

Before S.S. Saron & S.P. Bangarh

SOHAN LAL.—Appellant

versus

STATE OF HARYANA—Respondent

CRA NO. D-291-DB of 2008

March 3, 2013

Indian Penal Code, 1860 - S.302 - Repugnancy - Medical and ocular version - Recoveries doubtful - Appellant and his wife were tried for murder - Prosecution story - Appellant and his wife hit deceased with pestle and handle of spade - Police arrested appellant and his wife - Recorded disclosure statements - Recovery of pestle and handle of spade from cotton fields - Doctor found that most of the injuries were with sharp edged weapon - Trial court convicted appellant and acquitted his wife - Appellant assailed his conviction - State appealed against acquittal of appellant's wife - Appeal against conviction allowed - Appeal against acquittal dismissed - Held - Repugnancy between medical and ocular version - Presence of witness doubtful - Recoveries doubtful - Acquittal, upheld.

Held, that according to the medical evidence of PW5 and according to the inquest report Ex.PG, most of the injuries on the deceased were with the sharp edged weapon. According to the ocular evidence of PW6 Radhey Sham, Sohan Lal (appellant in CRA No. D-291-DB of 2008) used pestle (ghotna/ghota) for causing injuries to Hem Raj deceased, while Raj Bala (respondent in CRM No.314-MA of 2008) used handle of the spade (kassi) for causing injuries on the deceased. With both these weapons, stabbed wounds or incised wounds could not take place on the corpse of Hem Raj. The presence of PW6 becomes utterly doubtful, which could be believed, if he had candidly deposed that injuries to the deceased were given with sharp edged weapon. Even the conduct of PW6 Radhey Sham is very much suspicious. He did not rise to the occasion. He tacitly slept in his house which is unbelievable. When he had seen his brother being beaten by the assailants, it was required of him to raise alarm to attract the people from nearby place or he should have rushed to the police station to report the

incident. Silence of PW6 in this matter in not reporting the same to his family members or to the police or the respectable of village, whereon, he should have acted with alacrity is indeed, intriguing and that leads to inevitable conclusion that he was not present at the place of incident.

(Para 33)

Further held, that even recovery of weapon i.e handle of the spade and pestle (ghotna/ghota), on the basis of disclosure statement of Sohan Lal appellant is utterly doubtful. According to the serial no.23 of the inquest report Ex.PG, one wooden handle of spade and one wooden ghota in two pieces (pestle) were found near the corpse. Since these were lying near the corpse, blood oozing out of the wounds of Hem Raj deceased touched these articles that were sent to the Forensic Science Laboratory and the latter vide reports Ex.PT and Ex.PT/1 found human blood, thereon.

(Para 34)

Further held, that the weapons mentioned at serial no.23 of the inquest report Ex.PG were not recovered from Sohan Lal (appellant in CRA No. D-291-DB of 2008); while on the contrary, these were lying at the place of incident itself. Investigating Officer PW9, who prepared the inquest report had already recovered handle of the spade and pestle in two pieces from the place of incident itself and he should have seized those and on the contrary, he waited for sealing and seizing these vide memo till the arrest of Sohan Lal (appellant in CRA No. D-291-DB of 2008) and his wife Raj Bala (respondent in CRM No.314-MA of 2008).

(Para 35)

Further held, that the medical evidence and ocular evidence being repugnant to each other must make the prosecution case utterly doubtful against Sohan Lal (appellant in CRA No.D-291-DB of 2008).

(Para 41)

Further held, that resultantly, appeal of Sohan Lal appellant in CRA No. D-291-DB of 2008, titled Sohan Lal v. State of Haryana succeeds and is, hereby, allowed; impugned judgment of conviction and order of sentence qua him are set aside and he (Sohan Lal appellant) is acquitted of offence punishable under Section 302 IPC, where for, he was charged,

convicted and sentenced by the learned trial Court, by according him benefit of doubt.

(Para 47)

Application for grant of leave to appeal to the State of Haryana is declined and CRM No. 314-MA of 2008 is dismissed.

(Para 48)

Bikram Singh Gill, Advocate for the appellant in CRA No. D-291-DB of 2008.

