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BALWANT SINGH AND ANR. ETC. ETC.

v.

STATE OF HARYANA

MARCH 18, 1994

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[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

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Indian Penal Code, 1860—Sections 302/34—Convictions under—Appreciation of evidence—Eye witnesses—Independent and reliable—Ocular testimony corroborated by medical evidence—FIR promptly lodged—Complicity of accused proved beyond reasonable doubt—Their convictions legally sustainable.

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Appellants, father and son along with their brothers were prosecuted for an offence of murder. The trial Court convicted one accused for an offence u/s 302 IPC and other three including appellants were convicted for the offences u/s 302/34 IPC. Each of the accused was sentenced to suffer imprisonment for life. In appeal, the High Court acquitted two co-accused by giving them benefit of doubt while maintaining conviction and sentence of appellants. They filed an appeal on special leave being granted, against their conviction and sentence. The State and the complainant filed appeals against the acquittal of two co-accused.

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According to the prosecution case, there was previous enmity and some litigation was also pending between parties; that on the date of incident when PW8 and deceased, were proceeding on foot, accused M armed with a gandasi, accused L armed with a jaiiley, appellants armed with a lathi each, came running from behind and assaulted deceased; that M and L inflicted injuries on the head of deceased with their respective weapons, on receipt of which he fell down and thereafter appellant and his son gave numerous lathi blows on the person of deceased; that on an alarm being raised by PW8, PW10, who had his house at a distance of about 1 km. from the place of occurrence rushed to the place of occurrence and all the four accused sped away; that PW8 and PW10 then removed the deceased in an injured condition to the Primary Health Center; that SI PW11, on receipt of rukka proceeded to the Primary Health Center and on reaching there recorded the statement of PW8 which formed the basis of the first information report; that all the four accused later on sur-

rendered in the Court and were arrested; that on the disclosure statement made by accused M, a gandasi was recovered and on the disclosure statement of accused L, a jailley was recovered, while lathis were recovered on the disclosure statement made by appellants.

The ground on which the High Court acquitted accused M and L was the alleged absence of any injury by the weapons alleged to have been carried and used by these accused.

The appellants accused categorised the testimony of PW8 and PW10 as unreliable and not trustworthy and argued that PW8 was a relation of deceased and had been called from his home, at a far off place, to be a witness because nobody in the locality, where the occurrence allegedly took place and from where the blood stained earth was collected, was prepared to support the prosecution case regarding the alleged assault by the accused party; that the absence of blood stains on the clothes of PW8 and PW10, who deposed to having personally lifted and removed deceased in an injured condition with bleeding injuries to hospital showed that they were in fact not present at the place of occurrence; that the medical evidence belied the ocular testimony inasmuch as none of the injuries, on the deceased could correspond be the weapons alleged to have been used by the accused party; that the first information report had been ante-dated and ante-timed, there being no entry about the arrival of injured in the Primary Health Center; that witnesses in whose presence recovery of gandasi was alleged to have been made in the disclosure statement of M accused, had not been examined, the evidence relating to the alleged recovery of gandasi became doubtful and therefore, the High Court was fully justified in recording an order of acquittal of M and L.

The complainant as well as State submitted that the promptness with which the first information report had been lodged and the sequence of events deposed to by PW8 and PW10 showed that the prosecution had established the case against all the accused beyond a reasonable doubt; that from the evidence of PW3 and the contents of rukka, the presence of PW8 and PW10 at the time of occurrence stood established as they had removed deceased to the Primary Health Centre; that there was nothing on record to show that their clothes had not got stained with blood and the mere fact that the same were not taken into possession by the inves-

A tigation agency, could not cast any doubt on the evidence of PW8 and
PW10; that investigating officer PW11 had conducted the investigation in
a fair and impartial manner; that there was no contradiction at all between
the medical evidence and the ocular testimony; that the grounds on which
the High Court had recorded an order of acquittal of M and L, after it
had itself disbelieved the plea of *alibi* but up by M, were wholly unsustainable and were conjectural in nature and did not bear scrutiny and deserved to be upset and that the High Court had given no cogent reasons to upset the finding recorded by the trial Court regarding the guilt of M and L and had set aside their conviction on wholly unsustainable and imaginary grounds.

