



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Criminal Appeal No. 1041/2002

1. Lakshman Ram S/o Govind Ram
2. Prabhu Ram S/o Govind Ram
3. Lekh Ram S/o Govind Ram
4. Raja Ram S/o Rupa Ram
5. Hanuman S/o Govind Ram
6. Krishan Lal S/o Govind Ram
7. Devi Lal S/o Rupa Ram

All R/o Village Dhandhra, Police Station Ramsinghpur, District Sriganganagar.

----Appellants

Versus

The State of Rajasthan.

----Respondent

---

For Appellant(s) : Dr. RDSS Kharlia  
Mr. Govind Singh  
For Respondent(s) : Mr. Rajesh Bhati, PP

---

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR  
HON'BLE MR. JUSTICE SUNIL BENIWAL**

**Judgment**


**BY THE COURT: (Per Hon'ble Mr. Justice Vinit Kumar Mathur)**

1.	Date of conclusion of argument	11.05.2026
2.	Date on which the judgment was reserved	11.05.2026
3.	Whether the full judgment or only operative part is pronounced	Full Judgment
4.	Date of Pronouncement	16.05.2026

1. The instant D.B. Criminal Appeal has been preferred by the accused-appellants under Section 374 of the Code of Criminal Procedure assailing the validity of the judgment dated 04.12.2002 passed by learned Additional District and Sessions Judge (Fast Track), Anoopgarh, District Sri Ganganagar (hereinafter referred



to as "the learned trial court") in Sessions Case No. 98/2001, whereby the accused-appellants were convicted and sentenced in the following manner:-



Sl.No	Name of Apepllant	Conviction U/Sec.	Sentence	Fine Rs.	In-Default
1.	Prabhuram, Hanumanram, Lekhram, Devilal	147 IPC	One Year R.I.	NIL	NIL
2.	Krishanlal, Lakshmanram, Rajaram	148 IPC	Two Years R.I.	NIL	NIL
	Above all Seven appellants	302/149 IPC	L.I.	500/-	2 months
3.	Krishanlal	326 IPC	07 Years R.I.	100/-	1 months R.I.
4.	Lakshmanaram, Prabhuram, Lekhram, Rajaram@Rajiram, Hanuman Ram Devilal	326/149 IPC	07 Years R.I.	100/-	1 Months R.I.
5.	Krishanlal	324 IPC	2 Yrs. R.I.	NIL	NIL
6.	Lakshmanram, Prabhuram, Lekhram, Rajaram@Rajiram, Hanuman Ram, Devilal	324/149 IPC	2 Yrs. R.I.	NIL	NIL
	Above all the seven appellants	323/149 IPC	6 months R.I.	NIL	NIL
All the sentences were ordered to run concurrently					

2. As per the prosecution case, a written report was submitted by the complainant, Rajaram @ Rajjiram, son of Manfoolram, resident of village Dhandhra, alleging therein that on 02.10.1999 at about 6:00 P.M., his real brother, Mukhram, had gone to a mechanic shop (*Mistri*) situated within the jurisdiction of Police Station Ramsinghpur for getting his bullock-cart repaired. It was further alleged that the complainant and his brother had an existing dispute with Govind Ram and Roopa Ram Jakhar regarding a passage through their agricultural land. It was further



alleged that while the complainant was sitting at the house of Maluram situated near the mechanic shop (*Mistri*), he heard hue and cry emanating from the said place. Upon rushing towards the mechanic shop (*Mistri*), he allegedly saw accused persons, namely, Laxman Ram, Krishna Ram, Hanuman, Prabhu Ram, Lakh Ram, sons of Govind Ram, and Raja Ram and Devi Lal, sons of Rupa Ram, surrounding and assaulting his brother Mukhram. It was alleged that accused-appellant Rajaram was armed with a sharp-edged weapon (*Gandasi*), accused-appellants Laxman Ram and Devi Lal were armed with a sickle (*kasiya*), whereas the remaining accused persons were armed with axe (*Gandasi*) and *lathi*. According to the complainant, when he and other family members attempted to intervene and rescue Mukhram, accused-appellant Raja Ram allegedly inflicted a blow on the head of Mukhram with a sharp-edged weapon (*Gandasi*) with the intention to cause his death, while accused-appellant Laxman Ram caused injuries on his leg with a sickle (*kasiya*), as a result whereof, Mukhram fell on the ground. Thereafter, all the accused persons allegedly assaulted Mukhram with their respective weapons, namely axes (*Gandasi*), sickles (*kasiya*) and Lathis. It was further alleged that when the complainant tried to save his brother, accused-appellant Raja Ram inflicted a blow on his head and the remaining accused persons caused injuries on his calves and right shoulder. Even after Mukhram had fallen on the ground, the accused persons allegedly continued inflicting injuries upon him. On hearing the commotion, Krishna, Netram son of Poosaram, Asaram son of Kushlaram, along with other villagers, reached the





