

A

RAGHUNATH

v.

STATE OF HARYANA AND ORS.

NOVEMBER 13, 2002

B

[Y.K. SABHARWAL AND H.K. SEMA, JJ.]

C

Penal Code, 1860—Sections 148, 302, 325, 323, 452 and 436 read with Section 149—Conviction by trial Court—Upholding by High Court—On appeal held, since prosecution suppressed facts and failed to establish case beyond reasonable doubt conviction and sentence of the accused set aside.

Criminal Trial—Failure to explain injuries on accused by prosecution—Effect of—Discussed.

D

Criminal Law—If two views are possible one in favour of accused and other adversely against it, the view favouring the accused must be accepted.

Practice and procedure—Concurrent findings of fact recorded by Courts below—Interference with—Held: High Court without re-appraisal of evidence merely affirming findings of trial court—Hence interference of Supreme Court is justified.

E

According to the prosecution, there was a rift between the complainant and the accused group. On the fateful day accused armed with lathi and stones entered the house of K by breaking open the door. Accused A inflicted lathi blow on the head of K, while other accused injured the other members of complainant party. All this took place in the hall of 6 feet radius. Prosecution witnesses also came there and two of them received injuries when they tried to intervene. One of the accused exhorted the other accused to burn the members of complainant party. He was injured by complainant party in self-defence. Accused were convicted under sections 148, 302, 325, 323, 452 and 436 IPC read with section 149 IPC. High Court upheld the order. Hence the present appeal.

F

G

H

Appellants contended it was quite unusual that the complainant party sitting in a Poli allowed the accused party to break open and let them enter the house without any resistance from them, being mute spectators; that it was inherently improbable to accommodate complainant party

numbering seven and accused party numbering nine in a hall of six feet radius and wielding the lathis of six feet long and raining blows at the same time; that the conduct of complainant party was unusual; that the version of PW-2 before the Court was an improvement on the basis of medical evidence. A

Respondents contended that this Court would not interfere with the concurrent findings of fact recorded by trial court and upheld by High Court. B

Allowing the appeals, the Court

HELD: 1. In the facts and circumstances of the instant case, prosecution did not come up with a true story. It suppressed the facts and failed to establish its case beyond reasonable doubt. It is now well settled principle of law that if two views are possible, one in favour of accused and the other adversely against it, the view favouring the accused must be accepted. Therefore, the convictions and sentences of appellants are set aside. [149-A-B] C D

2.1. It would be inherently improbable that the accused nine in number, wielded lathis of six feet long and raining blows at the same time in a hall within the radius of six feet with seven members of the complainant party totaling 16 persons in the room. [137-C] E

2.2. The blood stain is of human blood is not conclusive evidence that it belongs to the blood group of deceased since there is no evidence on record to show that the blood stained earth removed from the hall, sent for FSL, bears a certificate that the blood is a human blood and belongs to a particular group same as blood group of deceased. Also there is defence version that accused No.1 was kidnapped and taken inside the house of deceased forcibly, wherein he was beaten up by complainant party and received several bodily injuries and as such the blood so collected could be the blood of the accused. [138-C-D] F

2.3. It is in evidence that the accident took place in village and the two police stations fall on the way from village to the Hospital. Complainant party did not stop at the police stations and proceeded straight to the Hospital. In the ordinary circumstances, it is quite imperative that complainant party could have stopped at the police station, sought necessary help and also given the first hand information to the H

A police. It is also the evidence of the doctor, that the injuries suffered by complainant party were simple in nature except that of deceased. Therefore, there were no mitigating circumstances for not reporting to the police station at the first hour especially when the police stations were on the way to the Hospital. [139-D-G]

B 2.4. PW-2 stated in the FIR that accused A on entering the house gave a lathi blow on the head of his father and the rest of the accused started beating him and members of the family continuously whereas in the court he deposed that accused A inflicted a lathi blow on the head of his father followed by a lathi blow each by two accused on his father's
C head and another lathi blow by other accused on his father's shoulders. It appears to be well an after thought after seeing the medical evidence. This substantial contradiction in the FIR and in his deposition before the Court makes a serious doubt of the presence of complainant-PW2 at the place where deceased was assaulted. [139-H]

D 2.5. PW1 stated that none of the accused had received injuries whereas PW2 stated that complainant party also caused injuries to accused No.1 in self-defence. This material contradiction between PWs.1 and 2 would render their presence doubtful. This apart, there is also evidence
E on record that except accused No.1 the rest of the accused did not sustain any injuries on their bodies. If the eye witness account of PWs.1 and 2 are to be believed, it is their specific statement that accused A caused the first blow on the head of deceased. Normally, the exercise of right of private defence is directed towards the assailants. Accused A, who stated to have dealt with the first blow on the head of the deceased did not sustain any injury. The rest of the accused also did not sustain any injuries. It is
F utterly unbelievable story of the prosecution that the right of private defence is directed against only accused No.1 who has sustained as many as six injuries on his body. At the same time, the nature of the injury sustained by accused No.1 would disclose that the complainant party was armed and had sufficient time to inflict the injuries. This circumstance would lend support to the defence version that accused No.1 was
G kidnapped and forcibly lifted to the house of deceased and beaten up mercilessly by complainant party. [141-C-F]

