

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

D.B. Criminal Appeal No. 185/2018

1. Madhuram S/o Sh. Javrilal, Aged About 34 Years, B/c Prajapat, Hanuman Nagar, Chakanion Ki Dhani Jhalmand , P.s. Basni, Jodhpur (Raj.)
2. Sumer S/o Sh. Javrilal, Aged About 54 Years, B/c Prajapat, Hanuman Nagar , Chakanion Ki Dhani Jhalmand, P.S. Basni , Jodhpur (Raj.)
3. Pannaram S/o Sh. Badriram, Aged About 49 Years, B/c Prajapat, Hanuman Nagar, Chakanion Ki Dhani Jhalmand , P.S. Basni, Jodhpur (Raj.)
4. Tarachand S/o Phusaram, Aged About 25 Years, B/c Prajapat, Hanuman Nagar, Chakanion Ki Dhani Jhalmand, P.S. Basni, Jodhpur (Raj.)
5. Jetharam S/o Sh. Hapuram, Aged About 54 Years, B/c Prajapat, Hanuman Nagar, Chakanion Ki Dhani Jhalmand, P.S. Basni, Jodhpur (Raj.)
6. Birmaram S/o Sh. Chhinaram, Aged About 31 Years, B/c Prajapat, Hanuman Nagar, Chakanion Ki Dhani Jhalmand , P.S. Basni, Jodhpur (Raj.)

----Appellants

Versus

State Of Rajasthan, Through PP

----Respondent

Connected With

D.B. Criminal Appeal (Db) No. 164/2018

Madanlal S/o Sh. Hapuram, Aged About 50 Years, B/c Prajapat, R/o Hanuman Nagar, Chakanion Ki Dhani, Jhalmand, P.s. Basni, Jodhpur

----Appellant

Versus

State, Through PP

----Respondent

For Appellant(s) : Mr. Vineet Jain & Mr. Ashok Panwar
(In Cr. Appeal No.185/2018)
Mr. Dharendra Singh & Mr. Rajiv

Bishnoi (In Cr. Appeal No.164/2018)
For Respondent(s) : Mr. B.R. Bishnoi, AGC
Mr. J.S. Choudhary, Sr. Advocate
assisted by Shri Pradeep Choudhary

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE RAMESHWAR VYAS

J U D G M E N T

Judgment pronounced on ::: **11/01/2022**
Judgment reserved on ::: **13/09/2021**

(REPORTABLE)

BY THE COURT : (PER HON'BLE MEHTA, J.)

1. The appellants herein have been convicted and sentenced as below vide judgment dated 07.08.2018 passed by the learned Additional District & Sessions Judge No.3, Jodhpur Metro in Sessions Case No.10/2013 (153/2011):

Offences	Sentences	Fine	Fine Default sentences
Section 148 IPC	2 Years' S.I.	Rs.1,000/-	1 Month's S.I.
Section 323/149 IPC	6 Months' S.I.	Rs.500/-	1 Month's S.I.
Section 325/149 IPC	3 Years' S.I.	Rs.5,000/-	3 Months' SI
Section 302/149 IPC	Life Imprisonment	Rs.20,000/- -	6 Months' SI

(All the sentences were ordered to run concurrently)

2. Being aggrieved of their conviction and sentences, the appellants have preferred these two appeals under Section 374(2) Cr.P.C.

3. Facts relevant and essential for disposal of the appeal are noted herein below:

Sub Inspector Deva Ram (PW.21) recorded the Parcha Bayan (Ex.P/2) of the complainant Malaram (PW.6) on 03.07.2011 at Mathura Das Mathur Hospital, Jodhpur wherein, the complainant alleged that in the morning, Rawalram (PW.5) had been threatened by Madhuram, Tarachand, Shrawanram, Sumer, Jetharam and Pannaram on the premise that since he had given out their names in the incident involving assault on a roadways' bus driver, they would take revenge by killing him. At around 5:00-5:30 pm, the complainant was sitting at his shop and Rawalram was sitting outside the shop. At that time, Madhuram S/o Shri Javrilal, Sumer S/o Shri Javrilal, Pannaram S/o Shri Badriram, Tarachand S/o Shri Phusaram and Jetharam S/o Shri Hapuram, armed with swords, hockeys, *lathis* and iron rods came there and launched an assault on Rawalram (PW.5) with the intention of killing him. Malaram (PW.6) intervened on which, he too was beaten up. He and Rawalram cried out for help, upon which, his elder brother Kishan and Virendra @ Bablu (PW.4) came around and made an attempt to rescue them. On seeing Kishan and Virendra @ Bablu, the assailants, turned their wrath towards these two persons and attacked them. They also scattered the goods lying in his shop. On hearing the commotion, Tulsiram (PW.10), Ramesh (PW.1), Manish (PW.3) and Arjun (PW.2) came there and intervened to rescue the complainant and his companions. He alleged that the assailants had launched the assault in order to wreak vengeance on account of an old land dispute and also on the premise that they (the appellants) had

been named in the assault launched on the roadways bus driver. The assailants thrashed them and caused serious injuries with an intention of killing. The complainant got hurt on his head and leg. Madhuram and Jetharam had hit Kishan on his head with iron rods, causing him serious injuries which resulted in profuse bleeding. Rawalram also sustained injuries on his head, hands and other parts of body. Virendra @ Bablu (PW.4) had also suffered head and leg injuries in the incident. The assailants, had come with an intention to kill them and had also damaged his shop and the articles lying therein.

On the basis of this report, an FIR No.246/2011 (Ex.P/32) came to be registered at the Police Station Basni, Jodhpur for the offences punishable under Sections 147, 148, 149, 307, 323 & 427 IPC and investigation was commenced. Kishan was taken to the M.D.M. Hospital, Jodhpur for treatment where he was declared dead. Autopsy was conducted on the dead body of Kishan. The injured persons were also examined and their injury reports were prepared. Some of the accused assailants had also received injuries in the incident and they too were provided treatment in the hospital. Since Kishan passed away, offence under Section 302 IPC was added to the case. The accused persons were arrested and as usual, acting on the informations, allegedly provided under Section 27 of the Evidence Act, the Investigating Officer proceeded to effect recoveries of the weapons and clothes etc. of the accused persons. After concluding investigation, a charge sheet came to be filed against the accused appellants Madhuram, Sumer, Pannaram, Tarachand, Jetharam, Madanlal and Birmaram for the offences punishable under Sections 147, 148, 323, 325, 307 and 302/149 IPC. As the offences under Sections 307 &

302/34 IPC were exclusively triable by Court of Sessions, the case was committed to the Court of Sessions Judge, Jodhpur Metro from where it was transferred to the Court of Addl. Sessions Judge No.3, Jodhpur Metro for trial where charges were framed and read over by the trial court to the accused persons in the following manner:-

Name of the accused	Offences Under Sections
Madhuram and Jetharam	147, 148, 323/149, 325/149, 307/149, 302/149 and 302 IPC
Sumer, Pannaram, Tarachand, Madanlal and Birma Ram	147, 148, 323/149, 325/149, 307/149, 302/149 IPC

The accused pleaded not guilty and claimed trial. The prosecution examined 23 witnesses and exhibited 42 documents to prove its case.