spot, whereupon the accused persons fled from the place of occurrence. Thereafter, the complainant and the injured Mukhram were taken through jeep to the Government Hospital at Sri Vijayanagar for treatment. However, Mukhram succumbed to the injuries sustained by him. Upon receiving information regarding the incident, the police reached at the Government Hospital, Sri Vijayanagar, at about 10:00 P.M. on 02.10.1999 and recorded the statement (*Parcha-Bayan*) of the complainant Raja Ram (Exhibit P-11).

3. On the basis of the said *Parchabayana* (Ex.P-11), a formal FIR No.175/1999 (Ex.P.34) was registered at Police Station Ramsinghpur, District Shri-Ganaganagar for the offence under Sections 147,148,149,323,341,307 and 302 of the Indian Penal Code and investigation was commenced.

4. After completion of investigation, the police filed charge-sheet against the five accused-persons, namely, Laxman Ram, Hanuman, Prabhu Ram, Lekh Ram and Raja Ram for the offences punishable under Sections 147, 148, 149, 302, 323, 324, 326 and 341 of the Indian Penal Code before the Court of the learned Additional Chief Judicial Magistrate, Anoopgarh, District Shri Ganganagar. From where, the case was committed to the Court of the learned Additional District and Sessions Judge (Fast Track), Anoopgarh, District Shri Ganganagar for trial in accordance with law. During the course of proceedings, prior to framing of charges, two more accused-appellants, namely, Krishnalal and Devilal, were impleaded as accused vide order dated 29.10.2001, whereafter





charges were framed and the trial was commenced against all the accused-appellants.

5. The learned trial court, after hearing arguments on charge, framed, read over and explained the charges under Sections 148, 302, 323, 324, 326, or 302/149,326/149,324/149,323/149 and 341 of the Indian Penal Code to the accused-appellant, who denied the same and claimed trial.

6. During the course of trial, the prosecution examined as many as 14 witnesses, exhibited documents from Ex.P.1 to Ex.P.52, along with 12 Articles in support of their case; whereafter the prosecution evidence was closed.

7. After the prosecution evidence was concluded, the accused-appellants were examined under Section 313 of the Code of Criminal Procedure, wherein they denied all the incriminating circumstances appearing against them, claimed false implication and asserted their innocence. In defence, the accused-appellants examined D.W.1 Panna Ram, D.W.2 Hans Raj and D.W.3 Revant Ram, and also exhibited documents marked as Exhibits D-1 to D-7 in support of their defence.

8. The learned trial court after hearing the arguments advanced by both sides and upon appreciation of the evidence available on record, convicted and sentenced the accused-appellants in the manner mentioned above vide judgment dated 04.12.2002.

9. Being aggrieved and dissatisfied with the impugned judgment dated 04.12.2002 passed by the learned trial court, the accused-appellants have preferred the present appeal before this Court.





10. Learned counsel appearing on behalf of the accused-appellants assailed the judgment of conviction and sentence dated 04.12.2002 passed by the learned trial court contending that the same suffers from serious infirmities and is liable to be set aside.

11. Learned counsel for the accused-appellants submitted that the alleged incident said to have taken place in broad daylight and in the midst of the village, and the prosecution witnesses as well as the Investigating Officer have themselves admitted in their depositions that several residential houses were situated in the immediate vicinity of the place of occurrence. Despite availability of independent witnesses, no such independent witness was examined by the prosecution for reasons best known to it. Even the carpenter/mechanic, at whose shop the alleged incident is said to have occurred, was withheld from the witness box, though he was the most natural witness, who could have unfolded the true genesis of the occurrence. He further submitted that the prosecution case rests solely upon the testimony of close relatives of the deceased, who are highly interested witnesses and whose statements suffer from material contradictions and improvements on vital aspects; therefore, no implicit reliance could have been placed upon such partisan testimony in the absence of independent corroboration.

