



2019 INSC 1221

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1856 OF 2013

STATE OF UTTARAKHAND

... APPELLANT

VERSUS

DARSHAN SINGH

... RESPONDENT

WITH

CRIMINAL APPEAL NO. 1857 OF 2013

J U D G M E N T

K.M. JOSEPH, J.

1. Since these appeals involve the same impugned judgment of the High Court acquitting the respondents of offences under Section 147, 148, 149 and 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC', for short), we deem it fit to dispose of the same by a common judgment.

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PROSECUTION CASE IN BRIEF

2. The complaint in this case, which led to the trial, was lodged by one Swarn Singh-PW1. The complaint in brief is as follows:

On 22.08.1992, when he, along with his father, mother and maternal uncle, were going on a tractor from Nanakmatta to their village and his father was driving the tractor, when the tractor reached one kilometre from their house, they found that a bullock cart has blocked their passage. The tractor stopped near the bullock cart. One of the accused-Pahalwan Singh appeared. The other accused, along with him, were hiding near a tree. He was having a sword in his hand. Resham Singh, who is the third respondent in Criminal Appeal No. 1857 of 2013, had a country-made pistol in his hands. Daleep Singh had a *ballam* (a sharp edged weapon), his son Jagir Singh carried a country-made

pistol. Darshan Singh also had a country-made pistol. Veer Singh was having a sharp-edged weapon (*campa*). They started hurling abuses on the family of the complainant. Resham Singh fired with his country-made pistol. Pahalwan Singh and Darshan Singh fired with their country-made pistol, and Veer Singh Singh with his *campa*, inflicted blows on the complainant's father-Singhara Singh. He fell from the tractor and died. On raising alarm, all the accused fled away on the bullock cart. The complainant, his father and maternal uncle did not dare to fight the assailants.

3. The First Information Report (FIR) came to be lodged under Sections 147, 148, 149 and 302 of the IPC. The Trial Court framed charges under Sections 147, 148, 302 read with 149 of the IPC. Separate charges were also framed under Section 25 of the Arms Act, 1959 (hereinafter referred to as 'the Arms Act', for short). PWs 1 to 6 were examined from

the side of the prosecution. Statements of the accused were taken under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.PC.', for short).

4. The Trial Court convicted Pahalwan Singh, Resham Singh, Daleep Singh, Veer Singh and Darshan Singh for offences under Sections 302 read with 148 and 149 of the IPC. Resham Singh and Darshan Singh were acquitted of the charge under Section 25 of the Arms Act.

5. The High Court, by the impugned order, has acquitted the accused. The judgment reveals that the following aspects weighed with the High Court in its decision to acquit the accused:

- i. There were material variations in the evidence of PWs 1 and 2.
- ii. PW2 was not a non-partisan witness. He is distantly related to the informant.
- iii. PW4 is none other than maternal uncle referred to by the complainant as having travelled along with him on the tractor. He has turned hostile and has not supported the prosecution version.

- iv. The case of the prosecution that after the firing and the inflicting the wound injuries on the deceased, the accused fled away in the bullock cart, could not be believed.
- v. PW1 deposed that the lights of the tractor were on. PW2, on the other hand, deposed that the bulb of the tractor was off.
- vi. Injury no.4 was a gunshot wound on the left side of the back of the deceased.
- vii. According to prosecution evidence, accused blocked the way of the tractor and accused fired while standing in front of the tractor. There was material inconsistency between ocular and medical evidence in this regard.
- viii. It is noticed by the High Court that PW3-Doctor, in his evidence, does not support the case of the prosecution.
- ix. The High Court noticed, according to the prosecution evidence, that the deceased was driving the tractor and his close relatives, viz., his wife, the complainant, who has been examined as PW1, and maternal uncle, were

travelling along with the accused. However, none of the relatives, who were sitting on the tractor and on the mudguard, have suffered any injuries. This also persuaded the High Court to acquit the accused.

6. We have heard the learned counsel appearing for the State/appellant and the learned counsel appearing for the accused/respondents, in both the appeals.

7. The learned counsel for the State has pointed out that respondent no. 2, in Criminal Appeal No. 1857 of 2013, has passed away and we have also taken note of the same in our order dated 28.08.2019 that the appeal stands abated as against him.

8. The learned counsel for the State would contend as follows:

(i) There was no actual inconsistency in the ocular evidence of PW1 and medical evidence. He has maintained that accused-Resham Singh has fired shot which hit the deceased at the back.

(ii) Merely on account of minor contradictions in the statement of PW1 and medical evidence depicting the injuries, High Court ought not have interfered in the matter, having regard to the nature of the injuries inflicted, the recovery of the weapons and the conclusion in the FSL Report, which fully corroborates the case of the prosecution.

(iii) PW1-son of the deceased was only 17 years of age at the time of the incident. The court may bear in mind that this is a case where accused ambushed them and carried deadly weapons hurling threats. Meticulous narrative of the incident, in such circumstances, may not be insisted upon. He relied upon judgment of this Court in Gosu Jayrami Reddy and another v. State of Andhra Pradesh¹ and Mangoo v. State of Madhya Pradesh².

(iv) At the place of the incident., an empty cartridge of 12-bore pistol was recovered by the Investigating Officer. A recovery was effected from the accused on

¹ (2011) 11 SCC 766

² AIR 1995 SC 959

the basis of statement by the accused including the 12- bore pistol. FSL Report states that the shot has been fired from the 12-bore pistol which was recovered.

The High Court has not found the recovery to be vitiated. This means that recovery can be acted upon.

