

CRA-D-848-DB-2004 (O&M)
CRA-D-880-DB-2004 (O&M) and
CRR-608-2005 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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2026:PHHC:115731-DB



CRA-D-848-DB-2004 (O&M)
CRA-D-880-DB-2004 (O&M) and
CRR-608-2005 (O&M)

Reserved on: 17.07.2026.
Pronounced on: 20.08.2026.
Uploaded on: 20.08.2026.

Whether only operative part of the judgment is pronounced or the full judgment is pronounced.	Operative part/full judgment
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(1)

CRA-D-848-DB-2004 (O&M)

Krishan

...Appellant(s)

VERSUS

State of Haryana

...Respondent(s)

CRA-D-848-DB-2004 (O&M)
CRA-D-880-DB-2004 (O&M) and
CRR-608-2005 (O&M)

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(2)

CRA-D-880-DB-2004 (O&M)

Rajbir Singh and others

...Appellant(s)

VERSUS

State of Haryana

...Respondent(s)

(3)

CRR-608-2005 (O&M)

Bhoop Singh

...Petitioner(s)

VERSUS

Rajbir Singh and others

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MS. JUSTICE SUKHVINDER KAUR

Present :- Mr. Akashdeep Singh, Advocate
for the appellant(s) in CRA-D-848-DB-2004.

Mr. R.S. Cheema, Senior Advocate with
Ms. Sumanjeet Kaur, Advocate;
Mr. Satish Sharma, Advocate;
Mr. Prince Bharol, Advocate;
for the appellant(s) No. 1, 2, 4 and 5
in CRA-D-880-DB-2004.

Mr. Ankur Goyat, Advocate
for the petitioner in CRR-608-2005 and
for complainant in CRA-D-848-DB-2004 and
CRA-D-880-DB-2004.

Mr. Nayandeep Rana, Amicus Curiae
for appellant No.3 in CRA-D-880-DB-2004 and
for respondent No.5 in CRR-608-2005.

Mr. Dhruv Dayal, Addl. AG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

1. CRA-D-848-DB-2004 titled as 'Krishan Vs. State of Haryana';
CRA-D-880-DB-2004 titled as 'Rajbir Singh and others Vs. State of Haryana'
as well as CRR-608-2005 titled as 'Bhoop Singh Vs. Rajbir Singh and others',
all arise from the judgment of conviction dated 11.10.2004 and order of
sentence of even date in Sessions Case No.22 dated 09.04.2004, in case FIR
bearing No.11 dated 11.01.2004, under Section(s) 148, 149, 302 and 323 of
the Indian Penal Code, 1860, (for short 'IPC'), registered at Police Station
Meham, rendered by the Additional Sessions Judge, Rohtak. Hence, they are
being decided by this common judgment.

2. CRA-D-848-DB-2004 has been filed by Krishan, who was found
innocent during investigation but was subsequently summoned under Section
319 Cr.P.C. and convicted. CRA-D-880-DB-2004 has been filed by Rajbir
Singh and other convicted accused assailing their conviction and sentence.
CRR-608-2005 has been filed by the complainant - Bhoop Singh against the
acquittal of two accused viz. Ajmer Singh son of Balwan Singh and Suresh
son of Gugan, against whom allegations of having inflicted injuries upon the

deceased, Dharam Pal, were levelled.

FACTS

3. Briefly, the case of the prosecution is that on the intervening night of 10/11.01.2004, a telephonic message was received from Police Post, PGIMS, Rohtak, informing that Bhoop Singh (PW-4), Ashok (PW-5) and Mangal Singh (PW-10) had been admitted to the hospital with injuries and that the dead body of their father, Dharam Pal, had also been brought to the hospital. On receipt of the said information, ASI Maha Singh (PW-12), Incharge, Police Post Lakhan Majra reached the Hospital and collected medical ruqa (Ex.PD) forwarded by the attending Doctor, at 12.30 a.m. and received at Police Post, PGIMS Rohtak at 12.50 a.m. He also obtained copies of the medico-legal reports (Ex. PA to Ex. PC) pertaining to the injuries sustained by the aforesaid injured persons. Thereafter, ASI Maha Singh met Bhoop Singh (PW-4) in the emergency ward and recorded his statement (Ex. PE). Bhoop Singh stated that he has four brothers, namely, Ashok, Mangal, Jasbir and Ranbir. Jasbir Singh was running a grocery shop in the village. On 10.01.2004, at about 6:00 p.m., Jasbir Singh was returning home from his shop carrying grocery articles when he encountered Surinder son of Balwan. An altercation ensued between them but they were separated by Ashok (PW-5).

4. The complainant alleged that harbouring resentment over the aforesaid incident, at about 10:30 p.m. on the same day, Surinder and the other accused, sharing a common object, formed an unlawful assembly and came in front of the complainant's house. They started hurling filthy abuses and

challenged the complainant and his family members to come out if they had the courage to face them. Hearing the noise, Dharam Pal, the seventy-year-old father of the complainant, came out of the house and requested the accused not to use abusive language and to behave. An electric bulb installed outside the house illuminated the place of occurrence. On hearing the noise, Bhoop Singh, along with his brothers Ashok and Mangal, also came out of the house. They saw Rajbir, Ajmer, Krishan and Surinder, all sons of Balwan, armed with a *mussal* (pestle), *jaili*, *jaili* and *lathi*, respectively. Suresh alias Mala son of Gugan was armed with a *jaili*; Karan son of Bajje and Dilbagh alias Bedar son of Pale Ram were carrying a *lathi* and a *jaili* respectively; while Krishan son of Randhir was armed with a *gandasi*. It was further alleged that all the accused were exhorting one another to take revenge and to eliminate the complainant's family. Consequent to the aforesaid exhortation, Rajbir inflicted a mussal blow on the head of Dharam Pal. Ajmer dealt a jaili blow on the left arm of Dharam Pal, while Suresh alias Mala inflicted a jaili blow on the fingers of his left hand. Krishan caused a jaili blow on the left hand of Bhoop Singh whereas Rajbir struck him with a mussal near his left elbow. When Ashok and Mangal intervened to rescue their father and brother, they too were assaulted and sustained injuries at the hands of the accused. On alarm being raised, Jugti son of Matu Ram and Vinod son of Chander, reached at the spot and intervened. The accused fled from the spot. Dharam Pal, having sustained grievous injuries, fell on the ground. Thereafter, the injured were transported to PGIMS, Rohtak where Dharam Pal was declared brought dead.

5. The medico-legal examination of the complainant as well as the other injured was carried out. The prosecution alleged that Dharam Pal succumbed to the injuries inflicted upon him by the accused during the occurrence. An FIR (Ex. PF) was accordingly registered on 11.01.2004 at 9.10 A.M. for offense under Sections 148, 149, 302, 323 of the Indian Penal Code, 1860 at Police Station Meham. After the registration of the FIR, ASI Maha Singh reached the mortuary at PGIMS Rohtak and conducted the inquest proceedings and prepared the inquest report (Ex. PM/3). Thereafter, the dead body of Dharam Pal was sent for post-mortem examination, which was conducted by Dr. Giri Raj (PW-11). In the post-mortem report (Ex. PN/1), the attending Doctor noted the following injuries on the person of the deceased: -

- “1. A lacerated wound 6 x 1 cm on posterior part of left parietal region, horizontally placed, 7cm left to midline and 10 cm from left pinna, underlying skull bone was seen. Ecchymosis was present. On further dissection, ecchymosis was also seen on left temporal region, fracture of left temporal bone was present and it was extending backwards up to posterior part of left parietal bone, upto junction of occipital bone. Underlying brain haemorrhage present, brain haemorrhage also present at the opposite side.*
- 2. Abrased contusion 3x2cm. Present on the upper part of right forehead, underlying ecchymosis present.*
- 3. Abrasion 3x2cm. On left face below eye, with ecchymosis*
- 4. Abrasion 3x0.5cm. On right mid shin, with ecchymosis.*
- 5. Abrasion 1x1cm. On anterior aspect of left knee with ecchymosis.”*

6. In the opinion of the Doctor, the cause of death was injuries to the vital organ i.e. the brain, which were sufficient in the ordinary course of nature to cause death. The injuries were further opined to be ante-mortem in nature. After the post-mortem examination, the Doctor handed over to the Police a sealed parcel containing clothes (Ex. P13 to Ex. P15) of the deceased, which was taken into possession by the Police vide recovery memo (Ex. PR) attested by HC Satbir Singh.

7. Dr. Asha Sehrawat, PW-1, had medico-legally examined the injured Bhoop, Ashok and Mangal at about 11.35 p.m. on 10.01.2004 and noted the following two injuries on the person of Bhoop (PW-4):

*“i) There was tenderness and swelling on his left forearm.
Advised X-ray and Ortho Surgeon opinion*

*ii) There was abrasion of 0.5cm on dorsal aspect of left
palm, at the base of little finger.*

*Injury no.1 was kept under observation and injury no.2
was declared simple in nature Both the injuries were caused by
blunt weapon.”*

8. In MLR (Ex.PB), Doctor noted the following injuries on the person of Ashok (PW-5):-

*“i) There was abrasion of 0.5cm on dorsal aspect of middle
finger with fresh bleeding. X-ray was advised*

*ii) There was lacerated wound of 1x0.5cm on dorsal aspect
of little finger X-ray was advised.*

*iii) Tenderness was present on left hand, with swelling X-ray
and Ortho Surgeon opinion were advised.*

9. In MLR (Ex. PC), Doctor noted the following injuries on the person of Mangal (PW-10):

“i) Lacerated wound of size 1x0.5cm linear on forehead left side with fresh bleeding on the wound. Surgeon opinion was advised,

ii) Tenderness and swelling was present on left forearm with restricted movements. X-ray left fore-arm was advised.

iii) Tenderness on palpation of left leg. X-ray was advised.

All the injuries were caused by blunt weapon and were kept under observation.”

10. ASI Maha Singh (PW-12) also inspected the place of occurrence. He got the scene of crime photographed by the official photographer Surinder Singh (PW-9), prepared the rough site plan (Ex. PQ) and also collected blood-stained earth from the place of occurrence. The blood-stained earth was sealed into a parcel and taken into possession vide recovery memo (Ex. PH), attested by Ashok (PW-5) and Mangal Singh (PW-10). Further investigation was taken over by Inspector (SHO) Inder Singh (PW-13).

11. On 16.01.2004, accused Surinder, Krishan, Karan and Dilbagh were produced before the Investigating Officer Inspector Inder Singh (PW-13), by one Gugan Singh, whereupon they were arrested. Following their arrest, Surinder produced a *lathi* (Ex. P16), Krishan produced a *jaili* (Ex. P17), Karan produced a *lathi* (Ex. P18) and Dilbagh produced a *jaili* (Ex. P19). The aforesaid weapons were taken into police possession vide recovery memo (Ex.

PS), after preparation of their respective sketches (Ex. PS/1 to Ex. PS/4). The recovery memo was attested by Jasbir and ASI Maha Singh (PW-12).

12. On the following day i.e. 17.01.2004, accused-appellant/ Ajmer, Rajbir and Suresh were also produced by said Gugan Singh and they were also formally arrested. Pursuant to their respective disclosure statements (Ex. PT, Ex. PU and Ex. PV), Ajmer got recovered a *jaili* (Ex. P20), Rajbir a *mussal* (Ex. P21) and Suresh a *jaili* (Ex. P22) from their respective residences. The aforesaid recoveries were effected vide recovery memos Ex. PT/1, Ex. PU/1 and Ex. PV/1, respectively. The Investigating Officer also prepared site plans of the respective places of recovery, marked as Ex. PT/2, Ex. PU/2 and Ex. PV/2, along with rough sketches of the recovered weapons, marked as Ex. PT/3, Ex. PU/3 and Ex. PV/3. All the aforesaid recoveries were attested by Wazir Singh son of Shri Mauji Ram (who was not examined during trial) and ASI Om Parkash (PW-14). Thereafter, the sealed parcels containing the recovered weapons were deposited with MHC Ram Bhagat (PW-6).

13. The recovered weapons of offence, the clothes of the deceased seized during the investigation and the blood-stained earth lifted from the place of occurrence were thereafter forwarded to the Forensic Science Laboratory, Madhuban, through Constable Sukhbir (PW-7) for forensic examination. As per the report of the Serologist, no blood was detected on the *jaili* (Ex. P20) recovered at the instance of accused Ajmer. Human blood, however, was detected on the three articles of clothing belonging to the deceased. Insofar as the remaining exhibits were concerned, the report records

that the origin of the blood stains could not be determined as the biological material had disintegrated.

14. After completion of investigation, the Police submitted its final report against all the nominated accused except Krishan son of Randhir, who was found innocent.

15. Finding that the offences alleged were exclusively triable by the Court of Sessions, the Illaqa Magistrate committed the case for trial in accordance with law. Charges were initially framed against all the accused, except Krishan son of Randhir. After examination-in-chief of Ashok (PW-5), one of the injured witnesses, the prosecution moved an application under Section 319 of the Code of Criminal Procedure, 1973, seeking summoning of Krishan son of Randhir, as an additional accused. The said application was allowed by the trial Court vide order dated 07.05.2004 and Krishan was summoned to face trial along with the other accused. Thereafter, charges under Sections 323, 302 and 148, each read with Section 149 of the Indian Penal Code, 1860, were framed against all the accused, including the summoned additional accused, Krishan son of Randhir to which they pleaded not guilty and claimed trial.

16. To prove the charges, prosecution examined the following witnesses: -

S. No.	Name	Description
PW-1	Dr. Asha Sehrawat	Medical Witness
PW-2	ASI Bhup Singh	Police Witness

PW-3	Constable Sumit Kumar	Official Draftsman
PW-4	Bhup Singh.	Injured Complainant
PW-5	Ashok	Injured Witness
PW-6	ASI Ram Bhagat	Police Witness
PW-7	HC Satbir Singh	Police Witness
PW-8	Constable Karam Singh	Police Witness
PW-9	Surinder Singh	Police Photographer
PW-10	Mangal Singh	Injured Witness
PW-11	Dr. Giri Raj	Medical Expert (Post mortem)
PW-12	ASI Maha Singh	Investigating Officer
PW-13	Inspector SHO Inder Singh	Investigating Officer
PW-14	ASI Om Parkash	Police Witness

Thereafter, the prosecution gave up Jugti, Rambir, Vinod, Silak Ram and HC Satbir Singh as unnecessary witnesses, whereupon the prosecution evidence was closed.

17. Upon conclusion of the prosecution evidence, the statements of all the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973. The incriminating circumstances appearing against them in the prosecution evidence were put to them, which they denied, while asserting

their innocence and alleging false implication.

18. Accused Rajbir, in addition to denying the prosecution case, set up a specific plea of alibi and stated that at the relevant time he was serving as a Security Guard in the Ministry of Home Affairs, New Delhi and on the date of the occurrence, he remained on duty from 1:00 p.m. to 7:00 p.m. at Lok Nayak Bhawan, New Delhi and had thereafter returned to his Government-allotted accommodation at Mandir Marg, New Delhi. He further stated that Constable Naseeb Singh (DW-3), who was posted in the same department, was residing with him in the said quarter. It was his case that he reached the quarter at about 9:00 p.m., had his dinner at around 10:00 p.m., retired for the night and reported for duty on the following day. He thus asserted that he was not present at the place of occurrence and had been falsely implicated in the present case.