12. Learned counsel for the accused-appellants submitted that the learned trial court adopted a wholly inconsistent and discriminatory approach while appreciating the evidence on record. On one hand, the testimony of defence witnesses, namely, D.W.1 Panna Ram, D.W.2 Hans Raj and D.W.3 Revant Ram, was





discarded merely on the ground that they were related to the accused persons and, therefore, interested witnesses; whereas, on the other hand, the testimony of the prosecution witnesses, who admittedly are close relatives of the complainant party, was accepted without any independent corroboration. He Further submitted that in the eyes of law, defence witnesses stand on the same footing as prosecution witnesses and their evidence is equally having the same weight for consideration. The learned trial court, without assigning cogent reasons, arbitrarily discarded the defence evidence and thereby seriously prejudiced the defence of the accused-appellants.

13. Learned counsel for the accused-appellants submitted that a bare perusal of the *Parchabayan* (Ex.P.11) and First Information Report (Ex.P-34), being the earliest version of the prosecution case, would reveal that the names of accused-appellants Devilal and Krishnalal do not find mention therein. Not only this, in the statements of prosecution witnesses recorded under Section 161 Cr.P.C., the witnesses Aduram (Ex.D-3) and Geeta Devi (Ex.D-6), have not named the accused-appellants, creating prosecution story doubtful. However, during trial, these witnesses made material improvements and for the first time implicated the said accused-appellants before the Court. Learned counsel further submitted that no plausible explanation has been offered by the prosecution for such material omissions, which strike at the very root of the prosecution case and render the subsequent improvements wholly unreliable.





14. Learned counsel further invited the attention of this Court to the testimony of P.W.-2 Aduram, who, in his cross-examination, admitted that his statement was recorded by the police after nearly one month of the alleged occurrence. However, the Investigating Agency withheld the said statement and instead produced a statement allegedly recorded after six days of the incident. He further submitted that had this witness actually been present at the spot, there was no reason whatsoever for the police not to record his statement at the earliest opportunity. The unexplained and inordinate delay in recording the statement of such a purported eye-witness creates serious doubt about his presence at the place of occurrence and indicates that he was subsequently introduced as a planted witness.

15. Learned counsel further submitted that the FIR, which is based on the statement of the injured witness, does not mention the names of Geeta Devi and her daughter as eye-witnesses to the incident. Nevertheless, during investigation and trial, the prosecution projected them as ocular witnesses. According to learned counsel, these witnesses were subsequently introduced after due deliberation and consultation by the complainant party, and their presence at the spot is highly doubtful. Consequently, no reliance could safely be placed upon their testimony.

16. Assailing the medical evidence, learned counsel submitted that if the post-mortem report and the testimony of the Medical Officer, namely P.W.-6 Dr. Devilal Bhakhar, are examined in their proper perspective, it becomes evident that no grievous injury was found on any vital part of the body of the deceased. Therefore,





even if the prosecution version is accepted in its entirety, the case would not travel beyond the ambit of Section 325 IPC, or at best the under Section 304 Part-II IPC. He further submitted that the ingredients necessary to constitute an offence punishable under Section 302 IPC are conspicuously absent in the present case, and therefore the conviction under Section 302 read with Section 149 IPC is wholly unsustainable.

17. Learned counsel further submitted that the alleged weapons of offence, said to have been recovered at the instance of the accused-appellants, have not been connected with the commission of the crime in any manner. As per the Forensic Science Laboratory report (Ex.P-52), no blood stains were detected on the recovered weapons. Moreover, the recovery witnesses P.W.-10 and P.W.-14 have turned hostile. Thus, the recovery evidence does not lend any support to the prosecution case and fails to establish any nexus between the accused-appellants and the alleged crime.

18. Learned counsel further submitted that the defence version, as unfolded through the testimony of the defence witnesses, clearly establishes that the deceased Mukhram and the complainant Rajaram @ Rajjiram were, in fact, the aggressors and had launched the attack upon the accused party with deadly weapons. It was contended that the occurrence was not the result of any premeditated or pre-planned assault on the part of the accused persons, but was a sudden fight which erupted on the spur of the moment. In such circumstances, the accused persons, while exercising their right of private defence, caused injuries by





using lathis and gandasis solely to protect themselves and their persons from the imminent threat posed by the complainant party.

