PETITIONER:
BOOTA SINGH & ORS.

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT: 12/12/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

The ten appellants before us, (hereinafter referred to as A1 to A10 respectively) were tried by the Additional Sessions Judge, Ludhiana for criminal conspiracy, rioting, murder and other related offences. The trial ended in conviction and sentence of A1 under Sections 302, 324/34 and 323/34 CPC, A2 to A4 under Sections 302/34, 324/34 and 323/34 IPC, A5 to A8 under Section 324 CPC, A9 under Sections 326 and 323 CPC and A10 under Sections 326 IPC. Against their convictions and sentences A1 to A4 filed one appeal and A5 to A10 another. By a common judgment the High Court dismissed their appeals and aggrieved thereby they have preferred these appeals after obtaining special leave.

2. Bereft of details the prosecution case is as follows:

(a) On August 3, 1988 at or about 6 A.M. Swaran Singh (P.W.6), a resident of village Jainpur, called on his brother Charan Singh (the deceased), who used to live in the adjoining house. A little later A3, who lived nearby, came there and asked Charan Singh to accompany him to his house as he wanted to discuss some urgent matters with him. Accompanied by A3 Charan Singh then proceeded towards the former's house. As they neared the neighboring shop of Lachhman Dass there was an alarm, whereupon Swaran Singh accompanied by his nephews Harjit Singh (P.W.7) and Harnek Singh (P.W.8) (two sons of Charan Singh) rushed there. In their presence A1, who was armed with a gandasa, gave a blow with it on the head of Charan Singh as a result of which he fell down. When Swaran Singh went to his rescue A2 hit him (Swaran Singh) with another

gandasa and A4 with a lathi.
(b) On seeing such assault on their father and uncle, Harjit Singh and Harnek Singh rushed to their house and came back armed with dangs followed by other members of their family including Ms. Amarjit Kaur, wife of Charan Singh. Simultaneously, the other accused persons arrived at the scene armed with gandasas, dangs and kirpans and started assaulting the members of Charan Singh's family. Some members of the party of A1 also sustained injuries at the hands of the two sons of Charan Singh when they snatched away some arms from the accused persons and beat them in self defence. The hue and cry attracted some villagers and then the accused disappeared from the spot carrying their respective weapons. All the injured were removed to the Civil Hospital, Ludhiana for treatment where from Charan Singh, who was found in a precarious condition, was immediately referred to C.M.C. Hospital, Ludhiana.
(c) On receipt of a telephonic message from the police guard posted at the C.M.C. Hospital, Ludhiana, Assistant Sub-Inspector Karmit Singh of Police Station Sadar, Ludhiana (P.W. 10) along with some police officials went to C.M.C. Hospital, Ludhiana, where the Medical Officer opined the Charan Singh was not fit to make a statement. The police party then went to Police Station, Division No. 2, Ludhiana and collected the medico-legal-examination reports of all the other injured which had in the meantime been sent there by the Civil Hospital. Karmit Singh then went to the Civil Hospital, Ludhiana and recorded the statement of injured Swaran Singh (Ext. PT). He sent the statement to the police station for registering a case thereupon and accompanied by some police officials went to the scene of occurrence. There he seized some blood-soaked earth and prepared a visual plan of the spot (Ext. PY). While at the spot he got information about the death of Charan Singh and hence went to C.M.C. Hospital. He prepared the inquest report regarding the death of Charan Singh and sent the dead body for Post-mortem examination. On completion of investigation he submitted chargesheet against the

accused persons and in due course their case was committed to the Court of Session.

(d) The motive, which according to the prosecution actuated the accused to commit the above crimes, was that eleven months earlier Sewa Singh, son of Hazura Singh and brother of A6, A7, A8 and A9 had, on account of domestic problem, committed suicide by hanging near the tube-well of Charan Singh (deceased), with whom he was working as a share-cropper. When this matter was reported by Charan Singh to the police the accused party levelled allegation that Sewa Singh was hanged. On that score the accused party nursed a grievance against Charan Singh.

3. The appellants pleaded not guilty to the charges levelled against them and their version of the incident, as given out by A1 in his statement recorded under Section 313 Cr. P.C., was that in the night preceding the date of the incident a calf of A1 had fallen in the outlet of the Bio-Gas plant of the complainant party and over that issue there was an exchange of abuses between A3 and the complainant party. A3 then gave out that he was going to inform the police about the misbehavior of the complainant party. To that the complainant party retorted that the Harijans (the accused party) had no right to abuse them. The following day (the date of the incident) the deceased and members of his family including Swaran Singh, Harinder Singh, Ajit Singh, Harjit Singh and Hari Singh went to the house of A3 armed with deadly weapons and asked him to come out. When he (A1) came out and protested he was attacked by the complainant party with the weapons they were carrying as a result of which he sustained severe injuries on his person. A1 next stated that thereafter when the complainant party trespassed into the house of A3 and his sons and caused multiple injuries to six members of their family, one of them, namely, Nachhatar Singh (A7) caused injuries on some of the members of the complainant party. According to A1, on account of the affluence and influence of the complainant party the police, instead of taking action against the complainant party who were the aggressors, falsely implicated them. While some of the other appellants took the same defence others took the plea of alibi.

