



**In the High Court for the States of Punjab and Haryana at Chandigarh**

CRA-D-186-DB-2005 (O&M)

Date of Decision:- 03.04.2025

Tek Chand and others ..... Appellants

Versus

State of Haryana ..... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL  
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Preetinder Singh Ahluwalia, Advocate as Amicus Curiae  
with Ms. Keerat Dhillon, Advocate and  
Mr. Om Pal Sharma, Advocate, for the appellants.

Proceedings qua appellant No.1-Tek Chand and  
appellant No.3-Ganesha stand abated  
vide order dated 19.03.2025.

Mr. Munish Sharma, DAG, Haryana.

Mr. Vinod Ghai, Senior Advocate with  
Ms. Kashish Sahni, Advocate, for the complainant.

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**GURVINDER SINGH GILL, J.**

1. Tek Chand, Neki Ram, Ganesha, Surta, Veerbhan, Parkash, Shishpal @ Sainsi, Nanu Ram, Krishan and Nafe Singh @ Nafiya preferred this appeal assailing judgment dated 10.2.2005 and order dated 12.2.2005 passed by Additional Sessions Judge, Kaithal. However, Tek Chand and Ganesha having expired, the proceedings qua them stand abated. The trial Court while holding them guilty imposed sentence as under:-



Section	Sentence
302 IPC	To undergo life imprisonment and fine of Rs.10,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months
324 IPC	To undergo rigorous imprisonment for six months
323 IPC	To undergo rigorous imprisonment for three months
325 IPC	To undergo rigorous imprisonment for three years and fine of Rs.2000/- and in default of payment of fine to further undergo rigorous imprisonment for two months
148 IPC	To undergo rigorous imprisonment for six months

2. The matter arises out of FIR No. 116, dated 02.07.2002, Police Station Siwan, District Kaithal, under Sections 148, 302, 323, 324, 325, 149 IPC (Ex.PA/1), lodged on the statement/*ruqa* (Ex.PA) of complainant Ram Kala son of Mangat Ram. The translated gist of the FIR reads as under:

“I am a resident of village Kawartan. We are three brothers. Ram Dia is eldest and I am younger to him and the youngest is Rameshwar. We have agriculture land measuring 22 *killas* which is situated about 2 kilometers away from the village. The fields of Tek Chand, Neki Ram, Surta Ram and Ganeshi Ram who are sons of Puri Ram are situated adjacent to our fields. A water channel passes through our fields leading to the fields of Tek Chand etc. We had initiated litigation to get the said '*khal*' (water channel) dismantled in the Court of XEN (Canal) Kaithal and the same had been decided in our favour. As per the said decision, the water channel was to remain in existence only upto 30.6.2002 and thereafter the same was not required to be maintained. Today i.e. on 02.07.2002 at about 8/8.15 am, I along with my brothers Rameshwar and Ram Dia along with our father Mangat Ram started demolishing the water channel with the help of '*kassis*'. In the meantime, four sons of Puri Ram namely Tek Chand and Neki Ram carrying '*gandasi*', Surta Ram carrying '*lathi*' and Ganeshi Ram carrying '*jaili*' along with three sons of Tek Chand namely Beeru, Krishan and Nanhu who were carrying '*lathi*' and two sons of Neki Ram namely Sainsi and Parkasha carrying '*gandasi*' in their hands and



also brother-in-law of Tek Chand carrying 'lathi' came there having made consultations with each other. Tek Chand raised a 'lalkara' exhorting his companions to teach all of us a lesson for demolishing the water channel. Thereafter, all of them attacked us with their respective weapons. Tek Chand gave 'gandasi' blow on the head of my father Mangat Ram. Neki Ram gave a 'gandasi' blow on left hand of my father Mangat Ram and upon which my father fell on the ground. While my father was lying fallen, Ganeshi gave a 'jaili' blow on the left eye and on the left ear of my father. Thereafter, Biru son of Tek Chand inflicted a blow with stick on the left arm of my father. In the meantime, Surta son of Puri gave a blow with 'lathi' on the right side of my head. Biru son of Tek Chand gave a blow with 'lathi' on my left arm. Krishan son of Tek Chand also inflicted a blow with 'lathi' on my left arm. Nanhu son of Tek Chand inflicted a blow with 'lathi' on my left leg. Biru thereafter gave another blow with a stick hitting my left knee. Krishan gave a blow with 'lathi' on my chest. Tek Chand, Neki Ram, Surta, Ganesha sons of Puri Ram, Biru, Krishan and Nanhu sons of Tek Chand, Sainsi and Parkasha sons of Neki along with brother-in-law of Tek Chand inflicted injuries with their respective weapons to my brother Ram Dia and Rameshwar and after inflicting injuries they all ran away from the spot. Since, my father had become unconscious, we rushed him to civil hospital Kaithal in a tractor, where he was declared dead. We three brothers also got ourselves medically examined. The aforesaid accused had inflicted injuries to my father and to us three brothers on account of their grudge regarding water channel, leading to death of my father."