Upon being questioned under Section 313 Cr.P.C. and when confronted with the circumstances appearing in the prosecution evidence, the accused denied the same, claimed to be innocent and contended that as a matter of fact, the members of the complainant party were the aggressors. They had given false evidence because of a previous dispute over agricultural land. In his examination under Section 313 Cr.P.C., accused Madhuram stated that Rawalram (PW.5) had called him to participate in talks for settling the disputes. He went to the shop of Malaram (PW.6) at about 5 o' clock in the evening and talked with Malaram and Rawalram for about 15-20 minutes. When no resolution was forthcoming, Madhuram refused to talk any further, on which

Malaram and Rawalram started hurling profanities towards him. Rawalram picked up a brick lying outside the shop and hit it on the head of Madhuram. The information of the quarrel reached Sumer, on which, he came around to save Madhuram. In the meantime, Kishan and Virendra @ Bablu also came to the shop of Malaram. Kishan exhorted that Madhuram should be killed. On hearing this, he (Madhuram) and his companions started running away. Kishan picked up a lathi and pursued them. In the meantime, Dayal and Jetharam also came to the spot. They ran towards the other side of the road. Persons from the complainant party threw brickbats towards them due to which, he (Madhuram) and his companions received injuries. In this melee, Malaram, Kishan, Virendra and Rawalram also received injuries. Madhuram and his companions ran towards the Meera Nagar lane where they were pursued by the members of the complainant party and were beaten up. The other accused persons also gave almost similar statements. Eight witnesses were examined and twenty-four documents were exhibited in defence.

After hearing the arguments advanced by learned Public Prosecutor, complainant's counsel and the defence counsel and appreciating the material available on record, the trial court proceeded to convict and sentence the appellants as above. Hence, these two appeals.

4. Learned counsel Shri Vineet Jain and Shri Dharendra Singh, representing the appellants vehemently and fervently urged that the entire prosecution case is false and fabricated. The complainant and the other material prosecution witnesses have

suppressed the true genesis of the occurrence. As a matter of fact, a land dispute was going on between the parties. Rawalram (PW.5) had called Madhuram to the shop of Malaram (PW.6) on the pretext that they would talk and settle the land dispute amicably. Accordingly, Madhuram went there in a bonafide belief that the offer made by Rawalram was genuine. When the complainant Malaram and Rawalram made absurd demands for settlement of the dispute and Madhuram did not accede to it, a verbal altercation ensued between the parties. Rawalram and Malaram became offensive and started beating Madhuram. When Tarachand, Sarwan, Sumer, Setharam and Pannaram came to know about the squabble, they also reached the place of incident. In the meantime, the quarrel had blown up into an all out fight. Kishan and Virendra arrived there in the garb of interveners but they also joined the fighting. The members of the complainant party chased the accused persons namely Madhuram, Dayal and Jetharam who had rushed into Meera Nagar lane in an attempt to save themselves from graver harm. However, the members of the complainant party pursued and a free fight broke out in which, members of the accused party as well as members of the complainant party received large number of injuries. However, the injuries inflicted to Kishan were unfortunately graver than others and he expired as a result thereof. Shri Jain and Shri Singh submitted that omission of names of the accused Madanlal and Birmaram in the FIR is fatal to the prosecution and as the complainant and the other witnesses have tried to improve the version as set out in the FIR by implicating these two accused at a later point of time, manifestly, their evidence is tainted and unreliable. They further urged that even if the allegations as set

out in the FIR and in the evidence of the material prosecution witnesses are considered, admittedly, the fight initiated between Madharam and some of his companions on the one side and Rawalram on the other side. At that point of time, some minor injuries were caused to Rawalram. Malaram also joined the fray and he too got injured. Kishan and Virendra @ Bablu came to the spot as interveners whereafter, the incident took the shape of a free-fight between two groups. It was also contended that the prosecution evidence does not give any indication whatsoever that the accused persons were present at the spot after forming an unlawful assembly. They urged that when an overall appreciation of the evidence of the prosecution witnesses is undertaken, it becomes clear that the members of the complainant party as well as the members of the accused party, reached the shop of Malaram from different directions and at different moments. Some of the witnesses even did not allege that the accused other than Madharam and Jetharam were armed with any weapon and thus, apparently the conviction of the accused appellants for the offence under Section 302 IPC with the aid of Section 149 IPC is totally illegal because, the concept of unlawful assembly cannot be applied in a case of free fight. They further urged that a number of accused persons, received significant injuries in this very incident. None of the prosecution witnesses, offered any plausible explanation for the injuries caused to the accused in the same incident and as such, the evidence of the witnesses deserves to be discarded. Shri Jain made two alternative submissions:-

(A) that the accused were acting in exercise of right of private defence and they raised arms in order to save themselves

from the attack launched upon them by the members of the complainant party.

(B) that even if the allegations, as set out in the evidence of the prosecution witnesses are accepted, the injuries were apparently inflicted to the deceased Kishan in a free-fight where both sides were wielding weapons and as such, the offence, attributed to the accused-appellants Madharam and Jetharam, would not travel beyond Section 304 IPC. In support of this contention, Shri Jain relied upon the following judgments:-

- (1) Abani K. Debnath & Anr. Vs State of Tripura : (2005) 13 SCC 422**
- (2) Babu Ram & Ors. Vs State of Punjab : (2008) 3 SCC 709**
- (3) Ratnaram Nayak & Ors. Vs State of Rajasthan : 2019 (3) Cr.L.R. (Raj.) 1210**

Shri Jain and Shri Dharendra Singh further urged that the motive behind the incident as portrayed in the FIR was that the members of the accused party were angered by the introduction of their names in a so-called incident involving assault on a roadways' bus driver and that they held the members of the complainant party responsible for the same. It was contended that no proof either documentary or oral was presented by the members of the complainant party nor could the IO collect any material to fortify this allegation. It was thus argued that the entire theory of the motive as portrayed by the complainant party is falsified and consequently, the genesis of the occurrence comes under a cloud of doubt. They further urged that there is no

averment in the FIR that the injuries were inflicted to Kishanlal in the Meera Nagar lane. This theory has been built up by way of a sheer improvement. They further urged that the fact that the first informant Malaram (PW.6) did not allege in his Parcha Bayan (Ex.P/2) that he had seen Kishan being assaulted in the lane of Meera Nagar, clearly establishes that Malaram never saw the said incident and the entirety of allegations set out in the FIR are cooked up and unworthy of credence. It was also contended that the so-called eyewitnesses Tulsiram (PW.10), Ramesh (PW.1), Manish (PW.3) and Arjun (PW.2) are cooked up witnesses and they were actually not present at the spot of occurrence. They reside at places far distant from the location where the incident took place, and as such, there was no reason for these witnesses to be present at the spot at the time of incident. They must have reached much later upon hearing about the incident and were planted as eyewitnesses in order to lend assurance to the fictitious prosecution story. On these submissions, learned counsel for the appellants sought acceptance of the appeals and implored the Court to either completely acquit the appellants; in the alternative, set aside their conviction for the offence under Section 302 IPC with the aid of Section 149 IPC, and to acquit the appellants Sumer, Pannaram, Tarachand, Madanlal and Birmaram completely and tone down the conviction of the appellants Madhuram and Jetharam to one under Section 304 Part-I IPC.