C Disposing of the matters, this court

D HELD : 1.1. The version given by PW8 which had been fully corroborated by PW7 and PW10 at the trial was truthful and unassailable. Nothing had been brought out on the record to doubt his veracity. PW8 had given a detailed account of the occurrence, including the part played by each one of the accused persons. No infirmity had been pointed out in so far as his testimony was concerned. The testimony of PW 3 who had sent rukka to the police after deceased had been taken to the Primary Health Center in a seriously injured condition by PW8 and PW10, established the presence of both these witnesses in the Primary Health Center. The name of PW8 as the person who had brought deceased to the Primary Health Center was clearly written in rukka. Corroboration in this behalf was also available from rukka sent by PW1, which conveyed the necessary information to the police to the effect that deceased had been brought to the Civil Hospital as dead and that the patient had been referred from Primary Health Center. PW10 and also given a detailed account and had fully supported PW8. He appeared to be an independent and reliable witness.

G 1.2. PW11 had reached Primary Health Center before deceased was removed to General Hospital and had recorded the statement of PW8 at the Primary Health Center itself. The formal case was thereafter registered. The first information was promptly lodged and neither the occurrence nor the first information report were ante-timed. The prosecution had established beyond any shadow of doubt the complicity of the

appellants. The ocular testimony was amply corroborated by the medical evidence and the testimony of PW8 and PW10 was supported by PW7 and PW11 with regard to the time or place of occurrence and the manner of assault on the deceased by the appellants. There was nothing on the record to show that the clothes of PW8 and PW10 had not been stained with blood while lifting the deceased and the mere negligence of the investigating officer to take their clothes into possession could not effect the trustworthiness of these witnesses. The explanation given by PW3 about the absence of entry of the arrival of injured at the Primary Health Center was sound.

1.3. According to PW8 and PW10, accused M had given a *gandasi* blow on the head of the deceased. *Gandasi* was recovered on the disclosure statement made by M. According to the medical evidence, injuries 1, 2 and 9 which were present on the head of the deceased could have been caused by *gandasi*. The Chemical Examiner and the Serologist found *gandasi* to be stained with human blood of 'A' group which corresponded to the blood group of deceased.

1.4. All these pieces of unimpeachable evidence showed, not only that there was no contradiction between the ocular testimony and the medical evidence in so far as the assault on deceased by M with *gandasi* was concerned but also that the evidence on the record, conclusively established that M had caused the injury with *gandasi* on the head of the deceased. The High Court did not deal with these factors in their correct perspective and acquitted M, without trying to properly appreciate and sift the evidence on the record by taking recourse to surmises and conjectures. The High Court erred in not taking note of the report of the Serologist which established that the blood stains on the weapon of offence tallied with the blood group with which the clothes of the deceased had been stained from his bleeding injuries. This had resulted in grave miscarriage of justice. After having disbelieved the plea of *alibi* which had been set up by M, the High Court fell in error in not properly appreciating the other evidence on the record to determine the guilt. The approach of the High Court in acquitting him was totally slip shod and conjectural. The opinion of the High Court was totally perverse and unreliable. The reasoning given by the Trial Court was sound and the High Court was not justified in upsetting the same.

