

## **State Of Himachal Pradesh vs Wazir Chand And Ors. on 16 November, 1977**

**Equivalent citations: AIR1978SC315, 1978CRILJ347, (1978)1SCC130, AIR 1978 SUPREME COURT 315, (1978) 1 SCC 130, (1978) 1 SC WR 501, 1978 CRI APP R (SC) 9, 1978 SCC(CRI) 58, 1978 SC CRI R 152**

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**Bench: D.A. Desai, N.L. Untwalia, P.K. Goswami**

### **JUDGMENT**

D.A. Desai, J.

1. Both these appeals by special leave arise out of a judgment rendered by High Court of Himachal Pradesh in Reference No. 1 of 1973 and, Criminal Appeal No. 36 of 1973. Both the appeals arise from the same judgment and were therefore heard together and are being disposed of by this common judgment.

2. The occurrence which gave rise to the present appeals took place on 7th August 1972 a little after 10.30 p.m. Parshottam Lal according to prosecution who was fatally injured in this occurrence had a few days prior to 7th August 1972 earned a prize in the amount of Rs. 5100/- in a private lottery. Along with some other amount which he had with him, it is alleged, he usually kept Rupees 8000/- in his pocket. On the date of the occurrence deceased Parshottam Lal accompanied by one Om Pra-kash alias Pashi visited Jyoti Cinema in the second show. Accused No. 2 Raj Kumar was also in the theatre at that time. At about this time accused No. 1 Wazir Chand (appellant in Criminal Appeal No. 369/75 and respondent No. 1 in Criminal Appeal No. 59/75) and Joginder Singh (respondent No. 3 in Cri. Appeal No. 59/ 75) were seen conversing among themselves in the verandah of the theatre. The second show was over around 10.30 p. m. Deshraj P.W. 3 who was also enjoying the picture came out of the theatre and proceeded towards his house and on the way he crossed accused No. 3 Joginder Singh whose clothes appeared to have been stained with blood. Proceeding ahead, Deshraj hoard a shout and rushed in that direction. He found Parshottam Lal injured lying on the ground and he inquired from Parshottam Lal as to what had happened whereupon Parshottam Lal told him that: 'Wazir Chand Hawker doing business near Prem Bus Company injured him with a knife and at that time Joginder Singh son of Nathu of Girth Sakna and Raj Kumar, brother of Wazir Chand were with him and they beat him and information should be given to his relatives'. Deshraj went to the house of Parshottam Lal and informed his wife Smt. Pushpa, P.W. 5 and she along with Daya Ram and Sita Ram came to the scene of occurrence but in the meantime Parshottam Lal succumbed to his injuries. Deshraj gave information of the offence at Kangra Police Station around

mid-night time and investigation was commenced. A search of the clothes of the deceased then put on by him led to the recovery of Rs. 71/- and a bunch of keys. The point worthy of notice is that the large cash which Parshottam Lal was alleged to be carrying was not found on his person and a suspicion arose that the motive for murder was robbery. A search of the house of accused No. 1 Wazir Chand was taken and except a paltry amount no cash was recovered. Accused No. 1 Wazir Chand was arrested on 8th August 1972 from the house of Raghu-nath Singh, P.W. 16 and at the time of his arrest on a search of his person, Banyan Ext. B. 18, and Pant, Ex. P-19 alleged to have been stained with blood, were recovered. Information given by accused No. 1 while in custody led to the recovery of blood-stained knife, Ext. P-1 from a bush of Nealkanthi and it was attached. Accused No. 2 Raj Kumar could not be traced till 20th August 1972 when he surrendered in the Court of Judicial Magistrate, Pathan-kot. He was arrested and the information given by him while in" custody led to the recovery of a ring and a watch pledged with one Jagir Singh, P.W. 21 on 31st August 1972. Accused No. 3 Joginder Singh was arrested by Head Constable Sunka Ram, P.W. 23 on 9th August 1972 and on a search of his person currency notes worth Rs. 28.15, one iron ring and a railway ticket were recovered. After completing the investigation, the accused were charge-sheeted and ultimately came to be committed to the Court of Session Where a charge was framed against accused No. 1 Wazir Chand for committing murder of Parshottam Lal punishable under Section 302 of the Indian Penal Code, and against accused No. 2 Raj Kumar and accused No. 3 Joginder Singh for committing an offence under Section 302 read with Section 34 of the Indian Penal Code.

