A SUKHCHAIN SINGH

*v.*

STATE OF HARYANA AND ORS.

APRIL 24, 2002

B [R.P. SETHI AND DORAISWAMY RAJU, JJ.]

*Penal Code, 1860—Section 302 read with Section 34—Murder—Conviction—Appreciation of evidence—On facts accused persons allegedly surrounding deceased and inflicting lathi blows—Occurrence witnessed by deceased brother and his cousin—Eye witnesses and another brother of deceased removed deceased in injured condition to hospital but he succumbed to his injuries at hospital—Post mortem report stating death due to injury to brain—FIR—Investigation—Trial Court relying on testimony of eye witnesses convicting accused persons—However, High Court on various presumptions holding that witnesses were not eye witnesses to occurrence, discarded their evidence and acquitted the accused—On appeal held, on facts and circumstances, order of High Court is perverse, based upon assumption which is not referable to any legal or factual presumption, hence liable to be set aside.*

*Constitution of India, 1950—Article 136—Special leave jurisdiction—Finding of fact by courts below on proper appreciation of evidence—Interference with—Held, is permissible when finding is perverse and based upon illegal assumption and conjectures.*

**On the fateful day one 'R' reached near his house with trolly loaded with chaff to be sacked in adjoining rooms. When 'R' was waiting for his brother and cousin to reach near his house, accused persons armed with lathis inflicted blows on his head. The commotion and noise attracted attention of complainant-brother of deceased (PW-1), his cousin (PW-2) who saw the occurrence. After the occurrence both the eye witnesses and another brother of the deceased removed 'R' in an injured condition to the hospital who succumbed to his injuries in the hospital. Doctor sent a note to the Police Station, on the receipt of which Assistant Sub-Inspector reached hospital and recorded the statement of complainant-PW1 which was later treated as FIR. Investigation was completed and accused were tried under Section 302 read with Section 34 IPC. Trial Court relying upon the testimony of eye witnesses**

held the accused guilty. However, High Court not relying upon the testimony of PW-1 and PW-2 acquitted the accused persons. Hence the present appeals. A

In appeal before this Court accused persons submitted that no interference under Article 136 of the Constitution was called for and the view taken by the High Court, on appreciation of evidence, was a probable view which did not require to be substituted by another view. B

State submitted that the finding of the High Court being perverse and based upon assumptions and presumptions required to be rectified, and in view of the elaborate judgment of the trial court, there was no ground for the High Court to have passed the impugned judgment. C

Allowing the appeals, the Court

HELD: 1. It is true that generally this Court does not interfere with the finding of fact arrived at after proper appreciation of evidence by the courts below. But if such a finding is perverse, based upon no evidence or based upon such evidence which is inadmissible or is the result of imaginative hypothesis, conjectures, illegal assumptions and presumptions, the Court is entitled to re-appreciate the evidence to ascertain the validity of its judgment. [416-H] D

*Pritam Singh* v. *The State,* AIR (1950) SC 169; *Sadu Singh Harnam Singh* v. *The State of Pepsu,* AIR (1954) SC 271; *Duli Chand* v. *Delhi Administration,* [1975] 4 SCC 649; *Ramniklal Gokuldas and Ors.* v. *State of Gujarat,* [1976] 1 SCC 6; *Mst. Dalbir Kaur and Ors.* v. *State of Punjab,* [1976] 4 SCC 158; *State of Jammu and Kashmir* v. *Hazara Singh and Anr.,* AIR (1981) SC 451 *Ramanbhai Naranbhai Patel and Ors.* v. *State of Gujarat,* [2000] 1 SCC 358 and *State of Punjab* v. *Jugraj Singh and Ors.,* JT (2002) 2 SC 147, referred to. E F

2.1. In the instant case High Court presumed that Complainant-PW-1 had not accompanied the injured, since the name of complainant-PW-1 was not mentioned in the medico-legal report. Such an assumption is not referable to any legal or factual presumption. It is in evidence that PW-1 accompanied by his cousin and other relatives had taken the injured to the hospital. In the report, name of one 'S' is mentioned by the Doctor. Omission to mention the names of other relatives in the certificate cannot be attributed to any of the prosecution witnesses. It is neither the requirement of law nor usually expected that names of all the relatives of the injured should be mentioned in the medico-legal report prepared by the Doctor in his discretion. Also it is neither G H