19. Accused Surinder, in his statement under Section 313 Cr.P.C. set up a defence to the effect that on 10.01.2004 at about 7:00 p.m., near Bari Chopal, he found Bhoop Singh in an intoxicated condition accompanied by his brother Mangal Singh. He stated to have taunted them and advised Mangal Singh to take Bhoop Singh back home which offended Mangal Singh, who then called his brother Ashok who was armed with a *lathi*. He alleged that Ashok inflicted a *lathi* blow on his head, Jasbir dealt a *lathi* blow on his left elbow and Mangal Singh caused a *lathi* blow on his left knee. Surinder further stated that upon his raising an alarm, Karan Singh son of Bajje Singh and Dilbagh son of Pale Ram reached the spot and rescued him. It was his case

that any injuries caused by him to Dharam Pal or the other members of the complainant party were inflicted in the exercise of his right of private defence. He further asserted that he had promptly reported the incident at Police Post Lakhan Majra, whereupon a Daily Diary Report (Ex. DC) was recorded and his medico-legal examination was conducted. According to Surinder, after the death of Dharam Pal, the complainant party, in connivance with the police, fabricated a false version of the occurrence and falsely implicated all the accused persons. He further asserted that Rajbir was not present at the place of occurrence and was, at the relevant time, at his place of posting in New Delhi.

20. Accused Krishan son of Randhir, denied the prosecution allegations in entirety and pleaded false implication. He stated that during investigation, he had been found innocent and consequently was not sent up for trial. However, he was subsequently summoned to face trial without any justifiable basis.

21. The remaining accused also denied the prosecution case and asserted that it was Surinder who had been assaulted by the complainant party. They alleged that despite the injuries sustained by Surinder, no action was taken against the members of the complainant side. It was further their case that they had been falsely implicated in the present case and that the recoveries of weapons at their instance had been planted by the investigating agency. They also claimed that they had been illegally detained at the police station much prior to the date shown by the prosecution as the date of their formal

arrest.

22. In support of their defence, the accused examined five witnesses, namely, Suresh Kumar (DW-1), Laxman Manjhi, Commandant of Platoon No. 17 (DW-2), Constable Naseeb Singh (DW-3), Om Parkash, Sub-Inspector, Food and Supplies Department (DW-4), and Dr. Sharanjit Singh (DW-5).

23. On consideration of the evidence as well as the respective arguments of the respective parties, the trial Court vide its judgment dated 11.10.2004 concluded that the prosecution had succeeded in establishing its case beyond reasonable doubt against all the accused except Ajmer, son of Balwan Singh, and Suresh alias Mala son of Gugan. Consequently, while the remaining accused were convicted for the offences for which they had been charged, Ajmer and Suresh alias Mala were acquitted of all the charges. Aggrieved by the judgment of conviction and the order of sentence, Krishan has preferred CRA-D-848-DB-2004, whereas Rajbir Singh and the other convicted accused have instituted CRA-D-880-DB-2004. The complainant, Bhoop Singh, being dissatisfied with the acquittal of Ajmer and Suresh alias Mala, has filed CRR-608-2005 challenging the said acquittal.

ARGUMENTS BY THE APPELLANT(S) IN CRA-D-848-DB-2004 AND CRA-D-880-DB-2004

24. Learned Senior Counsel for the appellant(s) contends that the trial Court committed an error in appreciating the facts and circumstances of the present case and the evidence adduced before it by the respective parties.

It is submitted that the conclusions drawn by the trial Court are based on conjectures, surmises and preponderance of probabilities. He contends that the obligation cast upon the prosecution is to establish its case beyond reasonable doubt, however, the trial Court recorded the conviction on the basis of assumption, rather than on an objective evaluation of the evidence on record. It is contended that the impugned judgment is, therefore, contrary to the settled principles of criminal jurisprudence and is liable to be set aside.

25. Learned Senior Counsel has primarily raised the argument that the entire case of the prosecution rests upon the allegation that the fatal injury to the deceased, Dharam Pal, was inflicted by Rajbir by using a *mussal* (pestle) on the head. It is submitted that accused-appellant/Rajbir was undisputedly serving as a security guard in the Secretariat Security Force under the Ministry of Home Affairs and at the relevant time, he was on duty at Lok Nayak Bhawan, Delhi. The duty roster of the concerned date was proved on record by appellant-accused/Rajbir and in support of the plea of alibi, his Supervisor as well as Commandant stepped into the witness box and deposed that Rajbir was on Sentry duty at Lok Nayak Bhawan, Delhi from 1.00 p.m. to 7.00 p.m on the date of occurrence. It is further contended that after completing his duty at 7:00 p.m., Rajbir returned to his Government-allotted residential quarter at Mandir Marg, New Delhi, where he resided with Constable Naseeb Singh and after taking dinner at about 9.30 P.M, he had gone to sleep and reported for duty on the following day. It is contended that the trial Court specifically admitted the plea of *alibi* to the extent of Rajbir's presence at his place of duty till 7:00 p.m., however, the trial Court committed a manifest error in failing

to examine whether the prosecution version regarding Rajbir's presence at the place of occurrence at about 10:30 p.m. was either probable or physically possible. In this regard, it is submitted that as per the testimony of DW-3 the distance between Delhi and village Kharanti, the place of occurrence, is approximately 120 km. Counsel submits that having regard to the prevailing traffic conditions in Delhi and the congested route required to be traversed, the journey would ordinarily consume more than 3 ½ hours thus, rendering the prosecution version inherently improbable.

26. It is further argued that the prosecution has also failed to establish or satisfactorily explain the following: -

- i. As to what was the mode and manner by which appellant-accused/Rajbir had been informed about the scuffle that took place in their village thus prompting him to leave Delhi immediately and to come to his village Kharanti;
- ii. There is neither any evidence on record nor any explanation as to the mode of transport used by Rajbir for travelling from Delhi to reach the place of occurrence; and
- iii. It remains undisputed that Rajbir reported for duty on the day immediately succeeding the incident and his absence from duty was recorded for the first time only on 13.01.2004. Since Rajbir was on duty on 10.01.2004, the prosecution has offered no explanation as to how he reached back to Delhi after having participated in alleged incident that took place around

10:30/11:00 P.M.

It is submitted that in view of above unanswered issues, presence of Rajbir at the place of occurrence is doubtful and inherently improbable.

27. Learned Senior Counsel contends that attribution of the fatal blow to appellant Rajbir is actuated by malice and has been a deliberated attempt to implicate the earning person in the family, employed in Government and who would have the means to effectively defend himself and support the litigation on behalf of the other accused. He contends that having accepted the defence evidence and alibi establishing Rajbir's presence on official duty at Lok Nayak Bhawan, New Delhi, until 7:00 p.m. on the date of the occurrence, the trial Court gravely erred in proceeding on mere conjectures and in presuming that he travelled back and forth from New Delhi to the place of occurrence during the night and participated in the assault.

28. Counsel submits that the prosecution has deliberately suppressed and distorted the true genesis of the occurrence and the actual sequence of events to carry out deliberations and to attribute injuries to each of them. It is submitted that the injury attribution contained in the FIR (Ex. PF) co-relates with the inquest proceedings and as noticed by the Investigating Officer at the time of preparing the inquest report. It is contended that the exuberance of the prosecution in attributing specific injuries to each accused herein is corroborated from detailed specific attribution with specific roles assigned to each accused, notwithstanding that such injuries were actually not present on the deceased as per the post-mortem report. Counsel thus submits that the

ocular understanding of the Investigating Officer Maha Singh, at the time of preparation of the inquest report, has translated into a tailored attribution of injuries by the prosecution witnesses.

29. He submits that three injuries were attributed by PW-4/Bhoop on the person of the deceased/Dharam Pal, of which the fatal blow with the mussal/pestle has been attributed to Rajbir, while the other two injuries have been attributed to Ajmer and Suresh. He draws the attention of this Court to the statement of the complainant as well as the inquest report Ex. PM/3 and juxtaposes the injuries recorded therein with the injuries as recorded in the post-mortem report of the deceased and contends that non corroboration of the injuries mentioned in the inquest report from the post-mortem report renders the prosecution version regarding the attribution of injuries doubtful. It is further argued that, with a view to falsely implicate the accused, the Investigating Officer not only arrested Ajmer and Suresh, the two accused to whom the aforesaid injuries had been attributed, but also effected recoveries of *jailies*, *allegedly* used in causing those injuries, at their respective disclosure.

30. He contends that even otherwise, the injuries found on the injured witnesses were mostly superficial in nature and were incapable of being caused by the weapons recovered from accused. He further points out that the post-mortem report of the deceased reveals that Injury No. 1 comprised a lacerated wound measuring 6 cm × 1 cm on the posterior aspect of the left parietal region, placed horizontally, 7 cm to the left of the midline and 10 cm above the left pinna, whereas the remaining injuries were merely contusions

and abrasions (ecchymoses). It is further pointed out that the attending Doctor, who conducted the post - mortem examination, specifically acknowledged that injuries Nos. 2 to 5 could have been suffered by the deceased on account of a fall after receipt of injury No.1 if he had fallen face downwards. It is contended that since none of the aforesaid injuries could reasonably be caused by a *jaili*, as alleged by the prosecution, it clearly demonstrates that the prosecution has indulged in over-implication and false attribution of injuries to the accused. It was in such circumstances that the benefit has been extended to Ajmer and Suresh and they were acquitted of the charges framed against them.

31. He further argues that undisputedly an incident/scuffle had taken place between accused/Surinder son of Balwan and Jasbir Singh. The scuffle escalated resulting in Surinder exercising his right of private defence and inflicting the injury which ultimately proved fatal to Dharam Pal. It is submitted that the defence version was never fairly verified or investigated into. Rather, the Investigating Officer made a deliberate attempt to suppress the defence version despite that DDR No. 17 having already been recorded at Police Post Lakhan Majra at about 2:05 a.m. on 11.01.2004 wherein Surinder specifically reported of the scuffle that had taken place at about 7:00 p.m. and submitted that injuries had been caused by him to members of the complainant party, including Dharam Pal. It is further contended that notwithstanding that the prosecution acknowledged that an altercation had earlier taken place between Surinder and Jasbir Singh, yet, Jasbir Singh, who was the principal participant in the incident and the most material witness to

explain the genesis of the occurrence and the circumstances leading to the subsequent confrontation, was withheld and was not examined during trial.

32. He further submits that when the Investigating Officer, ASI Maha Singh, appeared as PW-12, he initially denied not only his presence at the police station but also the recording of DDR No. 17 at the instance of Surinder. However, upon being confronted with DDR No. 17 as well as the *Roznamcha* entries, which reflected his presence at the police station at the relevant time, he was constrained to admit both his presence as well as the factum of recording of the said DDR. He further contends that immediately after the recording of DDR No. 17 at about 2:05 a.m. on 11.01.2004, Surinder was taken for medico-legal examination, which was conducted at 3:30 a.m. on the same day. Counsel argues that in this backdrop, the case of the prosecution becomes suspect, since the prosecution itself alleges that the occurrence took place at about 10:30 p.m. on 10.01.2004 and that the injured were thereafter shifted to PGIMS, Rohtak. The medico-legal examination of the injured witnesses commenced at about 11:45 p.m., following which the attending doctor forwarded the medical *ruqa* at 12:30 a.m., which was received at the Police Post, PGIMS, Rohtak, at 12:50 a.m. However, it was pointed out that the inquest report records the receipt of information by the police only at about 6:00 a.m. on 11.01.2004. It is submitted that the prosecution has failed to furnish any satisfactory explanation for the delay in setting the criminal law into motion, especially when the concerned Police Post Lakhan Majra was situated at a distance of merely about 2½ kilometres from the place of occurrence.

33. He further submits that even though medico-legal examination of PW-4/Bhoop, PW-5/Ashok and PW-10/Mangal had been conducted and the attending doctor had also forwarded the medical *ruqa*, however, the said *ruqa* makes no reference of the deceased, Dharam Pal. The post-mortem report rather records that Dharam Pal had been brought dead to PGIMS, Rohtak, at about 12:30 a.m. Such omission renders the case of prosecution suspect. It is further argued that in his statement (Ex. PE), PW-4 Bhoop Singh stated that upon reaching PGIMS, Rohtak, and after undergoing medico-legal examination, he and his brothers went to the residence of their relatives at Rohtak and stayed there overnight and they returned to the hospital only on the following morning, when they informed the police about the occurrence that had taken place during the previous night. Learned Senior Counsel argues that the conduct is unnatural and it is inconceivable that the sons of a person, who had succumbed to homicidal injuries, would choose to spend the night at a relative's residence instead of immediately reporting the matter to the police and pursuing the investigation.

34. He contends that the prosecution subsequently attempted to improve its version during trial by asserting that after the medical *ruqa* had been sent, the complainant party had been informed that the police would arrive at the hospital to record their statements, hence, they waited there. According to the revised version, when no police official arrived, they went to Police Post Lakhan Majra, where they were informed that the police had already left for PGIMS, Rohtak. They then returned to the hospital, where their statement was ultimately recorded. Learned Senior counsel contended

that the aforesaid explanation is but an afterthought devised by the investigating agency to cover up the delay in recording the statement of the complainant.

35. It is further submitted that the trial Court condoned the delay of nearly 9½ hours in reporting the incident to the Police by recording that since the occurrence had taken place on a winter night, the police officials did not consider it necessary to proceed immediately to PGIMS, Rohtak, for recording the statements as no significant development was expected to occur during the intervening night. He contends that such a conclusion is misplaced. The prosecution has even failed to establish the time at which the VT/ruqa was forwarded from the Police Post, PGIMS Rohtak to the Police Post, Lakhan Majra. He contends that the prosecution case itself is that the police received information through a telephonic message only at about 6:00 a.m. on 11.01.2004. It is submitted that the explanation offered and the conclusion so drawn by the trial Court fail to inspire confidence since the Police was demonstrably active throughout the night and the accused/Surinder was got medico-legally examined at 3:00 A.M. There was thus no occasion for them not to have immediately proceeded to PGIMS, Rohtak, to record the statements of the complainant party and commence the investigation without delay, if any such matter would have been reported.

36. Counsel further contends that the case of the prosecution heavily relies upon the testimonies of the three injured eye-witnesses, namely, PW-4 Bhoop Singh, PW-5 Ashok and PW-10 Mangal Singh. He submits that a careful scrutiny of the medico-legal evidence demonstrates that the injuries

sustained by these witnesses are largely in the nature of abrasions and tenderness. They do not support the prosecution's version regarding the injuries to have been caused by the weapons wielded by the accused. Inviting the attention of the Court to the medico-legal report of PW-4 Bhoop Singh, learned senior counsel submitted that only two injuries were found on his person. Injury No. 1, described as tenderness and swelling over the left forearm without any measurable dimensions, was opined by Dr. Asha Sehrawat (PW-1) to be simple in nature. It was pointed out that this injury had been attributed by the prosecution to Ajmer, who has since been acquitted by the trial court. Injury No. 2 was described as an abrasion measuring 0.5 cm on the dorsal aspect of the left palm, which the prosecution attributed to Krishan son of Balwan, allegedly caused by a *jaili*. He contends that, as per the opinion of the Doctor, the aforesaid abrasion was merely superficial in nature and could not reasonably have been caused by a weapon such as a *jaili*. Learned senior counsel, thus, argues that the injuries found on the person of PW-4 are more consistent with those ordinarily sustained during a scuffle, grappling or a fall, rather than with an assault by the deadly weapons attributed to the accused by the prosecution.

37. Learned Senior Counsel further submitted that the medico-legal evidence relating to PW-5 Ashok also belies the prosecution version. It was pointed out that Ashok was found to have sustained four injuries. Injury No. 1, described as an abrasion measuring 1×0.05 cm on the dorsal aspect of the right elbow, was attributed by the prosecution to Surinder, who was alleged to have inflicted the same with a *lathi*. Injury No. 2, an abrasion measuring

0.5 cm on the dorsal aspect of the middle finger, and Injury No. 3, a lacerated wound measuring 1×0.5 cm on the dorsal aspect of the little finger, were attributed to Krishan son of Randhir, allegedly caused with a *gandasi*. It was contended that the medical opinion of Dr. Asha Sehrawat (PW-1) was to the effect that Injury Nos. 1 to 3 could have been sustained as a result of a fall on a hard surface. Learned Senior Counsel argued that said opinion demolishes the prosecution case of the injuries being inflicted by way of a *lathi* and a *gandasi*. As regards Injury No. 4, described as tenderness and swelling on the left hand, it was submitted that the prosecution attributed the same to Karan Singh, allegedly caused with a *lathi*. However, the injury was not assigned any measurable dimensions nor was any opinion elicited from the doctor to establish that such an injury could have been caused by the alleged weapon. The same having not been put to the Doctor, the prosecution has failed to discharge its burden.