3. The defence of accused No. 1 Wazir Chand was that he caused injury to Parshottam Lal in exercise of the right of private defence of body in that when he was peeling apple for his wife who was then pregnant, deceased Parshottam Lal accompanied by Onkar Chand P.W. 17 and one Om Parkash alias Pashi came over there and started beating him. At that time Parshottam Lal according to the defence of accused No. 1 Wazir Chand felled him and sat on his chest and was pressing and he felt suffocated and wielded his knife not to kill Parshottam Lal but to save himself. The defence of accused No. 2 Raj Kumar and accused No. 3 Joginder Singh was one of total denial.

4. The learned Sessions Judge rejected the evidence of motive and he accepted the dying declaration as giving a truthful version of the occurrence and held it proved. He also accepted the circumstantial evidence in the form of recovery of blood-stained knife, Ext. P. 1 at the instance of accused No. 1 Wazir Chand and bloodstained clothes on the person of wazir Chand at the time of his arrest. Evidence in the form of recovery of watch and ring belonging to deceased Parshottam Lal on the information given by accused No. 2 Raj Kumar was accepted. He also accepted the evidence about the injuries found on the person of accused No. 1 Wazir Chand and accused No. 3 Joginder Singh and along with the recovery of button Ext. P. 10, and concluded that there was good deal of struggle at the spot where Parshottam Lal was found lying injured. On this evidence the learned Sessions Judge convicted accused No. 1 for an offence under Section 302 and awarded him capital punishment. He also convicted accused Nos. 2 and 3 for an offence under Section 302 read with Section 34, I.P.C. and sentenced each of them to suffer imprisonment for life. The sentence awarded to accused No. 1 was submitted to the High Court for confirmation. All the three accused appealed against their conviction and sentence.

5. The High Court held that the charge against accused Nos. 2 and 3 is not brought home to them and in the case of accused No. 1 Wazir Chand, it was held that on the evidence he could be convicted for an offence under Section 304, Part II of the Indian Penal Code and accordingly set aside his conviction for an offence under Section 302, I.P.C. and the capital punishment, and awarded him rigorous imprisonment for 10 years. The State of Himachal Pradesh has questioned the correctness of the judgment of the High Court in respect of the three accused in Criminal Appeal No. 59 of 1975. Accused No. 1 questioned the correctness of his conviction and sentence in Criminal Appeal No. 369 of 1975.

6. The autopsy on the dead body of Parshottam Lal was performed by Dr. Shushma Sood, P.W. 1 on 8th August 1972 at 2.30 p. m. She found four injuries on the dead body. They were as under:

1. Incised wound horizontal in direction 2" x 1/2" x 2" situated about 3" below and 2" below medial to the right nipple covered with blood. On washing the tissues it still was stained with blood. The wound was running downwards in direction.
2. Incised wound on the back about 1 1/4" x 1/2" x 2" in dimension situated about 4" above the left anterior superior iliac spine and 3" lateral to the vertebral column. Wound was running obliquely and was covered with dark coloured blood.
3. Incised wound about 2" x 1 1/4" x 1/2" situated lateral to the second Cervical vertebra on the left side of nape of neck.
4. Incised wound about 1" x 1/2" x 1/2" situated about 1" below the occipital eminence on the left side. It was running horizontally. The bone Underlying was intact. No mark of ligature anywhere on the neck. Scalp, skull, vertebrare, membranes, brain, spinal cord were healthy.

In her opinion injury No. 1 was sufficient in the ordinary course of nature to cause death. She said that after the receipt of injuries deceased could live for about 15 to 20 minutes or may as well survive for about 2-3 hours, and during this period he could understand and speak. There was some comment on this part of her evidence because in Col. 20 of notes of postmortem examination, Ext. P-A, she has stated that the death was sudden. It was suggested that the word 'sudden' would mean instantaneous and if the death was instantaneous, Deshraj, P.W. 3 could not have reached in time when deceased Parshottam Lal would be alive and would be able to make dying declaration to Deshraj. We are not impressed by this criticism. Both the Courts have rightly rejected. this criticism. As Dr. Sood made it very clear that there will be a time-lag of about 15-20 minutes from the receipt of injuries and it may even extend to 2-3 hours before the death occurred and it should be remembered that even though the deceased had received four separate incised wounds, only injury No. 1 was sufficient in the ordinary course of nature to cause death as opined fey Dr. Sood. Therefore, the suggestion that the death would be instantaneous and there was no chance for the deceased to make dying declaration has been rightly negatived.