H 2.6. PW2 did not mention about the particulars of the injuries suffered by him at the hands of accused, in the FIR. However, in his statement recorded and also while deposing before the Court he stated

that the injuries caused by each of the accused in which there is substantial contradiction. No reliance can be placed on such a contrary statement. These discrepancies would render prosecution story wholly unreliable concocted and well an after thought. [141-G-H; 142-A] A

2.7. Accused No.1 sustained as many as six injuries. The rest of the accused did not suffer any injury. There is no explanation by the prosecution as to how accused No.1 received injuries except in the statement of PW2 that injuries caused to accused No.1 were in self-defence. The fact that only accused No.1 received injuries would disclose that accused No.1 alone was present at the place of incident. This would also support the theory of defence that accused No.1 was kidnapped by complainant party to the house of deceased and beaten up by them mercilessly and not on account of right of private defence as projected by the prosecution story. [142-E, F] B C

2.8. Prosecution evidence consists of interested or inimical witnesses. There is also the defence version which competes in probability with that of the prosecution. Therefore, non-explanation of the injuries sustained by the accused No.1, which are grievous in nature, renders the prosecution story not wholly true. [143-H; 144-A] D

Ram Sunder Yadav and Ors. v. State of Bihar, [1998] 7 SCC 365, referred to. E

2.9. Out of the injured complainant party, only PWs.1 and 2 were cited as witnesses. Others were not examined. Nature of the injuries sustained by complainant party would clearly suggest that such injuries could be caused in a melee which is the defence version that injuries sustained by deceased and other members of complainant party have been caused by a mob consisting of 300-350 while trying to rescue accused No.1. Considering the nature of the injuries sustained by complainant party it is quite probable that they sustained injuries accidentally while being involved in a mob fight. Therefore, such injuries sustained by complainant party could not be attributed to accused. [148-F-H] F G

3. While it is true that normally this Court would not interfere with the concurrent findings of fact save in exceptional circumstances, where legal process are disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted. High Court is a final court of appeal and normally this Court would not interfere, if the H

A High Court on reappraisal of evidence confirms trial court judgment. But in the instant case, going through the judgment of High Court, it is seen that the High Court merely affirmed the findings of trial court without reappraisal of the evidence on its own. [142-G-H; 143-A]

Balak Ram. v. State of U.P., [1975] 3 SCC 219, referred to.

B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 73 of 2002.

From the Judgment and Order dated 1.3.2001 of the Punjab and Haryana High Court in CrI. A. No. 271-DB of 1999.

C

K.T.S. Tulsi, Sushil Kumar, S.B. Sanyal, Suresh C. Gupta, A. Guneshwar Sharma, Sanjay Pal, Kamal Mohan Gupta, Bhupender Yadav, S.S. Shamshery, R.C. Kohli, Ms. Babita Yadav, Sarvesh Bisaria, Ms. Nidhi, K.R. Nagaraja, J.P. Dhanda, Ms. Raj Rani Dhanda and Sunder Khatri for the appearing parties.

D

The Judgment of the Court was delivered by

SEMA, J. These two appeals arise out of a common judgment and order passed by the learned Additional Sessions Judge, Gurgaon, convicting the appellants in Sessions Case No. 32 of 1995 and sentenced them to suffer Rigorous Imprisonment on the following Sections of law as under:-

E

Offence U/s	Sentence awarded	Amount of fine Imposed	Sentence in default of payment
148 IPC	Two years	Nil	-
302 IPC r/w 149 IPC	Imprisonment for life	Rs. 1000	Six months RI
325 IPC r/w 149 IPC	Three years RI	Rs. 300	Two months RI
323 IPC r/w 149 IPC	Six months RI	Nil	-
452 IPC r/w 149 IPC	Three years RI	Rs. 300	Two months RI

H

436 IPC Seven years RI Rs. 700 Five months RI A
r/w 149 IPC

The substantive sentences were ordered to run concurrently. By the aforesaid judgment all the nine accused have been convicted. The convictions and sentences have been confirmed by the High Court. Criminal Appeal No. 73 of 2002 is preferred by accused Raghunath and Criminal Appeal No. 74 of 2002 is preferred by the remaining eight accused, namely, Ram Kishan s/o Ram Pat, Anil @ Ajay Kumar s/o Ram Kishan, Manohar Lal s/o Bohru, Desh Raj s/o Ram Pat, Siri Chand s/o Bohru, Satish s/o Siri Chand, Sunil s/o Ram Kishan and Jagmal s/o Ram Pat. B

The complainant parties are close relatives of deceased Kundan Lal. C
The accused are also inter-related (accused Nos. 2 and 6 being the sons of accused No. 1 Ram Kishan, accused Nos. 3 and 7 brothers of accused No. 1, accused Nos. 4 and 9 inter-se brothers, accused No. 5 being the son of accused No. 4), except accused No. 8.