A 1.5. Jailley was recovered at the instance of accused L but, there was no report of the Serologist showing that the jailley was stained with human blood of 'A' group. Whereas the medical witness categorically opined that injuries 1, 2 and 9 on the body of the deceased could have been caused with gandasi used by M, he tendered no such opinion with regard to the injuries

B allegedly caused by L with a Jailley. Might be, jailley was used by L in a manner which did not cause any punctured or paralled wounds, but considering that admittedly there was enmity between the parties, the possibility could not be ruled out that L might have been implicated in addition to the real assailants. Since, sufficient and reliable corroboration of the testimony of PW8 and PW10 with regard to the injuries allegedly

C caused by L was not available on the record, it could not be said with any amount of certainty that the prosecution had established the case against L beyond a reasonable doubt. The view taken by the High Court regarding L could not be said to be either unreasonable or perverse. Cogent and good reasons had been given by the High Court to order his acquittal.

D **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 163 of 1982 etc. etc.**

From the Judgment and Order dated 23.11.81 of the Punjab & Haryana High Court in CrI. A. No. 490-DB of 1981.

E R.K. Garg, S.B. Bajaj, U.R. Lalit, J.D. Jain, K.R. Nagaraja, K.C. Bajaj and Ms. Indu Malhotra for the Appellants/Petitioner.

R.L. Kohli, Ranbir Yadav and J.D. Jain for the Respondents.

F The Judgment of the Court was delivered by

DR. ANAND, J. Balwant Singh alongwith his brothers Mahabir Singh and Lal Singh and his son Abhey Singh were challaned by the police for an occurrence which took place on 26.10.1980 at 3.45 p.m. at Heily Mandi in which Suraj Bhan was murdered. All the four accused were sent up for

G trial. The learned Sessions Judge, Gurgaon convicted Mahabir Singh for an offence under Section 302 IPC and Lal Singh, Balwant Singh and Abhey Singh for the offences under Section 302/34 IPC. Each of the accused was sentenced to suffer imprisonment for life. An appeal was filed by all the four convicts in the High Court of Punjab & Haryana. The High Court

H dismissed the appeal in so far as the conviction and sentence of Balwant

Singh and Abhey Singh are concerned but giving benefit of the doubt acquitted Mahabir Singh and Lal Singh. Balwant Singh and Abhey Singh have filed an appeal on special leave being granted against their conviction and sentence. The State has filed an appeal against the acquittal of Mahabir Singh and Lal Singh. The complaint has also filed S.L.P. (Criminal) No. 342 of 1982 against the acquittal of Mahabir Singh and Lal Singh.

Since, both the appeals and the special leave petition arise out of the common judgment of the High Court of Punjab & Haryana, they are being dealt with and disposed of together.

According to the prosecution case, there was previous enmity and some litigation was also pending between Suraj Bhan, deceased and his sons on the one hand and Balwant Singh and his brothers on the other. On the date of occurrence i.e. 26.10.1980, it is alleged that at about 3.30/3.45 p.m., when Raj Singh PW8 who was the *Sambandhi* to be of Suraj Bhan deceased, after taking their meals at the house of Jagdish PW at about 1.45 p.m. were proceeding on foot towards Pataudi, at a distance of about 4-5 Kms from Hailey Mandi, all of a sudden near the Jain Temple, Mahabir Singh accused armed with a Gandasi, Lal Singh accused armed with a Jailley Abhey Singh and Balwant Singh accused armed with a lathi each, came running from behind and assaulted Suraj Bhan, deceased. Mahabir Singh and Lal Singh inflicted injuries on the head of Suraj Bhan deceased with their respective weapons, on receipt of which he fell down and thereafter Balwant Singh and his son Abhey Singh accused gave numerous lathi blows on the person of Suraj Bhan. On an alarm being raised by Raj Singh PW8, Jagmal Singh PW10, who has his house at a distance of about 1 Km. from the place of occurrence and was going to Pataudi, was attracted to the scene. He rushed to the place of occurrence and also raised an alarm whereupon all the four accused sped away. Raj Singh PW8 and Jagmal Singh PW10 then removed Suraj Bhan in an injured condition to the Primary Health Centre, Pataudi in a tonga. The doctor at the Primary Health Centre was on leave and, therefore, Ganesh Dutt Sharma, Pharmacist, PW3 sent a rukka Ex. PD to the police and advised Raj Singh PW8 to remove the injured Suraj Bhan, who was in a serious condition to the General Hospital at Gurgaon. SI Sultan Singh PW11, on receipt of rukka Ex. PD proceeded to the Primary Health Centre, Pataudi and on reaching there he recorded the statement of Raj Singh PW8, Ex.PK/1, which forms

