

Supreme Court of India

Ram Karan & Ors vs State Of Uttar Pradesh on 4 March, 1982

Equivalent citations: 1982 AIR 1185, 1982 SCR (3) 395

Author: S M Fazalali

Bench: Fazalali, Syed Murtaza

PETITIONER:

RAM KARAN & ORS.

Vs.

RESPONDENT:

STATE OF UTTAR PRADESH

DATE OF JUDGMENT 04/03/1982

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

DESAI, D.A.

VARADARAJAN, A. (J)

CITATION:

1982 AIR 1185

1982 SCR (3) 395

1982 SCC (2) 184

1982 SCALE (1) 288

ACT:

Sentencing-Imposition of appropriate sentence, under section 302 or 304 depends on the nature of offence of culpable homicide-Evidence showing homicide by both parties in a Civil Suit in a sudden fight in the heat of passion upon a quarrel-Appropriate sentence would be one under sections 304(1)/34 Indian Penal Code and not under sections 302/34 Indian Penal Code-Probability of culpability not proved by legal evidence-Benefit of doubt must ensue in such cases.

HEADNOTE:

The five accused Ram Karan, his sons Sunil Kumar, Ved Prakash, Anil Kumar, Satish Kumar and deceased son Chhoteylal filed a Civil Suit 34 of 1967 against the deceased Prakash Chandra, his brother Gopi Chandra and one Krishan Devi, alleging that while constructing their new house Prakash Chandra had encroached upon a portion of their land. In that suit appellant Ram Karan got Commissioners appointed by the court on five or six occasions for taking measurements of the properties with the object of proving his case of encroachment by Prakash Chandra, the deceased. But these Commissioners' reports were set aside on the

objection raised by Prakash Chandra and the other defendants. The last Advocate Commissioner Mr. Mathur (C.W. 1) visited the spot on 6-9-1970, the day of occurrence, accompanied by Mr. Zafar Hussain (C.W. 2) who appeared for deceased Prakash Chandra and Mr. Mahesh Chandra (C.W. 3) who appeared for Ram Karan. After the completion of the survey work and measurements at about 1 P.M. when all the three lawyers were standing and talking in front of the house of the appellants deceased Prakash Chandra and Umesh Chandra came there to talk to the Commissioner, which interference was not liked by the appellants. This resulted in a sudden quarrel, exchange of hot words later followed by assault with knife etc., on the appellants which, according to prosecution, was in the exercise of right of self-defence by the prosecution party, particularly Dinesh Chandra (P.W. 11). On the side of the appellants Ram Karan's son Chhotey Lal (accused) died and on the side of the prosecution Prakash Chandra and his son Umesh Chandra died and Dinesh Chandra (P.W. 11) was grievously injured. All the five accused were tried and convicted by the Sessions Judge for offences under sections 302/149 I.P.C. (two counts) and 307/149 I.P.C. and were sentenced to imprisonment for life and rigorous imprisonment for four years respectively. Ram Karan was also convicted under section 147 and sentenced to undergo rigorous imprisonment for one year and his four sons were convicted under section 148 and sentenced to rigorous imprisonment for two years. In appeal the

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High Court acquitted Anil Kumar and Satish Kumar, set aside the conviction and sentence under sections 147 and 148 I.P.C. in respect of the rest and confirmed (a) their sentence of life imprisonment by altering the conviction one under sections 302/149 I.P.C. and (b) their sentence of four years rigorous imprisonment to one under sections 307/34 I.P.C. Hence the appeal by special leave by Ram Karan and his two sons.

Acquitting Ram Karan and allowing the appeal of the other two in part, the Court

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HELD: Having regard to the age of the appellant Ram Karan who was about 70 years old at the time of the occurrence, there is a reasonable doubt as to whether he would have caught hold of the young man Dinesh Chandra (P.W. 11) by his waist and whether he would have asked all his sons to attack and kill Prakash Chandra and his sons. The appellant Ram Karan is entitled to be set at liberty. [409 D-E]

BY MAJORITY

Per Fazal Ali, J. (and on behalf of D.A. Desai, J.)

