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## CHARAN SINGH &amp; ORS.

v.

## STATE OF PUNJAB

July 26, 1974

[H. R. KHANNA AND Y. V. CHANDRACHUD, JJ.]

B

*Criminal Practice and Procedure—Appreciation of evidence—Reference under s. 374 Cr. P.C.—Duty of High Court to reappraise evidence—Extent to which evidence in one case could be used in another.*

Four appellants were convicted and sentenced to death for the murder of the two deceased; two accused for the murder of one of the deceased and the other two accused for the murder of the second deceased. On appeal, the High Court, without a detailed discussion of the evidence of the eye witnesses, merely observed that their evidence inspired full confidence and affirmed the judgment of the trial court.

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On further appeal to this Court the appellants contended that had the witnesses been present, the assailants would not have spared them.

Dismissing the appeal of two accused and allowing that of the other two:

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HELD : (1) This Court does not normally, in an appeal by Special Leave, go afresh into the question of credibility of witnesses and reappraise the evidence. In the present case, however, there was hardly any discussion worth the name of the evidence of eye witnesses in the judgment of the High Court. As the High Court was dealing with not only an appeal filed by the appellants but also a reference under s. 374 Cr. P. C. for confirming the death sentence, it was essential for it to have reappraised the evidence adduced in the case and come to an independent conclusion whether the guilt of the accused had been proved or not. While dealing with a reference under s. 374 Cr. P. C. the High Court should consider the proceedings in all their aspects and come to an independent conclusion on the material on record. In view of this infirmity, the evidence had to be examined by this Court. [568E-569B]

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*Junman & Ors. v. The State of Punjab*, A. I. R. 1957 S. C. 469 and *Bhupendra Singh v. The State of Punjab*, [1968] 3 S. C. R. 404. referred to.

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(2) The question of credibility of a witness has to be decided by referring to his evidence and finding out as to how the witness has fared in cross-examination and what impression is created by his evidence taken in the context of the other facts of the case. Decided cases can be of help if there be a question of law like admissibility of evidence but reference to decided cases is hardly apposite when the question before the court is whether the evidence of a particular witness should or should not be accepted. [574B-D]

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(3) In the instant case there appears to be no sufficient ground for disbelieving the evidence of the three eye witnesses. The witnesses had taken shelter and thus remained unhurt. As the ocular evidence consists of persons, two of whom were close relatives of the two deceased, it is not likely that the eye witnesses would spare the real assailants. The evidence of the eye witnesses as with regard to the part played by the two accused, whose conviction is upheld in respect of the murder of one of the deceased is also in conformity with the medical evidence. [570E]

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(4) As regards the other two accused, the evidence does not establish their complicity in the murder of the deceased beyond reasonable doubt and it is extremely unlikely that the appellants would have associated an old man with them in the assault, who, on account of his age, would be more of a handicap and a burden to them especially at the time of escaping after the occurrence. [572D-F]

Appeal by Special Leave from the Judgment & Order dated the 4th April, 1973 of the Punjab & Haryana High Court in Crl. Appeal No. 906 of 1972 and Murder Ref. No. 55 of 1972.

*Frank Anthony* and *R. L. Kohli*, for the Appellants.

*A. N. Mulla*, *H. S. Marwah* and *D. P. Sharma*, for the Respondents.

The Judgment of the Court was delivered by

KHANNA, J.— Karam Singh (60) and his son Sukhdev Singh (38) were shot dead in their field in the area of village Dhandari at a distance of seven miles from police station Sadar Ludhiana on August 5, 1971. Four persons Charan Singh (65), Mukhtiar Singh (50), Gurdev Singh (40) and Paramjit Singh (24) were tried in connection with that occurrence in the court of the Sessions Judge Ludhiana. The learned Sessions Judge convicted Charan Singh and Mukhtiar Singh under section 302 Indian Penal Code for the murder of Karam Singh and sentenced each of them to death. Charan Singh and Mukhtiar Singh were also convicted under section 302 read with section 34 Indian Penal Code for the death of Sukhdev Singh and each of them was sentenced to undergo imprisonment for life on that count. Gurdev Singh and Parmjit Singh were convicted under section 302 Indian Penal Code for the murder of Sukhdev Singh and each of them was sentenced to death on that score. Gurdev Singh and Paramjit Singh were further convicted under section 302 read with section 34 Indian Penal Code for the death of Karam Singh and each of them was sentenced to undergo imprisonment for life on that account. Charan Singh, Mukhtiar Singh and Gurdev Singh were also convicted under section 27 Arms Act and each one of them was sentenced to undergo rigorous imprisonment for a period of four years on that count. On appeal and reference the Punjab and Haryana High Court affirmed the judgment of the trial court. The four accused thereafter filed this appeal by special leave.