7. It must at once be noticed that in this case there is no witness to the occurrence in the sense that no one has spoken to his having seen the accused causing injuries to deceased Parshottam Lal. The direct testimony is furnished by the dying declaration of the deceased and that evidence is of vital Importance to connect the accused with the offence. P.W. 3 Deshraj spoke of the dying declaration and the learned Sessions Judge has reproduced the dying declaration in the judgment. It also finds place in the F.I.R. Ext. PG given by Deshraj at Kangra Police Station. The incident occurred a little while after 10.30 p.m. on 7-8-1972 and Deshraj lodged first information at, Kangra Police Station at 12.15 midnight. He was closely cross-examined. Some minor discrepancies were sought to be pointed out in the dying declaration which was reproduced in the oral evidence and the record of which is to be found in the first information report Ext. PG. Evidence of Pushpa, P.W. 5 widow of the deceased would show that she, was awakened by Deshraj and she was given information about the unfortunate occurrence. This clearly establishes that Deshraj was first to reach the scene of occurrence and through him Pushpa widow of deceased, received information about the occurrence. Some minor discrepancies were pointed out to us in the evidence of Deshraj and we must frankly say that we are not impressed by any of them. Both the learned Sessions Judge and the High Court observed the correct principle for appreciating the evidence furnished by a dying declaration and both have recorded an affirmative conclusion that the dying declaration as deposed to by Deshraj was inherently true, voluntary and reliable. We, therefore, do not consider it necessary to repeat the same criticism. We are in agreement with the reasons recorded by both the Courts for acceptance of the evidence furnished by the dying declaration.

8. Mr. Mahajan, learned Counsel for the State of Himachal Pradesh contended that once dying declaration is accepted as a truthful version of the occurrence it would unmistakably show that all the three accused were involved in the occurrence and that the learned Sessions Judge was right in convicting accused No. 1 for an offence under Section 302 and accused Nos. 2 and 3 under Section 302 read with Section 34 of the Indian Penal Code, and the High Court was clearly in error in setting aside the conviction of accused Nos. 2 and 3. In the earlier portion of this judgment we have reproduced the dying declaration. Scanning it, it becomes clear that it speaks of accused No. 1 Wazir Chand causing injuries to Parshottam Lal and it speaks of the presence of accused No. 2 Raj Kumar and No. 3 Joginder Singh. There was some Controversy about one word "Shamel" is used in the dying declaration and it was urged on the one hand that it means participation in the assault and on the other hand it was stated that it may at best suggest presence. But it was said that the next following sentence would clearly show that deceased Parshottam Lal stated that all the three beat him. That interpretation of the last sentence has been negated by the High Court saying that it is a very general phrasology not indicating participation in the assault. In fact, the first part of the dying declaration clearly attributes attack on deceased to accused No. 1 only. As we are left on the question of participation of accused Nos. 2 and 3 only on the dying declaration of the deceased as the other evidence offered for corroboration of the same does not appeal to us and when the language of the dying declaration is open to two interpretations and as the High Court has accepted that latter interpretation favourable to accused Nos. 2 and 3, on the material as it is, it would not be proper to take another view of the matter. Therefore, it could not be said that dying declaration also involves accused Nos. 2 and 3. If there was some other evidence directly suggesting involvement of accused Nos. 2 and 3 in the attack on the deceased it would have provided corroboration to the interpretation as was canvassed on behalf of the State but in the absence of such evidence it is not

possible to accept the suggested interpretation of the dying declaration and base the conviction of accused Nos. 2 and 3 solely on the same.

9. It was next contended that certain recoveries will clearly provide corroboration to the dying declaration. In respect of accused No. 1 it was urged that when he was arrested on 8th August 1972 from the house of one Raghunath Singh, P.W. 16, which fact itself was considered a circumstance of incriminating nature against accused No. 1, his clothes were found to be stained with blood and the report of the Serologist and Chemical Examiner, Ext. PGG shows that the clothes of accused No. 1 were stained with human blood. Thereafter he gave information leading to the discovery of knife Ext. P 1. This knife is also shown to have been stained with human blood. This evidence of recovery of blood-stained clothes of the accused and a bloodstained knife on the information given by him was not commented upon before us. Therefore, that evidence has been rightly accepted and it would certainly furnish corroboration to the dying declaration as against accused No. 1.