1:1. Exception 4 to section 300 I.P.C. provides that culpable homicide is not murder if it is committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken

undue advantage or acted in a cruel or unusual manner. [399 D]

1:2. In this case, the incident occurred upon a sudden quarrel and no one took undue advantage or acted in a cruel or unusual manner on either side. Prakash Chandra and Umesh Chandra on the side of the prosecution died and Chhotey Lal on the side of the accused died and each of them met a homicidal death. Therefore exception 4 to section 300 Indian Penal Code is clearly attracted and the offence of murder would be reduced to culpable homicide in respect of Sushil Kumar and Ved Prakash and, therefore, they would be guilty of committing an offence under section 304(1)/34 I.P.C. A sentence of rigorous imprisonment for seven years would be appropriate; conviction and sentence under sections 307/34 I.P.C. being in order would run concurrently.

[399 B-C, G-H,

400 A]

Per Varadarajan, J. (contra).

Sunil Kumar and Ved Prakash were the aggressors and they have been rightly convicted under section 302 read with section 34 I.P.C. for the offence of murder of Prakash Chandra and Umesh Chandra and under sections 307/34 I.P.C. with reference to P.W. 11. Neither Exception 2 nor Exception 4 to section 300 I.P.C. would apply to the facts of the case and the offence cannot be brought under section 304 (Part I) I.P.C. The evidence of P.Ws. 1, 10 and 11 proves beyond reasonable doubt that these two appellants Sunil Kumar and Ved Prakash attacked the deceased Prakash Chandra and Umesh Chandra with knives as a result of which both of them, who had no weapons died on the spot and these two appellants attacked P.W. 11 with knives with such intention that if he had died as a result of the injuries sustained by him they would be guilty of murder in furtherance of their common intention to murder. Their conviction under section 307/34 is proper. [408 F-H, 409 C-D]

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#### JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 329 of 1975.

From the Judgment & Order dated the 15th April, 1975 of the Allahabad High Court in Crl. A. No. 1144 of 1971.

R.L. Kohli and S.K. Sabharwal for the Appellants. D.P. Uniyal and R.K. Bhatt for the Respondent. The following Judgments were delivered:

FAZAL ALI, J. This appeal by special leave is directed against a judgment dated 15.4.1975 of the Allahabad High Court by which the Judges of the High Court while acquitting the accused, Anil

Kumar and Satish Kumar, altered the conviction of Ram Karan, Sunil Kumar and Ved Prakash from one under ss. 302 and 307 read with s. 149 I.P.C. to one under ss. 302 and 307 read with s. 34, I.P.C. and confirmed the sentences of imprisonment for life imposed on these appellants.

The prosecution case has been detailed in the judgment of the High Court as also in the judgment of our learned Brother Varadarajan J. and it is not necessary to repeat the same. So far as the question of occurrence is concerned that has been proved beyond reasonable doubt as pointed out by Brother Varadarajan, J. as also by the High Court. We also agree with the appreciation of the evidence by Brother Varadarajan, J. and his conclusion that the two deceased died at the hands of the appellants.

The entire occurrence seems to have been the result of a chronic land dispute between the parties in which several commissions were issued and which ultimately proved futile. The prosecution has no doubt proved that the two persons were killed at the hands of the accused and that the occurrence had taken place while the Commissioners were present at the spot though they were not able to see the actual assault and were, therefore, not in a position to depose the detailed manner in which the assault had taken place.

The only serious question on which we would like to sound a discordant note from our Brother Varadarajan, J. is as to the actual nature of the offence which had been committed by the appellants, Sunil Kumar and Ved Prakash. It would appear from the evidence of CW 1 as also other eye-witnesses that the accused were also assaulted with knife and one of them, Chhotey Lal, died as a result of the injuries caused to him. The medical evidence as also the evidence of CW 1 clearly shows that there was exchange of hot words, followed by the assault on the appellants which, according to the prosecution, was a result of the exercise of self-defence by the prosecution party, particularly Dinesh Chandra.

In fact, the learned Sessions Judge and the High Court held that the accused were the aggressors and, therefore, they had no right of private defence. In order to ascertain whether the accused had the right of private defence, the genesis of the incident has to be traced. Now, in this case the prosecution witnesses being partisan, the only important injured witness Dinesh Chandra, PW 11 being the son of the deceased, it would be necessary to ascertain with accuracy the genesis of the quarrel as revealed from the evidence of Court witnesses not shown to be partisan. CW 1, Prem Narain Mathur is the practising advocate and was appointed as a Commissioner. He was accompanied by Mahesh Chandra, Vakil, CW 3, advocate appearing on behalf of the plaintiffs (accused Ram Karan) in the suit in which Commission was issued and Shri Jafar Imam, CW 2, learned advocate appearing for the defendants in the same suit. C.W. 1 and C.W. 3 were at the house of accused 1 Ram Karan. C.W. 1 says that several persons assembled at that time at the house of Ram Karan. He is a bit vague but he says that at that time after tea was served and he was about to leave that place he saw a person lying on the pavement of the road. This injured person was lying in front of the house of accused 1 Ram Karan. This statement has not been questioned in cross-examination nor adversely commented upon. It gives a clue to the genesis of the occurrence. After measurements were taken as directed by the Court, C.W. 1 and C.W. 3 came to the house of accused 1 Ram Karan. Some persons collected there. According to C.W. 1 injured persons were seen lying in front of the