(v) There is no material for the inconsistency between the evidence of PWs 1 and 2. The only variation is that PW2 has deposed that Resham Singh has climbed up to the tractor and fired the shot which caused injury no.4 on the back of the body of the deceased. In this regard, he relied upon judgment of this Court in Abdul Sayeed v. State of Madhya Pradesh³ to contend if there is inconsistency between ocular and medical evidence, ocular evidence must prevail unless medical or scientific evidence completely renders impossible action upon ocular testimony.

(vi) The statement of PW1 that the shots were fired from 5-7 steps from near the bullock cart, was also explained, as found by the Trial Court, by holding that PW1 was

³ (2010) 10 SCC 259

describing the distance between the place of the bullock cart and the place of the shot fired.

(vii) The FIR was lodged within three hours on 22.08.1992 itself. The incident took place at 05.30 P.M.. The promptness, with which the FIR was lodged, was not given the due importance.

(viii) Lastly, the reasoning of the High Court that none of the relatives suffered injuries, is attacked on the basis that when the incident unfolded with the accused coming out with the armed weapons, it would be unnatural to expect that his relatives would have remained glued to their position. The fact that the relatives were unhurt is consistent with their normal behaviour when faced with assailants armed with deadly weapons, hurling threats and firing.

9. *Per contra*, learned counsel for the accused would submit that the incident is of the year 1992. She supports the order of the High Court. Learned counsel for the accused/respondents would submit that:

- a. There were four persons travelling on the tractor and only the deceased is seen injured.
- b. There is no motive established.
- c. There was no connection with the ocular and medical evidence.
- d. She reminds the Court that the accused have been acquitted under the Arms Act, 1959.

10. Before we discuss the evidence, we think it appropriate to refer to the injuries actually suffered by the deceased. PW3 is the Doctor. The following are the injuries noted by PW3, which are noted as *ante mortem* injuries besides his evidence *inter alia*:

"External Examination:-

One middle-aged person, upon dead body R.M. staining was present and upon his body stiffness was there stomach was swollen and left eye was not there. Upon the body of deceased. During body examination following pre death injuries were found:-

- (1) Cut wound 15 cm x 2 cm in the upper part of head and skull bone was broken.
- (2) Cut wound 16 cm x 2 cm left side of the face which was extended from behind

the ear to face. Due to that labron of ear and bone of mandible jaw had been broken.

- (3) Cut wound 3 cm x 2 cm at right side of the face, in which bone of right jaw had been broken.
- (4) Gunshot wound entry 3 cm x 2.5 cm at left side of back 6 cm from shoulder bone towards lower side. Upon putting prone in that was coming toward upper side and front side. Upon cutting the bone one tikle of plate was found blacking totem was present. No scorching was there.
- (5) Gunshot wound of entry on right side of chest which had fractured the color bone and rib. Upon proning it was going to backside and lower side.
- (6) Cut wound 3 cm x $\frac{1}{2}$ cm right side of chest in the side of nipple.

External Examination

- (1) Skull bone was broken brain membrane was torn. In the chest third and fourth rib and fifth. Towards left and first. Second of right side was broken. Both the lungs were torn, heart also was torn. 16/15 teeth in the mouth were there. There was no food in the stomach.
In my opinion death of the deceased was caused because of shock due to pre-death injuries and excessive bleeding. At the time of examination, Examination report was prepared by me, which is in my handwriting and signature. It was before me on the file. Upon this Ex. Ka 3 was put.

During body examination 2 tikle card board and 34 pallet had removed which were sealed and was handed over to concerned constable and clothes of deceased shirt, tahmad, underwear, kada, kripall. Total 5 piece and police documents and dead body was handed over to police people.

Above injuries are possible to be caused with sword, pistol, spear and sharp weapon on 22.8.92 at 5:30 PM in the evening.

The detail of possible symptom of post-death is given above in the column in postmortem report, 12 hrs difference in period of death, then said, six hour difference can be, that is, death is possible to be also in the night of 22.8.92. The shirt of deceased was cut or not, he does not remember. The injury No. 5 can be caused in such condition when striking person assault by standing in height. The injury No. 4 is from down to up side, i.e. Striking person fire the short from down side upon injured, then above both injuries can be caused by firing from the distance of 3 feet. The above injuries are of total two fire. Deceased would have taken the food before 8 hours, because in his stomach no contents were found. After 8 hrs of having food, food is digested."

11. It was found that the skull bone was broken, brain membrane was torn. In the chest, third and fourth rib and

fifth. Towards left and second of right side was broken. Both the lungs were torn. Heart also was torn. 16/15 teeth in the mouth were there. There was no food in the stomach. He says further that in his opinion, death was caused because of shock due to pre-death injuries and excessive bleeding.

12. A perusal of the description of the injuries would show that injuries 4-5 were gunshot injuries. The other four injuries were cut wounds.

13. This is a case of direct evidence.

14. PW1, a 17-year old son of the deceased, has deposed, *inter alia*, as follows:

He along with his father (deceased), mother and maternal uncle were travelling in a tractor with his deceased father driving it. A bullock cart was there on the road which was parked in the centre. This cause them to stop the tractor. Resham Singh, Darshan Singh, Jagir Singh with pistols in their hands and the other accused with other deadly

weapons, appeared. PW1 further says that Resham Singh fired the shot from the pistol which struck the back of his father and he fell down from the tractor. At that time, PW2 and one Gurdeep Singh were coming on cycles behind their tractor. When the deceased fell down, then, Pahalwan Singh with sword, Darshan Singh and Jagir Singh with pistol, Veer Singh and Daleep Singh with other deadly weapons, assaulted his father. Being empty handed, as they were not having any arms, they could not save his father. PW1 says that he knew the accused because they were their neighbours. There was enmity between the deceased and the accused acted due to not getting the road constructed and having passage.