Before adverting to the points urged by counsel for the appellants we D
may, at this stage, notice that there is a rift between the two groups. While considering the evidence of witnesses, particularly of PWs 1 and 2, one could not loose sight that it is in the evidence of the prosecution that the deceased Kundan Lal had contested the election of Sarpanch against accused Manohar Lal earlier. It is also in the evidence of the prosecution that just a day after the date of incident Panchayat elections were to be held. The fight for the post of Sarpanch was between Raj Singh and one Satbir. The complainant party was supporting Raj Singh and the accused were the supporters of Satbir. E
It is also in the evidence on record that both criminal and civil litigation was pending between the complainant and the accused groups. Therefore, the rift between the complainant and the accused groups was writ large prior to the date of the incident. In such a situation one should be cautious while F
appreciating the evidence of the prosecution witnesses.

The prosecution case, as revealed in the FIR, was set in motion on receipt of information received from Badshahpur Police Station through wireless that there was a fight in village Teekli and the injured were admitted in the hospital. On the basis of the said information, ASI Bhup Singh had noted the Farad Bayan. After recording the statement of the complainant party, a prima facie case was found and a case under Sections 148, 323/302/ 325/452/436/427 read with Section 149 of the Indian Penal Code was G
registered. H

A PW-2 complainant, Sumer Singh lodged the FIR stating that on 18.12.1994, at about 9.30 p.m., his wife Smt. Indrawati, father Kundan Lal, mother Smt. Premwati, brothers Sher Singh and Sunder Lal, and Smt. Munni wife of Sher Singh were present in their house. Accused Ram Kishan, Sunil, Anil, Deshraj, Jagmal, Raghunath, Siri Chand, Satish, Manohar Lal, lass with

B lathis and stones entered the house of the deceased Kundan Lal by breaking the door open and on entering accused Anil Kumar inflicted a lathi blow which fell on the head of Kundan Lal (deceased) father of the complainant, as a result of which he fell on the ground. Thereafter, accused Ram Kishan, Sunil, Deshraj, Jagmal, Raghunath, Siri Chand, Satish and Manohar Lal caused injuries indiscriminately with lathis and stones to the complainant, his mother

C Smt. Parmeshwari, his wife Smt. Indira, his brothers Sunder Lal and Sher Singh and brother's wife Smt. Munni Bai. On hearing a noise from the members of the complainant party, Sube Singh son of Makhan Lal, Karan Singh son of Pyare Lal, Ram Khilari son of Ami Chand and Satbir Singh son of Chhatter Singh, all resident of the same village, came to the spot when the accused set on fire a heap of cow dung cakes (Bitoras) lying on the roof of

D the house and also the bundles of fodder lying near the chaff-cutting machine. It is further stated that accused Ram Kishan gave a Lalkara exhorting that members of the complainant party be burnt alive. Karan Singh and Sube Singh when tried to intervene also sustained injuries from the accused. It is further stated that the complainant party also caused injuries to Ram Kishan

E in self-defence. In course of the investigation, the IO found prima facie case against the accused-appellants under the aforesaid Sections and submitted the challan. The prosecution mainly relied on the evidence of two injured witnesses, PW-1 Karan Singh son of Pyare Lal and PW-2 Sumer Singh son of deceased Kundan Lal. Injured Smt. Parmeshwari, Smt. Indira, Sunder Lal, Sher Singh and Smt. Munibai were not examined.

F

Counsel for the appellants, seriously doubted the genesis of the prosecution story with regard to the place of occurrence as revealed from the sketch map (Exht.P5). It is contended by Mr. K.T.S. Tulsi, learned senior counsel, appearing for the appellant in Crl. Appeal No.73 of 2002 and Mr. Sushil Kumar, learned senior counsel, appearing for the appellants in

G Crl.A.No.74 of 2002 that it is quite unusual that the complainant party namely Karan Singh, Satbir Singh, Ram Khilari and Sube Singh, sitting in a Poli and smoking Hukka, allowed the accused party to break the main gate of Poli and saw them going into the house of Kundan Lal. But the complainant party remained a mute spectators without any resistance. Similarly, it is argued that

H the hall, in which the accused party is stated to have assaulted the complainant

party marked points A, B, C, D, F and G, within a radius of six feet is inherently improbable. It is their contention that complainant party numbering seven and the accused party numbering nine totaling 16, armed with lathis of six feet long, it will be inherently improbable to accommodate the complainant party and the accused party in a hall within a radius of six feet and wielding the lathis and raining blows at the same time. The hall of deceased Kundan Lal in which the accused party is said to have assaulted the complainant party with the lathis and bricks is within the radius of six feet. According to the prosecution story, the complainant party consisting of seven family members and the accused party consisting of 9 in number, were assembled in the hall of Kundan Lal. Having considered the submission with the ground reality and after application of our mind, we are of the view that it would be inherently improbable that the accused nine in number, to have wielded and raining blows at the same time with lathis of six feet long in a hall within the radius of six feet with seven members of the complainant party totaling 16 persons in the room.