38. Adverting to the injuries suffered by PW-10/Mangal, learned Senior Counsel submitted that he was found to have suffered three injuries. Injury No. 1 was a lacerated wound measuring 1×0.5 cm on the left side of the forehead with fresh bleeding, whereas Injury Nos. 2 and 3 were described as tenderness and swelling on the left forearm and tenderness on palpation over the left leg, respectively. It was pointed out that Injury Nos. 2 and 3 were attributed by the prosecution to Dilbagh Singh, allegedly inflicted with a *jaili*, while Injury No. 1 was attributed to Krishan, allegedly armed with a *jaili*. He submits that according to the medical opinion, Injury Nos. 2 and 3 could have been sustained by a fall on a hard surface. It was further argued that the nature

of Injury No. 1, being a lacerated wound, is itself inconsistent with the prosecution allegation that it was caused by a *jaili* as it is a pronged implement.

39. Learned Senior Counsel contends that since the injuries sustained by the complainant party cannot be correlated to the weapons allegedly recovered at the instance of the appellants (notwithstanding that the recovery has not been proved by the prosecution), the prosecution version that the injuries were actually caused in the manner as suggested or alleged becomes wholly unreliable and the version as given by the appellants herein deserves to be taken into consideration.

40. It is vehemently contended that the version of the incident, put forth by the appellants, is the first account of the occurrence, having been recorded vide DDR No.17. In such circumstances, the Investigating Officer was under a legal obligation to fairly investigate the allegations contained therein before submitting the final report. However, instead of conducting an impartial investigation into the defence version, the Investigating Officer deliberately ignored the same and attempted to suppress it. He acknowledged its existence only when he was confronted with the relevant record during his cross-examination.

41. He contends that the defence version remained consistent that the occurrence had its genesis in a sudden quarrel between accused/Surinder and sons of Dharam Pal (since deceased) owing to a taunt made by Surinder which escalated into a physical scuffle. He contends that the evidence on record also shows that Surinder was about 19 years of age and was a wrestler by

profession and had returned from the wrestling ground shortly before the occurrence. He was physically robust and in the course of the ensuing grappling, could have caused the injuries such as tenderness, swelling and other superficial abrasion injuries noticed on the persons of the complainant witnesses, and without the use of the weapons attributed by the prosecution.

42 Counsel contends that the prosecution has also failed to offer any explanation whatsoever for the injuries found on the person of Surinder. In support of this submission, learned Senior Counsel placed reliance upon the testimony of DW-5, Dr. Sharanjit Singh. The injuries on the person of Surinder are extracted as under: -

- “1) A lacerated wound in the scalp right frontal region, 1 cm from the mid line and obliquely placed, size 2 cm x 5 cm. Clotted blood was present. No history of vomiting there. Advised x-ray of the skull and Surgeon opinion.*
- 2) A contused abrasion with swelling with deformity of the left elbow including forearm, lateral side. Advised x-ray of the part and ortho Surgeon Opinion.*
- 3) General swelling with reddish colour contusion of left shoulder joint, size 4x2.5cm on the anterio lateral aspect. Advised x-ray of the left shoulder.*
- 4) A swelling with contusion left knee joint size 5x3cm. Advised x-ray of part and ortho Surgeon opinion.”*

43. He contends that the nature, dimensions and seat of the injuries sustained by Surinder probabilise the defence plea that injuries caused by him

to the complainant party could have been inflicted in the exercise of his right of private defence.

44. He also submits that the most credible witness who could have testified about the manner in which the incident flared up was Jasbir and despite him being originally cited as a witness in the final report as well as the list of witnesses prepared by the prosecution, he was given up without any explanation. Learned Senior Counsel argued that the non-examination of such a vital witness gives rise to an adverse inference against the prosecution.

45. He further contends that the other independent witnesses to the recoveries viz. Jugti and Vinod son of Chander, as well as Wazir, have also not been examined in the present case. The trial Court recorded a specific finding that the recovery in this case was not proved. Once the recoveries are held to be doubtful, there can be no assumption that the weapons were recovered at the instance of the appellants or used in the commission of the offence. The existence of any stains or marks on the said weapons thus is inconsequential and cannot be relied upon to connect the appellants with the alleged assault. It was further submitted that the prosecution was under a legal obligation to establish not only the recovery but also the chain of custody and the preservation of the recovered articles. Mere assertion of the prosecution that the weapons were recovered at the disclosure of the appellants is unacceptable when the recoveries have neither been proved as per law nor accepted by the trial Court. The findings regarding the failure of the prosecution to prove the recoveries have remained unchallenged and have thus attained finality.

46. Learned Senior Counsel further argues that even otherwise, the prosecution case suffers from serious infirmities. He contends that the blood-stained earth was lifted from inside the house of the complainant even though it is undisputed that the occurrence did not take place inside the house but outside. The Investigating Officer failed to conduct an investigation into the defence version of the occurrence. No effort was made to verify the circumstances pleaded by the appellants regarding the genesis of the incident or the place where the initial altercation had taken place. It is, thus, contended that, in the absence of any meaningful investigation into the defence case, there was no legitimate basis for the prosecution to discard the version put forth by the appellants or to exclude the possibility that the occurrence had in fact transpired in the manner suggested by the defence.

47. It is argued with vehemence that the conduct of the Investigating Officer demonstrates a clear bias in favour of the complainant party. It is submitted that, despite admitting during his deposition that he was aware of the fact that Rajbir was employed with the Ministry of Home Affairs, was posted at New Delhi and had remained on official duty until 7:00 p.m. on 10.01.2004, the Investigating Officer made no endeavour whatsoever to independently verify whether Rajbir could have been present at the place of occurrence at the relevant time. Instead, he relied exclusively upon the statements of the prosecution witnesses, without undertaking any objective investigation into the plea of alibi. It has even come forth in the evidence that Police officials did contact Constable Naseeb Singh (DW-3), i.e. a colleague who was staying along with Rajbir at the residential quarter at Mandir Marg,

New Delhi, but even his statement was not recorded. It is argued that the trial Court also failed to appreciate the testimony of DW-3 and discarded the same solely on the ground that the residential quarter had not been jointly allotted in the names of Rajbir and Naseeb Singh. Learned Senior Counsel submitted that such reasoning is legally untenable and factually unrealistic. Merely because Naseeb Singh was not the formal allottee of the Government accommodation would not, by itself, lead to a conclusion that he was not residing there. It was argued that there is no legal impediment that only an allottee of a Government quarter can occupy it and he cannot share it with his family members, friends or colleagues temporarily. Counsel submits that the trial Court observed that as Naseeb Singh was drawing House Rent Allowance and had disclosed his residential address as Najafgarh, New Delhi, hence, he was unlikely to be residing with Rajbir. It is submitted that such an inference is based on conjecture rather than appreciating evidence. Having regard to the nature of duties performed by sentry-level personnel in the Ministry of Home Affairs, which are often at odd hours and on rotational shifts, it is neither uncommon nor improbable for colleagues to stay together in Government accommodation for reasons of convenience instead of commuting on daily basis cross the city and especially a city like Delhi.

48. Learned Senior Counsel further contends that while Jasbir, who was the actual eyewitness to the commencement of the incident, has not stepped into the witness box. It is argued that in their statements recorded by the police neither PW.4 Bhoop Singh nor PW.5 Ashok or PW.10 Mangal stated of having caused any injury to Surinder, however, in their deposition

before the Court, they made an improvement and stated that Surinder sustained injuries in the scuffle with Jasbir. PW.10 Mangal, however, stated that the scuffle did not take place in his presence and that even when the accused came to the spot and raised a lalkara, they came out empty handed and did not bring any weapons to save their father. It is contended that every prosecution witness originally denied having caused any injury to Surinder. The prosecution thus failed to explain how and under what circumstances Surinder sustained the injuries found on his person. Learned Senior Counsel submits that where the prosecution suppresses or fails to explain the injuries sustained by the accused during the same occurrence, the prosecution version requires prudent examination. In such circumstances, Surinder could reasonably have entertained a genuine apprehension to his life or personal safety he could well have inflicted in the exercise of his right of private defence.

49. Learned Senior counsel thereafter adverted to the finding(s) recorded by the trial Court on different aspects and the manner in which the same have been dealt with. While referring to the plea of alibi raised by Rajbir, learned senior counsel submits that the trial Court erroneously cast a burden of proof on him that he could not have been present at the place of occurrence under any circumstances whatsoever. It is contended that, in doing so, the trial Court virtually placed a burden equivalent to that resting upon the prosecution, namely, to establish the fact beyond reasonable doubt. Learned senior counsel argues that the plea of alibi is not a general exception under the Indian Penal Code, 1860, but is merely a rule of evidence. It is, thus, submitted

that such a plea is not required to be established beyond reasonable doubt by the accused and if, on a preponderance of probabilities emerging from the evidence on record, the accused succeeds in creating a reasonable doubt regarding his presence at the place of occurrence at the relevant time, the benefit of such doubt necessarily enures to him. In support of his aforesaid submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in the matter of '**Dharam Singh and others Vs. State of Punjab**', **reported as 1993 Supp (3) SCC 532**. The relevant extract thereof reads thus:

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“8. In any event there is one other aspect namely the alibi set up by A-1 and A-2. A-1 Dharam Singh having denied the offence and also the various circumstances put against him under Section 313 CrPC statement finally stated that he attended his office till 7.30 p.m. on December 2, 1978 at Chandigarh. In support of his alibi, he examined DWs 1, 2 and 4. DW 1 Amarjit Singh Gill, is the Executive Engineer, Punjab Irrigation Department, Central Design Office, Chandigarh. He deposed that A-1 Dharam Singh is employed as a draftsman in the Section of Design Office and headquarters being at Chandigarh A-1's office is housed in the same building where DW 1 sits. The Punjab Irrigation Department submitted a composite irrigation project for World Bank assistance. A World Bank team came to Chandigarh during November 1978 for re-appraisal of the project. DW 1 and other officials from the Irrigation Department were deputed to process the necessary information for answering the queries made by the team of the World Bank. The World Bank team was expected to go back on 8th or 9th December, 1978. Therefore the Irrigation Department Officers were asked to finalise the compilation of the

reports with regard to the queries made by the World Bank team and they were asked to make the same ready by 5th December. DW 1 deputed Assistant Engineer Mr Malik, DW 2 to ensure the finalisation of the reports and complete the work and the officers were also asked to do overtime work. Then we have the evidence of DW 2 S.R. Malik which is very important. He deposed that he was working as an Assistant Engineer and that on December 2, 1978 all the employees of his office attended to their duties and in connection with the impending visit of the World Bank team and in view of the urgency of the matter they had to complete the necessary compilation containing the information needed. DW 2 further deposed that DW 1 instructed him to see that the report was complete in all respects on that day namely December 2, 1978. Pursuant to this order of DW 1, DW 2 stayed in his office along with A-1 and Bhupinder Singh and Balraj till about 7.30 p.m. on December 2, 1978 at which time they completed the report. DW 2 categorically stated that A-1 remained in his office till 7.30 p.m. DW 4 Bhupinder Singh was another officer working in the same Department. His evidence is also to the effect that A-1 and other officers along with DW 2 worked in their office till 7.30 p.m. on December 2, 1978 for the purpose of the completion of the papers including the maps. DWs 2 and 4 who are important witnesses, were cross-examined but they asserted that A-1 worked in the office till 7.30 p.m. on December 2, 1978. The High Court, however, was not prepared to accept this evidence and observed that having worked till 7.30 p.m. A-1 could have come to the scene of occurrence which is about 10 miles away and participated in the occurrence. Though there is a remote possibility but under the circumstances it does not appear to us to be natural for A-1 to have left his office at 7.30 p.m. having worked overtime and be at the scene of occurrence some time

round about 7 p.m. In the FIR the time of occurrence is mentioned as 7 p.m. If that is so, it would not have been possible for A-1 to be present at the scene of occurrence. The High Court, however, explained this away by saying that PW 18 as an illiterate could not have given the correct time. But PW 18 stated that he has studied up to matric. Therefore we cannot presume that he did not know the time. That apart, if it was such a pre-planned murder one would not have expected A-1 to remain in the office and it was also a chance that he was made to work till 7.30 p.m. on that day in view of the urgency. DWs 2 and 4 are responsible officers and respectable witnesses and when they say that A-1 was with them till 7.30 p.m. there is no need to doubt the same in the circumstances of the case. Therefore, in our view A-1 has been falsely implicated. This false implication again affects the veracity of the alleged eyewitnesses. It only shows that they being interested witnesses were bent upon to implicate A-1 who had some dispute with the deceased's family. From the evidence of PW 22 it appears that he was also inimical towards A-1 and A-2 and admittedly he was with PW 18 throughout and especially at the time of giving the FIR before the police.

9. A-2 Gurdev Singh who is no other than the brother of A-1 Dharam Singh also pleaded alibi. Admittedly he is also an employee of the Punjab Irrigation Department at Patiala. Having pleaded not guilty he further stated in his statement under Section 313 CrPC that he had been falsely implicated at the instance of PW 22 and Joginder Singh who were hostile to him and to the members of his family. A-2 further stated that he was on duty at Patiala from 10 a.m. to 5 p.m. and even after office hours he remained at Patiala only and during the subsequent days also he had been attending to his duties. No doubt he has

not examined any witness in support of his alibi but PW 25 the Investigating Officer admitted that he has verified the office records which show that both A-1 and A-2 attended their offices on December 2, 1978. It therefore emerges that A-2 was at Patiala and attended his office at least till 5 p.m. and Patiala is about 40 miles away from the scene of occurrence. In such a situation his presence at the scene of occurrence at about 7 p.m. becomes highly doubtful. This circumstance also renders the evidence of the alleged eyewitnesses unreliable.”

50. He also relies upon the judgment passed by the Hon’ble Supreme Court in the matter of ‘**Binay Kumar Singh Vs. State of Bihar**’ reported as **(1997) 1 SCC 283**: -

“22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context: -

“The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant.”

23. The Latin word alibi means “elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged

to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt.

(emphasis supplied)

51. Further reliance is also placed on the judgment of the Supreme Court in the matter of '**State of Haryana Vs. Prabhu and others**' reported as **(1979) 4 SCC 189**. The relevant part of the judgment is extracted hereunder:

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“There are nine respondents in this appeal filed by the State of Haryana on grant of special leave by this Court. The trial court convicted each of the said respondents under Section 302 read with Section 149 of the Penal Code, 1860 and awarded life

imprisonment to each. They were further convicted under Section 325 read with Section 149 and for the offence of rioting. The High Court of Punjab and Haryana has acquitted Prabhu, Respondent 1 and Hoshiar, Respondent 6 of all the charges accepting their plea of alibi. It has maintained the conviction of seven other respondents only under Section 325 read with Section 149 of the Penal Code and not under Section 302 read with Section 149. A sentence of seven years' rigorous imprisonment has been awarded to Sheoram plus a fine of Rs 2000 and the others have been given a sentence of three years rigorous imprisonment plus Rs 1000 fine each. They did not challenge their conviction in this Court filing any appeal. We were informed at the Bar that all the convicted respondents have served out their sentences. The State had presented this appeal for setting aside the acquittal of Prabhu and Hoshiar and for convicting them along with other respondents under Section 302 read with Section 149 of the Penal Code.*

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7. In his statement under Section 342 Cr.P.C., 1898, Prabhu stated:-

On the day of occurrence, I was admitted in Civil Hospital Rewari as indoor (patient) Hospital?. Again said, I was admitted in Gohana Hospital.