5. Per contra, learned Public Prosecutor and Shri J.S. Choudhary, learned Senior Counsel appearing for the complainant, assisted by Shri Pradeep Choudhary, vehemently and fervently opposed the submissions of the counsel representing the

appellants. They urged that the accused formed an unlawful assembly, armed themselves fully and went to the shop of Malaram (PW.6) with the sole objective of killing the members of the complainant party. They pointed out that the defence has itself placed on record the documents pertaining to revenue litigation instituted *inter se* between the parties. Shri Choudhary pointed out that the reason behind the assault i.e. the existing land dispute has clearly been mentioned in the FIR itself and thus, the motive attributed to the accused for committing the offence is well established. He further contended that trivial omissions in the FIR and insignificant contradictions in the evidence of the prosecution witnesses have to be ignored because the assault was made in a pre-planned manner and as Malaram's brother Kishan had received grave life threatening injuries in the incident, it could not be expected of him to set out a photographic version of the incident in the Parcha Bayan (Ex.P/2). However, the other eyewitnesses, whose presence at the spot was absolutely natural, were examined by the Investigating Officer, soon after the incident and they, clearly stated that the accused pursued deceased Kishan to the Meera Nagar lane where he was surrounded and brutally assaulted by the accused Madhuram and Jetharam who were armed with deadly weapons i.e. iron rods. Repeated injuries were inflicted on the head of Kishan which led to his death. Shri Choudhary and the learned Public Prosecutor urged that even if it is assumed for a moment that the accused persons did not reach the place of incident in a group, then also, they have to be held responsible for their individual acts. So far as the accused Madhuram and Jetharam are concerned, there is a distinct allegation of the material prosecution witnesses that these two

accused, pursued Kishan to the lane in Meera Nagar and there, they belaboured him with deadly weapons like iron rods. Repeated blows of dangerous heavy weapons viz. iron rods, were inflicted on the head of the deceased which establishes beyond all manner of doubt that the intention of the two accused persons was unquestionably to kill Shri Kishan. The case of these two accused does not fall within any of the exceptions provided under Section 300 IPC and hence, there is no merit in the prayer of the appellants' counsel that the offence under Section 302 IPC for which the accused have been punished, should be toned down. They thus, implored the Court to dismiss both these appeals *in toto*.

6. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned Judgment and have minutely re-appreciated the evidence available on record.

7. When we consider the allegations as set out in the FIR (Ex.P/32), it is clearly borne out that the names of the accused Madanlal and Birmaram are not mentioned therein even though, the Parcha Bayan (Ex.P/2) of Malaram, on the basis whereof the FIR was registered, came to be recorded at about 9 PM i.e. after more than 4 hours of the incident. It is not disputed that Madanlal and Birmaram were previously known to the members of the complainant party. Malaram, the complainant (PW.6) and some of his companions who have been portrayed to be eye-witnesses of the incident were present with him at the hospital and thus, we do not find any justification behind omission of the names of these

accused persons in the Parcha Bayan (Ex.P/2) and to that extent, the prosecution case comes under a cloud of doubt.

8. Now we proceed to consider the testimony of the prosecution witnesses. The trial court recorded evidence in two parts because the accused Madanlal and Birmaram who were not named in the FIR were charge-sheeted subsequently and hence, statements of some of the witnesses were recorded twice.

9. Firstly, we take up the evidence of first informant Malaram (PW.6). The witness alleged in his sworn testimony, that on 3rd July, 2011, Madhuram, Jetharam, Pannaram, Tarachand and Sumer were implicated in an incident of beating/scuffle with a roadways' bus driver. These accused suspected the complainant party for divulging their names and hence, they threatened to take revenge. He was working at his shop at about 5:00-5:30 pm. Rawalram was sitting outside his shop. At that time, Madhuram, Jetharam, Sumer, Pannaram, Birmaram, Madanlal and Tarachand arrived there after forming an unlawful assembly. They were armed with swords, lathis, hockeys and iron rods and immediately on reaching the shop of the complainant, they started assaulting Rawalram. He went out to intervene on which he too was beaten up. They both raised an alarm on which Kishan and Virendra came and tried to intervene. The accused persons diverted their attention towards Kishan and Virendra and started assaulting them as well. Kishan and Virendra ran towards Meera Nagar Lane for saving themselves. The accused followed and accosted them near the houses of Mishrilal and Birmaram. Accused Jetharam and Madhuram inflicted blows of iron rods and bars to Kishan and

Virendra. Then the other accused persons joined in the assault. Tulsiram, Ramesh, Manish and Arjun went there and intervened to save the victims. The witness alleged that he sustained injuries on his head and right palm in the incident. Rawalram was also inflicted injury on his head and hands. The accused had launched the assault because of a long-standing land dispute. His shop was damaged. Kishan got grievously injured because of the assault and was taken to the M.D.M. Hospital where he expired during treatment. The witness also claimed that while he was admitted at the hospital for treatment, the SHO PS Basni recorded his Parcha Bayan (Ex.P/2) on which he appended signatures.

The witness did not state that the accused Madhuram, Jetharam and Tarachand first reached the spot on a motorcycle and that the others came later. The witness also did not specifically allege that the head injuries were caused to Kishan by Madhuram and Jetharam. The witness also did not state in his examination-in-chief that he followed Kishnaram and Rawalram in the Meera Nagar lane where the second part of incident took place.

In cross-examination, questions were put to the witness regarding the land dispute existing *inter se* between the parties. He refuted the suggestion that when the initial quarrel started only accused Madhuram and Jetharam were present and insisted that seven accused persons were present at the spot right from the beginning. He could not specify the weapons which these accused were holding when the quarrel was going on outside his shop. He stated that on hearing cries of Rawalram, Kishan and

Virendra came there and immediately thereafter, he saw the accused assaulting them. The witness improved upon his previous version given to police and stated that he also followed Kishan and Virendra in order to rescue them from the attack. The police reached the spot at about 5 o' clock, but he did not inform them about the occurrence because no one asked him. Only he and Kishan were taken to the hospital in the police jeep. At this stage, it would be relevant to note that this version of the witness creates a doubt on the assertion of Virendra (PW.4) that he and Kishan were taken to the hospital in the police jeep. The witness was confronted with the Parcha Bayan (Ex.P/2) regarding omission of names of Birmaram and Madanlal, which he was not able to explain. He was also confronted with the fact that in the Parcha Bayan (Ex.P/2), there was no reference of the fact that the second incident took place in the Meera Nagar lane. He admitted that the allegation made in the Parcha Bayan (EX.P/2 regarding swords being used by the accused was incorrect. He stated that all the accused assaulted Kishan between the houses of Mishrilal and Birmaram. In answer to a pertinent question, the witness admitted that he was not aware of the reason behind the altercation, which took place at the Sunil Kirana Store. The spot where Kishan and Virendra were beaten up i.e., the Meera Nagar lane was not visible from his shop. He was asked regarding the theory of motive i.e. the assault on the roadways' bus driver but he could not elaborate upon the same. He admitted that the names of Virmaram and Madanlal were not mentioned in his police statement (Ex.D/4). He denied the suggestion that Sumer, Jetharam, Pannaram, Birmaram, Madhuram and Bhundaram

sustained injuries in this very incident. He also denied the suggestion that he and his companions were the aggressors and that they had beaten the accused persons up.