Similarly, the blood stained earth, Muffler and lathis, said to have been taken in possession by the police in course of investigations were sent for F.S.L. The result of F.S.L. is marked Exh. 8. It is reproduced as under:

“Forensic Science Laboratory Haryana, Madhuban (Karnal)

Report No. FSL(H) 94/B-3801

Dated 14.2.1996

Case FIR No. 972

Dated 19.12.1994

U/s 148/149/436/302/201 IPC

P.S. Sdr. Gurgaon

Results of Serological Analysis of Blood

Exht. No.	Name of Exhibit	Origin	Group
1.	Blood Stained Cotton	Human	Inconclusive
2.	Muffler	Human ‘O’	
3a.	Pyjama	Human	Inconclusive
3b.	Underwear	Human	Inconclusive
4.	Sample blood	Human	Inconclusive
5.	Lathi	Human	Inconclusive
6.	Lathi	Human	Inconclusive

A	7.	Lathi	Human	Inconclusive
	8.	Lathi	Human Material disintegrated	Inconclusive

Sd/-

B
Dr. M.K. Goyal
Asstt. Director (Biology)
Forensic Sc. Laboratory
(H) Madhuban (Karnal)''

C There is no evidence on record to show that the blood stain sent for FSL bears a certificate that the blood is a human blood and it belongs to a particular group which is the same blood group of the deceased Kundan Lal. Therefore, the blood stain is of a human blood is not conclusive evidence that it belongs to the blood group of deceased Kundan Lal. This also can be examined in the background of the defence version that accused Ram Kishan was kidnapped and taken inside the house of Kundan Lal forcibly, wherein he was beaten up by the complainant party and received several bodily injuries. D PW-4 Dr.B.B. Sharma had examined accused Ram Kishan on 18.12.1994 at 11.10 p.m. and found the following six injuries:

- E
1. Abrasion on right eye-brow outer and 2 cm. x cm. surrounding area was swollen. Fresh clotted blood was present. X-ray was advised.
 2. 1 cm. x cm. lacerated wound. It was skin deep on left maxillary prominence.
 3. There was swelling below left elbow on fore-arm. It was 6 cm. x 4 cm. X-ray left elbow and forearm was advised.
 - F 4. Abrasions 6 cm. horizontal x 4 cm. on back of the left side chest. Lower ribs outer part. X-ray chest was advised.
 5. 4 cm x 1 cm. x bone deep lacerated vertical wound on middle part left leg was present. Fresh clotted blood was present. X-ray left leg was advised.
 - G 6. Lacerated wound cm x 1 cm. x muscle deep 2 cm. away. There was 1 cm x cm x muscle deep on the front of the right leg middle part ;surrounding area was swollen. X-ray right leg was advised."
- H

P.W. 5 Dr. B. B. Aggarwal, who conducted X-ray examination of accused Ram Kishan stated as under: A

“On 20.12.1994, I conducted X-ray examination of Ram Kishan son of Ram Pat, 42 years, male r/o Teekli, vide MLR No. BBS/126/94 Ex. DB and found fracture olecranon process of left upper limb (elbow) and fractures 8th, 9th and 10th ribs of left side chest.” B

It is pertinent to notice that the blood stained earth was removed from the point ‘A’, which is the hall of Kundan Lal. In the absence of certifying a particular group of blood by FSL, the blood so collected from the point ‘A’ inside the hall of Kundan Lal could be the blood of accused Ram Kishan from which place he is reported to have been beaten up mercilessly by the complainant party. C

As already noticed, the FIR was lodged on 19.12.94 at 2.30 a.m. for the incident said to have taken place on 18.12.94 at about 9.30 p.m. An accident which is stated to have taken place in the village Teekli, is stated to be at a distance of about 14 KM from Gurgaon. It is in the evidence on record that Sadar Police Station, Gurgaon, and police post Badshahpur fall on the way from village Teekli to General Hospital, Gurgaon. The complainant party did not stop at the two police stations and proceeded straight to the General Hospital, Gurgaon. It is urged that the conduct of the complainant party is unusual and this has created doubt about genesis of the prosecution story. This contention has been rejected by the learned trial court that the complainant party was busy in getting the first and immediate aid to the injured persons of the family. We are of the view that in the ordinary circumstances, it is quite imperative that the complainant party could have stopped at the police station, sought necessary help from the police station and also given the first hand information to the police. From the evidence of P.W.4 Dr. B.B. Sharma, it appears that the injuries suffered by the complainant party are simple in nature except that of Kundan Lal (deceased). In our view, therefore, there are no mitigating circumstances for not reporting to the police station at the first hour especially when the police stations are on the way to the General Hospital. D E F