In the cross-examination, he, *inter alia*, states as follows:

He has stated in the complaint that after firing shot by Resham Singh and falling down of his father, the other accused had fired and assaulted. He gave same statement to the Darogaji. He has no explanation for the statement not being in the FIR. PW2 is married to his father's sister. He lives about 2 to 2½ kilometres away from his village. Gurdeep Singh lives 10 to 12 kilometres away from his village. He is alive. After half quarter to one hour, Police came to the spot of incident. That it was quarter to nine. Police filled-up Panchnama at the spot which was filled in the night. Panchnama was filled in the torch light. The Panchnama was filled-up and PWs 1 and 2 are the witnesses to the Panchnama. Three of the two accused were arrested on the next day. They were Daleep Singh, Jagir Singh and Darshan Singh. They went to the Police Station on cycles. Ishwar Singh, Preetam

Singh (PW4-maternal uncle) and the mother of the PW1, accompanied him. Ishwar Singh is the resident of village Kisanpur which is 7 kilometres further from his village. For lodging the report, he went to Nanakmatta Police Station. They were coming from Nanakmatta. From their itself, they went back to lodge the report. Ishwar Singh was standing in the way at the house of maternal uncle in village Sunkari which is a village adjacent to the road. Ishwar Singh went to the Police Station with him. Ishwar Singh lodged the report at the Police Station. He and his mother and maternal uncle had told Ishwar Singh about the incident. House of the accused and their house, are located nearby. Suggestion that they had made three other persons flee from the village and had taken possession of their land, due to which there was enmity, was denied. There was no other

tree except *semal* tree on the spot. Bushes are there on both sides of the road. The *Semal* tree is on the eastern side of the road. They took one hour in coming to Nanakmatta from the village. PW1 was sitting on the right side in the tractor. PW4-maternal uncle and father of PW1 were sitting on the left side of the tractor. There were no rains at that time. The bullock cart was empty. They had stopped the tractor at the distance of 4-5 steps. The light of the tractor was burning. All the accused came, stood at front and all the three had fired the shot. Firing was done from the front. The other people climbed upon the seat of the tractor itself, assault was done with sword, spear, etc.. His father had fallen down at the seat of the tractor itself. Accused ran away. The shots were fired from the distance of 5-7 steps near to the bullock cart. The *Darogaji* had seen the blood on

tractor at the spot. The assaults with the sword, spear and sabre were done one to two times. They had not taken the tractor to the Police Station because the dead body was lying on it.

15. PW2, who was referred to by PW1 as one of the persons who were following them on cycle, corroborates PW1 that the deceased was driving the tractor, and along with him, PW1, his mother and maternal uncle were sitting. He deposes about the bullock cart. The tractor stopped. The threat by the accused who came out, is referred to. The firing by Resham Singh at the back of the deceased, and Darshan Singh and Jagir Singh, firing the shots from the front, and the others assaulting are deposed to. He claims to have gone along with PW1 to lodge the report. The report was got written from Ishwar Singh. He has told the names of the accused at the time of the filling of the Panchnama. He earlier says that on the day of the incident, at the spot also, Police did the inquiry after filling the Panchnama. At that time,

Police did not enquire with him about the incident. He denies as incorrect that the name and the address of the accused was not known till the filling of the Panchnama, and it is on account of that, that the name of the accused is absent in the Panchnama. PW1 and his parents had not met him at Nanakmatta on the day of the incident. PW4-maternal uncle also had not met. Tractor light was not burning. All the accused were standing behind the bullock cart, when they saw. There is a tree also nearby. After giving threat, firing started. They were standing near in front of tractor. Resham Singh had fired the shot from behind after climbing in tractor which had struck at the back of the deceased. Firing was done thrice. Daleep Singh attacked with spear. Jagir Singh attacked with spear from front in the stomach. Veer Singh attacked with *sabre* from behind on the head. There were no bushes on both sides but crop was there. Accused had struck one-one time with sword, *sabre* and spear. Swarn Singh-PW1, his mother and PW4 had gone on foot to lodged the report. He had also gone with them on foot holding the cycle. Four people went. The report was written sitting

at the Police Station. PW1 had written the report. PW1 is educated. Police had remained at the spot till 08.00 A.M. in the morning. It did not rain on that day.

16. PW4 is the maternal uncle. He, in chief examination, stated that at 05.30 P.M., he was at home on 22.08.1992. He had not seen any incident. In cross by prosecution, he would say that PW1 went to lodge the report in the morning. He also came to know in the morning that the deceased had died. PW1, Veera Kaur-mother of PW1 and Gurdeep Singh, all came to know about the incident in the morning and had gone near the dead body in the field and thereafter gone to file the report.

17. PW5 is the Sub-Inspector of Police. During investigation, he deposes that he had taken the statement of PW1. He deposes about the recovery statement by Darshan Singh which leads to the recovery of the pistol. Likewise, on the statement of Pahalwan Singh, the sword was recovered. Case under Section 25 of the Arms Act was registered at 1930 hours against Darshan Singh on 23.08.1992. On 28.08.1992, Resham Singh, Daleep Singh, Jagir Singh and Veer Singh were

arrested at 08.05 P.M. in the night. He speaks about the recovery of the 12-bore pistol on the statement of Resham Singh, one spear on the statement of Daleep Singh and one sabre on the statement of Veer Singh. The recovered goods were sealed separately. Case was registered against Resham Singh under Section 25 of the Arms Act, 1959. He prepared the site map which was produced as Ka-18. He states that he had reached the place of incident in the night of 22.08.1992 and due to dark, the Panchnama of the body could not be done on the same day. The investigation was done by PW5 till 28.08.1992. Thereafter, it was handed over to one Davendra Singh. In cross-examination, he would say as follows:

No serial number is there upon any pistol. Pistol without opening cannot be closed. Another pistol open with rust is there. Barrell is not getting opened. At this time, both the pistols are not in working condition. He does not remember as to after how many days of recovery, the pistols and

empty cartridges were sent to Analyzer. It was sent on 25.11.1992 by Special Messenger through the Munsif Magistrate Khateena which was received on 28.11.1992. He is neither a Ballastic Expert or did he have any special training in this regard.

