

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Case: Cr. Appeal No.18/2012 & MP No.11/2015 c/w Confirm. No.18/2012

Date of Decision: 30.12.2017

Bhagwan Dass & others

Vs.

State of J&K

Coram:

Hon'ble Mr. Justice Dhiraj Singh Thakur

Hon'ble Mr. Justice Sanjay Kumar Gupta

Appearing counsel:

For the appellant(s) : Mr. Rahul Bharti, Advocate.

For the respondent(s) : Mr. S. S. Nanda, Sr. AAG.

- i. Whether approved for reporting in Press/Media : Yes/No/Optional
- ii. Whether to be reported in Digest/Journal : Yes/No
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Per: Sanjay Kumar Gupta-J

1. Being aggrieved of impugned judgment of conviction/order of sentence dated 27.01.2012/28.01.2012 passed by the Court of Ist Additional Sessions Judge, Jammu, in FIR No.35/2001 of Police Station R. S. Pura, for offences under Sections 302/34 RPC & 4/25 Arms Act, appellants-Bhagwan Dass alias Bhana S/o Bari Ram, Shiv Kumar alias Shibu & Raj Kumar alias Bittu both sons of Bhagwan Dass, all residents of Ward No.9, R. S. Pura, Tehsil R. S. Pura, District Jammu (for brevity 'accused'), have filed Cr. Appeal No.18/2012. A criminal reference is also made by trial judge for confirmation of sentence of life imprisonment imposed by him under section 302 of RPC on accused persons.
2. Facts of the case, in brief, are that on 27.01.2001 complainant PW-1 namely Harnaik Singh S/o Chain Singh R/o Ward No.9, R.S.Pura, lodged a verbal report in P/S R.S.Pura stating therein that his real brother namely

Devinder Singh alias Bhola was running a tent house business in partnership with one Shiv Kumar and on 25.02.2011, they had installed a tent at village Chakroie More in the Sheller of one Harnam Dass where the marriage of a relative of Ram Dass was scheduled to take place. That at around 9.45 PM on that day when the Barat party was taking its dinner, the strong wind started blowing and because of the storm the power supply was disrupted. That Raj Kumar alias Bittu, Shiv Kumar alias Shibu both sons of BhagwanDass residents of Ward No.9, R.S.Pura who were also present in the said marriage assaulted his brother Devinder Singh and caused injuries to him on forehead and attributed the cause of power failure to him; that a report was lodged with police of Police Station Ranbir Singh Pura for this occurrence. That on 27.02.2001, the complainant at around 7.30 pm had gone to the spare parts shop of one Raj Paul situated at Bus Stand and the brother (deceased) of the complainant had already reached the bus stand area who had disclosed that on 28.02.2001 the marriage of the daughter of one KrishanLal is scheduled to take place and his tent house has been booked for that marriage and that the complainant's brother was on his way to inspect the site where the tent was to be installed. That his brother had hardly gone a few steps ahead when Raj Kumar alias Bitu, Shiv Kumar alias Shibu and BhagwanDass alias Bhana appeared on the scene and threatened his brother as to why he has come there and started assaulting him. Bhagwan Dass loudly proclaimed that Devinder Singh should not be allowed to go back alive and thereafter, Bhagwan Dass and Shiv Kumar caught the deceased from his arms whereas Raj Kumar alias Bitu pulled out a Kirch and struck a blow with it on the chest of the brother of deceased who fell on the ground and bled profusely; that the accused after the commission of the crime fled away from the scene of occurrence. That on hearing the alarm some people had gathered on the scene of occurrence. That the injured brother was shifted to R.S.Pura hospital with the help of Mohinder Singh and some people who had gathered on spot from where the

injured was referred to GMC, Jammu but the deceased succumbed to his injuries on reaching GMC, Jammu; that the accused have committed this crime with a deliberate intention and on the basis of the past rivalry. On the basis of this information, FIR No.35/2001 under Section 302/34 RPC came to be registered against the accused persons and investigation was carried out. After completion of the investigation and on the basis of evidence collected by the investigating agency, a charge sheet has been filed against the accused persons in the committal court of Judicial Magistrate, Ist Class, R.S.Pura on 1.5.2011 from where it came to be committed to the court of learned Sessions Judge, Jammu from where it came to be assigned to the trial Court for disposal under law. Court below after framing of charges against the accused on 06.06.2002, commenced the trial and after completion of trial, convicted all the accused persons and sentenced them as mentioned above.

3. Learned counsel for accused persons argued in detail and stated that Court below has not properly appreciated the evidence on record; that statements of witnesses are full of contradictions embellishment and improvements; that medical evidence does not support that injury was sufficient in ordinary course to cause death, because measurement of wound and place at where it was inflicted, does not support that deceased died on account of injuries sustained by him; that all witnesses examined are interested and no independent witnesses have been examined; that place of occurrence has not been proved; that witnesses whose presence have been shown on spot is after thought; that motive in the case has not proved by cogent evidence. It has also been argued that the offence under section 4/25 A. Act was not entered into FIR, but challan has been produced by entering this offence also, so investigation in the case has not been fairly been conducted, therefore no conviction can be made out against appellants due to this reason also.

4. Whereas, Sr. AAG has supported the judgement of Court below by relying all the evidence on record. He also argued that prosecution has proved its case beyond reasonable doubts.
5. We have considered the rival contentions and gone through the record cautiously.
6. Before appreciating the evidence on record and reasoning of court below in passing judgement, the brief resume of prosecution witnesses reads as under :-

PW-Harnek Singh: In examination-in-chief by the APP, the witness has stated that I know the accused persons present in the Court. The deceased Davinder Singh was my younger brother and was running a tent house business. On 27.02.2001 I had gone to the spare parts shop of Raj Pal situated at Bus Stand. Deceased Davinder Singh met me there and I enquired from him as to where he was going to and deceased replied that on 28.02.2001 he was to arrange the tent for the marriage of the daughter of KrishanLal and that he along with Shiv Kumar was going to inspect the site where tent was to be installed. Thereafter, deceased was seen talking with the PW-Shiv Kumar. I went to the shop of Raj Pal. I heard accused BhagwanDass, Raj Kumar and Shiv Kumar making a call as to why we had come there and in the meantime, the accused caught hold of Davinder Singh and asked him as to why he has come there and declared that the deceased would not be allowed to go home alive. Accused Shiv Kumar and BhagwanDass tightly held the deceased and started beating him. I and Raj Pal also rushed to the place of occurrence and in the meantime, PW-Shiv Kumar and Mohinder Singh also reached there and I was also standing at a small distance from the place of occurrence. Accused Raj Kumar alias Bittu pulled out a kirch from his loins and struck on the chest of the deceased Davinder Singh. We raised an alarm that deceased has been killed and the accused also made an attempt to assault me. In the meantime, deceased

Davinder Singh fell on the ground and the accused fled away from the scene of occurrence. Thereafter, we shifted the deceased to R.S.Pura hospital and where from he was referred to Jammu hospital and when the deceased was shifted to Jammu hospital, the doctor declared him brought dead. Thereafter, we went back to R.S.Pura and lodged a report. The FIR bears my signature at two places and verbal report was lodged in the police station. The report bears my signature, which I identify. I testify to the correctness of its contents and it is marked as EXPW-HS. After registration of the FIR, I along with police and Station House Officer visited the scene of occurrence and the scene of occurrence was accordingly guarded by keeping stones around it for identification and police officials were stationed there for protecting the scene of occurrence. The police had kept me along with it in the night in order to identify the accused persons but accused were not available. I again went to the police station where my statement was recorded by the police. Thereafter, some police officials along with me had visited Jammu hospital and police had taken the dead body in its possession. The receipt pertaining to the custody of the dead body by the police bears my signature. I testify to the correctness of its contents and it is marked as EXPW-HS/1. Thereafter, the doctor took the blood sample of the deceased on a white cloth and handed over to police. The seizure memo relating to sample of blood bears my signature, which I identify. I testify to the correctness of its contents also and it is marked as EXPW-HS/II. The clothes of the deceased were also seized by the police after the post mortem. The seizure memo bears my signature. I testify to the correctness of its contents and it is marked as EXPW-HS/III. After post mortem the dead body was handed over to me. The receipt executed bears my signature and its contents are correct and it is marked as EXPW-HS/IV. The clothes of the deceased were sealed on spot with a ring and it was placed on my supurdnama. The supurnama bears my signature. I also admit it contents and it is marked as EXPW-HS/V. At this stage, the APP

presented a sealed packet of clothes of the deceased and sought the permission of the Court to open the sealed packet for identification of clothes by the witness, which was granted. The clothes of the deceased were identified by the witness who also presented the ring before the Court. The witness identified the cut mark below the chest pocket of the deceased shirt. That thereafter on 05.02.2001 we went to police station to enquire as to whether accused had been arrested and found the accused having been arrested by the police who were being interrogated by the Station House Officer. Raj Kumar alias Bittu accused had disclosed that he has concealed the weapon in bushes at Toph Sherkhania on the side of the road. Police had prepared the papers relating to disclosure statement, which bear my signature, which I identify. I also testify to the correctness of its contents and it is marked as EXPW-HS/VI. Thereafter, I along with Mohinder, Bihari and police had visited the place of recovery in a police Jeep and accused Raj Kumar had pulled out the Kirch out of bushes and presented to the Station House Officer. The recovery memo was also prepared which bears my signature. I testify to the correctness of its contents and it is marked as EXPW-HS/VII. The police had also prepared the impression of the weapon of offence in my presence on a paper and it bears my signature, which I identify, and it is marked as EXPW-HS/VIII. Police had kept this weapon of offence in a Tin. At this stage, the APP sought the permission of the Court for opening the Tin, which was granted, and weapon of offence shown to the witness, who identified the same. Deceased Davinder Singh had installed his Tent house at a rented place. On 25th February the marriage of the daughter of Ram Dass was scheduled to take place there. There was strong wind blowing on that day and there was power failure on that count. Raj Kumar and Shiv Kumar had also participated in that marriage and there was exchange of blows between Davinder Singh and these two accused persons as to why there was power breakdown. Deceased Davinder Singh had received the injury on the forehead in this altercation

who had lodged report in police station R.S.Pura for this altercation and suffering of injuries on forehead and Davinder had disclosed this to me on 26.02.2001. It was for this reason that accused murdered him.

On cross-examination by defence counsel, the witness has stated that I am under-matric and do not know Urdu language. I am running a spare part show on Dablehar Road for the last 13 years in rented premises. This show is situated at a five minutes distance from the bus stand. S. Mohinder Singh is not my relative and is a member of my Biradari addressed by me as Uncle. At this stage the statement of the prosecution witness was deferred at the request of defence counsel.

Part Statement on 21.01.2003, on further cross-examination by defence counsel, the witness has stated that the occurrence took place at around 7.30 pm. Davinder Singh deceased who had fallen on the ground after being injured was shifted to R.S.Pura hospital by us in a car owned by Raj Pal. Mohinder Singh had also accompanied me whereas Shiv Kumar had followed us. The shop of Raj Pal is situated at a distance of 60 to 70 feet from the scene of occurrence where his white coloured Car bearing No.JK02-8257 was parked. I do not remember whether in my report to the police I had narrated tht deceased was shifted to R.S.Pura hospital in the car of Raj Pal from the place of occurrence. My clothes had also received blood stains of the blood of deceased and when I visited the police station for lodging the FIR my clothes were having blood stains. I was in panic at that time and I do not remember whether Shiv Kumar and Raj Pal were also present at that time at the scene of occurrence. I did not narrate this in my FIR that my clothes were blood stained nor I had handed over my blood stained shirt to them. In the hospital the deceased was not talking and we were exhorting him to talk. The doctor had put a bandage and administered the injection also in R.S.Pura hospital and we were advised to shift the deceased to Jammu hospital, who was shifted in an Ambulance. I and