3. The aforesaid statement Ex.PA was recorded by ASI Roop Singh (PW-11) when he visited to the hospital upon receiving information regarding death of Mangat Ram. ASI Roop Singh conducted the inquest proceedings. Dead body of Mangat Ram was got subjected to post mortem examination. ASI Roop Singh (PW-11) along with other police officials visited the place of occurrence from where blood stained soil was lifted and sealed into a parcel. A rough site plan of place of occurrence was prepared. Statements of



witnesses were recorded in terms of Section 161 Cr.P.C. Accused Tek Chand, Neki Ram, Ganesha, Surta, Veerbhan, Shishpal and Parkasha were arrested on 4.7.2002. The other accused were arrested later. It is further the case of prosecution that during the course of investigation, the accused made disclosure statements leading to recovery of weapons allegedly used in the occurrence. The particulars of the said disclosure statements and the recoveries effected thereupon are stated herein under:

Name of accused	Exhibit of disclosure statement	Article recovered	Recovery memo
Neki Ram	Ex.PC	<i>Gandasi</i>	Ex.PQ/2
Ganesha	Ex.PR	<i>Jaili</i>	Ex.PR/2
Tek Chand	Ex.PS	<i>Gandasi</i>	Ex.PS/2
Birbhan	Ex.PT	<i>Lathi</i>	Ex.PT/2
Shishpal	Ex.PU	<i>Gandasi</i>	Ex.PU/2
Surta	Ex.PV	<i>Lathi</i>	Ex.PV/2
Parkasha	Ex.PX	<i>Gandasi</i>	Ex.PX/2

4. Blood stained soil collected from the spot and weapons recovered at the instance of the accused were sent for chemical examination and as per report Ex.PDD of FSL, some of the articles were found to be stained with human blood. Upon completion of investigation the police presented a challan against the accused in the Court of learned Sub Divisional Judicial Magistrate, Guhla, on 31.07.2002, who committed the case to the Court of Sessions vide order dated 23.08.2002. Charges were framed against the accused for offence punishable under Sections 148 and 302, 323, 324, 325 read with Section 149 IPC on 19.10.2002 to which accused pleaded not guilty and claimed trial.
5. The prosecution in order to substantiate its case examined as many as 11 PWs. The gist of their testimonies is referred to herein under:-



**PW-1** Constable Prem Singh stated that on 2.7.2002 MHC Baldev Singh handed over copies of FIR as special reports to him which he delivered to the Illaqa Magistrate, DSP and SP without any delay.

**PW-2** Joginder Pal, Photographer, stated that on 02.07.2002 he had taken the photographs of the dead body and proved the photographs as Ex.P-1 to P-4 and negatives as Ex.P-5 to P-8.

**PW-3** Head Constable Baldev Singh stated that on 02.07.2002 while he was posted at Police Station Siwan he had lodged the formal FIR Ex.PA/1 pursuant to receipt of *ruqa* Ex.PA.

**PW-4** Ramdia, Halqa Patwari, Kawartan who had prepared the site plan of the place of occurrence proved the same as Ex.PC.

**PW-5** ASI Balbir Singh stated that on 02.07.2002 he was posted as Head Constable in Police Station Siwan and on the said day he had got the post mortem examination conducted on the dead body of Mangat Ram from general hospital, Kaithal.

**PW-6** Head Constable Ajmer Singh who is a formal witness tendered his affidavit Ex.PE in evidence wherein he deposed that on 08.07.2002 he was posed in Police Station Siwan and on the said day MHC Baldev Singh had handed over a parcel of blood stained soil, a parcel of cloth and another 4 parcels of '*gandasi*' which he deposited in the office of FSL, Madhuban on the same day. He further stated that as long as the said parcels remained in his custody the same were not tampered with.

**PW-7** Dr. Lajja Ram, Medical Officer who had conducted post mortem examination on the dead body of Mangat Ram described in detail the injuries



found on the dead body and proved the post mortem report as Ex.PN. He opined that the cause of death was due to shock and haemorrhage which was due to injury to vital organs like brain and other associated injuries which were sufficient to cause death in the ordinary course of nature.

**PW-8** Ram Kala who is the complainant in the present case stated in detail as regards the occurrence broadly in the same manner as stated by him in his statement/*ruqa* Ex.PA. He specifically stated with regard to the injuries inflicted by the accused to the deceased as well as to himself and also to Ramdiya and Rameshwar.

**PW-9** Ramdiya who is also an injured witness stated in tune with the case of prosecution and narrated the occurrence vividly.

