

A

LAKHWINDER SINGH AND ORS.

v.

STATE OF PUNJAB

DECEMBER 17, 2002

B

[N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

C

*Penal Code, 1860—Section 148 and Sections 302, 325, 324, 323 and 336 read with 149—Arms Act, 1959—Section 27—Allegation that accused along with co-accused committing murder of a person and injuring others—Conviction and sentence—High Court convicting accused but acquitting co-accused—Held, in view of the findings based on the evidence on record, prosecution case not credible due to several lacunae in it—Hence conviction and sentence of accused set aside.*

D

**It is alleged that the appellants and others variously armed committed the murder of one person and caused injuries to informant and other persons. Informant lodged an FIR and disclosed the motive as one party preventing other party from using the path near the village pond. Trial Court convicted them under Section 148 and Sections 302, 325, 324, 323, 336 read with 149 IPC and Section 27 of Arms Act, 1959. High Court convicted the appellants but acquitted the co-accused. Hence the present appeal.**

E

**Allowing the appeal, the Court**

F

**1. On the basis of evidence on record, the prosecution case is not credible due to several lacunae in it. Therefore the conviction and sentence of the appellants is set aside. [158-C]**

**2.1. The two eyewitnesses are not wholly reliable and the third witness is wholly unreliable. [158-B]**

G

**2.2. The FIR about the incident was lodged by informant with the police not at police station but at bus stand where police officer was found. [151-D]**

H

**2.3. The last sentence of FIR to the effect that the members of the prosecution party caused injuries to one of the appellant-gunman in the**

incident is interpolated with a view to explain the injuries on the aforesaid appellant. Informant asserted that he never stated so since he did not know the names of the gunmen till 3-4 days after the occurrence. According to him, police must have interpolated this. On examination of the original report recorded by the police officer there is no manner of doubt that the last sentence of the information has been interpolated and it is quite clear from a mere look at the document that the last sentence has been adjusted in the space available between the last sentence of the report and the signature appearing at the bottom. Further both the prosecution witnesses asserted that they had not caused injuries to anyone. The question of informant having stated that appellant was also assaulted and injured in the course of the incident did not arise since he did not know the name of appellant. [151-E-H]

2.4. Only one prosecution witness was examined to prove the seizures made from the place of occurrence by prosecution. From his evidence it does not appear that he was present at the place of occurrence when the alleged recoveries and seizures were made. Obviously he must have signed the seizure memos later. Therefore, the recoveries alleged to have been made from the place of occurrence is suspect and it is not safe to attach any credence to the recoveries made and seizures effected by the investigation officer. [152-C-D; 153-B-C; 155-B; 158-B]

2.5. The evidence on record is over-whelming that informant was not present at the place of occurrence and did not meet any of the police officers at the time of investigation and, therefore, the assertion of investigating officer that with his assistance rough site plan with marginal notes was prepared does not appear to be true and also that the inquest report was witnessed by informant. It seems the inquest report was prepared elsewhere and later on signature of informant was obtained. Furthermore in the 4th marginal note, name of appellant had been mentioned. Since informant did not even know the name of any of the gunmen, it is obvious that the marginal notes were not prepared by investigating officer with his assistance, and in all probability, investigating officer has himself prepared the marginal notes without his assistance. Neither the further statement of informant nor the statement of other prosecution witnesses was recorded by the investigating officer. This does not appear to be the natural conduct of an investigating officer, because if they were really present at the place of occurrence, and he had gone to the place of occurrence as claimed by him, he would have certainly

A recorded their statements. [153-E-G; 154-A-B]

2.6. Investigating officer was reluctant in recording the statements of material witnesses. Informant asserted that investigation officer did not record his further statement on the following day. One of the prosecution witnesses even though present at the place of occurrence when the investigating officer allegedly visited the place of occurrence, his statement was not recorded. The next investigating officer who took over the investigation on the next day, though he was aware of the fact that prosecution witness claimed to be an eye witness, made no effort to record his statement. It was only few days later that he recorded the statement. Thus the aforementioned evidence leads to the conclusion that the investigation has not been conducted in a fair and impartial manner.

[154-E-G]

3.1. Investigating Officer came to know that appellant was admitted in a hospital one day after the incident. For reasons best known to him, he did not visit the hospital where appellant was admitted and he claims that he deputed one SI to visit the hospital who in the course of his deposition has not said a word about his having gone to see appellant on the direction of the investigating officer. [155-D-E]

3.2. Entry report of the Hospital shows that there were as many 19 injuries on the person of the appellant. Defence witness stated in his examination in chief that he had conducted X-Ray examination and after looking at X-Ray report and having looked at the skiagrams, he declared two injuries to be grievous. In his cross-examination, he stated he had not seen X-Ray register and the skiagrams. He asserted that the injuries could not be self-suffered. The other defence witness deposed that the appellant was admitted in the hospital. He examined the patient. No suggestion has been put to any of these two witnesses that in fact appellant had not suffered injuries, as alleged. It is not even the case of the prosecution that appellant was not injured in the course of the same incident. High Court rejected the testimony of defence witness on the basis of this sole statement in his cross-examination. It appears to be quite possible that the witness may have stated about his having not seen the X-Ray register and the skiagrams under some confusion. Reading the evidence as a whole, there is no manner of doubt that defence witness had got X-Ray done and only after looking at X-Ray report and skiagrams, he had declared the injuries to be grievous. [155-G-H; 156-A-E]

H

3.3. Having regard to the facts and circumstances of the case, it was the duty of prosecution to explain the injuries suffered by the appellant which were 19 in number and two of them resulting in fractures. It is not as if the prosecution did not know of these injuries and that they were manufactured later to support the case of the defence. The facts disclose that even by the time the FIR was finalized and before the special report was dispatched, the investigating officer had knowledge of the fact that appellant had suffered injuries and was admitted in a hospital for treatment. High Court's holding that it is not necessary that in all cases the prosecution is bound to explain the injuries on the person of the accused and in fact, doubting the fact that the appellant had suffered any such injury is not justified by the evidence on record. Therefore, failure of the prosecution to explain the injuries on appellant leads to the inference that prosecution has not disclosed the true genesis and the manner of occurrence. [156-F-H]