In Sessions Court he said:

I was not present at the spot and was admitted in the Bawana dispensary of Municipal Corporation Delhi at the time of the alleged occurrence. Dr Ashok Nagpal proved certain records of the Bawana dispensary but they were not trustworthy as held by the trial court for cogent reasons. The High Court was not justified in brushing aside all these infirmities in the defence plea of alibi even

to probabilise this plea and in accepting the evidence of Dr Ashok Nagpal on its face. Be that as it may, the prosecution case cannot be said to have been proved against Prabhu merely because he came out with a plea of alibi, the evidence in support of which was untrustworthy. Having examined the evidence of the prosecution witnesses who gave the ocular version of the occurrence in the light of the First Information Report lodged by PW Mohar Singh we have come to the conclusion that the case against him is doubtful. .He was a sarpanch of the village and at the time of the occurrence he was not less than 60 years of age. It was not necessary for him to have himself participated in the occurrence. The part of assault attributed to him was not specific in 'the First Information Report nor was the story of the Lalkara mentioned therein. His brother Harphool, it seems, was falsely implicated and although that was not sufficient to cast a doubt on the prosecution story as a whole, it is sufficient to cast a doubt in our mind as to the participation of respondent Prabhu in the occurrence. According to the evidence of PW Mohar Singh, respondent Prabhu gave a lathi blow on the head of Kalu and respondent Sohan gave one lathi blow on the right temple of Kalu and one lathi blow on his left leg. Apart from the injury found on his left leg, apparently two injuries were found towards the right temple side of Kalu and they were very close to the right pinna. In all probability they could not have been caused by two blows on the head or the temple part of the head of Kalu. They seem to have been caused only by one lathi blow which was given by Sohan. Thus on this ground also Prabhu's participation in the assault becomes doubtful. We do not

think that justice requires the setting aside of the order of acquittal in his favour and sending him to jail now.

8. Hoshiar's plea of alibi of having been admitted in the Rewari Hospital was consistent. Although the records of the Hospital proved by Dr Mohinder Kumar, DW were not very reliable, the suggestion in cross-examination on behalf of the prosecution seems to be that Hoshiar had gone out of the Hospital on the night of the occurrence and taken part in it. Such a suggestion postulates that the prosecution was not seriously challenging his admission in the Rewari Hospital. We do not think that we shall be justified in differing from the High Court that he had left the Hospital without leave of the doctor in the night of the occurrence to take part in it. We, therefore, maintain his acquittal also by the High Court."

52. Referring to the aforesaid findings, learned Senior Counsel contends that once the defence succeeds in probabilising that Rajbir could not have been present at the place of occurrence at the relevant time, the burden shifts to the prosecution to establish affirmatively that he was, in fact, present at the spot when the incident took place. It is submitted that the plea of alibi need only create a reasonable probability regarding the absence of the accused, whereupon the prosecution is required to dispel such doubt by leading cogent and reliable evidence. Learned Senior Counsel further argues that the true test is whether the relevant facts are brought to the notice of the investigating agency at the earliest point of time. It is contended that, in the present case, the fact that Rajbir was on official duty at New Delhi on the date of the occurrence stood disclosed during the investigation itself i.e. much prior

to the filing of the final report. In such circumstances, the burden lay upon the investigating agency and, consequently, the prosecution, to undertake a fair investigation into the said plea and to establish conclusively that Rajbir was present at the place of occurrence only. It is further contended that the trial Court thus fell into error by accepting the plea of alibi partially and yet assuming Rajbir's presence at the place of occurrence.

53. He further contends that the trial Court adopted an incorrect approach in assuming involvement of the appellant-accused/Surinder. He contends that while the burden lay upon the prosecution to explain the injuries sustained by Surinder, the trial Court used the existence of injuries on his person to assume as a proof of his participation in the commission of the offence.

54. It is further contended that the prosecution failed to establish the recoveries of the weapons used in the commission of the offence. Further, the medical evidence does not support the prosecution version. Learned Senior Counsel argues that had the assault in fact been carried out using weapons such as a *gandasi*, *jaili*, *mussal* and *lathis*, the injured witnesses would ordinarily have sustained injuries corresponding to the nature of such weapons, including incised wounds, punctured wounds, lacerated wounds or other characteristic marks of their impact. However, the medico-legal evidence does not disclose the existence of any such injuries. Rather, the injuries found on the complainant witnesses are predominantly superficial in nature, comprising abrasions, tenderness, swelling and minor lacerations which are wholly inconsistent with the prosecution allegation regarding the

use of deadly weapons. It is thus contended that the medical evidence completely rules out the possibility of the injuries having been caused in the manner alleged by the prosecution.

55. It is further alternatively argued that in any case, it at worst appears to be a case of free fight and in such circumstances, the persons could not be held liable for any injury beyond what is specifically attributed and proved. He submits that as per exceptions to Section 300 IPC, in a case of free fight, it does not count as to which party initiated the fight or gave the first blow and further, the case would not change its flavour on as to who sustained numerically higher injuries. Such a measured methodology is inapplicable. The Court of law would mere take note of a fact as to whether any party has taken undue advantage or acted with cruelty. In such an eventuality, the party would not be entitled to the said benefit and offence would stand culminated.

56. It is hence contended that the prosecution has suppressed the true genesis of the occurrence and failed to present a complete and truthful account of the incident and the cumulative effect of the aforesaid infirmities creates a serious and reasonable doubt regarding the prosecution version and, thus, the benefit of such doubt be extended to the appellants.

ARGUMENTS BY THE STATE AND COUNSEL FOR THE PETITIONER IN CRR-608-2005 AND FOR THE COMPLAINANT IN CRA-D-848-DB-2004 AND CRA-D-880-DB-2004

57. Responding to the above, learned State counsel as well as counsel for the petitioner in CRR-608-2005 and for the complainant in CRA-D-848-DB-2004 & CRA-D-880-DB-2004, contend that the submissions advanced on

behalf of the appellants proceed on a misplaced premise and are an attempt to divert the attention of the Court from the core evidence available on record. It is submitted that the prosecution case rests upon the testimonies of three injured eyewitnesses, all of whom have consistently narrated the detailed account of the occurrence and the injuries caused by the respective accused. The ocular account furnished by the injured witnesses is also corroborated by the medical record as well as the recoveries of weapons effected during investigation.

58. They submit that there was no inordinate delay in reporting the incident to the Police. The incident took place at about 10.30 p.m. on 10.01.2004 whereafter the injured reached PGIMS Rohtak at 11.45 p.m. when their medico-legal examination commenced. After conclusion of the medical examination, the attending doctor dispatched the ruqa at 12:30 a.m., which was received at Police Post, PGIMS, Rohtak, at 12:50 a.m. It is contended that any delay thereafter in forwarding the ruqa to the jurisdictional police station or in the arrival of the police officials from Police Post Lakhan Majra or Police Station Meham should not be read against the complainant party. Counsel for the complainant contends that in the immediate aftermath of the occurrence, the foremost concern of the complainant party would not be to approach the police but to secure urgent medical treatment for Dharam Pal, who had sustained grievous injuries. It is, thus, contended that no adverse inference be drawn against the prosecution on account of the time taken in the registration of the FIR, and the delay, if any, does not detract the credibility of the prosecution case.

59. Learned counsel for the complainant further contends that the trial Court has rightly disbelieved the defence version as argued by the accused-appellants that, after the medico-legal examination, the members of the complainant party had gone to the residence of their relatives at Rohtak, holding that such an explanation was a device adopted by the Investigating Officer to justify and cover up the delay attributable to him in carrying the investigation forward. It is stated that during their depositions before the trial Court, PW-4 Bhoop Singh, PW-5 Ashok and PW-10 Mangal Singh consistently stated that they remained present at PGIMS, Rohtak throughout and had not gone to the residence of any of their relatives. Learned counsel argues that no material whatsoever has come forth during the investigation to disclose the identity or residence of any such relative, thus rendering the defence plea wholly speculative. Learned counsel further submits that the complainant party had been informed that the police officials would reach the hospital by about 6:00/6:30 a.m. to record their statements and accordingly they waited at the hospital for the arrival of the police. However, when no police official arrived, some of them proceeded to Lakhan Majra, where they were informed that the police personnel had already left for PGIMS, Rohtak. They thereafter returned to the hospital, while PW-4 Bhoop Singh continued to remain present there throughout. It is thus contended that there was no delay or lapse on the part of the complainant party in reporting the occurrence to the competent authorities. Any delay that subsequently occurred was entirely beyond their control and could not be attributed to them. The same, thus, would not constitute a circumstance adverse to the prosecution or be used to

discredit the prosecution case.

60. It is further argued that the ocular evidence in the present case stands fully corroborated by the medical evidence and the injuries are upon the person of the injured are consistently reflected in their respective MLR. It is thus contended that the prosecution succeeded in establishing its case beyond doubt against the appellant-accused and that there exists no justifiable reason to disbelieve the prosecution version. Learned counsel further contend that the occurrence undisputedly took place in front of the house of the complainant party and the appellants have failed to offer any plausible explanation as to why they had come to the place of occurrence, if they were not involved in the incident. It is vehemently argued that if the version of the defence is to be accepted, the incident in question took place near Badi Chopal, however, no independent or reliable evidence has been adduced by the defence to establish that any such occurrence had, in fact, taken place at the time and place alleged. Learned counsel contends that, in the absence of any evidence substantiating the alleged first incident, the defence version regarding the genesis of the occurrence remains wholly unproved. Consequently, the plea that the occurrence commenced in the manner suggested by the defence would not merit acceptance, and the prosecution version, being supported by the testimonies of the injured eyewitnesses as well as the medical evidence, deserves to be accepted.

61. Learned counsel also argued that the defence set up by the appellants is inconsistent even with regard to the time of the occurrence. It is submitted that, in DDR No. 17, which was recorded at 2:05 a.m., Surinder

Singh stated that the incident had taken place at about 7:00 p.m. on 10.01.2004. However, during the course of cross-examination and in the statements recorded under Section 313 Cr.P.C., the defence shifted its stand by suggesting that the occurrence had taken place at about 8:00 p.m. It is contended that the appellants have failed to explain that, if Surinder had indeed sustained injuries at about 8:00 p.m., where was he from 8:00 p.m. until 2:05 a.m., when he first approached the police, and why he was medico-legally examined only at 3:15 a.m. on 11.01.2004. It is thus apparent that sufficient time was available to the appellants to deliberate and consult amongst themselves in setting up a defence and gaining an advantage over the prosecution. Learned counsel contend that, instead of attending to the injured, the appellants chose to approach the police to create a defence in their favour, whereas the complainant party prioritised securing medical treatment for the injured persons. It is thus contended that the appellants should not be permitted to derive any advantage merely because they attempted to steal a march over the complainant party by approaching the police with a version devised after deliberation.

62. Learned counsel further contend that the plea of alibi raised on behalf of Rajbir is wholly untenable and does not merit acceptance. It is submitted that, according to the prosecution version, the occurrence resulting in the injuries had taken place at about 10:30 p.m., as is reflected in the ruqa as well as the medico-legal reports of PW-4 Bhoop Singh and the other injured witnesses. It is argued that the complainant party had no occasion to know the duty hours or place of posting of Rajbir so as to deliberately project the

time of occurrence at 10:30 p.m. only to nullify his plea of alibi. He contends that the same is of vital significance considering that undisputedly the parties had no previous dispute or enmity amongst them. It is thus contended that the complainant party had no motive or reason to falsely implicate Rajbir or any other appellant by attributing to them a role which they had not played. Learned counsel further contend that, in so far as Injury No. 1 sustained by the deceased Dharam Pal is concerned, the medical evidence supports the prosecution case. It is submitted that the doctor opined that the said injury could have been caused by a weapon such as a mussal (pestle). It is further argued that the said weapon was recovered pursuant to the disclosure statement made by Rajbir. Learned counsel thus contend that there exists no valid reason to ignore or discard this circumstance while appreciating the prosecution evidence, as the same lends assurance to the prosecution version regarding the role attributed to Rajbir.

63. Counsel has further pointed out that bloodstains were detected on the weapons recovered during the course of investigation as well as the blood-stained earth lifted from the place of occurrence. It is submitted that, even though the bloodstains could not ultimately be serologically matched on account of disintegration of the material, such a circumstance, by itself, would not rule out the use of the said weapons in the commission of the offence in the manner alleged by the prosecution and accepted by the trial Court. It is further contended that the prosecution evidence, both ocular and medical, remains consistent throughout and inspires confidence. There is thus no reason to discard evidence of such sterling quality. The finding of conviction

has thus rightly been recorded by the trial Court against the appellant(s) herein. He has also referred to the judgment in the matter of 'Solanki Chimanbhai Ukabhai v. State of Gujarat, reported as (1983) 2 SCC 174, wherein the Supreme Court held that it would not be proper to discard testimony of eye witnesses, if their deposition is otherwise satisfactory, merely on the ground that there are certain conflicts with the ocular and medical evidence on record.

64. He contends that the suggestions on behalf of the appellants regarding the incapability of the injuries being caused with the weapons is based on an error. It is submitted that there is a material distinction between an injury not being the probable result of a particular weapon and an injury not being capable of being caused by such a weapon at all. The medical evidence in the present case does not conclusively exclude the possibility of the injuries having been caused by the weapons attributed to the appellants. He thus contends that where two views are reasonably possible on the basis of the medical evidence, the consistent and reliable ocular account furnished by the injured eyewitnesses deserves to be accepted. The testimony of an injured eyewitness carries great evidentiary value and, unless shown to be inherently improbable or unreliable, ought to prevail. It is submitted with vehemence that medical evidence is essentially corroborative in nature and is not the primary evidence on the basis of which the veracity of a consistent ocular account is to be tested. Hence, the medical opinion would not assume primacy over the direct testimony of injured eyewitnesses. He contends that undisputedly, the records of PGIMS, Rohtak, as well as the post-mortem

report, establish that Dharam Pal (since deceased) had been brought to PGIMS, Rohtak. The mere omission to mention the said fact in the *ruqa* dispatched by the attending doctor would not, by itself, constitute a suspicious circumstance to cast any doubt upon the prosecution case. Such an omission is at best an inadvertent lapse and would not dilute the otherwise consistent prosecution evidence.

65. He further contends that the appellants have taken mutually contradictory stands in their defence as well as in the statements recorded under Section 313 Cr.P.C. He contends that not only is there a material inconsistency regarding the time of the first occurrence between Surinder and Jasbir, Surinder having stated in DDR No. 17 that the incident had taken place at about 7:00 p.m., whereas the defence subsequently suggested that it had taken place at about 8:00 p.m., but also that the defence version also suffers from further inherent contradictions. It is argued that, in DDR No. 17, Surinder stated that Karan and Dilbagh had reached the spot after noticing that he had sustained injuries and had thus cited them as witnesses to the occurrence. However, Karan and Dilbagh, in their respective statements recorded under Section 313 Cr.P.C., denied even being present in the village on the date of the occurrence. He contends that a similar stand of alibi had also been taken by Krishan. However, despite taking such a stand, none of the appellants who claim to be away from the place of occurrence lead any evidence in support thereof. Thus the defence is riddled with inconsistencies and that the appellants have repeatedly contradicted one another as well as their own earlier versions.