In Ka 6, in "Death" column, time of death has not been mentioned. Time of dispatch of body from "Police Headquarters", is not recorded.

18. He had filled-up the Panchnama on the next day in the morning. When he had reached there, due to insufficient light on the spot, Panchnama could not be filled at that night. The dead body was lying in the paddy field at the side of the road. On eastern side of the road, *semal* tree is there. Neither the ox and the bullock cart were found and taken into possession.

19. PW6 is Devendra Singh who carried on the investigation as per orders of the Magistrate dated 11.09.1992. He

prepared Site Map-Ka 19. PW6 continued with the investigation, and in cross-examination, he states as follows *inter alia*:

"The statement of Shri Kamal Ram Arya, S.I. and S.O. Nanakmatta was taken on 7.10.92. I had taken the statements of witnesses Pratap Singh on 7.10.92. Witnesses Veera Kaur, Pratap Singh, Preetam Singh, Harnam Singh and Munsha Singh had not told me the number of the tractor. Veera Kaur had deposed me that Resham Singh had fired upon my husband, who was sitting on the tractor and Pahalwan Singh had assaulted with sword, due to that her husband fell down from the tractor. Same way Pratap Singh also had given the statement."

20. It may be true that evidence regarding the statement in Section 161 Cr.PC is permissible only as contemplated in Section 162 of the Cr.PC and Section 145 of the Indian Evidence Act, 1872. What is relevant is the fact that the mother of PW1 who is the wife of the deceased and, more importantly, who was allegedly travelling in the tractor, was the most important witness and she was not examined.

21. This is a case where the Trial Court convicted the accused and the High Court has, in appeal filed by the

accused, acquitted them. This appeal is generated by special leave. What are the contours of the jurisdiction of this Court in this matter? We would only refer to two judgments of this Court in this regard.

22. In The State Government, Madhya Pradesh v. Ram Krishna Ganpatrao Limsey and others⁴, this is what this Court, *inter alia*, held:

"5. ... The exercise of this extraordinary jurisdiction is not justifiable in criminal cases unless exceptional or special circumstances are shown to exist or that substantial and grave injustice has been done. In the case of an order of acquittal where the presumption of the innocence of an accused person is reinforced by an order of acquittal of a High Court, the exercise of this jurisdiction would not be justified for merely correcting errors of fact or law. An occasion for interference with an acquittal order may arise, however, where a High Court acts perversely or otherwise improperly or has been deceived by fraud."

23. In State of Uttar Pradesh v. Guru Charan and others⁵, we noticed the following discussion at paragraphs 41 to 43:

⁴ AIR 1954 SC 20

⁵ (2010) 3 SCC 721

"41. In *Banne case* [(2009) 4 SCC 271: (2009) 2 SCC (Cri) 260], the settled legal position which has been crystallised in a number of judgments has been reconsidered and reiterated. The principles emerging are restated in the following words: (SCC p. 286, paras 27-28)

"27. The following principles emerge from the aforementioned cases:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed to be innocent until proved guilty. The accused possesses this presumption when he was before the trial court. The High Court's acquittal bolsters the presumption that he is innocent.

3. There must also be substantial and compelling reasons for reversing an order of acquittal.

This Court would be justified in interfering with the judgment of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court's decision.

28. Following are some of the circumstances in which perhaps this Court

would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive:

(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

42. We may also notice here the observations made by this Court in *State of U.P. v. Harihar Bux Singh* [(1975) 3 SCC 167 : 1974 SCC (Cri) 799] with regard to the scope of interference by this Court under Article 136 of the Constitution. It is observed as follows: (SCC p. 170, para 14)

"14. In an appeal under Article 136 of the Constitution, this Court does not interfere with the finding of acquittal recorded by the High Court unless that finding is vitiated by some glaring infirmity in the appraisal of evidence. The fact that another view could also have been taken on the evidence on record would not justify interference with the judgment of acquittal. The judgment of the High Court in the present case has not been shown to suffer from any such weakness as might induce us to interfere. The appeal consequently fails and is dismissed."

43. The same view has been reiterated by this Court in *State of U.P. v. Gopi* [1980 Supp SCC 160 : 1979 SCC (Cri) 630] wherein it is observed as follows: (SCC p. 161, para 2)

"2. ... There may be something to be said for this view of the High Court and, if we were sitting as a court of appeal, we may have taken a different view and may have accepted the statements of PWs 4 and 6. But that is no reason to set aside the judgment of the High Court for after consideration of the various aspects of the case it cannot be said that the view taken by the High Court was not reasonably possible."

(Emphasis supplied)

24. Having set out the boundaries of this Court's jurisdiction in the matter, let us examine what weighed with the High Court.