10. Ramesh was examined originally as PW.1 and then as PW.3. He alleged in his evidence that he had gone to Jhalamand Village to meet his sister. When he was returning and had reached Sunil Kirana Store, he saw a crowd gathered there and there was an ongoing fight. Sumer, Madan, Tarachand, Jetharam, Madhuram, Birmaram and Pannaram were assaulting Malaram, Kishan, Virendra and Rawalram with lathis and iron rods. The witness claimed that he, Arjun, Tulsiram and Manish tried to intervene to stop the fight, but the accused did not relent. Kishan and Virendra ran towards the Meera Nagar lane for saving their lives and the accused pursued them. The witness and his companions also followed. The accused persons caught hold of Kishan and Virendra outside the houses of Jats and then beat them up with iron rods. Thereafter, the accused ran away. The police came there and took the injured persons to the hospital. In cross-examination, the witness admitted that the accused as well as the complainant party were related to him. He could not pin-point specific roles of the accused in the incident. He admitted that he operated a Grocery Store opposite Umaid Bhawan and explained that on the day of the incident, he had gone to Jhalamand Village to meet his sister. He also stated that Sumer, Birmaram, Pannaram and Madanlal ran away and thereafter Kishan was beaten up by Madhuram and Jetharam by lathis and iron rods. Madhu Ram also

sustained some injuries but he did not see any other accused persons to have sustained injuries in the incident.

11. Arjun (PW-2) stated that he was sitting on the main road of Jhalamand Village. At about 5.00-5.30 PM, he heard a hue and cry from the direction of Sunil Kirana Store and saw crowd gathered there. He went and saw that Setharam @ Jetharam, Madanlal, Birmaram, Pannaram, Tarachand and Madhuram armed with lathis, iron rod, pipes etc. were beating Kishnaram, Virendra, Rawalram and Malaram up. He, alongwith Tulsiram (PW.10), Manish (PW.3) and Prakash tried to intervene to stop the fight. The assailants did not relent. Kishnaram and Virendra ran towards Meera Nagar lane. He and the other witness ran behind them. The assailants obstructed Kishnaram and Virendra in between the houses of Jats and started assaulting them with lathis, iron rods and pipes etc. Kishan was beaten by Setharam, Madhuram, Birmaram and Tarachand and got injury on his legs and head. He started bleeding extensively from his head wound and fell down unconscious. The same accused also assaulted Virendra. The witness and the other interveners raised a hue and cry upon which, the assailants ran away. A little later, the police arrived and took the injured persons to the hospital. He alleged that the incident took place because of an old land dispute. In cross-examination, the witness admitted that he was related to both the parties. He reached the spot at about 05.30 PM and saw that the fight was already underway. A crowd had gathered and he passed the bystanders and reached the spot and witnessed the fight. Madhuram was having an iron rod. Setharam @ Jetharam was having an iron pipe. Pannaram was having an iron bar. The other

accused persons were having lathis of four feet. The witness and four others intervened. Stones were indiscriminately thrown and thus, the nearby shopkeepers had to close their shops. Upon reaching the spot, he saw stones lying there. He was unable to say whether Madharam or the other accused persons sustained injuries in this incident.

12. Manish son of Shri Tulsiram (PW.3) alleged in his evidence that he and his father Shri Tulsiram (PW.10) had left their shop at Rameshwar Nagar and were proceeding homewards. At about 5:00–5:30 pm, they reached near Sunil Kirana Store on the Guda road, opposite Jhalamand Circle and saw a crowd of people gathered there. They stopped and saw that Madharam, Jetharam @ Setharam, Sumer, Tarachand, Birmaram, Madanlal and Pannaram were assaulting Kishan, Virendra, Rawalram and Malaram with iron rods, iron pipes, iron bars etc. The witness, alongwith Ramesh, his father Tulsiram and Arjun tried to intervene, but the fight was quite intense. Kishan and Virendra ran towards the Meera Nagar lane. Setharam and Madharam pursued them. The witness followed them and saw Kishanaram and Virendra being assaulted by these people upon which, he intervened in an attempt to save the victim. Kishan collapsed after being injured. The assailants then ran away. Police arrived at the spot and took the injured to the hospital.

In cross-examination, the witness admitted that he used to work at his own shop, which he usually opens at 8 o'clock in the morning and closes at about 9.30 pm. On the day of the incident, his younger brother was sitting at the shop. A suggestion was

given that as a matter of fact, he was not present at the spot and was created to be an eye-witness. He admitted that when he reached the spot, the fight had already commenced. He could not specify the weapons held by the particular accused. The police came to the spot in his presence. He did not handle the injured persons. He admitted that his statement under Section 161 Cr.P.C. was recorded after one month of the incident. He feigned ignorance to the suggestion that the accused Madhuram, Sumer, Jetharam and Bhundaram were also admitted in the same hospital because of the injuries sustained by them in this incident. When the incident was going on in the Meera Nagar lane, he, his father Tulsiram Ji, Ramesh and Arjun were present at the spot and in addition thereto, the people of the locality were also standing there, but he could not identify them. He denied the suggestion that Kishan, Virendra, Malaram and Rawalram had beaten the accused up outside the Sunil Kirana Store or that the accused were pursued by the members of the complainant party to the lane where Jats resided. He also denied the suggestion that Kishan gave a blow on the head of Madhuram and Virendra inflicted head injury to Sumer. He also denied the suggestion that Santosh and Dayal indulged into a fight with the accused party and caused them injuries. He feigned ignorance regarding the so-called cross case.

13. Virendra son of Shri Jagdish (PW-4) is the star witness of the prosecution who was manifestly, present in the second part of the incident which took place in the Meera Nagar lane and thus, his testimony would have a material bearing on the outcome of this case. While deposing on oath, Virendra stated that on 03.07.2011,

in the evening at about 5 o' clock, he had gone towards Sunil Kirana Store. There, he saw 6-7 people namely Madhuram, Jetharam, Tarachand, Birmaram, Pannaram, Sumer and Madanlal assaulting Malaram and Rawalram with iron rods and iron bars. He, his uncle Kishanaram (the deceased), Tulsiram, Manish and Arjunram tried to intervene on which, the accused diverted their wrath towards them. Kishanaram was assaulted by all the 7 assailants with their respective weapons, i.e. lathis, iron rods and pipes. He (witness) was also beaten up and sustained injuries on his head and legs. Kishanaram got injuries on his head and legs and due to which he fell down. The witness specifically stated that Madhuram and Jetharam gave blows of iron rods and bars on the head of Kishanaram and that Tarachand inflicted blows on his head and leg with an iron pipe. The police came to the spot and took him and Kishanaram to the hospital. Kishanaram succumbed to the injuries while undergoing treatment. He knew Madhuram and Jetharam and also the other accused Sumerram, Pannaram, Madanlal, Birmaram and Tarachand. In cross-examination, questions were put forth to the witness regarding the land dispute existing *inter se* between the parties. He could not offer much explanation to these suggestions. He stated that on the day of the incident, he randomly went to the Sunil Kirana Store. The quarrel started opposite the Store. He could not say as to how the incident precipitated because he had reached there a little late. While the fight was going on, he, Kishanaram, Tulsiram, Manish, Ramesh and Arjun were present there. All of them tried to disperse the fight on which, the accused diverted their attention and started assaulting them. In order to avoid being beaten up, he and Kishanaram ran towards the Meera Nagar lane which is