Similarly, as noticed earlier, FIR was lodged on 19.12.1994 at 2.30 a.m. PW-4 examined the injured at 10.30 p.m. on 18.12.1994. In the FIR, PW-2 has stated that “on entering our house, Anil Kumar gave a lathi blow on the head of my father which he was holding in his hand, and my father fell on the ground and Ram Kishan, Sunil, Desh Raj, Jagmal, Raghunath, Siri Chand, Satish, Manohar Lal caused injuries with their respective lathis, brick G H

A bats to me, my wife Indira, Bhabhi Munni Bai, my mother Parmeshwari, brother Sunder Lal and elder brother Sher Singh continuously.”

PW-6 Dr.Vineeta Bhatnagar, conducted the post mortem examination on the dead body of Kundan Lal on 19.12.1994 at 1.30 p.m. and found the following injuries on his body:-

B 1. A bone deep lacerated wound of 5 x 2 cms size on scalp 1.5 cm from the bridge of the nose in the mid line. Subcutaneous tissues showed hemorrhage and haematoma formation and underlying bone was found fractured. Meninges and brain matter found lacerated.

C 2. A bone deep lacerated wound of 2.5 x 2.5 cms size on the scalp. 6 cm. above and behind the tip of left ear. His subcutaneous tissue shows hemorrhage and hematoma underlying bone found fractured. Meninges and brain matter was found lacerated.

D 3. A bone deep lacerated wound of size 4.5 x 1.5 cms on right side. 7 cm. above the tip of right ear. Subcutaneous tissue shows hemorrhage meninges and brain matter was found lacerated.

E 4. An abrasion of 15 cm x 4 cm on the left upper arm just below the shoulder on the lateral side. Subcutaneous tissues showed hemorrhage. Bones were intact.

E Dr. opined that “the death was due to hemorrhage and shock resulting from ante-mortem injuries (Nos. 1 to 3) to brain, which were, cumulatively as well as individually, sufficient to cause death in the ordinary course of Nature”.

F PW-2 Sumer Singh has deposed before the Court as under:-

“Accused Anil inflicted a lathi blow on head of his father Kundan, followed by a lathi blow each by accused Ram Kishan and Manohar Lal on his father’s head and another lathi blow by accused Raghunath on his (Kundan Lal’s) shoulder”.

G Counsel for the appellants, would argue that the version of PW-2 before the Court is an improvement on the basis of medical evidence inasmuch as in the FIR he has stated that it was the accused Anil who on entering the house gave a lathi blow on the head of his father and the rest of the accused started beating him and members of the family continuously. In our view, the particular part played by lathi blow

H

each by accused Ram Kishan and Manohar Lal on his father's head and another lathi blow by accused Raghunath on his father's shoulder stated by PW-2 in his deposition before the Court appears to be well an after thought after seeing the medical evidence. This substantial contradiction in the FIR and in his deposition before the Court makes a serious doubt of the presence of complainant PW-2 - Sumer Singh at the place of occurrence, where deceased Kundan Lal was assaulted.

Similarly, PW-2 also stated that the complainant party also caused injuries to accused Ram Kishan in self-defence. PW-1 Karan Singh, however, stated categorically in his deposition before the Court that none of the accused had received injuries. This material contradiction between the two injured eye-witnesses PWs-1 and 2 would render their presence doubtful. This apart, there is also evidence on record that except accused No.1- Ram Kishan, the rest of the accused did not sustain any injuries on their bodies. If the eye witness account of PWs-1 and 2 are to be believed, it is their specific statement that accused Anil caused the first blow on the head of deceased Kundan Lal. Normally, the exercise of right of private defence is directed towards the assailants. Accused Anil, who stated to have dealt with the first blow on the head of the deceased Kundan Lal, did not sustain any injury. The rest of the accused also did not sustain any injuries. It is utterly unbelievable story of the prosecution that the right of private defence is directed against only accused Ram Kishan who has sustained as many as six injuries on his body, as described above. At the same time, the nature of the injury sustained by accused Ram Kishan would disclose that the complainant party was armed and had sufficient time to inflict the injuries. This circumstance would lend support to the defence version that Ram Kishan was kidnapped and forcibly lifted to the house of Kundan Lal and beaten up mercilessly by the complainant party.

Similarly, in the FIR PW-2 Sumer Singh did not mention about the particulars of the injuries suffered by him at the hands of the accused. He has, however, stated in his statement recorded under section 161 on 19.12.1994 that Desh Raj caused injury on his left shoulder by stone, accused Sunil caused injury on his left ankle and left foot by lathi, accused Satish caused injury on his right ankle and below right knee by stone. This witness deposed before the court that accused Desh Raj caused him injury on his right shoulder and accused Sunil on the right ankle and accused Satish on left knee respectively. This, in our view, is a substantial contradiction which is fatal to the prosecution story. No reliance can be placed on such a contrary statement

A with regard to the injuries sustained by him caused by each of the accused.