A the basis of the first information report. Jagmal Singh PW10 in the meanwhile arranged for a taxi and both he and Raj Singh PW8 removed the deceased to General Hospital Gurgaon where Dr. S.R. Dhingra, PW1 examined Suraj Bhan but declared him dead. The Doctor, gave the intimation through rukka Ex. PA to police station City Gurgaon.

B SI Sultan Singh PW11, after registration of the case, started the investigation and went to the spot of occurrence and prepared the site plan of the place of occurrence. He also made a search for the accused persons but they could not be found. All the four accused later on surrendered in the Court on 3.11.1980 and were arrested by SI Sultan Singh on 5.11.1980.

C On the disclosure statement, Ex.PO, made by Mahabir Singh in the presence of Bhanwar and Balwant Singh, a Gandasi Ex. P-5 was recovered and seized. On the disclosure statement of Lal Singh Ex. PQ, a Jailley Ex. P-6 was recovered, while lathis were recovered on the disclosure statements made by Balwant Singh and Abhey Singh Ex. PR and Ex. PS respectively. After completion of the investigation, all the accused were sent up for trial.

M/s R.K. Garg, Sr. Advocate and R.L. Kohli, Advocate, appearing for the appellants in Criminal Appeal No. 163/82 as well as for the respondents in Criminal Appeal No. 162A/82, categorised the testimony of Raj Singh PW8 and Jagmal Singh PW10 as unreliable and not trustworthy. Learned counsel argued that Raj Singh PW8 was a relation of deceased Suraj Bhan and appears to have been called from his home, at a far off place, to be a witness because nobody in the locality, where the occurrence allegedly took place and from where the blood stained earth was collected, was prepared to support the prosecution case regarding the alleged assault by the accused party. It was submitted that the absence of blood stains on the clothes of Raj Singh PW8 and Jagmal Singh PW10, who deposed to having personally lifted and removed Suraj Bhan in an injured condition with bleeding injuries in a Tonga to the Primary Health Centre goes to show that they were in fact not present at the place of occurrence and had not taken Suraj Bhan to the Primary Health Centre and had been introduced in the case much later. Learned counsel then argued that the medical evidence belied the ocular testimony inasmuch as none of the injuries, on the deceased could correspond to the weapons alleged to have been used by the accused party and this serious infirmity, according to the learned counsel, was sufficient to discard the testimony of PW8 and PW10.

Reference in this behalf was made to the absence of any injury with a Jailley on the deceased. It was then urged that the first information report had been ante-dated and ante-timed and the argument was sought to be supported by the absence of an entry about the arrival of injured Suraj Bhan in the Primary Health Centre, Pataudi, in the records of the Primary Health Centre. Learned counsel argued that Ex. PD which was signed by PW3 Ganesh Dutt Sharma appears to have been manufactured subsequently and since Sultan Singh SI PW11, the investigating officer, was admittedly hostile to the accused party, he had created all these false clues with a view to secure the conviction of the accused persons. According to the learned counsel since Bhanwar and Balwant Singh, in whose presence recovery of Gandasi is alleged to have been made on the disclosure statement of Mahabir accused, have not been examined, the evidence relating to the alleged recover of Gandasi becomes doubtful. It was submitted that Keeping in view the medical evidence and other circumstances of the case the High Court was fully justified in recording an order of acquittal of Mahabir Singh and Lal Singh, and since the reasoning given by the High Court could not be said to be perverse or unreasonable no interference was called for in so far as their acquittal is concerned.