house of accused 1 and that was none else than the deceased. If amongst those who collected at the house were the two deceased and P.W. 11 Dinesh Chandra, another injured witness on the side of the prosecution, it is crystal clear that the prosecution witnesses and the two deceased Prakash Chandra and Umesh Chandra had come to the house of accused 1 Ram Karan. How, if one of them was armed with a knife, they must have come with a view to either picking up quarrel or to guard themselves. The occurrence took place in front of the house of accused 1. On the side of the prosecution Prakash Chandra and Umesh Chandra received fatal injuries and Dinesh Chandra was also injured. However, on the side of the accused Chhotelal, son of accused 1 Ram Karan, suffered six injuries one of which proved fatal and he died. Accused Ram Karan himself was also injured. Injuries on both sides appear to have been caused with sharp cutting weapon like knife. It is easy to infer the genesis of the dispute.

Both the parties were completely exasperated with the litigation. Accused 1 Ram Karan had summoned Commission on five to six occasions and his attempt to end the litigation was thwarted by objections being taken on the side of Prakash Chandra deceased. Therefore, both sides were in an exasperated mood. Suddenly at the spur of the moment there ensued a quarrel. Prakash Chandra and Umesh Chandra on the side of the prosecution died and Chhotelal on the side of the accused died and each of them met a homicidal death. On the side of the prosecution Dinesh Chandra was injured, on the side of accused Ram Karan was injured. From this an irresistible inference ensues that exception 4 to s. 300, I.P.C. would be attracted. The exception provides that culpable homicide is not murder, if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. All the ingredients of Exception 4 are satisfied. Prakash Chandra and his two sons and others came to the house of accused 1 to protest for the work of the Commissioner. Dinesh Chandra amongst them was armed with a knife. May be, he may be usually carrying the same for his safety. The incident occurred in front of the house of accused 1 upon a sudden quarrel by this confrontation with eyebrows having been raised because of a persistent litigation, the occurrence took place. There is no clear evidence to show that any-one took undue advantage or acted in a cruel or unusual manner.

Taking an overall view of the situation, we find no evidence of any intention to kill the two deceased on the part of the accused because the occurrence itself had taken place suddenly when, to begin with, the entire episode started for the particular purpose of partitioning the land by the Commissioners who had visited the village. In these circumstances we are satisfied that Exception 4 of s. 300, I.P.C. is attracted and the offence of murder would be reduced to culpable homicide in respect of accused Sunil Kumar and Ved Prakash and, therefore, they would be guilty of committing an offence under s. 304(1)/34 I.P.C. and they should be convicted accordingly. To this extent, therefore, we are unable to agree with Brother Varadarajan, J. that the conviction of the appellants Sunil Kumar and Ved Prakash under s. 302 read with s. 34 of the I.P.C. should be confirmed.

We, therefore, allow this appeal to the extent that the conviction of Sunil Kumar and Ved Prakash are altered from one under s. 302 read with s. 34 of the I.P.C. to that under s. 304(1)/34 I.P.C. and they are sentenced to rigorous imprisonment for seven years. Conviction and sentences under s. 307/34, I.P.C. are maintained and sentences awarded have already been directed to run

concurrently. We allow the appeal of Ram Karan as indicated by Brother Varadarajan, J.

VARADARAJAN, J. This Criminal Appeal by special leave is directed against the judgment of a Division Bench of the Allahabad High Court in Criminal Appeal No. 1144 of 1971, whereby the learned Judges, while acquitting two appellants Anil Kumar and Satish Kumar of the charges, altered the conviction of Ram Karan, Sunil Kumar and Ved Prakash, appellants in this Criminal Appeal, under s. 302 and 307, both read with s. 149 I.P.C., into one under ss. 302 and 307 both read with s. 34 I.P.C. and confirmed the sentences of imprisonment for life for each of the two counts of murder of Prakash Chandra and Umesh Chandra and rigorous imprisonment for four years for attempt to murder Dinesh Chandra (P.W. 11) to run concurrently and set aside the conviction of the appellant Ram Karan under s. 147 and the other two appellants under s. 148 I.P.C.