25. In the first place, it is stated that there were material variations in the evidence of PWs 1 and 2. As to what these variations are, they have not been culled out in the judgment. We, however, find the following aspects:

- a. PW1 has stated that after half quarter to one hour, Policemen have come to the place of incident. Police had filled the Panchnama at the spot which was filled in the night. The Panchnama was filled in the torch light. PW2, on the other hand, says that Panchnama of the dead body was done on the next day in the morning. PW5-the Police Inspector, who did the Panchnama, has stated that on 23.08.1992 (next day), at the place of incidence, after filling the Panchnama of the dead body recorded and after reading, got the signatures of the Panches done. He further reiterates this when he says that he had reached the place of incidence in the night of 22.08.1992, and due to dark, the Panchnama of body

could not be done on the same day. A Sub-Inspector and PAC were posted for security of the dead body.

b. PW1 says that he had got report written of the incident from Ishwar Singh and gave to the Police Station. Ishwar Singh went to the Police Station with him. He wrote the report at the Police Station. PW1, his mother and maternal uncle had told to Ishwar Singh about the incident. PW2, on the other hand, would say that along with PW1, he also went to lodge the report. He also said that PW1 got the report written from Ishwar Singh and gave it to the Police Station. In cross-examination, however, he stated that PW1, his mother and maternal uncle had gone on foot to lodge the report. PW2 had also gone with him on foot holding the cycle. Four people had gone. PW1, no doubt, does not appear to refer to PW2 as having accompanied him to the Police Station. PW2 further says that the report had been written sitting at the Police Station. More importantly, he deposed that PW1 had written the report and that PW1 is educated. As can be noticed, according to PW1, the

report was got written through Ishwar Singh. PW2 also, in his examination, has given the same version but in cross-examination, as noticed, he states that the report was written by PW1.

c. According to PW1, the light of the tractor was burning.

According to PW2, bulbs were, however, off.

d. According to PW1, there were bushes on both sides of the road. PW2, however, deposes that there were no bushes nearby of road but crop was there.

e. PW1 deposed that they went to the Police Station on cycles. However, PW2 has deposed that PW1, his mother and PW4 had gone on foot to lodge the report and that PW2 had gone with them on foot holding the cycle.

f. Coming to the most important aspect of the matter, viz., as the actual unfolding of the incident, PW1 has stated that Resham Singh fired the shot from pistol which struck at the back of his father. When his father fell down, then, others attacked. All the accused stood at front and all the three had fired the shot. He further deposes that the firing was done from the

front. Other people climbed on the tractor. Upon the seat of the tractor itself, assault was done with spear, sword, etc. Total three shots were fired. The shots were fired from the distance of 5-7 steps near to the bullock cart.

26. PW2, who was coming on cycle, according to the prosecution, behind the tractor and witnessed the incident, also has deposed that Resham Singh fired the shot by the pistol at the back of the deceased. Darshan Singh and Jagir Singh fired from the front. Pahalwan Singh and Daleep Singh attacked with other weapons from the front. When they saw them, then, all the accused were standing behind the bullock cart. Then, he says, Resham Singh had fired the shot from behind after climbing in the tractor which had struck at the back of the deceased. There were total three fires done. Daleep Singh attacked with spear from the front in the stomach. Veer Singh assaulted with *sabre* from behind on the head.

27. These are apparently the variations which appear to have impressed the High Court.

28. Before we deal with them, let us have a look at the other aspects which weighed with the High Court. PW2 was found to be not a non-partisan witness being related to the informant. PW4 is the maternal uncle of PW1, who, according to PW1, was travelling with him in the tractor. He has turned hostile. It is worthwhile to advert to what PW4 has deposed:

"On 23.08.1992 Darogi had not recovered any sword and pistol in front of me from the chhappar of Pahalwan Singh and Darshan Singh. No incident had taken place before me.

Darogaji had not asked anything from me about the incident. His statement under section 361 Cr.P.C. was read. He said, I cannot say the reason that how my such statement was recorded. It is wrong to say that after meeting the accused today I am not telling this thing.

About the incident, I came to know in the morning. That Singara Singh had died. His dead body is lying in the field. Swarn Singh went to lodge the report in the morning. He also came to know in the morning only that Singara Singh had died."

29. The further circumstance is the improbability of the accused fleeing away in the bullock cart after inflicting wounds and firing.

30. The next circumstance relied upon by the High Court is the fact that PW1 deposed that the light of tractor was on whereas PW2 deposed that the bulbs of the tractor being off. Trial Court has got over it by reasoning that if the bullock cart was standing blocking, then, blowing the horn and burning the light by the driver is natural and possible. PW2 was coming on the cycle behind the tractor and it may not have been possible for him to know that the tractor lights were burning or not. At any rate, this by itself is not significant contradiction or circumstance as would merit consideration in the matter of reversing a conviction.

31. The next circumstance relied on by the High Court is that according to the prosecution case, PW1, his mother and PW4-his uncle, were travelling along with the deceased in the tractor. They were sitting on the tractor and on the mudguard. If there was firing, as projected in the

prosecution case, the High Court found it unnatural that these persons would not suffer any pellet injury when firing was done from the front.

32. Then, we come to the circumstances which relate to the inconsistency between the ocular evidence and also the medical evidence. PWs 1 and 2 have both deposed that three shots were fired. The medical evidence, undoubtedly, would show that there were two gunshot injuries, viz., injury no.4 and injury no.5, which we have set out earlier. Gunshot wound entry is on the left side of the back from the shoulder bone towards the lower side. No scorching was found. Injury no.5 was the gunshot wound of entry on the right side of the chest which had fractured the collarbone and rib. Upon pruning, it was going to back side and lower side.