Mr. U.R. Lalit appearing for the complainant in S.L.P. (Crl.) No. 342/82 as well as the learned State Counsel, Shri Bajaj, in reply submitted that the promptness with which the first information report had been lodged on 26.10.80 at 5.45 p.m. and the sequence of events deposed to by Raj Singh PW8 and Jugmal Singh PW10 goes to show that the prosecution has established the case against all the accused beyond a reasonable doubt. Learned counsel argued that from the evidence of PW3 and the contents of rukka Ex. PD, the presence of Raj Singh PW8 and Jagmal Singh PW10 at the time of occurrence stands amply established as they had removed Suraj Bhan deceased to the Primary Health Centre and both of them were present there and had removed the deceased from Primary Health Centre to the General Hospital at Gurgaon in a taxi arranged by Jagmal Singh PW10. Dealing with the question of absence of blood stains on the clothes of Raj Singh PW8 and Jagmal Singh PW10, it was submitted that there was nothing on the record to show that their clothes had not got stained with blood and the mere fact that the same were not taken into possession by the investigating agency, cannot cast any doubt on the evidence of PW8 or PW10. Learned counsel submitted that investigating officer, Sultan Singh PW11, had conducted the investigation in a fair and impartial manner and

A the allegation that the investigation was tainted was not based on any material on the record and was merely a hypothetical argument. Learned counsel submitted that there was no contradiction at all between the medical evidence and the ocular testimony and the alleged contradiction as pointed out by the defence was imaginary and far fetched. Learned
B counsel then argued that the grounds on which the High Court had recorded and order of acquittal of Mahabir Singh and Lal Singh, after it had itself disbelieved the plea of *alibi* put up by Mahabir Singh, were wholly unsustainable and were conjectural in nature and did not bear scrutiny and deserve to be upset. Learned counsel urged that the High Court had given
C no cogent reasons to upset the findings recorded by the learned trial court regarding the guilt of Mahabir Singh and Lal Singh and had set aside their conviction on wholly unsustainable and imaginary grounds.

We have given our anxious considerations to the submissions made at the bar and have also gone through the evidence with the assistance of
D learned counsel for the parties.

After going through the evidence on the record, we are satisfied that the version given by Raj Singh, PW8 which has been fully corroborated by Jagdish Chand PW7 and Jagmal Singh PW10 at the trial is truthful and unassailable. In spite of the lengthy cross examination nothing has been
E brought out on the record to doubt his veracity. Raj Singh PW8 has given a detailed account of the occurrence, including the part played by each one of the accused person. No infirmity has been pointed out by the learned counsel in so far as his testimony is concerned. The testimony of Ganesh Dutt Sharma PW3 who had sent rukka Ex. PD to the police after Suraj
F Bhan deceased had been taken to the Primary Health Centre in a seriously injured condition by Raj Singh PW8 and Jagmal Singh PW10, clearly establishes the presence of both these witnesses in the Primary Health Centre at about 4.30 p.m. The name of Raj Singh PW8 as the person who had brought Suraj Bhan deceased to the Primary Health Centre is clearly
G written in rukka Ex. PD. Corroboration in this behalf is also available from rukka Ex. PA sent by Dr. Dhingra PW1, which conveyed the necessary information to the police at Gurgaon to the effect that Suraj Bhan deceased had been brought to the casualty ward of the Civil Hospital, Gurgaon, as
H *dead* and that the patient had been referred from Primary Health Centre Pataudi, with slip No. 23155 dated 26.10.1980. PW10, Jagmal Singh has also given a detailed account and has fully supported PW8, Raj Singh. His

testimony has impressed us. There is nothing in the cross-examination of the witness which may effect his credibility at all. He appears to be an independent and reliable witness. A

