A SHER SINGH & ANR.

v.

STATE OF HARYANA

(Criminal Appeal No. 1071 of 2009 Etc.)

B DECEMBER 16, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

PENAL CODE, 1860:

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ss. 302/149, 323/149 and 148 – Several persons attacking complainant party and causing death of one of them and injuries to two others – Conviction by trial court – High Court converting conviction u/s 302/149 into s.304 (Part II)/

D *149 – HELD: High Court was influenced in its decision as the injuries were largely caused on non-vital part of the body – However, keeping in view the large number of injuries and multiple fractures and some injuries on vital parts as also the report of the doctor that the injuries were sufficient in the*

E *ordinary course of nature to cause the death, the intention of the accused to kill was evident – Pleas of alibi of two accused and shifting of the site of incident by prosecution not established – Judgment of High Court set aside and that of trial court restored – Evidence – Medical evidence.*

F *Evidence:*

Several accused attacking complainant party and causing death of one of them – Plea of accused that injuries on one of the defence witnesses were not explained by

G *prosecution – HELD: On facts, in spite of the suggestion on the day of incident, the X-Ray of the defence witness was taken after a month – Besides, the X-Ray film not being available, the doctor could not comment on duration of the injuries – There was no evidence to connect the injuries with*

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the incident and, as such, prosecution was not called upon to explain the injuries – Penal Code, 1860 – ss. 302/149, 323/149 and 148.

FIR – Delay in registration of – HELD: On facts, even presuming that there was some delay, it looses all significance – Presence of the two injured witnesses, who were the wife and the son of deceased, was admitted by the defence – The place of incident, Primary Health Centre, the Civil Hospital, and the Police Station, all were far from each other – Besides, when the deceased is the husband and the eye-witness is the wife, she would be overwhelmed and completely distraught by the turn of events and if there is some delay in recording her statement, that cannot be taken against prosecution in any way – Penal Code, 1860 – ss.302/149, 323/149 and 148.

The appellants in Criminal Appeal Nos. 1071 of 2009 and 1294/2009, along with others, were prosecuted for causing death of one 'US' and causing injuries to his wife (PW-1) and son (PW-6). The case of the prosecution was that on 29.9.1991, when the complainant party were harvesting their 'Bajra crop', accused 'BS' and others armed with 'axe', 'bankri', 'jailli' and 'lathis' reached there at 6.00 A.M. and attacked 'US' exhorting that he had interfered in the purchase of agricultural land. When PW-1 and PW-6 tried to intervene, they were also attacked. The accused then lifted 'US' to the tube well of accused 'BS' and leaving him there ran away. On coming to know of the incident, some persons from the village reached there and took the three injured to the Primary Health Centre. PW-1 and PW-6 were discharged after their medical examination, but 'US' was referred to the Civil Hospital where he succumbed to his injuries at 1.10 P.M. the same day. Initially, a charge-sheet against accused 'BS' and his sons, 'MR', 'DR' and 'SR' was filed. Subsequently, accused 'SS', 'RJ', 'HR' and Smt. 'R' were

A also summoned u/s 319 CrPC. The stand of the accused was that there was a dispute between deceased 'US' and accused 'BS' because of sale of certain land, and at about 6.00 A.M. on the day of the incident when DW-9 was working in her fields and accused 'DR' was
B ploughing the land, the complainant party armed with 'kasis' and 'bankris' attacked DW-9 and accused 'DR'. Meanwhile new arrivals inflicted injuries on the complainant party in defence. Accused 'SS' and his son 'HR' pleaded alibi. However, the trial court convicted and
C sentenced accused 'DR', 'MR', 'SR', 'SS' and 'HR' u/ss 302/149, 323/149 and 148 IPC. Accused 'RJ' and Smt. 'R' were acquitted. On appeal, the High Court set aside the conviction u/s 302/149 IPC and convicted the accused u/s 304 (Part II)/149 IPC with a sentence of 5 years RI and
D fine of Rs.50,000/- each, while maintaining the other sentences. Aggrieved, the convicts filed Crl. A. Nos. 1071/2009 and 1294/2009 whereas the State and the complainant filed the other appeals.

It was contended for the accused-appellants that
E there was inordinate delay in registering the FIR, and the delay was utilized by the investigating agency to evolve a false story and change the site of the incident from the fields of accused 'BS' to that of the deceased; that the grievous injuries on the person of DW-9 were suppressed
F by the prosecution and, as such, the very genesis of the incident was under suspicion; and that there was no close relationship between the families of appellant 'SS' and 'BS' and the animosity, if any, existed was with the latter. Accused 'SS' and his son 'HR' further took a plea
G of alibi.