33. Regarding the injury (injury no.4), being suffered in the back, the High Court has noted that the case of the informant is that the accused came abusing in front of the tractor and then inflicted injuries with the weapons which they were carrying. The court records that the learned AGA was gracious enough to admit that the medical evidence did

not support the eyewitness account. It is also found that injuries sustained by the sharp-edged weapons were from down to top and not up to down, and therefore, there was inconsistency between the eyewitness account and medical evidence in this respect also. The High Court further reasons that if PW1 is believed that Resham Singh's bullet hit at the back of the deceased, then, there is no explanation for *ante mortem* injury no.5 where the wound of entry is on the right of the chest with blackening and tattooing present. There was no explanation found for injury no.6 incised wound of 3 cm. x $\frac{1}{2}$ cm. on the right side of the chest near the nipple. In other words, it is found that if PW1 is believed, then, there would be no *ante mortem* injuries on the front of the deceased [This is apparently a mistake]. In normal course, if the assailants have attacked from the front, as is the prosecution case, there is justification for injuries nos. 5 and 6. But there is no justification for injury no.4. The High Court further reasons that if the prosecution witness is believed that the deceased was hit from the front, then, the injury no.4

should not have been there. It is further noted by the High Court that it is not the case of the prosecution that the deceased, while driving the tractor, bent in such a way that the bullet hit his back. The statement by PW2 that Resham Singh stepped into the tractor and fired from behind which hit the deceased, appeared to the High Court a new development. PW3-Doctor, in his cross-examination, deposed that injury no.5 was possible when the assailants hit the victim from a height. Injury no. 4 was possible, according to the medical officer, when the assailants fired on the victim from below (comparatively low level). It is on this basis, the High Court reasons that reasonable suspicion arises whether the incident took place in the manner depicted by the eyewitness. Medical evidence does not support the eyewitness account, it was found. It is on this basis, that the High Court has taken a view that the accused deserve to be acquitted.

34. PWs 1, 2 and 4 are the witnesses for the prosecution who were stated to have witnessed the incident. There can be no doubt that the deceased died a brutal death. The nature

of the injuries leaves us with no doubt in this regard. The only question is whether these injuries were caused by the accused and whether the incident took place in the manner spoken to by the prosecution witnesses.

35. The mother of PW1, who was travelling along with the deceased, has not been examined even though her statement has been taken as is proved by the statement of the Investigating Officer. PW4-brother-in-law of the deceased, as noticed by us, has turned hostile. He denied that any such incident happened before him. He has deposed that he came to know in the morning that the death has taken place. He further has deposed that the dead body was lying in the field and that PW1 went to lodge the report in the morning and he has also come to know in the morning only about the death. He further deposed that the wife of the deceased and the cyclists, all came to know about the incident in the morning and thereafter they went to lodge the report.

36. In the FIR, a contradiction was noticed by the Trial Court itself *vis-à-vis* the deposition of PW1. In the testimony of PW1, he has attributed overt acts by Jagir

Singh and Daleep Singh whereas it is not so found in the FIR. In the FIR, what is recorded is, *inter alia*, that Resham Singh fired the shot which struck at the back of the deceased. Then, he says Pahalwan Singh with sword, Darshan Singh with pistol and Veer Singh with *sabre* (Kappa), assaulted. No acts are attributed in the FIR, as is, in fact spoken to by PW1 in the court against Daleep Singh and Jagir Singh. In the court, PW1 has stated that when his father fell down, then, Pahalwan Singh with sword, Darshan Singh with pistol, Veer Singh with *sabre*, Jagir Singh with pistol and Daleep Singh with spear, assaulted his father. PW2 has also sought to implicate Jagir Singh and Daleep Singh. Thus, the nature of the involvement of Jagir Singh and Daleep Singh, according to version of PWs 1 and 2, involves a departure from the case set out in the FIR.

37. Another aspect to be noticed is that PW2 was a panch witness. Panchnama was held, as already concluded by us, on 23.08.1992. There is no dispute in this case about identification. In other words, there is no case for the accused that PW2 did not know them. Thus, PW2, it must be

taken, knew them. PW2 was admittedly a panch witness. However, PW2 does not name any of the accused when the Panchnama took place on 23.08.1992. According to him, he did name them but PW5 says otherwise. The Trial Court has overcome this anomaly by holding that the purpose of holding the Panchnama (inquest) would not comprehend within it, an inquiry into who has committed the offence.

38. It is true that this Court has repeatedly held that the purpose of inquest under Section 174 of the Cr.PC, as contained in the said provision, the person holding the inquest, in short, is not to make an inquiry about who are the accused (See in this regard the judgment in Tehseen Poonawalla v. Union of India and another⁶). But is equally true that PW2 has not taken the names of any of the accused before the Investigating Officer contrary to his evidence as is proved by the evidence of the Officer.

39. It is also pressed before us by the State that the High Court has ignored the aspect relating to recovery of the weapons used by the accused. PW5-Investigating Officer has

⁶ (2018) 10 SCC 498

spoken about recovery being effected from Darshan Singh and Pahalwan Singh. From Darshan Singh, the pistol was got recovered. From Pahalwan Singh, the sword was got recovered. This is done pursuant to the arrest on 23.08.1992. On 28.08.1992, Resham Singh, Daleep Singh, Veer Singh and Jagir Singh were found and arrested. Pursuant to interrogation, PW5 speaks about their stating that they had committed the murder along with Daleep Singh and Pahalwan Singh on 22.08.1992. PW5 speaks about recovery of 12-bore pistol from Resham Singh, one spear by Daleep Singh and one *sabre* by Veer Singh. In fact, the High Court has indeed not adverted to the recoveries, as such.

40. Appellant-State seeks support from judgment in Mangoo v. State of Madhya Pradesh (supra). Therein, this Court took the view that when the medical evidence was not in entire conflict with the ocular version of child witness, it would not be fatal to the prosecution. It was a case where there were discrepancies regarding the number of blows inflicted and which side of the weapon was used in the first instance.