H.S.Sran, Addl. A. G. Haryana for respondent in CRA No. D-291-DB of 2008 and applicant in CRM No. 314-MA of 2008.

S.P.BANGARII, J.

(1) Criminal appeal i.e CRA No. D-219-DB of 2008, titled Sohan Lal v. State of Haryana and CRM No. 314-MA of 2008, titled State of Haryana v. Raj Bala for leave to appeal arise from the common impugned judgment and order. These are, therefore, being decided by this common judgment.

(2) Case of the prosecution is that Radhey Sham complainant was having four brothers namely Hem Raj, Har Bhagwan, Krishan Kumar and Raj Kumar. All were married and residing separately. Hem Raj used to reside in a farm house (dhani in the local parlance) in the fields. He also owned a house in Sirsa. Sohan Lal (appellant in CRA No. D-291-DB of 2008) used to be his share cropper (siri in the local parlance). He owed money to Hem Raj. Sohan Lal (appellant in CRA No. D-291-DB of 2008) along with his family started living as a share cropper in a kotha (room) constructed in the fields belonging to Iqbal Singh son of Dilawar Singh of village Karamgarh.

(3) On 17.10.2006, Radhey Sham complainant and his brother Hem Raj had gone to take the balance of loan amount from Sohan Lal (appellant in CRA No. D-291-DB of 2008) at about 10:00 p.m. Hem Raj demanded money from Sohan Lal (appellant in CRA No. D-291-DB of 2008), whereupon, the latter got enraged and asked his wife Raj Bala (respondent in CRM No. 314-MA of 2008) to hit earthen lamp and exhorted that account be settled. Accordingly, Raj Bala (respondent in

CRM No.314-MA of 2008) lit the earthen lamp and Sohan Lal (appellant in CRA No. D-291-DB of 2008) took a pestle (ghota/ghotna in the local parlance) from the room and hit the head of Hem Raj, therewith, in order to kill him. Sequally, Hem Raj (deceased) fell down and Raj Bala (respondent in CRM No.314-MA of 2008) also hit the leg of Hem Raj (deceased) with a handle of spade. Both of them went on beating Hem Raj (deceased). Out of fear, complainant stood by the side of *Sheesham* tree and fled towards his house. He apprised his father about the incident, who was heart patient and diabetic and unable to walk. Brother of the complainant namely Hem Raj (deceased) did not return to his farm house (dhani) till morning. Thereupon, Radhey Sham complainant alongwith his brother Raj Kumar went to the place of incident and found Hem Raj lying dead in the room of Iqbal Singh on account of injuries. Much blood had oozed out of the wounds. Sohan Lal (appellant in CRA No. D-291-DB of 2008) fled away from the spot on account of fear.

(4) On the basis of aforementioned statement Ex.PI of Radhey Sham, formal FIR Ex.PD was recorded by the police against Sohan Lal (appellant in CRA No. D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008) under Section 302 of the Indian Penal Code ('IPC' for short) read with Section 34 IPC. Ram Murti, ASI took up the investigation. He visited the spot and got the scene of occurrence photographed. He also summoned the crime team and lifted blood stained earth from the spot. He also prepared inquest report Ex.PD upon the corpse of Hem Raj (deceased) and sent the same to the mortuary for autopsy.

(5) Ram Murti, ASI arrested Sohan Lal (appellant in CRA No. D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008) and interrogated them. Sohan Lal (appellant in CRA No.D-291-DB of 2008) made disclosure statement Ex.PP about the concealment of pestle (ghotna/ghota) and spade of handle in the cotton field of Iqbal Singh. Pursuant, thereto, he got recovered those articles (ghotna/ghota and spade of handle) from the disclosed place, which were sealed into separate parcels with the seal bearing impression 'RM' and taken in possession vide recovery memo Ex.PR. He also got prepared site plan of the place of occurrence. Blood stained articles were sent to Forensic Science Laboratory and the latter vide reports Ex.PT and Ex.PT/I found those to be stained with human blood.