Mohinder Singh had accompanied the deceased in the Ambulance and we had tried to talk with the deceased but deceased could not talk. The deceased had died in-route. I had stated this thing in my police statement that PW-Mohinder Singh and I had put the deceased in a Car and brought him to R.S.Pura hospital from where he was shifted in an Auto to Jammu hospital but on reading the statement under Section 161 CrPC, the story of Mohinder Singh accompanying the witness was found absent. In statement under Section 161 CrPC, the name of Ch. Mohinder Singh has been written who is stated to have accompanied us from the place of occurrence to R.S.Pura hospital and from there to Jammu hospital. The doctor had pronounced the deceased as brought dead and at around 9.30 to 9.45 pm, we had returned to R.S.Pura in a car. The doctors in Jammu hospital had informed the police of Police Post stationed in the hospital. In the hospital, the doctors had enquired from me as to how the deceased was injured and I had disclosed to them that deceased was stabbed with a Kirch. I had visited the police station R.S.Pura at around 10.30 pm along with Mohinder Singh. The police station R.S.Pura is situated at a distance of 5 to 7 minutes from the place of occurrence and the police had already received the information. Station House Officer, Ved Pal was present in police Station at that time. Police Station is situated at Bus Stand and the occurrence had also taken place inside the Bus Stand. Therefore, police had got the information of this occurrence. I and Mohinder Singh had lodged the report which was registered by the police. My signature was obtained on the paper on which report was written. I do not remember whether I had narrated the names of Mohinder Singh, Raj Pal, Bihari Lal, Shiv Pal being present on the place of occurrence although in my statement under Section 161 CrPC I had stated their names and the fact that these people were present at the scene of occurrence at the time of occurrence. The place of occurrence is situated in front of the shop of accused Bhagwan Singh at a distance of 50 feet. The shop of Davinder Singh deceased is not situated inside the Bus Stand area

nor is my shop situated in that area. The shop of Shiv Kumar who is partner of the deceased is also not situated inside the bus stand area. The shop of deceased was situated in Ward No.9, which is ½ km away from the place of occurrence. There are 15 to 16 shops inside the bus stand area. Accused party has a spare parts shop and a milk shop and a vehicle repair shop situated there. Adjoining the vehicle repair shop of the accused the shop of tyres belonging to one Sardar and adjoining to that is the shop of Raj Pal. The people had gathered at the scene of occurrence on hearing the commotion. Raj Pal and Shiv Kumar had reached the place of occurrence. Mohinder Singh and Ravinder had also reached the place of occurrence. I along with police had visited the scene of occurrence immediately after the registration of FIR and police had guarded the place of occurrence with stones and by placing police officials on duty to guard that place. The site plan was prepared by the police on next day of the occurrence. I was at a distance of 60 to 70 feet from the place of occurrence when the occurrence had taken place. I was night time and was dark. There was no vehicle in between the place of occurrence and the place where I was standing. The occurrence had taken place in aa flash. This is true that accused after injuring the deceased had tried to kill me also. My report does not disclose that all the three accused had pounced upon me. I knew the accused before the occurrence also and accused also knew me well before the occurrence. Accused Raj Kumar was having Kirch in his hand. On 5th March I got information that accused have been arrested. Police had taken a sample of blood of the deceased and had seized the clothes also. I had seen the accused in police lock up on 05.03.2001 when I alongwith Mohinder Singh and Bihari Lal had visited the police station to see whether accused were arrested or not. The accused were being interrogated by the police. Accused Raj Kumar alias Bittu during his interrogation had disclosed that he had concealed the Kirch at Toph Sherkhania in bushes on the side of the road and had made a disclosure statement. Police had prepared the papers at that

time. Accused Raj Kumar had signed that paper along with me and Mohinder Singh and Bihari Lal. Bilari Lal is known to me and his residence is at R.S. Pura. Accused Bittu had made the disclosure statement EXPW-HS/VI. Police had visited the place of recovery along with us in a Gypsy and accused Raj Kumar had identified the place of recovery at TophSherkhania and had pulled out the Kirch from bushes under a tree. The Kirch was seized and sealed in a Tin there. The place of recovery is a deserted place and vacant plot. A factory and temporary wall is also situated there which is owned by Kuldeep Singh. The recovery memo was prepared by police and was signed by Mohinder Singh and Bihari. This is not true that I was not present at that time at the place of occurrence as suggested by defence counsel. I open my shop at 9 am and close in between 7 to 8 pm.

PW- Ch. Mohinder Singh (24.02.2003):- In examination-in-chief by APP, the witness has stated that I know the accused present in the Court as well as the deceased Davinder Singh alias Bholla. On 27.02.2001 I had visited Jammu and had returned to R.S.Pura and reached R.S.Pura bus stand at 7.30 pm in the evening. Shiv Kumar met me at Bus Stand on that day who was the partner of the deceased in the ten house business. I enquired from Shiv Kumar the reason of his being at the bus stand at that time, who replied that he had come there in connection with the marriage arrangement of the daughter of Krishan Lal and that the deceased was also with him. I saw deceased talking to Harnek Singh. Shiv Kumar told that he has seen the site where the tent is to be installed for the marriage ceremony. The deceased after talk started coming back but within 5 to 10 minutes accused Bhagwan Dass raised a lalkara and threatened as to why the deceased has come there and in case he has come there he should not be allowed to go back alive; both the accused Bhagwan Dass and Shiv Kumar over powered the deceased whereas Raj Kumar alias Bittu struck at Kirch below in the chest of the deceased on the left side. The deceased fell down on the

ground. Harnek Singh brother of the deceased rushed to rescue the deceased but the accused pounced upon him and as such he retreated back. Many people gathered on the scene of occurrence including Shiv Kumar, Ravinder Singh; accused flee away from the scene of occurrence. The deceased was shifted by me and Harnek Singh to hospital in a Car No.8257 parked at the place of occurrence and I had driven the car. I had enquired from the injured deceased as to why the accused have launched a murderous assault on him and the deceased had stated that on 25th he had installed the tent at the Shellar of Harnam Dass on the marriage of the daughter of the brother of accused Bhagwan Dass; that because of strong wind, the tent got uprooted and lights got switched off, on which Raj Kumar and Bittu both sons of accused Bhagwan Dass had beaten the deceased. The deceased was shifted from R.S.Pura to Jammu hospital on the advice of doctors and thereafter I and Harnek Singh had shifted the deceased in an Ambulance to GMC Jammu. The deceased was declared dead by the doctors after 4 to 5 minutes after his admission in the Emergency. Thereafter, I and Harnek Singh came back to R.S.Pura in my car and visited the police station. Harnek Singh lodged a verbal report in the police and police had also obtained his signature after writing the report. The dead body of the deceased was taken into custody by police and its post mortem was also conducted. The receipt of the dead body bears my signature and I admit the correctness of its contents. It is already marked as EXPW-HS/I. Blood sample of the deceased was also taken. I identify the papers EXPW-HS/II which bears my signature. I also testify to the correctness of the contents of EXPW-HS/III and I identify my signature on it. I also testify to the correctness of contents of EXPW-HS/IV. On 05.03.2001 when I along with Harnek Singh and Bihari Lal had visited the police station R.S.Pura where we had seen the three accused in the room of the Station House Officer during my presence there. Accused Raj Kumar was interrogated who had made disclosure statement and had stated that he

has concealed the weapon of offence (Kirch) in bushes at TophSherkhania and he can get it recovered. That the disclosure statement EXPW-HS/VI bears my signature and I testify to the correctness of its contents also. Thereafter, we had accompanied the accused to Toph Sherkhania along with Bihari Lal and Harnek Singh with Station House Officer and 2/3 officials for recovery of the weapon of offence and accused retrieved the concealed Kirch from the bushes there. The Kirch was blood stained. The recovery memo EXPW-HS/VII was prepared which was witnessed by me. It bears my signature and I testify to the correctness of its contents. The seized Kirch and the clothes of the deceased shown to me in the court are the same. The under-shirt bears cut mark at the chest side. The police had kept the Kirch in a Tin, which was sealed with a ring. The ring was kept on my supurdnama which bears my signature. I testify to the correctness of its contents and it is marked as EXPW-MS. I present the ring.

In cross-examination by defence counsel, the witness has stated that I have studied up to Higher Secondary Class but I am not Urdu knowing. I do not remember the Roll number of my Higher Secondary Class or school. Deceased is my cousin in the biradari. I am 'A class' contractor and during the occurrence days I was a contractor and was perhaps executing some works at Pandorian. It was a PWD allotted work pertaining to construction of road. This work was allotted to me almost a year ago. There are different period fixed for completion of the work. I owned a Maruti Car No.2789-JK02K. On the day of occurrence I had visited Jammu by-pass in connection with my domestic work and one that day I had purchased 5 kg Rajmash and 5 kg walnuts from the Raghunath Bazar. I had travelled in the bus on that day and had not used my Car. On the day of occurrence I had set out for Jammu between 11 to 12 and had left Jammu for R.S.Pura at 6.45 pm in a bus from Asia Hotel. I had reached the bus stand R.S.Pura at 7.30 pm. Shop of Harnek Singh is situated on Dablehar road near the petrol pump and is situated at a distance of 300 to 400 metres from bus stand. It

was the month of February and was winter. I had not met Harnek Singh at bus stand but I had seen him standing near the shop of Raj Pal. I had no conversation with Harnek Singh before the day of occurrence nor I had talked to deceased before the day of occurrence as well. I had seen him standing at the place of occurrence. Harnek Singh and deceased were standing at a distance of 100 to 150 feet away from me. There were 7 to 8 vehicles at bus stand at that time including my Tipper No.9622-JK02F. It was evening at the time of occurrence. The sun sets early in winter and between 6 to 6.30 pm approximately in the month of February. There are 10 to 12 shops situated at Bus stand, R.S.Pura, out of them nine shops were opened and rest were closed. I know the names of the shopkeepers whose shops were opened at that time and some of them were Raj Kumar, Tirath Singh, KrishanLal, Parveen Kumar, who were present in their shops at the time of occurrence I cannot say whether these people had come at the scene of occurrence because the occurrence had taken place within minute. The shop of Raj Kumar is situated at a distance of 50 feet from the place of occurrence and I was standing at a distance of 100 feet from the place of occurrence. As soon as I reached at the place of occurrence, I saw the accused running away from the place of occurrence. All the three accused persons had fled together. The vehicular movement was still there at bus stand and one or two passengers were in the moving vehicles because most of the passengers alight from the bus either at the College Gate or at the Old bus stand. There was no police official present at the bus stand. There was only one Rehriwala at the bus stand who had also left the bus stand by that time. It took five to seven minutes to lift the injured from the place of occurrence and keeping him in the Car. This car belongs to Raj Kumar, which was already parked there. My clothes had not received any bloodstains but the clothes of Harnek Singh, the brother of the deceased, had got bloodstains. We along with Harnek Singh and deceased were in that car at that moment and I had driven the Car. I do not know whether

R.S.Pura hospital administration had informed the police or not. We had remained at R.S.Pura hospital for five minutes. The Police Station is situated at a distance of 300 to 400 metres away from the place of occurrence and hospital. The deceased was shifted to Jammu hospital in an ambulance where we had reached at around 8.30 pm. I had dropped my car at R.S.Pura hospital and I and Harnek Singh along with deceased and driver of the Ambulance had rushed to Jammu Hospital. No doctor or compounder from R.S.Pura had accompanied us. The doctors in the Jammu hospital had put the deceased on drip and thereafter the deceased had died. At Jammu hospital no police official had contacted me. My driver along with my car had reached Jammu hospital at 9.00pm and I and Harnek Singh had returned to the police Station from there. The deceased was kept in the Mortuary Room. We had reached in the police station between 10 to 10.30 pm and Munshi of the Thana had registered the report at the instance of Harnek Singh. I have no knowledge whether the SHO or other police officials at Police Station had gone at the place of occurrence or somewhere else. My statement was not recorded on that day but the statement of Harnek Singh was recorded by Munshi. I do not know whether Harnek Singh had mentioned in the report that his clothes had got bloodstains when he had put the deceased in the Car at the place of occurrence. Thereafter, I and Harnek Singh had returned to the house of Harnek Singh. The people at home had advised us to go back to Jammu Hospital, where deceased was left all alone and we had returned to the hospital along with 3-4 relatives of Harnek Singh. I do not know whether Harnek Singh in his report had mentioned the names of eyewitnesses. Police from police station R.S.Pura had visited Jammu hospital in the morning at 10.30am and my statement was recorded in Jammu hospital by a Sardar Sub Inspector. The statement of no other witness was recorded there. The seizure memos of clothes were prepared by Sub Inspector and I and Harnek Singh signed that seizure memo. I had visited the police Station on 5th at around 10.30 along with

Harnek Singh, BihariLal, who are the residents of R.S.Pura and is a Transporter. We had visited the police station on our own and we had seen the accused in handcuffs there in the room of Station House Officer. The accused were arrested on 5th. The accused were interrogated in our presence. Accused Raj Kumar had disclosed that he had concealed the weapon of offence in the bushes across the Canal in a vacant land along with wall of a Resin Factory. The signatures of Raj Kumar were taken on his statement. Accused had made a disclosure statement in the common language, which we speak. We stayed in the room of Station House Officer for 15 minutes and had reached at Toph Sherkhania, the place of recovery at 11.45 a.m. We had gone to that place in a police Gypsy. There are no houses or shops situated at the place of recovery except Resin Factory. I do not know whether Factory was in operation at that time or not. There was movement of people on the road alongside this Factory. The two people were called by the police but they had also disappeared. There is a village situated at a distance of 250 metres away from the place of recovery and none from that place was contacted. The place of recovery is an open place and is accessible to all. The seizure memo of the kirch was prepared on spot by Station House Officer in Urdu and I and BihariLal had signed this seizure memo. The kirch was kept in a Tin and this tin was got prepared in half an hour. I had taken 2 to 3 hours at the place of recovery. I had appeared as a witness in the case of my uncle Sh. ChuniLal, MLA, in the High Court. We had returned to the police station thereafter. I had not seen the blood stains on the seats of the car on which the deceased was kept in injured condition. This is not true that I was not present at the place of occurrence as suggested by defence counsel. This is also not true that I am deposing falsely in order to help the deceased party who are from my biradari as suggested by defence counsel. Apart from the Choudhary biradari, the shops of other biradari people are also situated at the bus stand near the place of occurrence. This is true that none apart from the people of

Jat biradari had come to the place of occurrence from their shops. No question in re-examination.