19. Learned counsel further drew the attention of this Court to the findings recorded by the learned trial court wherein it has been specifically observed that it was not clear from the prosecution evidence as to which of the accused persons caused the lathi blow on the chest of the deceased, which allegedly proved fatal. He also submitted that once such a categorical finding had been recorded by the trial court, the accused-appellants could not legally have been convicted for the offence under Section 302 read with Section 149 IPC. At best, the offence could fall under Section 325 read with Section 149 IPC. He further submitted that the learned trial court itself recorded a finding that accused-appellants Prabhuram, Hanuman, Lekhram and Devilal had not caused any injury on any vital part of the body of the deceased; therefore, their conviction for the offence punishable under Section 302/149 IPC is manifestly illegal and contrary to the evidence on record.

20. Lastly, learned counsel submitted that had the accused persons actually harboured any intention to commit murder or cause fatal injuries, there was no impediment for them to use the sharp-edged weapons allegedly carried by them to inflict injuries on the vital parts of the body of the deceased or the injured witnesses. Even if the prosecution story is accepted arguendo, at the highest it reflects an intention to administer a beating so as to teach a lesson arising out of the pre-existing dispute, and not an intention to commit murder. Therefore, the essential ingredients of





murder are wholly absent, and the conviction and sentence awarded to the appellants under Section 302 read with Section 149 IPC deserve to be set aside and the accused-appellants are entitled to acquittal, or in the alternative, to an appropriate alteration of conviction to a lesser offence.

21. *E-converso*, learned Public Prosecutor, Mr. Rajesh Bhati, opposed the submissions advanced by learned counsel for the accused-appellants and supported the prosecution case as set out before the learned trial court. He submitted that the findings recorded by the learned trial court are based on proper appreciation of the oral as well as documentary evidence available on record and do not suffer from any illegality, perversity or infirmity warranting interference by this Court. He thus, submitted that the learned trial court has rightly convicted and sentenced the accused-appellants in the manner indicated hereinabove vide judgment dated 04.12.2002.

22. Having heard the learned counsel for the accused-appellants and the learned Public Prosecutor for the State, and upon a thorough and meticulous re-appreciation of the entire evidence available on record, including the impugned judgment dated 04.12.2002, this Court proceeds to examine the correctness, legality, and propriety of the findings recorded by learned trial court based on material available on record.

23. The prosecution, in support of its case, has examined as many as fourteen witnesses. Out of them, P.W.-1 Rajaram @ Rajjiram, P.W.-2 Aaduram, P.W.-3 Asaram, P.W.-4 Krishna, P.W.-5 Geeta Devi and P.W.-7 Maluram are the eye-witnesses of the





occurrence. P.W.-6, Dr. Devi Lal Bhakhar, is the Medical Officer who examined the injured and conducted the post-mortem examination of deceased Mukhram. P.W.-8 Dullichand and P.W.-9 Birbalram are formal witnesses. P.W.-10 Guraditta Ram and P.W.-14 Raji Ram are witnesses of recovery of weapons. P.W.-11 Yudhveer Singh was examined as Malkhana In-charge, P.W.-13 Maniram was examined as the carrier of sealed articles to the Forensic Science Laboratory, whereas P.W.-12 Maniram is the Investigating Officer of the case.

24. P.W.-6 Dr. Devi Lal Bhakar, deposed that on 02.10.1999 at about 8:40 P.M., while he was posted at the Community Health Centre, Sri Vijayanagar, he medically examined Mukhram and found multiple injuries on the body of the deceased. As per the injury report (Ex.P-13) following injuries were found by him-

Injury No.1	was an incised wound measuring 4" × ¼", bone deep, on the upper right side of the forehead, whereas
injury No.2	was another incised wound measuring 2½" × ¼", bone deep, on the middle portion of the skull.
injury No.3	A contusion measuring 10" × 1" was present on the outer posterior aspect of the left side of the chest;
injury No.4	A contusion measuring 1½" × 1½" was present on the left anterior middle portion of the chest;
injury No.5	An incised wound measuring ½" × ¼" × ¼" was present on the lower anterior portion of the left leg;
injury No.6	Three incised wounds, each measuring approximately 1½" × 1½", were present on the anterior aspect of the left foot/toes;
injury No.7	Three incised wounds, each measuring approximately 1" X 1", were present on the right leg; and
injury No.8	An abrasion measuring 1" × 1" was present on the frontal portion of the face, along with a bluish contusion measuring 1" × 1" around the left eye.