**PW-10** Constable Mahi Pal stated that on 02.07.2002 he was posted in Police Station Siwan and on the said day he along with ASI Roop Singh and other police officials had visited civil hospital, Kaithal where dead body of Mangat Ram was lying and that after requisite proceedings had been conducted, the dead body was handed over to him and to Balbir Singh for getting the post mortem examination conducted and they accordingly got the needful done.

**PW-11** ASI Roop Singh who is the Investigating Officer in the present case stated in detail with regard to the entire investigation conducted in the matter right from lodging of the FIR upto presentation of challan. He stated with regard to interrogation of the accused and disclosure statements made by them and the recovery effected thereof and also proved various documents and memos prepared during the course of investigation.



6. The prosecution tendered into evidence a report of FSL (Ex.PDD) and closed its evidence. Upon conclusion of prosecution evidence, the entire evidence was put to the accused in terms of Section 313 Cr.P.C. to enable them to explain the same, but the accused denied the entire prosecution case in toto and pleaded false implication. Accused Tek Chand, Surta Ram, Shishpal and Veer Bhan additionally raised plea that in fact Mangat Ram used to sleep in his fields and was found murdered in the fields and his sons had thereafter brought his dead body to the village in a tractor trolley. It is further stated that the complainant and his brothers came in front of house of accused at about 7./7.30 am and started hurling abuses and the complainant raised a suspicion that the accused had murdered his father which led to a scuffle and hot words were exchanged and both the sides also caused injuries to each other. They further stated that Tek Chand was away to the fields and when he returned back he separated all of them and the police also arrived in the village and took the dead body in a tractor trolley to Kaithal.
  
7. The accused in their defence examined DW-1 Dhanpat alias Pilla son of Mangat son of Atru, wherein he stated that he knows the accused as well as the complainant party and that his land is situated adjacent to the land of complainant Ram Kala. He stated that on the day when father of Ram Kala had died, he came to his fields at about 5 am and that at about 6.30 am he heard the alarm raised by the complainant and when he went to the fields of the complainant he saw the complainant and his three servants to be present there and he saw that Mangat was lying dead and his body was covered with 'palli' (Jute cloth). Upon making inquiries Ramkala told him that he had no knowledge who had killed Mangat. He stated that Mangat used to sleep in



the fields and some times in his house. He stated that thereafter the dead body was taken in a tractor trolley.

8. Learned trial Court upon considering the evidence on record found the appellants guilty of having committed offence punishable under Sections 302, 324, 323, 325 and 148 IPC and sentenced them accordingly vide impugned judgment dated 10.02.2005.
9. Learned counsel for the appellants while assailing the judgment broadly made the following submissions:
  - i. that it is a case where some of the persons of the accused had also sustained injuries and in respect of which no explanation is forthcoming;
  - ii. that although as on the date of occurrence the Court had passed order for dismantling the '*khal*', but an appeal against the said order had been filed wherein subsequently the order for dismantling had been stayed but the complainant party was bent upon dismantling the '*khal*' without waiting for final verdict of the Court which led to a fight in which persons from both the sides were injured;
  - iii. that at best it is a case where Tek Chand and Ganesh, who were armed with '*jaili*' and are attributed specific injuries to the deceased, could be held responsible for culpable homicide and that all other accused had been falsely implicated particularly in view of the fact that most of them are alleged to be either armed with farm implements like '*jaili*' etc. or were carrying sticks and some of them are not even attributed any injury either to the deceased or to the witness.



- iv. that as pleaded by some of the co-accused it is infact a case of a blind murder wherein the deceased had died much prior to the alleged occurrence. It has been submitted that the deceased used to sleep in the fields and one morning he was found dead and thereafter his dead body was brought to the village and it was thereafter that the dead body was taken to the hospital. It is submitted that the said factum of death having taken place during the night intervening 1.7.2002 and 2.7.2002 is borne out from medical evidence in the shape of post mortem report as per which the stomach was found to be having some semi digested food and the large intestine was full of faecal matter.
- v. that the facts and circumstances of the case do not show that all the accused either had any common intention or had any common object to kill the deceased and as such cannot be said to be members of any unlawful assembly.
10. Opposing the appeal, learned State counsel submitted that it is a case where admittedly the accused and the complainant party had a dispute over a water channel and in fact litigation in respect of the same had also been initiated by the complainant wherein the Court had passed an order in favour of the complainant directing dismantling of the water channel after 30.6.2002 and that upon expiry of the said period when the complainant party was legitimately dismantling the said water channel on 02.07.2002, the accused who nursed a grudge on the said count attacked the complainant party and caused death of Mangat Ram and inflicted injuries to other members of the family. It has been submitted that since the accused were all carrying weapons including sharp edged weapons in the shape of 'gandasi' etc. their



intention and the object to be achieved was clear and under these circumstances all of them have rightly been held guilty of having committed offence punishable under Sections 148 and 302, 323, 324, 325 read with Section 149 IPC and that the impugned judgment does not warrant any interference.