The first appellant Ram Karan is the father of other appellants Sunil Kumar and Ved Prakash and also of Anil Kumar and Satish Kumar, who have been acquitted by the High Court as well as of deceased Chhotey Lal. The learned Sessions Judge who tried the case convicted Ram Karan and all his four sons, Sunil Kumar, Anil Kumar, Ved Prakash and Satish Kumar under s. 302 read with s. 149 I.P.C. (two counts) and s. 307 read with s. 149 I.P.C. and sentenced them to undergo imprisonment for life on each of the two counts under s. 302 read with s. 149 I.P.C. and to imprisonment for four years under s. 307 read with s. 149 I.P.C. He convicted Ram Karan under s. 147 and his aforesaid four sons under s. 148 I.P.C. and sentenced Ram Karan to undergo rigorous imprisonment for one year and his sons to undergo rigorous imprisonment for two years under s. 147 and s. 148 I.P.C. respectively.

The case of the prosecution was this:- The deceased Prakash Chandra was the father of the deceased Umesh Chandra and the injured witness Dinesh Chandra (P.W. 11) as well as of Gyan Chand (P.W. 1). Prakash Chandra and his sons were living in Seohara town, Bijnor district. The appellant Ram Karan and his five sons including the deceased Chhotey Lal were living in another house in the same town as the neighbours of Prakash Chandra and his sons. Prakash Chandra and his sons built a new house on a vacant land which existed between these two houses about three years prior to the occurrence in this case which has taken place at about 1.00 p.m. on 6.9.1970. The appellant Ram Karan and five others filed Civil Suit No. 34 of 1967 in the court of the Munsif, Nagina against Prakash Chandra and his brother Gopi Chandra and one Krishna Devi, alleging that while constructing the new house Prakash Chandra had encroached upon a portion of their land. In that suit, Ram Karan got Commissioners appointed by the court on five or six occasions for taking measurements of the properties with the object of proving his case of encroachment by Prakash Chandra. But those Commissioners' reports were set aside on the objection raised by Prakash Chandra and the other defendants. The last Advocate Commissioner Mr. Mathur (C.W.

1) visited the spot on 6.9.1970, accompanied by Mr. Zafar Hussain (C.W. 2) who appeared for Prakash Chandra and another and Mr. Mahesh Chand (C.W. 3) who appeared for Ram Karan. After the completion of the survey work at about 12.30 p.m. all the three lawyers were standing and talking in front of Ram Karan's baithak at about 1.00 p.m. Then Prakash Chandra and Umesh Chandra came there to talk with the Commissioner. Ram Karan, who was present there along with his five sons, did not like that interference of Prakash Chandra and Umesh Chandra with the

Commissioner. He stated that he has spent thousands of rupees for taking out the commissions and that the reports of the Commissioners were set aside on the objection of Prakash Chandra. So saying, he instigated his sons to kill Prakash Chandra and his sons. Thereupon, Chhotey Lal and Ved Prakash attacked Prakash Chandra with knives while Sunil Kumar, Anil Kumar and Satish attacked Umesh Chandra with knives. On seeing Dinesh Chandra (P.W. 11) who rushed meanwhile from the eastern side to help his father and brother, Ram Karan instigated his sons to attack him and caught hold of him by his waist, and all his five sons attacked him and inflicted injuries. Then P.W. 11 took out a knife from his pent pocket and wielded it against Ram Karan and Chhotey Lal in self-defence and they sustained injuries. P.W. 11 received injuries and fell down. Gyan Chandra (P.W. 1), who was seeing the occurrence, ran to his house along with some others and bolted the door when Sunil Kumar, Anil Kumar and Satish chased him for attacking him. Abdul Wahid, P.W. 10, and others who were witnessing the occurrence raised an alarm, and Ram Karan and his sons ran away.