66. It is argued with vehemence that right of private defence would not be available to the appellants since the deceased was not armed with any weapon during the incident and that even DDR No. 17 does not contain any allegation that Dharam Pal had threatened Surinder or had acted in a manner giving rise to a reasonable apprehension of death or grievous hurt. Consequently, it is contended that there existed no circumstance from which Surinder could have entertained a reasonable apprehension necessitating the exercise of the right of private defence. The plea of private defence, thus, would not be available to the appellants in the absence of any real or imminent threat to the person of Surinder. In support of his submission, he relied upon the judgment of the Supreme Court in the matter of **James Martin v. State of Kerala, reported as (2004) 2 SCC 203.**

67. Learned State counsel further contends that, even otherwise, the conduct of the appellants is wholly inconsistent with the defence now sought to be projected. It is submitted that no complaint was ever made by any of the appellants before any competent authority alleging false implication by the investigating agency. It is further submitted that no complaint or cross-case was ever instituted at their instance challenging the prosecution version or the manner in which the investigation had been conducted. Learned State counsel argues that the appellants, having never questioned the fairness of the investigation before any competent forum, are now precluded from raising such a plea for the first time in appeal. It is further submitted that the conduct of the appellants clearly indicates their complicity in the occurrence and demonstrates that DDR No. 17 was lodged merely as a pre-emptive measure

to create a defence and to steal a march over the prosecution. The said DDR was not a genuine account of the occurrence but was a calculated attempt to lay the foundation for the defence to be subsequently raised by the appellants.

68. In view of the aforesaid submissions, learned State counsel and learned counsel appearing for the complainant contend that the prosecution has succeeded in establishing the guilt of the appellants beyond all reasonable doubt through the consistent and cogent testimonies of the injured eyewitnesses which is also corroborated by the medical and other evidence on record. It is submitted that the defence sought to be projected by the appellants is inherently contradictory, unsupported by reliable evidence and incapable of creating any reasonable doubt in the prosecution case. They thus contend that the trial Court has correctly appreciated the oral as well as documentary evidence, rightly rejected the defence pleas and recorded well-reasoned findings of conviction which does not suffer from any legal or factual infirmity warranting interference by this Court.

69. We have heard learned counsel appearing for the respective parties and have gone through the documents and the evidence referred to and relied upon on behalf of the respective parties.

CONSIDERATION

70. The rival submissions advanced on behalf of the parties reveal that there is no serious dispute with regard to the broad sequence of events preceding the occurrence. The prosecution as well as the defence acknowledge that an altercation had taken place earlier in the evening of 10.01.2004 between Surinder and Jasbir Singh son of Dharam Pal. The

dispute, however, lies in the genesis of the subsequent occurrence, the manner in which it unfolded and the role attributed to the respective accused.

71. According to the prosecution, the earlier altercation furnished the immediate motive for the occurrence that followed. It is alleged that, with a view to avenge the said incident, the appellants-accused assembled at the residence of the complainant party at about 10:00/10:30 p.m. on 10.01.2004. Upon reaching there, they started hurling abuses and when Dharam Pal, along with his sons and other family members, came out of the house to restrain the appellants from misbehaving, the appellants launched a concerted assault upon them with the weapons carried by them.

72. The gravamen of the prosecution case is that, during the assault, Rajbir dealt a blow with a mussal (pestle) on the head of Dharam Pal, who was then about 70 years of age. The post-mortem examination revealed a lacerated wound measuring 6×1 cm over the posterior aspect of the left parietal region, placed horizontally, approximately 7 cm to the left of the midline and 10 cm above the left pinna. The said injury was opined by the doctor to be sufficient in the ordinary course of nature to cause death and was found to be the cause of Dharam Pal's demise. Apart from the fatal injury suffered by Dharam Pal, the prosecution also relies upon the injuries sustained by PW-4 Bhoop Singh, PW-5 Ashok and PW-10 Mangal Singh, all of whom claim to be injured eyewitnesses to the occurrence. As per the prosecution, the appellants were variously armed with *jailies*, *lathis*, *gandasis* and a *mussal*, and the injuries sustained by the deceased and the injured witnesses were inflicted by the appellants with the said weapons.

73. The defence, however, projects an entirely different version of the occurrence. According to the appellants, the prosecution has artificially bifurcated what was, in reality, a single continuous occurrence into two distinct incidents. It is their consistent stand that the occurrence commenced at about 7:00/8:00 p.m. with an altercation between Jasbir Singh and appellant-Surinder Singh and that the subsequent incident alleged by the prosecution at about 10:30 p.m. never took place in the manner alleged. The defence version is that, during the altercation with Jasbir Singh and the members of the complainant party, Surinder Singh sustained injuries on vital parts of his body, thereby giving rise to a reasonable apprehension of danger to his life and personal safety and cause injuries in self defence. It is further their case that Surinder Singh, who was then about 19 years of age and was actively engaged in wrestling, approached the police during the intervening night of 10/11.01.2004 and got his version recorded vide DDR No. 17 at about 2:05 a.m. The appellants contend that the said DDR constitutes the first account of the occurrence and, thus, deserved due consideration during investigation.

The principal questions that arise for determination are: -

- (i) whether the investigation suffers from such infirmities as materially affect the credibility of the prosecution case;
- (ii) whether the plea of alibi raised by Rajbir stands probalised;
- (iii) whether the prosecution has established the presence and specific role of each appellant beyond reasonable doubt;

- (iv) whether the appellants are entitled to the benefit of the right of private defence; and
- (v) whether the findings recorded by the trial Court warrant interference.

It is with a view to answering these questions that the evidence adduced by the parties now falls for consideration.

74. The position in law needs no reiteration that the burden of proving the guilt of an accused beyond reasonable doubt rests entirely upon the prosecution and continues to remain upon it throughout the trial. The accused is presumed to be innocent unless such presumption stands displaced by cogent, reliable and legally admissible evidence led by the prosecution. There is no corresponding obligation upon the accused to establish his innocence or to prove his defence beyond reasonable doubt.

75. The position in law with regard to plea of alibi stands settled through consistent judgments. Where an accused sets up a specific defence, such as a plea of alibi or a plea of private defence, the standard required to be discharged is not that applicable to the prosecution. It would suffice if the accused succeeds in probalising his defence on a preponderance of probabilities or is able to bring on record such material, either through the prosecution evidence or the defence evidence, as creates a reasonable doubt regarding the truthfulness of the prosecution version.

76. It is equally well settled that every reasonable doubt arising from the evidence must enure to the benefit of the accused. Such doubt, however,

must be a real and substantial one, founded upon the evidence on record and not upon conjectures or fanciful hypotheses. Thus, where the evidence adduced by the prosecution leaves the Court with a reasonable doubt regarding the genesis of the occurrence, the participation of the accused or the correctness of the prosecution version, the accused becomes entitled to the benefit of such doubt. Conversely, if the prosecution succeeds in establishing its case by reliable and convincing evidence, the accused cannot claim acquittal merely because an alternative hypothesis is remotely possible or because some insignificant discrepancy appears in the evidence which is otherwise largely consistent.

Issue No. (i) — Fairness and Completeness of the Investigation

77. We first take up Question No.(i), i.e. whether the investigation in the present case suffers from infirmities that materially affect the credibility of the prosecution case. The determination of this issue also has a direct bearing upon the evidentiary value of the ocular account relied upon by the prosecution. While it is settled that lapses or irregularities in investigation do not, by themselves, necessarily result in the acquittal of an accused, the position is equally well settled that where such lapses go to the root of the prosecution case and create a reasonable doubt regarding the genesis of the occurrence, the fairness of the investigation or the credibility of the version projected before the Court, they assume considerable importance in the appreciation of evidence. In this regard, the following aspects of investigation are being examined.

(a) Conduct of the Investigating Officer

78. At the outset, this court notices that the conduct of the Investigating Officer does not inspire confidence as regards its fairness and impartiality. The Investigating Officer initially denied having received any complaint during the intervening night of 10/11 January, 2004. He went to the extent of denying his presence at the Police Station during the said period. It was only when he was confronted with the Roznamcha maintained at the Police Station, which established his presence and being further confronted with DDR No. 17 recorded at 2:05 a.m., that he admitted the said facts. An Investigating Officer is expected to conduct a fair, impartial and objective investigation and thereafter draw appropriate conclusions on the basis of the material collected. In the present case, however, the Investigating Officer appears to have adopted the easier course of denying and withholding of the evidence which could have thrown better light on the case. Such conduct casts a serious doubt on its impartiality.

(b) Delay in Setting the Criminal Law in Motion

79. Another issue that has been argued with considerable vehemence pertains to the delay in the registration of the FIR. Learned Senior Counsel appearing for the appellants contended that there was an unexplained delay of more than 9½ hours in the registration of the FIR, after sending of ruqa at 10:00 a.m. on 11.01.2004, despite the occurrence having taken place around 12 hours earlier. Counsel submits that such delay afforded sufficient opportunity for deliberation and consultation. Per contra, learned State counsel as well as learned counsel appearing for the complainant contended

that the appellants themselves were equally guilty of delay in reporting the matter to the police. It is argued that, according to the defence version, the earlier incident between Surinder Singh and Jasbir Singh had taken place at about 8:00 p.m., yet the DDR was recorded only at 2:05 a.m., thereby reflecting a gap of nearly six hours in approaching the police. It is, thus, contended that the appellants could not derive any advantage from the alleged delay in the registration of the FIR when their own conduct in reporting the occurrence was also delayed.

80. We have gone through the *ruqa*, the medico-legal record as well as the post-mortem report. The prosecution seeks to explain the delay on the ground that the injured were immediately taken to PGIMS, Rohtak, and reached the hospital within about an hour of the occurrence. It has been pointed out that the medico-legal examination commenced at 11:35 p.m., whereafter a medical *ruqa* was dispatched at 12:30 a.m., which was received at the Police Post, PGIMS Rohtak at 12:50 a.m. It is contended that, thereafter, the matter was beyond the control of the complainant party. It has further been argued that the circumstances prevailing at the relevant time justified such delay, inasmuch as the immediate priority of the complainant party was to take their injured father to the hospital for treatment rather than to proceed to the Police Station to lodge a report.

81. A specific query was, however, put to the learned State counsel as well as learned counsel for the complainant as to why, although the medico-legal reports of PW-4 Bhoop Singh, PW-5 Ashok Kumar and PW-10 Mangal Singh record their arrival at the hospital and show that their medico-legal

examination commenced at about 11:30 p.m., the medical ruqa makes no reference whatsoever to Dharampal having been brought to PGIMS, Rohtak. The post-mortem report (Ex. PN/1), on the contrary, records that Dharampal was brought dead to the Casualty Department of PGIMS, Rohtak at 12:30 a.m. on 11.01.2004, i.e. more than an hour after PW-4 Bhoop Singh, PW-5 Ashok Kumar and PW-10 Mangal Singh had already been medically examined. The post-mortem report further records that the dead body of Dharampal was identified by Ranbir Singh, son of Dharampal, and Tilak Ram, son of Dariya Singh, who was the brother-in-law (Jija) of the deceased. Significantly, the medico-legal record pertaining to the injured witnesses also does not reflect the presence of Jasbir Singh. It appears highly improbable that, if the occurrence had taken place in the manner suggested by the prosecution, and three brothers had sustained injuries while their father had succumbed to the injuries, the fourth son would neither accompany the injured nor the deceased to the hospital. Equally, there is no explanation as to why Jasbir Singh did not proceed to the Police Station to report the occurrence, especially when he was admittedly not accompanying the injured or the deceased.

82. What is equally striking is that the inquest proceedings (Ex. PN/3) record that the Police Station was situated at a distance of about 3 kilometres from the place of occurrence and further state that the police received information regarding the death only at 6:00 a.m. on 11.01.2004. The said recital, prima facie, appears to be inconsistent with the prosecution record itself, inasmuch as Surinder Singh had admittedly reported the occurrence by way of DDR No. 17 at 2:05 a.m. on the same day. Additionally, even the

inquest proceedings do not record the presence of Jasbir Singh.

83. Learned Senior Counsel has argued at considerable length that the investigation in the present case was inquest-driven, and that it is in this backdrop that the delay in recording the statement of the complainant assumes significance. It is evident that the complainant made specific attributions against accused Ajmer Singh and Suresh regarding the injuries allegedly inflicted upon the deceased, and that such attributions appeared to correspond with the ocular assessment made by the Investigating Officer while conducting the inquest proceedings. However, the post-mortem examination revealed that the injuries attributed to Ajmer Singh and Suresh did not exist on the body of the deceased. The ocular version comes under scrutiny once the injuries attributed to Ajmer Singh and Suresh are found to be non-existent although the similar injuries had also found mention in the inquest proceedings prepared by the Investigating Officer. The said circumstance lends support to the contention that the investigation was guided by the inquest proceedings instead of a truthful recitation of the incident.

(c) Failure to Establish the Recovery of Weapons

84. The prosecution has failed even to prove the recovery of the weapons. The trial court has recorded a specific finding that the recoveries allegedly effected at the disclosure of the respective accused persons remained unproved. Significantly, the said finding has not been assailed by the complainant, despite having preferred separate petition. The said finding has, thus, attained finality. This circumstance further casts a doubt upon the prosecution case and satisfactory discharge of the burden of proving the

charges beyond reasonable doubt. Where the factum of recovery itself is not proved, the disclosure statement loses its evidentiary utility under Section 27 of the Indian Evidence Act, 1872. The weapon recovered thus cannot be relied upon either to place the accused at the scene or to link a particular weapon with any specific accused.

(d) Suppression of the True Genesis of the Occurrence — DDR No.17 and the Non-Examination of Jasbir Singh

85. The witnesses have proved on record DDR No. 17, recorded at 2:05 a.m. on 11.01.2004, lodged by Surinder Singh regarding the injuries sustained by the deceased Dharam Pal in an incident that allegedly took place between him and Jasbir Singh at about 7:00 p.m. In the said DDR (Ex. DC), Surinder Singh stated that while he was standing near the Chaupal, he noticed Bhoop Singh, who was in an inebriated condition, accompanied by his brother Mangal Singh. Upon seeing them, he cracked a joke, which was taken offensive by Mangal Singh (PW-10) who called his brother Ashok Kumar (PW-5) to bring a lathi from the house and initiated a fight with Surinder Singh. Ashok Kumar immediately arrived at the spot and inflicted a lathi blow on the head of Surinder Singh. Thereafter, another lathi was brought by Jasbir Singh, who also inflicted an injury on the left elbow of Surinder Singh. Mangal Singh too brought a lathi from the house and struck a blow on the knee of Surinder Singh. The aforesaid version also indicates that the house of the complainant party was at a short distance from the place of occurrence since Mangal Singh was able to summon Ashok Kumar merely by calling him loudly. This circumstance also finds some corroboration from the distances

reflected in the site plan.

86. Even though an attempt has been made by the prosecution to contend that the *Badi Chaupal* was situated at a considerable distance from the house of the complainant and, therefore, the appellant-accused were the aggressors who had come all the way to the place of occurrence, however, no evidence has been pointed out from the record to substantiate such a contention. The prosecution has failed to refer to any material on the basis whereof such an aspect could be established or has been proved by the prosecution.

87. It has further emerged from the testimonies of the prosecution witnesses that, when questioned regarding the injuries sustained by Surinder Singh, they remained evasive in their responses. PW-4 Bhoop Singh stated that he had not caused any injury to Surinder Singh and added that his brothers might have caused the injuries. However, PW-5 Ashok Kumar categorically denied having caused any injury and stated that, on hearing the exhortation, they had come out empty-handed. An improvement was sought to be added. Likewise, PW-10 Mangal Singh also failed to offer any explanation regarding the injuries found on the person of Surinder Singh and claimed that he came to the spot later.

88. The failure of the prosecution witnesses to explain the injuries sustained by the alleged assailant, especially when such injuries are located on vital parts of the body and are of considerable dimensions, raises a serious doubt regarding the genesis of the occurrence as projected by the prosecution.