(6) On completion of investigation, Station House Officer of Police Station Baragudha, instituted police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C' for short) to the effect that it appeared that Sohan Lal (appellant in CRA No.D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008) have committed an offence punishable under Section 302 IPC read with Section 34 IPC.

(7) On presentation of police report, copies of documents as required under Section 207 Cr.P.C were furnished to Sohan Lal (appellant in CRA No. D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008) and the case was committed to the Court of Session by the learned Illaqa Magistrate, where charge under Sections 302 IPC read with Section 34 IPC, was framed against Sohan Lal (appellant in CRA No.D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008), where to, they pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

(8) At the trial, prosecution examined Rajesh Kumar, IIC as PW1, Sita Ram, Constable as PW2, Rajbir Singh, Constable as PW3, Mohan Lal, Constable/Draftsman as PW4, Dr.Jagdeep Aggarwal as PW5, Radhey Sham, complainant as PW6, Devinder Kumar as PW7, Rakesh Kumar, Photographer as PW8, Ram Murti, ASI as PW9 and Manoj Kumar, SI as PW10 and closed the evidence later.

(9) After closure of the prosecution evidence, Sohan Lal (appellant in CRA No.D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008) were examined under Section 313 Cr.P.C, wherein, they denied the allegations of the prosecution, pleaded innocence and false implication in this case. Sohan Lal (appellant in CRA No.D-291-DB of 2008) gave his own version that he had never remained share cropper of Iqbal Singh son of Dilawar Singh nor had he ever resided in the kotha situated in his fields and he was residing in his village. He further stated that he had nothing to do with the field of Iqbal Singh and that he and his wife Raj Bala (respondent in CRM No.314-MA of 2008) have been falsely involved in this case on the basis of suspicion and that he had no dispute regarding money with the deceased. He further stated that he had already asked the deceased to get the loan sanctioned in his name, for which he had got filled the forms from him so that when the loan was sanctioned,

he (deceased) may get the amount from that loan amount. He further stated that the complainant was not in the knowledge of this fact.

(10) Raj Bala (respondent in CRM No.314-MA of 2008) had also given her own version on the lines of version given by Sohan Lal (appellant in CRA No. D-291-DB of 2008).

(11) Sohan Lal (appellant in CRA No. D-291-DB of 2008) and Raj Bala (respondent in CRA No.314-MA of 2008) were called upon to enter in defence, but they closed the same without examining any witness.

(12) After hearing both the sides, the learned trial Court vide impugned judgment and order of sentence, convicted Sohan Lal (appellant in CRA No. D-291-DB of 2008) for the commission of offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of '5,000/- and in default, thereof, to undergo further imprisonment for five months. Whereas, Raj Bala (respondent in CRM No.314-MA of 2008) was convicted for commission of offence punishable under Section 323 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of '1,000/- and in default, thereof, to further undergo imprisonment for a period of one month. Since Raj Bala (respondent in CRM No.314-MA of 2008) had undergone imprisonment for more than 1-1/4 years, she was ordered to be released forthwith, if not required in any other case. However, she was acquitted of offence punishable under section 302 IPC.

(13) Aggrieved, thereagainst, Sohan Lal (appellant in CRA No. D-291-DB of 2008), who was accused before the learned trial Court, has filed this appeal with a prayer for acceptance, thereof, and for his acquittal of offence punishable under Section 302 IPC.

(14) Aggrieved against the impugned judgment of acquittal of Raj Bala, State of Haryana has also assailed the same by filing separate CRM No.314-MA of 2008, titled State of Haryana v. Raj Bala and prayed that Raj Bala be held guilty of offence punishable under Section 302 IPC and convicted, thereunder.

(15) Learned counsel for Sohan Lal (appellant in CRA No. D-291-DB of 2008) and Mr.H.S.Sran, Addl. Advocate General, Haryana have been heard and record of the learned trial Court perused with their assistance.

(16) PW1 Rajesh Kumar, IIC tendered in evidence his affidavit Ex.PA.

(17) PW2 Sita Ram, Constable also tendered in evidence his affidavit Ex.PB.