Disposing of the appeals, the Court

HELD:

H 1.1 The delay in the lodging of the FIR, even

presuming that there is indeed some delay, looses all significance, more particularly, as both PW-1 and PW-6 were injured and their presence has been admitted by the defence. Though the incident had happened at 6.00 A.M. on 29.10.1991 in the village, the statement of PW-1 (the wife of the deceased), was recorded at 6.00 P.M. and on its basis the FIR was registered at 7.20 P.M. the same day, and the special report also delivered to the Illaqa Magistrate about 5 hours later. It is the admitted position that the distance between the place of occurrence and the Police Station was about 12 km., and the Police Station and the Civil Hospital were 25 km. apart. It has come in the evidence that the ASI (PW7) on receiving the information about the incident went to the Primary Health Centre, but the victim had been removed to the City hospital and when he reached there, the victim was already dead and it was thereafter that he returned to the village and recorded the statement of PW-1 at 6 p.m. on the basis whereof the FIR was registered. It must also be borne in mind that in a case where the deceased is the husband and the eye-witness is the wife, it is but natural that she should be overwhelmed and completely distraught by the turn of events and if there is some delay in the recording of her statement, that cannot be taken against the prosecution in any way. [para 8] [1243-E-H; 1244-A-C]

1.2 So far as the plea that the genesis and the site of the incident had been changed is concerned, as per the prosecution story the incident had happened in the field of the deceased whereafter he was taken by the accused to the tubewell of accused 'BS'. It is significant that the site plan Ext. PW prepared by the Sub-Inspector of Police corresponds entirely with the site plan Ext. PG prepared by the Patwari. The two site plans indicate that when the deceased was dragged or lifted from print 'A' (field of deceased and place of occurrence) to 'D' (field of

A accused 'BS'), several items which had been on his person had fallen en route and this is borne out by the recoveries of articles. The two site plans which were prepared almost contemporaneously and immediately after the incident, prove the case of the prosecution with B regard to the site of the incident beyond any doubt. The observation of the High Court, therefore, that there appeared to be some confusion about the place of incident is completely misplaced. In that eventuality, also the possibility that a large number of persons had been C involved in the incident, cannot be ruled out, as it would not have been possible for a few persons to have carried the deceased to a distance of 294 karams from point 'A' to 'D'. It must, therefore, be held that the circumstances indicate that all the appellants were, in fact, participants D in the murder. [para 10] [1246-A-H; 1247-A]

1.3 As regards non-explanation of the injuries on the person of DW-9, it is significant to note that she was examined at 10.30 a.m. on 29.9.1991 and X-Ray was suggested, but she was subjected to an X-ray E examination by DW7 on 28.10.1991 and it was at that stage that a fracture of the middle femur bone was detected. The doctor admitted that the X-ray film was not on the file of the case and was not traceable at that moment and without seeing the film, he could not F comment as to the duration of the fracture. In the circumstances, the prosecution was not called upon to explain the injuries on DW-9 as there was no evidence to show that they could be connected with the incident. [para 9] [1244-G-H; 1245-A-D]

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Babu Ram & Ors. vs. State of Punjab 2008 (3) SCC 709- held inapplicable.

1.4 It is true that the High Court has not dealt with the question of alibi and has neither referred to this aspect

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nor to the evidence of DWs-1, 2 and 8, who were examined to prove the alibi and unanimously stated that 'SS' had been taking tuitions and his son 'HR' too was present in the house at that time. However, it appears that this defence was an after thought as there was no suggestion to the prosecution witnesses that 'SS' had been taking tuitions or that 'HR' was asleep in the house. More significantly, 'SS', in his statement u/s 313 Cr.P.C. did not take this plea and, in fact, the plea put up was that one 'BD', who visited his house, was the witness of the alibi. 'BD' was not produced as a witness. From the cross-examination of the defence witnesses, nothing could be made out to suggest that 'SS' or his son 'HR' were present in the house. In any case, the place of occurrence was about 2 km. away from the village and it was, therefore, possible for them to have participated in the crime and then rushed back to the village. It is, therefore, held that there is no evidence to suggest whatsoever or to create a doubt with regard to the involvement of either 'SS' or his son 'HR' on the basis of the alibi. [para 11] [1247-B-F]

Binay Kumar Singh vs. State of Bihar 1996 (8) Suppl. SCR 225 = 997 (1) SCC 283 *and* *Jayantibhai Bhenkarbhai vs. State of Gujarat* *2002* (2) Suppl. SCR 255 = 2002 (8) SCC 165- held inapplicable.

2. As regards the conviction, a perusal of the impugned judgment indicates that the High Court was influenced in its decision as the injuries on the deceased had largely been caused on non-vital parts of the body and, therefore, held that there was no intention to cause death and the accused were, thus, liable to be convicted u/s 304 (Part II) IPC for culpable homicide not amounting to murder. However, the evidence of the doctor, who conducted the autopsy, indicates that 26 injuries in all were found on the person of the deceased. Injury No.11

A was a fracture of both bones of the right forearm. Injury No.16 was a fracture of both bones of the left leg in the upper third; and Injury No.18 was a fracture of the left foot. Injuries No.1, 13, 14 and 15 were caused on vital parts of the body. Further, a minute examination of the B post-mortem report (Ext. PD) indicates that in addition, two other injuries which are not referred to in the statement of the doctor, are fractures of the 9th and 10th ribs on the right side and the liver too was found to be lacerated along side the fractured ribs which also C indicated heavy bleeding. A perusal of these injuries and the post-mortem report clearly reveals that the intention of the accused to cause death was evident and merely because most of the injuries were on the extremities would not be a reason to bring the case within s. 304 (Part D II) IPC, more particularly, as the doctor had opined that they were sufficient to cause death in the ordinary course of nature. It appears that great damage had been caused as the fracture of the 9th and 10th ribs had damaged vital organs both in the abdominal and thoracic cavities. Therefore, the judgment of the High Court cannot be E sustained in fact or in law. The judgment of the trial court is restored in all respects. [para 13-15] [1248-G-H; 1249-A; 1251-C-H; 1252-A-E]

Case Law Reference:

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1996 (8) Suppl. SCR 225	held inapplicable	para 6
2002 (2) Suppl. SCR 255	held inapplicable	para 6
2008 (3) SCC 709	held inapplicable	para 6

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1071 of 2009.