3.4. It is not in dispute that on the date of occurrence the informant and other prosecution witnesses did not know the names of any of the gunmen. Despite the fact that they did not know the names of any of the gunmen who had taken part in the assault on the date of occurrence, the name of one appellant finds place in the FIR as well as in the marginal notes of the site plan, both prepared at the instance of informant. That apart, since the assailants were not known to this witness by name, there appears to be no reason why a test identification parade was not held. It is not in dispute that no test identification parade was held to identify the assailants. [157-A-B]

4. Deformed jacket of a bullet sent to Laboratory for examination appeared to be a part of 9 mm bullet as per the report of Forensic Science Laboratory. If this was the metallic piece which was found embedded in the injury of deceased, then the forensic report does not support the prosecution case that the injury suffered by him was a result of the shot fired from AK-47 rifle which has 7.62 mm bore and not 9 mm. If that is so then the entire prosecution case that shot was fired from AK-47 rifle of appellants falls to the ground. Moreover, the report discloses that a spent cartridge of a carbine was amongst the items sent for examination. No explanation is forthcoming as to how a spent cartridge of a carbine was recovered and seized from the place of occurrence, because it is no one's case that a carbine had been used in the incident. [157-F-H; 158-A]

5. High Court was right in disbelieving the eye witnesses accepting

**A** the plea of alibi of one of the accused and also disbelieving the eye witnesses with regard to the participation of other two. [158-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1307 of 2001.

**B** From the Judgment and Order dated 24.4.2001 of the Punjab and Haryana High Court in Criminal Appeal No. 423-DB of 1999.

Sushil Kumar, B.S. Jain, Sanjay Jain, Dr. (Mrs.) Vipin Gupta, Ajay Veer Singh, Adolf Mathew and Goodwill Indeevar, for the Appellants.

**C** V.C. Mahajan, Bimal Roy Jad, B.K. Khurana and Ms. Sunita Parihar, for the Respondent.

The Judgment of the Court was delivered by

**D** **B.P. SINGH, J.** The three appellants in this appeal, namely Constables Lakhwinder Singh, Pargat Singh and Paramjit Singh have challenged their conviction and sentence passed by the High Court of Punjab and Haryana in Criminal Appeal No.423-DB of 1999 whereby they have been sentenced to one year rigorous imprisonment under section 148 IPC ; life imprisonment and fine of Rs. 1,000 under section 302/149 IPC ; two years rigorous imprisonment and a fine of Rs. 500 under sections 325/149 IPC ; one year rigorous imprisonment under section 324/149 IPC ; six months rigorous imprisonment under section 323/149 IPC ; three months rigorous imprisonment under section 336 IPC and seven years rigorous imprisonment and a fine of Rs.500 under section 27 of the Arms Act. The High Court disposed of three appeals before it arising out of the same judgment and order of the Additional Sessions Judge, Ludhiana dated 20th July, 1999 in Sessions Case No.13/56 of 6/6/97 / 16/3/1999. It allowed Criminal Appeal No.344-DB of 1999 preferred by Ranjit Singh accepting his plea of alibi. It partly allowed Criminal Appeal No.376-DB of 1999 inasmuch as it acquitted Kulwant Singh and Gurmit Singh of all the charges levelled against them on a finding that there was no acceptable evidence of their participation in the offence. The appeal preferred by the third appellant in that appeal, namely Jit Singh @ Parmi was rejected. It appears that Jit Singh @ Parmi has not preferred an appeal to this Court.

**H** The occurrence is said to have taken place on 24th December, 1996 at 8.00 p.m. at village Talwandi Rai within the jurisdiction of P.S. Raikot. In

that incident, it is alleged, the appellants and four others variously armed A  
 committed the murder of Chamkaur Singh and caused injuries to Darshan  
 Singh, PW.14 (informant) ; Sohail Singh, PW.15 and Maghar Singh (since  
 deceased). It also appears from the record that Kuldip Singh, who was also  
 charged of having committed the offence alongwith the appellants and others  
 absconded during trial and was, therefore, declared a proclaimed offender. In B  
 this appeal, therefore, we are only concerned with the three appellants before  
 us.

The case of the prosecution is that after the occurrence took place at  
 about 8.00 p.m., Darshan Singh, PW.14, proceeded to P.S. Raikot to lodge  
 a report but he met Inspector Gur Tejinder Singh, S.H.O., Raikot at the bus C  
 stand, Raikot and lodged his report there at about 10.00 p.m. In his report he  
 stated that he was a resident of village Pabbian but resided with his maternal  
 grand father in village Talwandi Rai where he was employed as a Munshi.  
 At about 8.00 p.m., on hearing a commotion he rushed towards the path way  
 near the village pond where he saw Jit Singh @ Parmi, Gurmit Singh and D  
 Kulwant Singh (both since acquitted) quarrelling with Sohail Singh, PW.15,  
 Maghar Singh (since deceased) and Chamkaur Singh, who was killed in the  
 incident. Brick bats were being hurled. In the meantime Ranjit Singh (since  
 acquitted) alongwith his gunmen and the gunmen of his father Joginder Singh  
 came there. He exhorted Jit Singh @ Parmi to kill as many persons as he E  
 liked and he would take responsibility for it. On his exhortation, Jit Singh @  
 Parmi snatched the rifle of one of the gunmen and fired a shot at Chamkaur  
 Singh injuring him on his neck. Chamkaur Singh fell down and died soon  
 thereafter. The others assaulted Sohail Singh, PW.15 and Maghar Singh (since  
 deceased) with 'dangs' and sticks. One of the gunmen gave him a blow on  
 his head with the butt of his rifle causing an injury. All of them raised alarm,  
 whereafter Ranjit Singh alongwith his gunmen ; Gurmit Singh and Kulwant F  
 Singh fled towards the village firing from their weapons. The motive for the  
 occurrence disclosed in the report is that Gurmit Singh, Kulwant Singh and  
 Parmi were preventing Sohail Singh, Hardev Singh and others from using the  
 path way in the shamelat land near the village pond.

The informant further reported that Sohail Singh and Maghar Singh G  
 were removed to the hospital, while Kewal Singh had been left behind to  
 guard the body of deceased Chamkaur Singh. The informant had proceeded  
 to lodge the report with the police but met the S.H.O. at the bus stand and  
 had given his report there. The last sentence in the report states "During the  
 said fight, we also inflicted injuries to Paramjit Singh gunman". H

A A mere perusal of the first information report reveals that the names of the gunmen who accompanied Ranjit Singh have not been disclosed and that Parmi snatched the weapon of one of the gunmen. The name of the gunmen from whom the gun was snatched is not stated. However, in the last sentence of the report the informant named Paramjit Singh as one of the  
B gunmen on whom injuries were inflicted by members of the prosecution party.