Sultan Singh PW11 had reached Primary Health Centre Pataudi before Suraj Bhan was removed to General Hospital Gurgaon and had recorded the statement of PW8 Raj Singh, Ex. PK/1 at the Primary Health Centre itself. The formal case was thereafter registered and the investigation taken in hand. A copy of the special report was sent to and received by the Addl. Chief Judicial Magistrate at 1.30 a.m. on 27.10.1980. We are, therefore, satisfied that the first information report was promptly lodged and neither the occurrence was ante-timed nor the first information report was ante-dated as argued by the learned counsel for the accused. There is, as a matter of fact, no factual foundation for the argument to the contrary raised by learned counsel for the accused and the submission that the first information report was delayed does not rest on any factually correct premises. Both the High Court and the Trial Court were perfectly sound in their approach to hold that the first information report had been lodged promptly and that both Raj Singh PW8 and Jagmal Singh PW10 were the eye witnesses who had witnessed the occurrence and that their testimony did not suffer from any infirmity whatsoever and that both of them were truthful witnesses. In our opinion the prosecution has established beyond any shadow of doubt the complicity of the appellants Balwant Singh and Abhey Singh. The ocular testimony stands amply corroborated by the medical evidence. So far as the conviction of Balwant Singh and Abhey Singh is concerned, the Trial Court as well as the High Court have correctly appreciated the evidence and rightly placed reliance upon the testimony of PW8 Raj Singh and PW 10 Jagmal Singh, which stands amply supported by PW7 Jagdish and PW 11 Sultan Singh, investigating officer. The medical evidence has also lent sufficient credence to the ocular testimony. Nothing has been brought on the record, as was also found by the learned Sessions Judge and the High Court, which may cast any doubt on the testimony of Raj Singh and Jagmal Singh with regard to the time or place of occurrence and the manner of assault on the deceased by the appellants. There is nothing on the record to show that the clothes of PW8 and PW10 had not been stained with blood while lifting the deceased and the mere negligence of the investigating officer to take their clothes into possession cannot effect the trustworthiness of these witnesses. The explanation given by PW3 about the absence of entry of the arrival of injured Suraj Bhan at B
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A the Primary Health Centre is sound and does not detract from the reliability of the prosecution case.

B The ground on which the High Court acquitted Mahabir Singh and Lal Singh accused is the alleged absence of any injury by the weapons alleged to have been carried and used by Mahabir Singh and Lal Singh respondents. According to the prosecution case, Mahabir Singh have a gandasi blow while Lal Singh had given a blow with the Jailley to the deceased. The gandasi Ex. P-5 was recovered on the disclosure statement made by Mahabir Singh, Ex. PO. According to the testimony of Dr. M.S. Ahalwat, who had been shown Gandasi Ex. P-5 and had found that even C its sharp edge was blunt, injuries 1, 2 and 9 could have been caused by a 'Farsa' (actually gandasi) Ex. P-5. His opinion Ex. PB/3 which has remained unchallenged and unquestioned, unmistakably shows that injuries 1, 2 and 9 on the deceased which are as follows :

D (1) There was a lacerated wound 10 cms. X 1/2 cms. X scalp deep over right parietal region with clothed over it.

(2) There were lacerated wounds of the size of 3 to 5 cms X 1/2 cms. X scalp deep at the top and front region of scalp with clotted blood all over it.

E (9) Fracture base of the skull was seen with injury of the brain stem.

were caused by gandasi Ex. P-5. The High Court while acquitting Mahabir Singh and Lal Singh respondents, after accepting the substratum of the prosecution case, observed as under :