From the Judgment and Order dated 01.10.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal H Appeal No. 225-DB of 1999.

WITH

Criminal Appeal No. 1294 of 2009.

Criminal Appeal No. 182-183 of 2010.

Criminal Appeal NO. 97-98 of 2010.

R.S. Cheema, K.B. Sinha, Kawaljit Kochhar, Ashok K. Sharma, Tarannum Cheema, Kusum Chaudhary, Spitti, Naresh Bakshi, Ranbir Singh Yadav, P. Kakra, Eldho Varghese, Kamal Mohan Gupta, Gaurav Teotia and Sanjeev Kumar for the appearing parties.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. This judgment will dispose of Criminal Appeal Nos. 1071 of 2009, 1294 of 2009, 182-183 of 2010 and 97-98 of 2010. The facts have been taken from Criminal Appeal No.1071 of 2009.

2. At 6 a.m. on the 29th September 1991 Umed Singh deceased accompanied by his wife Bimla PW-1 and son Raj Kumar PW-6 had gone to their fields situated in village Kosli, Police Station Jatusana, District Rewari, for harvesting the bajra crop when accused Balbir Singh armed with a Kulhari, Mange Ram, Sher Singh and Harish with lathis, Surender with a bankri, Rajesh and Smt. Rajesh with a jailli each, and Des Raj empty handed came to the spot. The accused raised a lalkara that they would teach Umed Singh a lesson for having interfered in the purchase of agricultural land and on saying so Balbir Singh gave a kulhari blow on the left knee of Umed Singh, Des Raj grappled with Umed Singh and felled him to the ground whereafter Sher Singh gave a lathi blow on his chest and Mange Ram and Harish also gave lathi blows on his person and Surender and Smt. Rajesh gave blows with bankris on the back portion of his hand and Rajesh gave a jailli blow lathiwise. Bimla and Raj Kumar stepped forward to rescue Umed Singh

A and they too were attacked by Surender who gave a bankri blow on Bimla's head and Smt. Rajesh administered another blow on her head whereafter Mange Ram gave a lathi blow on the left hand and Raju gave a jailli blow lathiwise on Bimla's head. An alarm raised by Bimla attracted many persons, B including Shakuntla, Hoshiar, Raghu Nath, Om Prakash, Siri Chand and Mahabir and when Shakuntla intervened, Mange Ram dealt her a lathi blow on the left knee. The accused then lifted Umed Singh and took him to the tubewell belonging to Balbir Singh accused where he was left bleeding. The accused C then ran away from the spot. Information about the occurrence was carried to the village by Raj Kumar PW-6 on which Mansa, Braham and Bhagat Singh reached the tubewell. They removed Umed Singh, Bimla and Raj Kumar in an auto rickshaw to the Primary Health Centre, Kosli. Dr. Ravinder Nath examined D Bimla at 7.30 am. on the same day and found three skin deep lacerated wounds on the head, forearm and the web space between the index and middle finger of the left hand and several other injuries on the thighs as well. The doctor opined that the injuries had been caused by a blunt weapon within six hours. Raj Kumar too was examined by the said doctor who E found two superficial injuries on the right side of his head and three on the right lower leg. Injury No.1 was put under observation while the other was declared simple. In the opinion of the doctor, these injuries had been caused within six hours. Umed Singh was also examined and was found to have injuries F of the dimensions of 10 cm x 10 cm and 15 cm x 15 cm on the upper arm and back, respectively. The doctor opined that all the injuries had been caused by a blunt weapon within a duration of six hours. Umed Singh, after receiving first aid at the Primary Health Center, was referred to the Civil Hospital, Rewari at G about 10 a.m. while Bimla and Raj Kumar were discharged. The Medical Officer also sent information to the Police Post, Kosli about the arrival of the injured. ASI Balbir Singh PW accordingly reached the Primary Health Center but found that Umed Singh had already been removed to the Civil Hospital,