We have noticed this fact in view of the submission urged on behalf of the defence that the first information report was drawn up after due deliberations, after the police had visited the place of occurrence, and further that on coming to know that Parmjit Singh had been seriously injured, the  
C last sentence in the report was added with a view to explain his injuries. As noticed earlier, seven persons were tried by the Additional Sessions Judge, Ludhiana, who found all of them guilty of various offences including section 302/149 IPC. On appeal, the High Court acquitted Ranjit Singh, Kulwant Singh and Gurmit Singh of the charges levelled against them.

D The prosecution examined large number of witnesses to prove its case which included three alleged eye witnesses, namely Darshan Singh PW.14, Sohail Singh, PW.15 and Jodh Singh, PW.17. It further led evidence to prove the recoveries made from the place of occurrence and produced the report of the Forensic Science Laboratory as regards the weapons used in the  
E commission of the offence.

Ranjit Singh set up the plea of alibi and submitted that on the date of occurrence, he was not present. He also examined defence witnesses to prove that on that date he had met the ex-President of the Bar Association of Ludhiana and that he had also visited Dr. B.K. Sharma at his clinic since he  
F was suffering from tooth pain. The plea of alibi was investigated by the Superintendent of Police (H) and the Superintendent of Police (D), Jagraon and that they both found him innocent, and that is why he had not been sent up for trial. His case was that he had been falsely implicated for political reasons as he and his father belonged to the party in opposition. It may be  
G noticed that Ranjit Singh was not sent up for trial after investigation as no case was found against him, but he was later summoned for trial by the trial court under section 319, Code of Criminal Procedure.

H Since the High Court has itself recorded a finding in favour of Ranjit Singh and held that his plea of alibi is proved by cogent and reliable evidence, and the High Court has further acquitted Kulwant Singh and Gurmit Singh

on a finding that they have not participated in the commission of the offence, though such allegations were made by the prosecution witnesses, it becomes imperative for this Court to critically scrutinize the evidence of the eye witnesses since they are obviously not wholly reliable witnesses, on whose testimony alone a conviction can be based. A

In this connection we may also notice the plea of Paramjit Singh, who had suffered as many as 19 injuries including fracture of the mandible and fracture of body of scapula, that when he was returning after easing himself, he was attacked by 2-3 persons who pounced upon him and tried to snatch his AK-47 rifle which he resisted. In that process he was mercilessly beaten, as a result of which he became unconscious. On regaining consciousness, he found himself admitted in Civil Hospital at Sudhar. B C

The informant, Darshan Singh (PW.14) stated how he came to the place of occurrence on hearing a commotion. He found Jit Singh @ Parmi, Gurmit Singh and Kulwant Singh quarrelling with Sohail Singh, PW.15, Chamkaur Singh (deceased) and Maghar Singh (since deceased). Brick bats were being hurled and dangs and sticks were being used. In the meantime Ranjit Singh came there alongwith his gunmen and gunmen of his father Jathedar Jagdev Singh Talwandi. He names three of the gunmen who came with Ranjit Singh, namely Pargat Singh, Parmajit Singh and Lakhwinder Singh, the appellants herein. On the exhortation of Ranjit Singh, Parmi snatched the rifle from gunman Paramjit Singh and fired shots towards Chamkaur Singh injuring him on his neck, as a result of which he fell down. The specific allegation against Kulwant Singh and Gurmit Singh by this witness in examination-in-chief is to the effect that they assaulted Sohail Singh and Maghar Singh with dangs and sticks. Similarly Pargat Singh had inflicted injury to him on his head with the butt of his rifle. On alarm being raised, they ran away. He further stated the motive for the offence, namely the insistence on the part of Jit Singh @ Parmi, Kulwant Singh and Gurmit Singh in preventing Sohail Singh and Maghar Singh from using the path near the village pond. In the last sentence of his examination-in-chief he stated that they did not inflict any injury to any member of the defence party. D E F

In his cross-examination he admitted that Sohail Singh and Maghar Singh were both related to him being sons of the brother of his grand father, Joginder Singh. This witness admitted that in his statement made before the Magistrate on 29th March, 1997 it is recorded that it was Paramjit Singh who hit him on his head with the butt of his rifle. But he explained by saying that G H

A the name of Paramjit Singh was wrongly recorded instead of the name of Pargat Singh. He admitted that he had not named the gunmen who assaulted him in his statement to the police. This witness asserted that he as well as Sohail Singh and Maghar Singh were empty handed and did not inflict any injury to any of the accused. When confronted with the statement made by him in the first information report Ext.PF where it was recorded that they had inflicted injuries on Paramjit Singh, this witness explained that that sentence had been subsequently added by the police and that he did not state such a fact. In fact, he came to know the name of Paramjit Singh for the first time 3-4 days after the occurrence when he was in the hospital. Similarly he was not aware of the names of Pargat Singh and Lakhwinder Singh but he could recognize them from their facial features. He came to know of their names 3-4 days after the occurrence. He had not named any one of them in the first information report. He further admitted that no test identification parade was held. This witness further claimed that he had got recorded in the first information report that Kulwant Singh and Gurmit Singh had inflicted injuries on Sohail Singh and Maghar Singh with dangs and sticks but such a specific statement was not found in the first information report. He further admitted that he did not know how many gunmen were attached with Ranjit Singh and how many with his father, nor did he know their names on the date of occurrence. In his report to the police, he had not described the features of the gunmen who participated in the assault. It is not necessary to refer to other omissions and contradictions elicited from this witness in the course of his cross-examination. Three facts however, are noticeable, namely that in the first information report the police, according to this witness, had interpolated the last sentence to the effect that they had caused injuries to Paramjit Singh. Secondly, that he did not know the names of the appellants on the date of occurrence neither had he described their features in the first information report. In the statement to the police also he had not named the appellants, yet no test identification parade was held to establish the identity of the appellants. Lastly, though this witness claims that Kulwant Singh and Gurmit Singh had assaulted Sohail Singh, PW.15 and Maghar Singh (since deceased), such a statement is not to be found in the first information report lodged by him wherein a general statement was made that the others assaulted them.