41. In Abdul Sayeed v. State of Madhya Pradesh⁷, this Court discussed elaborately the case law on the subject of conflict between medical evidence and ocular evidence:

"Medical evidence versus ocular evidence

32. In *Ram Narain Singh v. State of Punjab* [(1975) 4 SCC 497 : 1975 SCC (Cri) 571 : AIR 1975 SC 1727] this Court held that where the evidence of the witnesses for the prosecution is *totally* inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case.

33. In *State of Haryana v. Bhagirath* [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15)

"15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt

⁷ (2010) 10 SCC 259

the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

(Emphasis added)

34. Drawing on *Bhagirath* case [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] , this Court has held that where the medical evidence is at variance with ocular evidence,

"it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'".

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

"21. ... The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the 'credit' of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

[Vide *Thaman Kumar v. State (UT of Chandigarh)* [(2003) 6 SCC 380:2003 SCC (Cri)1362] and *Krishnan v. State* [(2003) 7 SCC 56:2003 SCC (Cri) 1577] at SCC pp. 62-63, para 21.]

36. In *Solanki Chimanbhai Ukabhai v. State of Gujarat* [(1983)2 SCC 174:1983 SCC (Cri) 379: AIR 1983 SC 484] this Court observed: (SCC p. 180, para 13)

"13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the

ground of alleged inconsistency between it and the medical evidence."

(Emphasis added)

37. A similar view has been taken in *Mani Ram v. State of U.P.* [1994 Supp (2) SCC 289: 1994 SCC (Cri) 1242] , *Khambam Raja Reddy v. Public Prosecutor* [(2006) 11 SCC 239 : (2007) 1 SCC (Cri) 431] and *State of U.P. v. Dinesh* [(2009) 11 SCC 566 : (2009) 3 SCC (Cri) 1484] .

38. In *State of U.P. v. Hari Chand* [(2009) 13 SCC 542:(2010) 1 SCC (Cri) 1112] this Court reiterated the aforementioned position of law and stated that: (SCC p. 545, para 13)

"13. ... In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

42. There are certain other aspects which strike us. The incident allegedly unfolded when the deceased along with PW1, his wife, and brother-in-law (PW4) were coming back from Nanakmatta in a tractor. The case of the prosecution further is that the accused came forward and committed the acts attributed to them. There is an allegation that some relatives accompanying the deceased were sitting on the mudguard of the tractor. There is a case for the prosecution that the deceased fell from the tractor when PW1 was asked how he went to the Police Station to lodge the report and whether he had taken the tractor, his answer was that since the body of his father was lying on it, they did not take the tractor and they went on foot. Therefore, it must be taken that the body was on the tractor. PW5-the Investigating Officer, on the other hand, deposed that the dead body of the deceased was lying in the paddy field at the side of the road. PW5-original Investigating Officer does not speak a word about the tractor. Was an effort made to trace the tractor and to make it available in evidence as the details about the tractor would have shed light on

the position of the deceased and of the others and facilitated the proving of the prosecution case. According to PW1, the tractor was left behind as the dead body was lying on it. As noted, PW5 speaks otherwise and the dead body was found at the paddy field at the side of the road. Whether, therefore, the tractor was in fact used as claimed by the prosecution? There is no evidence regarding any investigation conducted by the Officer in regard to the tractor. The nature and size of the tractor remains a mystery.

43. We have already noticed that there are contradictions in the evidence of PWs 1 and 2 as to who wrote the report. Did PW1 himself write the report as claimed by PW2 in his cross-examination or was it written by Ishwar Singh, who according to PW1 wrote the report? There are contradictory answers given by PWs 1 and 2 as already noticed.

44. Another aspect which strikes us is as follows:

According to PW1, his mother who was travelling with him and his father and who

has witnessed the entire incident, is supposed have walked a good seven to eight kilometres to the Police Station, if PW2 is believed.

PW1 claims that he, his mother and his maternal uncle (PW4) had told Ishwar Singh about the incident, and after writing the report, PW1 appended his signatures. As already noticed, PW4-maternal uncle has turned hostile. PW1 does not speak about PW2 accompanying them to the Police Station. PW2, on the other hand, would state that he also went along with them (not riding the cycle but on foot). Is it likely that the mother of PW1, who has witnessed the ghastly murder of her husband and who would be shell-shocked, would undertake the journey seven to eight kilometres long or would she rather not prefer to stay near the body of her husband? She has not been examined.

45. If the incident had happened, as projected by the prosecution, and PW1, his mother and PW4 were accompanying the deceased apart from PW2 and other cyclists, would they not immediately rush the body to the nearest hospital? In fact, from the post-mortem report, it would appear that the body reached the hospital only on 23.08.1992 in the afternoon. These aspects create doubts in our minds and strengthens the judgment of the High Court further.

46. As far as injury no.4 is concerned, quite indisputably, it has been sustained by the deceased on the back side. The site of the injury is not the subject matter of any controversy. Both, oral testimony and the medical evidence, establish this fact. In regard to this fact, there is no contradiction between the oral version of the witnesses and the Expert opinion.

47. In fact, the doubt arises about the prosecution version from the oral testimony itself. As noticed already, PW1 is already unambiguous when he states that all the accused came at front and all the three had fired the shots. The firing,

PW1 was specific, was done from the front. He claims that other people climbed on the tractor. This can mean that the people who had not done the firing and who were otherwise armed according to his version, climbed on the tractor. In his earlier version, in the chief examination, he, on the other hand, states that when his father fell down, the Pahalwan Singh with sword, Darshan Singh with pistol, Veer Singh with Sabre, Jagir Singh with pistol and Daleep Singh with spear, assaulted his father. This itself manifests a contradiction.