Gyan Chand, (P.W. 1) came out of his house sometime later and found his father Prakash Chandra and brother Umesh Chandra dead and Dinesh Chandra (P.W. 11) lying with injuries. He prepared the report, Ex. Ka. 3 and proceeded in a jeep with his brother Dinesh Chandra (P.W. 11), to Seohara Police Station situate about half a mile away and handed over that report at 1.30 p.m. Dinesh Chandra (P.W. 11) was taken to Dhampur hospital after he was given first aid by a Doctor on the way. He was examined at the Dhampur hospital by Dr. Bagchi, P.W. 3 who found on his person an abrasion and nine incised wounds of which injury No. 7 on the right side of the chest through which blood and air were coming out was serious and the rest were simple.

The dead bodies of Prakash Chandra and Umesh Chandra which were found lying in front of their house where blood also was found, were later sent for autopsy. Ram Karan and Chhotey Lal went to the Government hospital, Bijnor where they were examined by Dr. Sarin (P.W. 2) at 4 p.m. and 4.15 p.m. respectively on 6.9.1970. P.W. 2 found one punctured wound and four incised wounds on Chhotey Lal and three incised wounds on Ram Karan. The injuries on both of them were fresh and those on Ram Karan were simple while injury No. 1 on Chhotey Lal, namely, a punctured wound which was lung-deep and anterior to the left nipple, was grievous and the rest were simple. The injuries on both could, in the opinion of P.W. 2, have been caused by knife. P.W. 2 issued the wound certificates Ex. Ka. 12 and Ka. 13. Ram Karan's report was lodged at the Police Station at 10.30 p.m. on 6.9.1970. Chhotey Lal died in the District hospital, Bijnor on 10.9.1970.

Dr. Zuber conducted autopsy on the bodies of Prakash Chandra and Umesh Chandra on 7.9.1970 and found nine antemortem, injuries, of which six were incised wounds, on the body of Prakash Chandra and six antemortem incised wounds on the body of Umesh Chandra and he opined that the death of both of them was due to shock and haemorrhage resulting from the incised injuries. Ex. Ka. 1 and Ka. 2 are the postmortem certificates relating to Prakash Chandra and Umesh Chandra issued by Dr. Zuber who was examined as P.W. 1 in the Committing Magistrate's Court (Ex. Ka. 37). Dr. Dua (C.W. 4) conducted autopsy on the body of Chhotey Lal on 11.9.1970 and found an abrasion and five incised wounds which were sufficient in the ordinary course of nature to cause death.

The prosecution's case rests mainly on the evidence of Gyan Chand (P.W. 1), Abdul Wahid (P.W. 10) and Dinesh Chandra (P.W. 11). As stated earlier P.Ws 1 and 11 are the sons of deceased Prakash

Chandra and brothers of the other deceased Umesh Chandra. P.W. 11 had received injuries during the occurrence and P.W. 1 is the witness who had lodged the First Information Report (Ex. K. 3) in the Seohara Police Station at the earliest opportunity at 1.30 p.m. soon after the occurrence which had taken place at about 1.00 p.m. These three witnesses were put forward as eyewitnesses and they have deposed in support of the case of the prosecution.

The accused put forward their version of the case. According to the accused, after the Commissioner (C.W. 1) finished his work and went to the house of the appellant Ram Karan, Prakash Chandra and his sons Umesh Chandra and Dinesh Chandra (P.W. 11) came to the baithak of Ram Karan and attacked Ram Karan and deceased Chhotey Lal with knives and thereupon they grappled with those three persons and wrested the knives from them and attacked them in self-defence. The accused examined D.W. 1 on their behalf. The court examined the Commissioner and the counsel of the parties in the civil suit as C. Ws. 1 to 3 and the Doctor who conducted autopsy on the body of Chhotey Lal as C.W. 4.

The evidence of C.W. 1 is that after he completed taking measurements he went along with Ram Karan's counsel Mr. Mahesh Chandra (C.W. 3) to the baithak of Ram Karan's house, that both of them came out of the house 8 or 10 minutes later, that when he advanced from the door of the baithak he saw a person lying injured on the pavement of the road and another injured person standing there, that a third person came and struck the injured person who was standing, and that he and C.W. 3 left the place thereafter. The evidence of C.W. 3 is that he and C.W. 1 who had gone to the baithak of Ram Karan's house after C.W. 1 had taken the measurements, came out of the baithak 5 or 7 minutes later, and saw Chhotey Lal grappling with a young man, that in the course of grappling Chhotey Lal fell down bleeding, that Chhotey Lal managed to get up and snatched the weapon of the assailant and struck him with it, that Prakash Chandra came to the rescue of the young man and Chhotey Lal struck him with the same weapon and both the young-man and Prakash Chandra fell down after receiving injuries from Chhotey Lal, and that on account of the incident he went away along with C.W. 1. C.W. 3 has added that soon after he went and sat in the baithak of Ram Karan's house, Zafar Hussain (C.W. 2) came and said something to C.W. 1 from beyond the door of the baithak. The evidence of Zafar Hussain (C.W. 2) is that after measurements had been taken C. Ws. 1 and 3 went to the baithak of Ram Karan's house while he sat in the verandah of the old haveli of Prakash Chandra, that he and Prakash Chandra's son, who is now no more, thereafter went near the Commissioner (C.W. 1) and he told C.W. 1 that he may hear what Prakash Chandra wanted to say, that after saying so he got back for meeting another person while Prakash Chandra and his son remained there, that after reaching the verandah of Prakash Chandra he went away with Mehboob Ali who was waiting for him to Mehboob Ali's house and that no quarrel took place when he was present there though when he was returning to the verandah of Prakash Chandra's house he heard some hot words being exchanged near the baithak of Ram Karan's house.