PW.15, Sohail Singh claimed that he and Chamkaur Singh, deceased, were returning to their house from the fields at about 8.00 p.m. when Gurmit Singh, Kulwant Singh and Jit Singh hurled brick bats at them. In the meantime Maghar Singh and Darshan Singh came there. Thereafter Ranjit Singh

accompanied by three gunmen came there. He has named them as Paramjit Singh, Lakhwinder Singh and Pargat Singh, the appellants herein. On the exhortation of Ranjit Singh, Jit Singh @ Parmi took the rifle from Paramjit Singh and fired shots hitting Chamkaur Singh on the back of his neck, as a result of which he died. Gurmit Singh and Kulwant Singh gave dang blows to him and Maghar Singh while Pargat Singh hit on the head of Darshan Singh, PW.14, with the butt of his rifle. Thereafter they ran away. This witness was brought to the Civil Hospital, Raikot and thereafter to Ludhiana. He remained admitted in the hospital for about a month. This witness had received injuries on his left arm. In cross-examination, when confronted with the statement made in the course of investigation where he had not named Kulwant Singh and Gurmit Singh as the two persons who caused him injuries with dangs, this witness had asserted that he had stated before the police that they had assaulted him with dangs. This witness also asserted that they had not caused any injury to any of the accused. He had not noticed Paramjit Singh receiving any injury. He denied the suggestion that Paramjit Singh was assaulted by three persons who had mercilessly beaten him and tried to snatch his rifle. The witness asserted that in the statement recorded under section 161 Cr. P.C. as also in the statement made before the Magistrate he had stated that Pargat Singh had given a blow with the butt of rifle to Darshan Singh but such a statement is not found either in his statement under section 161 Cr. P.C. or in his statement before the Magistrate. This witness denied the suggestion that he was known to Kuldip Singh, proclaimed offender, who was a relative of Jagdev Singh Talwandi, or that he was employed as the private gunman of Jagdev Singh Talwandi and that he armed with a private carbine had come along with other gunmen while Constable Paramjit Singh was armed with AK-47 assault rifle and Constable Lakhwinder Singh and Pargat Singh were armed with SLR rifles. However, in his statement before the police these facts have been recorded, though this witness admitted in his deposition that he could not distinguish between a carbine, SLR rifle and AK-47 rifle. This witness asserted that he came to know the names of the appellants for the first time 10-15 days prior to the date of the occurrence. He had no talk with them at any time nor had he any dealings with them. He denied the suggestion that he had been tutored to name them. This witness denied the suggestion that he had stated in his statement before the Magistrate that the police arrived within 10-15 minutes of the incident and made enquiries from them, but in the statement made by him before the Magistrate it is so recorded. He further claimed that Darshan Singh and Maghar Singh met him 10-15 days after the occurrence. No resident of his village came to meet him in the hospital. His statement was recorded by the police three days after the

A occurrence.

The last eye witness is PW.17 Jodh Singh. Having gone through his evidence, we find this witness to be wholly unreliable. He claims that on 24th December, 1996 he was at the shop of one Kuljit Singh when he came to know that some fight was going on near the village pond. He went in that direction and when he reached his house, he heard the report of gun shot and he, thereafter proceeded to the place where the fight was going on. There he saw Kulwant Singh, Gurmit Singh and Jit Singh @ Parmi, Ranjit Singh and his gunmen quarreling with Chamkaur Singh, Sohail Singh, Darshan Singh, and Maghar Singh. He also saw Ranjit Singh raising lalkara and Jit Singh @ Parmi snatching rifle from the gunman Paramjit Singh and firing at Chamkaur Singh which hit him on his head and he died. He noticed Kulwant Singh and Gurmit Singh armed with dangs and sticks and they inflicted injuries on Sohail Singh and Maghar Singh while Pargat Singh gave a blow with the butt of his rifle on the head of Darshan Singh. According to this witness the police arrived at the spot after about 45 minutes but his statement was recorded on the next day i.e. 25th December, 1996. It appears from the statement made by him under section 161 Cr. P.C. that he had earlier stated that the police had arrived within 20-25 minutes of the incident. He also denied having made a statement, though it is so recorded, that he requested the police not to remove the dead body from the place of occurrence but they still took away the body to the police station. This witness claims to have been with the police officials at the place of occurrence for about 2-3 hours and on the following day he again joined them at about 6.45 a.m. till about 9.45 a.m. During this period, he did not notice Darshan Singh. He admitted that Chamkaur Singh deceased was his nephew. He, however, did not make any statement before the police on the date of occurrence i.e. 24th December, 1996 and for the first time he made statement before the police on 25th December, 1996 and that too before the Superintendent of Police Rachhpal Singh. He denied that he had stated in his statement recorded in the course of investigation that when he came to the place of occurrence several other persons had collected and he came to know from them that Jit Singh @ Parmi had snatched the rifle from the gunman of Jagdev Singh Talwandi and had fired shot at Chamkaur Singh. Such a statement was found recorded in his 161 Cr. P.C. statement Ex. DB. Though this witness claims that he had stated in the course of investigation that Jit Singh @ Parmi had snatched the rifle from Paramjit Singh, such a statement does not find mention in his earlier statement under section 161 Cr. P.C. This witness also claims to have come to know the names of Paramjit Singh and Pargat Singh 10-20 days before the

date of occurrence, but he did not know the name of the other gunmen. He, however, admitted that he had not stated in his statement under section 161 Cr. P.C. that Pargat Singh had given blow with the butt of his rifle on the head of Darshan Singh. It also appears from the statement made under section 161 Cr. P.C. that this witness had not stated that he had seen Sohail Singh being assaulted. On the contrary what was recorded was that he had come to know that injuries were inflicted on him by these persons. Though this witness claims that he had named the gunmen in his statement recorded on 25th December, 1996 and 10th January, 1997, his statements show that he had not named the gunmen.

It will thus appear that the presence of this witness is highly doubtful. Though he claims to have been at the place of occurrence when the police arrived, his statement was not recorded and even on the following day his statement was recorded when the Superintendent of Police came to supervise the investigation. Moreover, though he claims to have known the names of atleast two of the appellants, in his two statements recorded on 25th December, 1996 and 10th January, 1997 he had not disclosed the names of the gunmen. Moreover he claims to have heard the report of gun fire which attracted him to the place of occurrence and thereafter he witnessed Ranjit Singh raising a lalkara and firing from the rifle by Parmi. It is not even the prosecution case that before Parmi fired at Chamkaur Singh, anyone else had fired from his weapon. We, therefore, do not propose to place any reliance on the testimony of this witness.