10. It was next contended that accused No. 2 Raj Kumar was not traced till he surrendered to the Judicial Magistrate First Class, Pathankot on 19th August 1972, and he was brought to Kangra on 20th August 1972 and was interrogated. On 30th August Raj Kumar was taken to Dhugiari and on the next day one Jagir Singh produced one golden ring Ext. P-6 and one wrist watch Ext. P-5 before the investigating officer Shri P. N. Kapoor P.W. 24 who attached them under Memo. marked Ext. P. V. in the presence of. Vidya Ram P.W. 8. This watch and ring were identified by Pushpa as belonging to the deceased. Learned Sessions Judge relied upon this recovery to connect accused No. 2 with the offence. Now, it must be recalled that the incident occurred on the night of 7th August 1972. Accused No. 2 Raj Kumar was in police custody from 20th August 1972. It was for the first time that he was taken to Dhugiari at the house of Jagir Singh on 30th August 1972. There is a long delay between the date of occurrence and the arrest of Raj Kumar and recovery. Again it is not clear from the Memo of recovery that these articles were recovered on the information given by accused No. 2 Raj Kumar. Of course Jagir Singh 'P.W. 21 is examined and he said that the aforementioned two articles were pledged by Raj Kumar with him for a loan of Rs. 200/-. However, even if this evidence of recovery is believed it would not establish participation of accused No. 2 Raj Kumar in the assault because he may have got these articles even from Wazir Chand who is alleged to be the assailant of the deceased. Raj Kumar is not charged for retaining stolen property. Therefore, it is not possible to place any reliance on this recovery as directly suggesting participation in the attack on the deceased and the High Court has not rightly relied upon it. Therefore, there is no material evidence in this case which would corroborate dying declaration so far as accused No. 2 is concerned.

11. The situation with regard to accused No. 3 is not materially different. Deshraj, P.W. 3 has stated that a little while before he heard the shout of Parshottam Lal, accused No. 3 Joginder Singh crossed him on the way and that at that time he found clothes of accused No. 3 bloodstained. Accused No. 3 was arrested on 9th August 1972 while he was boarding a bus. Deshraj could not have clearly noticed at night time the fact that the clothes then put on by accused No. 3 were blood-stained. The clothes are not forthcoming. There is no other evidence in the form of recovery of any incriminating article from accused No. 3 or recovery on the information given by him and therefore, there is no corroboration to the dying declaration so far as accused No. 3 is concerned.

12. Mr. Mahajan then invited our attention to the fact that both accused Nos. 1 and 3 had some injuries on their person at the time of their arrest. Both accused No. 1 Wazir Chand and accused No. 3 Joginder Singh were examined by Dr. S. R. Chaki P.W. 2 on the application submitted to him by the police officer on 9th August 1972. He found the following injuries on the person of accused No. 1:

1. One abrasion  $\frac{3}{4}$ " x  $\frac{1}{4}$ " transverse on the right side of face  $\frac{1}{2}$ " lateral to the lateral angle of right eye and  $\frac{1}{4}$ " below the lateral end of the right eye-brow covered brownish crust.
- 2 One abrasion 1" x  $\frac{1}{2}$ " vertical, on the left half of back of chest, 2" below the lower angle of left scapula (i. e. lower end of left scapula) covered with brownish crust.
3. One abrasion 2" x  $\frac{11}{4}$ " vertical, on the lower Part of right half of back of chest, 5" below the lower angle (i.e. lower end) of right scapula, covered with brownish crust.
4. One abrasion  $\frac{3}{4}$ " x  $\frac{1}{2}$ " transverse, on the right half of back at the level of iliac crest and 1" to the right of the mid-line of back-covered with brownish crust.
5. One abrasion 2  $\frac{1}{2}$ " x  $\frac{3}{8}$ " vertical on the front of the left leg, 3" below the left knee joint covered with brownish crust.
6. One abrasion  $\frac{1}{2}$ " x  $\frac{1}{2}$ " on the front of left leg, i.e.  $\frac{7}{2}$ " below the left knee-joint covered with brownish crust.

