



**CRA-D-829-DB-2004 (O&M)**

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**105**

**CRA-D-829-DB-2004 (O&M)**

Date of Reserve: 18.08.2025

Date of Pronouncement: 01.09.2025

Madan Lal and others

... Appellants

Versus

State of Haryana ... Respondent

**CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL  
HON'BLE MR. JUSTICE H.S. GREWAL**

Present:- Mr. Vinod Ghai, Sr. Advocate with  
Mr. Arnav Ghai, Advocate,  
Ms. Kashish Sahni, Advocate and  
Mr. R. S. Bagga, Advocate for the appellants.

Mr. Karan Sharma, DAG, Haryana.

Mr. Sandeep K. Sharma, Advocate for  
Mr. G. P. Singh, Advocate for the complainant.

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**H.S. Grewal, J.**

1. The present appeal has been preferred against the judgment of conviction and order of sentence dated 19.07.2004 passed by the learned Sessions Judge, Narnaul in case F.I.R. No.273 dated 11.09.2002, under Section 302 read with Section 34 IPC, registered at Police Station Mahendergarh, whereby the appellants had been convicted and sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs.500/- each under Section 302/34 IPC and in default of payment of fine, to undergo further RI for one month.

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2. The appeal qua appellants No.1 and 3, namely Madan Lal and Jagmal Singh, already stands abated vide order dated 18.08.2025, as they have expired during the pendency of the appeal.

3. The case of the prosecution is that Surender Singh-complainant, who is a resident of village Birawas, used to run an STD booth. On 11.09.2002, at about 7:30 a.m., his father, Shadi Ram, proceeded from their *nohra* towards the fields. At that time, the complainant was present in the *nohra*. When Shadi Ram reached the street in front of the house of accused Madan Lal, the complainant heard voices saying that a lesson would be taught to him for having deposed in favour of Bhagwanti. On hearing this, the complainant came out of the *nohra* and witnessed accused Madan Lal and Jagmal holding Shadi Ram. In the meantime, accused Sunil Kumar inflicted a blow with the reverse side of a *kulhari* on the head of Shadi Ram, followed by accused Lal Chand, who dealt a blow with an iron rod on the back side of his head. As a result, Shadi Ram fell to the ground, raising an alarm by crying "*mar diya, mar diya.*" At that juncture, Accused-Sanjiv and Munni, wife of Lal Chand, exhorted the co-accused to teach Shadi Ram a lesson for giving evidence and to kill him. Thereafter, the complainant, along with Lila Ram son of Prabhu Ram and one Kanhi Ram (father's name not known), reached the spot and rescued Shadi Ram. While Shadi Ram was lying on the ground, accused Madan Lal and Jagmal also gave him kicks. In the meantime, several persons from the village gathered at the spot. Before leaving, accused Madan Lal and others threatened Shadi Ram, declaring that though he had survived that day, he would be killed whenever an opportunity arises in the future. Thereafter, injured was admitted in CHC, Mahendergarh and ruqa was sent to the Police Station. However,

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Shadi Ram was not fit to make a statement and he was thereafter referred to PGIMS, Rohtak. Head Constable Om Parkash reached CHC, Mahendergarh. However, he could not find any eye witness of the occurrence and, therefore, he went to PGIMS, Rohtak. He moved an application to know if Shadi Ram was fit to make a statement or not. However, Shadi Ram was declared unfit to make statement and the statement of Surender Singh, an eye witness of the occurrence, was recorded. Shadi Ram died on 11.09.2002 at about 11.10 pm and on 12.09.2002, the police was informed about the death and thereafter, postmortem was conducted and other police investigation was carried out.

4. Learned Senior counsel for the appellants submits that the trial court had erred in convicting the appellants as there were material contradictions in the prosecution version. He submits that during the alleged occurrence, the appellants had received multiple injuries, two of which were grievous in nature. The injuries were duly proved by DW1 Dr. Karan Singh and DW2 Dr. Narbir Singh, who were independent Doctors. The prosecution has not explained these injuries at all, which clearly shows that the genesis of the occurrence has been concealed and the prosecution has projected a distorted version of events. Moreover, the incident allegedly took place around 07:30 a.m. on 11.09.2002, whereas the statement of Surender Singh (complainant) was recorded only at 03:10 p.m. The unexplained delay of nearly eight hours gives sufficient time for deliberation, consultation and embellishment. On the other hand, the accused had lodged a daily diary entry at 10:00 a.m. on the same day (Ex.DC), which shows that they were the ones who first approached the police. Learned counsel also submits that PW1 Surender Singh stated that