Charan Singh accused is the real brother of Karam Singh deceased. Paramjit Singh accused is the grandson of Charan Singh. Gurdev Singh accused is the brother of the wife of Charan Singh, while Mukhtiar Singh accused is a friend of Gurdev Singh. The two deceased persons as well as Charan Singh and Paramjit Singh accused are the residents of village Dhandari. Gurdev Singh is a resident of village Bhutari, at a distance of about 15 miles from Dhandari, while Mukhtiar Singh is a resident of village Khatra Chaharan. Charan Singh accused and Karam Singh deceased were the sons of Sardara Singh. Sardara Singh had three other brothers. One of the brothers was Nirranjan Singh. Nirranjan Singh was issueless and without a wife. Hazara Singh was another brother of Sardara Singh. Mann Dass (PW 4), who lodged the first information report, is the grandson of Hazara Singh. Apart from Sukhdev Singh who was killed along with Karam Singh deceased, the latter had another son Gurdial Singh (PW 8) who has appeared as an eye witness of the occurrence.

The prosecution case is that on September 28, 1966 Nirranjan Singh, uncle of Charan Singh accused and Karam Singh deceased,

A executed a will in favour of Charan Singh bequeathing all his movable and immovable property in favour of Charan Singh accused. On March 18, 1971 Niranjana Singh executed another document cancelling the will which he had earlier executed in favour of Charan Singh. It is stated that Niranjana Singh revoked the will in favour of Charan Singh at the instance of Karam Singh deceased and Mann Dass PW. Niranjana Singh thereafter got back possession of his land from Charan Singh. On June 15, 1971 Niranjana Singh leased out half of his land in favour of Mann Dass for a period of ten years. The remaining half of the land was sold by Niranjana Singh in two equal shares, one in favour of Garcha Poultry Farm and the other in favour of Sukhdev Singh deceased and Gurdial Singh PW, sons of Karam Singh deceased. Charan Singh accused felt aggrieved against Karam Singh deceased on account of being deprived of the land of Niranjana Singh.

D About a month before the present occurrence, it is stated, Mann Dass and Sukhdev Singh were going to their lands which they had obtained from Niranjana Singh. Near a well Paramjit Singh and Gurdev Singh accused fired shots from a rifle and gun at Sukhdev Singh deceased. The shots, however, did not hit Sukhdev Singh. The matter was then reported by Sukhdev Singh at police station Sadar Ludhiana. On July 8, 1971 the Gram Panchayat intervened in the dispute between Charan Singh and Karam Singh. A compromise was got recorded. It was stated in the compromise that Charan Singh had left the possession of the land. The compromise was signed by Charan Singh, Karam Singh and Sukhdev Singh.

E On August 5, 1971 at about 5 p.m., it is stated, Mann Dass PW and Kamikkar Singh (PW 18) were hoeing maize crop in the land which Mann Dass had taken on lease from Niranjana Singh, Kamikkar Singh who belongs to village Paddi is a friend of Mann Dass and had come to village Dhandari two days before the present occurrence. Karam Singh and his sons Sukhdev Singh and Gurdial Singh were also at that time hoeing maize crop in the adjoining land which had been purchased by Sukhdev Singh and Gurdial Singh from Niranjana Singh. The four accused then emerged from a nearby sugarcane field of Charan Singh accused. Paramjit Singh was armed with a rifle. Mukhtiar Singh and Gurdev Singh had single barrel guns, while Charan Singh had a country-made pistol. The accused raised challenging shouts. When they were at a distance of 65 to 70 Karams from Sukhdev Singh, Paramjit Singh fired a shot from his rifle towards the field of Sukhdev Singh. Sukhdev Singh then crawled towards the Kotha of the tubewell installed in that field. Karam Singh also did the same thing. Mann Dass and Kamikkar Singh ran towards a Khal (water course). The four accused fired shots from their respective weapons at Sukhdev Singh and Karam Singh. Kamikkar Singh, who had a weak leg and was within the firing range, received bullet injuries on his back. Mann Dass took shelter behind the Khal. Sukhdev Singh deceased had a licensed gun in the Kotha. He then started firing from his gun in reply to the firing by the accused. All

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the four accused then proceeded towards the tubewell Kotha. Gurdev Singh and Paramjit Singh fired from their respective weapons when they were at a distance of 15 or 20 yards from the tubewell Kotha towards Sukhdev Singh. Sukhdev Singh then came out of the Kotha and ran towards the eastern side. Paramjit Singh and Gurdev Singh came in front of Sukhdev Singh and fired with their respective weapons at him. Sukhdev Singh fell down on receipt of those shots from the fire-arms. Karam Singh who was taking shelter at a distance of about two karams from the tubewell Kotha then tried to run away. Charan Singh and Mukhtiar Singh accused, however, came in front of Karam Singh and fired shots at him from their fire-arms, as a result of which Karam Singh fell down. As Karam Singh was lying injured, Paramjit Singh went near him and fired two or three shots at him with his rifle. The four accused then went towards the railway line. The occurrence was witnessed by Mann Dass, Kamikkar Singh as well as by Gurdial Singh, who had continued to stay in the field where he was working.