11. This Court has considered rival submissions addressed before this Court and has also perused the record of the case.
12. It is a case where one person i.e. Mangat Ram had died and three of his sons namely Rameshwar, Ram Kala and Ramdiya had sustained injuries. PW-7 Dr. Lajja Ram stated that on 02.07.2002 he had medico legally examined injured Rameshwar son of Mangat Ram and proved MLR Ex.PH and described the injuries on his person as under:

- “1. Incised wound 5 x 1 cm just above right eye brow It was bleeding on cleening the wound. Advised X-ray skull orbit view.
2. Patient was complaining of pain right eye ball. Advised Eye surgeon's opinion.
3. Punctured wound size 3 x 1 cm over upper third of left elbow. It was bleeding on cleening the wound. Advised X-ray left elbow with fore-arm.
4. There was lacerated wound 2,5 x .5 cm over posterior of left fore-arm on upper third. Bleeding on cleening the wound. Advised X-ray left fore-arm.
5. Deffused swelling over left leg overline skin was reddish in colour. Advised Xray left leg.”

13. PW-7 Dr. Lajja Ram further stated that on the same day he had also examined Ram Kala son of Mangat Ram and proved the MLR Ex.PJ and described the injuries on his person as under:

- “1. Lacerated wound size 2 x .5 cm with diffused swelling over right parietal region. Bleeding on cleening the wound. X-ray of skull was advised.
2. Diffused swelling over mid of left fore-arm. Advised X-ray left fore-arm.



3. Abrasion size 3 x 1 cm over distal third of left fore-arm. It was reddish in colour. Advised X-ray left fore-arm with wrist joint.
  4. Multiple abrasion size variable from 1 to 2 cm over anterior of left leg.
  5. Abrasion size 2 cm over anterior of left knee joint.
  6. Patient was complaining of pain, anterior of mid of chest. Advised X-ray chest.”
14. PW-7 Dr. Lajja Ram further stated that on the same day he had also examined Ramdiya son of Mangat Ram and proved the MLR Ex.PK and described the injuries on his person as under:
- “1. Incised wound size 1.5 x .5 cm over ulnar aspect of mid of right fore-arm. Bleeding of cleaning the wound.
  2. Diffused swelling of mid of right fore-arm. Advised X-ray right fore-arm.
  3. Patient was complaining of pain on left hand and ulnar aspect.”
15. PW-7 Dr. Lajja Ram further stated that on the same day itself he conducted post mortem examination on the dead body of Mangat Ram. PW-7 Dr. Lajja Ram proved the post mortem report as Ex.PN and stated that as per his opinion the cause of death was shock and haemorrhage on account of vital injury to vital organ like brain and other associated injuries. PW-7 described the following injuries on the dead body of Mangat Ram:
- “1. Incised wound size 4.5 x 5 cm obliquely placed over top of skull. It was skin deep.
- 1-A. There was big swelling 8 cm x 6 cm over both temporal region.
- On dissection of these injuries, there was fracture, bilateral temporo parietal region on deep dissection there was sub dural haemotoma and E.D.H. (Extra dural haemotoma) present of about 500 CC blood underlying the fracture site with large contusion over bilateral parietal region of brain.
2. Incised wound of size 4 cm x 2 cm x .5 cm over left pinna, anterior to external auditory meatus There was no fracture on dissection.
  3. Lacerated wound size 2.5 x 1 cm over left pinna posterior to injury no.2.



4. Lacerated wound size 6 cm x .5 cm over lateral to left eye ball. There was blackening of upper eye lid on dissection, there was no fracture.
  5. There was lacerated wound size 3 cm x .5 cm over palmer aspect of distil phalynx of left index finger. There was fracture of distil phalynx on dissection.”
16. PW-7 Dr. Lajja Ram was cross-examined at length on behalf of the accused but nothing substantial could be elicited so as to either doubt his veracity or his opinion. As such, it is evident that while Mangat Ram had been done to death by inflicting injuries to him with weapons including sharp edged weapons. It is also borne out that the injured witness namely Ram Kala (PW-8) and Ram Diya (PW-9) and also Rameshwar had also been inflicted injuries with blunt and sharp edged weapons.
17. As far as the motive is concerned, it is apparent that there was a dispute amongst the parties as regards a ‘*khal*’ (water channel) which was passing through the land of the complainant and was ultimately serving the land belonging to the accused. Apparently, the accused wanted the water channel to keep on existing so that they could continue irrigating their land through said water channel even though the Divisional Canal Officer, Kaithal had already ordered for dismantling of the water channel. The Divisional Canal Officer, Kaithal, vide order dated 13.3.2002 (Ex.PBB) had directed that the water channel shall remain in existence only upto 30.6.2002. It was upon expiry of the aforesaid period upto 30.6.2002 that the complainant party proceeded to dismantle the water channel on 02.07.2002 which was not to the liking of the accused who attacked the complainant party and caused injuries. Although, the accused in their defence have also placed on record a copy of an interim order dated 09.08.2002 passed by this Court in CWP-



7345-2002 (Ex.DD) wherein the demolition of water channel had been ordered to be stayed, but the said order was passed after more than a month of the occurrence in question. In other words, while as on the date of the occurrence the complainant party was well within their rights to dismantle the water channel, however, the accused, in order to thwart dismantling of water channel entered into the fields of the complainant and inflicted injuries to complainant and others.