A the duty of the Doctor nor usually expected from him. Furthermore, no question was put to PW-1 as to his presence or alleged absence at the time of preparation of medico-legal report. The mention of the injured having been beaten by somebody in the Doctor's intimation to the police station has been used to hold that in fact by that time the witness did not know the name of any of the assailants and that the case was a blind murder case. The intimation B given by the Doctor was regarding the admission of the patient in unconscious position requesting the police to take necessary action. High Court's assumption that when Assistant Sub-Inspector reached the hospital, he could not find the witnesses, thus it should be presumed that they had not come with the injured in the hospital and thus were not eye-witnesses is also C referable to any legal evidence. It was not unusual for a brother to search for some good doctor or be busy in arranging better treatment for his injured brother. If they were not found standing by the side of the injured, it cannot be imagined, by any stretch of imagination, that they actually had not come to the hospital and were telling lies. Non reporting and non-mentioning the names of the accused at the police station is stated to be a reason to hold that D the witnesses had not seen the occurrence, appears to be perverse as it is in the evidence that the doctor had reported to the police about the admission of the injured in the hospital in presence of the witnesses which justified them to pay more attention for the treatment of the injured and wait for the police to come. [417-H; 418-A-G]

E

2.2. Investigation officer had categorically stated that he did not feel the necessity of seizing the tractor trolley or the chaff as the same was not considered to be material evidence in the case. The failure of the investigating agency to take steps which may have been required in strengthening to prove the guilt, beyond doubt, cannot be made a basis to reject the prosecution F version or the statements of the eye-witnesses. Further, the High Court was not justified in holding that there did not exit any room where the chaff was to be stacked as draftsman deposed that in the site plan in addition to one room he had seen two more rooms. [418-H; 419-A, B]

2.3. The statement of complainant-PW-1 could not be rejected because G a special behaviour was expected of him on account of his being an advocate and also non-mentioning of the fact that he had not hired a house in the town where he was carrying on practice. [419-C]

2.4. The alleged improvements and contradictions must be shown with respect to the material particulars of the case and the occurrence. Every H contradiction or improvement, not directly related to the occurrence, is no

**ground to reject the testimony of the witnesses. In the instant case the improvement and contradictions have no reference to the material particulars of the occurrence and the trial court rightly held them to be minor discrepancies not affecting the merits of the case. [419-E, F]** A

**2.5. It cannot be accepted that introduction of lalkara in the FIR was only to attract the provisions of Section 34 IPC. Both the accused inflicted injuries on the vital part of the body of 'R' which clearly show their intention. The contention that the prosecution version, if accepted, the nature of the injuries would not show the commission of the offence punishable under Section 302 IPC but at the most accused are stated to have committed the offence punishable under Section 326 or 304 (II) IPC cannot be accepted. [419-G, H; 420-A]** B C

**2.6. According to Medical Superintendent, the cause of death was injury on the brain leading to shock and haemorrhage. Injury No. 1 and its impact leaves no doubt that the accused had intended to cause the death of the deceased and they shared the common intention as both are proved to have given the blow, with lathis which they had brought with them to inflict the injuries to the deceased. Trial Court, therefore, rightly held the accused guilty for the offence of murder punishable under Section 302 IPC. High Court erroneously held that PWs 1 and 2 were not the eye-witnesses and that the occurrence had not taken place in the manner they had deposed in the Court. [420-H; 421-A, B]** D E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 57 of 1996.

From the Judgment and Order dated 3.3.1993 of the Punjab and Haryana High Court in Crl. A. No. 320/DB/1990. F

WITH

Crl. A. No. 58 of 1996.