opposite to the Sunil Kirana Store. The accused pursued them. Tulsiram, Manish and Arjun also followed them. The second part of the incident took place in Meera Nagar Lane, which is at a distance of 150 *Pawandas* (five steps are equal to one *Pawanda*) from the store. This place was not visible from the Sunil Kirana Store. He admitted that all the accused were raining indiscriminate blows and he could not distinguish as to who was beating whom. Malaram and Rawalram were beaten up at the Sunil Kirana Store by sticks, rods and bars. Kishanaram was beaten up near the houses of Birmaram and Mishrilal. He could not say as to how many blows were landed on Rawalram and Malaram. Three injuries were inflicted to Kishan and he (witness) too was hit on the head when he intervened. His clothes got stained with blood. However, he did not give them to the police. In a question raised by the defence, the witness stated that he as well as Kishan were beaten up by all the seven accused. He admitted that when the police came to the spot, he was fully conscious, but he did not give a report or oral information to the police. He and Kishan were taken to the hospital in the police jeep. On reaching the hospital, Kishan was admitted to the ICU and he was kept in the outer ward. Rawalram was lying beside him. He could not say as to whether Sumer, Jetharam, Madhuram and Bhundaram were also admitted in the same ward. They stayed in the hospital overnight and went home at about 7:00-8:00 am on the next day. Till then, he did not give any information to the police. The Police recorded his statements 3-4 days after the incident. The relevant parts of cross-examination conducted from the witness with reference to his police statement (Ex.D/3), is reproduced hereinbelow for the sake of ready reference:-

“मेरी मुख्य परीक्षण की बात “सुनिल किराणा स्टोर की दुकान के आगे छः सात लोग मालाराम, रावलराम के साथ लाठियों, सरियों से मारपीट कर रहे थे” यह बात मेरे पुलिस बयान प्रदर्श.डी.3 में लिखी हुई नहीं है। मेरे मुख्य परीक्षण का भाग “मारपीट करने वाले माधुराम, जेठाराम, ताराचंद, बीरमाराम, पन्नालाल, सुमेर, मदनलाल थे” यह बात मेरे पुलिस बयान प्रदर्श.डी. 3 में लिखी हुई नहीं है। मुख्य परीक्षण की बात “बीच बचाव में मैं, मेरा काका किशनराम, तुलसीराम, मनीष, रमेश अर्जुनराम थे” इनमें से तुलसीराम, रमेश, मनीष, अर्जुनराम का नाम प्रदर्श.डी. 3 में लिखा हुआ नहीं है। मुख्य परीक्षण की बात “मुलजिमान ने हमारे ऊपर वार किया था” प्रदर्श.डी. 3 में केवल ताराचंद अभियुक्त का नाम लिखा हुआ है, बाकी लिखा हुआ नहीं है। मुख्य परीक्षण का भाग “मारपीट से सुनिल किराणा स्टोर से बचने के लिये मीरा नगर जाटों के घरों की तरफ भागे थे” प्रदर्श.डी. 3 में मीरा नगर जाटों के घरों की तरफ भागे लिखा हुआ नहीं है। मुख्य परीक्षा की बात “वहां पर मेरे काका किशनराम के ऊपर लाठियां, सरिया व पाईपों से सातों लोगों ने वार किया” का उल्लेख प्रदर्श.डी.3 में नहीं है, खुद कहा कि मारपीट में मुलजिमान के नाम बताये हुवे है। यह बात सही है कि प्रदर्श.डी. 3 बयान में दूसरी घटना वाली जगह जाटों के घर के पास न होकर मीरा नगर की गली में होना बताया है। यह कहना सही है कि चश्मदीद गवाह मालाराम व रावलराम के साथ मारपीट करने का उल्लेख प्रदर्श.डी. 3 बयान में नहीं है।”

When we peruse the statement of this witness, we find that there is a significant contradiction in his sworn testimony and the statement (Ex.D/3) inasmuch as, while in the sworn statement, the witness stated that he as well as Kishanaram ran together towards the lane of Meera Nagar in an attempt to escape from the assailants, but in the statement (Ex.D/3), the witness stated that he had gone to the Sunil Kirana Store and saw that his uncle Kishan was being beaten up in a lane across the road. Upon seeing this assault, he ran there and tried to intervene on which, Tarachand inflicted an iron pipe blow to him due to which he sustained injuries on his head and right leg. Kishan was inflicted blows of iron rods by Madhuram and Jetharam on his head. Thus,

in this statement, the witness did not pertinently allege that the second part of the incident took place in the Meera Nagar lane. He also did not allege that he and Kishanaram reached at the spot of incident together or that they were pursued by the assailants. To this extent, there is significant inconsistency in the two versions of the witness. Furthermore, in the statement (Ex.D/3), the witness did not allege that Tulsiram, Arjunram, Ramesh and Manish were present at the spot during any of the incidents. A vague suggestion was given to the witness that the accused were called to the spot by making an offer of settling the dispute which, the witness refuted. He also denied the suggestion that the accused Madhuram, Sumer, Jetharam and Bhundaram sustained injuries in this incident.

14. Rawalram (PW.5) is a very important witness of the prosecution because he is alleged to be the person with whom the initial scuffle started. Upon being examined on oath, the witness alleged that he had reached the Sunil Kirana Store, Jhalamand road between 4:00-5:00 PM on 03.07.2011. He parked his motorcycle and was sitting at the Sunil Kirana Store. Madhuram, Jetharam and Tarachand came there on a motorcycle and parked the same beside his motorcycle. Madhuram was holding an iron bar, Jetharam was holding an iron rod and Tarachand was holding an iron pipe. Jetharam and Madhuram inflicted iron bar blows on his head. Tarachand inflicted a pipe blow on his left wrist. When he shouted, Malaram who was working in the shop came out and tried to intervene, on which, he was also inflicted blows on his head by all the three assailants. A hue and cry was raised on

which, others from the accused party namely Pannaram, Madanlal, Sumer and Birmaram came there. Kishan and Virendra also rushed to the spot on noticing the commotion and tried to intervene. The accused diverted their attention towards these two persons who ran towards the Meera Nagar lane. They were pursued and belaboured in the lane. Madhuram, Jetharam and Tarachand inflicted injuries on the head of Kishan with iron rods, bars and pipes due to which, the deceased started bleeding. Virendra was also badly beaten up. Ramesh, Arjun, Tulsiram and Manish also tried to intervene, but the accused did not relent. The police came there and took him along with Kishan and Virendra to the hospital. All were provided treatment. Kishan was admitted to the ICU. The witness was discharged in the night. Kishan passed away at the hospital. He alleged that the accused had beaten them up because of a land dispute. He claimed to be knowing the accused from before and identified them in the Court.