The learned Sessions Judge has observed in his judgment that the evidence of C.Ws. 1 to 3 is contradictory, unnatural and not truthful. He found that P.W. 1's report (Ka. 3) was lodged in the Police Station at 1.30 p.m. soon after the occurrence had taken place at about 1.00 p.m. and that there has been no attempt at concoction in this case. He rejected the contention that Abdul Wahid,



(P.W. 10) had any reason to depose falsely against the appellant Ved Prakash and found his evidence to be reliable. He observed that though Prakash Chandra had been working as an Engineer in a sugar mill at Seohara and P.W. 10 was employed in the engineering department, P.W. 10 was actually working under one Bachcha Lal and is an independent witness. P.W. 1 has stated in his evidence that Prakash Chandra, Umesh Chandra and Ram Karan did not have any weapon at the time of the occurrence. The evidence of the injured witness P.W. 11 is that when he returned home from Moradabad at about 12.30 p.m. on the day of occurrence he saw his father Prakash Chandra and brother Umesh Chandra lying in a pool of blood and that on seeing him Ram Karan shouted that he also should be killed and caught hold of him by his waist and that he was attacked with knives by the accused persons including Ram Karan and he wielded in self- defence the knife which he had purchased on that day for his work.

The learned Sessions Judge accepted the evidence of P.Ws. 1, 10 and 11 and commented upon Ram Karan and Chhotey Lal going to the hospital at Bijnor without arranging for a report being given at the Police Station at Seohara in time and held that the accused were the aggressors and that Dinesh Chandra (P.W. 11) caused injuries to Ram Karan and the deceased Chhotey Lal in the exercise of the right of private defence. Accordingly he found the accused guilty and convicted them and sentenced them as mentioned above.

The High Court also rejected the defence theory that Chhotey Lal was attacked by three persons armed with knife, chura and khukhri having regard to the fact that he had only one lung deep punctured wound and the other four wounds were only skin deep and of very minor dimensions.

The learned Judges of the High Court found that the name of Anil Kumar is not mentioned in the First Information Report (Ex. Ka. 3) but instead the name of one Virendra is mentioned and that it appears from the evidence of P.W. 1 that Virendra is the name of Prakash Chandra's brother. They found that in the statement of P.W. 11 recorded as dying declaration, Sushil Kumar is mentioned instead of Satish Kumar. In these circumstances the learned Judges found that there is reasonable doubt regarding the participation of the accused Anil Kumar and Satish Kumar and they gave the benefit of that doubt to those two appellants before them and acquitted them. In other respects, the learned Judges accepted the evidence of P.Ws. 1, 10 and 11 regarding the occurrence and rejected the defence version and held the appellants guilty under s. 302 read with s. 34 in respect of the murder of Prakash Chandra and Umesh Chandra and under s. 307 read with s. 34 in respect of Dinesh Chandra, (P.W. 11) and convicted them accordingly and sentenced them to undergo imprisonment for life under s. 302 read with s. 34 I.P.C. and rigorous imprisonment for four years under s. 307 read with s. 34 I.P.C.