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After the departure of the accused, Mann Dass, Kamikkar Singh and Gurdial Singh went to Karam Singh and Sukhdev Singh found that both were lying dead. Leaving Gurdial Singh and Kamikkar Singh near the dead bodies, Mann Dass proceeded towards the police station. Mann Dass met ASI Amrik Singh near railway station Dhandari and made statement PH to him at 6.15 p.m. A.S.I. Amrik Singh then sent statement PH through a constable to police station Sadar Ludhiana. The statement was received at the police station at 6.45 p.m. Formal first information report PH/2 was prepared on the basis of the said statement and a case was registered against the accused.

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Raghubir Singh student (PW 13) at the time of firing, it is alleged, was present at his well at a distance of about 80 or 100 karams from the place of occurrence. Raghubir Singh heard the reports of the gun fires and about 10 minutes after the firing had stopped, he went to the place of occurrence. He found the dead bodies of the two deceased persons lying there guarded by Gurdial Singh and Kamikkar Singh PWs. On enquiry Raghubir Singh was told about the occurrence by Gurdial Singh and Kamikkar Singh PWs. Raghubir Singh was further told that Mann Dass had gone to the police station to lodge the report. Raghubir Singh was asked also to join Mann Dass. Raghubir Singh then went towards the road but could not catch a bus.

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ASI Amrik Singh after sending report to the police station proceeded to the place of occurrence along with Mann Dass. The Assistant Sub Inspector found the dead bodies of Sukhdev Singh and Karam Singh lying there being guarded by Gurdial Singh and Kamikkar Singh. The Assistant Sub Inspector prepared the inquest reports relating to the two dead bodies. Eleven empty cartridges of 12 bore were taken into possession from the place of occurrence by the Assistant Sub Inspector and were put into a sealed parcel. One empty rifle cartridge was also found there and was taken into possession. The licenced gun P-7 of Sukhdev Singh deceased along with a bag containing his licence was found near the dead body of Sukhdev Singh. The Assistant Sub Inspector took that gun and the bag into possession.

A Four .12 bore empty cartridges were recovered from inside the tubewell Kotha. Three Khurpas were found in the main field of Sukhdev Singh deceased, while two Khurpas were found in the maize field of Mann Dass. These Khurpas too were taken into possession.

B Post mortem examination on the two dead bodies of Karam Singh and Sukhdev Singh deceased was performed by Dr. Ajit Singh in Civil Hospital Ludhiana at 4 p.m. on August 6, 1971. Earlier on that day at 4 a.m. Dr. Ajit Singh examined Kamikkar Singh and found four simple injuries consisting of lacerated wounds on the back of the elbow, leg and neck of Kamikkar Singh.

C The four accused, it is stated, absconded after the occurrence. Charan Singh accused was arrested on receipt of secret information by A.S.I. Amrik Singh on August 17, 1971 on Grand Trunk Road near Samrala. Mukhtiar Singh and Gurdev Singh accused surrendered on the same day, i.e. August 17, 1971 in the court of Shri Bakhshish Singh magistrate Sunam. Paramjit Singh accused was arrested on April 11, 1972 by Sub Inspector Ajit Singh.

D Gurdev Singh accused, according to the prosecution, was interrogated by Sub Inspector Ajit Singh (PW 19) on August 20, 1971. Gurdev Singh then disclosed that he had kept concealed his licensed single-barrel gun along with its licence in a heap of chaff lying in his house and that he could get the same recovered. Statement PS of Gurdev Singh was then recorded by the Sub-Inspector and was thumb-marked by Gurdev Singh. Sub Inspector Ajit Singh thereafter started interrogation of Mukhtiar Singh accused. Mukhtiar Singh made disclosure statement PJ to the effect that he had kept concealed his licensed gun along with the licence in the *Turi* lying in the entrance room of his house. Gurdev Singh then led the Sub Inspector and the witnesses to his house and from there got recovered gun P-2 and its licence P-5. The gun and the licence were taken into possession as per memo Ex. PU. The gun was put into a sealed parcel. Mukhtiar Singh accused thereafter led the police party to his Deodi and from there got recovered his gun Ex. P3: along with its licence P-6. The gun put into a sealed parcel. ASI Amrik Singh interrogated Charan Singh accused on August 22, 1971. Charan Singh disclosed that he had buried country-made pistol in a ditch near a rubber factory situated on the Grand Trunk Road and railway line at Dhandari and that he could get the same recovered. Memo PTD with regard to the statement of Charan Singh was prepared. Charan Singh then led the police party to that place and got recovered pistol P-4. The pistol was then put into a sealed parcel.