4. In support of their respective cases the prosecution examined ten witnesses, of whom Swaran Singh (P.W.6), Harjit Singh (P.W.7), Harnek Singh (P.W.8) and Hari Singh (P.W.9) figured as eye-witnesses, and the defence examined one doctor to prove injuries on the persons of some of the members of its party.

5. When the medical evidence adduced during trial is read in the context of the respective cases of the parties it is evident that Charan Singh met with his death and four members of his party namely, Swaran Singh (P.W.6), Harjit Singh (P.W.7), Harnek Singh (P.W.8), Hari Singh (P.W.9) and seven member of the accused party, including A1, A3, A7 and A8 sustained injuries in course of the incident. Resultantly, the only question that fell for consideration before the learned Courts below was which of the versions regarding the incident was true. To answer this question both the learned Courts below detailed and discussed the

entire evidence; and concurring with the findings of the trial Court in this regard the High Court made the following observations:

> "Thus, from the evidence available on the record, we have no doubt that the first part of the occurrence took place in front of the shop of Lachhman Dass and, at that time, only Boota Singh (A1), Malkiat Singh (A2), Karam Chand (A4) and Surat (A3) appellants, were present. Surti alias Surat Singh was the accused who brought Charan Singh from his house and Boota Singh gave the gandasa blow which proved fatal. Malkiat Singh gave two gandasa blows on the person of Swaran Singh while Karam Chand gave three dange blows on the person of Swaran Singh. The first part of the occurrence came to an end with the causing of the injuries on the person of Swaran Singh. Thereafter, the nephews of Swaran Singh and other members of the family came rushing from their house and the nephews of Swaran Singh were armed and the remaining members of the accused-party including Surat Singh came armed from their house and there was a free fight between the parties in the Chowk. Evidently, in a case of free fight, the provisions of Sections 148 and 149, Indian Penal Code, cannot be invoked and each accused shall have to be dealt with individually and shall be individually liable for the injuries caused by him."

The High Court then discussed the individual roles of the appellants in the first and second part of the incident and upheld their convictions as recorded by the trial Court. Having considered the evidence on record we do not see any reason to differ from the above quoted observations of the High Court.

6. Coming now to the individual roles of the appellants, we find that the evidence on record unmistakably proves that without any provocation whatsoever A1 gave Charan Singh a blow on his head with a gandasa which resulted in his death. Considering the nature of the weapon used, the situs of the blow and the extent of the injury (external and internal) caused to the deceased it must be said that A1 has been rightly convicted under Section 302 IPC (simpliciter). So far as conviction of A2 and A4 for the above murder is concerned we are however unable to agree with the findings of the learned Courts below that they are liable for conviction with the aid of Section 34 IPC. Admittedly A2 and A4 did not inflict any blow upon Charan Singh and except their presence when Charan Singh was assaulted by A1 there is no other material from which it can be conclusively said that they shared the common intention in causing his death. They are therefore entitled to the benefit of reasonable doubt so far as it relates to the murder of Charan Singh. That brings us to the role of A3 in the murder of Charan

Singh. From the sequence of events, as noticed earlier, it is evident that pursuant to a pre-arranged plan he persuaded Charan Singh to come out of the house on the plea of some discussion, which was obviously a hoax. Needless to say, but for his stratagem Charan Singh would not have come out of his house and met with his death immediately thereafter at the hands of A1. It is true that he did not actually participate in the actual assault though present but from his earlier act it stands fully established that he shared a common intention with A1 to commit the murder of Charan Singh.

7. So far as the convictions of the ten appellants relating to the assault on P.Ws. 6, 7, 8 and 9, the concurrent findings of the learned Courts below are unexceptionable and no inference in respect thereof is called for.

8. On the conclusions as above we set aside the convictions of Malkiat Singh (A2) and Karam Chand (A-4) under Section 302/34 IPC and the sentence of imprisonment for life and fine imposed therefor but maintain their other convictions and sentences. All the convictions and sentences of the other eight appellants are however maintained. Appellants, namely, Boota Singh (A1), Harmel Singh (A5), Balbir Singh (A6), Nachhattar Singh (A7), Sarabjit Singh (A8), Jaswant Singh (A9) and Gulzar Singh (A10), who are on bail, are directed to surrender to their bail bonds to serve out the remainder of their sentences.

The appeals are, thus, disposed of.