(18) PW3 Rajbir Singh, Constable also tendered in evidence his affidavit Ex.PC adjuring, therein, that he handed over copy of FIR Ex.PD to the learned Illaqa Magistrate after taking the same from the MHC of Police Station.

(19) PW4 Mohan Lal, Constable deposed that on 07.11.2006, he visited the place of occurrence and prepared scaled site plan Ex.PE, on the basis of demarcation provided by Radhey Sham.

(20) PW5 Dr.Jagdeep Aggarwal, deposed that on 18.10.2006, he along with Dr.C.P.Dadhich, Medical Officer of Civil Hospital, Sirsa conducted autopsy on the corpse of Hem Raj and found following injuries, thereon:-

1. 2 cms x 0.5 cm incised wound right side frontal area of scalp;
2. 2 cms x 0.5 cm incised wound over right frontal area below injury no.1 and medial;
3. 2 cms x 0.5 cm incised wound over frontal area below injury no.2 and medially right side;
4. 5 cms x 1 cm incised wound over right side face extending from lateral aspect of nose to mid chin involved both lips and jaw. Underlying bones were fractured (upper jaw and mandible);
5. Multiple abrasions present over right side face with forehead underlying bone depressed and fractured (with parietal, frontal, maxillary bone, mandible) underlying brain matter was lacerated and blood was present. Right side orbit fractured and eye ball torn;
6. 6 cms x 2.5 cms abrasion over right side chest laterally;
7. Incised wound of 2 cms x 0.5 cm over left frontal area of scalp;
8. Incised wound of 1.5 cms x 0.5 cm over mid tibial area left lower leg anteriorly;

9. Incised wound of 5 cms x 0.5 cm over right knee anteriorly;
10. Incised wound of 1 cm x 0.5 cm over right mid tibial area anteriorly right leg;
11. Incised wound of 2 cms x 0.5 cm over right fore-arm;
12. Incised wound of 2 cms x 0.5 cm over left shoulder deltoid area and
13. Incised wound of 2 cms x 0.5 cm over right knee anteriorly below patella.

(21) PW5 further deposed that scalp and skull were healthy and as described vertebrae were healthy. Membrane and brain were healthy; spinal code was not opened. He further deposed that walls, ribs and cartilages were healthy; pleura was healthy and larynx and trachea were pale. He also deposed that both the lungs were healthy, pericardium was healthy, however, heart was healthy and left side chamber was containing fluid blood. He further deposed that mouth pharynx and oesophagus were pale, stomach and its contents were healthy containing 300 mls of semi digested food material; small intestine and their contents were healthy and containing chyme. PW5 further deposed that large intestine and their contents were healthy and contained faecal matter; liver and spleen were pale; both kidneys were healthy; urinary bladder was healthy and empty and organs of generation and external genitalia were healthy.

(22) PW5 further deposed that cause of death in this case, in his opinion, was haemorrhage and shock, as a result of injuries to the vital organs which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. He further deposed that time between injuries and death was variable and between death and autopsy was within 12 to 24 hours. He further deposed that they handed over to the police a well stitched corpse of male after conducting autopsy, copy of autopsy report Ex.PF and diagram showing the seat of injury Ex.PF/1 along with inquest report Ex.PG and sealed parcel bearing eight seals containing clothes of the deceased. He also deposed that they conducted autopsy on police application Ex.P11. shirt Ex.P1, underwear Ex.P2 and blanket (chadar) Ex.P3, which were removed from the corpse were handed over to police

by them in a sealed cover that was opened during the deposition of this witness. Lathi Ex.P4 and pestle (ghotna/ghota) Ex.P5 were also show to this witness during his deposition. He deposed that possibility of injuries with these lathis and pestle (ghotna/ghota) on the person of deceased could not be ruled out.