H The two sealed parcels, one containing 11 empty .12 bore cartridges and the other containing one empty rifle cartridge, were sent to the office of the Director, Forensic Science Laboratory, Chandigarh on August 11, 1971. Sealed parcels containing guns P-2 and P-3 and pistol P-4 were also later sent to the said Director, Shri J. K. Sinha, Assistant Director, Forensic Science Laboratory (PW 14) found that two of the empty cartridges which were recovered from the spot had

been fired from pistol P-4. Three other empty cartridges which were recovered from the spot were found by Shri Sinha to have been fired from gun P-2 of Gurdev Singh. Gun P-3 of Mukhtiar Singh was found by Shri Sinha to be not in proper working condition. The cocking portion, i.e. hammer, of the gun was found to be jammed. As such, it was not possible to find whether any of the empty cartridges which were recovered from the spot had been fired from gun P-3.

At the trial the four accused in their statements under section 342 of the Code of Criminal Procedure denied the prosecution allegations regarding their participation in the occurrence. Charan Singh admitted that the will which had been made by Niranjana Singh in his favour was subsequently revoked. According to Charan Singh, the possession of the land of Niranjana Singh, however, remained with him. Charan Singh denied that he absconded after the occurrence or that he got recovered pistol P-4. According to Charan Singh, he was all along with the police. Mukhtiar Singh stated that he had surrendered himself in court on August 17, 1971. According to Mukhtiar Singh, the police had taken the licence of his gun from his house about four or five days earlier. Gurdev Singh stated that he never made any disclosure statement about gun P-2 and that the recovery of the gun had been foisted upon him. Paramjit Singh in his statement before the committing magistrate when asked about the occurrence stated he had already sold away his rifle. Paramjit Singh denied that he had remained absconding till his arrest on April 17, 1972. No evidence was produced in defence.

The trial court accepted the prosecution case and accordingly convicted and sentenced the accused as above. On appeal and reference the high Court affirmed the judgment of the trial court.

It cannot be disputed that Charan Singh and Sukdev Singh were shot dead on August 5, 1971 in the fields in the area of village Zhandari. Assistant Sub Inspector Amrik Singh found the two dead bodies lying in those fields when he arrived there on the evening of that day. Dr. Ajit Singh who performed post mortem examination on the two dead bodies found the following seven injuries on the body of Karam Singh :

- "1. Abrasion 5/8" on the left side of nose.
2. Lacerated wound  $2" \times \frac{3}{4}"$   $\times$  bone deep on the left side of forehead including the middle part of left eye brow. The margins were black and inverted. It was oblique in direction.
3. Lacerated wound  $1" \times \frac{1}{2}"$   $\times$  bone deep on right temporal region. The margins were black and oblique in direction.
4. Lacerated wound  $4" \times 4\frac{1}{4}"$  muscle deep on inner side upper part of right forearm, the margins were black.
5. Abrasion 3 in number  $\frac{1}{2}" \times \frac{1}{4}"$  on inner side middle right forearm.
6. Lacerated wound  $1" \times \frac{1}{2}"$   $\times$  chest cavity deep on the back of chest in the left lower part. The margins were black and inverted. The direction as inwards-upwards and forwards.

**A**

7. Lacerated wound  $4\frac{1}{2}" \times 2"$  chest deep on front of right side of chest, 2" above the right nipple. Margin were lacerated and everted. Heart duly pierced was protruding out."

**B**

The following 12 injuries were found by the doctor on the body of Sukhdev Singh :

**C**

- "1. Lacerated wound  $\frac{1}{4}" \times \frac{1}{4}"$  bone deep on front of right leg upper part, 2" below the knee-joint. The margins were black.
2. Lacerated wound  $1" \times \frac{1}{2}" \times \frac{1}{2}"$  on the inner side of right knee. The margins were black and oblique in direction.
3. Lacerated wound  $1\frac{1}{4}" \times \frac{1}{2}" \times \frac{1}{8}"$  on upper part of penis. Margins were black.
4. Lacerated wound  $\frac{1}{4}" \times \frac{1}{4}" \times 3"$  deep on the upper part of left mid-inguinal point. The margins were black and inverted. The direction was above outwards and backwards. One small metallic piece was recovered under the injury.

**D**

5. Abrasion  $\frac{1}{2}" \times \frac{1}{4}"$  on front of left chest, 1" above left nipple.
6. Lacerated wound with black and inverted margins  $\frac{3}{4}" \times \frac{1}{4}" \times 2"$  deep on the left front of anterior axillary line. The direction was backwards and outwards with a wound of exit  $\frac{3}{4}" \times \frac{1}{2}"$  on the mid axillary line of the left side. The margins were everted.