F "Dr. M.S. Ahalwat PW2 had not originally mentioned in the post mortem report that there was any injury caused by a sharp-edged weapon like a pharsa on the dead body. It was only by way of clarification on November 17, 1980, that according to him, pharsa Exhibit P.5 alleged to have been recovered from Mahabir G appellatant was shown to him and he expressed this opinion that injuries Nos. 1, 2 and 9 as noted by him could be caused with such a weapon. It may here be mentioned that injury No. 9 was only the result of the injuries Nos. 1 and 2. We are of the view that pharsa Exhibit P5 being a sharp-edged weapon, it would have caused H incised wounds if it had in fact been used by Mahabir on two

occasions as alleged by the prosecution. He was said to have caused injuries with that weapon while Suraj Bhan was standing and also after he had fallen on the ground. The evidence of Dr. M.S. ahalwat also does not show the user of Jaili Exhibit P.6 said to have been recovered from Lal Singh. It being a pronged weapon, some parallel punctured wounds should have been found on the dead body but the doctor said that there was no clear evidence of any parallel injuries on the dead body. As about Lal Singh, it was alleged by the prosecution that he had caused injuries with his Jaili to Suraj Bhan on those very two occasions when Mahabir had used a pharsa. A reasonable doubt about the participation of Mahabir and Lal Singh arises for this reason that neither Raj Singh PW8 nor Jagmal PW10 has been able to explain the absence of such injuries which could be caused by Mahabir and Lal Singh by the wielding of their weapons. We thus grant the benefit of doubt to these two appellants.

For the foregoing reasons, the appeal on behalf of Mahabir and Lal Singh is allowed and they are acquitted of the offence under section 302 and 320/34 of the Indian penal Code. The conviction and sentence of Balwant Singh and Abhey Singh are confirmed and their appeal stands dismissed."

We will demonstrate by reference to few important circumstances, as to why the High Court was not justified in interfering with the order of conviction of Mahabir respondent.

From the testimony of Raj Singh PW8 and Jagmal Singh PW10, we are satisfied that the account of occurrence given by them is intrinsically correct. According to both these witnesses, Mahabir had given a gandasi blow on the head of the deceased Suraj Bhan. Ex.P-5 was the gandasi in question and as already noticed, it was recovered on the disclosure statement made by Mahabir, Ex. PO. According to the medical evidence, injuries 1, 2 and 9 which were present on the head of the deceased could have been caused by gandasi Ex. P-5. The chemical examiner and the Serologist found gandasi Ex. P-5 to be stained with human blood of 'A' group which corresponded to the blood group of deceased Suraj Bhan. All these pieces of unimpeachable evidence would go to show, not only that there was no contradiction between the ocular testimony and the medical

A evidence in so far as the assault on Suraj Bhan by Mahabir Singh with
 B gandasi Ex. P-5 is concerned but also that the evidence on the record,
 conclusively establishes that Mahabir Singh respondent had caused the
 C injury with gandasi Ex. P-5 on the head of the deceased. The High Court
 did not deal with these factors in their correct perspective at all and
 acquitted Mahabir Singh, without trying to properly appreciate and sift the
 evidence on the record by taking recourse to surmises and conjectures. The
 High Court erred in not taking note of the report of the Serologist Ex.PJ/1,
 which established that the blood stains on the weapon of offence, Ex. P-5
 tallied with the blood group with which the clothes of the deceased had
 been stained from his bleeding injuries. This has resulted in grave miscar-
 riage of justice. The High Court itself disbelieved the plea of *alibi* which
 has been set up by Mahabir Singh. In the words of the High Court :

D "Mahabir is a Physical Training Instructor at the Middle School,
 Bharat Nagar, Delhi. He took up this defence that on the date of
 occurrence he was present on duty in that school. It being Sunday
 that day, he could not say that he was actually performing some
 duty at the time of the occurrence. Shri Laxmi Narain DW16, a
 teacher of the same school, was produced for proving the plea of
alibi. He only deposed about this fact that Mahabir was present at
 E Delhi from October 27, 1980 to October 31, 1980. He was then
 said to be on half day's casual leave for October 28, 1980. It does
 not follow from his evidence that Mahabir could not have come to
 the spot from Delhi for taking part in the occurrence. We agree
 with this finding of the trial Court that the plea of *alibi* does not
 stand proved."