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accused-Sunil inflicted the blow with the reverse side of a *kulhari* (axe) while PW10 Leela Ram had stated that the weapon used was a *sheru* (short arm of a cot). Even the Investigating Officer admitted during cross-examination that a *sheru* was actually used. This contradiction regarding the weapon goes to the root of the case. The complainant initially stated that the occurrence took place in front of the house of accused-Madan Lal but later in his statement, shifted the place of occurrence near the Panchayat Ghar. Furthermore, Virender Singh, son of the deceased, who had accompanied his father to the hospital and was a material eye-witness, has not been examined by the prosecution without any explanation. Learned counsel, therefore, submits that the conviction of the appellants is wholly unsustainable and they deserve to be acquitted by giving them the benefit of doubt.

5. On the other hand, learned State counsel and the counsel for the complainant jointly submit that the trial Court had rightly convicted the appellants under Section 302/34 IPC on the basis of cogent, reliable and trustworthy evidence. The accused/appellants had a dispute with Bhagwanti and in the complaint lodged by Bhagwanti against the accused, Shadi Ram deceased was cited as a witness. The ocular version of PW1 Surender Singh and PW10 Lila Ram is reliable as both of them are natural witnesses being present at the spot. Their testimonies are consistent on material particulars. Minor discrepancies regarding the exact weapon used or the precise place of occurrence cannot demolish the otherwise trustworthy evidence of eye-witnesses. The post-mortem report corroborates the ocular version regarding the fatal head injury suffered by the deceased. They further submit that

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although there is some delay in recording the FIR but it was duly explained by the fact that the complainant was attending to the injured and arranging for his medical treatment. The injuries on the accused/appellants were superficial and could very well have been suffered during the course of the scuffle initiated by them. Merely because injuries exist on the accused side does not mean that the prosecution case should be thrown out. The defence story is an afterthought. The DDR lodged by the accused was rightly discarded by the trial Court because it did not lead to any regular investigation or registration of case. The accused cannot take advantage of their own report which is self-serving. On the basis of the above submissions, learned counsel(s) have submitted that the findings recorded by the trial Court are well-reasoned and the appeal deserves to be dismissed.

6. We have heard learned counsel for the parties and have perused the material available on record.

7. In order to substantiate the charge against the appellants, the prosecution had examined as many as 16 prosecution witnesses.

8. PW1 Surender Singh, who is the complainant and also an eye witness of the occurrence, had deposed that on 11.09.2002 at about 07:30 a.m. he was present in his nohra (out house where cattle are tethered). His father (Shadi Ram) was also present there. He stated that when his father had just come out in the street, he had heard someone speaking that he would be made to taste the fruit of making statement in favour of Bhagwanti as a witness. Upon hearing, he came out of the nohra and saw that at a distance of 20-22 steps from the nohra, in front of panchayat ghar, six persons namely Madan

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Lal, Jagmal, Lal Chand, Sunil, Sanjiv and Munni Devi were there. Madan Lal and Jagmal had caught hold of his father. Sunil gave a blow with reverse side of kulhari on the head of his father. He was standing in front of his father at that time. Lal Chand was at the back of his father and had given a blow at the back of his head with an iron rod. Munni and Sanjiv were giving kicks to his father and Munni was exhorting the other accused to kill him for appearing as a witness in the case of Bhagwanti. The complainant along with Lila Ram had gone to rescue his father. Thereafter, the accused persons ran away from the place of occurrence. Then he had arranged a vehicle from the village and brought his father to CHC, Mahendergarh. They reached CHC, Mahendergarh at about 08:00 a.m. from where his father was referred to PGIMS, Rohtak. His father died at about 11.00 p.m. on the same day. In his cross-examination, he had deposed that the kulhari (axe) used by accused-Sunil was not used from the side of its handle, the part that caused injury was the reverse side of the metallic blade of the kulhari. He also deposed that after the occurrence, his father was not in a condition to speak.

9. PW2 Dr. Vinod Kumar Pathak had radiologically examined Shadi Ram on 11.09.2002 at PGIMS, Rohtak and found Shadi Ram as having suffered fracture of his frontal bone.