18. As regards the contention of the learned counsel regarding the case being a case of blind murder with death having taken place much earlier in the fields from where the dead body was recovered later, the learned counsel for the appellants mainly relies upon the post-mortem report wherein it has been mentioned that the stomach was found to be having some semi digested food and the large intestine was full of faecal matter and rigor-mortis had set in. The aforesaid factum of presence of faecal matter in the intestine at 8 AM can be on account of several reasons. First of all, having regard to the fact that it was the month of summer, the village folks would normally get up early. A person who works in the fields would be expected to be up before sunrise and have something to eat before proceeding to fields which would explain presence of undigested food in stomach. In village some persons even choose to ease themselves in fields. Still further in a given case, a person may not have been able to fully clear his bowel. Thus, in the instant case the presence of undigested food or faecal matter in the body would not cause any dent in the case of prosecution.
19. As regards the presence of rigor mortis, the doctor in his statement opined that rigor mortis starts setting in after about 2/3 hours and develops



completely within 12 hours and stays as such for 12 hours before it starts receding. The doctor in his post mortem report opined the duration between death and post mortem as 12 hours. When a question was put to him by public prosecutor as to whether the duration between death and post-mortem could be six hours, he replied that the possibility could not be ruled out. Similar was his reply when a question was put to him during cross-examination by defence counsel as to whether the said duration could have been more than 12 hours. In any case, it is well settled that the medical opinion as regards the time of death is not conclusive. Hon'ble Supreme Court in 2006(13) SCC 65 994 Baso Prasad vs State of Bihar, while referring to medical jurisprudence held that the exact time of death cannot be said to be established just on account of presence or absence of rigor mortis. The relevant extracts are reproduced here-under:

“19. We may deal with the question as regards presence of rigour mortis.

20. In 'Modi's Textbook of Medical Jurisprudence and Toxicology', 21st Edn., at page 171, it is stated :

"Rigor mortis generally occurs, while the body is cooling. It is in no way connected with the nervous system, and it develops even in paralyzed limbs, provided the paralyzed muscle tissues have not suffered much in nutrition. It is retarded by perfusion with normal saline.

Owing to the setting in of rigor mortis all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple and flaccid, but will not return to its original position after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away.

Rigor mortis first appears in the involuntary muscles, and then in the voluntary. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy



or degeneration. The left chambers are affected more than the right. Post-mortem delivery may occur owing to contraction of the uterine muscular fibres.

In the voluntary muscles rigor mortis follows a definite course. It first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities, and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected are the small muscles of the fingers and toes. It passes off in the same sequence. However, according to H.A. Shapiro this progress of rigor mortis from proximal to distal areas is apparent only, it actually starts in all muscles simultaneously but one can distinguish the early developing and fully established stage, which gives an indication of the time factor.

*Time of Onset.* - This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death."

21. In Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology' 6th Edn., at page 3.14, it is stated :

"Rigor mortis (rigor-rigidity; mortis-of death) is a condition characterised by stiffening and shortening of the muscles which follow the period of primary relaxation. It is due to chemical changes involving the structural proteins of the muscle fibres and indicates the molecular death of its cells.

The contractile element of the muscle consists of protein filaments of two types, viz, myosin and actin, which are arranged and organised interdigitating manner. In the relaxed state, the actin filaments interdigitate with myosin filaments only to a small extent but when the muscle contracts, they interdigitate to a great extent due to the presence of ATP (adenosine triphosphate). The production and utilisation of ATP are constantly balanced in life. After death, ATP is resynthesised for a short time depending upon the glycogen available locally, but after this glycogen is used up, ATP cannot be resynthesised. This leads to the fusion of myosin and actin filaments into a dehydrated stiff gel resulting in the condition known as rigor mortis. During rigor mortis, the reaction of muscle changes from slightly alkaline to distinctly acid owing to the local formation of lactic acid. Rigor mortis persists until autolysis of myosin and actin



filaments occurs as a part of putrefaction. When autolysis occurs, the muscles soften and secondary relaxation sets in.