(23) PW6 Radhey Sham deposed that on 17.10.2006, at about 10:00 p.m. his deceased brother Hem Raj had gone to the fields of Iqbal Singh in village Karamgarh to take money from Sohan Lal (appellant in CRA No. D- 291-DB of 2008), where the latter used to reside and he (PW6) was accompanying him. He further deposed that Sohan Lal (appellant in CRA No. D-291-DB of 2008) asked his wife Raj Bala (respondent in CRM No.314- MA of 2008) to lit the earthen lamp to settle the accounts with Hem Raj. Thereupon, Sohan Lal appellant picked up a pestle (ghotna/ghota) and gave blow, thereof, on the forehead of Hem Raj and the latter sequally fell down. He further deposed that Raj Bala (respondent in CRM No.314-MA of 2008) also beat his brother Hem Raj deceased with handle of spade on his leg and he became perplexed and could not come forward to rescue his brother and he got aside behind a *Sheesham* tree and then he came back and on return, he apprised his father of the incident. He further deposed that he is a heart patient and his father is also a diabetic and his wife gave him some medicines as he was feeling restless and he slept and in the morning, he learnt that his brother had not returned to his house. Then, he alongwith his brother Raj Kumar went to the spot and found his brother dead and some blood was scattered over the earth and both the accused persons were not there.

(24) PW6 further deposed that they contacted their relatives on phone; panchayat was also convened by them which also went to the spot and police met him on the way, when he was going to lodge the report with them and he made statement Ex.PI, which bears his signatures. He further deposed that police then accompanied them to the spot and lifted some blood stained earth from the spot and made parcel, thereof, that was sealed and seized vide memo Ex.PJ, which bears his signatures. He also deposed that photographs were also taken by the Investigating Officer, as also, police prepared rough site plan of the place of incident, as also, got conducted autopsy on the corpse of his brother.

(25) PW7 Devender Kumar deposed that Sohan Lal (appellant in CRA No. D-291-DB of 2008) was employed as a share cropper two years prior to the death of his father, who had taken a sum of '14527/- from them as advance and a sum of '8187/- was deposited by him and a sum of '6300/6400/- was to be recovered from him and writing Ex.PK about this fact was also made. He also deposed that Sohan Lal (appellant in CRA No. D-291-DB of 2008) had requested his father to give loan to purchase buffalo and that amount he would repay and his father had advanced a loan of '12,000/- to Sohan Lal (appellant in CRA No. D-291-DB of 2008) to purchase buffalo vide loan form Ex.PL, which bears thumb impression of Sohan Lal (appellant in CRA No. D-291-DB of 2008) and those papers were handed over to police by him that were seized vide memo Ex.PM and his statement was also recorded.

(26) PW8 Rakesh Kumar deposed that on 18.10.2006, he took photographs Ex.P9 to Ex.P14, whose negatives are Ex.P15 to Ex.P20.

(27) PW9 Ram Murti, ASI conducted the investigation of this case. He deposed that he recorded the statement Ex.PI of Radhey Sham complainant at Bus stand of village Sahuwala, where, he was present alongwith other police officials and on the statement Ex.PI, he made his endorsement Ex.PI/1 and on the basis, thereof, formal FIR Ex.PD was registered in the police station. He further deposed that he prepared inquest report Ex.PG, as also, prepared rough site plan Ex.PN of the place of occurrence. He further deposed that he lifted blood stained earth from the spot, that was sealed into a parcel with his seal bearing impression 'RM' and that parcel was seized vide recovery memo Ex.PJ. He also deposed that he moved application Ex.PH for getting conducting autopsy on the corpse of the deceased that was sent to the mortuary of Civil Hospital, Sirsa for autopsy and on the same day, Subhash Chander, IIC produced before him a parcel containing clothes of the deceased and that parcel was seized vide memo Ex.PO. He further deposed that on 19.10.2006, he arrested both the accused of this case and Sohan Lal (appellant in CRA No. D-291-DB of 2008) suffered disclosure statement Ex.PP, pursuant, thereto, he got recovered handle of spade and pestle (ghotna/ghota) from field of Iqbal Singh that were sealed with the seal bearing impression 'RM'. He also deposed that sketches of pestle (ghotna/ghota) and lathi Ex.PQ and

Ex.PQ/1 respectively were prepared and made into separate parcels, sealed with the seal bearing impression 'RM' and those parcels were seized vide recovery memo Ex.PR. He also deposed that on 26.10.2006, he was present in police station where, Devender Kumar produced before him Ex.PK and Ex.PL and he seized those vide memo Ex.PM. Lathi Ex.P4 and three pieces of pestle (ghotna/ghota) Ex.P5 were produced in the Court, during his deposition.