The doctor categorically opined that injury Nos.1 and 2 had been caused by a sharp-edged weapon, whereas the remaining injuries were caused by a blunt weapon. He further stated that all the injuries were fresh, caused within twelve hours prior to examination, and at the time of examination, the injured was found in a semi-conscious condition and in a state of shock.

25. The witness further deposed that despite medical aid, Mukhram succumbed to the injuries at about 9:45 P.M. on the same day. Thereafter, on 03.10.1999 at about 8:30 A.M., he conducted the post-mortem examination on the dead body of Mukhram and prepared the post-mortem report (Ex.P-22). The doctor categorically stated that all the injuries noted in the injury report were found present on the dead body and all of them were ante-mortem in nature. He specifically opined that injury Nos.3 and 4, situated on the chest, had punctured the lungs of the deceased and were sufficient in the ordinary course of nature to cause death. According to his medical opinion, the cause of death was shock resulting from vital injuries to the lungs.

26. Upon careful scrutiny of the cross-examination of P.W.-6, Dr. Devi Lal Bhakar, we find that nothing material has been elicited therein so as to discredit his testimony or to create any doubt with regard to the nature of injuries sustained by Mukhram or the cause of his death. The medical opinion furnished by the said witness regarding the injuries noticed on the body of the deceased and the cause of death, as reflected in the post-mortem report, remains wholly unshaken. The testimony of this witness finds complete corroboration from the injury report (Ex.P-13) as well as





the post-mortem report (Ex.P-22), and, therefore, inspires full confidence of this Court.

27. Having held so, we now proceed to examine the ocular account of the prosecution witnesses. The prosecution has examined fourteen witnesses in support of its case, out of whom P.W.-1 Rajaram @ Rajjiram, P.W.-2 Aaduram, P.W.-3 Asaram, P.W.-4 Krishna, P.W.-5 Geeta Devi and P.W.-7 Maluram have been examined as eye-witnesses of the occurrence. Amongst them, P.W.-1 Rajaram is not only the author of the written report, but is also an injured witness, having himself sustained both grievous as well as simple injuries in the very same incident. The evidentiary value of an injured witness stands on a higher pedestal, inasmuch as his presence at the place of occurrence cannot ordinarily be doubted. P.W.-1 Rajaram @Rajjiram, while deposing before the learned trial court, stated that on the date of the incident, at about 5:45 P.M., he was sitting at the house of P.W.-7 Maluram situated near the mechanic shop. Upon hearing hue and cry coming from the direction of the mechanic shop, he immediately rushed towards the spot. Upon reaching there, he saw accused-accused-appellants, namely, Prabhu Ram, Krishnalal, Laxman Ram, Hanuman, Lekh Ram sons of Govind Ram and Devilal and Raja Ram sons of roopa Ram, surrounding his brother, Mukhram. P.W.-1 Rajaram @ Rajjiram further deposed that accused-appellant Raja Ram s/o Roopa ram inflicted a blow with the axe (*Gandasi*) on the head of Mukhram, while the other accused persons continued to assault him with their respective weapons. According to this witness, accused-appellants Raja Ram and





Krishnalal were armed with axes (*Gandasi*), accused-appellant Laxman Ram was carrying a lathi fitted with a sharp-edged weapon (*kasiya*), whereas the remaining accused persons were armed with *lathis*.

28. When P.W.-1 Rajaram attempted to intervene and rescue his brother, the accused persons turned towards him and chased him. Though he picked up a lathi in order to defend himself and tried to retreat, the accused persons surrounded him near the abandoned house of Krishna and assaulted him. According to P.W.-1 Rajaram @ Rajjiram, accused-appellant Krishnalal inflicted successive blows with the axe on both his legs, thereafter on his head and shoulder, as a result whereof, he fell down on the ground and started bleeding profusely. The testimony of this witness with regard to the manner of occurrence, the presence of all the accused-appellants, the weapons carried by them and the injuries caused to both Mukhram and himself remains consistent and inspires confidence. His ocular version finds substantial corroboration from the medical evidence as well as from the testimony of the other eye-witnesses examined by the prosecution.