U.R. Lalit, Ms. Madhu Tewatia, Ranbir Singh Yadav, Yugal Kishore Prasad, B.S. Rajesh Roshan, Varinder Kumar Sharma, J.P. Dhanda, Ms. Raj Rani Dhanda, K.P. Singh and D.S. Nagar, for the appearing parties. G

The Judgment of the Court was delivered by

**SETHI, J.** These appeals are directed against the order of the High H

A Court acquitting the respondents who, upon trial, were found guilty and convicted by the trial court for the commission of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They were sentenced to life imprisonment and a fine of Rs. 10,000 each to be paid, on realisation, to the widow of the deceased. It is contended that the judgment
B of the High Court is perverse, based upon assumptions and conjectures, completely ignoring the reliable legal evidence and has resulted in miscarriage of justice which is sought to be set right.

The occurrence in which one Raj Karan aged about 23 years was murdered, took place in Village Siwah near Panipat in the State of Haryana.
C Report of the occurrence was lodged on the same day at about 10.30 a.m. at the police station which is 8 kms. away from the place of occurrence. The copy of the said report was sent to the Area Magistrate under Section 157 of the Cr.P.C. which reached the Magistrate at 11.00 a.m.

The deceased along with his 7 other brothers was living in the said
D village Siwah where they owned their lands. One of his brother Sukhchain Singh (PW1) was a practicing lawyer at Panipat while permanently residing in the village. The deceased and Sukhchain Singh (PW1) were living jointly whereas all the remaining brothers lived separately. In their neighbourhood lived Hardwari Lal and Suraj Mal who were in litigation with each other for
E partition of the land. As Raj Karan was on visiting terms with Suraj Mal, Hardwari Lal's nephew Bishna and his grandson Balbir, both accused, had conceived ill-will against Raj Karan, deceased whom they considered as the apple of discord. On the night intervening 2nd and 3rd of May, 1989, Sukhchain Singh (PW1), Raj Karan, deceased and Jai Karan, cousin of PW1 were carrying chaff loaded in a trolley from the fields of the village. At about
F 4 a.m. on 3rd May, 1989, the deceased after loading the trolley tied it with the tractor and drove it near their house where the chaff was to be stacked in the adjoining rooms. Sukhchain Singh (PW1) and Jai Karan (PW2) were coming to their house on foot by a short-cut passage after Raj Karan had left the fields. After reaching near the house Raj Karan started waiting for his brother and cousin to reach. At that time both the accused persons, armed
G with lathis (sticks), came out of their house, raised a lalkara declaring that they will teach a lesson to Raj Karan for helping Suraj Mal and finish him. They surrounded the deceased and inflicted lathi blows on his head. The commotion and the noise attracted the attention of Sukhchain Singh (PW1) and Jai Karan (PW2) who saw the occurrence. They saw Balbir and Bishna
H giving blows on the head of Raj Karan as a consequence of which the injured

became unconscious and fell down on the ground. When the witnesses raised hue and cry and sought help of the villagers, the accused persons fled away from the spot with their lathis. Satinder Kumar, another brother of the deceased, also reached on the spot. All the persons present on the spot arranged a trolley and removed Raj Karan in an injured condition to Civil Hospital, Panipat for treatment but at 6.45 p.m. the injured succumbed to his injuries in the Hospital. When the injured was brought to the Hospital, the doctor had sent a note to the Police Station, Sadar, Panipat on the receipt of which Bullan Singh, Assistant Sub-Inspector (PW5) reached the Civil Hospital and recorded the statement of complainant Sukhchain Singh (PW1) at 8.30 a.m. which was later treated as First Information Report and marked Exh. PA/3.

After completing the investigation, the accused were sent for their trial under Section 302 read with Section 34 of the Indian Penal Code. In order to prove its case prosecution examined Sukhchain Singh (PW1), Jai Karan (PW2), Dr. Mahesh Parkash (PW3), Balak Ram (PW4), Assistant Sub-Inspector Bhullan Singh (PW5), Head Constable Hanu Ram (PW6), Head Constable Chandi Ram (PW7), Head Constable Tasveer Singh (PW8), Sub-Inspector Mehar Singh (PW9) and Constable Om Parkash (PW10). As earlier noticed, Sukhchain Singh (PW1) and Jai Karan (PW2) are the eye-witnesses of the occurrence. Relying upon the testimony of the eye-witnesses, the trial court held both the accused guilty of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to life imprisonment.