Similarly, he found the following injuries on the person of accused No. 3:

1. One abrasion 2" X 1" transverse, oh the left side of left buttock, 2" behind the anterior superior iliac spine and 1  $\frac{1}{2}$ " below the iliac crest of left iliac bone-covered with brownish crust.
2. Abrasion on the inner mucous membrane of the upper lip against the right and left, upper medial incisor teeth almost healed up.
3. One abrasion  $\frac{1}{4}$ " x  $\frac{1}{4}$ " on the back of right chest 2" above the inferior angle of right, scapula and 4" to the right of the mid-line of back covered with brownish crust.

13. In the opinion of Dr. Chaki the injuries must have been received by the aforementioned two persons before 24 hours and within 72 hours of their examination. In this connection, we must also take note of the version of accused Nos. 1 and 3. Accused No. 1 has stated in his statement recorded by the learned Sessions Judge under Section 342 of the Criminal Procedure Code that while he was peeling apple for his wife who was pregnant sitting in his verandah at night, Parshottam Lal accompanied by Om Prakash alias Pashi and On-kar Chand came over there and one of the three had a stick. He said that he was attacked and beaten and he abused them loudly and then ran out of his verandah. He said that he was pursued and was felled in the back law and Parshottam Lal sat on

his chest and pressed it. He said that he felt great suffocation and he used his hands to escape and there was knife in one of his hands. He said that he had no intention to kill him but he was anxious to save himself. The suggestion seems to be that when 'fee was felled on the ground and Parshottam Lal sat on his chest he suffered abrasions on his back. It may be pointed out that, from amongst six abrasions on the person of Wazir Chand, No. 1 is on the face, Nos. 2, 3 and 4 are on the back and Nos. 5, 6 and 7 are on the left leg. Joginder Singh stated that he got the injuries when Om Parkash alias Pashi came to his shop and beat him accusing him. of beating the servant of Om Parkash. Om Parkash is not examined as a prosecution witness. If prosecution comes out with the story that Parshottam Lal alone was attacked and beaten by the three accused and that they suddenly pounced upon him and that Parshottam Lal was unarmed, there was absolutely no ghost of a chance even in the ensuing scuffle that accused No. 3 would be injured in the way accused No. 3 has offered explanation about his injuries. This explanation gets some support from the evidence of Onkar Chand PW 17 who has stated that Parkash Chand alias Pashi complained to him that Joginder Singh beat his servant. Therefore, it is not possible to accept the submission that the presence of injuries on accused No. 3 would provide corroboration to the dying declaration so as to hold that he participated in the assault,

14. It would thus appear that the High Court was perfectly justified in acquitting accused Nos. 2 and 3 and there is no reason to take another view of the matter and the appeal preferred by the State against the acquittal of accused Nos. 2 and 3 must fail.

15. Turning to the case of accused No. 1 he was convicted by the learned Sessions Judge for an offence under Section 302. I.P.C. and was awarded capital punishment. The High Court took the view that accused No. 1 would be guilty of committing an offence under Section 304, Part II, I.P.C. Mr. Mehta who appeared for accused No. 1 urged that accused No. 1 should be acquitted because he had caused injuries in exercise of the right of private defence of body.

16. Evidence furnished by the dying declaration corroborated by the recovery of blood-stained clothes from the person of accused No. 1 Wazir Chand further corroborated by the recovery of a blood-stained knife on the information given by him would affirmatively establish that accused No. 1 attacked deceased and caused him four injuries. Injury No. 1 is described by Dr. Sood as one sufficient in the ordinary course of nature to cause death. Accused No. 1 himself has suffered abrasions. The nature of injuries on the deceased would indicate that accused No. 1 was armed with a sharp edged weapon and he did attack deceased Parshottam Lal. Having reached this conclusion, we are left to guess about the genesis of the trouble. The origin or the commencement of the occurrence to some extent is left to surmise. A reasonable prognosis may have to be made as to how the incident occurred.