In cross examination, the witness stated that no sooner the accused Madhuram and his companions got down from the motorcycle, they started hurling profanities. Madhuram inflicted two iron bar blows on his head. He shouted upon which, Malaram came to save him on which, he too was beaten up. Thereafter, the accused Pannaram, Madanlal, Sumer and Birmaram arrived at the scene. A few moments later, Kishan reached the spot. He claimed to have seen the incident of assault on Kishan from a distance of about 200 feet. The witness admitted that the assailants did not come to the spot as a group, but arrived at different moments. When Kishan was being beaten up, about 40-50 people had

gathered there. He did not file any report with the police as the policemen did not inquire from him about the incident. He was provided treatment and was discharged in the morning. His statement was recorded by the police after one month of the incident. Accused Madhuram was also admitted in the hospital. The motorcycle, on which the accused came to the Sunil Kirana Store, kept lying outside there for about seven days. The witness was confronted with certain parts of his police statement (Ex.D/2). The significant omission in this statement is regarding arrival of Jetharam to the spot with the two accused Madhuram and Tarachand. In the police statement (Ex.D/2), the witness did not name Birmaram and Madanlal as the assailants. He had no explanation for these omissions. General suggestions were given to the witness that as a matter of fact Kishanaram was the aggressor and that the injuries were inflicted to him in exercise of right of private defence and in the alternative, the injuries which were sustained by Kishan were as a result of stones thrown by Santosh and Dayal, which the witness denied.

After going through the entire cross-examination conducted on this witness, we are of the view that he definitely did not follow the brawl which had spilled over to the Meera Nagar lane and stayed back at the shop and thus, he could not have seen the assault made on Kishnaram and Virendra. Furthermore, the witness also did not name the accused Birmaram and Madanlal in his statement. He did not even state that the witnesses Tulsiram, Arjun, Ramesh and Manish also arrived at the spot and intervened to save them.

15. The last eye-witness of the prosecution is Tulsiram (PW.10) who alleged in his testimony that he and his son were going towards their shop on 03.07.2011. When they reached Sunil Kirana Store, they saw a crowd gathered there. Malaram, Kishan, Rahul (Rawalram) and Virendra were being beaten up by Madhuram, Jetharam, Sumer, Madanram and Pannaram with lathis, iron rods and sticks, etc. Kishanaram, Malaram and Virendra ran towards the Meera Nagar lane in an attempt to save themselves from the assailants. All the by-standers followed them. He ran towards the said direction along with his son Manish. The accused surrounded Kishanaram near the houses of Jats. Jetharam and Madhuram inflicted blows of iron rods on the head of Kishanaram. Virendra was also beaten up. The police came there. Kishanaram's family members also reached there and he was taken to the M.D.M. Hospital. On 04.07.2011, he heard that Kishanaram had passed away. In cross-examination, he stated that he was a resident of Hanuman Nagar and was having a shop at Rameshwar Nagar. On the fateful day, he had left his shop at about 5 o'clock in the evening because of some domestic work. About 150 people were present at the spot.

On a threadbare appraisal of the evidence of this witness, it becomes clear that he definitely did not see Kishanaram being assaulted because unlike the other witnesses, he did not state that the police took Kishanaram to the hospital in its jeep. Furthermore, the contradictions as appearing in his testimony

indicates that he must have been present at the spot amongst the crowd and did not observe any specific part of the incident.

16. After analysing the evidence of the eye-witnesses, we are convinced that the version as set out in the FIR is not accurate and that the incident took place in two parts, first, at the Sunil Kirana Store and the second, between the houses of Jats located in the lane of Meera Nagar.

17. The dead body of Kishan was subjected to autopsy by Dr. Jagdish Jugtawat (PW.16) who stated in his testimony that on conducting autopsy of the dead body, he noticed the following injuries:-

- (1) Stitched wound 9 cm long on the parieto-occipital region at the back of the head.
- (2) On the parietal region at the back of the head, another stitched wound 5 cm long was seen.
- (3) On the temporo parietal region of the head, stitched wound 4 cms long was seen.
- (4) In addition thereto, there were two abrasions on the right leg.

When the skull was opened, subdural hematoma was seen at the temporo parietal and occipital regions. Both parietal and left temporal bones were fractured. Blood had collected on the dura membrane. The cause of death was opined to be the head injuries. He pertinently stated that the injuries Nos. 1, 2 and 3 as mentioned in the Post-mortem report were individually and cumulatively sufficient in ordinary course of nature to cause death

of the deceased. Nothing significant was elicited in the cross-examination conducted from the witness.

Dr. Mahendra Kumar (PW.15) examined the injuries of injured Rawalram (Ex.P/22), Malaram (Ex.P/23) and Virendra (Ex.P/1E), and x-ray report (Ex.P/24). In his testimony, the doctor stated that the three injuries noticed on the body of Rawalram were superficial and were caused by blunt weapons. Malaram had four injuries and as per the x-ray report, the two injuries on his right thumb and index finger were opined to be grievous in nature. Two injuries were noticed on the body of Virendra, both of which, were found to be simple in nature after x-ray.

18. The investigation of the case was carried out by Mumtaj Khan (PW.22), who stated in his evidence that Parcha Bayan (Ex.P/2) of Malaram was provided to him by Devaram, SI (PW.21). He proceeded to the crime scene and conducted the relevant steps of investigation viz. preparation of site inspection plan (Ex.P/3), collecting the blood stained soil (Ex.P/7) etc. The accused Madhuram, Jetharam, Pannaram and Sumer were arrested. Madhuram gave him an information (Ex.P/33) under Section 27 of the Evidence Act and in furtherance thereof, the witness recovered an iron rod vide memo Ex.P/9. He also alleged that Jetharam also gave him an information (Ex.P/34) under Section 27 of the Evidence Act and got an iron bar recovered vide memo Ex.P/11. Likewise, Pannaram also gave him an information (Ex.P/36) under Section 27 of the Evidence Act and got a lathi recovered vide memo Ex.P/13. Sumer gave him an information (Ex.P/37) under

Section 27 of the Evidence Act and got an old wooden bat recovered vide memo Ex.P/15. Madanlal gave him an information (Ex.P/38) under Section 27 of the Evidence Act and got an old lathi recovered vide memo Ex.P/29.

It is significant to note here that the witness did not elaborate upon what exactly were the informations given by the accused which lead to the recoveries and thus apparently, these informations were not proved as per law. As a consequence, neither the informations nor the alleged recoveries made in pursuance thereof can be read in evidence.