PW-Shiv Kumar:- In examination-in-chief by APP, the witness has stated that I know the accused persons present in the court as well as the deceased Davinder Singh alias Bhola who was my partner in Tent House business. That on 25.02.2001 we had installed a tent in a rice mill belonging to Ram Dass on the occasion of the marriage of his daughter. That at around 10.00 pm strong winds started blowing and the lights in the tent started flickering. That I and Tota Ram went to look into the matter and deceased was also present there. All the three accused were also present in that function, who started abusing the deceased as to the lack of proper arrangements made by him in the tent house. That the accused grappled with the deceased, as a result of which the deceased suffered an injury on his forehead. With the intervention of people present there, the parties were separated but accused Bhagwan Dass threatened that the deceased will be dealt with later on and let him go alive this time. That the deceased was bleeding and we took him to police station R.S. Pura and got a report lodge there. That a police official was deputed from there with us and the deceased was taken to the hospital for treatment of his injuries and thereafter we had gone back to our houses. That on 27.02.2001 there were many marriages taking place and we were busy in making arrangements for the marriage of the daughter of KrishanLal, who had already booked a tent house from us. On 28.02.2001, the barat was expected to reach there and I and deceased on 27.02.2001 at around 7pm in the evening had gone to supervise the arrangement on foot to the fixed venue. That as soon as we were passing through the middle of bus stand, we came across the spare parts shop of Raj Kumar which is situated there where the brother of the deceased Harnek Singh was standing. That deceased went to Harnek Singh for a brief talk and I had gone some four steps ahead when I saw Ch. Mohinder Singh coming down from the bus, who was known to me and started talking with me That the

deceased in the meanwhile after talking to his brother was coming towards me. That I heard the voice that deceased has himself come here and when I went towards the place from this voice had emanated, I heard another voice saying that deceased should not be allowed to go back alive and he should be done away with. Then it was accused Bhagwan Dass who had uttered these words. That I had hardly gone ten steps ahead when accused Bhagwan Dass and Shiv Kumar caught the deceased from his arms and accused Raj Kumar dealt a kirch blow on the left side of the chest of the deceased near the heart, as a result of which the deceased fell on the ground and the brother of the deceased namely, Harnek Singh, who was also standing there started running towards his brother and the accused also pounced upon him but he saved himself. That Ch. Mohinder Singh and I raised an alarm along with one S. Parvinder Singh and accused fled away from the place of occurrence in the meantime. That occurrence took place at around 7.30pm within a span of 25 to 30 seconds; the deceased was shifted to R.S.Pura hospital in a Car from where the deceased was referred to Jammu Hospital by the doctors. That it was informed later on that deceased had died en-route to Jammu Hospital. The place of occurrence was guarded by the police. Police had visited the scene of occurrence and had seized the bloodstains and simple clay from the scene of occurrence. I testify to the correctness of the contents of seizure memo EXPW-SK and EXPW-SK/1. Both these clays were sealed in a tin with a ring, which was kept on my supurdnama. I testify to the correctness of the contents of supurdnama as well. Police had recorded my statement and I had narrated the occurrence, which I had seen.

In cross-examination by defence counsel, the witness has stated that I have passed 12th class from Pune in 1990 but I do not know the roll numbers of my class as well as University at this time. I am running the tent house business for the last seven years in a rented shop. The rent was fixed

Rs.250/- per month according to the rent deed. The statement of the witness was deferred for presenting the Rent Deed.

In further cross-examination on 8th April, 2003, the witness has stated that I present the Rent Deed in the Court, which has been taken on the record. That the rent is paid in the name of Mandir Market since 01.01.1995; there was no rent deed executed between me and the Mandir and I had secured the possession of shop from one Kaku Ram; I had entered into partnership on 01.01.1995 in the tent house business with the deceased. The partnership deed was reduced to writing and the tent house business is running effectively. I and deceased were doing the tent house business; we used to inspect the site of marriage where tent house was installed as and when the weather turned hostile and during stormy conditions. On the day of occurrence also I and deceased were participating in the marriage of the daughter of Ram Dass. Harnek Singh is running a spare parts shop and he usually closes his shop at 8 pm. My shop is situated at a distance of 200 yards; on 25.02.2001, I was present in the marriage of the daughter of Ram Dass; the quarrel had taken place in my presence and I had accompanied the injured/deceased for lodging the report in the police station; the report was dictated by deceased Davinder Singh and I was also present there; in the report it was stated that all the three accused have assaulted the deceased; my statement was not recorded on that day; I have no knowledge whether any challan was presented in that report; I had not signed that report; I do not remember how many booking offers were received by me for the marriages on 27.02.2001; the tent was to be installed in a lane on that day; I had secured Rs.2500/- from Krishan Lal; I do not remember how many tables and chairs were kept for the marriage; on the day of occurrence at 7.15 pm I had left for the place where tent was installed at the request of Krishan Lal on foot; bus stand R.S. Pura is situated at a distance of 400 metres from my shop; I saw Mohinder Singh coming down from the bus at bus stand as soon as I reached there and talked to him for two/three

minutes; the quarrel had taken place at a distance of 90 to 100 feet away from me and I was talking with Mohinder Singh at that time; Mohinder Singh had enquired from me and I had replied that I am proceeding towards the site where the tent was to be installed; the shops of Raj Pal are situated at a distance of 150 feet from the place, where I and Mohinder Singh were talking; Harnek Singh and Raj Pal were sitting inside the shop; there are 40 to 50 shops around the place of occurrence; some 10 to 15 people had gathered on my raising alarm; the deceased had fallen on the ground and became unconscious and had not talked with me or any other person, as he was not in a position to talk at that time; thereafter, I and Harnek Singh lifted the deceased from the place of occurrence and put him on the back seat of the car belonging to Rajpal who had handed over key of car to Mohinder Singh who had driven the car and shifted deceased to R.S. Pura Hospital; I and Rajgopal had not visited hospital R.S. Pura; my clothes had not received bloodstains; I do not know whether the clothes of Harnek Singh and Mohinder Singh were soiled with the blood of deceased. In my statement to the police, I had stated that deceased was shifted in a Car to the hospital; the police had read over the statement to me but the statement under Section 161 Cr.P.C. does not reveal this fact; I had reached the hospital on foot and had reached there at 7.35 pm, where I found the deceased being shifted to Jammu Hospital in an Ambulance; thereafter I had gone back to my house and had not gone to lodge the report; the police station is situated at a distance of 200 metres from the hospital; police officials were not present at bus stand at the time of occurrence; I had gone to the police to give my statement on next day on my own; there were many people present in R.S.Pura hospital, when I had gone there but I had not talked to anyone; I do not know who had informed me about the death of deceased but Harnek Singh had informed me when I rang up at his residence at 10/11 pm. I remained with Harnek Singh on that night; my statement was recorded on 28.09.2003; the statement of Raj Pal was also

recorded; the place of occurrence was guarded by 4/5 police officials and all the shops were closed on that day; in my statement under Section 161 CrPC, I had stated to the police that I had heard the voice that deceased bad himself come at the scene of occurrence, which I have stated in the Court with respect to accused Bhagwan Dass; I do not remember from which side the accused had fled away from the place of occurrence; I had not made any effort to save Harnek Singh nor made any effort to catch the accused persons; Mohinder Singh is a contractor; I do not remember whether the Station House Officer or any other police official had seized the blood stained and sample clay from the scene of occurrence; I do not remember who apart from me had signed the seizure memos; police had prepared the site plan; I had not stated to the police the position where the witnesses and I were standing at the place of occurrence nor the police had enquired from me in this regard; the content of the seizure memos were not read over to me; I had no knowledge whether any other witness apart from Jatbiradari was also present at the scene of occurrence; Mohinder Singh is not related to deceased nor deceased is my relation, although we belong to the same biradari; I had no knowledge whether all the witnesses cited in the present case belong to Jat biradari. Kirch is of common make and I do not know whether it is readily available in the market or not; I do not know whether the cover of the kirch was seized or not; I had seen the occurrence from a distance of 15 to 20 feet; the accused had pulled out the kirch from loin; I do not know as to which accused had caught hold of the arm of the deceased at the time of occurrence nor I can tell whether accused Bhagwan Dass had caught hold of the left or right arm of deceased; I have not seen the Kirch today; this is not true that I was not present at the scene of occurrence and I am making a false statement in the court today for the reason that deceased was my partner and belongs to my biradari as suggested by learned defence counsel.

PW6-Bihari Lal S/o Hans Raj:- In examination in chief by the APP, the witness has stated that I know the accused persons present in the court as well as deceased Devinder Singh alias Bhola; on 27.02.2001, I came out of my house which is situated in the vicinity of P/S R.S.Pura and I met Mohinder and Harnek Singh in the meantime who informed me about the occurrence and requested me to accompany them to police station and I also accompanied them to P/S R.S. Pura where we saw accused sitting in the room of SHO and were being interrogated by the police; accused Raj Kumar had made a disclosure statement about the weapon of offence that he has concealed it at Toph Sherkhanian alongside the wall of the factory in the bushes and can get it recovered; that thereafter, I along with Mohinder, Harnek Singh, SHO accompanied by three four police officials and accused Raj Kumar visited TophSherkhanian and accused Raj Kumar retrieved the weapon of offence from bushes and handed it over to the SHO who received the weapon of offence in a handkerchief; the disclosure statement EXPW-HS6 bears my signature and I testify to the correctness of its contents; the recovery memo EXPW-HS 7 also bears my signatures and I testify to the correctness contents of EXPW-HS/7 also; SHO had prepared the impression of the weapon of offence and I identify my signatures on EXPW-HS/8 and testify to the correctness of its contents as well; I identify the kirch shown to me in the Court; the police had preserved the kirch in a tin and had sealed it and the seal was placed on the supurdnama of Mohinder Singh; I also identify my signatures on supurdnama of seal; EXPW-MS and testify to the correctness of the same as well.

In cross-examination, the witness has stated that the deceased was not my relative and was a member of my biradari; I had stepped out of my house at around 11 am when Harnek Singh and Mohinder Singh had met me outside my house; Harnek Singh had requested me to accompany the police station and I had accompanied him; the accused were sitting in the room of the SHO before our arrival and I have no knowledge since when the accused

were sitting in the room of the SHO before our arrival; the accused were in handcuffs; SHO had recorded the statement of the accused between 11 to 11.45 and at around 11.45, we had boarded a gypsy and left for TophSherkhanian and had reached TophSherkhanian between 1 to 1.30 pm; the wooden tin was got prepared at TophSherkhanian in which the kirch was preserved; a police official had got the wooden tin prepared at the place of recovery; one or two persons were found going through the place of recovery and the SHO had requested them to be a witness to the recovery but they had declined; we had left from R.S.Pura to the place of recovery directly; Toph Sherkhanian is nearer to the place of recovery and neither the Numberdar nor Chowkidar or any another respectable person from nearby village were summoned to witness the recovery; kirch was retrieved from the bushes and it was not buried in the earth; the place of recovery is accessible to all; SHO had prepared the recovery papers which were signed by Mohinder, Harnek Singh and Shiv Kumar apart from me and the proceedings at the place of recovery had taken some two to two and a half hours and we returned to R.S.Pura at around 3pm; the contents of the seizure memos were read over to me; I had not signed the disclosure statement; the accused had made the disclosure statement in Dogri language to the effect that he had concealed the kirch and he can retrieve it from the bushes; the disclosure statement was scribed by second officer and not by SHO; the kirch is not of common nature and is of special kind; I do not know whether kirch of this kind is readily available in the market; the kirch was not rusted at the time of recovery; I do not know where the handkerchief with which the SHO had received kirch from the accused is kept; the kirch was preserved in a wooden tin; the impression of the kirch was prepared by the SHO and it bears the signatures of Mohinder Singh, Harnek Singh apart from me; I do not know Urdu language; I have never appeared as witness in the Court in any case: I do not know when the

accused were arrested nor the accused were beaten in my presence. No question in re-examination.

PW-Raj Pal:- In examination in chief by APP, the witness has stated that I know the accused persons present in the Court; my shops are located at bus stand R.S. Pura and the shops of accused are also located there; I know deceased Davinder Singh alias Bhola; on 27.02.2001 at around 7.30 to 7.45 in the evening, I was present at my shop; when Harnek Singh came to my shop in the meantime deceased also came there; Harnek Singh enquired from deceased as to where he is going to and the deceased had replied that he is going to inspect the site for installation of the tent in connection with the marriage of the daughter of one Krishan Lal; the deceased had hardly moved some steps ahead, when accused Bhagwan Dass uttered that deceased had come here and do not allow him to go back alive; thereafter, accused Bhagwan Dass caught hold of deceased from an arm and Shiv Kumar caught hold of the deceased from the other arm, whereas accused Raj Kumar pulled out a kirch and dealt a blow on the left side of the chest of the deceased; Harnek Singh rushed to save the deceased and the accused also attempted to kill him but Harnek Singh saved himself and accused fled away from the scene of occurrence; the deceased was taken to R.S.Pura hospital by Hominder Singh and Harnek Singh in a car; I had also visited the hospital but deceased was shifted to Medial College Hospital Jammu and in the morning I got the news about the death of deceased; at the time of occurrence, the shops were opened at the bus stand and people were watching this occurrence; the police had visited the scene of occurrence and had prepared the site plan and had also lifted the blood stained earth from the scene of occurrence; I testify to the correctness of the contents of EXPW-SK and EXPW-SK/1, which bears my signatures and are relating to the seizures of blood stained and simple clay from the scene of occurrence; the simple clay and blood stained clay were sealed; I testify to the correct of supurdama EXPW-SK/2 which bears my signature.

