

Gurjant Singh and the same being objected by him he has been wrongly implicated in the case of murder. However, none of the accused led any evidence in defence.

4. The following injuries were found on the body of the deceased on performing post mortem:

1. Incised wound 4 cm x 1/5 cm x bone deep was on left forearm. The bones of lower side were fractured.

2. Incised wound 20 cm x 1/4 cm x skin deep was on the right forearm.

3. Abrasion 5 cm x 1/8 cm on right shoulder.

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5. Abrasion 7 cm x = cm was present on the waist.

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7. Cyanosed mark with swelling. There was 8 cm abrasion within the injury on left temple which 1 cm x 1 cm on central part.

8. Cyanosed and swelled 7 cm x 7 cm on right temple 1 cm x 1 cm abrasion was present inside the same injury.

9. Cyanosed and swelled 6 cm x 8 cm clotted blood was present under the skin on cutting back side of head which was extending from injury No. 7 upto the lower part of injury No. 9. On cutting the bone blood had coagulated which duramatter was in the brain which was in the left parietal region, occipital region and right tempo-parietal region.

10. Cyanosed 10 cm x 1 cm on right knee.

5. According to the doctor (PW-6), all the injuries were ante mortem and the deceased died due to shock and coma arising out of head injury Nos. 7, 8 and 9. Injury Nos. 7 and 8 was the cause of death in ordinary course of nature.

6. The trial court on the basis of statement of PW-6 made on the basis of post mortem report (Ex.P/14) held that the death of deceased Hansraj Singh was homicidal. As regards credibility of the testimony of eye-witnesses (PW-1, PW-2 and PW-3), the trial court observed (in para 18) that it may be true that the place where all these three witnesses were standing seeing the accused directly from there is not at all possible but their statement is that they heard the call MARO MARO and then they rushed there; there may be exaggeration in the statements of PW-1 and PW-2 regarding seeing the accused because both of them are close relatives of the deceased and they have made statement of seeing the accused directly that they wanted to give conclusive evidence on this point that they saw accused while assaulting from the very beginning but on the basis of their statement that they have seen the accused from that place where they were standing, on this basis it cannot be agreed that they did not hear the call MARO MARO; and since there was a call of MARO MARO, therefore all these three witnesses rushed there and they saw that the accused were assaulting the deceased Hansraj Singh, cannot be disbelieved. As regards discrepancies and shortcomings in the statements, the trial court held (in para 19) that on this ground the entire prosecution case cannot be treated untrue because there is no such case in which such discrepancies of general nature do not exist and the court has to see that how much prosecution evidence is reliable in respect of chief statement of the occurrence. On the argument that PW-1 and PW-2 being close relatives of the deceased their statements cannot be believed, the trial court did not accept the same observing that their arrival at the spot of occurrence was natural because they made statement of reaching the place of occurrence on hearing the call of MARO MARO and the place of occurrence is not very far from their house. On the argument that Gurjant Singh being the eye-witness has not been examined by the prosecution, the trial court held that it is for the prosecution as to which witnesses are to be examined and when the same fact is proved through reliable witness then for corroboration of it on the same

point by getting examined more than one witnesses is not required.

7. Ultimately, the trial court held that the accused Litta Singh and Kalla Singh caused fatal injuries to the deceased Hansraj Singh by assaulting him with sickle (gandasi) and lathi with the motive of causing his death as a result of which he died but the fact of any participation of accused Boga Singh in the said offence is not found to be proved beyond reasonable doubt and therefore, giving benefit of the doubt accused Boga Singh was acquitted. The appellants herein were convicted under Section 302/34 IPC and sentenced as stated above.

8. Aggrieved by the judgment of the trial court, the appellants preferred an appeal before the High Court. The High Court after analyzing the facts of the case and re-appreciating the testimonies of the witnesses, affirmed the findings recorded by the trial court and dismissed the appeal. Hence, this appeal by special leave.