(28) PW10 Manoj Kumar SI/SHO also corroborated the testimony of PW9 by deposing likewise.

(29) Learned counsel for Sohan Lal (appellant in CRA No. D-291-DB of 2008) contended that latter neither remained a share cropper with Iqbal Singh nor resided in his alleged kotha in his fields at the village Karamgarh. He also contended that the conduct of PW6 Radhey Sham complainant, alleged eye witness of the incident, is highly unnatural. If he would have been present at the place of incident, in that event, he would have intervened to rescue his deceased brother Hem Raj or he would have reported the matter to the police instead of sleeping in his house for whole of the night. He also contended that the ocular evidence and the medical evidence are contradictory to each other and, therefore, the impugned judgment and order of sentence qua Sohan Lal (appellant in CRA No. D-291-DB of 2008) may be set aside.

(30) On the other hand, learned Additional Advocate General, Haryana for the respondent in CRA No.D-291-DB of 2008 contended that the impugned judgment of conviction and order of sentence qua Sohan Lal appellant were rightly passed by the learned trial Court and, therefore, these may be upheld and affirmed and on the basis of parity, Raj Bala (respondent in CRM No.314-MA of 2008) wife of Sohan Lal appellant is also required to be convicted and sentenced, as she shared common intention with her husband Sohan Lal (appellant in CRA No. D-291-DB of 2008) in killing Hem Raj and, therefore, he contended that leave to appeal may be granted and the appeal be heard on merit and the impugned judgment of acquittal against Raj Bala (respondent in CRM No.314-MA of 2008) may be set aside and she be also held guilty for commission of murder of Hem Raj and be sentenced accordingly like her husband Sohan Lal (appellant in CRA No. D-291-DB of 2008).

(31) Medical evidence of PW5 Dr. Jagdeep Aggarwal has been reproduced in the earlier parts of this judgment. According to that testimony, there were thirteen injuries on the corpse of Hem Raj, out of these, eleven injuries were incised wounds, while only two injuries i.e nos. 5 and 6 were abrasions. Indubitably, injuries nos. 1 to 4 and 7 to 13, which were incised wounds could be suffered only with a sharp edged weapon.

(32) According to serial no. 10 of Inquest report Ex.PG there was a mark of stab wound on the right side of forehead of Hem Raj deceased. There was injury on the eye lid of right eye and right side jaw was damaged due to injury. There was mark of cut injury below the chin; there was injury bluish in colour (neclgu) on the ribs; there was injury on the arm of right hand; there was injury on the left shoulder; there were injuries on the neck and back and blood had oozed out of these injuries. According to this inquest report Ex.PG, sharp edged weapon was used in the occurrence. Manifestly stabbed wound on the right side of the forehead of the deceased could be caused only with a sharp edged weapon.

(33) So, according to the medical evidence of PW5 and according to the inquest report Ex.PG, most of the injuries on the deceased were with the sharp edged weapon. According to the ocular evidence of PW6 Radhey Sham, Sohan Lal (appellant in CRA No. D-291-DB of 2008) used pestle (ghotna/ghota) for causing injuries to Hem Raj deceased, while Raj Bala (respondent in CRM No.314-MA of 2008) used handle of the spade (kassi) for causing injuries on the deceased. With both these weapons, stabbed wounds or incised wounds could not take place on the corpse of Hem Raj. The presence of PW6 becomes utterly doubtful, which could be believed, if he had candidly deposed that injuries to the deceased were given with sharp edged weapon. Even the conduct of PW6 Radhey Sham is very much suspicious. He did not rise to the occasion. He tacitly slept in his house which is unbelievable. When he had seen his brother being beaten by the assailants, it was required of him to raise alarm to attract the people from nearby place or he should have rushed to the police station to report the incident. Silence of PW6 in this matter in not reporting the same to his family members or to the police or the respectable of village, whereon, he should have acted with alacrity is indeed, intriguing and that leads to inevitable conclusion that he was not present at the place of incident.