In cross-examination by defence counsel, the witness has stated that I am running a spare parts shop at bus stand R.S.Pura and the shop of accused Bhagwan Dass is also situated there, which is also of spare parts; both the sons of the accused BhagwanDass sit with him at the shop alongwith him; there are two shops in between my shop and the shops of accused Bhagwan Dass; the shops of accused persons are closed since 27.02.2001; accused Bhagwan Dass has a younger son and a younger daughter and a wife; the occurrence had taken place on 27.02.2001; the place of occurrence is situated at a distance of 50 to 60 yards from my shop; the place where the deceased was assaulted is situated at a distance of 10 to 12 feet from the shop of accused persons; It was growing dark at the time of occurrence; the occurrence had taken place between 7.30 to 7.45 pm in the month of February and it gets dark between 7.30 to 7.45 pm; there are poles of electricity near the shop; there are two/three poles of electricity at the place of occurrence as well but the light was off at that time; I had seen the occurrence from outside my shop from a distance of 50 to 60 yards and the occurrence had taken place within 5 to 10 minutes; apart from accused and deceased, Mohinder, Shiv Kumar and Harnek Singh were also present, where altercation between deceased and accused had taken place; Harnek Singh is the brother of deceased and Mohinder Singh and Shiv Kumar are friends of the deceased; I had seen Harnek Singh reaching lat the place of occurrence first; accused Bhagwan Dass had raised the lalkara in Hindi language; I had stated to the police about the facts, which were enquired from me; I had narrated the story to the police in my statement in Hindi language; police station is situated at a distance of ½ km from the place of occurrence, whereas the hospital R.S.Pura is situated at a distance of 100 yards from the place of occurrence; I had also lifted the deceased from the place of occurrence and put him in the vehicle along with Harnek Singh and Mohinder Singh; I had not received any blood stains on my clothes and my hands while lifting the deceased from the place of occurrence and

putting him in the vehicle; thereafter, I had gone back to my shop; the vehicle in which the deceased was shifted to hospital belonged to me; the seats of the vehicle had got bloodstained; when deceased had received a kirch blow, he was facing me, whereas the accused had a back towards me; I had seen the faces of the accused while a kirch blow was being dealt to the deceased; this is not true that at the time of occurrence, the back of the accuse was towards me, as is stated hereinabove by me but the truth is that the accused were also facing towards me; the statement of the witness was deferred on account of sudden break down of his health.

In further cross-examination by defence counsel, the witness has stated that my statement by the police was recorded on 28th at around 8.30 am in the morning at the place of occurrence; the statement of Shiv Kumar was also recorded there, along with Mohinder Singh and Harnek Singh; the statement recorded by police was read over to me; police had called me for recording my statement; 15 to 16 shops were opened at the time of occurrence at bus stand which include the shops of Tirath Singh, Bichu Electrician, Parveen Spare Parts, Tarsem Mistry and a Tea Stall of Babu Ram; all these people were summoned by the police; at the time of occurrence I was standing outside my shop and I had seen the occurrence from a distance of 15 to 16 feet, when the generator was on and the light was also there; on being confronted with his earlier statement that light was off at that time, the witness has clarified that there was light because of the generator, which was in operation at the shop of Bittu which is situated at a distance of 10 yards from the place of occurrence; Bittu was not summoned by the police; I had no knowledge whether Bittu was present in his shop at the time of occurrence; the two/three bulbs were lit because of the generator inside an outside the shop but because of the power break down the street lights were not on; the shops of the accused are situated on the light side of the shop of Bittu and my shop is situated on the left side of these shops; only three accused were present at the place of occurrence besides the

deceased and Shiv Kumar, Harnek Singh and Mohinder Singh; all these people were facing me; this is true that when the deceased was assaulted he was all alone; accused BhagwanDass and Shiv Kumar had caught the deceased from his arm; I had tried to intervene but the deceased was assaulted by a kirch by accused Raj Kumar.

PW-Shanti Saroop: In examination in chief by APP, the witness has stated that on 25.02.2001 I was posted in Police Station R.S.Pura as Moharer Head Constable; on that day, in the evening deceased Davinder Singh in an injured condition had lodged a report in the police station and I had registered that report in Roznmcha; the Roznamcha report dated 25.02.2001 on the file is in my handwriting and bears my signature; I admit its correctness; it is marked as EXPW-SS; I had prepared the injury form of the deceased and had sent the deceased to the hospital; the copy of the report was handed over to the Station House Officer; the copy of the report on the file when compared with the original is correct; it is marked as mark A; the seizure memo relating to the copy of the report also bears my signature; it is marked as EXPW-SS/1.

In cross examination by defence counsel, the witness stated that deceased Davinder Singh had come to the police station all alone for lodging the report.

PW-Romesh Lal: In examination in chief by APP, the witness has stated that in the year 2001, I was working in the tent house business of Davinder Singh and Shiv Kumar as a waiter. On 25.02.2001 a night programme was scheduled in the house of Ram Dass in connection with the marriage of his daughter and we had installed a tent in the Mill of Harnam Singh at around 9.30 pm; the light wires got snapped because of a storm on which accused Shiv and Bittu asked as to why the light arrangements have broken down and we should make the light arrangements; there was power break down also and we put the generator in motion and restored the lights; both the

accused started quarrelling with the deceased Bhola and questioned his arrangements as to why there was light failure; in this scuffle the deceased was hurt by Shiv and Bittu accused and the hurt was inflicted on the forehead on the right side from where the bleeding had taken place; the people present there had intervened but the accused had threatened that they will not spare the deceased in future. On 27.02.2001, I had left the shop at 5.00 in the evening because my daughter was sick but on next day on 28th I got information that Davinder Singh has been murdered.

In cross examination by defence counsel, the witness has stated that I was working with deceased Bhupinder Singh Bhola for the last 4-5 years ago. My statement was recorded by the police on 11th March; on 28th I had got the information about the death of the deceased; between 28th and 11th March, I had not disclosed to anyone about this quarrel between deceased and Bichu and Bittu; my statement was recorded in the police station; police had not obtained my signature nor had read over the statement to me.

PW-Anubhav Sharma: In examination in chief by APP, the witness has stated that I am running a photograph studio by the name of Anubhav Studio near GMC, Jammu; on 28.02.2001 I had clicked the photographs of the deceased who was a Sardar with a stab wound on the chest in the mortuary room in the GMC Hospital Jammu at the request of Police Station R.S.Pura; there were digital photos with no negatives; I had handed over these photos to police station in an envelope; these are on the file, which are marked as A to E. The cross examination of the witness was not conducted during the trial.

PW-Ram Saran Patwari: In examination in chief by APP, the witness has stated that in the year 2001, I was posted in Purana Pind; I had prepared the site plan on the Nishan Dai of police in which the place of occurrence has been reflected; the site plan is in my handwriting and bears my signature; it is marked as EXPW-RS.

In cross examination by defence counsel, the witness has stated that this site plan was prepared by me on 03.03.2001 in the presence of police only at the scene of occurrence.

PW-19 Dr. Jeet Raj: In examination in chief by APP, the witness has stated that in the year 2001, I was posted in Sub District Hospital, R.S.Pura; On 25th of February 2001, I examined Davinder Singh injured at 10.35 pm and found the following injuries, on his person:

1. Lacerated wound 2 cm x ¼ cm on right eyebrow.

Bleeding present.

In my opinion, injury was simple in nature, caused by some blunt object; duration was fresh; injured was brought by Mohd Ashraf No.296 of Police Station R.S. Pura; the certificate bears my signature and is correct; it is exhibited as EXPW-JR.

In cross examination by defence counsel, the witness stated that this injury could be possible as a result of fall also; I do not remember as to how many persons were accompanying the injured when he approached me; this type of injury is possible if a person hits against hard surface. No further question.

PW-20 Dr. Raj Kumar Thapa: In examination in chief by APP, the witness has state that in February 2001, I was posted in Forensic Medicine Department GMC, Jammu; I conucted post-mortem on the body of Davinder Singh alias Bhola son of Charan Singh on 28th February 2001 at 10.30 am; he was identified by Harnek Singh and Mohinder Singh; Davinder Singh was alleged to have been stabbed; there were two external injuries on his body, which are mentioned, in my post mortem report. The death in this case was a result of shock due to haemorrhage, resulting from injury to the heart; the post mortem report on record is in my handwriting and bears my signature; it is correct in accordance with my observations;

same is exhibited as EXPW-RK; the weapon of offence was shown to me on 25th April, 2001; the weapon has been seen by me in the court today and is same, which was shown to me during investigation; the weapon bears my signature; the same is marked as EXPW-RK/1; the certificate in respect of weapon is on record and bears my signature; it is correct; it is exhibited as EXPW-RK/2.

On court question, the witness stated that diaphragm in human being is located in between abdomen and chest; it is located below the lungs and moves up and down while breathing in and out; the diaphragm can go up to the level of heart while breathing out; **there was an internal injury in the heart of deceased and also to the diaphragm**; the duration of death could have been 12-18 hours from the time of death till post-mortem; within eight hours, the food digests completely in the stomach; in case of semi-digest food, the dead person must have taken food almost 3-5 hours before. In this case, injured must have died at least 10.30 pm of 27th of February 2001; the deceased had injury on the right eyebrow but it was a blunt weapon injury. **The depth of injury No.2 could be almost 25 cms.** The weapon was produced before me almost two months after post-mortem examination.

On cross examination by learned defence counsel, the witness stated that most likely, the deceased and the accused must have been in standing position at the time of offence; the deceased and accused were most likely fact-to-face; the assailant must have been in a position between 45 degree and 90 degree vis-a-vis deceased. Injury No.2 was on the left side of the front of the chest. **If any two persons catch hold of the deceased from arms face-to-face third person can inflict injury like one in question.** The weapon had a blade 8.1 inches with a handle 3.1 inches; I have not mentioned the entire track of the injury in my post mortem report nor have made any note regarding that; the injury was on front of the chest and it was suggestive that it could be inflicted by assailant at an angle 45 degree

to 90 degree. My statement that assailant must have inflicted injury on victim at an angle 45 degree does not have any reference about the track of injury. On the basis of location of external injury on body and on the basis of injury to the internal one can say that as to at what angle, the injury must have been inflicted; I have at least conducted 20/30 autopsies before the instant one; whatever I have stated vis-a-vis the angle, is on the basis of my experience; I am not in a position to cite any book by now. Injury No.2 could possibly be caused with arm holding weapon with upward thrust. **The distance in between assailant and the victim in this case could have been at arms length.** No further question was put to the accused.

PW-Dr. Anil Gupta: In examination in chief by APP, the witness has state that on 27.02.2001, I was posted in Sub District Hospital R.S.Pura; on that date, one Davinder Singh was brought by local public at 7.30 pm; there was alleged history of assault. On examination, I found the injuries detailed in the certificate. Patient was in state of shock and injuries were on the critical area, so patient was shifted to Govt. Medical College, Jammu. I have issued the certificate to this extent only; it bears my signature and contents of the same are correct; it is marked EXPW-SG; I have not given my opinion.

In cross examination, he has stated that the patient was not conscious at that time. Heart being in this area, I have stated that this is critical area; I have not measured the dimension of injuries; electricity was off; it was dark; I could approximately notice the injury; there was only one fresh injury and other injury was already stitched; I have sealed the injury and referred the patient to GMC, Jammu; pulse was feeble; blood pressure was not recorded by me; I did not check the blood pressure; I have not mentioned about feebleness of the pulse; I have not mentioned that condition of the patient was serious. No further question in re-examination.

PW-Mool Raj, Scientific Officer, FSL, Jammu: In examination in chief by APP, the witness has stated that on 21st March 2001, five sealed packets were received by me in the office through SGC KrishanLal No.44/J forwarded by SDPO R.S.Pura vide his letter No.885-87 SDR dated 08.03.2001 in connection with case FIR No.35/2001 under Section 302/34 RPC of Police Station R.S.Pura. Packet marked 'A' sealed with ten intact seals, out of which only five seals tallied with specimen seal impressions forwarded by the Magistrate contained stained clay which was marked as exhibit B-217/2001; packet marked B seal with eight intact seals out of which four seal impressions tallied contained unstained clay, which was mentioned, B-218/2001; packet C sealed with fifteen intact seals out of which six seals tallied contained moderately stained shirt, undershirt and feebly stained pant which was marked B-219/2001 to 221/2001; packet D sealed with 23 intact seals out of which nine seals impression tallied contained feebly stained kirch having metallic handle, which was marked B-223/2001. Portions from each of the above exhibits were tested chemically and microscopically for the presence of origin and groups of blood.