17, In this connection we must refer to some facts which unquestionably emerge from the evidence. It is satisfactorily established that the deceased had visited the cinema show. Evidence clearly establishes that the incident occurred in front of the house of accused No. 1. The site-plan indicates a trail of blood to a distance of 50 feet. It further evidences marks of scuffle and some buttons lying at the spot. Bush-shirt of the deceased Parshottam Lal was found unbuttoned and the banyan put on by him was found torn. It is not made clear in evidence whether the way to the house of Parshottam

Lal from the theatre passed by the house of Wazir Chand. If that was not his normal route to his house he came there for some purpose.

18. In the absence of any witness to the occurrence and the deceased died giving only . that part of the occurrence which implicates the accused, we are left with the statements of accused No. 1 made by him under Section 342, Cr.P.C. About the origin of the occurrence. This would raise the question as to what value should be attached to the statement made by the accused under Section 242, Cr.P.C. 1898. It is obligatory on the court to question the accused on the circumstances appearing against him in evidence so as to enable him to explain the same. Sub-section (3) provides that the answers given by the accused may be taken into consideration in such inquiry or trial, etc. In order to give an opportunity to the accused to explain the circumstances appearing against him in evidence, the Court under Section 342, Cr.P.C. was required at the close of the trial to question the accused on such circumstances. The Court had to guard against cross-examination of the accused. The accused was to be questioned with regard to the circumstances appearing against him in evidence and not the inference that flows from the circumstances. The answers given by the accused have to be taken<sup>1</sup> into consideration.

19. There was at one point of time some controversy whether the statement of the accused can be accepted in part and rejected in part This situation arose where a part of the statement was inculpatory and a part of the statement was exculpatory. In *Narain Singh v. State of Punjab* it was held that it is not open to the Court to dissect the statement and to pick out a part of the statement which may be incriminative, and then to examine whether the explanation furnished by the accused for his conduct is supported by the evidence on the record. If the accused admits to have done an act which would but for the explanation furnished by him be an offence, the admission cannot be used against him divorced from the explanation. The question again figured before this Court in *Nishi Kant Jha v. State of Bihar* wherein the Court held that the Court may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution. In *Nishi Kant Jha's* case there was no eye-witness to the commission of the crime and the evidence was all circumstantial and the statement of the accused that he was present at the scene of the crime was a vital circumstance which taken in conjunction with other circumstances led the Court to come to the conclusion that he was guilty of the crime imputed to him. The ratio of the aforementioned cases was again examined in *Sampat Singh v. State of Rajasthan* . On the facts of the case, after accepting a part of the statement of the accused it was held that he caused injuries in exercise of the right of self-defence but he exceeded the same. It was observed that it is permissible for the Court to rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution.

20. Where the commencement or genesis of the occurrence is not available because there was no witness to the occurrence available, the only direct version of the commencement of the occurrence would be found in the statement of the accused, if he chooses to give out his version of the occurrence. His statement has to be considered in the light of the evidence adduced by the prosecution and weighing his statement with the probabilities of the case either in his favour or against him.



21. In this case the direct testimony, if it can be so styled, is furnished by the dying declaration which speaks of who caused injuries to the deceased and who others were present. How the occurrence commenced or what was the genesis of the trouble is not found in the dying declaration. Accused No. 1 has given his version of the occurrence. According to him he was the victim of an assault and he was felled on the ground and in his attempt to get a release from the grip of Parshottam Lal he caused injuries to him by a knife which was accidentally in his hand. If this version accords with the probabilities of the case it may have to be examined whether he acted in exercise of the right of private defence of body and whether he exceeded the same. Accused No. 1 states that Parshottam Lal was accompanied by Om Parkash alias Pashi and Onkar Chand. Onkar Chand was examined as prosecution witness though Om Parkash was not examined. Onkar Chand, P.W. 17 does refer to Om Parkash telling him that Joginder Singh, accused No. 3 had beaten his servant without reason and he also speaks about accused No. 2 Raj Kumar and accused No. 1 Wazir Chand rescuing Joginder Singh from Pashi. Therefore just before the occurrence in which Parshottam Lal received injuries there was an incident involving Om Parkash alias Pashi and accused No. 3 Joginder Singh and it may be recalled here that Joginder Singh has so stated in his statement under Section 342, Cr.P.C.