Not relying upon the testimony of PWs1 and 2, the High Court acquitted the accused persons vide the judgment impugned in these appeals. Feeling aggrieved by the judgment of the High Court Criminal Appeal No. 57 of 1996 was filed by the complainant and Criminal Appeal No. 58 of 1996 by the State of Haryana.

To arrive at the conclusion that PWs1 and 2 were not the eye-witnesses of the occurrence, the High Court noted:

> "PW1 Sukhchain Singh stated at the trial that he brought his injured brother Raj Karan to Civil Hospital, Panipat in a tractor-trolley. He was accompanied by Satinder Kumar, Sukhdarshan alias Sukhdev and Jai Karan; but from the medico-legal report, it is shown that injured Raj Karan (since deceased) was brought to *the Hospital by* Sukhdarshan alias Sukhdev and none else. On the medico-legal report Exhibit PE, in the column "name of relative and friend", the name of

Sukhdarshan alias Sukhdev was written. It is again clear from the medico-legal report Exhibit PE that the certificate to the effect that the injured was not previously medico-legally examined was also signed by Sukhdarshan. At the end of the medico-legal report where it is printed as signatures of thumb-impression of private party, there also the name of Sukhdarshan is written. Date of arrival and medical examination of Raj Karan is given as May 3, 1989, 6.30 a.m. by the Doctor. Immediately after the medical examination of injured Raj Karan the doctor had sent ruqa Exhibit PF to the Station House Officer, Police Station Sadar, Panipat, which reads as under:

"To

SHO,
Sadar, Panipat

It is for your information that an unconscious patient Mr. Raj Karan, S/o Sh. Kehar Singh is admitted in G.H. Panipat alleged to have been beaten up by somebody.

Kindly note and take the necessary action.

Sd/-
Doctor 3.5.1989
at 6.35 a.m."

Immediately after receipt of ruqa Exhibit PF from the Hospital in the police station which is admittedly at a distance of about 200 yards from the Hospital, an entry Exhibit PF/1 in the Daily Diary Register was made in the police station which reads as under:

| *P.S. Sadar Panipat* | *Copy of Rapat* | *District Karnal* |
|---|---|---|
| SI/SHO | On receipt of the ruqa of the Doctor and Departure of ASI | 3.5.1989 Time 6.55 a.m. |

At this time a ruqa of the doctor has been received from G.H. Hospital through the Ward Servant with following subject.

It is for your information that unconscious patient Mr. Raj Karan S/o Kehar Singh is admitted in G.H. Panipat alleged to have been beaten up by somebody. Kindly note and take the necessary action.

Sd/-
DOCTOR
3.5.1989 6.30 a.m.

FROM THE POLICE STATION:

On receipt of the ruqa of the doctor with the above subject, I the ASI along with H.C. Tasvir Singh No. 1012 and Davinder Singh No. 183, started towards G.H. Panipat for recording the statement of injured.

Sd/-
P.S. SADAR
PANIPAT
3.5.1989."

From the evidence mentioned above, one thing is, however, clear that immediately after arrival of injured Raj Karan, the Doctor who had conducted medico-legal examination was informed by Sudarshan that injured Raj Karan was beaten up by someone. The accused were not named as the assailants before the Doctor. Even PW1 had stated at the trial that Sukhdarshan alias Sukhdev gave information to the Doctor about the particulars of the injured and PW2 Jai Karan had stated at the trial that Sukhdarshan had made enquiries from them as to who had caused injuries to Raj Karan and they had told him as to who had caused injuries to Raj Karan. It has come in evidence of PW5 Assistant Sub-Inspector Bhullan Singh that when he reached the Hospital at 7.10 a.m., on May 3, 1989 there was none with Raj Karan Injured (deceased) except the Doctor. He had searched for relations/attendants of Raj Karan, but he could not find any. It was only at 8.30 a.m. on that date that Sukhchain Singh (PW1) met him in the lawn of the Hospital who was alone at that time and he recorded his statement. It was only at that stage that the appellants were named as accused in this case by PW1 Sukhchain Singh, the real brother of the deceased. Earlier to that, neither Sukhchain Singh, the first informant nor others including Jai Karan, Satinder Kumar or Sukhdarshan alias Sukhdev were available to the police in the Hospital nor any one of them had informed the police regarding the occurrence, though the police station was hardly 200 yards from the Hospital (the distance of 200 yards from the Hospital to Police Station has come in the evidence of PW1 Sukhchain Singh). Again it is clear from the evidence on record that Sukhdarshan met the Doctor who prepared the medico-legal report Exhibit PE and he did not name these two accused-appellants as the assailants. It is further fortified by the fact that Sukhdarshan who was a material witness in this case and signed the medico-legal report and