Result of examination:

Various chemical and microscopically examinations revealed the presence of blood in the exhibits B-217/2001 to B-223/2001 except for 218/2001.

The serological result of exhibits is as under:-

<u>Exhibit No.</u>	<u>Origin</u>	<u>Groups</u>
B-217/2001	Disintegrated	-
B-218/2001	Unstained clay	-
B-219/2001 to		
B-221/2001	Human	'A'
B-222/2001		Human
Inconclusive		
B-223/2001	Human	'A'

The report No.285/FSL dated 12.04.2001 bears my signature which is found correct; it is already exhibited EXPW-KK.

On cross examination by the defence counsel, the witness has stated that in packet 'A' out of ten seals, five seals did not tally and were found on examination to be different seals. With respect to five un-tallied seals on enquiry, I was told that these seals are I.O's seal impression, sample of which was not forwarded to me; with respect to packet 'B', 'C', 'D' & 'E' regarding untallied seals, I was conveyed that un-tallied seals have been put by the I.O's. The exhibit marked B-221/2001 the group could not be ascertained because of the presence of interfering substances. In this exhibit, the rust particles might be the interfering substances; the weapons like one forwarded to me may get rusted after sealing in a cloth or may not rusted depending upon the prevailing condition. The blood group found on B-221 and B-223 can be connected with blood found on B-222.

PW-K.K.Raina, Scientific Officer, FSL, Jammu: In examination in chief by APP, the witness has stated that on 21.03.2001, I was posted as Scientific Officer, FSL, Jammu; five sealed packets were received by me from Dy.S.P SDPO, R.S.Pura, vide his letter No.885-87/SDR dated 08.03.2001 through GC Krishan Lal No.441/J in connection with case FIR No.35/2001 under Section 302/34 RPC Police Station R.S.Pura. As Incharge of the Division, I marked this case to Sh. Mool Raj Scientific Assistant, FSL, Jammu for examination; the case was examined by Sh. Mool Raj Scientific Asstt, Jammu. The report bearing No.285/FSL dated 12.04.2001 which in the court file bears signature of Mool Raj, Scientific Asstt and the same has been countersigned by me as Incharge of the Division. It is marked as EXPW-KK.

On cross-examination by the defence counsel, the witness has stated that the blood present on various objects can be examined for many years provided the same is properly preserved during investigation by the I.O. In

case of the blood present on the clothes and clay, samples, the preservative is not required, as it has to be simply dried in normal shade and not in direct sun light. However, in case of the liquid sample of the blood, if same has to be forwarded, a preservative has to be added and it has to be sent under the proper temperature, i.e., below 4 degree centigrade.

PW-Shanti Saroop, Tehsildar (Retired): On being question by APP, the witness stated that on 25.04.2001 I was posted as Tehsildar R.S.Pura. On 25.04.2001 on the request of SHP Police Station R.S.Pura, I visited the Forensic Department GMC, Jammu where inspector Vijay Kumar SHO Police Station R.S.Pura produced a sealed packet allegedly containing a kirch seized in case FIR No.35/2001 under Sections 302/34 RPC of Police Station R.S.Pura before Dr. Raj Kumar. The said packet was opened by Dr. Raj Kumar in my presence and the weapon, i.e. kirch was examined/verified by him; the said weapon was again sealed by Dr. Raj Kumar by his own seal; I issued the certificate on 27.04.2001, which bears my seal and signature, and the same is exhibited as EXPW-SS.

On cross examination by defence counsel, the witness states that the kirch was not re-sealed by me in this case. I do not remember whether the kirch was blood stained or not and nor I have mentioned in the certificate whether it was blood stained or not. No further question put to the witness.

PW-KrishanLal: In examination in chief by APP, the witness has stated that some four years ago the marriage of my daughter was schedule to take place and I had paid advance money to Bhola ram for installing a tent whose shop is situated near a petrol pump at R.S.Pura. He had disclosed to me that on 27th he would visit my house for inspecting the site where the tent was to be installed but he did not come. On 28th I went to his house and I was informed that Bhola Ram has been murdered by someone, when I visited his house. In cross examination, no question was asked.

PW-Amarjeet: In examination in chief by APP, th witness has stated that I know the accused persons; I have no knowledge about the occurrence; on being declared hostile at the request of APP, the witness in cross examination by APP has stated that some four years ago I used to work at the tent house of deceased as well; this is not true that on 25.02.2001 I had visited Chakroi for installing a tent; that on the day of occurrence I was at my house and I was not present at the scene of occurrence; this is not true that I am making a false statement in the court today. No question in cross examination by defence counsel.

PW-Jatinder Kumar: In examination in chief by APP, the witness has stated that on 28.02.2001, the police had visited my shop and asked me to take photographs of the blood which had splashed at the place of occurrence; I had taken the photographs reflecting the presence of blood at the scene of occurrence and my statement was recorded by some police officials; the photographs on the file are marked as J-1 to J-3; these photographs reflect the blood stains with stones around it. No question in cross examination by defence counsel.

PW- S. Jaswant Singh: In examination in chief by APP, the witness has stated that on 08.03.2003, I was posted as Tehsildar R.S.Pura; that SHO R.S.Pura has presented a packet before me for re-sealing, which were already sealed; I had re-sealed it and dispatched it to FSL, Jammu; the letter on file is in my handwriting and bears my signature; it is marked as EXPW-JS; the seal impression is affixed on my certificate.

In cross examination by defence counsel, the witness has stated that in my report, I have not stated as to how many seals were already affixed on the packet when it was presented before me, for re-sealing nor I remember now how many seals I had affixed on the packet.

PW-Kuldeep Kumar HC: In examination in chief by APP the witness has stated that I know the accused persons. On 01.09.2000 I was posted in Police Station R.S.Pura; the copy of the report No.25 which the deceased had lodged on 25.02.2001, when he was alive was obtained by Station House Officer from Moharer Head Constable Shanti Saroop and seized in the present case; the seizure memo EXPW-SS/1 was prepared which bears my signature, which I identify. In cross examination no question was asked by defence counsel.

PW-Jaswant Singh Sub Inspector (Retd): In examination in chief by APP, the witness has stated that I had carried out the investigation in the present case in the year 2001 in part. I had got the post mortem of the deceased conducted in Govt. Medical College Hospital, Jammu according to the instructions of the then SHO and had also prepared the FardSurat-hall and injury form; the clothes of the deceased were also seized after the post mortem and the photographs of the deceased were also taken through private photographer; I have also seized the samples of blood, which were given to me by the doctor; the seized articles were sealed on spot; the fardsurat-hal EXPW-JS; seizure memo of dead body EXPW-HS/1, seizure memo of the sample of blood, EXPW-HS/2, seizure memo of clothes, EXPW-HS/3 and receipt of the dead body, EXPW-HS/4 are in my handwriting and bear my signatures; site plan recovery EXPW-JS/1, EXPW-HS/5 are also in my handwriting; I had also recorded the statements of witnesses under Section 161 Cr.P.C.

In cross examination by defence counsel, the witness has stated that at the time of lodging of the report I was not present in the Police Station; I had got the information about the occurrence in the Bazar also and about the lodging of the report when I reached the Police Station; I do not know the time when I had returned to the police station; I had not made any enquiry from the SHO about this case nor I had felt any need for doing that; on the

next day of occurrence on 28.02.2001, I was summoned by the SHO at 7.00am in the morning and instructed to get the post-mortem of the deceased conducted and from there I had left to the hospital: I do not remember the number of injuries on the person of the deceased but according to the FardSurat-hall two injuries were found on the person of the deceased, one injury was noticed on the left side of the chest and the other injury on the face, which was soiled with Earth; these injuries were found to have been caused by a sharp edged weapon; I cannot describe how the injury on the face was caused; the injury report prepared by me reflects only one injury in the relevant column of injuries on the left side of the finger, it is marked as EXPW-JS/3; the statements of the witnesses of seizure memos were recorded in the hospital and these were handed over to SHO in the evening at 4.30 pm; I had handed over the case diaries to the SHO after recording my proceedings in the case diaries; I had visited the hospital in FIR No.335/2001 after recording the report in the police station; I had read the FIR before leaving for hospital; thereafter, SHO himself had carried out the further investigation.

PW-Vijay Kumar Chowdhary: In examination chief by APP, the witness has stated that on 25.04.2001, I was posted as SHO, Police Station R.S.Pura; I know accused persons present in the Court; I had carried out the part investigation in this present case; Docket EXPW-AG is in my handwriting and bears my signature on which the report from Dr. Anil Gupta was obtained; the identification of the weapon of offence was carried out through Dr. Raj Kumar in Govt. Medical College Hospital, Jammu, which is already marked as EXPW-RK/2, which is in my handwriting and bears my signature. I had prepared and presented the challan against the accused, which is in my handwriting and is on the file.

In cross-examination by defence counsel, the witness has stated that I was posted as SHO on 10.04.2001. The weapon of offence was obtained from

FSL in the month of April only; I do not know when this weapon of offence was sent to FSL by the Investigating Officer concerned and perhaps it was dispatched before my posting there; I do not remember whether the weapon of offence was found blood stained or not but it was sealed at that time and I had presented it in a sealed condition before the doctor in presence of Magistrate where it was opened; when it was opened and was examined and after examination the report was given; I do not remember the number of seals put on the packet when it was dispatched to FSL; I had prepared the challan.

PW Ved Parkash: In examination in chief by APP, the witness has stated that on 27.02.2001, I was posted as SHO Police Station R.S.Pura; I had carried out the investigation in the present case under FIR No.35/2001; I identify the accused persons present in the court. During investigation I had inspected the scene of occurrence and prepared the site plan dated 28.02.2001 which is on the file and bears my signature and which was scribed by my Reader on my dictation; it is marked as EXPW-VP. I had seized the samples of simple and blood stained clay from the place of occurrence and had prepared the seizure memos which were prepared by my Reader on my dictation and which bears my signatures, these are marked as EXPW-SK and EXPW-SK/1. The scene of occurrence was got photographed through a private photographer, which is on the file; the AksSajra of the place of occurrence was got prepared from Patwari and was annexed with the challan; the post mortem of the dead body of the deceased was got carried out from GMC Jammu through Sub Inspector Jaswant Singh, who had conducted the proceedings to that extent; after the arrest of the accused they were interrogated; accused Raj Kumar alias Bittu son of Bhagwan Dass had made a disclosure statement on 05.03.2001 pursuant to which the weapon of offence, i.e, one iron kirch was recovered on 05.03.2001 from Toph Sherkhania, Jammu from the side of a road; the disclosure statement and recovery memo papers were prepared which bear

my signatures and were scribed on my directions; these are marked as EXPW-HS/6 and EXPW-HS/7. The site plan of the place of recovery dated 05.03.2001 annexed with the challan file bears my signature and is in my handwriting; it is marked as EXPW-VP/1; the impression of the weapon of murder was prepared which bears my signature, it has already been marked as EXPW-HS/8. The copy of the Nakal Report Roznamcha No.25 dated 25.02.2001 of Police Station, R.S.Pura was seized was seizure memo was prepared which bears my signatures; It is marked as EXPW-SS/1; the packets were got re-sealed through Executive Magistrate and sent to FSL for examination; the statements of the witnesses under Section 161 CrPC were recorded and I had found the commission of offence under Section 302/34 RPC, 4/25 Arms Act made out against the accused persons. FIR EXPW-HS on the file bears my signature also. After sealing the packets, the ring was placed on the supurdnama of Shiv Kumar; after sealing the weapon of offence, the seal and ring was placed on the supurdnama of Mohinder Singh son of Amrik Singh resident of R.S.Pura.