(34) Even recovery of weapon i.e handle of the spade and pestle (ghotna/ghota), on the basis of disclosure statement of Sohan Lal appellant is utterly doubtful. According to the serial no.23 of the inquest report Ex.PG, one wooden handle of spade and one wooden ghotna in two pieces (pestle) were found near the corpse. Since these were lying near the corpse, blood oozing out of the wounds of Hem Raj deceased touched these articles that were sent to the Forensic Science Laboratory and the latter vide reports Ex.PT and Ex.PT/1 found human blood, thereon.

(35) Therefore, the weapons mentioned at serial no.23 of the inquest report Ex.PG were not recovered from Sohan Lal (appellant in CRA No. D-291-DB of 2008), while on the contrary, these were lying at the place of incident itself. Investigating Officer PW9, who prepared the inquest report had already recovered handle of the spade and pestle in two pieces from the place of incident itself and he should have seized those and on the contrary, he waited for scaling and seizing these vide memo till the arrest of Sohan Lal (appellant in CRA No. D-291-DB of 2008) and his wife Raj Bala (respondent in CRM No.314-MA of 2008).

(36) Therefore, the disclosure statement Ex.PP ascribed to Sohan Lal (appellant in CRA No. D-291-DB of 2008) becomes utterly doubtful. This disclosure statement Ex.PP was prepared on 19.10.2006, while, inquest report was prepared on 18.10.2006, on which date, these weapons allegedly recovered from Sohan Lal (appellant in CRA No. D-291-DB of 2008), pursuant, to his disclosure statement Ex.PP were already with the police, as per inquest report Ex.PG.

(37) In view of the recovery of weapons of offence allegedly used in this occurrence by the police at the time of preparation of inquest report Ex.PG dated 18.10.2006, it is arduous to hold that these were got recovered by Sohan Lal (appellant in CRA No.D-291-DB of 2008). Therefore, his disclosure statement Ex.PP becomes utterly doubtful, as also, alleged recovery of weapons of offence. When disclosure statement Ex.PP and resultant recovery of weapons of offence i.e handle of the spade and pestle (ghotna/ghota) are discarded, it becomes a case of recovery of no weapon of

offence from the appellant. Even, Raj Bala (respondent in CRM No.314-MA of 2008) did not suffer any disclosure statement for the purpose of getting recovered her weapon of offence allegedly used by her in this occurrence. It is, thus, a case where no weapon of offence was recovered from Sohan Lal (appellant in CRA No.D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008). It was night time and Sohan Lal (appellant in CRA No. D-291-DB of 2008) and Raj Bala (respondent in CRM No.314-MA of 2008) could not be recognized during night. Earthen lamp, allegedly lit by Raj Bala (respondent in CRM No.314-MA of 2008) was not recovered from the place of incident. That falsifies the version propounded by PW6. If this version would have been veritable, police would have made recovery of the earthen lamp from the place of incident. It, therefore, follows that there was no source of light at the place of incident and PW6 could not identify the assailants of his deceased brother.

(38) There may be some explanation for the nature of injuries being incised one, where the surface below the skin is hard like scalp. However, in the present case, there are other incised wound injuries on the corpse of the deceased, which may not be possible with blunt weapons like handle of the spade and pestle (ghotna/ghota).

(39) Besides, no sharp edged weapon was either recovered or allegedly used. It is, thus, quite doubtful that with the use of pestle (ghotna/ghota) or handle of the spade, incised injuries could be caused to the deceased. Thus, use of alleged weapons of offence cannot be held to be established. This is, more so, for the reason that recovery of these weapons is also doubtful, inasmuch as in the inquest report Ex.PG the weapons i.e pestle (ghotna/ghota) in two pieces and handle of spade were lying near the corpse of Hem Raj on 18.10.2006, at the time of preparation of inquest report Ex.PG Later, recovery, thereof, pursuant to the disclosure statement Ex.PP of Sohan Lal (appellant in CRA No. D-291-DB of 2008) is utterly doubtful.