had taken the injured to the Hospital had not been produced by the prosecution having been left over as unnecessary and particularly so when PW1 had stated at the trial that Sukhdarshan had given information about the injured to the Doctor."

The High Court further found that except the alleged bald assertions of PWs1 and 2, there was no evidence of transporting the chaff from the field to the house of the complainant. The room where the chaff was to be stacked was held to be not in possession of the complainant and in fact leased out to Anganbadi because in one of rooms there hung a sign-board with the words "Agan Badi Village Siwah". The transportation of the chaff was also held to be not proved by the High Court because of the non seizure of the tractor trolley or the chaff by the investigating officer. As some semi digested food was found in the stomach of the deceased, the High Court held PWs1 and 2 to be untrustworthy as they had consumed their food at 8.30 p.m. and the deceased was wrongly stated to have taken his food at 10-11 p.m. The High Court concluded that it was the case of blind murder and the occurrence had not taken place at 4 a.m. in view of the finding of the Doctor regarding semi-digested food in the stomach of the deceased.

Mr. U.R. Lalit, Senior Advocate who appeared for the accused persons supported the judgment of the High Court and submitted that it was a fit case where this Court should not interfere under Article 136 of the Constitution of India. It is submitted that the view taken by the High Court, on appreciation of evidence, was a probable view which did not require to be substituted by another view even that view is possible to be taken. Learned counsel also justified, on facts, the conclusions arrived at by the High Court in the impugned judgment.

Mr. J.P. Dhanda, the learned counsel appearing for the State of Haryana submitted that the finding of the High Court being perverse and based upon assumptions and presumptions required to be rectified.He contended that in view of the elaborate judgment of the trial court, there was no ground or occasion for the High Court to have passed the impugned judgment.

It is true that generally this Court does not interfere with the finding of fact arrived at after proper appreciation of evidence by the Courts below. But if such a finding is perverse, based upon no evidence or based upon such evidence which is inadmissible or is the result of imaginative hypothesis, conjectures, illegal assumptions and presumptions, the Court is entitled to re-appreciate the evidence to ascertain the validity of its judgment. In *Pritam*

*Singh* v. *The State,* AIR (1950) SC 169 this Court held that special leave to appeal can be granted only if it is shown that the exceptional and special circumstances exist to show that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. In *Sadu Singh Harnam Singh* v. *The State of Pepsu,* AIR (1954) SC 271 it was observed that this Court does not, by special leave, convert itself into a court of review to review evidence for a third time. But where, however, the court below is shown to have failed in appreciating the true effect of material change in the version given by the witnesses, it would be right for this Court to interfere to avert the failure of justice. In *Duli Chand* v. *Delhi Administration,* [1975] 4 SCC 649, *Ramniklal Gokuldas and Ors.* v. *State of Gujarat,* [1976] 1 SCC 6, *Mst. Dalbir Kaur and Ors.* v. *State of Punjab,* [1976] 4 SCC 158, *State of Jammu & Kashmir* v. *Hazara Singh and Anr.,* AIR (1981) SC 451, *Ramanbhai Naranbhai Patel and Ors.* v. *State of Gujarat,* [2000] 1 SCC 358 the scope of the appellate jurisdiction under Article 136 of the Constitution was considered in detail and guidelines provided for the exercise of the power. In its latest judgment in *State of Punjab* v. *Jugraj Singh and Ors.,* JT (2002) 2 SC 147 this Court held:

> "It is now well established that this Court does not, by special leave, convert itself into a court to review evidence for a third time. However, where the High Court is shown to have failed in appreciating the true effect and material change in the version given by the witnesses, in such a situation it would not be right for this Court to affirm such a decision when it occasions a failure of justice. The power under Article 136 of the Constitution of India is, no doubt, extraordinary in amplitude and this Court goes into action only to avert miscarriage of justice if the existence of perversity is shown in the impugned judgment. Unless some serious infirmity or grave failure of justice is shown, this Court normally refrains from re-appreciating the matter on appeal by special leave. The findings of the High Court have to be judged by the yardstick of reason to ascertain whether such findings were erroneous, perverse and resulted in miscarriage of justice. If the conclusions of the courts below can be supported by acceptable evidence, the Supreme Court will not exercise its overriding powers to interfere with such a decision."

As in the medico-legal report Exh.PE, name of PW1 was found not mentioned, the High Court presumed that he had not accompanied the injured.

A Such an assumption is not referable to any legal or factual presumption. It is in evidence that Sukhchain Singh, accompanied by his cousin Jai Karan and other relatives had taken the injured to the Hospital. In the report Exh. PE in the column "Name of relatives and friends", the name of Sukhdev Singh is mentioned by the Doctor. Omission to mention the names of other relatives in the said certificate cannot be attributed to any of the prosecution witnesses. B No question is shown to have been put to PW1 as to his presence or alleged absence at the time of preparation of medico-legal report Exh.PE. It is neither the requirement of law nor usually expected that names of all the relatives of the injured should be mentioned in the medico-legal report prepared by the Doctor in his discretion. The mention of the injured having been beaten by C *somebody* in the Doctor's intimation to the police station has been used to hold that in fact by that time the witness did not know the name of any of the assailants and that the case was a blind murder case. The intimation given by the Doctor was regarding the admission of the patient in unconscious position requesting the police to take necessary action. Mentioning of the names or holding the inquiry regarding the occurrence was neither the duty D of the Doctor nor usually expected from him. The High Court further held that as when Bhullan Singh, Assistant Sub-Inspector (PW5) reached the Hospital at 7.40 a.m., he could not find PWs1 and 2, it should be presumed that they had not come with the injured in the hospital and thus were not eye-witnesses. Such an assumption by the High Court is also not referable to any E legal evidence. No question was put to PW1 as to where he was at 7.40 a.m. when Assistant Sub-Inspector Bhullan Singh had come in the police station. It was not unusual for a brother to search for some good doctor or be busy in arranging better treatment for his injured brother. Jai Karan (PW2) had very specifically stated "We reached in the Civil Hospital Panipat at about 6.15 a.m.. From 6.15 a.m. to 8.30 a.m. I remained in the Hospital but during F this period I had also gone for my blood testing in the Hospital itself as it was required by the Doctor". After admission of the patient in the Hospital if his relations who were none else than brothers and cousin were not found standing by the side of the injured, it cannot be imagined, by any stretch of imagination, that they actually had not come to the hospital and were telling lies. Non G reporting and non-mentioning the names of the accused at the police station before 8.30 a.m. is stated to be a reason to hold that the witnesses had not seen the occurrence. Such a finding, apparently, appears to be perverse as it is in the evidence that the doctor had reported to the police about the admission of the injured in the hospital in presence of the witnesses which justified them to pay more attention for the treatment of the injured and wait for the H police to come. The investigating officer had categorically stated that he did

not feel the necessity of seizing the tractor trolley or the chaff as the same was not considered to be material evidence in the case. Be that as it may, the failure of the investigating agency to take steps which may have been required in strengthening to prove the guilt, beyond doubt, cannot be made a basis to reject the prosecution version or the statements of the eye-witnesses. Similarly, the High Court was not justified in holding that there did not exist any room where the chaff was to be stacked. Shri Balak Ram, Draftsman (PW4) in his deposition in the Court had stated that he had prepared the site plan Exh. PJ wherein, in addition to one room shown in Exh. PJ he had seen two more rooms at Point "X" and "X1" marked in the said Exhibit. What persuaded the court to hold that the complainant had no room to stack the chaff is not borne out from the record.

