

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NOS.63-64 OF 1996@@
BB

State of Punjab Appellant(s)

VERSUS

Shavinder Sing & Anr. Respondent(s)

(With Office Report)

DATE : 31-10-2002: These matters were called on for hearing today.@@
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CORAM:
HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s): Mr. Bimal Roy Jad, Adv.

For Respondent(s): Mr. O.K. Khullar, Adv.
Mr. R.C. Kohli, Adv.

UPON hearing counsel the Court made the following
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Heard learned counsel for the parties for twenty minutes.

The appeals fail and are dismissed.

Bail bonds shall stand discharged.

Let the documents which are produced in the Court be kept on record.

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(R.K. Dhawan) (Shelly Sengupta)
Court Master Court Master

(Signed order is placed on the file) ~

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.63-64 OF 1996@@
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versus

Shavinder Singh & Anr.

Respondent(s)

O R D E R@@
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The State is in appeal against an order of acquittal. Shavinder Singh and Kashmir Singh, the respondents herein, have been convicted for offence under Section 302 of the Indian Penal Code by the learned Sessions Judge, Faridkot on 21st May, 1993, and sentenced to undergo imprisonment for life together with fine. Aggrieved by the order, the accused persons went before the High Court and the High Court, on perusal of evidence, have been pleased to record that by reason of the contradiction of the oral testimony with the medical evidence, question of rendering a concurrent finding as regards the guilt of the accused persons does not arise and as such acquitted the accused persons.

The High Court placed reliance on the evidence of PW-2 Ajit Sharma being the draftsman who prepared the site plan and the distance of location of the eye witnesses namely, PW-6 Angrez Singh and PW-7 Mukhtiar
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Singh. The former, however, in his oral testimony stated before the Court that the distance between assailants and the deceased was about 12 feet but the medical evidence available on record of Dr. Harnek Singh, PW-5, has been rather candid and in cross-examination it has been stated that the injuries were caused from a very close range of about 9 inches. This contradiction between the medical evidence and eye witnesses' account has been taken serious note of by the High Court and it is on this score, the High Court came to a conclusion, as noticed above.

Incidentally, there is also available on record the ballistic expert report which, however, negates the entire prosecution case of the recovery of armaments in terms of the seizure effected under the provision of Section 27 of the Evidence Act. The ballistic expert has been rather emphatic about the fire, the nature of injuries and the cartridges lying near the body at the place of occurrence together with an observation that the same does not match with the weapon recovered. Incidentally, two firearms were used whereas one, as stated by the prosecution, stands recovered while the other one, admittedly, has not been recovered. It is on this score, we have also some reservations about the acceptability of the judgment of the learned Sessions Judge.

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In any event, the jurisdiction of the apex court is rather restricted and the law stands to be well settled on that score. The High Court in appreciation of evidence can alter a finding but this Court cannot reappraise the evidence and record a finding unless the High Court's finding can be ascribed to be totally

perverse. The apex court would not be justified in interfering with the finding of the High Court if two views are possible and the High Court accepts one such view. In that view of the matter question of recording a contra finding would not arise.

On the wake of the aforesaid, we do not find sufficient compelling reasons to record a contra finding from that of the High Court and as such these appeals fail and are dismissed.

Bail bonds shall stand discharged.

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.....J.
(U.C.BANERJEE)

.....J.
(B.N. AGRAWAL)

New Delhi,
October 31, 2002