29. Upon a careful re-appreciation of the ocular evidence led by the prosecution, it emerges that all the eye-witnesses have consistently supported the prosecution case regarding the participation of the accused-appellants in the assault upon deceased Mukhram as well as injured witness Rajaram @ Rajjiram. P.W.-1 Rajaram, in his deposition, specifically stated that accused-appellants Krishnalal and Raja Ram were armed with axes, whereas accused-appellant Laxman Ram was carrying a





*lathi* fitted with a sharp-edged weapon, and the remaining accused persons were armed with lathis. P.W.-2 Aaduram, P.W.-3 Asaram and P.W.-4 Krishna have also substantially corroborated the testimony of P.W.-1 by stating that accused Krishnalal and Raja Ram were armed with sharp-edged weapons. Similarly, P.W.-5 Geeta Devi and P.W.-7 Maluram have also supported the prosecution version regarding the presence of the accused persons and the weapons carried by them at the time of the occurrence. Though some minor variations appear in the statements of these witnesses regarding the precise weapon carried by accused Laxman Ram, whether a sickle, lathi or crude lathi fitted with a sharp-edged weapon, such minor discrepancies are natural and do not affect the core substratum of the prosecution case.

30. The ocular evidence finds substantial corroboration from the medical evidence. P.W.-6, Dr. Devi Lal Bhakar, has categorically deposed that injury Nos.1 and 2 found on the skull of the deceased were caused by a sharp-edged weapon, whereas the remaining injuries were caused by blunt weapons. Thus, the medical evidence lends complete corroboration to the prosecution version that the accused persons were armed with both sharp-edged as well as blunt weapons and had used the same during the commission of the offence.

31. P.W.-12, Maniram, the Investigating Officer, has deposed regarding the arrest of the accused persons and the recoveries effected at their instance during investigation. As per his testimony, weapons were recovered pursuant to the information furnished by accused-appellants Laxman Ram, Lekh Ram, Prabhu





Ram, Hanuman and Raja Ram. It is true that no weapon was recovered from accused-appellants Krishnalal and Devilal, as they were initially not charge-sheeted by the investigating agency. Learned counsel for the appellants has sought to contend that since the names of accused Krishnalal and Devilal do not find mention in certain statements recorded under Section 161 Cr.P.C., namely Ex.D-3 and Ex.D-6, their presence at the spot becomes doubtful.

32. We have carefully examined this submission. The earliest version of the prosecution case, namely the written report (*Parchabayan*) (Ex.P-11) lodged by injured witness Rajaram @ Rajiram immediately after the occurrence, specifically names all the seven accused persons, including Krishnalal and Devilal, and attributes active participation to each one of them. The said witness, in his statement before the police (Ex.D-1), has consistently named all the seven accused persons. However, in certain portions of the statements recorded by the Investigating Officer, the names of Krishnalal and Devilal appear to have been omitted. P.W.-2 Aaduram, during his cross-examination, categorically stated that he had informed the police about the presence of Krishnalal and Devilal at the place of occurrence, but he was unable to explain as to why their names were not incorporated in the relevant portions of his police statement (Ex.D-3). Likewise, P.W.-5 Geeta Devi also stated in her cross-examination that she had disclosed before the police the presence and participation of Krishnalal and Devilal in the incident, but their names were not recorded in the relevant portions of her police





statement (Ex.D-6). It has further come on record that in her subsequent statement (*Titamba*) recorded by the Additional Superintendent of Police, District Sri Ganganagar, on 19.12.1999, she specifically reiterated that she had disclosed the names of Krishnalal and Devilal during investigation, but the same were not recorded by the Station House Officer.

33. In view of the aforesaid evidence, it appears that omission of the names of Krishnalal and Devilal in certain portions of the statements recorded under Section 161 Cr.P.C. is attributable to lapses committed during investigation and not to any contradiction in the prosecution case. It is well settled that lapses or irregularities committed by the investigating agency cannot, by themselves, enure to the benefit of the accused when the ocular evidence adduced before the Court is otherwise cogent, trustworthy and inspires confidence. Since the earliest version of the prosecution case, namely *Parchabayan* (Ex.P-11), specifically names all the seven accused persons and the eye-witnesses have consistently supported their presence and participation during trial, we find no reason to doubt the involvement of accused-appellants Krishnalal and Devilal in the incident. Accordingly, the submission advanced on behalf of the accused-appellants in this regard deserves to be rejected.