The Court is under an obligation to objectively evaluate the evidence on

record, and where the evidence fails to furnish a satisfactory explanation for the circumstances that emerge therefrom, the prosecution version necessarily suffers a dent. This assumes greater significance when all the prosecution witnesses deny having caused any injury to Surinder Singh.

89. It is also not the case of the prosecution that the injuries were self-inflicted or had been caused by a friendly hand. The medico-legal report of Surinder Singh has neither been disputed nor challenged. Consequently, the authenticity and credibility of the medico-legal report remain unimpeached.

90. Considering that the defence case is that the occurrence had its genesis in a minor altercation between Jasbir Singh and Surinder Singh, it became relevant, and indeed incumbent upon the prosecution, to examine Jasbir Singh, especially when he was cited as a prosecution witness. However, Jasbir Singh was not examined and no explanation whatsoever has been offered for such omission. This, too, constitutes another circumstance which persuades the Court to infer that the true genesis of the occurrence has been withheld and that the narrative projected before the Court has been tailored to conform to the prosecution version.

(e) Errors in the Trial Court's Own Appreciation of the Investigation

91. The trial Court discarded DDR No. 17 (Ex. DC) on the reasoning that it was an attempt by Surinder Singh to create a defence for himself and to save the remaining accused without discussion and without even any investigation of the same. If such a test is to be applied, it has to operate uniformly while appreciating the evidence of both sides. The Court would not presume that every version put forth by the accused is inherently false merely

because it supports the defence. Such reasoning, in effect, reflects that an adverse presumption had already been drawn against the accused merely because they stood charged with the commission of an offence.

92. The trial Court also appears to have proceeded on an assumption that there were two distinct occurrences i.e. one as narrated in the FIR (Ex. P-8) and the other as reflected in DDR No. 17 (Ex. DC). In arriving at such a conclusion, the trial court completely overlooked the conduct of the investigating agency in withholding from the Court the existence of DDR No. 17 and the medico-legal report of Surinder Singh, and treated the omission as a bona fide lapse. Such a conclusion, in the opinion of this Court, is founded more on conjecture than on the evidence available on record. Significantly, it was never the defence case that two separate incidents had taken place. On the contrary, the consistent stand of the appellants throughout has been that there was only one occurrence, during which both sides sustained injuries.

93. The trial court also ignored the material contradictions in the testimonies of the prosecution witnesses regarding the place where they had stayed overnight before reporting the occurrence. Instead of appreciating the effect of such inconsistencies, the trial court attributed the discrepancy to an attempt on the part of the Investigating Officer to explain away the delay in the investigation, although such was not the case set up either by the prosecution or by the defence. The conclusion recorded by the trial Court is hence founded upon its own assumptions.

94. The trial court further proceeded to draw an adverse inference against the appellants merely because blood-stained earth had been recovered,

without assigning due significance to the place from where such blood-stained earth had admittedly been lifted. The trial Court specifically recorded that no blood-stained earth had been collected from the place where the prosecution alleged the occurrence to have taken place and that the blood-stained earth had, in fact, been lifted from Point 'B', situated inside the house. It held that absence of blood at the place of occurrence is of no consequence.

95. Such a finding, in the opinion of this Court, is misplaced. The determination of the place of occurrence constitutes a vital circumstance in a criminal trial, especially where rival versions regarding the genesis of the incident and place of occurrence are put forth. The location from which blood-stained earth is recovered may have a direct bearing upon the determination of the actual place of occurrence, the sequence of events, and the question as to which party was the aggressor. The circumstance, therefore, could not have been brushed aside as being immaterial, especially when the defence asserted that the occurrence had taken place at a different location and not at the place where the prosecution so claims.

96. We are of the opinion that that the investigation carried out into the incident does not inspire confidence as being fair, complete and objective. The material brought on record indicates that several crucial aspects, which had a direct bearing on the rival versions put forth by the parties, were either left unexplored or were consciously ignored by the Investigating Officer. Such omissions have materially impaired the ability of the prosecution to establish its case beyond reasonable doubt.

97. Accordingly, Question No. (i) is answered in the affirmative and

against the prosecution/State. We are of the opinion that the investigation suffers from serious infirmities which are not merely procedural irregularities. The suppression of DDR No. 17 and the medico-legal report of Surinder Singh, the failure to investigate the plea of alibi raised by Rajbir Singh at the very inception of the investigation (which is dealt with while considering Question No. (ii)), the unexplained non-examination of Jasbir Singh, the failure of the prosecution to establish the recoveries allegedly effected from the accused, and the attribution of injuries during the inquest proceedings finding no support from the post-mortem report, cumulatively demonstrate that the investigation was not comprehensive. The aforesaid deficiencies are not of such a nature as to be viewed in isolation but taken together, they disclose a pattern of investigation that failed to explore material circumstances favourable to the defence and omitted to place before the Court the complete picture relating to the genesis of the occurrence. Such omissions have materially affected the credibility of the prosecution case and have rendered it unsafe to accept the prosecution version without independent and careful scrutiny.

Issue No. (ii) — Plea of Alibi Raised by Rajbir Singh

98. Since the prosecution attributes the fatal blow on the head of Dharam Pal to Rajbir Singh, the determination of his presence at the place of occurrence assumes considerable significance and is taken up next.

99. The evidence on record undisputedly establishes that Rajbir Singh was serving with the Ministry of Home Affairs and was posted with the 17 Battalion. The documentary evidence produced by the defence, including

the duty roster, shows that he was deputed for sentry duty at Lok Nayak Bhawan, New Delhi, from 1:00 p.m. to 7:00 p.m. on 10.01.2004. During cross-examination, the prosecution suggested that certain entries in the duty roster had been made in handwriting. However, no suggestion was put to the official witness that the record was fabricated, manipulated or otherwise forged. The genuineness of the official record, thus, remained unchallenged. The trial court also accepted the defence evidence to the extent that Rajbir Singh had, in fact, remained on official duty at Lok Nayak Bhawan, New Delhi, from 1:00 p.m. till 7:00 p.m. on 10.01.2004.

100. The real question, however, is not whether Rajbir Singh remained on duty till 7:00 p.m., but whether, after completion of his official duty, it was reasonably possible for him to travel from New Delhi to Village Kharanti and be present at the place of occurrence at about 10:30 p.m. The trial Court placed much reliance upon the testimonies of PW-4 Bhoop Singh, PW-5 Ashok and PW-10 Mangal Singh, all of whom attribute the fatal blow to Rajbir Singh. However, the Court did not undertake any detailed examination of the practical feasibility of Rajbir Singh reaching the place of occurrence within the available time. The judgment does not advert to the implications arising from the admitted fact that Rajbir Singh remained on official duty till 7:00 p.m. at New Delhi, nor does it analyse whether the intervening period of approximately three and a half hours was sufficient for him to cover a distance of nearly 120 kilometres and reach Village Kharanti by about 10:30 p.m.

101. The plea of alibi could not be accepted or rejected in isolation merely on the basis of the oral testimony of the prosecution witnesses or the

defence witnesses. It necessarily requires a holistic appreciation of all the attendant circumstances. Once the prosecution itself does not dispute that Rajbir Singh remained on official duty till 7:00 p.m. on the date of occurrence, it was incumbent upon the trial Court to examine whether his presence at the place of occurrence at the relevant time was reasonably probable in the ordinary course of human conduct and as per the evidence available on record.

102. The law governing a plea of alibi is equally well settled. A plea of alibi is not one of the general exceptions embodied in the Indian Penal Code, 1860. It is a rule of evidence recognised under Section 11 of the Indian Evidence Act, 1872, and is founded on the principle that the presence of the accused at another place, if established, renders his presence at the place of occurrence highly improbable or impossible. Unlike the burden cast upon an accused while invoking a general exception under the Indian Penal Code, the burden resting upon an accused setting up a plea of alibi is not to establish the same beyond reasonable doubt. It is sufficient if the accused is able to place before the Court such material as probabilises his absence from the place of occurrence and creates a reasonable doubt regarding the prosecution allegation of his presence. The standard applicable is that of preponderance of probabilities and not proof beyond reasonable doubt. Once the accused succeeds in probabilising the plea of alibi to the satisfaction of the Court, the evidentiary burden shifts back to the prosecution. Since the legal burden of proving the guilt of the accused never departs from the prosecution, it continues to remain under an obligation to establish that notwithstanding the circumstances relied upon by the accused, he was in fact present at the place

of occurrence and participated in the commission of the offence. The prosecution must, thus, dispel the doubt arising from the plea of alibi and exclude the reasonable possibility of the accused having been elsewhere at the relevant time.

103. The essential aspects of the present case which remain unanswered and unexplained are as under: -

- (a) Once it stands accepted that Rajbir Singh was an employee of the Ministry of Home Affairs and was on official duty on the relevant date, it became incumbent upon the Investigating Officer to investigate his location and whereabouts. Such an obligation assumes greater significance when a specific plea, that the accused was not present in the village and was instead on duty at New Delhi, was raised at the very inception of the investigation and was within the knowledge of the Investigating Officer. The Investigating Officer himself admitted that he had come to know that Rajbir Singh was employed with the Ministry of Home Affairs at the relevant time. Despite the same, the prosecution has not led any evidence to establish that any investigation whatsoever was conducted into the claim made by appellant-accused Rajbir Singh. It is significant to note that the entry pertaining to Rajbir's sentry duty appears in the middle of the duty roster and does not reflect any interpolation, overwriting or interlineation. The Supervisor as well as the Commandant of the 17 Battalion specifically deposed

regarding the presence of Rajbir Singh on sentry duty on 10.01.2004.

- (b) The prosecution case is that Rajbir Singh was informed about the earlier incident between Surinder Singh and Jasbir Singh and that, upon receiving such information, he immediately proceeded towards his village. However, there is no explanation whatsoever as to who informed Rajbir Singh of the said incident or by what mode such information was conveyed to him. There is nothing on record to suggest that either the appellant-accused or Rajbir Singh had access to any telephone facility at the relevant time. Neither any landline number nor any mobile number has been brought on record. The said aspect is crucial considering that the occurrence took place in the year 2004, when the use of mobile phones was still at a nascent stage and had not permeated the rural hinterland in the manner it has today. The use of mobile telephony was limited, and communication ordinarily took place through landline or STD facilities. There is no evidence to show that the appellants had any such telecommunication facility either at their residence or elsewhere in the village from where Rajbir Singh could have been informed. Likewise, no telephone numbers have been disclosed either at the place where Rajbir was posted or at any other place from where such information could have been transmitted. In such circumstances, the manner in which Rajbir

Singh allegedly received information regarding the incident remains wholly unexplained.

- (c) The complainant has raised an argument that the incident between Jasbir and Surinder Singh had taken place at around 6:00 P.M. however, there is no evidence to establish the same.
- (d) Apart therefrom, DW-3 Naseeb Singh, who was residing with Rajbir Singh at the Government-allotted accommodation at Mandir Marg, New Delhi, specifically deposed that certain police officials had visited the said accommodation to enquire about the whereabouts of Rajbir Singh and that he had informed them that Rajbir Singh had remained at the allotted quarter throughout the night. Despite such evidence, the Investigating Officer did not conduct any inquiry into the said aspect. To the contrary, the investigation remained completely dismissive of every claim raised by Rajbir Singh in support of his plea of alibi.
- (e) The prosecution has also failed to explain the mode of transport allegedly used by Rajbir Singh to reach the village. It needs no elaboration that traffic conditions in Delhi in the year 2004 were far from ideal. Assuming that Rajbir Singh had left immediately after the completion of his duty at 7:00 p.m. and had travelled by public transport, it would ordinarily have taken him about one and a half hours merely to reach the outskirts of Delhi. Whether the route commenced from the Inter-State Bus Terminus, Kashmere Gate, or through Ring Road via Wazirabad, Burari, Karnal Bye-

pass, Rohini, Peeragarhi Chowk and thereafter through the old Rohtak Road, the journey necessarily involved passing through heavily congested areas such as Nangloi and J.J. Colony. Public transport in such areas was often delayed on account of traffic congestion. The travel time from the outskirts of Delhi to Rohtak would, in the ordinary course, not have been less than three hours and the journey from Rohtak to Village Kharanti would have required an additional 45 minutes. These are the contemporaneous realities and a Court of law does not remain oblivious to the social and situational realities. Disregarding the same merely on technicalities may lead to a travesty of justice since people in contemporaneous time expect awareness by the Court of the same and do not feel the need to prove a fact well known. Two decades later, even the appellate Court may be expected to keep note of the contemporary reality and social circumstances.

- (f) There is also no explanation as to how Rajbir Singh travelled from Rohtak to Village Kharanti after reaching Rohtak. The only inference that flows is that a regular transport was available between Rohtak and the village. However, the said assertion remains wholly uncorroborated. Merely because transport may have been available from the village to the city during daytime would not necessarily imply that similar transport facilities were available from the city to the village at late hours of the night. It is not even the prosecution case that Rajbir Singh had any private

vehicle or personal mode of transport at his disposal, at Rohtak. Public transport to rural areas ordinarily remains limited during late hours unless the village is situated on a State Highway or National Highway. The burden lay upon the prosecution to establish the means of connectivity and the feasibility of such travel. However, no evidence has been led in that regard.

- (g) While the complainant asserts that the earlier altercation had taken place at about 6:00 p.m., the evidence on record does not corroborate such a time. The earliest version of the occurrence is reflected in DDR No. 17 recorded at 2:05 a.m. during the intervening night of 10/11.01.2004, wherein Surinder Singh stated that the earlier incident had taken place at about 7:00 p.m. In the suggestions put to the prosecution witnesses as well as in the defence taken in the statements recorded under Section 313 Cr.P.C., the occurrence between Jasbir Singh and Surinder Singh was stated to have taken place at about 8:00 p.m. Thus, even according to the defence, the first incident could have taken place sometime after 7:00 p.m. It was only thereafter, that an occasion would have arisen for the family members of Rajbir to inform him at Delhi about the incident in question. Consequently, there was no occasion for Rajbir Singh to have left Delhi before 7:00 p.m. Since he admittedly remained on sentry duty till 7:00 p.m., and there is no evidence regarding any means by which he could have been contacted while on his way from his place of duty to his

residence. Ordinarily, such a circumstance may not assume much significance, however, in the peculiar facts of the present case, where the presence of Rajbir Singh at the place of occurrence depends entirely upon a narrow margin of time, the said aspect assumes considerable importance. The burden to explain the same lay upon the prosecution, especially when the plea of alibi and absence from the place of occurrence was taken at the very inception of the investigation and was not introduced as an afterthought during the course of trial.

104. The prosecution, however, remains conspicuously silent on these aspects and relies solely upon the testimonies of the injured eyewitnesses to contend that Rajbir Singh was present at the place of occurrence and had inflicted the fatal injury. While it is true that PW-4 Bhoop Singh, PW-5 Ashok and PW-10 Mangal Singh have consistently attributed the fatal blow to Rajbir Singh. However, all the three witnesses are brothers and hence interested witnesses. Even though their evidence is not liable to be discarded on that ground alone, it nonetheless requires careful and objective scrutiny, especially when weighed against the documentary evidence relied upon by the defence.

105. The matter does not end there. The trial court further proceeded to record a finding that, after sustaining injuries, Surinder Singh might have informed Rajbir Singh and the other members of his family and thereafter got DDR No. 17 (Ex. DC) recorded so as to create evidence in their favour. Such

a conclusion is plainly conjectural. There is no evidence whatsoever on record to support such an inference.

106. A criminal Court is required to record its conclusions on the basis of proved facts and legitimate inferences flowing therefrom, and not upon possibilities, surmises or hypotheses unsupported by evidence. Findings affecting the liberty of an accused could not have been founded upon what "might have happened", in the absence of any material substantiating such an assumption. The circumstances emerging from the evidence, coupled with the conspicuous gaps in the prosecution case, also fail to establish that Rajbir Singh was informed of the earlier incident in time or that he had both the occasion as well as the opportunity to reach the place of occurrence at the time alleged by the prosecution.