The case was investigated by several investigating officers. The first investigating officer Gur Tejinder Singh, PW.18 is the person who recorded the information given by Darshan Singh, PW.14, at the bus stand. According to him, he went to the place of occurrence on 24th December, 1996 itself but since it was dark, he came back after making arrangements for guarding the dead boy of Chamkaur Singh. Next day at about 7.45 a.m. he went to the place of occurrence. The dead body of Chamkaur Singh was identified by Darshan Singh, PW.14 and Mewa Singh. He, thereafter prepared the inquest report and inspected the place of occurrence. He is categoric in his assertion that PW.14 was with him that morning when he prepared the inquest report as well as the rough site plan with marginal notes. The notes and the site plan were prepared with the assistance of Darshan Singh who pointed out the various points which were explained in the notes to the site plan. He made various seizures at the place of occurrence, namely Ex.P-9, a dang with sua attached to it ; Ex, P-10 blood stained earth ; Ext. P-11 one spent cartridge

- A of AK-47 rifle ; Ex.P-12/1 to Ex.P-12/12 - 12 spent cartridges of SLR ; Ex.P-13 one spent cartridge of carbine ; Ex.P-14 one AK-47 rifle without magazine and Ex.P-15/1 to 15/12 brick bats found near the place of occurrence. He also recorded the statements of witnesses. Later in the day, he met SI Gurcharan Singh, PW.16 at the bus stand Raikot who handed over to him the post mortem report of Chamkaur Singh and two parcels - one containing the clothes of the deceased and the other containing a metallic piece handed over by the doctor who conducted the post mortem examination and which was extracted from the body of Chamkaur Singh. In his cross-examination this witness has stated that on 25th December, 1996 at about 8.45 a.m. he directed the informant Darshan Singh to go to the hospital for medical check up. He also claimed that Jodh Singh, PW.17 was with him at the place of occurrence till the evening but surprisingly he did not record the statement of this witness who claimed to be an eye witness. He also admitted that he received a wireless message regarding Paramjit Singh having been admitted in the Sudhar Primary Health Centre. He, however, did not go to see Paramjit Singh but instead sent SI Jagir Singh, PW.11. He saw the medico legal report brought by SI Jagir Singh and according to the said report, Paramjit Singh was admitted in the Sudhar Primary Health Centre at 11.45 p.m. on 24th December, 1996.

- It appears that the investigation was later entrusted to DSP Gurmit Singh, PW.13 who took over the investigation on 26th December, 1996. From the deposition of PW.13 it appears that on 26th December, 1996, he did not conduct any investigation, but on 27th December, 1996 he alongwith Inspector Gur Tejinder Singh, PW.18, SI Jagir Singh, PW.11 and SI Gurcharan Singh, PW.16 and other police officials met at the bus stand Raikot preparing to go to a village, the name of which he did not remember. When they had gone about 1 Kms. ahead of village Talwandi, they saw Jit Singh, Kulwant Singh (since acquitted), Pargat Singh and Lakhwinder Singh, appellants. The rifles of Pargat Singh and Lakhwinder Singh were seized and taken into possession vide recovery memos Ex. PDD and Ex.PEE. These memos were attested by SI Jagir Singh, PW.11 and SI Gurcharan Singh, PW.16. On 28th December, 1996, he came to Civil Hospital, Ludhiana and recorded the statement of Sohail Singh, PW.15. He also recorded statements of some other formal witnesses. This witness was declared hostile by the prosecution, though it is not very clear to us why. In his cross-examination he stated that he was keen to record the statement of Sohail Singh PW.15 who was a material witness but he also admitted that between 24th and 26th December, 1996 he did not make any effort to search Sohail Singh. There was no note in the case diary as to when the copy of the medico legal report was received by him.

He admitted that he was present at the place of occurrence when PW.18 was conducting the investigation of the case. It was only on 26th December, 1996 that he was entrusted with the investigation but on that day he did not conduct any investigation. He then stated that he had seen the MLR of Sohail Singh on 27th December, 1996. On 28th December, 1996 he handed over the investigation of the case to another police officer.

PW.11 SI Jagir Singh, who was associated with the investigation of the case claims that on 25th December, 1996 he accompanied PW.18 Inspector Gur Tejinder Singh and SI Gurcharan Singh, PW.16 to the place of occurrence. PW.18 inspected the place of occurrence and took possession of various items including a spent cartridge of AK-47 rifle, 12 spent cartridges of SLR etc. which were duly sealed and witnessed by him. All the seizure memos have been attested by this witness and by one Major Singh, who was not examined and was given up as unnecessary. This witness again accompanied the police party which arrested appellants Lakhwinder Singh and Pargat Singh and seized the weapons carried by them.

In his cross-examination the attention of the witness was drawn to DDR No.21 of Raikot P.S. and he admitted that his departure from P.S. Raikot was shown as 12.30 p.m. on 24th December, 1996. His arrival in the police station was shown as 6.05 p.m. on 25th December, 1996. He stated that he did not come to the police station before 6.05 p.m. on 25th December, 1996. There was no other person by the name Jagir Singh posted in P.S. Raikot. DDR No.49 dated 25th December, 1996 was recorded at 8.00 a.m. on his behalf. After 8.00 a.m. on 25th December, 1996 no departure from the police station concerning the witness had been recorded. He, however, admitted that the place of occurrence was inspected by PW.18 on 25th December, 1996 at 6.45 a.m.. It took about 3-4 hours to complete the proceedings relating to the seizures made at the place of occurrence. He was present till the recoveries were affected. He volunteered a statement that DDR No.49 was not regarding him but regarding SI Jarnail Singh and that it was a mistake of the Moharir Head Constable, but he had to admit that DDR No.49 bore his signature.

He further stated that he went to the place of occurrence at 10.00 p.m. on 24th December, 1996 with the investigating officer, PW.18. Darshan Singh was present there and he remained with them at the place of occurrence also on 25th December, 1996. It was only at about 12.30 p.m. on 25th December, 1996 that Darshan Singh was sent to get himself medically examined. He,

A however, admitted that injury statement of Darshan Singh had not been prepared. Maghar Singh (since deceased) and Sohail Singh, PW.15 were also there when Darshan Singh, PW.14 was sent for medical examination. He was categorical in asserting that on 24th December, 1996 when the police party had reached the place of occurrence, Darshan Singh, PW.14, Maghar Singh (since deceased) and Sohail Singh, PW.15 were present at the place of occurrence and that they remained with them till such time, they were sent for medical examination. He denied the suggestion that the alleged recoveries were fabricated.