F After having disbelieved the plea of *alibi* of Mahabir, the High Court
 fell in error in not properly appreciating the other evidence on the record
 to determine his guilt. Keeping in view the evidence relating to the recovery
 of Gandasi Ex. P-5 which fully corroborates the testimony of PW8 and
 G PW10, coupled with the report of Serologist Ex.PJ/1, the order of acquittal
 passed by the High Court in so far as Mahabir Singh respondent is
 concerned, cannot be sustained. The approach of the High Court in
 acquitting him is totally slip shod and conjectural. The opinion of the High
 Court is totally perverse and unreliable. The High Court was in error in
 finding that the medical evidence belied the ocular testimony. There is no
 H basis for that opinion. The reasoning given by the Trial Court, on the other

hand, was sound and the High Court was not justified in upsetting the same. A

So far as the acquittal of Lal Singh is concerned, the position is somewhat different. Undoubtedly, Jailley Ex. P-6 was also recovered at the instance of Lal Singh but, there is no report of the Serologist showing that the Jailley Ex. P-6 was stained with human blood of 'A' group. Again, B
 whereas the medical witness PW2, categorically opined that injuries 1,2 and 9 on the body of the deceased could have been caused with gandasi Ex. P-5 used by Mahabir Singh, he tendered no such opinion with regard to the injuries allegedly caused by Lal Singh with a Jailley. May be, Jailley Ex. C
 P-6, was used by Lal Singh in a manner which did not cause any punctured or paralled wounds but, keeping in view the position that admittedly there was enmity between the parties, the possibility cannot be ruled out that Lal Singh may have been implicated in addition to the real assailants. Since, sufficient and reliable corroboration of the testimony of PW8 Raj Singh andh PW10 Jagmal Singh, with regard to the injuries allegedly caused by D
 Lal Singh, is not available on the record, it cannot be said with any amount of certainty that the prosecution has established the case against Lal Singh beyond a reasonable doubt and therefore, we do not find it appropriate to set aside the acquittal of Lal Singh as recorded by the High Court. The view taken by the High Court regarding Lal Singh cannot be said to be E
 either unreasonable or perverse. Cogent and good reasons have been given by the High Court to order his acquittal.

As a result of the above discussion, the State appeal in so far as the acquittal of Lal Singh is concerned, is dismissed while it is accepted in so far as the acquittal of Mahabir Singh is concerned, which is hereby set F
 aside.

After carefully considering the testimony of the eye witnesses, the medical evidence the recoveries and the other evidence including the report of the serologist on the recored, we are satisfied that both the Trial G
 Court and the High Court on a proper and correct appreciation of the evidence found the case against Balwant Singh and Abhey Singh to have been established beyond any doubt and agreeing their reasoning, we uphold the conviction and sentence of Balwant Singh and Abhey Singh and dismiss their criminal appeal. Thus, Criminal Appeal No. 163 of 1982 filed H
 by Balwant Singh and Abhey Singh is dismissed and their conviction and

A sentence as recorded by the Courts below is upheld. They are no bail. Their bail bonds are cancelled and they are directed to be taken into custody to serve the remaining part of their sentence of life imprisonment.

The appeal filed by the State, being Criminal Appeal No. 162A of 1982 is allowed in so far as the acquittal of Mahabir Singh is concerned.

B His acquittal is set aside and he is convicted for an offence under Section 302/34 IPC and sentenced to suffer life imprisonment. The appeal in so far as Lal Singh is concerned is dismissed and his acquittal as recorded by the High Court is not interfered with. The bail bond of Lal Singh shall stand discharged while that of Mahabir shall stand cancelled and he shall be
C taken into custody to undergo the remaining part of the sentence.

The Special Leave Petition (Criminal) No. 342 of 1982 filed by the complainant shall also stand disposed of in the above terms.

R.A.

Appeals disposed of.