**E**

7. Lacerated wound with black and inverted margins  $\frac{1}{4}" \times \frac{1}{4}" \times$  more than 6" deep on the front of right side of chest, 3" above the right nipple. The direction was upwards, outwards and backwards with a wound of exit  $3\frac{1}{2}" \times 2"$  on the back of right shoulder joint, with lacerated and everted margins. The right scapula was fractured.

**F**

8. Lacerated wound  $\frac{1}{4}" \times \frac{1}{4}" \times$  bone deep on front of right side of chest in lower part 4" below right nipple,  $1\frac{1}{2}"$  outer to mid-line. The margins were black and inverted and metallic piece was recovered under the skin.

**G**

9. Lacerated wound with black and inverted margins  $2" \times 1\frac{1}{2}" \times$  chest cavity deep on front of right chest 2" inner to right nipple. There was black atraded area around it  $4" \times 4"$ . The wound was directed backwards and slightly upwards with a wound of exit  $2" \times 2"$  on the back in-between the scapulae and the spinal cord underneath was fractured at the back. 3rd and 4th ribs on right side were fractured in front.

**H**

10. Lacerated wound  $\frac{1}{4}" \times \frac{1}{4}" \times$  skin deep with black and inverted margins, in front of right chest  $1\frac{1}{2}"$  inner to injury No. 9. One metallic piece was recovered underneath.

11. Lacerated wound with black and inverted margins  $1\frac{1}{2}'' \times 1\frac{1}{2}'' \times$  more than 6" deep on right side of back at lumbar regions, directed inwards, upwards and forwards, piercing upper part of right kidney and omentum. 13 metallic irregular pieces were recovered from left pleural cavity and diaphragm.

12. Lacerated wound 72 in number with black and inverted margins each  $\frac{1}{8}'' \times \frac{1}{8}''$  bone deep on the sacral region and upper part of both the buttocks. 35 small metallic pieces were recovered under it. Left pelvic bone was fractured underneath."

The cause of death of Karam Singh was shock and haemorrhage as a result of injuries to heart and lungs. The cause of death of Sukhdev Singh was shock and haemorrhage as a result of injuries to the right lung under injury No. 9. The injuries in the case of both Karam Singh and Sukhdev Singh were sufficient in the ordinary course of nature to cause death.

In order to bring the charge home to the accused, the prosecution examined Mann Dass (PW 4), Gurdial Singh (PW 8) and Kamikkar Singh (PW 18) as eye witnesses of the occurrence and they supported the prosecution case.

This Court does not normally in an appeal by special leave go afresh into the question of the credibility of witnesses and reappraise the evidence. In the present case, however, we find that there was hardly any discussion worth the name of the evidence of the eye witnesses in the judgment of the High Court. The High Court has made only a general reference to the evidence of the eye witnesses and has observed that all the witnesses examined by the prosecution inspire full confidence. As the High Court was dealing with not only the appeal filed by the appellants but also a reference under section 374 of the Code of Criminal Procedure for confirming the death sentence, it was, in our opinion, essential for the High Court to have reappraised the evidence adduced in the case and come to an independent conclusion as to whether the guilt of the accused had been proved or not. Ordinarily in a criminal appeal against conviction the appellate court can dismiss the appeal if the court is of the opinion that there is no sufficient ground for interference after examining the various grounds urged before it for challenging the correctness of the decision of the trial court. It is not necessary for the appellate court to examine the entire record for the purpose of arriving at an independent conclusion. The position, however, is different where in addition to an appeal filed by an accused who is sentenced to death, the High Court has to dispose of the reference for confirmation of the death sentence under section 374 of the Code of Criminal Procedure. While dealing with a reference the High Court should consider the proceedings in all their aspects and come to an independent conclusion on the material on record apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned

**A** it is for the High Court to come to an independent conclusion of its own (*see Jumman & Ors. v. The State of Punjab*<sup>(1)</sup> and *Bhupendra Singh v. The State of Punjab*<sup>(2)</sup>). In view of the infirmity noted above in the judgment of the High Court, we have considered it proper to examine the evidence adduced in the case ourselves instead of remanding the case and thus delaying the matter further.

**B** Mann Dass, Gurdial Singh and Kamikkar Singh have deposed that at the time of the present occurrence, Mann Dass and Kamikkar Singh were present in the field which Mann Dass had taken on lease from Niranjn Singh, for hoeing the maize crop, while Gurdial Singh PW was present along with Karam Singh and Sukhdev Singh for the same purpose in the field which had been purchased by Sukhdev Singh and Gurdial Singh from Niranjn Singh. There appears to be no sufficient ground for disbelieving the evidence of the three eye witnesses that they were present at the scene of occurrence. Kamikkar Singh received injuries during the course of the present occurrence and as such there can be hardly any manner of doubt regarding his presence at the scene of occurrence. It is in the evidence of Kamikkar Singh and Mann Dass that Kamikkar Singh who is a friend of Mann Dass and had come two days before the present occurrence from his village, was engaged with Mann Dass in hoeing the maize crop. Mann Dass would not normally throw the burden of hoeing the maize crop on his friend alone and it is but natural that Mann Dass would be with him for the purpose of hoeing the maize crop. There also appears to be nothing improbable in the statement of Gurdial Singh PW that he was engaged with his father Karam Singh and brother Sukhdev Singh in hoeing the maize crop.