C PW.16, SI Gurcharan Singh is the other police witness whose evidence deserves to be noticed. This witness was also present at the bus stand with Gur Tejinder Singh PW.18 when Darshan Singh, PW.14 got his statement recorded. He accompanied PW.18 and other police officials to the place of occurrence on 24th December, 1996. On the next date i.e. 25th December, 1996 the inquest report Ex. PC was prepared. The dead body of Chamkaur Singh was handed over to him for post-mortem examination. After post-mortem examination the doctor handed over the post-mortem report to him and two parcels one containing a metal piece extracted from the wound of Chamkaur Singh and the other containing the clothes of the deceased. He handed over those parcels to PW.18.

E This witness again accompanied the police party led by the then investigating officer DSP Gurmit Singh, PW.13 and deposed about the arrest of four persons including Lakhwinder Singh and Pargat Singh, appellants herein. Their rifles were seized by the police party vide Memos Ex. PDD & Ex. PEE. The recovery memos were signed by him and SI Jagir Singh. This witness has further deposed that he was posted at Lohat Baddi which is at a distance of 14-15 kms. from bus stand Raikot. On 24th December, 1996, per chance he happened to meet Gur Tejinder Singh, PW.18 at the bus stand, Raikot. Similarly he met SI Jagir Singh, PW.11 per chance. They were at the bus stand for about 10 minutes when Darshan Singh came and lodged his report. After his statement was recorded, he alongwith Gur Tejinder Singh went to the place of occurrence in a private vehicle and Darshan Singh, PW.14 also sat in the vehicle of PW.18. Further investigation was commenced at about 6.45 a.m. on 25th December, 1996. This witness has stated that he did not see Darshan Singh at the place of occurrence on 25th December, 1996. He denied the suggestion that appellants Lakhwinder Singh and Pargat Singh were arrested on 25th December, 1996 and the story of their being arrested on 27th December, 1996 and seizure of their weapons was a cooked

up story. He admitted that no independent witness was associated with the arrest and seizure of fire arms of these two appellants. This witness has denied that in his statement recorded on 25th December, 1996 he had stated that he met Gur Tejinder Singh, PW.18 at the bus stand Raikot, though from the evidence of PW.18 Gur Tejinder Singh, it is clear that he met SI Gurcharan Singh at the bus stand Raikot and the latter handed over to him the two parcels and the copy of the post mortem report.

We shall later discuss the evidence relating to the seizure of the weapons belonging to the gunmen of Ranjit Singh and his father and the report of Forensic Science Laboratory in regard to those weapons and the other items sent to the Forensic Science Laboratory.

We have already noticed the relevant evidence on record and now we proceed to examine the credibility of the prosecution case.

To begin with, the first information report, was lodged by Darshan Singh, PW.14 at the bus stand of village Raikot. In the State of Punjab the bus stand appears to be a convenient place for meeting of police officers, and in this case alone there are three such meetings. Learned counsel for the appellants submitted that this feature is not so innocuous as it appears to be because by this method the police officers can avoid the police station records where their arrivals and departures are recorded. We have noticed that in the body of the report Darshan Singh did not name the gunmen of Ranjit Singh or his father, nor did he disclose the number of gunmen who had come. However, the last sentence of the first information report is to the effect that the members of the prosecution party had caused injuries to Paramjit Singh gunman in the incident. PW.14, informant, asserts that he never stated so, the reason being that he did not even know the names of the gunmen till 3-4 days after the occurrence. According to him, this must have been interpolated by the police. We have carefully examined the original report recorded by PW.18 and we have no manner of doubt that the last sentence of the information has been interpolated, and it is quite clear from a mere look at the document that the last sentence has been adjusted in the space available between the last sentence of the report and the signature appearing at the bottom. Both PW.14 as well as PW.15 have asserted that they had not caused injuries to anyone. Therefore, the question of PW.14 having stated that Paramjit Singh was also assaulted and injured in the course of the incident by them did not arise. In fact PW.14 did not even know the name of Paramjit Singh. We have, therefore, no hesitation in holding that the last sentence of the information lodged by

A PW.14 has been interpolated by the investigating officer. This also gives credence to the submission urged on behalf of the defence that by the time the report was finalized, the investigating officer had come to know that Paramjit Singh had been seriously injured in the same incident and, therefore, with a view to offer an explanation for the injuries suffered by Paramjit Singh, this sentence was interpolated in the first information report.

B

On the next date i.e. 25th December, 1996 the investigating officer claims to have gone to the place of occurrence accompanied by PW.11, Jagir Singh and other police officials. On the earlier night, he could not conduct the investigation because it was dark. The investigation, therefore, commenced at about 6.45 a.m. on 25th December, 1996 and seizures were made. He also claims to have recorded the statements of the witnesses. So far as the seizures made from the place of occurrence is concerned all the seizure memos were witnessed by one Major Singh and PW.11 Jagir Singh. Major Singh has not been examined as being unnecessary. Only Jagir Singh was examined to support the seizures made from the place of occurrence which included one AK-47 rifle, one spent cartridge of carbine ; 12 spent cartridges of SLR being Ex.P-12/1 to Ex.P-12/12 and one spent cartridge of AK-47 rifle.