In cross-examination, the witness was confronted with certain omissions in the Parcha Bayan (Ex.P/2), but as the Parcha Bayan was recorded by SI Devaram (PW.21), the SHO could not be expected to answer the contradictions appearing therein. As a matter of fact, these questions should have been disallowed. Few pertinent admissions as elicited in the cross-examination of the Investigating Officer are reproduced hereinbelow for the sake of ready reference as the same have material bearing on the case:-

“यह सही है कि घटना के रोज सुनिल किराणा स्टोर के सामने दोनों के बीच झगड़ा हुआ था। यह सही है कि दोनों पक्षों के आपस में चोटे आई थी।

..... यह सही है कि गवाह रावलराम के मुताबीक पहले माधुराम व ताराचंद का आना बताया। उसके बाद रावलराम व माधुराम के बीच झगड़ा होने के बीच मालाराम का आना उसके बाद अन्य अभियुक्त जेठाराम, पन्नाराम व सुमेर का बाद में आना बताया। यह सही है कि सभी अभियुक्त एक साथ इक्ठठे होकर घटना वाले स्थान पर एक साथ नहीं आए बल्कि अलग अलग आए थे। यह सही है कि माधुराम के साथ मारपीट होने की इतला मिलने के बाद जेठाराम, पन्नाराम व सुमेर एक साथ आए थे। यह सही है कि दोनों पक्षों के बीच सुनिल किराणा स्टोर के सामने मुंस्तगीस पक्ष मीरा नगर भगे व

उनके पीछे ही मुल्जिम पक्ष भगने लगे व उनके बीच मीरा नगर जाटो की गली में झगड़ा हुआ।”

The IO proved the medical reports of the accused in the following order:-

Sr. No.	Name of the accused	Exhibit
1.	Sumer	D/12
2.	Jetharam	D/13
3.	Pannaram	D/14
4.	Madharam	D/15
5.	Bhundaram	D/16

Other than that, nothing significant was elicited in the cross-examination conducted on the witness.

19. The defence examined six witnesses in support of its case. DW.1 Pukhraj stated that Madharam was beaten up at the shop of Malaram. He ran towards the lane where he was beaten up again. The fight took place between Kishan and Madharam. He saw Kishan getting injured in the incident. The incident took place in three parts. He went to the police for reporting the matter but the police did not accept his report whereafter a complaint (Ex.D/8) came to be filed in the Court.

20. Bhundaram (DW.2) gave evidence regarding an unconnected incident of beating which took place at the Shatabadi Circle. However, the said incident appears to have no connection with the incidents which took place outside the Sunil Kirana Store and in the Meera Nagar lane.

21. DW.3 Rajendra gave evidence regarding preparation of the Site Inspection plan (Ex.D-11) which pertains to the third incident of assault on Bhundaram.

22. DW-4 Sumer is an accused in this case. He alleged that he was at his home at about 5:30 PM when Kaluram came and told him that Madhuram was being beaten up at the Sunil Kirana Store. On hearing this, he went to the Sunil Kirana Store for saving his brother Madhuram. He saw that Madhuram was being beaten by Rawalram, Malaram, Kishan, Santosh, Virendra @ Bablu and Dayalram. He tried to intervene on which, Rawalram gave him a blow with a blunt weapon on the head. Dayal also hit him on his leg. Jetharam came to the spot for saving them on which, he too was beaten up. They ran towards Meera Nagar lane for saving themselves, but as the lane was blocked, they could not proceed further. Kishan, Dayal, Santosh, Malaram, Rawalram, Virendra @ Bablu came there and started assaulting them with iron pipes etc. In the melee, Madhuram and Kishan started grappling with each other. Kishan's brother Bastiram started to hit a stone on the head of Madhuram, but suddenly Kishan got up in between and resultantly received injuries on his head instead.

23. Dr. Ramakant Verma was examined as DW.5. He stated that he examined the injuries of the accused persons on 03.07.2011 and prepared the injury reports as below:-

Name of the accused	Exhibit	Details of Injuries
Sumer	Ex.D/12	(1) Abrasion 1 x 1 cm on the left side of head
		(2) Complain of pain in the right knee
Jetharam	Ex.D/13	(1) Abrasion 1 x 1 cm on the left ear
		(2) Complain of pain on shoulder
Pannaram	Ex.D/14	(1) Complain of pain on the right thumb
		(2) Abrasion 2 x 2.25 cm ankle joint
Madhuram	Ex.D/15	(1) Stitched wound 5 x 1 cm on the left side of skull.
		(2) One stitched wound 3 cm long on the back side of head.
		(3) One lacerated wound 1 x .25 cm on the palm of right hand
		(4) One lacerated wound with stitches 3 cm long on the left toe

All the injuries were opined to be simple in nature. The doctor also proved injury report of Bhundaram (DW.2), but as the said injury was admittedly caused in an unconnected incident, the same has no bearing on the present case.

24. Dr. Ramprakash Meena (DW.7) and Dr. Kirti Rana (DW.8) conducted x-ray on the head injuries of the accused Madhuram and Pannaram and after conducting x-ray, reports were issued and as per which, none of the injuries were opined to be grievous in nature.

25. On an overall appreciation of the evidence available on record, we are of the firm view that as per the admitted case emerging from the evidence of Malaram (PW.6), the first

informant, and Virendra (PW.4), both of them did not follow the injured Virendra and the deceased Kishan towards the Meera Nagar lane and thus, they definitely could not have seen the incident in which fatal injuries were inflicted to Kishan. Hence, their evidence is only relevant *qua* the incident which took place outside the Sunil Kirana Store.

26. From the evidence of Rawalram (PW.5), it becomes clear that he alleged that the three accused namely Madhuram, Jetharam and Tarachand came to the store on a motorcycle and that while the incident of assault was going on at that place, the other accused arrived separately. Though, Malaram (PW.6) tried to portray in his evidence that all the seven accused persons came to his shop together but on comparing the evidence of Malaram (PW.6) and Rawalram (PW.5), we find that Malaram was definitely not cognizant of the manner in which the accused came to his shop.

27. Tulsiram (PW.10), Ramesh (PW.1), Manish (PW.3) and Arjun (PW.2) were also named as witnesses in the FIR, but when we see the evidence of these four witnesses in reference to the statement of the star prosecution witness Virendra (PW.4), it becomes clear that when Virendra was examined by the police, he did not state that these four persons were present when the incident of assault with him and Kishanaram was going on in the Meera Nagar lane. In this background and looking to the facts as emerging from the evidence of the four witnesses referred to *supra*, their presence at the spot when Kishanaram was assaulted appears to be doubtful.

28. In this background, we are of the view that so far as the incident which took place outside the Sunil Kirana Store is concerned, there is a great deal of doubt regarding the manner in which the said fight started. The theory of motive which has been portrayed in the FIR is regarding the naming of the accused persons in a so-called incident of assault on a roadways' bus driver. Apparently, the said theory is fictional because Rawalram (PW.5) himself did not make any such allegation in his evidence. Therefore, there is a serious doubt regarding the genesis of occurrence of the incident which erupted outside the Sunil Kirana Store. The accused Birmaram and Madanlal were not named in the FIR. The omission of their names goes to the root of the matter and it is manifest that the prosecution witnesses have deliberately introduced their names as assailants at a later point of time for oblique motive. The testimony of the witnesses to this extent is fit to be discarded.

29. As per the statements of witnesses Rawalram (PW.5) and Virendra (PW.4), who in our opinion are the only material witnesses of the two incidents, it is evident that the accused, other than Madharam, Jetharam and Tarachand came to the spot from different directions on hearing the hue and cry which was raised after the incident outside the Sunil Kirana Store started. None of the witnesses alleged that the two accused namely Pannaram and Sumer were armed with any particular weapon. The incident involving the assault made on Kishnaram and Virendra in the Meera Nagar lane was a spill over of the initial

incident outside the Sunil Kirana Store, the origin whereof is under a grave cloud of doubt. Admittedly, the parties were fighting with each other outside the Sunil Kirana Store and this fact is fortified when we consider that a number of accused persons sustained injuries in this very incident and were admitted for treatment to the M.D.M. Hospital alongside the members of the complainant party.