9. Mr. Sushil Kumar Jain, learned counsel for the appellants assailed the impugned judgment and order of conviction as being contrary to the facts and evidence on record. Learned counsel firstly submitted that the courts below have erred in placing reliance on the statements of the PW-1 Baltej Singh, PW-2 Yadvinder Singh, PW-3 Mukund Singh, who were ex facie interested witnesses inasmuch as PW-1 and PW-2 are brother and son of the deceased and Mukund Singh was inimical towards the appellants. Learned counsel submitted that since the statements of these witnesses had been disbelieved qua Boga Singh, the High Court has gravely erred in placing reliance on the statements of these witnesses without any corroboration by independent witnesses. Learned counsel drew our attention to the judgment of the trial court and submitted that the High Court ought to have considered the findings recorded by the trial court in para 22 of the judgment. Para 22 of the trial court judgment reads as under:-

"As far as there is the question of the accused Boga Singh though statements are also against him similar to PW.1, PW.2 and PW.3 that he also beat the deceased with lathi but our opinion in this regard is that PW.1 and PW.2 have made statements regarding the accused Boga Singh that accused Boga Singh raised the call of MARO MARO but in the statement under Section 161 Cr.P.C. of all these three there is no such statement that who gave a call of MARO MARO was the accused Boga Singh. It is revealed from this that the statement made by PW.1 and PW.2 regarding giving a call of MARO MARO by accused Boga Singh has been made for ensuring that accused Boga Singh be also fully included in this case. PW.3 Mukand Singh does not make such statement in his statement in the court that accused Boga Singh raised a call of MARO MARO and it was natural for him that he only heard the call did not see the accused because at that time he was feeding bread to the dogs in front of his house. PW.1 and PW.2 have made this excess statement in the court regarding Boga Singh due to which doubt is created that whether in fact call of MARO MARO was made by Boga Singh only because the place where these people were standing and in the time of occurrence it was not possible to see for them that the call was given by him. In addition to this there was no blood on the lathi which accused Boga Singh got recovered on his information. Therefore, this also creates doubt that the lathi which was seized was used in causing injuries to the deceased. There is one more practical fact that when his two young sons in which the age of accused Kala Singh is 20 years and accused Leeta Singh is 25 years old as has been told by them in their statements under Section 313 Cr.P.C, and both have sufficient capacity of causing injuries to the deceased then this accused was having the necessity that he also cause injuries to the deceased. His presence may be at the spot of occurrence because the manner in which PW.1, PW.2 and PW.3 came on hearing MARO MARO then he may have also come there but neither he gave a call of MARO MARO and instigated both his sons in any manner and nor he took any part in causing injuries to the deceased. Therefore, the statements of PW.1, PW.2 and PW.3 concerning him cannot be believed and giving benefit of doubt to him is justified."

10. Learned counsel submitted that the allegation in the FIR made

against all the three accused persons and the evidence adduced by the prosecution cannot be segregated. Since one of the accused Boga Singh has been acquitted, then there is no reason why the appellants may not be acquitted from the charges. Learned counsel further submitted that the genesis of the incident has not been established as to which injuries were fatal. Learned counsel referred the decisions of this Court in the case of Ishwar Singh vs. State of U.P., (1976) 4 SCC 355 and State of U.P. vs. Madan Mohan & Ors., AIR 1989 SC 1519. Learned counsel submitted that the non-examination of Gurjant Singh and the persons of the locality is fatal in the instant case as no explanation has been given for their non-examination. Lastly, learned counsel made an alternative argument and submitted that there was no common intention of the appellants to kill the victim. It may be that because of some dispute and quarrel between the appellants and the victim, the appellants might have tried to teach lesson to the victim and in that they have allegedly inflicted injuries which have caused the death of the victim. And in the said premises, the conviction of the appellant may be altered from Section 302 IPC to Section 304 Part II IPC or at the most under Section 304 Part-I IPC.

11. On the other hand, Dr. Manish Singhvi, learned counsel appearing for the prosecution side submitted that there are direct evidence in the form of eye-witnesses, namely, PW-2 and PW-3. Learned counsel submitted that the weapons used by the appellants were recovered and blood found on the said weapons. Learned counsel submitted that the head injuries i.e. injury Nos. 7, 8 and 9 are independently sufficient to cause the death. Learned counsel submitted that Gurjant Singh may not be called as best witness but one of the witnesses. Since the evidence of PWs 1, 2 and 3 was sufficient to establish the case, non-examination of Gurjant Singh is not in any way fatal to the prosecution side.