10. PW3 Sukhbir Singh, Record Keeper, PGIMS, Rohtak had produced the record of treatment of Shadi Ram of PGIMS, Rohtak. PW4 Mahesh Kumar is the Constable-cum-Draftsman, who had prepared a site plan to scale of the place of occurrence on the demarcation of the same by Surender Singh and Lila Ram.

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11. PW5 ASI Om Parkash had reached PGIMS, Rohtak on receipt of telephone call from Surender Kumar about the death of Shadi Ram. He had prepared the inquest report and got post-mortem examination conducted on the dead body of Shadi Ram. He had received the clothing of the deceased in a sealed cover from the doctor alongwith post mortem report which he delivered to SI Laxmi Narain on his return to Mahendergarh.

12. PW6 HC Satbir Singh had recorded the formal FIR of this case on receipt of the statement of Surender Singh from HC Om Parkash. He had also deposed by way of an affidavit with regard to keeping the case property.

13. PW7 UGC Harpal Singh UGC and PW8 Constable Dharmender are formal witnesses. PW9 Ajit Singh is the Photographer who had taken the photographs at the spot on 12.09.2002.

14. PW10 Lila Ram, who is stated to be an eye witness of the occurrence, had deposed the version as reiterated by PW1 Surender Singh. In his cross-examination, he had deposed that he along with PW1 Surender had taken Shadi Ram to CHC, Mahendergarh in a Tata Sumo. Virender son of Shadi Ram had reached CHC, Mahendergarh, at about 09:00 or 09:30 a.m. Before Virender reached there, Surender had already left with Shadi Ram for PGIMS, Rohtak. Virender came to CHC, Mahendergarh from the village itself. He had told Virender about the occurrence. Thereafter, Virender left for the village. Surender had asked Lila Ram to reach Narnaul to inform the brother-in-law of Shadi Ram. It was for the explicit purpose of arranging money. Thawar Singh brother-in-law of Shadi Ram had gone to Rohtak with the money. He (PW10) did not go to Police Station Mahendergarh for making a report. Surender had told him that he had lodged the report. He did not tell the

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police that Kanhi Ram son of Kurda Ram and other villagers were attracted to the spot hearing the commotion and they rescued Shadi Ram from the hands of the accused. He had stated to the police in his statement that Munni Devi had also reached the spot and participated in the occurrence. He had told the police that all the six accused were giving kicks and fist blows to Shadi Ram. Despite him and Surender (complainant), no one else was present at the spot.

15. PW11 Dr. Gajraj Singh had medico-legally examined Shadi Ram on 11.09.2002 at CHC, Mahendergarh. He deposed that the patient was unconscious and following injuries were present on the person of Shadi Ram:-

*“1. A lacerated wound of size 6.5x1cm bone deep was present on right frontal parietal region. Red in colour. Fresh bleeding was present.*

*2. A lacerated wound of size 1.5x.5cm was present on right occipital region. Red in colour. Fresh bleeding was present.”*

He further deposed that the patient was referred to PGIMS, Rohtak. Ruqa Ex. PH was sent to police Station, Mahendergarh regarding the condition of Shadi Ram. On 13.09.2002, accused-Sanjeev son of Jagmal, Lal Chand son of Mauja Ram and Sunil son of Jagmal and Jagmal son of Bhola Ram were produced before him by the police with applications Ex.PQ, Ex.PR, Ex.PS, Ex.FT. He did not find any injury on their person and he endorsed this fact on the application. In his cross-examination, he deposed that Shadi Ram was brought to the Hospital by Virender Singh (son of the deceased).

16. PW12 Head Constable Om Parkash went to CHC, Mahendergarh on receipt of ruqa on 11.09.2002. Finding no eye witness of the occurrence at

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CHC, Mahendergarh, he went to PGIMS, Rohtak. As Shadi Ram was declared unfit to make statement, he recorded the statement of Surender Singh and making his endorsement on the same, he had sent the same to the police station for registration of the case.