30. Thus, we have no hesitation in holding that the ingredients required to constitute an unlawful assembly are totally lacking in this case and hence, the implication of accused persons by virtue of Section 149 IPC is unwarranted and unsustainable. The altercation started outside the Sunil Kirana Store where both the sides started fighting with each other. During the melee, the deceased Kishan and the injured Virendra ran towards the Meera Nagar lane. It is alleged that the accused also followed and there, the fight continued. Therefore, the incident has all trappings of a free-fight between the two parties without there being any motive for the accused to launch an assault with the intention to commit murder of any person from the complainant party. As per the admitted prosecution case, assault was initiated by the accused persons on Rawalram (PW.5) and Kishan (the deceased) and Virendra (PW.4) came to the spot subsequently as interveners. Once the interveners arrived at the spot, the parties ran towards the Meera Nagar lane and the fight continued there. Manifestly, thus, only Virendra (PW.4) could have witnessed the incident, wherein Kishanaram was beaten up because Virendra (PW.4) also sustained injuries in the same process.

31. As per the pertinent allegation of Virendra, injuries were inflicted to Kishanaram with iron rods and bars by Madhuram and Jetharam. Tarachand allegedly inflicted blows with iron pipe to Virendra, who in his testimony did not utter a single word that anyone other than these three accused persons were present at the spot where Kishanaram was assaulted. Hence, the involvement of the accused Tarachand, Pannaram, Sumer, Birmaram and Madanlal in this case by invoking Section 149 IPC is totally unjustified. The incident which took place in the Meera Nagar lane was nothing but a free-fight which spilled over after the initial brawl at the Sunil Kirana Store. In this second part of incident at the Meera Nagar Lane, Madhuram and Jetharam inflicted iron rod and bar blows on the head of Kishanaram which proved fatal.

32. The contention of Shri Jain, learned counsel representing the appellants, that the accused Madhuram and Jetharam did not have the intention to cause death of Kishanaram because they were interveners and thus, the offence should be toned down from one under Section 302 IPC to one under Section 304 Part-I IPC, is not tenable when we see the plain language of Clauses 2nd and 3rd of Section 300 IPC which stipulates:-

300. Murder.—*Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—*
2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

33. In the face of the evidence of the witness Virendra (PW.4), the medical jurist Dr. Jagdish Jugtawat (PW.16) and the number and nature of injuries caused to the deceased Kishanaram, we are of the firm opinion none of the exceptions provided under Section 300 IPC are applicable to the facts of the present case. For reaching to this conclusion, we are persuaded to reiterate that when the medical jurist Dr. Jagdish Jugtawat (PW.16) conducted autopsy of the dead body of Kishan, he noticed existence of three grave head injuries all of which resulted in fractures of different skull bones causing extensive brain damage leading to the death of Kishanaram.

34. So far as the judgments cited by Shri Jain, are concerned, we are of the view that the facts of those cases are totally distinguishable from the facts of case at hand. As the accused Madhuram and Jetharam inflicted repeated blows of dangerous weapons like iron rods and bars on the vital body part i.e, head of the victim, it can definitely be concluded that the acts were done with the intention of causing death as well as with the intention of causing bodily injuries which were sufficient in the ordinary course

of nature to cause death. Thus, the case of the accused Madhuram and Jetharam is covered by clauses firstly and thirdly of Section 300 IPC and does not fall within any of the exceptions to Section 300 IPC. Hence, so far as the accused Madhuram and Jetharam are concerned, their conviction as recorded by the trial court for the offence punishable under Section 302 IPC is absolutely justified and need not be toned down.

35. So far as the injuries sustained by the accused persons in this incident are concerned, we find that the same were absolutely trivial and superficial in nature. Looking to the manner in which the incident took place, where both the parties were fighting with each other, it was a foregone conclusion that injuries would be suffered by both the sides. Thus, even if the prosecution witnesses did not offer any explanation for the injuries of the accused, the circumstances in which the incident took place are self explanatory for the injuries of the accused.

36. The assault on Kishanaram was a spill over of the initial incident wherein, Malaram (PW.6) and Rawalram (PW.5) were assaulted at the Sunil Kirana Store. In the said incident, the allegation of inflicting simple and grievous injuries to Malaram and simple injuries to Rawalram is against Madhuram, Jetharam and Tarachand. Two injuries of Malaram were found to be grievous and the injuries of Rawalram were found to be simple in nature after medical examination and thus, the accused Madhuram, Jetharam and Tarachand deserve to be convicted for the offences under Section 323 read with Section 34 IPC and Section 325 read with

Section 34 IPC. While inflicting injuries to Kishanaram in the Meera Nagar lane, the accused Madhuram and Jetharam definitely had the common intention to commit offence and thus, their conviction has to be recorded for the offence under Section 302 read with Section 34 of the IPC. As a consequence, the impugned judgment dated 07.08.2018 passed by the learned Additional District & Sessions Judge No.3, Jodhpur Metro is modified in the following terms:-

1. Conviction of the appellants Sumer, Pannaram, Tarachand, Birmaram, and Madanlal for the offences punishable under Sections 148, 323/149, 325/149 and 302/149 is quashed and set aside.

2. For inflicting simple injuries to Rawalram and for inflicting simple/grievous injuries to Malaram, the accused Madhuram, Jetharam and Tarachand are convicted and sentenced as below:-

Offences	Sentences	Fine	Fine Default sentences
Sec. 323/34 IPC	3 Months' S.I.	Rs.5,000/-	1 Month's S.I.
Sec. 325/34 IPC	6 Months' S.I.	Rs.5,000/-	1 Month's S.I.

3. The conviction of the appellants Madhuram and Jetharam as recorded by the trial court for the offence under Section 148 is also quashed. For inflicting simple injuries to Virendra @ Bablu and for the murder of Kishanaram, the accused Madhuram and Jetharam are convicted and sentenced as below:-

Offences	Sentences	Fine	Fine Default sentences
Sec.323/34 IPC	3 Months' S.I.	Rs.5000/-	1 month's S.I.
Sec.302/34 IPC	Life Imprisonment	Rs.20,000/-	6 Months' SI

The accused-appellants Sumer, Pannaram, Birmaram, Madanlal and Tarachand are on bail. On going through the record, it becomes clear that the accused Tarachand has remained in custody for nearly 11 months and 17 days during trial and during pendency of the instant appeal. Thus, the bail bonds of these accused appellants are discharged. They need not surrender. The appellants Madhuram and Jetharam are in jail. They shall serve out the remainder of the sentences awarded to them.

The appeals are allowed/partly allowed in these terms.

37. However, keeping in view the provisions of Section 437-A Cr.P.C., the appellants Sumer, Pannaram, Birmaram, Madanlal and Tarachand are directed to furnish a personal bond in the sum of Rs.40,000/- each and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of a Special Leave Petition against the judgment on receipt of notice thereof, the appellants shall appear before the Supreme Court.

38. Record be returned to the trial court. A copy of this order be placed in each file.

(RAMESHWAR VYAS),J

Sudhir Asopa/-

(SANDEEP MEHTA),J