We perused the records and the judgments of the learned Sessions Judge and of the learned Judges of the High Court and heard the arguments of Mr. R.L. Kohli, Senior Advocate who appeared for the appellants and of Mr. D.P. Uniyal, Senior Advocate who appeared for the respondent-State of U.P. We were taken through the evidence of P.Ws. 1, 10 and

11. The learned Sessions Judge has observed in his judgment that the evidence of the three lawyers C.Ws. 1 to 3 is contradictory, unnatural and not truthful and that if they had given honest evidence it

would have been easier for the court to conclude which side was the aggressor. This observation of the learned Sessions Judge appears to be too sweeping and not correct at least with reference to C.W. 2 who has professed ignorance about the actual occurrence in the case and has stated that he left after asking C.W. 1 from outside the baithak of Ram Karan's house to hear what Prakash Chandra who had gone with him and his deceased son wanted to tell him because another person Mehboob Ali with whom he later went to his house was waiting for him in the verandah of Prakash Chandra's house. The evidence of C.W. 2 that no quarrel took place when he was present there though when he was returning to the verandah of Prakash Chandra's house he heard some hot words being exchanged near the baithak of Ram Karan's house, is, in a way, corroborated by the evidence of P.W. 1. P.W. 1 has stated that when exchange of hot words started the Commissioner and Vakils of the parties moved from there to the road and that just when Ram Karan's Vakil had gone a short distance from Ram Karan's house, Ram Karan and others stated that "they have got our thousands of rupees spent over litigation. We have become tired of getting commissions issued. Kill them today so that the trouble may be ended for ever. At that time all the five sons of Ram Karan, Chhotey Lal, Ved Prakash, Satish Kumar, Sunil Kumar and Anil Kumar were present, and when Ram Karan said so all five sons whipped out knives and started assulting.....". This portion of the evidence of P.W. 1 is to the effect that the lawyers C.Ws. 1-3 were not present at the time of the actual assault on the deceased Prakash Chandra and Umesh Chandra as a well as on P.W. 11. Even P.W. 10 has stated in his evidence that "when he reached near dharmshala at about 12.45 p.m. he heard the shouts of Ram Karan from his house situate at a distance of 30 paces, that when he reached the end of the road he was in a position to see the house of Ram Karan, that on hearing the shouts he proceeded towards the place from where they came and stood near the wall and found three Vakils present and also Prakash Chandra and Umesh Chandra, that as soon as he reached the place, the Vakils left the place, that Ram Karan then stated that he got the Commissioner appointed 5 or 6 times and spent several thousands of rupees and he should be killed and that when Ram Karan said so his sons Chhotey Lal and Ved Prakash began to attack Prakash Chandra with knives, that Sunil Kumar and Ram Karan's other sons began to assault Umesh Chandra with knives, that during the marpit Prakash Chandra and Umesh Chandra fell down after receiving injuries, that thereafter Dinesh Chandra, son of Prakash Chandra came from the eastern direction, and on seeing him Ram Karan shouted that he should also be done to death, and he caught hold of Dinesh Chandra by his waist, and that all the four boys and deceased Chhotey Lal began to assault Dinesh Chandra with knives, and Dinesh Chandra wielded his knife in self-defence and caused injuries to Ram Karan and Chhotey Lal and thereafter fell down and became unconscious....". This portion of the evidence of P.W. 10 also shows that C.Ws. 1 to 3 left the place soon after exchange of hot words began between the two sides. Therefore, I am of the opinion that there is no reason to reject the evidence of C.W. 2 that no quarrel took place when he was present near about the scene of occurrence. In the circumstances of the case, it is very probable that before serious trouble started from the exchange of hot words, C.Ws. 1 to 3. the Commissioner and the counsel for both the parties in the civil suit, left the place and were not present at the time of the actual occurrence as stated by P.Ws. 1 and 10.

Mr. R.L. Kohli drew our attention to some portions of the judgment of the learned Judges of the High Court and submitted that the observation of the learned Judges that from the side of the defence it was not suggested to any witness that Abdul Wahid (P.W. 10) was a different man and

that he has been introduced because the real Abdul Wahid was not prepared to support the prosecution case is incorrect. The learned counsel further submitted that the observation of the learned Judges that the presence of Gyan Chand (P.W.