17. PW13 Dr. Pardeep Sharma was posted as Medical Officer at Civil Hospital, Rohtak on 12.09.2002 and had conducted the post-mortem examination on the dead body of Shadi Ram at the mortuary of PGIMS, Rohtak on the request of ASI Om Parkash. He had found following injuries on the person of Shadi Ram:-

- “1. A lacerated wound 8.5. cms. x .5 cm. and bone deep, obliquely placed on the right half of forehead started from right frontal pole to the medial end of the right eye brow. On dissection, the under surface of scalp showed ecchymosis and a bony gap of 10 cms. x ½ cm. was present in the line with the external injury. The supra orbital bony part and the base of the nose was fractured and further exploration showed subdural haemotoma covering the frontal lobes of both right and left cerebral hemisphere.*
- 2. A lacerated wound 3 cm x 1.5 cms, x bone deep on the right half of occipital area. On dissection 5. echymosis and blood clots were found beneath the scalp.*
- 3. A vertically placed abrasion on the outer side of front of right knee joint.”*

PW13 Dr. Pardeep Sharma had opined that the cause of death was a result of shock and haemorrhage by head injury. The injury was ante mortem and sufficient enough to cause death in normal course of nature. In his cross-examination, he had deposed that under the site of injury No. 2, no fracture of bone was found. So, it was a simple injury. Death in this case is due to injury

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No.1. he did not find the skull of the deceased having been opened in any surgical operation. Possibility of injury Nos.2 and 3 by way of fall cannot be ruled out.

18. PW14 Dr. S.P. Chugh, Causality Medical Officer, PGIMS, Rohtak had deposed that on 11.09.2002, the police had made an application Ex.PU for seeking his opinion regarding the fitness of Shadi Ram. He examined Shadi Ram and had found that he was unfit for making statement and he had endorsed his opinion on the application as Ex.PU/1.

19. PW15 Dr. Paryesh Gupta, Senior Resident, Department of General Surgery, PGIMS, Rohtak had deposed that on 11.09.2002, Shadi Ram was brought in the Emergency Ward of PGIMS, Rohtak, with history of assault on head. The patient had head injury for which C.T. scan was done. C.T. Scan showed subdural haemotoma. Neurosurgeon's opinion was taken. Shadi Ram was advised for conservative treatment. The condition of the patient was deteriorating and despite best possible efforts, he could not be revived. He was declared dead on 11.09.2002 at 11.10 p.m.

20. PW16 SI/SHO Laxmi Narain is the Investigating officer of this Case. He had deposed that on 12.09.2002, he had received a telephone call from ASI Om Prakash, who was at PGIMS, Rohtak for investigation. Then he went to the spot and got the same photographed. From the spot, blood stained earth was lifted, was given the shape of parcel and was sealed with the seal 'DP', which was taken into possession vide recovery memo Ex.Pk. He had prepared the rough site plan of the place of occurrence (Ex.PX). On 13.09.2002, he had arrested accused Jagmal, Lal Chand, Sunil and Sanjeev. During interrogation accused Sunil disclosed that a short arm of cot had been

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kept by him inside the kotha of his house about which no one else had knowledge and he could get the same recovered. Statement of Sunil was recorded which is Ex.PY, was signed by him and attested by the witnesses. Lal Chand was then interrogated who had disclosed that he had kept an iron rod in his residential house. His disclosure statement Ex.PZ was recorded which was signed by him and attested by the witnesses. Accused-Sunil then led the police party headed by him to the kotha of his house and he brought out the short arm of the cot. Sketch thereof (Ex.PAA) was prepared which was given the shape of parcel and was sealed with seal 'SS'. It was taken into possession by way of recovery memo Ex. PAB. Accused-Lal Chand then produced an iron rod from the residential house. Sketch thereof (Ex.PAC) was prepared and the same was also given the shape of parcel and was sealed with the seal 'SS'. It was taken into possession by way of recovery memo EX.PAD. Rough site plans of the places of recovery were prepared which are Ex.PAE and Ex.PAF. The accused were got medico-legally examined on the same day. For this purpose he made applications Ex.PQ, Ex. PR, Ex.PS and Ex. PT. On 07.10.2002 accused Madan Lal was arrested. On 18.9.2002, he had produced the rod and Sheru (short arm of the cot) before the doctor at CHC, Mahendergarh in a sealed cover. The doctor opened the sealed covers and examined the weapons and gave his opinion. He made applications in this regard which are Ex.PO and Ex.PT. The doctor sealed the weapons again and gave them to him. In his cross-examination, he had deposed that during investigation, it was noticed that accused-Sunil had used *sheru* during the occurrence and he did not use *kulhari*. As per the statement of Lila Ram, Surender Kanhi Ram son of Kurde Ram had been an eye witness of the occurrence. He tried to call Kanhi Ram son of Kurda

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Ram but he did not come present before him and so he had no occsaion to record his statement under section 161 Cr.P.C.