34. We have also carefully considered the submission advanced on behalf of the accused-appellants questioning the presence of the prosecution eye-witnesses at the place of occurrence. Upon a careful scrutiny of the evidence available on record, we find no substance in the said contention. The presence of P.W.-2 Aaduram,





P.W.-3 Asaram, P.W.-4 Krishna and P.W.-7 Maluram at the place of occurrence cannot be said to be unnatural or suspicious, inasmuch as all these witnesses are residents of the same village where the incident took place, and their presence at or near the place of occurrence appears to be wholly natural and probable in the ordinary course of events. It is pertinent to note that in the written report (Ex.P-11), injured witness P.W.-1 Rajaram @ Rajjiram has specifically stated that upon hearing the cries and commotion, witnesses Asaram, Krishna, Netram and other villagers had reached the place of occurrence. Thus, the presence of these witnesses stands corroborated by the earliest version of the prosecution case itself. So far as the testimony of P.W.-5 Geeta Devi is concerned, merely because her name does not find mention in the written report (Ex.P-11), her testimony cannot be discarded on that ground alone. During her cross-examination, the said witness satisfactorily explained that at the time of the incident, she was engaged in milking a cow nearby and, upon hearing the commotion, she rushed towards the place of occurrence where she found her husband being assaulted by the accused persons. In the facts and circumstances of the case, such explanation appears to be natural, probable and worthy of acceptance.

35. It is equally well settled that in a sudden and violent incident, an injured person is primarily concerned with the assault being inflicted upon him and his immediate surroundings, and it cannot be expected of him to notice or remember the presence of every person who subsequently arrives at the spot to rescue him.





Naturally, his attention would be focused upon the assailants and the persons present at the inception of the occurrence or those seen fleeing from the spot. Therefore, mere non-mention of the name of Geeta Devi in the earliest report does not, by itself, render her presence doubtful, particularly when her testimony finds corroboration from the other ocular evidence available on record. In view of the above discussion, we are of the considered opinion that the presence of the aforesaid eye-witnesses at the place of occurrence stands satisfactorily established and cannot be termed as doubtful or suspicious.

36. The contention raised regarding delay in recording the statement of P.W.-2 Aaduram also does not impress this Court. Though an attempt was made during cross-examination to suggest that his statement was recorded after about one month, the documentary record reveals that his statement was, in fact, recorded on 08.10.1999, i.e., within six days of the occurrence. In the facts and circumstances of the present case, such delay is neither inordinate nor fatal to the prosecution case, particularly when the testimony of the said witness is corroborated by other eye-witnesses and by the injured witness himself.

37. The argument advanced on behalf of the accused-appellants regarding absence of blood stains on the weapons allegedly recovered at their instance, as per the FSL report (Ex.P-52), also does not persuade this Court to discard the prosecution case. It is true that human blood could not be detected on the recovered weapons; however, the same, by itself, cannot override the cogent ocular testimony of multiple eye-witnesses. The recovery of





*Gandasi*, Lathi and *Kasiya* from the accused-appellants herein clearly establishes their connection with commission of crime. The law is well settled that recovery evidence is merely corroborative in nature, and absence of blood stains on the recovered weapons is not sufficient to discard otherwise reliable direct evidence.

38. We also find no merit in the submission that the offence, if any, would fall under Section 325 IPC or at the highest under Section 304 Part-II IPC. The medical evidence clearly establishes that the accused persons inflicted multiple injuries upon the deceased, including severe blunt-force injuries on the chest, which punctured the lungs and were sufficient in the ordinary course of nature to cause death. The accused persons were armed with deadly weapons, acted as members of an unlawful assembly, and jointly assaulted the deceased as well as the injured witness. The nature of injuries, the part of the body targeted, the force employed and the concerted manner of assault unmistakably establish the existence of common object attracting the provisions of Section 149 IPC. Thus, the learned trial court has rightly held all the accused persons liable for the offence punishable under Section 302 read with Section 149 IPC.