1) at the time of the occurrence does not appear to have been challenged by the defence is also not correct. This criticism of the learned counsel for the appellants appears to be well-founded, for I find that a suggestion has been made to P.W. 10 in cross-examination and he has admitted that there is also another person named Wahid son of Abdul Rehman in his mohalla and that that person was an accused in a rioting case. And in the cross-examination of P.W. 1 it has been clearly suggested that he was not present at the spot and that he prepared the report Ex. Ka. 3 afterwards with some consultation. P.W. 1 has no doubt denied that suggestion and stated that he was present at the spot and that he himself wrote the report Ex. Ka. 3 before he came out of the house by opening the door. The learned Judges have stated in their judgment that after Ram Karan stated that he has spent thousands of rupees on commissions and every time the report of the Commissioner was set aside on the objection of Prakash Chandra and he instigated his sons to kill Prakash Chandra and Umesh Chandra, all the five sons of Ram Karan started giving knife blows to Prakash Chandra and Umesh Chandra and both of them fell down. This portion of the judgment of the learned Judges is to the effect that all the five sons of Ram Karan including the deceased Chhotey Lal attacked the deceased Prakash Chandra and Umesh Chandra whereas it is the case of the prosecution as brought out in the evidence of P.W. 1 that after Ram Karan instigated his sons to open the attack only Chhotey Lal and Ved Prakash attacked Prakash Chandra with knives and only Sunil Kumar. Anil Kumar and Satish Kumar attacked Umesh Chandra with knives. It is unfortunate that these inaccuracies have crept into the judgment of the learned Judges of the High Court. But on an overall consideration of the entire material on record and the evidence in the case in the light of the arguments of the learned counsel for the parties I am of the opinion that the appreciation of the evidence of P.Ws. 1, 10 and 11 by the learned Sessions Judge and the learned Judges of the High Court in so far as the appellants Sunil Kumar and Ved Prakash are concerned is correct and that the evidence of P.Ws. 1 and 10 proves beyond reasonable doubt that these two appellants Sunil Kumar and Ved Prakash attacked the deceased Prakash Chandra and Umesh Chandra with knives as a result of which both of them, who had no weapons died on the spot, and the evidence of P.Ws. 10 and 11 proves satisfactorily and beyond any reasonable doubt that these two appellants attacked P.W. 11 with knives with such intention that if he had died as a result of the injuries sustained by him they would be guilty of murder in furtherance of their common intention to murder. The dead bodies of Prakash Chandra and Umesh Chandra and blood were found in front of the house of both the deceased and P.W. 11. Both the deceased had no weapons and they had been attacked before P.W. 11 arrived and wield his knife against Ram Karan and Chhotey Lal. The main occurrence had taken place in front of the house of both the deceased and P.W. 11. Before the trial court it was not submitted that the attack by the accused persons on both the deceased Prakash Chandra and Umesh Chandra and P.W. 11 was without any pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel. Nor is it a case in which it could be said that the offenders had not taken undue advantage or had not acted in a cruel or unusual manner. No such argument was put forward even before the High Court to bring the main occurrence under s. 304 (Part I) I.P.C. Since I have found that the occurrence has taken place in front of the house of the two deceased and P.W. 11 in this case and that the accused persons were the aggressors neither Exception 2 nor Exception 4 to s. 300 I.P.C. would apply to the facts of

this case and the offence cannot be brought under s. 304 (Part I) I.P.C. In these circumstances, I agree with the learned Sessions Judge that the appellants Sunil Kumar and Ved Prakash were the aggressors and find that they have been rightly convicted under s. 302 read with s. 34 I.P.C. for the offence of murder of those two persons and under s. 307 read with s. 34 I.P.C. with reference to P.W. 11. But I am of the opinion, having regard to the age of appellant Ram Karan, who was about 70 years old at the time of the occurrence that there is a reasonable doubt as to whether he would have caught hold of the young man Dinesh Chandra (P.W.

11) by his waist and whether he would have asked all his sons to attack and kill Prakash Chandra and his son. I therefore, give the benefit of this reasonable doubt to the appellant Ram Karan and set aside his conviction under s. 302 read with s.34 (two counts) and under s. 307 read with s. 34 and acquit him and direct him to be set at liberty forthwith if he is in custody and his presence is not required in connection with any other case. In other respects I dismiss the criminal appeal and confirm the conviction of Sunil Kumar and Ved Prakash and the sentences awarded to them.

In accordance with the opinion of the majority, the appeal is allowed to the extent that the conviction of Ram Karan under s. 302 read with s. 34 (two counts) and under s. 307 read with s. 34 of the Indian Penal Code is set aside and he is acquitted and that convictions of the appellants, Sunil Kumar and Ved Prakash, are altered from one under s. 302/34, I.P.C. to that under s. 304(1)/34, IPC and they are sentenced to rigorous imprisonment for seven years. Conviction and sentences under section 307/34, I.P.C. are maintained and sentences awarded have already been directed to run concurrently.

S.R.

Appeal partly allowed.