21. After closing the prosecution evidence, the statements of the appellants under Section 313 Cr.P.C. were recorded wherein they had denied all the allegations and pleaded innocence. They had deposed that they had been falsely implicated in this case and there is no motive for the alleged murder.

22. Accused/appellant-Madan Lal had pleaded that he is handicapped from his left hand. Accused-Sanjiv Kumar had also denied the truth of the prosecution evidence put to him in the shape of questions. He has also taken the plea of his absence from the spot at the time of occurrence. He stated that Munni Devi was also not present at the spot at the time of the alleged occurrence. Accused-Lal Chand had deposed that on 11.09.2002 at about 7.30 a.m., he came out of his house with tiffin in his hand for going to his shop at Behror. According to him, when he was in front of the nohra of Shadi Ram, Surender and Virender armed with lathis came there and caused injuries to him. When he raised noise, Jagmal and Sunil came there and they were also assaulted by Surender, Shadi Ram and Virender. According to him, Basanti wife of Shadi Ram also came there and abused him as well as Jagmal and Sunil and pelted stones which had hit Shadi Ram. According to him, the alarm raised by them attracted Sandeep @ Mandeep and Mehar Chand s/o Girdhari who rescued them. Lila Ram is denied to be present at the spot. Kanhi Ram is, however, admitted to be present at the spot. He denied that either he or Jagmal have caused injuries to Shadi Ram. Thereafter, he alongwith Jagmal reported the matter to Police Station, Mahendergarh and lodged a report there which was recorded in the daily diary. Accused further deposed that they were sent for

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medico-legal examination to CHC, Mahendergarh where they were admitted. He and Jagmal Singh are said to have been X-rayed for their injuries and they were found to have received grievous injuries on their persons. According to him, SI Laxmi Narain picked them up from the hospital and arrested them and recorded their false disclosure statements and planted the recovery of shuru and an iron rod.

23. Accused/appellant-Jagmal Singh had also denied the truth of the prosecution evidence put to him in the shape of questions. He had claimed himself innocent and deposed that on the noise raised by Lal Chand, he and Sunil ran to rescue him but they were also assaulted by Surender, Shadi Ram and Virender.

24. Similarly, accused/appellant Sunil Kumar had denied the truth of the prosecution evidence put to him. He had repeated the defence version given by Jagmal. He had also added that his brother-Shashi Kumar had filed a complaint in respect of this occurrence in the court of Illaqa Magistrate.

25. In defence, the accused/appellants have examined six witnesses. DW1 Dr. Karan Singh, Medical Officer, CHC, Mahendergarh had medico-legally examined the accused/appellants on 11.9.2002.

(a) First of all, DW1 Dr. Karan Singh had medico-legally examined accused/appellant-Sunil Kumar son of Jagmal and had found the following injuries on his person:-

*“1. Lacerated wound over left pariental region and over the pariental enimance inverted V shape 2 x .7 x .8 cm in size and fresh bleeding was present.*

*2. Swelling with tenderness with abrasion over right hand thumb.5 x .2cm in size.*

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*3. lacerated wound over right hand index finger tip 1 x .3 x .3cm in size and fresh bleeding was present.”*

He further deposed that injuries No 1 & 2 were advised for x-ray examination. All the three injuries were caused by blunt weapon within probable duration of 06 hours. This patient was brought by Constable Rajender Singh. Injuries on the person of Sunil cannot be self suffered. It cannot be caused by fall and were not superficial in nature. Ex.DE is the photocopy of the MLR.

(b) Dr. Karan Singh had further medico-legally examined accused/appellant-Lal Chand and had found the following injuries on his person:-

- “1. Contusion with redness with difficulty in movement. 10 x 2.5cm in size located over left leg upper 1/3rd.*
- 2. Contusion with redness over left knee externally placed 10 x 2.5cm in size and movement was restricted.*
- 3. Contusion with redness with swelling over left thigh and it was externally placed and the movement was painful.”*

He deposed that all the three injuries were kept under observation and X-rays were advised. All the injuries were caused by blunt weapon within probable duration of 06 hours. Injuries on the person of Lal Chand cannot be self-suffered and cannot be resulted due to fall and were not superficial in nature. EX.DP in the correct photocopy of the MLR.