D

Learned counsel for the appellants submitted before us, as it was submitted before the courts below, that no such investigation was conducted. Two of the appellants were arrested on 25th December, 1996 itself and the third was in the hospital. Their weapons were seized and shots were fired from those weapons to create evidence in support of the prosecution case. All the paper work was done in the police station and not at the place of occurrence. The seizures made from the place of occurrence, therefore, is doubtful. As earlier observed, the local witness Major Singh has not been examined. Only Jagir Singh, PW.11 was examined to prove the seizures made from the place of occurrence. The veracity of this witness has been seriously challenged, and that too on the basis of documentary evidence. We have noticed the evidence of this witness earlier. This witness claims to have gone to the place of occurrence alongwith the investigating officer on 25th December, 1996 at about 6.45 a.m. However, the record maintained in the police station shows that he had departed from the P.S. Raikot at 12.30 p.m. on 24th December, 1996. His arrival was recorded at 6.05 p.m. on 25th December, 1996. He also stated that before 6.05 p.m. on 25th December, 1996 he did not come to police station. These entries, therefore, clearly establish that from 12.30 p.m. on 24th December, 1996 till 6.05 p.m. on 25th December, 1996 this witness was not in the police station. We fail to understand

H

how he could have accompanied the investigating officer, PW.18 when he went to the place of occurrence at 6.45 a.m. on 25th December, 1996. We, therefore, seriously suspect the recoveries alleged to have been made from the place of occurrence on the morning of 25th December, 1996. The appellants have contended before us that no investigation was conducted in the manner alleged and sitting in the police station, all documents have been prepared. From the evidence of SI Jagir Singh it does not appear that he was present at the place of occurrence when the alleged recoveries and seizures were made on the morning of 25th December, 1996. Obviously he must have signed the seizure memos later. The other seizure witness Major Singh has not been examined. But this is not all to suspect the case of the prosecution. The evidence which we shall discuss hereafter confirms our suspicion.

According to PW.18 Gur Tejinder Singh the dead body of Chamkaur Singh was identified by Darshan Singh (informant) PW.14. He has further stated that the place of occurrence was inspected by him and the rough site plan together with the marginal notes was prepared by him with the assistance of Darshan Singh, PW.14. Darshan Singh is also a witness to the inquest report. On the other hand Darshan Singh has stoutly asserted that on 25th December, 1996 he did not meet any police officer, and he has given details of the places he visited on that date. The evidence of PW.16 SI Gurcharan Singh and PW.17 Jodh Singh is to the same effect. Both have stated that on 25th December, 1996 they were present when the investigating officer was conducting the investigation at the place of occurrence and they had not seen Darshan Singh, PW.14 there. The evidence on record is, therefore, overwhelming that Darshan Singh was not present at the place of occurrence and did not meet any of the police officer on 25th December, 1996 and, therefore, the assertion of PW.18, the investigating officer, that with his assistance the rough site plan with marginal notes was prepared does not appear to be true. Even the inquest report is witnessed by PW.14, Darshan Singh and, therefore, for the same reason we must hold that the inquest report was prepared elsewhere and later signature of Darshan Singh, PW.14 obtained thereon. Learned counsel for the appellants pointed out that Columns 23 and 24 of the inquest report have been left blank. Col. No.23 relates to the things found near the dead body and Col. No.24 relates to sketch plan. He submitted that if really recoveries were made and spent cartridges were found, as claimed by the prosecution, those should have been mentioned in the inquest report. One thing which strikes us is the fact that in the 4th marginal note, the name of appellant Paramjit Singh had been mentioned. Since Darshan Singh, PW.14 did not even know the name of any of the gunmen, it is obvious that the

A marginal notes were not prepared by the investigating officer with his assistance, and in all probability, the investigating officer has himself prepared the marginal notes without his assistance. Another fact worth noticing is that the further statement of Darshan Singh, PW.14 was not recorded even on 25th December, 1996. According to PW.11 Jagir Singh, Sohail Singh was also present at the place of occurrence when the investigating officer went there on the morning of 25th December, 1996 though the first information report lodged earlier mentioned that he has been sent to the hospital for treatment. It is surprising that neither the further statement of Darshan Singh, PW.14 nor the statement of Sohail Singh, PW.15 was recorded by the investigating officer. This does not appear to be the natural conduct of an investigating officer, because if they were really present at the place of occurrence, and he had gone to the place of occurrence as claimed by him, he would have certainly recorded their statements under section 161 Cr. P.C.. Even PW.17 Jodh Singh, according to the investigating officer, PW.18, was present at the place of occurrence on 25th December, 1996. Even his statement was not recorded by him on that date. All these facts taken together leads us to the conclusion that there is considerable force in the argument of the learned counsel for the appellants that the investigating officer did not conduct the investigation in the manner claimed by him and the possibility of documents being prepared in the police station, as alleged by the defence, cannot be ruled out.

E We have also noticed the reluctance of the investigating officer in recording the statements of material witnesses. PW.14 Darshan Singh (informant) asserted that PW.18 did not record his further statement on the following day. Sohail Singh, PW.15, even though present at the place of occurrence on 25th December, 1996 when the Investigating Officer allegedly visited the place of occurrence, his statement was not recorded. The next investigating officer, PW.13 who took over the investigation on 26th December, 1996 took no steps on 26th December, 1996 and though he was aware of the fact that Sohail Singh, PW.15 claims to be an eye witness, he made no effort to record his statement. It was only on 28th December, 1996 that he recorded the statement of Sohail Singh.

G The evidence discussed above, therefore, leads us to hold that the investigation has not been conducted in a fair and impartial manner. There is an interpolation in the first information report inserted with a view to explain the injuries on Paramjit Singh. The investigation conducted on the morning of 25th December, 1996 by PW.18 is highly doubtful and it appears

H

that neither PW.11, Jagir Singh, who is a witness to all the seizure memos of that date nor Darshan Singh, PW.14 with whose assistance the rough site plan was prepared with marginal notes and who attested the inquest report, were present at the place of occurrence. Obviously these seizure memos, site plan, inquest report etc. have not been prepared at the place of occurrence and may be, they were prepared in the police station, as alleged by the defence. The recoveries of spent cartridges of SLR and AK-47 rifle, therefore, is rendered doubtful and we do not consider it safe to attach any credence to the recoveries made and seizures effected on 25th December, 1996 by PW.18.

Counsel for the appellants submitted that in the facts and circumstances of the case the prosecution was bound to explain the injuries suffered by appellant Paramjit Singh. The High Court has rejected the contention holding that it is not necessary that in all cases the prosecution is bound to explain the injuries on the person of the accused. Moreover the High Court has, in fact, doubted the fact that Paramjit Singh had suffered any such injury. In our view the finding recorded by the High Court is not justified by the evidence on record.

As observed earlier, PW.18, the investigating officer had come to know atleast on 25th December, 1996 that Paramjit Singh was admitted in a hospital and that he was admitted at 11.45 p.m. on 24th December, 1996. For reasons best known to him, he did not visit the hospital where Paramjit Singh was admitted and he claims that he deputed SI Jagir Singh to visit the hospital. We find that SI Jagir Singh, PW.11 in the course of his deposition has not said a word about his having gone to see Paramjit Singh on the direction of the investigating officer. Moreover we have held earlier in this judgment that the investigating officer already knew of the fact that Paramjit Singh was seriously injured and that was the reason why he interpolated the last sentence in the first information report to explain his injuries.