12. We have carefully examined the evidence adduced by the prosecution and also the complaint lodged by the complainant on the basis of which the case was registered against the appellant Boga Singh who has been acquitted in the case. Much stress and emphasis has been given to the word "MARO MARO" coming from the side of lane in front of the house of Mukund Singh. Hearing the voice, the accused person alleged to have run towards the place and saw that the accused Boga Singh and his two sons Litta Singh and Kalla Singh were beating the deceased with lathi and gandasi. In the FIR (English translation of the same has been annexed as Annexure P-1), it appears that the informant alleged that when he along with two others ran in front of the house of Mukund Singh, a loud voice "MARO MARO" was heard. On hearing the turmoil, the complainant and PWs 2 and 3 rushed and saw that the accused persons were assaulting the deceased. When the complainant and PWs 2 and 3 raised commotion, then the accused persons ran away. PW-1, who is the complainant, in his evidence, has deposed otherwise. According to his evidence, there was hue and cry, Boga Singh was saying "KILL KILL". Hearing the hue and cry, he went running there and saw that the accused persons were beating the deceased. PW-2 Yadvinder Singh in his deposition has said that on hearing the sound of "MARO MARO" he saw that Boga Singh was saying "MARO MARO", then they went there and saw that three accused persons were beating his father. When they reached nearby, then these persons fled away. PW-3 Mukund Singh has said that the incident was of about six months before. While he was feeding bread to the dogs, then sound of "MARO MARO" reached. He reached there running and saw that the accused persons were beating Hansraj Singh.

13. The trial court proceeded on the basis of written report (Ex. P/1) submitted in the police station wherein the allegation was that the deceased while coming home from the field at about 7 O'clock and when he reached in the lane in front of the house of Mukund Singh a loud voice "MARO MARO" was heard. In the judgment, the word "MARO MARO" was described as "MAR DO MAR DO". The trial court further noticed the evidence of PWs 1, 2 and 3 who alleged to have heard the noise "MARO MARO". The trial court recorded its opinion which is quoted hereinbelow:-

" My opinion in this regard is that it may be true the place where all these three witnesses were standing seeing the accused from there is not at all possible because the occurrence is about quarter to seven - seven O'clock evening on 7th February 2001 and on this day sun sets at almost 6= O'clock and the dark after half an hour after sun set is that much in which it is not possible to see the accused directly but their

statement is that they heard the call MARO MARO then they rushed there. There may be exaggeration in the statements of PW-1 and PW-2 regarding seeing the accused because both of them are close relatives of the deceased and they have made statement of seeing the accused directly that they wanted to give conclusive evidence on this point that they saw accused while assaulting from the very beginning but on the basis of their statement that they have seen the accused from that place where they were standing, on this basis it cannot be agreed that they did not hear the call of MARO MARO. The statement of PW.1, PW.2 and PW.3 that they had gone there on hearing MARO MARO and among them the statement of PW.1 and PW.2 is certain that Banga Singh was giving a call of MARO MARO but in it their evidence may be doubtful that in fact Bonga Singh made a call of MARO MARO but since there was a call of MARO MARO therefore all these three witnesses rushed there and they saw that the accused were assaulting deceased Hansraj Singh. The place of all these witnesses is though not very far from the place of occurrence hence, their going to the place of occurrence on hearing the sound of MARO MARO and having gone there evidence of seeing the accused assaulting Hansraj Singh cannot be disbelieved. Though the Advocate for the accused have given the argument in their arguments that the Investigation Officer has not shown that place wherefrom they were seeing the accused by standing but it does not have any adverse effect because it was necessary for the Investigation Officer that he would show the spot of occurrence and the place in the vicinity not that place wherefrom any witness may have seen occurrence. Had all the three witnesses would have made the statement of not going at the place of occurrence on hearing the sound of MARO MARO and would have made the statement of seeing the occurrence standing only at that place then this argument was having the importance that how they had seen the occurrence while standing at the place where they were standing. When they reached the place of occurrence on hearing the call then the state of their being standing or place becomes secondary. Therefore, the argument given by the learned Advocate for the accused does not have any force."

14. However, with regard to the accused Boga Singh, the trial court recorded the reasoning in para 22 of the judgment while acquitting him.

15. Curiously enough, the High Court while narrating the incident as contained in Ex. P/1, has wrongly mentioned that the witnesses have heard the voice "KILL KILL" and hearing the shout, the witnesses reached the spot and saw the accused persons beating the deceased.