The defence raised serious contentions on the discrepancy of the injuries described by PW-2, said to have been sustained by him from each of the accused but the same has been rejected by the learned trial court on tenuous grounds. The aforesaid contention has been rejected by the learned trial Judge in paragraph 91 of his order as under:-

B
C “In the totality of circumstances it is to be mentioned that it is not a case of non-existence of injuries but while appearing as PW-2 Sumer Singh instead of injuries No.1 and 2 being mentioned on left shoulder and left ankle, he mentioned the same on the right side. Similarly injury No.5 though is present on the right knee but was mentioned to be on the left side. This slip, though exists, would not be a circumstances to discredit the prosecution version. It may be a slip of tongue or a *bonafide* mistake”.

D In our view, the aforesaid discrepancies appearing in the statement of PW-2 would render the prosecution story wholly unreliable, concocted and well an after thought.

E As^o already noticed, accused Ram Kishan sustained as many as six injuries. The rest of the accused did not suffer any injury. There is no explanation by the prosecution how the accused Ram Kishan received injuries except in the statement of PW-2 that injuries caused to Ram Kishan were in self defence, which has already been discussed. The fact that only accused Ram Kishan received injuries would disclose that accused Ram Kishan alone was present at the place of incident. This would also support the theory of defence that accused Ram Kishan was kidnapped by the complainant party to the house of deceased Kundan Lal and beaten up by them mercilessly and not on account of right of private defence as projected by the prosecution story.

F
G Mr. J.P. Dhanda, learned counsel, appearing for the respondents urged that this Court would not interfere with the concurrent findings of fact recorded by the learned trial court Judge and affirmed by the High Court. While it is true that normally this Court would not interfere with the concurrent findings of fact save in exceptional circumstances, where legal process are disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted see *Balak Ram v. State of U.P.*, [1975] 3 SCC 219.
H The High Court is a final Court of appeal and normally this Court would not

interfere, if the High Court on the reappraisal of evidence confirms the trial court judgment. But in the present case, going through the judgment of the High Court, with respect we may point out that the High Court merely affirmed the findings of the trial Court without reappraisal of the evidence on its own. A

As already pointed out, accused Ram Kishan sustained as many as six injuries on his body, injury Nos.3 and 4 stated to be grievous in nature. Both the trial court and the High Court accepted the version of PW-2 that injuries were caused in self-defence. We have already disbelieved the version of PW-2. No explanation whatsoever has been afforded by the prosecution with regard to the injuries on the person of the accused - Ram Kishan. B

The question, whether prosecution is obliged to explain the injuries sustained by the accused in the same occurrence and failure to explain injuries on the accused would construe that the prosecution has suppressed the truth and also the origin and genesis of the occurrence, has been in controversy before this Court in a catena of decisions. A three-Judge Bench of this Court in *Ram Sunder Yadav and Ors. v. State of Bihar*, [1998] 7 SCC 365, referred to another three-Judge Bench decision of this Court in *Vijayee Singh v. State of U.P.*, [1990] 3 SCC 190 at page 202 para 10, which held as under: C D

“In Mohar Rai case it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in Lakshmi Singh case also it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case.” E F G

In the present case, as noticed earlier, the prosecution evidence consists of interested or inimical witnesses. Therefore, non-explanation of the injuries sustained by Ram Kishan may assume greater importance. There is also the defence version which competes in probability with that of the prosecution. In our view, therefore, non-explanation of the injuries sustained by the accused H

A Ram Kishan, which are grievous in nature, renders the prosecution story not wholly true.

Regarding the injuries sustained by the complainant party, it is in the evidence of PW-4 Dr. B.B. Sharma, Medical Officer, General Hospital, Gurgaon that he examined PW-1 Karan Singh, s/o Pyare Lal on 18.12.1994

B at about 10.30 P.M. and found the following injuries on his person:

1. "Lacerated wound horizontally placed 12 cm. x 2 cm. muscle deep. It was on right parietal region. 8 cm. from right ear. Fresh blood was coming. Surrounding area was swollen. X-ray skull was advised.

C

2. 5 cm. x 2 cm. muscle deep lacerated wound on right side of fore-arm near mid line. It was 4 cm. from injury No. 1. It was horizontal. X-ray skull was advised.

D

3. Oblique lacerated wound on right occipital region. It was 6 cm. x 1 cm. muscle deep. Fresh bleeding was present. Surrounding area was swollen. X-ray skull was advised.