107. It also cannot be overlooked that all the four sons of Balwan Singh have been arrayed as accused and that Rajbir Singh was admittedly the only member of the family holding a Government job, thereby providing financial stability to the family, while the remaining members were primarily engaged in agriculture. Though such a circumstance by itself is not determinative of guilt or innocence, experience reflects that, in certain situations, a person who constitutes the principal earning member of a family may be assigned a more prominent role in the occurrence. Such social realities, though incapable of precise proof, could not be ignored altogether while objectively appreciating the evidence on record.

108. Reliance in this regard can be placed on the judgment of the Hon'ble Supreme Court in **Dharam Singh v. State of Punjab, reported as**

1983 (Supp.) SCC 52. In the said case, the deceased as well as the principal prosecution witnesses belonged to the same village. Specific attributions had been consistently levelled by the three prosecution witnesses against all the accused persons, as is the case in the present matter. The prosecution relied principally upon the testimony of Jai Singh, an eye-witness who was also an injured witness, to establish the presence and participation of the accused persons. The accused, in defence, raised the plea of alibi. The occurrence in the said case was alleged to have taken place at about 7:30 P.M., whereas the accused asserted that he had attended his office on the said date till 5:00 p.m., which assertion stood corroborated by the evidence on record. The distance between the office of one of the accused and the place of occurrence was about 10 miles, whereas the distance in respect of the other accused was about 40 miles. The trial Court returned a finding of conviction on the premise that it was possible for the accused to have been present at the place of occurrence, participated in the crime and thereafter returned to his office. The Hon'ble Supreme Court, however, set aside the judgment of the High Court and accepted the plea of alibi by extending the benefit of doubt. It was held that once the accused had established that he attended his office till 5:00 p.m., his presence at the place of occurrence at about 7:00 p.m. became doubtful, notwithstanding the fact that the distance between his office and the place of occurrence was only 40 miles. The evidence of the eye-witnesses was, consequently, held to be unreliable. Significantly, the Hon'ble Supreme Court also commented upon the specific and pin-pointed attribution of injuries by all the eye-witnesses itself as a suspicious circumstance. It was observed that

such careful distribution of overt acts amongst the respective accused could ordinarily have been made only after the complainant and the witnesses had come to know of the injuries sustained by the victims. The Court held that such precision regarding the seat of injury inflicted by each accused gave rise to a suspicious circumstance and led to an inference that the version contained in the FIR and the prosecution evidence had been recorded after considerable deliberation and reflection.

109. Although, there could be no steadfast rule that a consistent deposition should be viewed with suspicion, however, the same is to be seen on a case to case basis and upon an objective assessment of the evidence and the circumstances brought on record. The facts of the present case are quite similar to the above case. While the time gap is similar, the distance is more than twice the distance in the case of **Dharam Singh (supra)**. The pin pointed precision attribution, in conformity with the observations of the Investigating officer in inquest, coupled with non-existence of corresponding injuries and raise significant question about the probability of injuries being caused with the weapons recovered, leave much room for the prosecution version to be accepted at its face value.

(a) Non-appreciation of the Defence Evidence — DW-3 Naseeb Singh

110. It further transpires that the trial Court has recorded its conclusions on the basis of assumptions rather than on an objective appreciation of the evidence available on record. The testimony of DW-3 Naseeb Singh came to be discarded primarily on the ground that there was no documentary evidence to establish that he was sharing the Government-

allotted accommodation with Rajbir Singh. Such a circumstance, by itself, could not have constituted a ground for rejecting his testimony. The absence of documentary proof regarding allotment of residence is not determinative of the truthfulness of a witness, especially when the fact sought to be established pertains to a matter of ordinary human conduct. It is not uncommon for colleagues or acquaintances to share Government accommodation, especially where the lawful allottee is residing alone. Unless the witness is effectively discredited in cross-examination or his version is shown to be inherently improbable or inconsistent with the surrounding circumstances, the mere absence of documentary corroboration could not justify discarding his testimony.

111. The approach adopted by the trial Court also overlooks the settled principles governing the appreciation of defence evidence. It is now well established that the evidence adduced by the defence does not occupy an inferior pedestal vis-à-vis the evidence led by the prosecution. A defence witness enters the witness box under the same sanctity of oath and is equally subject to the test of cross-examination. The law does not recognise any distinction in the evidentiary value of a witness merely because he has been examined by the prosecution or by the defence. The source from which the evidence emanates is immaterial. What is material is its credibility, reliability and its consistency with the probabilities emerging from the record.

112. It is equally well settled that there exists no rule of law or prudence requiring the evidence of a defence witness to be viewed with suspicion merely because he supports the case of the accused. Such an

approach would be fundamentally inconsistent with the presumption of innocence that operates in favour of every accused and with the cardinal principle that the burden of proving guilt beyond reasonable doubt rests throughout upon the prosecution. The defence is entitled to rebut the prosecution case either by relying upon the material elicited during the cross-examination of prosecution witnesses or by leading independent evidence in support of its plea. Where such evidence creates a reasonable doubt or probabalises the defence set up by the accused, the Court is duty-bound to accord due weight to it.

113. The Court, while appreciating defence evidence, is not required to search for reasons to reject it merely because it emanates from the defence. Equally, the testimony of prosecution witnesses does not acquire any additional sanctity merely because they have been examined by the prosecution. Both sets of evidence have to be tested by applying the same judicial standards, namely, whether the witness is trustworthy, whether the testimony inspires confidence, whether it is consistent with the surrounding circumstances, and whether it withstands the scrutiny of cross-examination. Any approach that accords a higher evidentiary value to prosecution witnesses or subjects defence witnesses to a stricter standard of scrutiny would be contrary to the settled principles governing criminal trials.

114. In the present case, the trial court appears to have rejected the testimony of DW-3 Naseeb Singh not because it was inherently unreliable or stood demolished in cross-examination, but because it lacked documentary corroboration regarding his residence with Rajbir Singh. Such reasoning, in

the opinion of this Court, proceeds more on conjecture than on settled principles of appreciation of evidence. The testimony of DW-3 ought to have been evaluated on its own intrinsic merits and in conjunction with the remaining evidence on record.

115. In the aforesaid circumstances, this Court is of the opinion that the preponderance of probabilities renders it highly probable, if not impossible, that Rajbir Singh was not present at the place of occurrence at the relevant time. The prosecution has failed to dispel the doubt arising from the plea of alibi. Except for the testimonies of the interested witnesses, there is no independent or corroborative evidence establishing his presence at the place of occurrence. The alleged recovery of the weapon of offence having itself remained unproved, the specific attribution made against Rajbir Singh also remains unsubstantiated. Consequently, the prosecution has failed to establish his participation in the occurrence beyond reasonable doubt.

116. Accordingly, Question No. (ii) is answered in favour of appellant Rajbir Singh and against the prosecution. This Court is satisfied that the plea of alibi raised by Rajbir Singh stands sufficiently probalised by the evidence led in defence. The prosecution has failed to conduct any meaningful investigation into the said plea despite being aware of it from the very inception of the investigation. It has also failed to establish, by any evidence, that Rajbir Singh could have reached the place of occurrence at the relevant time after completing his official duty at New Delhi. The material brought on record by the defence creates a reasonable doubt regarding his presence at the scene of crime, and the prosecution has been unable to dispel the said doubt.

Hence, the prosecution has failed to establish the presence and participation of Rajbir Singh in the occurrence beyond reasonable doubt. He is, consequently, entitled to the benefit of doubt.

Issue No. (iii) — Presence and Specific Role of Each Appellant

117. We now examine whether the prosecution has established the presence and specific role of each of the remaining appellants beyond reasonable doubt.

118. The suspicion regarding the reliability of the prosecution version is further strengthened by the fact that, although all the appellant-accused are alleged to have been armed with weapons such as jellies, gandasis, lathis and mussals (tassals), the injuries found on the persons of PW-5 Ashok Kumar and PW-10 Mangal Singh do not appear to have been caused by the use of such weapons. It is difficult to comprehend that when a group of eight persons is allegedly armed with weapons of such nature, not a single injury could be attributed to the use of a jaily or a gandasi. There are no scratch marks or punctured wound that could be associated with the use of a jaily, nor is there any incised wound that could reasonably be attributed to the use of a gandasi. Even though it may be possible that the injuries were caused by the blunt side or the handle of a jaily or a gandasi, however, despite the detailed and specific attribution of overt acts by the prosecution witnesses, none of them has specified the side of the weapon with which the injuries were allegedly inflicted. An argument has also been advanced that the abrasions could have been caused by the blunt side or the handle of the jaily or gandasi. Such an argument, however, does not satisfactorily explain the nature of the injuries.

Ordinarily, if an injury is caused by the handle of a weapon such as a jaily or a gandasi, the abrasion would exhibit distinct corresponding physical characteristics including ecchymosis. It is also not expected that the use of such a weapon in an assault would result only in an abrasion. Some corresponding injury, in the nature of a contusion, incision or laceration, would ordinarily accompany such an abrasion. Apart therefrom, the dimensions of the injuries themselves constitute another circumstance giving rise to suspicion. The dimensions are minuscule and, prima facie, do not correspond with the dimensions of the handle ordinarily used for holding a jaily or a gandasi.

119. Interestingly, the defence specifically put a suggestion to the doctor that the injuries in question could have been caused as a result of a fall on a hard surface, and the doctor accepted such a possibility. However, no corresponding effort was made by the prosecution to elicit from the doctor whether the injuries sustained by the prosecution witnesses/injured eye-witnesses could have been caused by the weapons allegedly recovered from the accused persons. The only weapon shown to the doctor was the mussal/pestle allegedly recovered from Rajbir Singh, and that too only in relation to Injury No. 1 on the scalp of the deceased Dharampal. Thus, while the prosecution itself recognised the necessity of obtaining medical opinion regarding the compatibility of the injuries with the alleged weapon, as is evident from the aforesaid deposition, it failed to discharge a similar burden in relation to the injuries sustained by the remaining injured eye-witnesses vis-à-vis the other weapons allegedly recovered from the accused persons. The

omission on the part of the prosecution to seek such medical opinion remains wholly unexplained. Such reticence on the part of the prosecution becomes significant when the nature of the injuries does not, prima facie, inspire confidence that they were caused by the weapons attributed to the respective accused persons.

120. It is evident that, in the present case, specific injuries have been attributed to as many as eight accused persons. The prosecution relies upon a total of nine injuries sustained by the three injured witnesses and four injuries found on the person of the deceased Dharampal, including one lacerated wound on the scalp. A closer examination of the nine injuries sustained by the prosecution witnesses reveals that four of them are merely in the nature of tenderness and swelling, which, according to the doctor, could have been caused by a fall. Three injuries are abrasions measuring 0.5 cm, 1 × 0.5 cm, and 0.5 cm, respectively. These abrasions are alleged to have been caused by the use of a jaily and a lathi. To a person of ordinary prudence, abrasions of such dimensions do not ordinarily appear to be consistent with injuries caused by the use of weapons such as a gandasi, a lathi or a jaily. Apart therefrom, there are only two lacerated wounds, namely, one measuring 0.5 cm on the little finger of the right hand of Ashok Kumar and another measuring 1 × 0.5 cm on the left side of the forehead. Both these injuries are alleged to have been caused by a gandasi and a jaily. A gandasi is a sharp-edged weapon and, ordinarily, its use would result in an incised wound unless the injury is inflicted by the blunt side or the handle of the weapon. However, having regard to the location as well as the dimensions of the aforesaid injuries, the

prosecution version regarding the manner in which the injuries were sustained appears to be doubtful. Even though presence of some of the accused at the spot is established, however, their roles cannot be held to have been proved beyond reasonable doubt, for causing injuries with a common intention to cause death. Our findings about them are as under: -

121. Question No. (iii) is, accordingly, answered as follows. The prosecution has failed to establish the presence and specific role of Rajbir Singh, for the reasons recorded while answering Question No. (ii), as also of Krishan @ Randhir. The injuries attributed to Ajmer Singh and Suresh are not corroborated by the medical evidence. Insofar as Krishan @ Balwan, Karan Singh and Dilbagh Singh are concerned, their presence at the place of occurrence and their individual roles stand established only to the extent of the simple injuries specifically attributable to each of them. However, the prosecution has failed to establish any common intention or common object so as to render them vicariously liable for the fatal injury sustained by Dharampal or for the acts attributed to the other accused. Their criminal liability is, therefore, confined to their respective individual acts alone. A detailed discussion about the same is in the later part of the judgment.

Issue No. (iv) — Right of Private Defence and the Nature of the Offence

122. We now proceed to examine Question No. (iv) i.e. whether the appellants, and particularly Surinder Singh, are entitled to the benefit of the right of private defence. The right of private defence is a valuable statutory right recognised under the Indian Penal Code. At the same time, it is not an unfettered or unrestricted right. The extent of such right is circumscribed by

the conditions prescribed in Sections 96 to 106 IPC. Insofar as the right of private defence of the body is concerned, Section 100 IPC permits the causing of death only in those situations where the assault gives rise to a reasonable apprehension of death or grievous hurt, or where the case otherwise falls within any of the contingencies specifically enumerated therein.

123. It is equally well settled that the right of private defence is essentially preventive and protective in character. It cannot be invoked as a pretext for retaliation, retribution or punishment once the danger has ceased. The burden of establishing circumstances bringing the case within any of the general exceptions is governed by Section 105 of the Indian Evidence Act, 1872. The accused is not required to establish such a plea beyond reasonable doubt. It is sufficient if the material brought on record, whether through the evidence led by the defence or through the evidence adduced by the prosecution itself, probabilises the existence of circumstances entitling the accused to the benefit of the exception. Once such circumstances emerge from the record, the Court is required to examine whether the prosecution has succeeded in excluding the applicability of the exception.

124. In the present case, the material discussed while answering Question No. (i) undoubtedly establishes that the prosecution has suppressed the true genesis of the occurrence and that Surinder Singh had also sustained injuries which remained wholly unexplained. The evidence further probabilises that the occurrence was not one-sided and that both parties participated in the altercation. These circumstances certainly cast doubt upon the prosecution version and lend support to the defence case that the

occurrence arose out of a sudden confrontation. However, the existence of a sudden quarrel or a free fight is not, by itself, sufficient to attract the right of private defence extending to the causing of death.

125. The evidence on record however does not establish that, at the stage when the fatal injury was inflicted, Surinder Singh or any other appellant was confronted with such an imminent threat as would reasonably give rise to an apprehension of death or grievous hurt so as to justify causing the death of Dharampal. It is significant that there is no evidence to show that Dharampal himself was armed with any weapon. Even DDR No. 17, which constitutes the earliest version put forth by the defence, does not allege that Dharampal had assaulted Surinder Singh or had threatened him with death or grievous hurt. The material on record, therefore, falls short of satisfying the statutory requirements of Section 100 IPC.

126. We are, therefore, unable to hold that the appellants, and particularly Surinder Singh, have succeeded in bringing their case within the ambit of the right of private defence extending to the causing of death. At the same time, the evidence unmistakably suggests that the occurrence was not a pre-planned assault but arose out of a sudden altercation culminating in a free fight between the rival factions. The legal consequences of such a finding are to be examined not on the touchstone of the right of private defence, but in the context of Exception 4 to Section 300 IPC.

127. The trial Court proceeded to record a finding of conviction against all the accused primarily on the premise that the injuries sustained by the complainant party could not have been inflicted by a single individual. In

doing so, however, the trial Court failed to examine the nature, dimensions and characteristics of the injuries in the peculiar facts of the present case. It overlooked that, numerically, the injuries may have been several, but in substance a majority of them were merely in the nature of swelling, tenderness or minor abrasions. Such injuries are equally capable of being sustained during grappling, scuffling or the use of force by rival parties in the course of a physical altercation. This possibility assumes significance in the present case, especially in view of the admitted position that Surinder Singh was a wrestler and would ordinarily be robust and expected to possess considerable physical strength and stamina.

