CASE NO.:
Appeal (crl.) 349 of 2005

PETITIONER:
Lachman Singh

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 28/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
[With Criminal Appeal Nos. 350 of 2005 and 351 of 2005]

ARIJIT PASAYAT, J.

These appeals have been filed by Lachman Singh, Dev Singh and Randhir Singh (accused numbers 1, 2 and 3 respectively) who faced trial for alleged commission of offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). Additionally, Dev Singh was tried for alleged commission of offence punishable under Section 307 IPC, while other two were charged for alleged commission of offence punishable under Section 307 read with Section 34 IPC. While accused Lachman Singh was convicted for offence punishable under Section 302 IPC and was sentenced to imprisonment for life and to pay a fine of Rs.2,000/- with default stipulation, Dev Singh and Randhir Singh were convicted under Section 302 read with Section 34 IPC. Similarly, accused Dev Singh was found guilty for offence punishable under Section 307 IPC while other accused Lachman Singh and Randhir Singh were convicted for offence punishable under Section 307 read with Section 34 IPC and they were sentenced to undergo 5 years RI and to pay a fine of Rs.500/- each with default stipulation, as was the case with accused Dev Singh. The conviction as recorded and sentenced as imposed were challenged in Crl. Appeal No.206-DB of 1996 before the Punjab and Haryana High Court. The Division Bench of the High Court dismissed the appeal.

Flittering unnecessary details, the prosecution version as unfolded during trial is as follows:

On 3.3.1994 at 11.40 p.m. Jai Singh (PW-5) made statement (Exhibit PA) before ASI Raj Kumar (PW-21) in Civil Hospital, Shahabad to the effect that he was a resident of village Charunni Jattan and was doing cultivation. Rain water of the residential Chobara of accused Dev Singh flows to the roof of the kitchen of Pritam Singh and they wanted to use the water for bathing on the roof of the kitchen of Pritam Singh by making a hole inside their Chobara. Pritam Singh did not allow the flow of water through the roof of the kitchen. When Pritam Singh and his family members tried to construct a room on the roof of the kitchen, accused Dev Singh used to restrain them from constructing a room on the roof of their kitchen by obtaining stay order from the Civil Court against Pritam Singh and others. Previously also there was an altercation between Dev Singh and Pritam Singh on the issue of flow of water, but the well-wishers got the matter settled. It

was alleged that on the fateful day i.e. on 3.3.1994 at about 8.30 a.m. he (Jai Singh) had gone to the house of Surmukh Singh, neighbour of Pritam Singh for some personal work. When he was having a talk with the son of Surmukh Singh while standing on the roof, he noticed that there was exchange of abuses between accused Lachman Singh and Randhir Singh, who were standing on the roof of their house on one hand, and Naib Singh (hereinafter referred to as the 'deceased'), Jaswant Singh, Angrez Singh and Vikram Singh, who were standing on the roof of their kitchen on the other hand, over the issue of flow of water. It was alleged that accused Dev Singh was challenging that they would pass the flow of water from there in any case. Accused Dev Singh got infuriated and all of a sudden asked his son Lachman Singh to bring revolver from inside as the other side members were always harassing them. It was alleged that thereupon accused Lachman Singh brought a revolver from inside and thereafter, accused Dev Singh stated "shoot them", whereupon accused Lachman Singh fired and the shot hit the deceased, and on receipt of the said shot deceased fell down. Thereafter, accused Dev Singh took revolver from accused Lachman Singh and started firing shots, which, hit Jaswant Singh and Angrez Singh who were injured. Accused Randhir Singh exhorted that they had harassed them a lot and that nobody should be allowed to go Scot free and thereupon he started pelting brick bats after picking the same from the roof. Vikram Singh (PW-7), who had escaped from the shots by taking shelter of a wall, jumped down from the roof out of fear. Jai Singh and Balbir Singh gave a Lalkara as to why they were killing innocent persons and they also reached the spot to rescue the injured and on seeing them coming, all the three accused persons fled away from the roof of their house together with the revolver. After arranging a vehicle, he (Jai Singh) brought Jaswant Singh, Naib Singh and Angrez Singh, who had received fire arm injuries, to Civil Hospital, Shahabad for their treatment and the Doctor referred Angrez Singh and Jaswant Singh to PGI, Chandigarh, while Naib Singh was declared dead on account of the fire arm injury received by him on his waist. ASI Raj Kumar (PW-21), after recording statement (Exhibit PA) made by Jai Singh (PW-5) before him, sent the same to the Police Station with his endorsement (Exhibit PA/1) on the basis of which formal FIR relating to alleged commission of offences under Sections 302/307/34 IPC and Section 27 of the Arms Act, 1959 (in short 'Arms Act') was registered in Police Station Shahabad at 11.50 p.m. on 3.3.1994 and the special report was sent to the Judicial Magistrate at Kurukshetra who received it at 3.45 p.m. on the same day i.e. 3.3.1994.