**E** The first information report about the present occurrence was lodged promptly and this is apparent from the fact that a copy of the first information report was received by the judicial magistrate concerned at Ludhiana at 8. 12 p.m. the same evening. We are not impressed by the suggestion that the occurrence took place not at 5 p.m. but much earlier. According to the post mortem examination reports, the stomach of each one of the two deceased persons was empty at the time of the post mortem examination. Normally a vegetable diet containing mostly farinaceous food as usually taken by an Indian does not leave the stomach completely within six to seven hours after its ingestion (*see* page 151 of Modi's Medical Jurisprudence and Toxicology, Sixteenth Edition). If the occurrence had taken place at 2 or 3 p.m. as suggested on behalf of the accused-appellants, the mid-day meals usually taken by the villagers at about 11 a.m. would still be in their stomach and the same would not have been empty at the time of the post mortem examination. The fact that the stomach of each of the deceased persons was empty lends assurance to the prosecution version that the occurrence took place at about 5 p.m.

**H** Another argument which has been put forth on behalf of the accused-appellants is that the assailants would not have spared Mann Dass if he had been present at the scene of occurrence. From the

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(1) A.I.R. 1957 S.C. 469.

(2) [1968] 3 S.C.R. 404.

mere fact that there were no injuries on the person of Mann Dass it does not necessarily follow, in our opinion, that Mann Dass was not present at the scene of occurrence and that his evidence as such should be thrown out. As would appear from the resume of facts given above, Sukhdev Singh deceased and Karam Singh crawled towards the tubewell Kotha when the assailants appeared on the scene of occurrence and a shot was fired towards the field of Sukhdev Singh. Sukhdev Singh had his gun in that kotha and he fired shots from that gun. It is but natural that the attention of the assailants would be first focussed upon Sukhdev Singh so that he might be liquidated and be not in a position to fire at them. The assailants after killing Sukhdev Singh killed Karam Singh, who was also present near the spot where Sukhdev Singh was killed. Mann Dass who had before that taken shelter behind a khal in his own field thus seems to have remained unhurt. The same also seems to be the explanation for Gurdial Singh P.W not being injured at the time of the present occurrence. In any case there can be hardly any doubt, as already mentioned, regarding the presence of Kamikkar Singh at the place of occurrence.

The case of the prosecution is that Paramjit Singh and Gurdev Singh accused killed Sukhdev Singh and thereafter Charan Singh and Mukhtiar Singh killed Karam Singh. As the ocular evidence consists of persons two of whom were close relatives of the two deceased persons, it is not likely that the eye witnesses would spare the real assailants. At the same time we have to guard against the possibility of implication of an innocent person along with the actual culprits. The need of this precaution becomes all the more obvious when it is kept in view that the ocular evidence is of a partisan nature. It is in such a situation that a duty is cast upon the court to separate the grain from the chaff.

After having been taken through the evidence on record, we have no doubt regarding the complicity of Paramjit Singh and Gurdev Singh. Paramjit Singh, according to the testimony of the eye witnesses, was armed with a rifle and Gurdev Singh with a gun. Paramjit Singh in his statement before the committing magistrate admitted that he had a rifle, but, according to him, he had already sold that away. Gurdev Singh undoubtedly owned licensed gun P-2. According to the evidence of Dr. Ajit Singh who performed post mortem examination on the body of Sukhdev Singh, Sukhdev Singh had a number of bullet injuries. Sukhdev Singh had also a number of injuries caused by gun-shots. The evidence of the eye witnesses with regard to the part played by Paramjit Singh and Gurdev Singh is thus in conformity with the medical evidence. Although Paramjit Singh played the leading part in the assault on the two deceased persons, his rifle could not be recovered as he absconded after the occurrence and remained absconding for a period of more than eight months till his arrest on April 11, 1972. Gurdev Singh surrendered himself in the court of judicial magistrate Sunam on August 17, 1971. It is in the testimony of Shri J. K. Sinha, Assistant Director, Forensic Science Laboratory that three of the crime cartridges which were received in the laboratory on August 11, 1971 had been fired from licensed gun P-2 of Gurdev Singh. According to the evidence of Sub-Inspector Ajit Singh