39. We have also carefully examined the forensic and documentary evidence collected during the course of investigation. The evidence of P.W.-12 Maniram s/o Ramridh, P.W.-11 Yudhveer Singh and P.W.-13 Maniram s/o Ramgopal clearly establishes that during the course of investigation, the Investigating Officer took into possession the blood-stained clothes/articles of injured witness Rajaram @ Rajjiram, marked as Articles 6 to 8, as well as





the blood-stained clothes/articles of deceased Mukhram, marked as Articles 9 to 12, and after sealing the same in accordance with law, sent them to the Forensic Science Laboratory for chemical examination. A perusal of the FSL report (Ex.P-52) reveals that human blood was detected on the blood-stained soil collected from both the places marked "A" and "B", as well as on the blood-stained clothes/articles seized from both Mukhram and Rajaram. Thus, the forensic evidence lends substantial corroboration to the ocular version of the prosecution witnesses that deceased Mukhram and injured Rajaram were assaulted at the respective places shown in the site-plan and had sustained bleeding injuries during the occurrence.

40. The aforesaid forensic evidence also stands fully corroborated by the medical evidence on record, which establishes that Rajaram @ Rajiram had sustained grievous as well as simple injuries and that Mukhram succumbed to the injuries caused to him during the same transaction. Thus, from the ocular, medical and forensic evidence taken cumulatively, it stands established beyond reasonable doubt that on 02.10.1999, the accused-appellants, being members of an unlawful assembly and in prosecution of their common object, voluntarily caused grievous as well as simple injuries to Rajaram @ Rajiram by assaulting him with sharp-edged and blunt weapons, and also caused fatal injuries to Mukhram, resulting in his death.

41. The findings recorded by the learned trial court regarding the individual role of each accused-appellants also appear to be based on proper appreciation of evidence. The evidence on record clearly





establishes that accused-appellants Krishnalal, Laxmanram and Raja Ram were armed with sharp-edged weapons, whereas the remaining accused persons were armed with lathis. Accordingly, the learned trial court has rightly differentiated between the roles of the accused-appellants while recording conviction under Sections 148 and 147 IPC respectively. Likewise, the conviction under Sections 326, 324 and 323 read with Section 149 IPC is fully supported by the ocular as well as medical evidence.

42. We have also carefully examined the defence version as unfolded through D.W.-1 Panna Ram, D.W.-2 Hans Raj and D.W.-3 Revant Ram. However, their testimony neither probabilizes the plea of private defence nor creates any reasonable doubt in the prosecution case. The defence evidence does not inspire confidence and fails to rebut the cogent, reliable and overwhelming prosecution evidence available on record.

43. It is further noteworthy that none of the accused persons sustained any injury during the occurrence, which substantially weakens the plea that they had acted in exercise of their right of private defence. Furthermore, from the evidence available on record, no weapon was found or noticed in the hands of the complainant party at the time of the occurrence so as to indicate any imminent threat or aggression from their side. On the contrary, the nature, seat and manner of injuries inflicted upon the deceased Mukhram and complainant Rajaram @ Rajjiram by sharp-edged weapons like gandasi as well as lathis clearly reflect that the assault was deliberate, concerted and not a spontaneous





act arising out of a sudden fight, thereby ruling out the defence plea of private defence.

44. In view of the foregoing discussions, we are of the considered opinion that the prosecution has successfully proved the charges against the accused-appellants beyond all reasonable doubt. The findings recorded by the learned trial court are based upon proper appreciation of the oral, medical, forensic and documentary evidence and do not suffer from any perversity or legal infirmity requiring interference by this Court in appellate jurisdiction.

45. Consequently, the present criminal appeal fails and is hereby dismissed. The judgment of conviction and order of sentence dated 04.12.2002 passed by the learned trial court against the accused-appellants, is hereby affirmed and upheld.

46. This Court vide orders dated 4.2.2004, 19.06.2003 and 28.4.2004 suspended the sentence of accused-appellants and therefore, they are on bail and since the judgment passed by the learned trial court convicting and sentencing them has been affirmed, therefore, all the accused-appellants are directed to be taken into custody.

47. The record of the trial court be sent back forthwith along with a copy of this judgment for information and necessary compliance.

**(SUNIL BENIWAL),J**

**(VINIT KUMAR MATHUR),J**

-Kartik Dave/C.P.Goyal/-