The statement of PW1 could not be rejected only because a special behaviour was expected of him on account of his being an advocate. Non mentioning of the fact that he had not hired a house in the town of Panipat where he was carrying on practice could not be made a basis for rejecting his testimony without seeking his explanation. It has come in evidence that Village Siwah was only 8 kms. away from Panipat and was located on the GT Road and the witness was commuting every day.

Learned counsel appearing for the accused then brought to our notice some alleged improvements and contradictions in the statements of the prosecution witnesses. The trial court dealt with those discrepancies and rightly held them to be minor discrepancies not affecting the merits of the case. Otherwise also the alleged improvements and contradictions must be shown with respect to the material particulars of the case and the occurrence. Every contradiction or improvement, not directly related to the occurrence, is no ground to reject the testimony of the witnesses. The improvement and contradictions, pointed out by the learned senior advocate have no reference to the material particulars of the occurrence.

It has been argued in the alternative that the introduction of lalkara in the FIR was only to attract the provisions of Section 34 of the Indian Penal Code. We are not impressed with this argument also. Both the accused are proved to have inflicted the injuries on the vital part of the body of Raj Karan which clearly show their intention. It is contended that the prosecution version, if accepted, the nature of the injuries would not show the commission of the offence punishable under Section 302 of the Indian Penal Code. At the most accused are stated to have committed the offence punishable under Section

326 or 304 (II) of the Indian Penal Code. We are not impressed with this argument in view of the injuries found on the person of the deceased.

Dr. Dilgulzar Singh, Medical Superintendent of Civil Hospital (PW3), who conducted the post-mortem on the dead body of Raj Karan, found the following injuries on his body:

"1. Stitched wound on the right side of the head starting 2 inch above the middle of the right eye-brow going upward and medially, 7 c.m. long T. shape from the middle of the wound (stitched extending laterally towards the right ear 7 c.m. long. There was swelling of the whole right side of the head up to the eye lid. Clotted blood was present.

2. Stitched wound just lateral to the occipital 5 c.m. long with swelling around was present. Clotted blood was present.

3. lacerated wound on the left ear posterior at a base 1 cm long. Clotted blood was present in the left ear.

4. Two lacerated wound on the back of right ear 1 c.m. x ½ c.m. each was present. Pinna was swollen and clotted blood was present.

5. Contusion of the right arm (deltoid region) 4 inch x 1-½ inch red in colour and swelling was present.

On exploration of the skull, there was a big sub contaneous haematoma present on both side of the skull. On right side of the skull, anteriorly 1-1/4 inch above the right ear, there was a depressed fracture of the skull bone of the size of 5 inch x 4 inch. The piece of the skull bone were fractured in multiple pieces and embedded in the brain matter. Clotted blood was present. The posterior part of the depressed fracture was extending as a leniar fracture upto the occiput 4-½ inch in length. Medially the fracture was extending on left side vertically upto the root of the left ear canal. Linear in shape and was half c.m. wide, clotted blood was present. There was a big sub dural haemotoma on the right side of the skull. The membrance was lacerated at the depressed fracture sight. Brain matter was also lacerated. On left side subdural haemotoma was present below the fracture sight and the clotted blood was present in the left middle cranial cavity."

According to him the cause of death was injury on the brain leading to shock and haemorrhage. Injury No.1 and its impact leaves no doubt in our mind

that the accused had intended to cause the death of the deceased and they shared the common intention as both are proved to have given the blows with lathis which they had brought with them to inflict the injuries to the deceased. The trial court, therefore, had rightly held the accused guilty for the offence of murder punishable under Section 302 IPC. We are satisfied that in the instant case the High Court erroneously held that PWs1 and 2 were not the eye-witnesses and that the occurrence had not taken place in the manner they had deposed in the court. We are of the opinion that the trial court had assigned valid and cogent reasons for concluding that the accused persons had committed the offence and were guilty.

Both the appeals are allowed and the judgment of the High Court is set aside. Upholding the judgment of the trial court, the respondents are convicted under Section 302/34 IPC and sentenced to life imprisonment besides paying a fine of Rs. 10,000 each, imposed by the trial court on them. The amount of fine, when it is realized, shall be paid to the widow of the deceased in terms of the directions of the trial court.

N.J. Appeals allowed.