In cross-examination by defence counsel, the witness has stated that in the year 2000 I was posted as SHO, R.S.Pura and was transferred from there in March 2001; the occurrence has taken place on 27.01.2001; FIR is not written by me; I know Urdu language; I had recorded the statements of three eye witnesses namely, Harnek Singh, Raj Pa and Shiv Kumar; the statements of Shiv Kumar, Harnek Singh and Raj Pal were recorded on 28th February; the statement of Harnek Singh as per the perusal of the case diary was recorded in Police Station at 4.00 am whereas statements of Raj Pal and Shiv Kumar were recorded on 28.02.2001 at the place of occurrence; the original statements are required to be annexe with the challan but since I had not presented the challan therefore, I cannot say whether the original statements or their copies have been annexed with the challan; I had recorded the statements of Jetender Pal on 28th and Mohinder Singh, Shanti Saroop, Kuldeep Kumar KrishanLal, Ram Saran Patwari, BihariLal,

RomeshLal, Kartar Chand under Section 161 CrPC; after receiving the information, I had rushed to the place of occurrence from the police station; I had prepared the site plan on 28th February because it was not possible to prepare it on the same day, as it was dark; I had reached at the place of occurrence at 10.40 pm; the police station is situated at a distance of two furlongs from the place of occurrence; the complainant had reached the police station at 10.30 pm and had lodged the report; the FIR was lodged at 10.30 pm and its copies were dispatched to the Ilaqa Magistrate on next day; the FIR is on the file; the FIR had reached the Court on 28th February and does not bear the seal of the Magistrate and was received by a clerk of the staff; I had annexed the report of the previous altercation between the parties with the challan; when I reached at the place of occurrence there was no person except one or two; I had not conducted any proceedings after reaching the place of occurrence and had only inspected the site of occurrence; the complainant had accompanied me to the place of occurrence; the complainant had given the details of the occurrence on the next day; the complainant had gone back to his house. According to my investigation, the occurrence had taken place at 7.30 in the month of February when it was dark; site plan EXPW-VP has been prepared by my Reader and bears my signature; this was prepared on the Nishan Dai of complainant; there are 28 shops at R.S.Pura Bus Stand when the occurrence took place; some of the shops were closed and all the shops were close when I had reached at the place of occurrence after lodging of the report; thereafter, I had visited the scene of occurrence on 4th day on 03.03.2001 at 5 pm; the shops were opened, I had not confirmed whether at 7 pm on the day of occurrence there was a power cut from 7 pm to 10 pm at the place of occurrence but when I reached the place of occurrence the power supply was on. Since the witness had not denied the availability of light at the place of occurrence therefore, I had not enquired into this matter; the shops of the accused are also at the place of occurrence, which according to my

investigation were opened at the time of occurrence but by the time I reached there it was closed; the shop No.11 belongs to accused BhagwanDass, 14 to Rakesh Singh, 15 to Raj Pal Choudhary, 18 to Satpal Singh, 19 to Shiv Kumar, 20 to KrishanLal; the identification of the place of occurrence was done by complainant and the site plan was prepared accordingly; Shiv Kumar witness is a resident of Ward No.10 and I do not know the distance of ward No.10 of the place of occurrence; PW Raj Pal is a resident of Ward No.1 and I do not know the distance between Ward No.1 and the place of occurrence. Both these witnesses were present at the scene of occurrence on 28th February when I had visited at 7.30; I had not seen the dead body of the deceased; according to statement of the complainant, the deceased had received one injury and the post mortem can confirm other injuries after finding on the body of the deceased; all the accused were arrested on 3rd March at the same time from Kunjwani Bye Pass; the house of the accused persons was raided on the day of occurrence itself; the accused were standing on the road at the time of arrest and had tried to escape but were over powered and arrested and taken to the police station. During interrogation accused Raj Kumar had confessed that he has murdered the deceased with a kirch and had also made a disclosure statement which had led to the recovery of the kirch also and it is on these basis that I was satisfied that accused were involved in this murder. From the personal search of accused Bhagwan Dass Rs.3950/- were recovered and seizure memo was prepared; EXPW-VP, EXPW-SK, EXPW-SK/1, EXPW-SK/2 reveals only the name of complainant in the title and in opposite column the name of accused is not mentioned; this is not true that this omission has occurred because names of the accused were not known to me till the preparation of these documents; Accused Raj Kumar was interrogated and had made a disclosure statement on 5th; the witnesses Harnek Singh, Bihari Lal and Mohinder Singh had come in the police station on that day for finding the status of the investigation; the disclosure

statement was made in the presence of these witnesses and thereafter these persons were cited as witnesses and were asked to sign these papers; these persons had accompanied us to the place of recovery and they have been cited witnesses to recovery memo also; there was no other person available at the place of occurrence; I had not called any respectable person from the adjoining locality to the place of recovery because people are not willing to be a witness in a police case; the investigation was completed by 4th April 2001 and thereafter the other Investigating Officer had taken up the investigation.

On cross-examination by court, the witness has stated that the occurrence in fact had taken place on 27th February and not in January as disclosed by me in the beginning of the examination in chief; the carbon copies of the statements on the file bear my signature and are on the Court file.

After the closure of the prosecution evidence, the statement of the accused persons under Section 342 Cr.P.C were recorded and the incrimination material appearing in the prosecution evidence was put to the accused and their explanation sought on it; the accused thereafter entered upon the defence evidence and have examined DW-Davinder Kumar, DW-Ram Dayal and DW-Mohan Lal in defence. A resume of the defence evidence is reproduced as under:

DW-Davinder Kumar: in examination in chief by defence counsel the witness has stated that I am resident of R.S.Pura and I know the accused persons who are my neighbours. On 27.02.2001, the light was off and there was hue and cry that some people had killed someone; I had not seen the accused at the place of occurrence on the day of occurrence; there are two shops of the accused, one is of spare parts and the other is a welding shop; accused have not quarrelled with anyone.

In cross examination by APP, the witness has stated that accused are living at distance of 2 to 2 ½ feet away from my house; the shops get closed at 6 pm at the Bus Stand including the spare parts shops; the deceased Davinder Singh is not known to me; a shop where puncher tyres are repaired, is also situated adjacent to the shop of accused; the bus stand is situated at a distance of 500 feet from my house and I was at my home when hue and cry had erupted at bus stand at 7.30 pm. On hearing the alarm, I had rushed to the bus stand and had heard that a murder had taken place there but I had not seen the dead body; police had arrested the accused persons in this murder case on next day; the accused had requested me for deposition in the court today.

DW-Ram Dayal: In examination in chief by defence counsel, the witness has stated that I am resident of R.S.Pura; on 27.02.2001 people had gathered at R.S.Pura Bus Stand when the light was off and it was 7.30 pm and it was a scheduled power cut from 6 to 8 pm and light was restored on that day at 8pm; I had also gone at the place of occurrence where I had heard people saying that somebody has murdered someone.

On cross examination by APP, the witness has stated that I do not know the shop number of accused Bhagwan Dass; I own a Khokha; there is a electric pole towards the shop of accused Bhagwan Dass situated at Bus stand which is situated at some distance from the shop; I know the deceased Davinder Singh alias Bhola who owned a tent house shop; this is true that deceased was murdered at bus stand; I had no knowledge about any previous quarrel allegedly having taken between the deceased and the accused in some marriage function.

DWP-Mohan Lal: In examination in chief by defence counsel, the witness has stated that in April 2001, I was Incharge Receiving Station, R.S.Pura; one application moved by Mukesh Kumar before the Executive Engineer was dispatched to me for report, which I had submitted; the original

application shown to me by the defence counsel in the court today is the same one and I have reported on this application according to Log Book which is in my handwriting and bears my signature as Junior Engineer; According to this report, on 27th February 2001, there was power cuts from 7 am to 9 am, 1pm to 3.3.30pm and thereafter from 6 pm to 8pm; the report is marked as mark 'L'.

In cross examination by APP, the witness has stated that the aforesaid application was not presented in my presence before the Executive Engineer; I do not know who had presented it but the name of Mukesh Kumar has been mentioned in this application; I do not know which boy had handed over this application to me; this Log Book remains in the custody of Station Incharge and I was the Station Incharge at the relevant time and as such I have given this report; there is some fluid applied on the endorsement made by Assistant Executive Engineer on this application; I have no knowledge why the certificate was required; my report is not dated nor it bears my dispatch number of the office I have not kept the copy of the report in my record; this report is dated 22nd April, by the Assistant Executive Engineer; I do not remember the name of Executive Engineer or Assistant Executive Engineer of the relevant time.

7. This is the whole evidence of prosecution and defence. On the basis of evidence on record, now we have to appreciate as to whether the reasoning given by court below, while passing judgment is right or wrong.
8. Court below has firstly dealt with motive to commit the murder by accused persons. Law is now settled, that when there are direct ocular witness to crime, motive carries less value; but if prosecution relies upon motive, it has to be proved and if it is proved, it strengthen the prosecution case. In present case, motive to commit crime by accused was previous occurrence which took place between deceased and accused persons on 25.02.2011, at village Chakroie More in the Sheller of one Harnam Dass where the

marriage of a relative of Ram Dass was scheduled to take place, where deceased and his partner had installed tents.

9. As per prosecution, deceased Devinder Singh was running a tent house business in partnership with P.W Shiv Kumar; they had installed a tent at village Chakroie More in the Sheller of one Harnam Dass where the marriage of a relative of Ram Dass was scheduled to take place; that at around 9.45 PM on that day when the Barat party was taking its dinner, the strong wind started blowing and because of the storm the power supply was disrupted; accused Raj Kumar alias Bittu, Shiv Kumar alias Shibu both sons of Bhagwan Dass, residents of Ward No.9, R.S.Pura who were also present in the said marriage assaulted deceased Devinder Singh and caused injuries to him on forehead and attributed the cause of power failure to him. **P.W. Shiv Kumar** in his testimony has corroborated this occurrence and he has also further deposed that accused Bhagwan Dass threatened that the deceased will be dealt with later on and this time he be allowed to go back alive. He has further deposed that the deceased was bleeding and was taken to police station R.S Pura where report was lodged and after lodging the report, the deceased was taken to the hospital for treatment of his injuries. **P.W. Harnaik Singh** has also supported these facts; **P.W Shanti Swaroop** who was posted as Mohrar Head Constable in P/S R.S Pura on 25.02.2001, in his testimony before the court, has stated that on 25.2.2001 in the evening, deceased Devinder Singh in an injured condition had lodged report in the police station and that he had registered that report in the Roznamcha. He has proved the Roznamcha report dated 25.2.2001, as EXPW/SS. This witness has also admitted the correctness of EXPW/SS-I, the injury form. **P.W Romesh Lal**, a waiter in the marriage, has also deposed that on 25.2.2001, a night program was scheduled in the house of Ram Dass; tent house business of Devinder Singh and Shiv Kumar was there; at around 10.20 PM the light wires got snapped due to the storm, to which, the accused Shiv and Bitoo objected as to why the lights have

broken down; that both the accused started quarreling with the accused Bhola and attributed the light failure to him. That there was a scuffle and the deceased was hurt by accused Shiv and Bitoo and deceased had received injury on the right side of his forehead and from which the bleeding had also taken place. **P.W. Dr. Jeet Raj**, who examined deceased Devinder Singh at that relevant time, found a lacerated wound 2 cms x 1/4 cm on the right eye brow present and in his opinion the injury was simple in nature caused by some blunt object and he has proved the contents of the certificate issued by him marked as EXPW/JR. **P.W Kuldeep Kumar**, Head Constable, has stated that copy of report no.25 was seized in the present case. He has proved the contents of the seizure memo EXPW SS/1. **P.W Ved Prakash**, who is the I.O in the present case, has also in his statement deposed that the copy of the Roznamcha report No. 25 dated 25.2.2001 of P/S R.S Pura was seized and seizure memo was prepared which bears his signature and it is marked as EXPW-VP.

10. Section 8 of Evidence Act talks about motive. It reads:

“Section 8. Motive, preparation and previous or subsequent conduct.- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.”

11. In terms of this section, motive is relevant fact in issue. But when there are credible eye witnesses to occurrence, it has less significance. Motive always plays a significant role in circumstantial evidence. If a motive is

proved, it may support the prosecution version in case where there are eye witnesses also to occurrence. But existence or otherwise of a motive plays a significant role in cases based on circumstantial evidence. Motive is a thing primarily known to the accused himself and it may not possible for the prosecution in each and every case to find out the real motive behind the crime.

12. In present case, after appreciating the evidence in this regard, we do not find any infirmity in finding of Court below. The oral statements are supported with medical evidence and report no.25 of Roznamzcha dated 25.2.2001,
13. The argument of counsel for accused that deceased has not named the accused persons in report and there is also no mention of PW Shiv Ram accompanying the injured, are not tenable; because Roznamacha report is not an encyclopedia, which should contains all details; but material facts like installation of tent in the marriage ceremony on 25.2.2001; the disruption of power light has been proved. Even deceased has named the assailant as son of Bhana , which is nick name of accused Bhagwan Dass.
14. One more point has been raised by counsel for defence that as per report no.25 injured was sent to hospital with constable 376/CR Mohd. Haneef, but in Doctor Certificate, it has been stated that injured was brought by Mohd. Ashraf no.296. We have given our thoughtful consideration to this aspect. It is not a material and fatal aspect, which goes to root of the case. High court in appeal against conviction has to see broader probabilities of facts, which has already been appreciated by trial court, because trial court has chance to demeanor of witnesses while examinations in chief and cross examinations.
15. So we are of opinion that finding of Court below in this regard is not perverse in nature.

16. Next court below has dealt with recovery part of prosecution case.

Accused Raj Kumar alias Bitoo had made a disclosure statement on 5.3.2001 before PWs Harnaik Singh , BihariLal and Mohinder Singh that weapon of offence KIRCH has been concealed at Toph-Sherkhania in bushes at roadside; this disclosure had led to the recovery of the weapon of offence i.e. Kirtch from a place at Toph Sherkhania. After that recovery was effected on 5.3.2001 in presence of all these witnesses.