- A** (PW19) and Mann Dass (PW4) gun P-2 was recovered in pursuance of the disclosure statement of Gurdev Singh subsequent to his surrender in court. There is no material to warrant the inference that gun P-2 was secured by the police before Gurdev Singh surrendered in court on August 17, 1971. ASI Amrik Singh (PW20) has deposed that he recovered a number of empty cartridges from the place of occurrence. Out of those empty cartridges, three were found by
- B** Shri Sinha to have been fired from gun P-2 of Gurdev Singh. There could, in our opinion, be hardly any doubt on the point that the three cartridges fired from the gun of Gurdev Singh were found at the spot because those empty cartridges were sent to the ballistics expert long before the arrest of Gurdev Singh and the recovery of his gun. It is significant that gun P-2 of Gurdev Singh is his licensed gun. No question of foisting a licensed gun upon Gurdev Singh could possibly arise in the very nature of things. It was also not possible to
- C** falsely show the recovery of three empty cartridges which had been fired from that gun because at the time those three empty cartridges were sent to the Forensic Science Laboratory, the police was not in possession of gun P-2 of Gurdev Singh. The despatch of the three empty cartridges which had been fired from the licensed gun P-2 of Gurdev Singh lends assurance to the evidence about recovery of those
- D** cartridges from the place of occurrence. The fact that three of the cartridges fired from the gun of Gurdev Singh were found at the place of occurrence goes a long way to corroborate the testimony of the three eye witnesses regarding the complicity of Gurdev Singh.

- E** We may now consider the case against Charan Singh and Mukhtiar Singh. It is the case of the prosecution that Charan Singh and Mukhtiar Singh fired at Karam Singh deceased with country-made pistol P-4 and gun P-3 respectively and as such, killed him. There is however, discrepancy in the evidence of the eye witnesses regarding the exact manner in which Karam Singh was killed. According to Mann Dass PW when Paramjit Singh and Gurdev Singh fired at Sukhdev Singh and the latter fell down, Karam Singh who was taking shelter behind a Chapacha at a distance of about two karams from the tubewell Kotha tried to run away. Charan Singh and Mukhtiar Singh then came in front of him and fired shots from their respective fire-arms as a result of which Karam Singh also fell down. As Karam Singh was lying injured, Paramjit Singh went near him and fired two or three shots from his rifle at him. The evidence of Mann Dass would thus show that Karam Singh deceased was shot at by Charan Singh and Mukhtiar Singh when the deceased was in the act of running away. As against that, Gurdial Singh and Kamikkar
- F** Singh have deposed that Charan Singh and Mukhtiar Singh fired shots at Karam Singh deceased while the latter was sitting and taking shelter behind the Chapacha.
- G**

The evidence of Dr. Ajit Singh who performed post mortem examination on the dead body of Karam Singh shows that injuries Nos. 3, 6 and 7 on the body of Karam Singh had been caused by bullets. As regards injuries 2 and 4 which were the only two other injuries caused by fire-arm on the body of Karam Singh, Dr. Ajit Singh has

deposed that each of those injuries could have been caused either by a bullet fired from a rifle or by a pellet fired from a gun. The evidence of Dr. Ajit Singh thus tends to show that the only two injuries which were ascribed to Charan Singh and Mukhtiar Singh accused could as well have been caused by shots from the rifle with Paramjit Singh accused. The medical evidence is thus consistent with the stand taken on behalf of Charan Singh and Mukhtiar Singh that they did not cause any injury to Karam Singh.

Another circumstance which creates doubt about the veracity of the evidence of Gurdial Singh and Kamikkar Singh regarding the part played by Charan Singh and Mukhtiar Singh is that injury No. 4 on the dead body of Karam Singh could be the result of grazing either by a bullet or pellet shot. If Karam Singh deceased was sitting as has been deposed by Gurdial Singh and Kamikkar Singh PWs and Charan Singh and Mukhtiar Singh fired at him from a close range, it is difficult to believe that the pellet shot by these two accused would only graze at the point of injury No. 4. On the contrary, if the version of Gurdial Singh and Kamikkar Singh PWs were to be accepted, a number of pellets would have hit Karam Singh deceased.

It is the prosecution case that the assailants escaped after the occurrence. It is, in our opinion, extremely unlikely that Paramjit Singh and Gurdev Singh would have associated an old man like Charan Singh with them in the assault as Charan Singh because of his age, would be more of a handicap and a burden to them especially at the time of escaping after the occurrence. It may be mentioned that although the prosecution case is that Charan Singh remained absconding after the occurrence till his arrest on August 17, 1971, the version of Charan Singh in his statement under section 342 of the Code of Criminal Procedure is that he was with the police from the very start.

The circumstances referred to above, in our opinion, create considerable doubt regarding the complicity of Charan Singh and Mukhtiar Singh.