Rigor mortis can also be broken by mechanical force. Thus, if a limb, which is stiff due to rigor, is flexed forcibly at a joint, the limb becomes flaccid and will remain so thereafter. This is known as breaking of rigor mortis. Existing rigor mortis is broken down at least partially in the process of removal of the body from the crime scene to mortuary, and this may mislead the doctor in estimation of time since death. It is therefore essential to make a note of its stage of development while visiting the crime scene.

All muscles of the body, voluntary and involuntary, are affected by rigor. It first appears in involuntary and then in voluntary muscles. It is not dependent on the nerve supply as it also develops in the paralysed limbs. It is tested by (1) attempting to lift the eye lids (2) depressing the jaw, and (3) gently bending the neck and various joints of the body.”

At page 3.16 it is stated :

“The medico-legal importance is as follows : (1) It is a sign of death (2) It helps to estimate the time since death. (3) It may give information about the position of the body at the time of death and if it has been altered after rigor has set in. As for example, if a person dies with the hands and legs supported against a brick wall and the position of the body has been changed after rigor set in, the hands and legs would remain raised in an unnatural position (without support).

The factors which influence rigor mortis are : age and condition of the body (2) mode of death, and (3) surroundings.

Age and condition of the body : In children and old people, rigor develops earlier than in the adults. The onset of rigor is later and the duration longer in the strong muscular person. The more feeble or poorly developed the muscles, the more rapid is the time of onset, and the shorter the duration”

22. The exact time of death, therefore, cannot be established scientifically and precisely, only because of presence of rigour mortis or in the absence of it.”

.....(emphasis supplied)

20. Still further, it is also well settled that in a case where direct oral evidence of sterling quality is available, then even if medical opinion is slightly to the



contrary, the ocular version should be given preference. In Rakesh and another Vs. State of Madhya Pradesh, (2011) 9 SCC 698, the Hon'ble Supreme Court held as follows:

*“It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More so, the ocular testimony of a witness has a greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence if proved, the ocular evidence may be disbelieved.”*

21. The Hon'ble Apex Court in a judgment reported as (2016) 4 SCC 357, Sadhu Saran Singh Vs. State of Uttar Pradesh held that in a case of variance between medical evidence and ocular version, the oral evidence has to get primacy as medical evidence is opinionative. The Hon'ble Apex Court in a case reported as (2015) 4 SCC 749 Vijay Pal v. State (Government of NCT of Delhi), while observing that the value of medical evidence is only corroborative, held as under :-

*“ ..... It is also a settled principle that the opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. That apart, it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which are to be tested independently and not treated as the “variable” keeping the medical evidence as the “constant”. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to the alternative possibilities cannot be accepted as conclusive.”*

22. It thus follows that it is only when the contradiction between medical evidence and ocular version is so extreme that the medical evidence



completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved. In the present case, the prosecution has led ample evidence to establish that Ram Kala (complainant), Ramdiya and Rameshwar had sustained simple as well as grievous injuries. Both injured namely Ram Kala and Ramdiya have stated consistently to this effect. The medical evidence led by prosecution fully corroborates the factum of receipt of injuries. There is no other evidence regarding the aforesaid plea of the accused that the deceased had been found murdered in his fields in the morning and that they have later been falsely implicated. Under these circumstances, contention raised on behalf of accused in this regard can not be accepted.

23. Since it is a case where the victims have been inflicted injuries by several of the accused, it is apposite to examine the specific role of each of the accused before proceeding to assess their liability. Their roles are being discussed individually herein-under in context of the evidence brought on record.
24. Tek Chand (since expired): As per FIR Ex.PA/1, accused Tek Chand was carrying 'gandasi' and upon entering the fields of the complainant he had raised a 'lalkara' exhorting his companions to teach the complainant party a lesson for dismantling the 'khal' and had thereafter inflicted a blow with 'gandasi' on the head of the deceased. Complainant Ram Kala (PW-8) and his injured brother Ramdiya (PW-9) have stated consistently as regards the aforesaid raising of 'lalkara' and inflicting of injury by accused Tek Chand with 'gandasi' on the head of the deceased. As per post-mortem report duly proved by PW-7 Dr. Lajja Ram an incised wound was found on the top of skull of the deceased, which is consistent with ocular version.