From the evidence of Dr. Balwinder Singh, DW.1, Medical Officer, PHC, Sudhar, it appears that on 24th December, 1996 at about 11.30 p.m. Paramjit Singh was brought to the Health Centre with injuries on his person. The entry report shows that there were as many 19 injuries on his person mostly contusions and lacerations. He kept some of the injuries under observation while he found the remaining injuries to be simple in nature, all caused by blunt weapons. The duration of the injuries was within 6 hours. A photocopy of the medico legal report was marked as Ex.PDW-1.A. He further stated that he had conducted the X-Ray examination of the injuries on the

A person of Paramjit Singh. After X-Ray report and having looked at the skiagrams, he declared injuries No. 7 and 17 to be grievous. X-Ray showed fracture of body of scapula besides fracture of manible on left side. He sent intimation to the SHO of PS Sudhar. The skiagrams were also sent to the police station alongwith the bed ticket. In his cross-examination, he stated he had not seen the X-Ray register and the skiagrams. He asserted that the injuries could not be self-suffered.

Dr. Subhash Batta, DW.3, Surgical Specialist at the Civil Hospital, Ludhiana deposed that on 27th December, 1996, Paramjit Singh was admitted in the hospital. He had examined the patient on 30th December, 1996 and referred him to the Dental Surgeon for further management. No suggestion has been put to any of these two witnesses that in fact Paramjit Singh had not suffered injuries, as alleged. Apart from this, it is not even the case of the prosecution that Paramjit Singh was not injured in the course of the same incident. The High Court has rejected the testimony of Dr. Balwinder Singh, DW.1 on the basis of the sole statement in his cross-examination that he had not seen the X-Ray register and the skiagrams, completely ignoring the clear assertion made by him in his examination-in-chief that he had conducted the X-Ray examination and had declared the injuries to be grievous only after looking at the X-Ray reports and the skiagrams. It appears to be quite possible that the witness may have stated about his having not seen the X-Ray register and the skiagrams under some confusion. Reading the evidence as a whole, we have no manner of doubt that DW.1 had got the X-Ray done and only after looking at the X-Ray report and the skiagrams, he had declared the injuries to be grievous.

The next question is, in a case of this nature, whether the prosecution was bound to explain the injuries appearing on the person of Paramjit Singh. In our view, having regard to the facts and circumstances of this case, it was the duty of the prosecution to explain the injuries suffered by Paramjit Singh which were 19 in number and two of them resulting in fractures. It is not as if the prosecution did not know of these injuries and that they were manufactured later to support the case of the defence. The facts disclose that even by the time the first information report was finalised and before the special report was despatched, the investigating officer had knowledge of the fact that Paramjit Singh had suffered injuries and was admitted in a hospital for treatment. We, therefore, hold that the failure of the prosecution to explain the injuries on Paramjit Singh leads to the inference that the prosecution has not disclosed the true genesis and the manner of occurrence. It is not in

dispute that on the date of occurrence i.e. 24th December, 1996 the informant PW.14 did not know the names of any of the gunmen who had taken part in the assault. Similarly, PW.15 also did not know the names of the gunmen of Ranjit Singh and his father. Admittedly PW.14 came to know of their names 3-4 days later. We have earlier noticed that despite the fact that they did not know the names of any of the gunmen, the name of Paramjit Singh finds place in the first information report as well as in the marginal notes of the site plan, both prepared at the instance of PW.14. That apart, since the assailants were not known to this witness by name, there appears to be no reason why a test identification parade was not held. It is not in dispute that no test identification parade was held to identify the assailants and this also is a serious lacuna in the case of the prosecution.

Learned counsel for the appellants submitted that the reliance placed by the High Court on Ex.PN which contains a list of fire arms entrusted to the gunmen of Jagdev Singh Talwandi and Ranjit Singh, is misplaced because Ex.PN does not furnish sufficient particulars about the weapons so as to identify which weapon was entrusted to which particular gunman. He further submitted that the report of the Forensic Science Laboratory also is of no avail to the prosecution, even if it is accepted that some of the spent cartridges were fired from some of the weapons. It may not advance the case of the prosecution because it is not known to whom that particular weapon was entrusted. We do not wish to go into this question for the reason that we have suspected the recoveries and seizures of the spent cartridges from the place of occurrence. We have noticed serious lapses in the investigation of the case and we have recorded a finding that the investigation was not fair and impartial. In this view of the matter we do not wish to examine the submission urged on behalf of the appellants in this regard.

We may, however, notice the fact that even according to the report of the Forensic Science Laboratory, the deformed jacket of a bullet sent to the Laboratory for examination appeared to be a part of 9 mm bullet. If this was the metallic piece which was found embedded in the injury of Chamkaur Singh, then even the report of the Forensic Science Laboratory does not support the case of the prosecution that the injury suffered by him was a result of the shot fired from AK-47 rifle. The report of the Forensic Science Laboratory discloses that AK-47 rifle had 7.62 mm. bore and not 9 mm. If that is so then the entire prosecution case that Jit Singh @ Parmi fired from AK-47 rifle of Paramjit Singh falls to the ground. Moreover, the report discloses that a spent cartridge of a carbine was amongst the items sent for

A examination. No explanation is forthcoming as to how a spent cartridge of a carbine was recovered and seized from the place of occurrence, because it is no ones case that a carbine had been used in the incident.

B In view of our findings that eye witnesses, PW.14 and PW.15 are not wholly reliable and the third witness PW.17 is wholly unreliable, that the investigation of the case is tainted and not fair and impartial, that the recoveries and seizures made are suspect, that the prosecution has failed to explain the injuries on Paramjit Singh which it was bound to explain in the facts and circumstances of the case, and lastly that no test identification parade was held even though informant and eye witness PW.14 did not know the names  
C of the assailants on the date of occurrence, coupled with the fact that the High Court disbelieving the eye witnesses accepted the plea of alibi of Ranjit Singh and did not believe the eye witnesses with regard to the participation of Gurmit Singh and Kulwant Singh, this appeal must succeed. It is accordingly allowed. The conviction and sentence of the appellants are set aside. The appellants shall be released forthwith unless required in connection with any  
D other case.

N.J.

Appeal allowed.