E

4. Left leg was swollen lower 1/3rd. Angulation of the bone was present. It was 12 cm. from the ankle joint. Lacerated wound on anterior size 2cm. x 1cm. It was bone deep. 10 cm. above ankle joint. Underlying bone was present. X-ray left leg was advised.

F

5. Left index and middle fingers were swollen. Advised X-ray, index and middle fingers.

6. Right fore-arm was swollen in the middle part. X-ray right fore-arm was advised.

Injury No. 4 was declared grievous and injury Nos. 1, 2, 3, 5 and 6 were kept under observations. After seeing the X-ray report No. MLX-1284 dated 19.12.1994 injury No. 1 was dangerous to life. Injuries No. 4 and 5 grievous. Rest were simple in nature.

G

The weapon used was blunt and injury No. 4, it was penetrating weapon. It was within 24 hours. The duration between the injuries and the MLR within 24 hours."

H

On the same day, Dr. B.B. Sharma examined Sunder Lal s/o Kundan Lal and found the following injuries on his person.

1. "Horizontal lacerated wound 6 cm. x ½cm. into muscle deep. It was 8 cm. from left ear on parietal region. Fresh clotted blood was present. X-ray skull was advised. A
2. Lacerated wound on left side fore-head. Oblique from mid line to left side. It was 4 cm. x 1 cm. It was muscle deep. Fresh clotted blood was present. X-ray skull was advised. B
3. Lacerated wound 3 cm. x 1 cm. into muscle deep right side of parietal region near mid line. It was vertically placed. It was 2 cm. posterior to injury No. 2. X-ray skull was advised.
4. On front of right leg anterior side there was 4 lacerated wounds. (a) 10 cm. below knee. 1-1/2 cm. x 1 cm. x muscle deep (b) 3 cm. below injury No. A. 2 cm. x 1 cm. x muscle deep (c) 6 cm. below injury No. B. 4 cm. x 1 cm. into muscle deep. It was vertically placed (d) 7 cm. below injury No. C. 2 cm. x ½cm. into skin deep. X-ray right leg was advised. C
5. Lacerated wounds on front left leg. Fresh clotted blood was present. 5-A (1 cm. x ½cm. into muscle deep. It was vertical and 8 cm. below 5-B) 1-1/2 cm. x ½cm. x muscle deep it was 8 cm. below injury No. 5-A. (5-C) 1-½cm. x ½cm. into skin deep. It was 8 cm. from injury No. 5B. X-ray left leg was advised. D
6. On the left fore-arm there was abrasion. On the posterior size Middle part 2 cm. ¾x cm. was vertically placed. Adjoining area was swollen. X-ray left fore-arm was advised. E
7. Right fore-arm was swollen in middle and upper 1/3rd. Advised X-ray right fore-arm. Abrasion on posterior aspect 3 cm. below elbow. It was 2 cm. x ½cm. F
8. Abrasions on the back of right index finger first phalanx posterior size 1 cm. x ¾cm. X-ray right index finger was advised.
9. Swelling on angle of left jaw 5 cm. x 4 cm. It was red in colour. X-ray left jaw was advised. G
10. Pattern contusion elongated in shape on middle part of abdomen 3 cm. above umbilicus the margins were echymosed. It was oblique, the rounded and was towards left and upper.
11. Pattern oblique contusion on back of the left side of chest extending H

A from mid line towards outer and lower side upto costal margins. It was 16 cm. x 2 cm. The margin was ecchymosed. X-ray chest was advised.

12. Defused red swelling on anterior and outer aspect of left shoulder. It was 12 cm. x 8 to 10 cm. in size. X-ray left shoulder was advised.

B Injuries No. 1 to 12 were kept under observations. The duration between the injuries and examination was within 24 hours. The injuries were caused by blunt weapon.

C After seeing the X-ray report No. M.L.X.-1285 dated 19.12.1994. Injury No. 1, 2, 3 were kept under observations and the opinion of treating Doctor is required. Injury No. 4 was simple in nature, injury No. 5, 6, 7, 8, 9, 10 and 12 were simple in nature. The injury No. 11 repeated X-ray was advised, "no definite opinion can be given after seeing the X-ray report repeated."

D On the same day at about 11.40 P.M., Dr. B.B. Sharma examined Indira w/o Sumer Singh and found the following injuries on her person:

E 1. "There was oblique lacerated wound on right parietal occipital region 13 cm. x 1-1/2 cm. x muscle deep extending from mid line towards right side. Occipital region. Surrounding area was swollen. Fresh clotted blood was present. X-ray skull was advised.

2. Right thumb was swollen. More in proximal part movement were painful. X-ray right thumb was advised.

3. Slight swelling on palmer side of left hand near thumb.

F The nature of injuries are as follows:

Injury No. 3 is simple in nature, however injury No. 1 and 2 were kept under observations.

G The injuries were caused within 24 hours of the examination. All the injuries were caused by blunt weapon.

I have seen X-ray report No. MLX 1287 dated 19.12.1994, I declared injury No. 2 grievous in nature and opinion about injury No. 1 can be given after treating the record of the doctor."