25. Ganesha (since expired) : As per FIR Ex.PA/1, accused Ganesha was carrying '*jaili*' and inflicted a blow with on the left eye and left ear of the deceased. Complainant Ram Kala (PW-8) and his injured brother Ramdiya (PW-9) have stated identically as regards inflicting of injury by accused Ganesha to the deceased and also as regards the seat of injury. There is no inconsistency in the same. PW-7 Dr. Lajja Ram who had conducted post-mortem examination on the dead body found one incised wound and one lacerated wound on left pinna and another lacerated wound on left eye (injury no. 2, 3 and 4), which is in tune with ocular version.
26. Neki Ram : As per FIR Ex.PA/1, Neki Ram was carrying '*gandasi*' and had inflicted a blow with '*gandasi*' on the left hand of the deceased. Complainant Ram Kala (PW-8), while in the witness box stated that Neki Ram inflicted injury to deceased with *gandassi* on left arm, PW-9 Ramdiya stated that Neki Ram had inflicted a blow with '*gandasi*' on the left hand of the deceased, However, both of them stated that the blow was given from the reverse side of '*gandasi*'. PW-7 Dr. Lajja Ram, Medical Officer, who had conducted the post-mortem examination on the dead body, found one of the injuries to be on the left index finger which was a lacerated wound with underlying fracture. The said description clearly suggests that the same had been inflicted with blunt edged weapon and which is in tune with case of prosecution.
27. Surta : As per FIR Ex.PA/1, the accused Surta was carrying a '*lathi*' and had inflicted a blow with '*lathi*' on the right side of the head of the complainant Ram Kala. Ram Kala (PW-8) stated consistently to the effect that Surta had inflicted a blow with '*lathi*' on his head. PW-9 Ramdiya, however did not



attribute any specific role to accused Surta. PW-7 Dr. Lajja Ram, Medical Officer, who had medico legally examined injured Ram Kala, found lacerated wound with diffused swelling over right parietal region which would lend corroboration to version of the complainant regarding 'lathi' blow having been inflicted to him by Surta.

28. Veerbhan : As per FIR Ex.PA/1, accused Veerbhan was carrying a 'lathi' and had inflicted a blow with 'lathi' on left arm of the deceased and also to the complainant on his left arm and knee. Complainant Ram Kala (PW-8) and his injured brother Ramdiya (PW-9) have stated consistently to the effect that Veerbhan had inflicted a blow with 'lathi' on the left arm of the deceased. PW-8 stated that accused Veerbhan gave 'lathi' blow to him near the wrist of the left arm and on the left knee. However, PW-7 Dr. Lajja Ram, Medical Officer, who had conducted the post mortem examination on the dead body did not find any corresponding injury on the left arm of deceased. PW-7 did find abrasion and swelling on left arm and left knee of complainant (injury No.2, 3 and 5 ) which would substantiate the assertions of complainant as regards Veerbhan having injured him.
29. Parkash : As per FIR Ex.PA/1, accused Parkash is not attributed any specific injury. While Ram Kala (PW-8) in the witness box did not state that Parkash had caused any injury, Ramdiya(PW-9) stated that Parkash inflicted a blow with 'gandasi' on his right arm. PW-7 Dr. Lajja Ram, Medical Officer, who had medico legally examined Ramdiya found an incised wound on his right forearm.
30. Nanhu Ram : As per FIR Ex.PA/1, accused Nanhu Ram was carrying 'lathi' and had inflicted a blow with the same on left leg of the complainant.



Complainant Ram Kala (PW-8), while in witness box stated consistently to the effect that Nanhu Ram had inflicted a blow with '*lathi*' on his left leg. PW-9, while in witness box, however, did not stated specifically about any injury caused by accused Nanhu Ram. PW-7 Dr. Lajja Ram, Medical Officer, who had medico legally examined the complainant, found multiple abrasions on the left leg of complainant apart from injuries on other parts of body.

31. Krishan : As per FIR Ex.PA/1 he was carrying '*lathi*' and had inflicted a blow with '*lathi*' on the left arm and chest of the complainant. Complainant Ram Kala (PW-8) has stated consistently to the effect that Krishan had inflicted a blow with '*lathi*' on his left arm and chest. PW-9 however did not attribute any specific injury to accused Krishan. PW-7 Dr. Lajja Ram, Medical Officer, who had medico legally examined the complainant, found injury on left forearm of complainant and has also recorded in MLR that patient complained of pain in chest.
32. Nafiya : As per FIR Ex.PA/1, accused Nafiya was carrying '*lathi*' but no specific role was attributed to him. Complainant Ram Kala (PW-8), while in witness box did not attribute any specific role to accused Nafiya. PW-9 Ramdiya, however, stated that Nafiya gave '*lathi*' blows on his left and right arm. PW-7 Dr. Lajja Ram, Medical Officer, who had medico legally examined the injured (Ramdiya), found injuries on his left and right arm.
33. Shishpal @ Sainsi : As per FIR Ex.PA/1, accused Shishpal is not attributed any specific injury. Complainant Ram Kala (PW-8) and his injured brother Ramdiya (PW-9) have not stated about any specific injury to have been caused by accused Shishpal @ Sainsi.