128. The trial court also proceeded to record a finding of conviction principally on the basis that the deceased had sustained four injuries. In doing so, however, it failed to notice the specific opinion of the medical expert that, except for Injury No. 1, all the remaining injuries could have been sustained as a result of a fall following the infliction of the first injury. The medical evidence, therefore, required a more careful appreciation before being reconciled with the ocular version. The omission to consider this material aspect has a direct bearing upon the appreciation of the prosecution case.

129. In the aforesaid circumstances, the question that falls for our consideration is the manner and circumstances in which Dharampal sustained the fatal injury. Having regard to the surrounding circumstances, the evidence on record, and the nature of the injuries sustained by the remaining prosecution witnesses, the occurrence, at best, appears to be one arising out of a sudden flare-up resulting in a free fight between the rival parties,

constituting one continuous transaction or an immediate back to back transaction.

130. It is not in dispute that PW-4 Bhoop Singh, PW-5 Ashok Kumar and PW-10 Mangal Singh sustained only simple injuries, which are in the nature of tenderness, abrasions and minor lacerations. The fatal injury on the person of Dharampal, namely the lacerated wound on the scalp, is also capable of having been caused by a lathi. The defence has consistently maintained that the said injury was inflicted by Surinder Singh during the course of the occurrence.

131. The respondent-State has laid considerable emphasis on the circumstance that Surinder Singh assumed responsibility for causing the fatal injury only with a view to shield the remaining members of his family. Even though such a possibility cannot altogether be ruled out, equally, however, is the converse possibility that the version put forth by Surinder Singh was truthful and deserves due consideration. Criminal adjudication requires the Court to examine all reasonably probable hypotheses emerging from the evidence and not merely those favourable to the prosecution.

132. In this regard, the surrounding circumstances assume significance. Surinder Singh was about 19 years of age at the relevant time and was the youngest amongst the brothers, whereas Rajbir Singh and Ajmer Singh were about 31 and 32 years of age respectively, and Krishan, son of Balwan Singh, was also stated to be above 30 years of age. All the family members were engaged in agriculture, except Rajbir Singh, who was employed in Government service. No specific reason has either been

suggested or established as to why Surinder Singh, a young man with his entire future before him, would falsely assume responsibility for causing the fatal injury merely to exonerate the remaining accused. In the absence of any material indicating such a motive, the explanation furnished by Surinder Singh could not have been discarded solely on the assumption that it was intended to protect the other members of his family. It was required to be examined in the light of the surrounding circumstances and the evidence available on record.

133. In the backdrop of the discussion as above, Section 300 IPC needs to be examined. The same is extracted as under: -

“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.

xxx xxx xxx

Exception 1.—When culpable homicide is not murder.—
Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

xxx xxx xxx

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith,

believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—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 offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

134. A culpable homicide would not be a murder, if it is committed without any pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel manner. Explanation thereto further clarifies that it is immaterial in such cases as to who offered the provocation or committed the first assault.

135. There being only one substantive injury on deceased Dharampal and other injuries being possible as a result of fall, it seems highly probable that the account given by Surinder Singh was genuine and he gave the injury to the deceased, which became fatal due to his advanced age. His sufferance of injuries, not explained by prosecution, corroborates the same. It seems that only in the ensuing course, other accused came to the spot and a scuffle/grappling took place, causing resultant injuries to other witnesses.

136. In the present case, the evidence, as appreciated hereinabove, does not establish a premeditated attack by the appellants. Rather, the circumstances probabilise that the occurrence arose out of a sudden altercation between the parties, which escalated into a free fight forming part of one continuous transaction. The injuries sustained by both sides, the suppression of the true genesis of the occurrence, the unexplained injuries on Surinder Singh, the failure of the prosecution to present the complete sequence of events, and the absence of any reliable evidence of pre-concert or premeditation, all probabilise that the occurrence was a spontaneous consequence of a sudden flare-up rather than a planned assault.

137. Once such circumstances emerge from the evidence, the Court is required to examine the culpability of the person responsible for the fatal injury in the light of the exceptions to Section 300 IPC. Where death occurs during the course of a sudden fight, without premeditation, in the heat of passion, and the assailant has not taken undue advantage or acted in a cruel or unusual manner, the law does not treat such culpable homicide as murder. The liability of the offender however does not stand obliterated; it merely stands altered in its legal character. The offence would, in such circumstances, be punishable under Section 304 IPC, depending upon the intention or knowledge attributable to the offender. Applying the aforesaid principles to the facts of the present case, we are of the opinion that the occurrence appears to have been the result of a sudden free fight constituting one continuous transaction.

138. It is equally well settled that the concept of a free fight stands on

an altogether different footing from the right of private defence. In a free fight, both rival groups voluntarily engage in the confrontation and each side assumes the role of an aggressor. The occurrence is not initiated by one side alone while the other merely defends itself. Consequently, neither party can legitimately invoke the right of private defence. Where both sides willingly participate in the affray, the plea of private defence ordinarily becomes unavailable.

139. It is also a settled principle that, in a case of a free fight, criminal liability has to be determined with reference to the specific overt act committed by each accused. Since the occurrence does not arise out of the prosecution of a common intent or object shared by an unlawful assembly, the principle of constructive or vicarious liability embodied in Section 149 IPC or Section 34 IPC, ordinarily has no application. Every participant is answerable only for the act individually proved against him, and his liability has to be assessed on the basis of the injury caused by him and the attendant circumstances established by the evidence.

140. We also find that the evidence on record does not establish the existence of an intention to commit murder. The deceased Dharampal sustained only one injury on a vital part of the body i.e. the scalp, and there is no material to suggest that the assault was accompanied by exceptional brutality or that repeated blows were inflicted upon the deceased or the other injured persons. The nature of the occurrence, as already noticed, probabilises that it arose out of a sudden altercation culminating in a free fight, rather than a premeditated attack. In such circumstances, the requisite intention

contemplated under Section 300 IPC does not emerge from a meaningful appreciation of the evidence.

141. At the same time, the circumstances do not absolve Surinder Singh of criminal liability. The evidence establishes that the fatal injury was inflicted by him. It has also come through his own admissions that Surinder Singh was a wrestler and was regularly engaged in wrestling practice. A person possessing such physical strength and training would reasonably be attributed with the knowledge of the likely consequences of striking a forceful blow on the scalp of an elderly person. The deceased was about 70 years of age and a blow on such a vital part of the body was reasonably likely to cause death or such bodily injury as was likely to result in death.

142. In the facts and circumstances of the present case, therefore, while the intention to cause death or such bodily injury as would ordinarily cause death is not established, however, the knowledge attributable to Surinder Singh brings the case within the ambit of Section 304 Part II IPC. A person of ordinary prudence would be deemed possessing the knowledge that a forceful blow on an aged person can cause injury likely to cause death, though without the intention of causing death or such bodily injury as is sufficient in the ordinary course of nature to cause death.

143. Accordingly, Question No. (iv) is answered by holding that the appellants are not entitled to the benefit of the right of private defence. The evidence on record does not establish the existence of circumstances giving rise to a reasonable apprehension of death or grievous hurt so as to attract the protection of Section 100 IPC. The statutory requirements for extending the

right of private defence to the causing of death are, therefore, not satisfied.

144. At the same time, the very same body of evidence also establishes that the occurrence was neither pre-planned nor premeditated, but arose out of a sudden altercation which escalated into a free fight between the rival factions. The prosecution has failed to establish that Surinder Singh acted pursuant to any prior design or with an intention of executing a planned assault. The evidence further shows that only a single fatal injury was inflicted upon Dharampal during the occurrence and that neither side can be said to have taken undue advantage over the other or acted in a cruel or unusual manner. The cumulative effect of these circumstances brings the case squarely within the ambit of Exception 4 to Section 300 IPC.

145. Consequently, while the plea of private defence is rejected, Surinder Singh is held entitled to the benefit of Exception 4 to Section 300 IPC, with the result that the offence committed by him does not amount to murder punishable under Section 302 IPC but falls within the category of culpable homicide not amounting to murder.

Issue No. (v) — Whether the Findings of the Trial Court Warrant Interference

146. Applying the findings recorded under Issues No.(i) to (iv) above to each appellant/respondent individually:

(a) Rajbir Singh - Insofar as appellant Rajbir Singh is concerned, for the reasons recorded hereinabove, this Court finds that the plea of alibi raised by him stands sufficiently probalised and the prosecution cannot be assumed to have established his presence at the place of occurrence, beyond reasonable

doubt. The evidence led by the prosecution is insufficient to dispel the doubt arising from the defence version, and even the alleged recovery of the weapon attributed to him has itself remained unproved. Consequently, we are of the view that the prosecution has failed to establish the charge against Rajbir Singh beyond reasonable doubt. The judgment of conviction and the order of sentence passed against Rajbir Singh for the offence punishable under Section 302 IPC are, accordingly, set aside, and he is acquitted of the said charge by extending to him the benefit of doubt.

(b) Ajmer Singh and Suresh (CRR-608-2005)

147. While appreciating the evidence on record, we find that the injuries specifically attributed to accused Ajmer Singh and Suresh do not find corroboration from the post-mortem report. The very injuries alleged to have been inflicted by them are absent in the medical evidence. The prosecution has failed to reconcile the ocular version with the medical evidence in this regard.

148. The prosecution witnesses have attributed jaily blow to deceased on his left arm, Suresh is attributed a second jaily blow on the left hand which landed on the back side of the fingers of the deceased. Notwithstanding that recovery of weapons has not been proved, PW.11 Dr. Giri Raj who conducted the post-mortem of deceased Dharam Pal did not find any corresponding injury. Rather, he specifically states that Injury No.1, which is a lacerated wound, could be caused with a mussal or even by lathi. The other injuries could be due to a fall. The response reads thus: -

“Injury No.1 on the person of the deceased could be caused by a

lathi. Injuries No.2 to 5 on the person of the deceased were possible by a fall after receipt of injury no.1, if injured falls face downward.”

149. The allegations are thus not proved by medical evidence. The acquittal of Ajmer and Suresh thus cannot be said to be misplaced, illegal or improper. Their acquittal is thus affirmed.

(c) Krishan son of Balwan, Karan Singh and Dilbagh Singh –

150. Insofar as accused Krishan @ Balwan, Karan Singh and Dilbagh Singh are concerned, this Court finds that the prosecution has succeeded in establishing their presence at the place of occurrence only to the limited extent of having caused simple injuries individually attributed to them. The injuries that have been sustained by the complainant party were medico-legally examined by PW.1 Dr. Asha Sehrawat. She noticed two injuries on PW.4 Bhoop Singh which were tenderness and an abrasion. While injury No.1 was kept under observation, the other injury was found to be simple.

151. She also medically examined and noted three injuries on PW.5 Ashok which are abrasions and lacerated wound on dorsal aspect of little finger and tenderness. Injury Nos.1 to 3 on Ashok were possible by a fall on a hard surface or by a blow.

152. There were three injuries on PW.10 Mangal and injuries were eventually found to be simple and charge was framed only for the substantive offence of having caused simple injuries. The evidence on record does not justify fastening any vicarious liability upon them for the fatal injury sustained by Dharampal or for the acts committed by the remaining accused. Their

criminal liability has to be determined on the basis of their own individual acts and not by invoking a broad theory of collective participation.

153. The injuries attributed to the aforesaid accused are undisputedly simple in nature. The prosecution has not examined the Radiologist to prove that any of the injuries inflicted by them were grievous in nature. The medical evidence, therefore, does not disclose any aggravating circumstance warranting interference with the sentence imposed by the trial Court.

154. Their convictions are, accordingly, maintained only to the extent of the individual injuries proved to have been caused by each of them, and not by applying the principle of constructive or vicarious liability for the acts of the other accused.

155. For the reasons recorded under Issue No.(iii) above, their conviction stands affirmed but for offence under Section 323 IPC each. This Court has also taken into consideration the period of custody already undergone by the said accused, the fact that the occurrence pertains to the year 2004, and the ordeal of a protracted criminal trial and appellate proceedings spanning over two decades. Having regard to the totality of the circumstances, we are of the opinion that the ends of justice would be adequately met by reducing the substantive sentence awarded to the aforesaid accused to the period already undergone by them.

(c) Krishan son of Randhir (CRA-D-848-DB-2004)

156. Insofar as appellant Krishan s/o Randhir is concerned, this Court finds that the prosecution has failed to establish his presence and participation in the occurrence beyond reasonable doubt. The evidence led against him does

not inspire confidence and falls short of the standard required in a criminal trial. The prosecution has also failed to establish any specific overt act attributable to him by leading any evidence. All other injuries having already been attributed to other accused, there remained no further corresponding injury. He was originally found innocent by the investigating agency. The FIR recorded at the instance of PW.4 Bhoop Singh as well as in the statement of PW.10 Mangal Singh, there is no mention regarding any injury attributed to him. Only PW.5 Ashok Kumar alleges a gandasi blow by the accused-appellant Krishan, to him, on the right hand little finger. The medical evidence however does not prove any corresponding injury and PW1, the doctor deposed that tenderness was present on the left hand, which injury has neither been attributed nor could have been caused by a gandasi.

157. For the reasons recorded under Issue No.(iii) above, his conviction and sentence are set aside and he is acquitted.

158. As emerges from the detailed deliberations in preceding paras, it has emerged that even though Surinder had admitted to having caused injuries to deceased Dharampal but the same was not accepted on the ground that it was an attempt to save the culprits. The said finding having been held by us to be invalid and unsustainable on the objective reading of the evidence and coupled with all other injuries rather being simple and co-relatable to act of scuffling, grappling and blows, the version of Surinder seems more cogent.

159. Besides, recoveries of weapons having not been proved, the prosecution case about the accused having used the weapons to cause injuries cannot be taken as a gospel truth. It thus seems that Dharampal was given a

blow by Surinder. The same proved fatal. He fell down due to impact thereof and sustained the other injuries. The said opinion is based upon objective consideration of the medical record and opinion of PW.11 Dr. Giri Raj.

160. It is also noticed that the incident falls in Exception 4 of Section 300 IPC and hence, it would not be a case of culpable homicide amounting to murder, instead it is punishable under Section 304 Part II. A knowledge has to be imputed to the accused to be aware of consequences of use of excessive force against a frail person who is at advance stages in life.

161. The appeal is thus partly allowed and his conviction for offence under Section under Section 302/149 is set aside and he is instead held guilty for offences under Section 304 IPC.

162. Adverting next to the quantum of sentence. Undisputedly, the incident is more than two decades old. The accused was then a young boy of 19 years and a Wrestler. Soon before the incident, he was coming after a Wrestling practice. Youth and robust fitness coupled with uncontrolled physical strength, the injury was seemingly caused. There was no repeat blow or injury by him to any other person. It shows that he tripped on crime but is not a criminal by intent. Besides, there are no criminal antecedents and he has not indulged in any other criminal conduct as well. By now he is in his early forties and would also have family responsibilities to discharge.

163. In view of the discussion held above, the appellant is sentenced to undergo rigorous imprisonment for a period of seven (07) years and to pay a fine of Rs.10,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of three (03) months.

164. For the reasons as aforesaid, CRR-608-2005 filed by Bhoop Singh is dismissed. Appeal filed by Krishan bearing No.CRA-D-848-DB-2004 is allowed. The judgment of conviction qua him is set aside. Appeal bearing No.CRA-D-880-DB-2004 filed by Rajbir Singh and others is partly allowed, as above.
165. Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.
166. A photocopy of the order be placed on the connected file(s).

(VINOD S. BHARDWAJ)
JUDGE

August 20, 2026.
raj arora

(SUKHVINDER KAUR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No