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whereas Bimla and Raj Kumar had gone home after being discharged, with the result that the ASI received no information about the incident at that time. Umed Singh, however, died in the Civil Hospital, Rewari at 1.10 p.m. on the same day and information to this effect was received by Bimla in the village at 3.00 p.m. A First Information Report was, accordingly, registered at Police Station, Jatusana at 7.10 p.m. on the basis of Bimla's statement recorded by ASI Balbir Singh of Police Post, Kosli at 6 p.m. The Special Report was also delivered to the Illaqa Magistrate at Rewari on the 30th September 1991 at 1.25 a.m. ASI Balbir Singh also reached the hospital and conducted the inquest proceedings and referred the dead body for a post-mortem examination which was carried out by Dr. V.K.Jain, PW-4 of the Civil Hospital, Rewari. In the opinion of the Medical Officer, all the injuries were ante-mortem in nature but he was unable to give any definite opinion about the weapons used as nine of the injuries had been stitched up whereas the remaining injuries were blunt weapon injuries. During the course of the investigation, Sub-Inspector Jai Narain PW-8 visited the place of incident (on the 30th September 1991) and picked up two pairs of chappals, a rapri with a broken handle, a piece of rope and a blood stained match box from the field of Umed Singh deceased or nearabouts. The Police Officer then went to the field of Balbir Singh accused and picked up blood stained earth from near his tubewell. He also prepared the site plan relating to the incident in the field of Umed Singh and the tubewell of Balbir Singh. Some of the accused including Sher Singh were arrested on the October 2, 1991 by Sub-Inspector Karan Singh PW-10 and on the interrogation of accused, Balbir Singh, a kulhari was also recovered. On the completion of the investigation, the police filed a charge-sheet against Balbir Singh and his sons Mange Ram, Des Raj and Surender whereas the other accused i.e. Sher Singh, Rajesh, Harish and Smt. Rajesh were placed in column 2. These accused were subsequently summoned by orders dated April 4, 1992 made on an application under Section 319 of the Cr.P.C.

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A 3. The prosecution in support of its case relied primarily on the evidence of Bimla PW-2 and Raj Kumar PW-6, the two injured witness, Dr. V.K.Jain, PW-4 who had conducted the post-mortem on the dead body, ASI Balbir Singh PW-7, Sub-Inspector Jai Narain PW-8 and Sub-Inspector Karan Singh PW-
B 10. The prosecution case was then put to the accused and they denied all the allegations levelled against them and pleaded false implication as also a counter version. Mange Ram stated that two years before the occurrence, his father Balbir had purchased 2 acres of land and had acquired rights as a co-
C sharer and on that basis he had successfully pre-empted a sale in favour of Umed Singh and that Umed Singh was, accordingly, upset with Balbir Singh and that a fight had taken place on the 21st August 1991 and injuries had been inflicted on his brother Des Raj accused. He further stated that at about
D 6 a.m. on the 29th September 1991 his mother Parvati DW-9 had been working in their field whereas Des Raj accused was ploughing the land at some distance when Umed Singh, Bimla and Raj Kumar armed with Kasis and Bhankris had attacked Parvati and caused injuries to her on which Des Raj had come
E running and he too had been caused injuries by them whereafter Pappu, Partap, Hoshiar and Raghbir had also arrived at that place and Des Raj and the new arrivals had accordingly given injuries to the complainant party in their defence. He further stated that Parvati had been medico-legally examined on the same day at the Primary Health Center, Kosli
F in the presence of the complainant party and though the police too had been present at that time and a request had been made by Parvati to record her statement, the police had not done so and had colluded with the opposite party and after the death of Umed Singh, had registered a false case against them.
G Sher Singh and Harish, however, pleaded an alibi and examined three witnesses Ravinder Singh DW-1, Bhagwan Devi DW-2 and Shailender DW-9 to the effect that they had been present in their house at 6 a.m. on the 29th September 1991 with Sher Singh taking tuitions (and Harish still asleep)

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which had been attended by Ravi, Ravinder Singh, PW and Rajesh upto 8 a.m. and that Bhagwan Devi had also come to take lassi during that period. Dr. Neel Kanth Sharma DW-7, Radiologist, ESI Hospital, Faridabad was also examined who deposed that he had performed an X-Ray on the person of Parvati DW-9 on the 28th October, 1991 and the test had revealed a dislocation of the right wrist and a fracture of the femur.

4. The trial court on a consideration of the evidence particularly the statements of Bimla and Raj Kumar PW's, both injured, held that the incident had not happened in the field of the accused, as alleged by Mange Ram but in the field of Umed Singh and that he had, thereafter, been taken to Balbir Singh's tubewell. It was, further, observed that the absence of drag marks on the body did not indicate that he had not been dragged to that place. The court also held that the delay in the lodging of the FIR had also been explained. The court accordingly convicted and sentenced the accused Des Raj, Mange Ram, Surender, Sher Singh and Harish to rigorous imprisonment for life and to a fine of Rs.300/- each for the offences under Section 302 read with Section 149 and in default of payment of fine, to further undergo imprisonment for a period of two months each, and under Section 323 read with Section 149 IPC rigorous imprisonment to a period of two months rigorous imprisonment and for a period of one year each under Section 148 IPC all the substantive sentences to run concurrently. Rajesh son of Sher Singh and Smt. Rajesh wife of Mange Ram who had been summoned under Section 319 Cr.P.C. were, however, acquitted. An appeal was thereafter taken by the accused to the High Court.