34. The ocular evidence when read along with the medical evidence as referred to above clearly bears out that the deceased lost his life on account of the injuries on his head including his fractured skull which are attributed to Tek Chand and Ganesha who had inflicted the said blows to the deceased on his head, left eye, left ear with '*gandasi*' and '*jaili*' respectively. The doctor having attributed the cause of death to be the injuries particularly the injury to the vital organ like brain, the aforesaid two persons had rendered themselves liable for the murder of the deceased as held by the trial Court. In any case, since the aforesaid two persons have already expired and proceedings qua them stand abated, this Court need not go further into their roles and liabilities.
35. The remaining accused barring Surta and Krishan are attributed injuries on non-vital parts i.e. on legs and arms and while five of them were carrying sticks (*lathis*), the remaining three were carrying '*gandasis*'. Given the fact that it is a case where the accused had gone together carrying weapons in the nature of sticks and other farm implements with the object of preventing dismantling of the water channel, as is also specifically stated in the FIR by complainant (PW-Ram Kala), it can safely be inferred that the common object as formed by the accused was to prevent the dismantling of canal. The fact that they were carrying ordinary weapons like sticks and some farm implements would show that their object was limited to prevent the dismantling and if need be to cause injuries. The very fact that one of them i.e. Neki Ram despite being armed with a '*gandasi*' inflicted injury from its reverse side on hand would show that all of them did not have any clear intention or object to kill the deceased. As already noticed above, five of the



accused were carrying sticks only. Out of the surviving appellants all except two are attributed injuries on non-vital parts. As such, the surviving appellants would be responsible individually with regard to the injuries inflicted by them and cannot be held vicariously liable for the murder of Mangat Ram who had been killed by Tek Chand and Ganesha. Hon'ble Supreme Court in 1993(3) RCR (Criminal) 681, Jamma and others Vs. State of U.P. held as under:

“9. When the finding is that the *common object* of the unlawful assembly in general was only to cause grievous hurt, if anybody has *exceeded* the same, he or they would be liable for their individual acts. In this view of the matter, Ghanshyam, appellant No.4 cannot be said to have shared the *common* intention, along with appellants Nos.1 to 3 who instantly killed the deceased by inflicting injuries with ballams. Therefore he would also be liable under Sections 326/149, Indian Penal Code.”

36. Thus in the absence of any evidence to show that remaining co-accused (other than Tek Chand and Ganesha) shared any common intention with or had any common object to eliminate Mangat Ram, they cannot be held guilty for murder of Mangat Ram. However, the factum of causing injuries to complainant and other when complainant and other were dismantling water channel in their fields on the strength of an order of revenue authorities, does show that accused had formed a common object to obstruct dismantling of water channel by use of force and by entering into property of complainant. While the common object was apparently to forcibly prevent dismantling of water channel but it cannot be assumed that it even extended to causing death. In view of aforesaid position, the appellants would be liable for the offences committed by them individually. Out of these remaining 8 appellants, it is only appellant-Neki Ram who has rendered himself liable for



having cause a grievous hurt inasmuch as the injury caused by him from the reverse side of '*gandasi*' on the left hand of deceased was found to be a fracture. As such, while setting aside the conviction of Neki Ram for offence punishable under Section 302, 323, 324 and 148 IPC, he is held guilty of having committed offence punishable under Section 325 IPC only.

37. As regards appellants Veerbhan, Surta, Nanhu Ram, Krishan, Parkash and Nafe Singh @ Nafiya, all of them barring Surta and Krishan have inflicted injuries to PWs Ram Kala and Ramdiya on non-vital parts. Surta and Krishan had caused injuries to the complainant on his head and chest with the help of '*lathis*' which have been found to be simple injuries. As such, the aforesaid six accused namely Veerbhan, Surta, Nanhu Ram, Krishan, Parkash and Nafe Singh @ Nafiya had rendered themselves liable for having caused simple hurt to the complainant as well as to Ramdiya. Consequently, their conviction for remaining offences punishable under Section 302, 324, 325 and 148 IPC is set aside and they are held guilty of having committed offence punishable under Section 323 IPC only.
38. As far as Shishpal @ Sainsi is concerned although in the FIR he is stated to be carrying '*gandasi*', but neither in the FIR any specific role is attributed to him nor any of the eye witness including the complainant has attributed any specific injury to him. As such Shishpal @ Sainsi is entitled to be acquitted of all the offences. Consequently, the appeal is partly accepted and while acquitting all of them for offence under Sections 302, 324 and 148 IPC, Neki Ram is held guilty of offence punishable under Section 325 IPC, Surta, Veerbhan, Parkash, Nanhu Ram, Krishan and Nafe Singh @ Nafiya are held



guilty for offence punishable under Section 323 IPC and Shishpal @ Sainsi is acquitted of all the charges framed against him.

39. The sentence imposed upon the appellants is reduced to be one already undergone. Appeal stands partly accepted. A copy of this judgment be sent to the quarters concerned. Case property be destroyed as per rules after expiry of limitation for filing appeal or revision as the case may be.

**( GURVINDER SINGH GILL )**  
**JUDGE**

**( JASJIT SINGH BEDI )**  
**JUDGE**

**03.04.2025**

Mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No