(c) On the same day, accused/appellant Jagmal Singh was also examined and the following injuries were found on his person:-

- “1. Swelling with tenderness over the right wrist. Movement was painful. No visible external injury was seen and redness was present.*

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2. *Contusion with abrasion over it with redness and fresh bleeding was present, located over the skull area.*
3. *Swelling with tenderness over left hand thumb. No visible external injury was seen.*
4. *Abrasions over right hand thumb and base of index finger. 1x1.5cm and 1x1cm in size.”*

Dr. Karan had opined that all the injuries were caused by blunt weapon within probable duration of 06 hours. The injuries on the person of Jagmal cannot be self-suffered or by fall and were not superficial in nature, Ex.DG is the correct photocopy of the MLR.

26. DW2 Dr. Narbir Singh, SMO CHC, Mahendergarh, had deposed that on 11.9.2002, he had radiologically examined accused/appellant-Lal Chand and found fracture of fibula bone in his x-ray of left leg. Ex.DH is the correct photocopy of X-ray report. On the same day, accused-Jagmal Singh was also radiologically examined by him and the Doctor had found fracture of proximal phalynax of thumb in his x-ray of left wrist and hand. Ex.DJ is the photocopy of x-ray report which bears his signatures.

27. DW3 Manoj Kumar, Criminal Ahlmad had brought the record of the Criminal case titled as ‘Shashi Kumar Vs. Virender Singh etc.’ bearing No. 97 dated 26.10.2002 pending for 26.08.2004 for notice to the complainant in the court of Sh. Rajesh Kumar Bhankhar, Judicial Magistrate Ist Class, Mahendergarh. He had proved a certified copy of the complaint as Ex.DL.

28. DW4 Kanwar Singh, Clerk to Mr. R.S. Yadav, Advocate had stated that the complaint was got typed on the instructions of Shashi Kumar and the said complaint was signed by him in his presence.

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29. DW5 Dr. S.P. Aggarwal had deposed about the handicapped condition of Madan Lal which was assessed by way of a handicap certificate on 15.07.1991. He was found to be 50% permanent handicapped on account of contracture of all four fingers of left hand after burns.

30. Thereafter, Jagmal Singh applied under Section 315 Cr.P.C. for permission to appear as a defence witness. He was permitted to do so and he appeared as DW6 and deposed that Lal Chand is his younger brother. On 11.9.2002 at about 07.30 a.m. Lal Chand left home with his tiffin for his shop. After sometime, he had heard an alarm of Lal Chand. He came out of the house and saw Surender, Birender, and Shadi Ram armed with lathis. Basanti armed with stones. They had surrounded Lal Chand and Shadi Ram was telling Lal Chand that he would be taught a lesson for getting the matter of Bhagwanti compromised. First of all, Birender gave a lathi blow to Lal Chand which fell on the right arm of Lal Chand which fell above the elbow joint. Second blow with lathi was given by Virender on the left leg below the knee joint. Birender gave another blow on the left thigh of Lal Chand. Shadi Ram gave a lathi blow on the left calf of Lal Chand. He along with his son had rushed to the spot to rescue Lal Chand. Within his sight, one lathi blow was given by Shadi Ram on the head of Sunil (son of Jagmal). Virender gave a lathi blow on the right hand palm of Sunil. When Jagmal Singh had tried to rescue them, Virender gave a lathi blow on his left wrist. Virender gave another lathi blow on his left palm. The complainant party wanted to hit him on his head and he avoided the blow by raising his hand. Surender gave a lathi blow on the left side of his head. Basanti was throwing stones. One of the stones thrown by Basanti had hit Shadi Ram on his head. Shadi Ram fell down. Basanti kept throwing stones.

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Hearing the commotion, Mehar Chaul son of Girdhari, Kanhi Ram son of Kurda Ram, Mandeep son of Leeladhar came to the spot. They rescued us. Virender had threatened them of being liquidated in future on getting opportunity. He was also saying that they had been spared on that day. Munni Devi, Sanjeev and Madan Lal were not there at the spot. Lila Ram son of Prabhu Dayal was also not there at the spot. Jagmal Singh had also deposed that they reported the matter to the Police but the Police did not record the same properly but their signatures were obtained by the police.