The High Court vide its judgment dated 1st October 2008 partly allowed the appeal whereby the conviction and sentence awarded under Section 302/149 was set aside and a conviction under Section 304 Part II read with Section 149 with a sentence of 5 years rigorous imprisonment and a fine of

A Rs.50,000/- each was substituted; the other parts of the sentence being maintained. In arriving at its conclusions, the High Court found that as the place of occurrence had been shifted by the prosecution from the field of Balbir Singh to that of Umed Singh and as there was no explanation for the injuries
B to two members of the accused party it was difficult to believe the prosecution story in totality. The Court then observed that the nature and extent of the injuries received by the witnesses would help in determining what had really transpired and by some convoluted inferential process arrived at a conclusion
C which was neither the story of the prosecution nor of the defence and observed thus:

> "The present case is one in which medical evidence is of great importance. We say this because there was delay in reporting the matter to the police. The place of the
D occurrence had been shifted. There was no explanation of the injuries on two members of the party of the accused. All of this made it difficult to believe the prosecution version in totality. It is not the duty of the court to try to reconcile the version, borrow some features from the prosecution
E case and add features from the defence version to come up with a common story. This is not the task which either the trial court or the appellate court can undertake. Criminal cases are decided on the basis of the evidence led by the prosecution because it is the duty of the prosecution to
F establish the charges framed the accused. The defence may only create gaps and holes in the prosecution case in order to derive benefit, either of outright acquittal or some reduction/modification of the offence.
>
> G Therefore, we feel that the nature and extent of the injuries received by the witnesses would help us to determine what had really transpired. Witnesses say that they were attacked by eight accused (seven men and one woman). The accused were armed with weapons like
H kulhari, bankri (sickle), lathis and jalli. At the trial five of the

accused were convicted, three of them were the men with lathis and one was the man armed with a sickle, the fifth appellant was empty handed. We may add that if Balbir Singh had been alive, he may have found it difficult to secure an acquittal. Balbir Singh had been armed with a kulhari during the occurrence and must have swung it around to inflict injuries. It is hard to accept that the empty-handed man or the three men holding lathis could have caused any of the lacerated wounds found on the deceased. The deceased received ten lacerated wounds as per MLR and also had some contusions. Lacerated wounds were sickle/kulhari blows received by the deceased while the contusions were the lathi blows.

It is also important to notice that no blood was found from the spot where the prosecution witnesses say the fight had occurred. It was recovered at the spot near the tubewell of the accused. The witnesses had testified that after Umed Singh had been attacked, he was dragged to the tubewell of the accused. We are unable to say with certainty the extent of injuries inflicted by the accused at the first spot. We are also unable to determine if the deceased had himself walked to the tubewell of the accused or whether he had been dragged, pushed or shoved from one place to other. The story of dragging is lacking corroboration and becomes hard to accept. Therefore, if Umed Singh received most of the injuries at the tubewell of the accused, the prosecution version certainly gets watered down, and the defence version gains acceptability. However, we are not convinced that the complainant party was the aggressor."

5. Four appeals in all have been filed in this Court against the judgment of the High Court – two by the accused *Sher Singh & Anr. vs. State of Haryana* (Criminal Appeal No. 1071/2009), and *Des Raj vs. State of Haryana* (Criminal Appeal No. 1294/2009), two each by the State (Criminal Appeal Nos. 97-

98/2010 *State of Haryana vs. Des Raj & Ors.*) and the complainant Bimla, Criminal Appeal Nos. 182-183 of 2010. In the appeals filed by the State of Haryana and by the complainant, the prayer is that the conviction recorded by the trial court under Section 302/149 of the IPC had been wrongly set aside by the High Court and that the judgment of the trial court should, accordingly, be restored. All the aforesaid matters are being disposed of by this judgment.

6. Mr. R.S.Cheema, the learned senior counsel for the appellants in Criminal Appeal No.1071 of 2009, has raised several arguments during the course of hearing. He has first pointed out that the FIR had been recorded after an inordinate delay and that this delay has been utilized by the investigating agency to evolve a false story and to change the site of the incident from the field of Balbir Singh to the field of the deceased Umed Singh. It has also been pleaded that the grievous injuries on the person of Parvati DW-9 had been suppressed by the prosecution with the result that the very genesis of the incident was under suspicion. It has, further, been submitted that there was no evidence to show any close relationship inter-se appellant Sher Singh's family and the family of Balbir Singh appellant and that the animosity, if any, existed was with the latter, and that Sher Singh who was a teacher by profession, had a cast iron alibi. It has further been pointed out that the defence evidence on this aspect rendered by DW-1, DW-2 and DW-8 had not even been alluded to by the High Court, and if an accused was able to create a doubt about his presence by giving a reasonable alibi, this would be sufficient to decide the matter in his favour. Reliance for this submission has been placed by Mr. Cheema on *Binay Kumar Singh vs. State of Bihar* 1997 (1) SCC 283 and *Jayantibhai Bhenkarbhai vs. State of Gujarat* 2002 (8) SCC 165. Mr. Sinha, the learned senior counsel for the appellants in Criminal Appeal No.1294/2009 has supplemented Mr. Cheema's arguments by submitting that Des Raj appellant is alleged to have only caught hold of the deceased and as the injuries on

the person of Parvati had not been explained, the very inception of the incident was in doubt. Reliance for this argument has been placed on *Babu Ram & Ors. vs. State of Punjab* 2008 (3) SCC 709. A