Regarding the alleged recovery of pistol at the instance of Charan Singh accused, we find no reassuring circumstance as may furnish corroboration to the evidence of the recovery which has been adduced in the case.

As regards Mukhtiar Singh we find that it is in the evidence of Shri Sinha that gun P-3 of Mukhtiar Singh was not in proper working condition. As such, no test could be held to find out if any of the empty cartridges which were alleged to have been recovered from the place of occurrence had been fired from that gun.

We have already referred to above while dealing with the case of each accused, the evidence regarding the recovery of fire-arms and cartridges. We may in the above context refer to some other material facts. There was no mention in the first information report of the presence of any empty cartridges at the spot. In the inquest report PB relating to the dead body of Karam Singh, there was mention of only

A four empty 12 bore cartridges in the tubewell Kotha of Sukhdev Singh. These cartridges were apparently those which had been fired by Sukhdev Singh from inside that Kotha. There was, however, no mention in this inquest report of the presence of 11 empty cartridges. In the inquest report PE relating to the dead body of Sukhdev Singh there was reference to the presence also of 11 empty 12 bore cartridges and one empty brass cartridge of a rifle at the spot besides four empty cartridges which were recovered from the tubewell Kotha. According to the evidence of Dr. Ajit Singh, the dead bodies of Karam Singh and Sukhdev Singh were brought to the mortuary in the hospital at 6 a. m. on August 6, 1971, while the inquest reports were brought as late as 3.20 p. m. on that day.

C The prosecution evidence about the recovery of the fire arms and the empty cartridges consists, besides the testimony of the investigating officer, of that of Mann Dass who has signed as many as 15 recovery memos. Regarding the recovery of the country-made pistol at the instance of Charan Singh accused, the evidence consists of the statements of the investigating officer and Mohinder Singh (PW 15), who is son-in-law of Karam Singh deceased. In view of the three circumstances, viz., the non-mention of the presence of the empty cartridges at the place of occurrence in the first information report and the inquest report relating to the dead body of Karam Singh, the delay in the receipt of the inquest reports by the doctor who performed post mortem examination on the dead bodies and the fact that the witnesses of recovery were not disinterested, we have applied a rule of caution dictated by prudence of seeking some reassurance before acting upon the evidence of recovery.

The prosecution has also led the evidence of Raghbir Singh (PW 13), according to whom he heard fire shots when he was present in his field. About 10 minutes after the firing had stopped, the witness left his field and came to the place of occurrence. The witness has deposed that he was thereafter told about the occurrence by Gurdial Singh and Kamikkar Singh PWs. In our opinion, not much value can be attached to the testimony of Raghbir Singh. Raghbir Singh's name in the very nature of things could not be mentioned in the first information report because, according to him, he arrived at the scene of occurrence after Mann Dass had left that place for making a report to the police. There was also no mention of the name of Raghbir Singh in either of the two inquest reports. Raghbir Singh did not deny that his maternal grandmother was the sister of the father-in-law of Karam Singh deceased and merely pleaded ignorance on the point. Raghbir Singh, however, admitted that his father had a double relationship with Karam Singh. In the circumstances, we are of the opinion that the deposition of Raghbir Singh cannot be of much avail for corroborating the testimony of Gurdial Singh and Kamikkar Singh PWs regarding the actual occurrence and that the said testimony would have to be judged otherwise on its own merits.

In the context of what value should be attached to the statements of the witnesses examined in this case, our attention has been invited by

the learned counsel for the appellants to a number of authorities. We have refrained from referring to those authorities because, in our opinion, reference to those authorities is rather misplaced. The fate of the present case like that of every other criminal case depends upon its own facts and the intrinsic worth of the evidence adduced in the case rather than what was said about the evidence of witnesses in other decided cases in the context of facts of those cases. The question of credibility of a witness has primarily to be decided by referring to his evidence and finding out as to how the witness has fared in cross-examination and what impression is created by his evidence taken in the context of the other facts of the case. Criminal cases cannot be put in a strait jacket. Though there may be similarity between the facts of some cases, there would always be shades of difference and quite often that difference may prove to be crucial. The same can also be said about the evidence adduced in one case and that produced in another. Decided cases can be of help if there be a question of law like the admissibility of evidence. Likewise, decided cases can be of help if the question be about the applicability of some general rule of evidence, *e. g.*, the weight to be attached to the evidence of an accomplice. This apart, reference to decided cases hardly seems apposite when the question before the court is whether the evidence of a particular witness should or should not be accepted.

As a result of the above, we uphold the conviction and sentence of Gurdev Singh and Paramjit Singh and dismiss the appeal in so far as it relates to them. The appeal in respect of Charan Singh and Mukhtiar Singh is accepted because the case against them is not free from reasonable doubt and they are entitled to the benefit thereof. Their conviction and sentence are set aside and they are acquitted.

P.B.R.

*Appeal Partly allowed.*