P.W Harnaik Singh, in his testimony before the court has stated that accused Raj Kumar alias Bitoo had made a disclosure statement that he has concealed the weapon of offence in the bushes at Top Sherkhania on the side of the road. He has testified to the correctness of the contents of the disclosure statement EXPW/HS-VI. He has also stated that along with Mohinder, Bihari and the police had visited the place of recovery in a Police Jeep and accused Raj Kumar had pulled out the Kirtch out of the bushes and presented to the Station House Officer. He has testified to the correctness of the recovery memo, EXPW/HS-VII. The weapon of offence was identified by the witness in the court that it was shown to him by the prosecution. **P.W. Chowdhary Mahinder Singh** and **P.W. BihariLal** have also corroborated these aspects of matter. **P.W Ved Parkash** who was posted as SHO, R.S Pura on the day of occurrence i.e 27/2/2001 and had carried out the major part of the investigation, in his statement before the court has deposed that accused Raj Kumar alias Bitoo had made a disclosure statement EXPW-HS/6 on 5th March 2001 pursuant to which the weapon of offence i.e. one iron “Kirtch” was recovered on that day from Toph-Sherkhanian Jammu from the side of a road from bushes vide memo EXPW-HS/7.

17. In this way both aspects of the matter,i.e disclosure statement of accused and recovery effected thereof have been proved. The argument of counsel for accused that recovery has been effected from open place accessible to public has been repelled by trial court by relying judgment of Hon’ble

Apex Court in the case of **State of H.P. v. Jeet Singh** reported in (1999) 4 SCC 370 , wherein it has been observed as follows:

“26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others. It would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For Example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

27. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it. (PulikuriKottaya AIR 1947 PC 67). The said ratio has received unreserved approval of this Court in successive decisions. (JaffarHussainDastagir vs. State of Maharashtra (1969 2 SCC 872), K.Chinnaswamy Reddy vs State of Andhra Pradesh (AIR 1962 SC 1788), Earabhadrapa @ Krishnappa vs. State of Karnataka(1983 2 SCC 330), ShamshulKanwar vs. State of U.P. (1995 4 SCC 430), State of Rajasthan vs. Bhup Singh 1997 10 SCC 675).”

18. Learned counsel for defence has failed to furnish any law in support of his contention and contrary to above law.
19. Lastly court below has dealt with the important aspects of the case, which is appreciation of ocular evidence. Prosecution has relied on eye witnesses **PWs Harnek Singh (brother of deceased), Mohinder Singh, Shiv Kumar and Raj Pal.**

20. **The prosecution story is that** on 27.02.2001, the complainant at around 7.30 pm had visited the spare parts shop of one Raj Paul situated at Bus Stand and the brother of the complainant –the deceased, had already reached the bus stand area who had disclosed that on 28.02.2001 the marriage of the daughter of one Krishan Lal is scheduled to take place and his tent house has been booked for that marriage and that the complainant's brother was on his way to inspect the site where the tent was to be installed. That his brother had hardly gone a few steps ahead when Raj Kumar alias Bitu, Shiv Kumar alias Shibu and Bhagwan Dass alias Bhana appeared on the scene and threatened his brother as to why he has come there and started assaulting him. Bhagwan Dass loudly proclaimed that Devinder Singh should not be allowed to go back alive and thereafter, Bhagwan Dass and Shiv Kumar caught the deceased from his arms whereas Raj Kumar alias Bitu pulled out a Kirch and struck a blow with it on the chest of the brother of deceased who fell on the ground and bled profusely; that the accused after the commission of the crime fled away from the scene of occurrence.
21. So as per this story, the occurrence had taken place inside the area of Bus Stand, R.S Pura. Perusal of site plan EXPW-VP, it reveals that the place of occurrence is surrounded by shops on all the sides with a passage for the incoming and outgoing vehicles from the bus stand area. On the Southern side of the place of occurrence, the shops of accused Bhagwan Dass and P.W Rajpal are situated. According to EXPW-VP, shop No. 11 and 13 belong to accused Bhagwan Dass and his sons who are co-accused in the present case. Adjoining to these shops, P.W Rajpal is running an auto garage in shop No. 15. Therefore, in between the shops of Bhagwan Dass and P.W Rajpal, there is only one shop i.e. Shop No. 14 in between these shops. As per site plan EXPW-VP, shop No. 11 belonging to accused Bhagwan Dass is situated at a distance of 25 feet only from the place of occurrence towards southern side. Therefore, the distance between the

place of occurrence and the shop of P.W Rajpal is within the range of 50 feet. The occurrence had taken place at around 7.30 PM on 27.2.2001 when it was darkness.

22. **P.W Harnaik** in his statement before the court has stated that on 27.2.2001 he had visited the spare shop of P.W Rajpal situated at Bus Stand, R.S Pura, where he had met deceased Devinder Singh (deceased) and enquired from him as to where he was going to and after having a brief conversation with the deceased near the shop of P.W Rajpal, the deceased had started talking with P.W. Shiv Kumar and in the meantime, he heard accused Bhagwan Dass, Raj Kumar and Shiv Kumar making a call as to why they had come there and in the meantime, accused caught hold of Devinder Singh and asked him as to why he has come there and openly declared that the deceased would not be allowed to go back home alive. That thereafter, accused Shiv Kumar and Bhagwan Dass tightly held the deceased and started beating him. That accused Raj Kumar pulled out “Kirtch” and struck on the chest of the deceased. That on seeing this, he and Rajpal rushed to the place of occurrence and the meantime, P.W. Shiv Kumar and Mohinder Singh also reached there and that at the time of occurrence, he was standing at a small distance from the place of occurrence. In his cross-examination, this witness has stated that the shop of Rajpal is situated at distance of 60 to 70 feet from the place of occurrence. He has further admitted in his cross-examination that the shop of P.W. Rajpal is also situated adjoining to the shop of the accused persons and the occurrence had taken place in front of the shop of the accused Bhagwan Dass and that he was at a distance of 60 to 70 feet from the place of occurrence. **P.W Mohinder Singh** has also in his statement before the court deposed that on 27.2.2001, he had returned from Jammu to R.S Pura and reached R.S Pura Bus Stand at 7.30 P.M when Shiv Kumar met him at Bus Stand on that day who was partner of the deceased in the tent house 3 business. That he enquired from Shiv Kumar

the reason for his being at the bus stand at that time who had replied that he along with the deceased were going to see the site for making marriage arrangement of the daughter of one Krishen Lal. That he saw deceased talking to Harnaik Singh, his brother and when the deceased came back after conversation with his brother, the accused Bhagwan Dass raised a “Lalkara” and threatened as to why the deceased had come there and that in case he has come there, the deceased should not be allowed to go back alive, that both of the accused Bhagwan Dass and Shiv Kumar overpowered the deceased whereas Raj Kumar alias Bitu struck a “Kirtch” blow in the chest of the deceased, on the left side. That Harnaik Singh rushed to rescue the deceased but the accused tried to assault him also and the accused after the commission of crime had fled away from the scene of occurrence. That the deceased was shifted by him and Harnaik Singh to hospital in a car and during inquiry from the deceased, the deceased had disclosed the details of the event and quarrel which had taken place on the 25th Feb. 2001. In his cross-examination this witness has deposed that he had reached the Bus Stand, R.S Pura at 7.30 P.M. That he had seen P.W. Harnaik Singh standing near the shop of P.W. Rajpal. That Harnaik Singh and the deceased were standing at distance of 100 to 150 feet away from me. That he was standing at a distance of 100 feet from the place of occurrence and as soon as he reached there, he saw the accused running away from the place of occurrence. **P.W Shiv Kumar** has also in his statement before the court deposed that on 25.2.2001 he along with deceased had installed a tent in a rice mill belonging to Ram Dass on the occasion of the marriage of his daughter and at around 10 P.M strong winds started blowing which disrupted the power supply. That all the three accused were present in that function who started abusing the deceased for this power in that function who started abusing the deceased for this power failure and thereafter, assaulted the deceased also as a result of which the deceased suffered an injury on his forehead. That accused Bhagwan Dass

had threatened that deceased also as result of which the deceased suffered on injury on his forehead. That accused Bhagwan Dass had threatened that deceased would be dealt with later on and he has been let to go home alive this time. That a report was also lodged about this occurrence and the deceased was shifted to the hospital for treatment of injuries. That on 27.2.2001, many marriages were scheduled to take place and he and deceased on 27.2.2001 at around 7 P.M had gone to supervise the arrangements to be made for the marriage of the daughter of one KrishenLal at the fixed venue. That as soon as he and deceased were passing through the middle of bus stand, they came across the spare parts shop of P.W Raj Kumar where they saw the brother of the deceased Harnaik Singh standing. That deceased went to Harnaik Singh for a brief talk and he had gone some four steps ahead when he saw P.W ChowdharyMohinder Singh coming down from the bus and he started talking with him. That the deceased in the meanwhile after talking to his brother was coming towards him when he heard accused BhagwanDass threatening that deceased should not be allowed to go back alive and the deceased should be done away with. That after going ten steps ahead, he saw accused BhagwanDass and Shiv Kumar catching the deceased from his arms and accused Raj Kumar dealt a kirtch blow on the left side of the chest of the deceased near the heart as a result of which the deceased fell on the ground and P.W Harnaik Singh, the brother of the deceased rushed towards the deceased and the accused also pounced upon him. That he and ChowdharyMohinder Singh raised an alarm on which the accused fled away from the scene of occurrence. That this occurrence took place at around 7.70 P.M within a span of 25 to 30 seconds. **P.W Rajpal** in his testimony before the court has stated that the accused are known to him and his shop is located adjoining the shops of the accused persons at Bus Stand, R.S Pura. That on 27.2.2001 between 7.30 to 7.45 he was present in his shop when P.W Harnaik Singh and the deceased came there. That P.W

Harnaik Singh enquired from the deceased as to whether he was going and the deceased had replied that he was on his way to inspect the sight for installation of the tent in connection with the marriage of the daughter of KrishenLal. That deceased had hardly moved some steps ahead when accused BhagwanDass raised a “Lalkara” that deceased had come there and he should not be allowed to go back alive. He has further stated that accused BhagwanDass thereafter caught hold of the deceased from one arm and accused Shiv Kumar caught hold of the deceased from the other arm and accused Raj Kumar pulled out the Kirtch and dealt ablow on the left side of the chest of the deceased. That Harnaik Singh rushed to save his brother deceased but the accused party also attempted to kill him but Harnaik Singh saved himself and the accused fled away from the scene of occurrence. That at the time of occurrence the shops at the Bus Stand were open and people were watching this occurrence.

23. Bare perusal of relevant parts of statements of these witnesses it is evident that they have categorically proved facts in issue and other relevant facts from which inference can be drawn with regard to existence of facts in issue.
24. Learned counsel for defence has brought to knowledge about certain facts given by these witnesses in cross examinations and facts which as per his arguments makes the statements of these witnesses un-natural. He has stated that on the day of occurrence, there was admittedly a schedule power cut in the area where the place of occurrence is situated and there was no other source of light on the spot to facilitate or make the identification of the real killers of the deceased possible; that sunrising timing on 27th Feb 2001 was 6.26 A.M and the sun set time was 6.21 P.M whereas the moon visibility was only 17 percent and it was a dark night. He has relied upon the statement of **D.W. Mohan Lal**, who on the relevant day was Incharge of Receiving Station R.S. Pura, stated that there was power cut on that

relevant date from 7 AM to 9 AM, 1 PM to 3 PM and then 6 PM to 8 PM. This argument has been repelled by court below by stating that the place of occurrence is situated inside the area of bus stand R.S Pura as per the site plan EXPW-VP and is surrounded by shops on all the sides with a passage for incoming and outgoing vehicles from the bus stand area. There is nothing on the record to suggest that the movement of incoming and outgoing vehicles had stopped or the vehicles were operating without lights at that time of occurrence which was in between 7.30 to 7.45 P.M. There is also nothing on the record to suggest that all the shops opened at the relevant time were transacting business without any alternative arrangements of light in their shops if the scheduled power cut as per the arguments. Court below further held that from the evidence on record, it is amply proved that P.Ws Harnaik Singh, Shiv Kumar and Raj pal and accused persons were previously known to one another particularly P.W. Raj pal whose shop is situated in the immediate vicinity of the shops of the accused persons as is borne out from the evidence particularly EXPW VP according to which there is only one shop situated in between the shop of the accused persons and P.Ws Raj Pal. The distance between the shop of the accused persons and the place of occurrence is only 25 feet and all these eye witnesses particularly P.W. Harnaik Singh who was talking to P.W. Raj pal at that relevant time and P.W. Raj pal and Shiv Kumar have seen the occurrence from a very close distance within the range of 25 to 50 feet. P.W. Raj Pal has also stated that there was light available because of the generator at that relevant time and two three bulbs were also lit because of the generator. That the range of distance in which the witnesses and the accused were present at the time of occurrence, so trial court was of the opinion that it was not difficult for the prosecution witnesses to identify the real killers who are the accused in the present case because if the accused were in a position to identify the deceased and launch a murderous and fatal assault on him, then it does not appeal to reason that these P.Ws were not

able to identify the accused persons. P.W Ved Prakash who has carried out the investigation in the present case in his cross-examination has stated that according to his investigation, the occurrence had taken place at 7.30 P.M in the month of February when it was dark. This witness has further stated that since the witnesses had not denied the existence of light at the place of occurrence, therefore, he had not enquired into this matter. This witness has also stated that he had not confirmed that on the day of occurrence there was power cut from 7 P.M to 10 P.M at the place of occurrence. According to this witness, the shops of the accused, according to his investigation, were open at the time of occurrence, which are situated inside but stand area.