7. The learned counsel for the State of Haryana and the complainant have, however, controverted the above submissions and have pointed out that the incident had happened in the field of Umed Singh and after injuries had been caused to him, his wife Bimla and son Rajesh, he had then been picked up from his field and taken to the tube well of Balbir Singh and that this aspect was clear from the site plan prepared by the investigating officer and the Patwari. It has also been submitted that there was no delay in the lodging of the FIR and that there was no obligation on the prosecution, in the facts of the case, to explain the injuries on Parvati DW-9 and that the trial court had dealt with this aspect and the alibi pleaded in a cogent manner. It has finally been submitted that the observations of the High Court that the case fell within the ambit of Section 304 Part II of the IPC and not as a case of murder were erroneous in the light of the medical and other evidence. B C D E

8. We first deal with the argument with regard to the delay in the lodging of the FIR. It is the admitted case that the incident had happened at 6 a.m. on the 29th October 1991 in village Kosli. Bimla's statement Ex.PA had been recorded in the village and on its basis the FIR had been registered at 7.20 p.m. on the same day and the special report also delivered to the Illaqa Magistrate about 5 hours later. It is the admitted position that the distance between Kosli and Jatusana i.e. the place of occurrence and the police station was about 12 km., and Rewari and Jatusana were 25 km. apart. It is in evidence that Umed Singh had been removed from the Primary Health Center to the Civil Hospital and it was after he had died in the hospital that the FIR had been recorded. It has also come in the evidence that ASI Balbir Singh PW7 had received information about the incident from the Primary Health Center F G H

A and had gone to that place and found that Umed Singh had been removed to the hospital at Rewari on which he had followed him only to see that he was already dead and it was thereafter that he had returned to Kosli and recorded the statement of Bimla at 6 p.m. It must also be borne in mind that
B in a case where the deceased is the husband and the eye witness is the wife it is but natural that she should be overwhelmed and completely distraught by the turn of events and if there is some delay in the recording of her statement that cannot be taken against the prosecution in any way.
C Significantly, also the presence of Bimla and Raj Kumar has been admitted by the defence. The defence counsel in the course of the cross-examination put a counter version in the following terms to Bimla:

> "It is incorrect that Ms.Parvati mother of Des Raj was
D harvesting the crop in their field and her son Desh Raj was ploughing the land at some distance and that I and my husband and son armed with Khasi and bankri went to her and caused injuries and Des Raj came running on her alarm and then he too was given injury. It is incorrect that
E Desh Raj, Pappu and Raghbir gave us injuries in their self defence."

The delay in the lodging of the FIR, even presuming that there is indeed some delay, looses all significance, more particularly
F as both Bimla PW-2 and Raj Kumar PW-6 were injured.

9. Much emphasis has been placed by the learned counsel on the fact that the injuries on the person of Parvati DW-9, had not been explained. The basis for this argument is the statement of DW4 Dr. Ravinder Nath, who had examined
G Parvati at 10.30 a.m. on the 29th September 1991 and had found three injuries on her person and had suggested that an X-Ray be taken. Surprisingly, however, despite the fact that Parvati had three painful injuries, and an X-ray had been suggested by the doctor, Parvati was subjected to an X-ray
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examination by DW7 Dr. N.K.Sharma of the ESI Hospital, Faridabad on the 28th of October 1991 and it was at that stage that a fracture of the middle femur bone had been detected. This doctor further stated that the X-ray had been conducted on the directions of the Deputy Commissioner, Rewari as well as the SHO, Jatusana, and the Medical Officer, Primary Health Center, Kosli, but he admitted that the X-ray film was not on the file of the case and was not traceable at that moment and without seeing the film, he could not comment as to the duration of the fracture. When questioned about the delay in the X-ray examination, DW9 stated that she had made several complaints to the higher authorities that the incident had not been properly recorded by the police and that an X-ray was not being carried out. When questioned further, she deposed that no copy of any such application was with her. We are therefore of the opinion that the prosecution was not called upon to explain the injuries on Parvati as there was no evidence to show that they could be connected with the incident. The judgments cited by the learned counsel are, therefore, not relevant in the facts of the case.

10. It has also been submitted in the light of the findings recorded by the High Court that the genesis and site of the incident had been changed as the High Court too had not accepted that the incident had happened in the field of Umed Singh and that if the matter was to be carried to its logical conclusion, the conviction of the appellants could not be justified. It has been emphasized that the prosecution story that Umed Singh had been dragged from his field to the tubewell of Balbir Singh had no basis in the evidence as there were no drag marks on the body or on the ground indicating that the body had indeed been dragged from one place to the other. It bears reiteration that as per the prosecution story the incident had happened in the field of Umed Singh whereafter he had been shifted to the tubewell of Balbir Singh and subsequently taken to the Primary Health Centre. Sub-Inspector Jai Narain PW8 visited the site of occurrence on the 30th September 1991