16. The word "MARO MARO" can never mean "KILL KILL". The word "KILL" means to cause the death of a person or animal. It also means to put some one to death, to murder, to slaughter. On the other hand, the word "MARO MARO" means to beat, to cause assault. Here the thin line of distinction lies between the two words. If the voice is "KILL KILL", it means to cause death of the person and to finish him. Had the intention of the person been to make such call or voice "KILL KILL" and on the basis of such call the accused persons had assaulted the deceased, then the intention would have been clearly to kill and murder the deceased. Here on hearing the call "MARO MARO", the accused persons with Boga Singh started beating the deceased.

17. Considering the nature of the injury caused to the deceased and the weapons i.e. lathi and gadasa (sickle) used by them, it cannot be ruled out that they assaulted the deceased with the knowledge that the injury may cause death of the person. Moreover, there is no evidence from the side of the prosecution that the accused persons pre-planned to cause death and with that intention they were waiting for the deceased coming from the field and then with an intention to kill the deceased they assaulted him.

18. It is well settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is very important consideration for coming to the conclusion that death is

indeed a murder with intention to cause death or the knowledge that death will probably be caused. From the testimonies of the witnesses, it does not reveal that the accused persons intended to cause death and with that intention they started inflicting injuries on the body of the deceased. Even more important aspect is that while they were beating the deceased the witnesses reached the place and shouted whereupon the accused persons immediately ran away instead of inflicting more injuries with intent to kill the deceased.

19. In the case of Gurdip Singh & Anr. vs. State of Punjab, (1987) 2 SCC 14, this Court came across a similar type of incident, where the prosecution case was that one Maya Bai had two sons and two brothers. She was the mother of accused Nos. 1 and 2 and sister of accused Nos. 3 and 4. The deceased was one Kishore Singh. The accused suspected that Mayabai had illicit relations with the deceased. Hence one day when the deceased was returning from village and when he reached the field of Kashmiri Lal, the accused came out of the wheat field. The first appellant had a kirpan and the second appellant had kappa. It was alleged that the four accused took deceased on wheat field and threw him on the ground. One of the acquitted accused Jit Singh caught hold of arms of the deceased and the two appellants caused injuries with the weapons in their hands. There was an alarm created by Lachhman Singh, PW-3, which had attracted PW-4 and Mohinder Singh. When they reached the spot, the accused ran away with their weapons. The deceased had seven injuries on his body. Injury No.7 was fatal according to the doctor, who examined him. It was argued that the prosecution had not come forward with true case as to how the incident happened. The trial Judge found two accused Jit Singh and Teja Singh not guilty, since the case against them was not proved beyond the reasonable doubt. The appellants were convicted because they had weapons with them unlike the acquitted accused. This Court on consideration of the entire evidence did not interfere with the findings that the appellants were responsible for the death of the deceased by attacking him with the weapons in their hands, but on reappraisal of the entire evidence, the Court found it difficult to agree with the trial court that the appellants were guilty of the offence under Section 302 IPC. Hence, converting the offence under Section 304 Part I, this Court observed:-

"6. The trial Judge was not wholly justified in observing that there was no evidence about the so-called illicit relationship between Maya Bai and Kishore Singh, the deceased. The materials available create considerable doubt in our mind as to whether the appellants really intended to kill Kishore Singh or whether his misconduct pushed them to wreak revenge against the deceased and in this pursuit attacked him. We are not unmindful of the fact that the 7th injury noted in the post-mortem certificate is in the ordinary course sufficient to cause the death of the deceased. But we are not fully satisfied that the appellants intended to kill the deceased. The correct approach on the evidence and other circumstances in this case, would according to us, be to find the accused guilty under Section 304 Part I, and to sentence them under that section."

20. After analyzing the entire evidence, it is evidently clear that the occurrence took place suddenly and there was no premeditation on the part of the appellants. There is no evidence that the appellants made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellants assaulted deceased in such a manner that the deceased suffered grievous injuries which was sufficient to cause death, but we are convinced that the injury was not intended by the appellants to kill the deceased.

21. In the facts and circumstances of the case, in our considered opinion, the instant case falls under Section 304 Part II IPC as stated above. Although the appellants had no intention to cause death but it can safely be inferred that the appellants knew that such bodily injury was likely to cause death, hence the appellants are guilty of culpable homicide not amounting to murder and are liable to be punished under Section 304 Part II IPC.

22. Accordingly, we modify the judgment of the trial court and the High Court and convert the conviction under Section 302 to 304 Part II IPC, and sentence the appellants to ten years' imprisonment. The appeal is,