25. This answer by court below to the arguments of counsel for defence, is plausible and does not suffer from inherent probability.
26. Court below has further relied upon Apex Court judgment in **Kommu Vinja Rao Vs. State of Andhara Pradesh and another** decided on 31st of March 1998, wherein it has been observed as under:-

“What was urged by the learned counsel for the appellant is that the High Court and also the trial court failed to appreciate that there was no light at the place of the incident and, therefore, PW 3 could not have identified the assailant of Lakshmi. He submitted that it was running on that day and as disclosed by the prosecution evidence it had become dark when the incident had happened. There were no electric lights around because of load shedding. That, however, cannot mean that there was no sufficient light at the time of the incident. The evidence of PWs 3 and 4 discloses that the incident had happened near the shop of one KapalaBapiraju at a distance of about 10 feet. It can be safely assumed that the shopkeeper would not have kept his shop open without providing for some other source of light. Moreover, the incident took place at about 7.00 p.m. and, therefore, it is not possible to accept the contention that there must be complete darkness at that time and PW 3 could not have identified the assailant. It was not raining heavily. There was movement of persons on the road. All these suggest that there was enough light

and PW 3 could not have found it difficult to recognize the appellant, who was none other than the person with whom his sister had stayed for 8 to 9 years.”

27. Court below has relied upon **Nathuni Yadav and ors. Vs. State of Bihar and another** reported in **AIR 1997 SC 1808**, a two judge bench of the Apex Court has observed as under:-

“8. According to the learned counsel, there was no possibility at all for the witnesses to identity the assailants as it was a moonless night and there was no lamp burning in the vicinity and hence it would have been pitch dark when the incident happened.

9. We have considered the said contention from all its angles. Ever assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be born in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that assailants were no strangers to the inmates of the tragedy bound house, the eye witnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identity the victims whom they targeted without any mistake from among those who were sleeping on the terrace. If the light then available, though meager, was enough for the assailants why should we think that same light was not enough for the injured who would certainly have pointedly focused their eyes on the faces of the intruders standing in front of them. What is sauce for the goose is sauce for the gander.”

28. Therefore court below has rightly relied upon the statements of these eye witnesses. Further, no animosity of these witnesses with accused has been brought in trial.

29. Next defence counsel has argued that as nature of injury described by Doctor as per doctor certificate, it was not sufficient in ordinary course to cause death.
30. We have considered this aspect of the matter. **PW. Raj Kumar Thapa**, who has conducted the autopsy on the body of the deceased and proved the contents of the post mortem report EXPW RK, has found the following external and internal injuries on the body of the deceased:-
1. Stitched wound over right eyebrow.
 2. **Incised puncture wound 2.5 cms x 1.7 cms present in left side front of chest in 7th inter-costal space, wound is 10 cms. From midline on left side, 9 cms from left nipple.**

In his testimony in the court, on a court question, this witness has deposed that there was an internal injury in the heart of the deceased and also to the diaphragm. That the depth of injury No. 2 could be almost 25 cms. This witness in his opinion has stated that death in the present case was due to hemorrhage and shock resulting from injury to the heart. This witness has also identified the weapon of offence shown to him in the court and which was shown to him during the investigation also which has been marked as EXPW RK. He has also proved the contents of postmortem report EXPW RK II. As per the opinion of this witness in EXPW RK II, injury No. 2 mentioned in post-mortem report EXPW RK could have been possible by the weapon of offence i.e. Kirtch which was produced before this witness in sealed condition.

31. Learned counsel for accused/appellant has also argued that as per postmortem report in column external injury, the incised puncture wound measuring 10cm from midline on the left side, 9cm from left nipple has been mentioned on left side of chest in 7th intercostal space, whereas in opinion column, it has been mentioned on right side.

32. Both these arguments are not tenable, because heart situates towards left side of body and deceased has sustained punctured wound, which means wound which pierce the skin and creates a small hole. In present case, this préising injury has been caused to right ventrick of heart and not on right side of chest as alleged. The **right ventricle** is the chamber within the heart that is responsible for pumping oxygen-depleted blood to the lungs. The **right ventricle** is one of the heart's four chambers. It is located in the lower **right** portion of the heart below the **right** atrium and opposite the left **ventricle**. As per Doctor the depth of injury No. 2 could be almost 25 cms in depth. As per opinion of Doctor, the death in the present case was due to hemorrhage and shock resulting from injury to the heart. A piercing injury on the left side of body near to heart is sufficient to reach at puncture the any chamber of heart of a person.
33. Another argument of counsel for appellants that no offence under section 4/25 A. Act was registered in FIR and this offence has been entered during investigation, and so investigation is tainted. We have gone this aspect of matter. It is correct that offence u/s 4/25A. Act was not registered; but law is clear that offence u/s 4/25 A. Act is only made out, when the possession of arms/weapon qualifies the condition laid down in SRO 175 dated 23/4/1974. As per this SRO, the possession of Sharp edged weapon with blade more than 6 inch long or 2 inch width and all spring actwated knives of any size, are punishable under section 25 of Arms Act.
34. In present case, weapon of offence (Kirch) was recovered on 5.3.2001 on disclosure statement of accused Raj Kumar. Thereafter, it was measured vide memo EXPW –HS/8 and its length came 8.1 inch; then offence under Section 4/25 of A. Act was added. So this argument is also of no avail to appellants.

35. So in view of above discussion, we are of the opinion that prosecution has proved the charges leveled against the appellants/accused persons beyond reasonable doubts.
36. Now coming to conviction part of judgment, counsel for defence has argued that there was no mensrea on part of accused person for committing murder of deceased; all accused persons have not pre-planned the commission of offence; all of sudden when deceased appeared on spot, where the shops of accused persons is situated, they assaulted the deceased; even only single blow of kirch has been given. Appellants have not pre-meditated to commit murder.
37. These arguments were also taken before court below, but court below has relied upon various judgments and held that offence under section 302/RPC has been made out. Court below in specific terms has held that from the evidence on record in the present case and in view of the above noticed legal position, it is amply proved that the accused intentionally aimed and inflicted the injury with the deadly weapon i.e. the (Kirch) and this injury was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, the commission of offence of murder and not culpable homicide not amounting to murder is made out.
38. We have considered this aspect of matter and finding of court below. Court below except citing so many judgment and academic discussion, has not properly appreciated the facts of present case; firstly facts are to be seen, then law especially made after appreciation of evidence in a particular case is to be applied; facts of all cases cannot be same, but general analogy can be considered.
39. Intention of a criminal in committing offence is gather-able from the way in which act has been committed and weapon of offence with which he has committed the crime. As per postmortem report-EXPW-RK/II of deceased

reveals that only one injury on left side of chest has been caused, which proved fatal as it pierced through heart. As per law all "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence penal law practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in [Section 300](#) as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of [Section 304](#). Then, there is "culpable homicide of the third degree". This is the lowest type. Culpable homicide and the punishment provided for it, is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of [Section 304](#). Distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of [Sections 299](#) and [300](#).

40. In [PulicherlaNagaraju @ Nagaraja Reddy v. State of Andhra Pradesh, \(2006\) 11 SCC 444](#), the Hon'ble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Court observed as under:

"...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under [Section 302](#) or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an

objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under [Section 302](#), are not converted into offences punishable Under [Section 304 Part I/II](#), or cases of culpable homicide not amounting to murder, are treated as murder punishable Under [Section 302](#). The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention..."

41. In the case of [Sukhbir Singh v. State of Haryana](#) reported in (2002) 3 SCC 327, the Appellant caused two bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the Appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court the Hon'ble Supreme Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of [Section](#)

300 Indian Penal Code. In cases where after the injured had fallen down, the Appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed as under:

"19.All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 Indian Penal Code. After the injuries were inflicted and the injured had fallen down, the Appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner."

42. In the case of **V. Subramani v. State of Tamil Nadu**, reported in (2005) 10 SCC 358, there was some dispute over grazing of buffaloes. Thereafter, there was altercation between the accused and the deceased. The accused dealt a single blow with a wooden yoke on the deceased. Altering the conviction from Section 302 of the Indian Penal Code to Section 304Part II of the Indian Penal Code, the Hon'ble Supreme Court clarified that it cannot be laid down as a rule of universal application that whenever death occurs on account of a single blow, Section 302 of the Indian Penal Code is ruled out. The fact situation has to be considered in each case. Thus, the part of the body on which the blow was dealt, the nature of the injury and the type of the weapon used will not always be determinative as to whether an accused is guilty of murder or culpable homicide not amounting to murder. The events which precede the incident will also have a bearing on the issue whether the act by which death was caused was done with an intention of causing death or knowledge that it is likely to cause death but without intention to cause death. It is the totality of circumstances which will decide the nature of the offence.

43. In the case (Crl.A.No.134/2009) titled as [Jagtar Singh @ Jagga @ Ganja v. State of Delhi](#), there were two injuries on the neck and two in the chest, of the deceased, caused by a sharp edged weapon. There were other minor injuries and abrasions; in all there were nine injuries. According to the doctor who conducted the post mortem of the deceased, the shock caused as a result of the injuries to the neck and chest was sufficient to cause death in the ordinary course of nature. The surrounding circumstances in the case pointed to some previous quarrel between the deceased and the appellant; the latter was agitated and confronted the deceased in the first part of the incident; on the day of occurrence. It was held by this Court that though the appellant inflicted several blows some of which were fatal, it is clear that he did not set out with a pre-mediated intention to kill the deceased. The facts clearly established an offence under [Section 304](#) Part I of the Indian Penal Code in which intention was to cause such bodily injuries as would have resulted in death in the ordinary course of nature.
44. Hon'ble Supreme Court in [Sudhakar v. State of Maharashtra](#), reported in **2013 (1) JCC 266** wherein it was held as under:

"Therefore, unmindful of the consequences, though not in a cruel manner the Appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by Learned Counsel for the Appellant, we are convinced that the offence alleged and as found proved against the Appellant can be brought under the First Part of [Section 304](#) of Indian Penal Code. Accordingly, while affirming the conviction of the Appellant, we are only altering the same as falling under [Section 304](#) Part I of Indian Penal Code in place of [Section 302](#) of Indian Penal Code."

45. Considering the facts and the circumstances of the case, the background of the matter that there took place some altercation between accused and accused persons on 25.02.2011, where deceased had installed a tent at

village Chakroie More in the Sheller of one Harnam Dass in the marriage of a relative of Ram Dass and at around 9.45 PM on that day when the Barat party was taking its dinner, the strong wind started blowing and because of the storm the power supply was disrupted; the accused Raj Kumar alias Bittu, Shiv Kumar alias Shibu both sons of Bhagwan Dass residents of Ward No.9, R.S.Pura, who were also present in the said marriage assaulted his brother Devinder Singh deceased. After two days of this episode, on 27.02.2001 deceased was on his way to inspect the site where the tent was to be installed in a marriage. The accused persons who were on shop appeared before deceased; the accused Raj Kumar alias Bitu, Shiv Kumar alias Shibu and Bhagwan Dass alias Bhana Bhagwan Dass stopped; Bhagwan Dass and Shiv Kumar caught the deceased from his arms whereas Raj Kumar alias Bitu pulled out a Kirch and struck a blow with it on the chest of deceased, who fell on the ground and bled profusely; and thereafter deceased succumbed to his injuries. The appellants had not pre-planned the murder of deceased, because they had not gone to anywhere to commit murder of deceased; they were not equipped with deadly weapons; it is the deceased who suddenly passed in front of their shop; the number of injury is one, conduct of the appellants after the incident was also not brutal, because after falling of deceased on sustaining one injury, no further blows have been inflicted; accused are not habitual offenders as no such evidence of previous criminal backgrounds have been brought on record during trial; appellants belong to one family. In view of these facts and circumstances of the case, we are of the considered view that it is a case of culpable homicide not amounting to murder, but appellants were having sufficient knowledge that a single injury inflicted by them by sharp edged weapon (Kirch) on the left side of chest of the deceased near to heart, death can be caused.

46. In the result, we allow this appeal but only to the extent that instead of [Section 302](#) of the Ranbir Penal Code, the appellants shall stand

convicted for the offence of culpable homicide not amounting to murder punishable under [Section 304](#) Part-II of the Ranbir Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years. The sentence imposed on appellant-Raj Kumar under section 4/25 Arms Act is also upheld. The fine imposed upon the appellants and the default sentence awarded to them shall remain unaltered. The appeal is **disposed of** in the above terms in modification of the order passed by the Court below. The criminal reference is also answered accordingly. The appellants are entitled to have the benefit of deduction of the period already undergone.

(Sanjay Kumar Gupta)
Judge

(Dhiraj Singh Thakur)
Judge

Jammus
30.12.2017
Narinder

This judgment is pronounced by me in terms of Rule 138(4) of the Jammu & Kashmir High Court Rules, 1999.

(Dhiraj Singh Thakur)
Judge

Jammu
30.12.2017
Narinder