A and took into possession two pairs of chappals Ex.P3 and P4, one rapri with a broken handle, one danti, one piece of rope and one blood stained match box lying on the path by the side of the occurrence which would be relevant as the complainant party was harvesting the bajra crop. He had, thereafter, B examined the place surrounding the tubewell and recovered blood stained earth from that place in the presence of Bhagat Singh, Sarpanch. It is perhaps even more significant that in the site plan PW prepared by this Police Officer, the prosecution story is clearly spelt out. Mark A in the site plan is the place C where the injuries are alleged to have been caused to Umed Singh, his wife Bimla and to Raj Kumar and also the place from where two pairs of chappals, a broken bankri and a danti had been picked up. Mark B is the place where the rope was lying and the distance from Mark A to Mark B is 14 karams. Mark D C in the site plan is the place where the blood stained match box had been picked up and the distance between Mark A and C is 17 karams and Mark D is the place from where blood stained earth had been picked up from the field of Balbir Singh and the distance from Mark A to Mark D is 294 karams. (Note: E One karam is about 5 feet) It is significant that the site plan Ex.PW prepared by the police officer corresponds entirely with the site plan Ex.PG prepared by the Patwari. The two site plans indicate that when Umed Singh was dragged or lifted from Mark A to Mark D, several items which had been on his person had F fallen en route and this is borne out by the recoveries noted above. To our mind, the plans which were prepared almost contemporaneously to the incident, prove the case of the prosecution with regard to the site of the incident beyond any doubt. The observation of the High Court, therefore, that there appeared to be some confusion about the place of incident is G completely misplaced. In that eventuality, also the possibility that a large number of persons had been involved in the incident, cannot be ruled out, as it would not have been possible for a few persons to have carried Umed Singh to a distance 294 karams from point A to D. It must, therefore, be held that the

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circumstances indicate that all the appellants were in fact participants in the murder. A

11. It is true that the High Court has not dealt with the question of alibi and has not referred to this aspect or to the evidence of DWs-1, 2 and 8. We have, however, examined the evidence of these witnesses in the light of the other evidence and find that the alibi cannot be accepted. PW-10, the I.O. admitted that Sher Singh had, at the very initial stage, pleaded an alibi and that he had investigated this plea. The defence also produced the three witnesses aforementioned to prove the alibi and they unanimously stated that Sher Singh had been taking tuitions and his son Harish, too, was present in the house at that time. However, it appears that this defence was an after thought as there was no suggestion to the prosecution witnesses that Sher Singh had been taking tuitions or that Harish was asleep in the house. More significantly, however, Sher Singh, in his statement under Section 313 of the Cr.P.C. did not take this plea and in fact the plea put up was that one Bhagwan Devi had visited his house to get some lassi and was the witness of the alibi. Bhagwan Devi was not produced as a witness. We also see from the cross-examination of the defence witnesses that there is nothing to suggest that Sher Singh or his son Harish were present in the house. In any case we find that the place of occurrence was about 2 km. away from the village and it was, therefore, possible for them to have participated in the crime and then rushed back to the village. We are, therefore, of the opinion that there is no evidence to suggest whatsoever or to create a doubt with regard to the involvement of either Sher Singh or his son Harish on the basis of the alibi. The judgments cited by Mr. Cheema on this aspect, therefore, have no applicability. B C D E F G

12. We now come to the State appeal as well as the appeal filed by the complainant with regard to the nature of the offence. The High Court has relied upon several judgments of this Court to hold that as most of the injuries were superficial and on non H

A vital parts of the body, there was no intention to cause death, and the accused were, thus, liable to be convicted under Section 304 Part II of the IPC for culpable homicide not amounting to murder. The reasons given by the High Court are reproduced herein below:

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"We are of the view that the conviction of the accused under Section 302 read with Section 149 IPC cannot be sustained. The act of the appellants was done without any intention to cause death or to cause such bodily injury as was likely to cause death. Des Raj was empty
C handed,Mange Ram,Sher Singh and Harish were armed with lathis. Only Surender was armed with a bankri. The spread nature and extent of injuries on the deceased also support our view that the appellants had committed manslaughter and not murder. They are guilty under
D Section 304 Part II read with Section 149 IPC. The conviction of the appellants is converted from under Section 302 read with Section 149 IPC to one under Section 304 Part II read with Section 149 IPC. Their sentence is reduced from life imprisonment to five years
E rigorous imprisonment and fine of Rs.50,000/- each (in default a further period of one year rigorous imprisonment). The conviction of the appellants for the other offences and sentences awarded by the learned Sessions Judge are upheld. These sentences shall run
F concurrently. Fine if recovered, shall be paid to the heirs of Umed Singh deceased. The appellants are on bail, they shall be taken into custody forthwith to under remaining part of their sentence."

13. The learned counsel for the State of Haryana and the
G learned counsel for the complainant have serious objection to the observations made by the High Court on this score. We notice that the High Court was influenced in its decision as the injuries had largely been caused on non vital parts of the body. We have, however, carefully examined the medical evidence.
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PW-4 Dr. V.K.Jain who performed the post-mortem on the dead body on the 30th September 1991 found the following injuries on the person of the deceased:

"1.Brownish bruise of size 20 cm x 2 cm over left side of chest in upper part, above the left nipple,horizontally traced.