(40) The testimony of PW5 Dr.Jagdeep Aggarwal to the effect that injuries could be possible on the corpse of Hem Raj deceased with pestle (ghotna/ghota) and handle of spade is only an expression of possibility and

not of sureness. Therefore, taking into the facts and circumstances together, inflicting of injuries to Hem Raj deceased with ghotna and handle of spade is, indeed, doubtful.

(41) So, the medical evidence and ocular evidence being repugnant to each other must make the prosecution case utterly doubtful against Sohan Lal (appellant in CRA No.D-291-DB of 2008). Even, the benefit of doubt was accorded to Raj Bala (respondent in CRM No.314-MA of 2008) by the learned trial Court and she was acquitted vide impugned judgment.

(42) Place of incident is allegedly owned by Iqbal Singh, who has not been brought to the witness box to depose that Sohan Lal (appellant in CRA No. D-291-DB of 2008) and his wife Raj Bala (respondent in CRM No.314- MA of 2008) were residing in the disputed kotha where, occurrence allegedly took place, as also, to depose that Sohan Lal (appellant in CRA No. D-291- DB of 2008) was working as a share cropper with him. There is, thus, no cogent evidence on record that the place of incident was occupied by Sohan Lal (appellant in CRA No. D-291-DB of 2008) and his wife Raj Bala (respondent in CRM No.314-MA of 2008).

(43) Even, in his statement under Section 313 Cr.P.C, Sohan Lal (appellant in CRA No. D-291-DB of 2008) stated that he never remained a share cropper of Iqbal Singh. Even, he never resided in the alleged kotha situated in the fields of Iqbal Singh. In the absence of evidence of Iqbal Singh, it is arduous to hold that the place from where the corpse of Hem Raj deceased was recovered was occupied by Sohan Lal (appellant in CRA No. D-291-DB of 2008) and his wife Raj Bala (respondent in CRM No.314-MA of 2008). When they have not been proved to be the occupiers of the place of incident, they could not be held to be the killers of Hem Raj, especially when the presence of PW6 is also doubtful at the place of incident.

(44) There is no gain saying about the handle of spade and pestle (ghotna/ghota) being stained with human blood as reported vide report Ex.PT and Ex.PT/1 of Forensic Science Laboratory. These reports could be relevant only, if these alleged weapons would not have been lying at the

place of incident as per serial no.23 of the inquest report Ex.PG and on the contrary, these would have been recovered from Sohan Lal (appellant in CRA No. D- 291-DB of 2008) and his wife Raj Bala (respondent in CRA No.314-MA of 2008).

(45) Therefore, it follows that the prosecution has failed to prove its case against Sohan Lal (appellant in CRA No. D-291-DB of 2008) beyond shadow of reasonable doubt, but the learned trial Court wrongly convicted and sentenced him vide impugned judgment of conviction and order of sentence. While, on the contrary, he should have been acquitted of the offence punishable under Section 302 IPC like his wife Raj Bala (respondent in CRM No.314-MA of 2008), who remained complacent with her conviction under Section 323 IPC and did not file any appeal.

(46) So, the learned trial Court rightly acquitted Raj Bala (respondent in CRM No.314-MA of 2008) for commission of offence punishable under Section 302 IPC. There is no ground to interfere into the impugned judgment acquitting her of offence punishable under Section 302 IPC. The impugned judgment of conviction and order of sentence qua Sohan Lal (appellant in CRA No.D-291-DB of 2008) are erroneous, that must be set aside. At the same time, there is no merit in the appeal of State of Haryana and leave to appeal must be declined to them.

(47) Resultantly, appeal of Sohan Lal appellant in CRA No. D-291- DB of 2008, titled Sohan Lal v. State of Haryana succeeds and is, hereby, allowed; impugned judgment of conviction and order of sentence qua him are set aside and he (Sohan Lal appellant) is acquitted of offence punishable under Section 302 IPC, wherefor, he was charged, convicted and sentenced by the learned trial Court, by according him benefit of doubt.

(48) Application for grant of leave to appeal to the State of Haryana is declined and CRM No. 314-MA of 2008 is dismissed.