31. Having heard the rival submissions of learned counsel for both the sides and upon careful scrutiny of the evidence adduced by both sides, this Court is of the considered opinion that the conviction and sentence recorded against the appellants cannot be sustained in law. It is a settled principle of criminal jurisprudence that the prosecution is bound to explain the injuries on the accused side, especially when the injuries are grievous and are shown to have been sustained in the same occurrence. In the present case, not only the injuries on the accused/appellants are unexplained but the defence version also finds corroboration from the medical evidence of DW1 Dr. Karan Singh and DW2 Dr. Narbir Singh.

32. Firstly, the prosecution has failed to explain the injuries suffered by the accused persons. The medical evidence, as deposed by DW1 Dr. Karan Singh and DW2 Dr. Narbir Singh, clearly proves that the accused had sustained multiple injuries, two of which were grievous in nature i.e. fracture of fibula in the case of Lal Chand and fracture of the phalynx of thumb in the case of Jagmal Singh. The consistent medical testimony further rules out the possibility of these injuries being self-inflicted or caused by a fall. When such injuries are

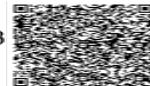
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proved to have been received in the same occurrence, it is incumbent upon the prosecution to offer a satisfactory explanation. Failure to do so raises a strong presumption that the true genesis of the occurrence has been suppressed and a one-sided version has been projected.

33. Secondly, the registration of FIR is surrounded by suspicious circumstances especially when the occurrence is alleged to have taken place at 07:30 a.m. on 11.09.2002 and the statement of Surender Singh (PW1) was recorded only around 03:10 p.m. which is creating an unexplained delay of nearly eight hours. In serious offences like murder, such delay in setting the criminal law into motion assumes significance, especially when the accused themselves are shown to have lodged an earlier report at 10:00 a.m. on the same day, which finds mention in the daily diary entry (Ex.DC). This delay in lodging the FIR gives rise to a strong possibility of consultation, deliberation, and embellishment, thereby rendering the prosecution version doubtful.

34. Thirdly, there are material contradictions between the versions of the alleged eye-witnesses. PW1 Surender Singh stated that accused-Sunil inflicted the injury with the reverse side of a *kulhari* (axe), while PW10 Lila Ram deposed that the weapon used was a *sheru* (short arm of a cot). The Investigating Officer also admitted that during investigation it was found that a *sheru* was used. Such inconsistency regarding the weapon of offence is not a trivial discrepancy but goes to the core of the prosecution case, particularly when the recovery itself is doubtful.

35. Fourthly, the place of occurrence itself raises doubt inasmuch as the complainant (PW1 Surender Singh) initially stated that the incident took place in front of the house of accused Madan Lal but he later shifted the place



to the vicinity of the Panchayat Ghar. This inconsistency, coupled with the admitted fact that no independent witness from the locality was examined despite availability, shakes the credibility of the prosecution version.

36. Fifthly, the prosecution has withheld a material witness i.e. Virender Singh, son of the deceased. The evidence on record shows that Virender accompanied the injured to CHC, Mahendergarh, and was thus in a position to depose about material facts. His non-examination without any reason suggests that had he been examined, his testimony may not have supported the prosecution case.

37. On the contrary, the defence version finds corroboration not only from the medical evidence of independent doctors but also from the existence of the daily diary report lodged by the accused side prior in point of time. Though the trial Court brushed aside this defence evidence, this Court finds it consistent and probable, particularly in light of the unexplained injuries on the accused and the material contradictions in the prosecution case.

38. It is a well-settled proposition of law that where two versions are available and one is put forth by the prosecution and the other by the defence and both appear probable, the Court should accept the one which is fully supported with material aspects because in criminal law, the accused cannot be convicted unless the prosecution proves its case beyond reasonable doubt. Suspicion, however strong, is not enough.

39. In view of the above, we are of considered view that the prosecution story is not trustworthy. Consequently, the appeal is allowed and the judgment of conviction and order of sentence dated 19.07.2004 passed by

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the learned Sessions Judge, Narnaul is hereby set aside. The appellants are acquitted of all the charges levelled against them.

40. Pending application(s), if any, shall stand disposed of accordingly.

**(MANJARI NEHRU KAUL)****JUDGE****(H.S.GREWAL)****JUDGE****01.09.2025****A.Kaundal**

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