2. Brownish contusion of size 7 cm x 1.5 cm with abrasion of size 2 cm x 1 cm over left upper arms in lower 1/3rd.

3. Abrasion of size 3 cm x 1 cm over posterior aspect of left upper arm in lower 1/3rd.

4. Diffused swelling over the posterior aspect of left fore arm in middle 1/3rd with abrasion of size 8 cm x 1.5 cm over the swelling.

5. Abrasion of size 5 cm x 1 cm over posterolateral aspect of left forearm 4 cm away from injury No.4.

6.Switched wound of x 3 cm length over base of a middle finger of left hand over posterior aspect with swelling around.

7. Multiple mark of small abrasion over the posterior aspect of left hand at the base of middle, ring and little finger.

8. Brownish contusion of size 10 cm x 2 cm over postero lateral aspect of right upper arm in lower half.

9. Brownish contusion of size 12 cm x 2 cm over postero lateral aspect of right upper arm in lower 1/3rd, 5 cm below the injury No.8.

10. Switched wound of size 4 cm over posteromedical aspect of left forearm in middle 1/3 with swelling around.

11. Brownish contusion of size 10 cm x 2 cm over posterior aspect of right forearm in lower 1/3rd, with abrasion of 3 cm x 1 cm over the swelling. There is fracture of both bones

A of right forearm.

12.Switched wound of size 1 cm x 0.5 cm over base of right index finger with swelling around.

13. Brownish contusion of size 12 cm x 2 cm over back of
B chest of left scapular region.

14 Brownish contusion of size 15 cm x 2 cm over back of chest in right scapular region.

C 15. There is multiple marks of brownish contusion of different sizes over whole of back below the scapular region down to the lumbosaeral region also on the posterolateral aspect of back. One bruise is crossing the other soit is not possible to count all and describe
D separately.

16. There is diffused swelling over the left leg in upper ½ at and below the knee joint. There is abrasion mark of size 6 cm x 1 cm over the swelling. Both bones of left leg are fracture in upper third.

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17. There is stitched wound of 3 cm length over left leg in upper 1/3rd.

18. Diffused swelling over the anterior aspect of left foot fracture of 3rd and 4th.....bones.

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19. Stitched wound of size 3 cm in length over medical aspect of left foot.

20. Stitched wound of size 1.5 cm over base of nail bud
G of left great toe.

21. Reddish abrasion of 7 cm x 1 cm chin of right leg in upper half.

22. There is stitched wound of 4 cm length 3 cm lateral to
H the injury No.21.

23. There is diffused swelling over right leg in lower half with brownish contusion over the sizes 7 cm x 2 cm.

24. There is stitched wound of size 7 cm in length one chin of right leg in lower 1/3rd.

25. Stitched of size 5 cm in length over medical aspect of right foot.

26. Brownish contusion of size 12 cm x 2 cm over lateral aspect of right thigh.

14. 26 injuries in all were found on the person of the deceased. Injury No.11 was a fracture of both bones of the right forearm. Injury No.16 was a fracture of both bones of the left leg in the upper third and Injury No.18 was a fracture of the left foot. We also see that Injuries No.1, 13, 14 and 15 were caused on vital parts of the body. We have also minutely examined the post-mortem report Ex.PD. In addition to the above fractures, two other injuries were detected thereon which are not referred to in the statement of the Doctor. These are a fracture of the 9th and 10th ribs on the right side which had lacerated the underlying liver and when the abdomen had been opened 200 ml. of blood had been found in the peritoneal cavity and a hepatic haematoma with another 400 ml. of blood had been seen in the retroperitoneal cavity and the liver too was found to be lacerated along side the fractured ribs which also indicated heavy bleeding. The doctor also opined that the injuries were sufficient to cause death in the ordinary course of nature.

15. A perusal of these injuries and the post-mortem report clearly reveal that the intention of the accused was evident and that was to cause death and merely because most of the injuries were on the extremities would not be a reason to bring the case within Section 304 Part II of the IPC more particularly as the doctor had opined that they were sufficient to cause death in the ordinary course of nature. It appears that great

A damage had been caused as the fracture of the 9th and 10th ribs had damaged vital organs both in the abdominal and thoracic cavities. The judgments relied upon by the Division Bench to hold that the case would fall within Section 304 Part II are on their peculiar facts. It is true, that as per the statement B of the two eye witnesses, some of the accused were armed with cutting weapons and there are no incised injuries on the person of the deceased. The post-mortem report, however, says that no opinion could be given with regard to the weapons used for injury Nos. 6, 10, 12, 17 to 20, 22, 24 and 25 as the C said injuries had been stitched up at the time when Umed Singh was still alive. The post-mortem Doctor, however, testified that all the other injuries were blunt weapon injuries. It has also come in evidence that some of the cutting weapons had been used from the wrong side as well. We are, therefore, D of the opinion that the judgment of the High Court cannot be sustained in fact or in law. Criminal Appeal Nos. 1071/2009 and 1294/2009 Sher Singh vs. State of Haryana and Des Raj vs. State of Haryana are, accordingly, dismissed whereas Criminal Appeal Nos. 97-98/2010 and 182-183/2010 are allowed. Ipso-facto the judgment of the trial court is restored in E all respects. The appeals are disposed of as above.

R.P. Appeals disposed of.