22. The next aspect which we must bear in mind is that the site plan shows that there were marks of scuffle and buttons torn out of the bush-shirt were found lying there and a torn bush-shirt of Wazir Chand was recovered. Bush-shirt of deceased Parshottam Lal was found unbuttoned and his banyan was torn. Now, if deceased Parshottam Lal, accompanied by two persons came and if Wazir Chand was alone and he was felled on the ground, there was no ghost of a chance that Wazir Chand, accused No. 1 could cause injuries to Parshottam Lal. He would be disarmed immediately even if he had a knife in his hand with which he according to him, was peeling apple. Therefore, that part of the statement of accused No. 1 is inherently improbable and must be rejected.

23. The very evidence indicates that a little before the occurrence there was mutual recrimination between Om Parkash and Joginder Singh and for that there is direct evidence of Onkar Chand P.W. 17. It appears that the trouble started on Om Parkash beating Joginder Singh on the allegation that Joginder Singh had beaten the servant of Om Parkash. Thereafter the present occurrence occurred near the house of accused No. 1. Parshottam Lal must have come there. Accused No. 1 would naturally be present there. There were marks of scuffle. A bush-shirt of accused No. 1 Wazir Chand was torn. Buttons had come out. There was a trail of blood to a distance of 50 feet. On this evidence the High Court at number of places has observed that these circumstances would lead to an inference that, the two parties, one led by deceased Parshottam Lal and another led by Wazir Chand had a quarrel, and in this quarrel accused No. 1 Wazir Chand inflicted knife injuries on Parshottam Lal. At another stage it is observed that the High Court was left with only one inference that there was a mutual fight between Parshottam Lal and Wazir Chand and some persons supporting each party. This inference according to the High Court was reinforced by the fact that the conduct of accused No. 1 and even accused No. 3 would be the same as is attributed to them in a mutual fight. After examining these circumstances in detail, the High Court concluded that the only inference that can be drawn is that there was a mutual fight.

24. After having correctly concluded that a mutual fight took place, the High Court came to the conclusion that the accused had no intention to commit the murder and convicted him for an

offence under Section 304, Part II, I.P.C. It is difficult for us to subscribe to this view.

25. Accused No. 1 has wielded a weapon like a knife indisputably a dangerous weapon. He has caused four injuries one of which is necessarily fatal. He has received six abrasions. The proper legal and reasonable inference to be drawn from all the circumstances is that because of the earlier incident in which Om Parkash alias Pashi and Joginder Singh were involved something like a challenge was taken up and Parshottam Lal definitely accompanied by some others, more presumably Om Parkash alias Pashi came over to the house of accused No. 1 and there was a ' mutual free fight between the parties. Accused No. 1 had returned to his house probably a little before the incident took place. Therefore, when Parshottam Lal appeared there was a sudden fight upon a sudden quarrel flowing from the earlier incident and in this both sides attacked each other. All the ingredients to attract Exception 4 to Section 300, I.P.C. are established. There is no premeditation. Parshottam Lal left the theatre and came over there. There was a fight that ensued in a sudden quarrel. The previous incident between Om Parkash alias Pashi and accused No. 3 Joginder was the cause and in that heat of passion and sudden quarrel parties grappled and attacked each other and it cannot be said in the circumstances that any undue advantage was taken. It may be recalled here that Parshottam Lal was a hefty well built fellow and if accused No. 1 alone was to attack him he could not have escaped with few abrasions. Therefore, all the ingredients to attract Exception 4 of Section 300, I.P.C. are fully established.

26. As injury No. 1 was fatal in the ordinary course of nature and accused No. 1 had wielded a dangerous weapon and caused an injury on the vital part of the body and the blows were repeated inasmuch as four injuries were caused the offence but for the application of Exception 4 would be one under Section 302, I.P.C. but as Exception 4 is attracted, it would be reduced to Section 304, Part I, I.P.C. and the conviction of accused No. 1 would be modified to one under Section 304, Part I, I.P.C. maintaining the sentence as awarded by the High Court as in our opinion that is adequate.

27. Accordingly, Criminal Appeal No 59 of 1975 preferred by the State of Himachal Pradesh against original accused Nos. 2 and 3 is dismissed and it, is partly allowed as far as accused No. 1 is concerned in that his conviction is modified to one under Section 304, Part I, I.P.C. maintaining the sentence of 10 years rigorous imprisonment as awarded by the High Court. Criminal Appeal No. 369 of 1969 preferred by the original accused No. 1 is dismissed.