ASI Raj Kumar (PW-21) had recorded the aforesaid statement Exhibit PA of Jai Singh (PW-5). He had gone to Civil Hospital, Shahabad on receipt of ruqa Exhibit PF from the Civil Hospital at 10.20 a.m. regarding the arrival of two seriously injured persons, namely, Jaswant Singh and Angrez Singh, who were referred to PGI, Chandigarh, while Naib Singh was brought dead. On reaching the hospital, Jai Singh, Balbir Singh and Wazir Singh met ASI Raj Kumar (PW-21) near the dead body of Naib Singh and it was thereupon that ASI Raj Kumar (PW-21) recorded the statement (Exhibit PA) of Jai Singh (PW-5) and thereafter had sent the same to the Police Station with his endorsement Exhibit PA/1 and afterward, as noted above, the formal FIR was recorded in Police Station, Shahabad.

After completion of investigation charge-sheet was placed

and accused persons faced trial. In order to further its case prosecution examined several witnesses. It examined Angrez Singh (PW-6), Vikram Singh (PW-7) and informant Jai Singh (PW-5) who were stated to be eye-witnesses. The accused pleaded false implication due to political rivalry and pendency of several litigations. Trial Court on consideration of materials placed before it recorded conviction and imposed sentences as aforenoted. An appeal was filed challenging conviction and sentences.

Before the High Court it was urged that there was no motive established and in any event the medical evidence runs contrary to the version of the alleged eye-witnesses. The bullets seized did not match with the seized gun and could not have been fired from the revolver as is evident from the materials on record. There is doubt about the time of incident and the evidence of Jai Singh (PW-5) who claimed to be an eye-witness is falsified by the fact that contrary to what he has stated the so-called injured eye-witnesses stated that the injured persons were taken to the hospital by one Kulwant Singh and not by Jai Singh. In any event, it was submitted that the occurrence took place in course of a sudden quarrel and, therefore, Section 302 IPC has no application. The ingredients of Section 307 IPC are also absent. So far accused Randhir is concerned, it was submitted that it was casually stated by the witnesses that he was pelting brickbats which resulted injury on the PW-7. But the doctor's evidence clearly shows that the injury on PW-7 was not possible by brickbats.

The prosecution, however, took the stand that after the detailed analysis, more particularly, of the eye-witnesses the conviction has been recorded. Merely because of some minor discrepancies in the testimony, the evidence of injured eye-witnesses could not be discarded, and has been rightly relied upon by the Trial Court.

The High Court did not find substance in the plea of the accused persons and dismissed the appeal.

In the present appeal stands taken before the High Court were reiterated by the learned counsel for the parties. We find that the evidence of the witnesses, more particularly, injured witnesses have been carefully analysed by the Trial Court and the High Court. There is no discrepancy of any vital nature which will affect credibility of the witnesses. There is no doubt that some minor discrepancies are noticed. But that does not in any way dilute the otherwise cogent evidence of injured witnesses about the role played by two of the accused persons i.e. Lachhman Singh and Dev Singh. So far as the bullets not matching the seized gun is concerned, the trial Court and High Court have dealt with this aspect in great details. As rightly submitted by learned counsel for respondent-State, recovery of the gun was made on being pointed out by the accused. To draw a red herring he pointed out to a different gun, so that the plea as presently urged can be taken. We, however, find that the evidence is inadequate so far accused Randhir Singh is concerned. It was prosecution case that he had thrown brickbats which caused injury on Vikram Singh (PW-7). But the same is clearly ruled out by the doctor's evidence to the effect that none of the injuries can be caused by brickbats. Additionally, his role of presence at the spot has not been established by any cogent and credible evidence. Therefore, conviction so far as he is concerned, cannot be sustained in the appeal filed by him i.e. Criminal Appeal No.350 of 2005 is allowed.

The residuary plea relates to the applicability of Exception 4 of Section 300 IPC.

For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is no possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

Section 307 IPC reads:
"Attempt to murder - Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act

caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overact in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

In Sarju Prasad v. State of Bihar (AIR 1965 SC 843), it was observed that the mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim is not itself sufficient to take the act out of the purview of Section 307 IPC.

The above position was highlighted in State of Maharashtra v. Balram Bama Patil and Ors. (1983 (2) SCC 28), Girija Shankar v. State of U.P. (JT 2004 (2) SC 140), Vasant Vithu Jadhav v. State of Maharashtra (2004 AIR SCW 1523), and State of M.P. v. Saleem (2005 (5) SCC 554).

Analysing the evidence in the background set out above the inevitable conclusion is that conviction of Lachman Singh has to be altered from Section 302 IPC to Section 304 Part I IPC. Custodial sentence of 10 years with fine of Rs.1,000/- with default condition of 3 months RI would meet the ends of justice. He is also to be convicted under Section 307 read with Section 34 IPC. Accused Dev Singh has to be convicted under Section 304 Part I read with Section 34 IPC. Custodial sentence would be 10 years RI with fine of Rs.2,000/- with default stipulation of three months. He is also convicted under Section 307 IPC for causing injury on Angrez Singh (PW-6). The conviction of Dev Singh under Section 307 IPC and that of Lachman Singh under Section 307 read with Section 34 IPC has been rightly upheld by the High Court, with the corresponding sentence as imposed. We find no reason to interfere with either the conviction or the sentence. However, the sentences shall run concurrently. Criminal Appeal No.349 of 2005 filed by Lachman Singh and Criminal Appeal No.351 of 2005 filed by Dev Singh are allowed to the extent indicated above.