48. PW1 deposed that upon the seat of the tractor itself, assault was done with sword, spear, etc. His father fell down on the seat of the tractor. If the version of PW1 is accepted, it is difficult to explain how injury no.4, viz., gunshot injury could be sustained by his father on the back. It is to be immediately noticed that this does not involve alluding to the medical evidence as it is not the prosecution version that injury no.4 was not sustained in the back side. It is to be noticed that according to PWs 1 and 2, the first shot was fired by Resham Singh. PW1 states

that he fired from the pistol which struck at the back of his father. According to the prosecution version, deceased was driving the tractor. We have already noticed the non-availability of the details of the tractor. Incidentally, PW1 gives the number of the tractor as 1815.

49. The real contradiction comes in the form of testimony of PW2. PW2 states that Resham Singh fired the shot from behind after climbing in tractor which had struck at the back of deceased whereas PW1 has deposed that all the accused came stood at front and all the three had fired the shot. This is an inconsistency which goes to the root of the matter. If the above version of PW1 is believed, it is the deposition of PW2 which comes under a cloud. More importantly, injury no.4, viz., the gunshot injury at the back remains unexplained. For this, we do not have to go into the contents of the medical evidence. It is not doubt true that that the medical evidence also points to the injury no.4 being sustained by the deceased on his back side.

50. We have already noticed that PW2 has initially stated that PW1 got the report written by Ishwar Singh. We have further noticed that contrary to the evidence of PW1 that the *Panchnama* of the dead body (inquest) was done on the very same night in torch light, both PWs 2 and 5 have deposed that *Panchnama* was done only on the next morning. PW2 takes a stand that he had told the names of the accused at the time of the inquest. There is not much dispute that the inquest does not bear him out in this regard. PW2 has deposed that Resham Singh fired the shot from behind after climbing in the tractor which had struck at the back of the deceased. PW1, on the other hand, has stated that the shots were fired from the distance of five to seven steps near to the bullock cart. Even proceeding on the basis on what the Trial Court has accepted, viz., that five to seven steps near to the bullock cart is not to be understood as five to seven steps around the bullock cart but it would be away from the bullock cart, and therefore, near to the tractor, PW1 has no case that Resham Singh has fired the shot after climbing in the tractor, thus, striking at the back of the deceased. PW2

speaks about Daleep Singh assaulting with spear and Veer Singh assaulting with *sabre* from behind on the head. It is to be noted that in the FIR, Resham Singh is stated to have fired the shot which struck at the back of his father. Pahalwan Singh with sword, Darshan Singh with pistol and Veer Singh with *sabre* assaulted. No role has been attributed in the FIR to Daleep Singh and Jagir Singh whereas when the evidence opened, PW1 has gone on to attribute specific overt acts to them also. While a FIR is not to be an encyclopaedia of all that transpired, the omission to mention about actual overt acts to Daleep Singh and Jagir Singh, creates serious doubt about the version.

51. PW2 also stated that they had left the tractor at the spot and had not taken it to the Police Station to lodge the report as the dead body was on it. On the other hand, the site of the dead body is the paddy field, according to PW5. The tractor is not referred to by PW5.

52. As regards the deceased falling down on being shot at and assaulted, PW5 would state that PW1 did not tell him

anything (apparently, in the 161 statement about the fact of the deceased falling down).

53. The bullock cart was not taken into possession by the Officer.

54. The next aspect is about the recoveries attributed to the accused based on the statements. PW5 has stated, *inter alia*, as follows:

"Darshan Singh had told that pistol through which I had fired that has been kept hiding in the heap of straw (Bhoosa) in the house of Pahalwan Singh, can give after taking out and Pahalwan Singh told that the sword from which I had killed Singara Singh. That I have kept hiding in the heap of straw (Bhoosa) near my house, can give after taking out. We people went with accused and amongst the accused Pahalwan Singh had given one sword from the heap of straw near to his house and Darshan Singh had given one pistol 12 bore after taking out and said that it is, that pistol and sword which was used in the murder of Singhara Singh."

55. PW5 has spoken about the recoveries effected from Resham Singh, Daleep Singh and Veer Singh. Recovery of a pistol was effected according to PW5 on the basis of a statement given by Resham Singh; spear on the basis of

statement given by Daleep Singh and sabre on the basis of the statement by Veer Singh.

56. The manner of effecting recovery has been described by PW5 in the following words:

"In Ex. Ka 12 Darshan Singh and Pahalwan Singh told that we can given sword and pistol which has been kept hiding near the house of Pahalwan Singh. Accused moved ahead and went near to chhapper. Only one memo of recovery of Pahalwan Singh and Darshan Singh is there. Before preparing this memo, the statement of accused were not recorded on separate paper. In the same way memo of accused Resham Singh, Daleep Singh and Veer Singh also is one and not noted anywhere separately. But all the three said that we can give after going and all three accused moved ahead and carried at the place of recovery."

The finding in the FSL Report that the cartridge (apparently recovered from the site) has been fired from the 12-bore pistol no.1/69, would not be sufficient for us to hold that the prosecution version in this case stands established and that too in an appeal against the acquittal.

In a criminal trial, the prosecution can succeed only if the guilt of the accused is brought home. That the accused

may have done the crime barely suffices. The case of the prosecution as sought to be made out must be established.

57. In the state of evidence, in this case otherwise, as discussed, particularly bearing in mind the nature of the limited jurisdiction this Court exercises *qua* the order of acquittal rendered by the High Court, the appellant has not made out a case in interfering with the impugned judgment of the High Court. Resultantly, the appeals fail and are accordingly dismissed.

.....J.
(SANJAY KISHAN KAUL)

.....J.
(K.M. JOSEPH)

New Delhi,
November 7, 2019.