H On 19.12.1994, at 12.15 A.M. Dr. B.B. Sharma examined Smt. Muni

w/o Sher Singh and found the following injuries on her person:

1. Vertical lacerated wound in front of parietal region near mid line right side. It was 8 cm. x 1 cm. It was a muscle deep. Fresh clotted blood was present. Surrounding area was swollen. X-ray skull was advised.

2. Complained of pain on back of left side of the chest. No apparent injury was seen. X-ray chest was advised.

Injuries No. 1 and 2 were kept under observations. The duration of the injuries was within 24 hours of the examination. The injuries were caused by blunt weapon."

On 19.12.1994, at 12.35 AM, Dr. B.B. Sharma examined Sube Singh s/o Makhan Lal and found the following injuries on his person:

1. Contusion on the back of left fore-arm below elbow. 8 cm. x 6 cm. in the centre of the contusion. There was abrasion with fresh clotted blood 1 cm. x $\frac{3}{4}$ cm. X-ray left fore-arm was advised.

2. Defused contusion on the outer side of right shoulder upper part 10 cm. x 6 cm.

3. Abrasion on front of left knee joint 2 cm. x 2 cm. Fresh clotted blood was present.

Injury No. 1 was kept under observation, however, injury No. 2 and 3 were declared simple in nature. The probable duration of the injuries are within 24 hours. The injuries were caused by blunt weapon.

On the same day, at about 1.00 AM, Dr. B.B. Sharma examined Sumer Singh s/o Kundan Lal and found the following injuries on his person:

1. 2 adjacent abrasions on outer aspect of left shoulder 1 cm. x $\frac{3}{4}$ cm. 1 cm. x $\frac{3}{4}$ cm. 8 cm. from upper border of shoulder joint. Fresh clotted blood was present.

2. On inner maleolus of left ankle $\frac{1}{2}$ cm. x 1 cm. abrasion was present. Fresh clotted blood was present. Surrounding area was swollen.

3. Right big toe was swollen more on the dorsal side. Advised X-ray right big toe.

- A 4. 3 abrasions on inner aspect of right ankle joint.
- 4-A. 1 cm. x ¾cm. on centre of maleolus for injury No. 4-B.
- 4-B. 1 cm. x ½cm. on ankle joint. It is 4 cm. from injury No. 4-A towards heal.
- B 4-C. ½cm. x 1.2 cm. abrasion. It was 3 cm. above injury No. 4-A.
5. Abrasion on front of middle part of right leg 1 cm. x ¾cm. fresh clotted blood was present.
- C Injury No. 1, 2, 4, 5 were simple in nature however, injuries No. 3 was kept under observation for X-ray. The probable duration of all the injuries was within 24 hours for examination. The injuries were caused by blunt weapon.”

- D Doctor opined that “the injury No.5 of Sumer Singh (PW-2) having been caused by a fall on a hard surface can not be ruled out. Similarly, injury No.3 on the person of Sube Singh having been caused by a fall on a hard surface can not be ruled out. The injury No.2 on Muni Devi is only a complaint of pain and I can not give its duration and the weapon used. The injury No.3 on the person of Indira, having been caused by a fall on the hard surface can not be ruled out. The injury No. 6 and 8 on the person of Sunder Lal having been caused by a fall on the hard surface can not be ruled out.
- E

- As already noticed, out of the injured complainant party, only Karan Singh, PW-1 and Sumer Singh PW-2 have been cited as witnesses. The others were not examined. The nature of the injuries sustained by the complainant party would clearly suggest that such injuries could be caused in a melee which is the version of the defence that injuries sustained by deceased Kundan Lal and other members of the complainant party have been caused by a mob consisting of 300-350 while trying to rescue the accused Ram Kishan. Considering the nature of the injuries sustained by the complainant party it is quite probable that they sustained injuries accidentally while being involved in a mob fight. We are clearly of the view that the nature of the injuries sustained by the complainant party would clearly suggest that such injuries could only be caused in a melee wherein the mob of 300-350 gathered at the place as projected by the defence. Such injuries sustained by the complainant party could not be attributed to the accused in the circumstances as explained above.
- H

In the fact and circumstances recited above, we are clearly of the view, A
that the prosecution has not come up with a true story. It has suppressed the
facts. If that be the case, the whole prosecution story would stand on a quick
sand. The prosecution has failed to establish its case beyond reasonable doubts.
It is now well settled principle of law that if two views are possible, one in
favour of the accused and the other adversely against it, the view favouring B
the accused must be accepted.

In the result, these appeals are allowed, the convictions and sentences
passed on the appellants are set aside and all the appellants are acquitted of
the charges framed against them. The appellants are in jail. They are directed
to be set at liberty forthwith, if not required in connection with any other C
case. The impleadment application is dismissed.

N.J.

Appeals allowed.