

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1736 OF 2007

Jalpat Rai & Ors.

...Appellants

Versus

State of Haryana

...Respondent

WITH

CRIMINAL APPEAL NO. 1306 OF 2006

JUDGEMENT

R.M. LODHA, J.

On October 2, 2002 two persons – Sunil and Chand – were shot dead and three persons – Pawan, Rohtas and Rakesh – got injured in the town of Jind (Haryana). One of the injured, Pawan died after three days. In connection with that incident, six persons—Jalpat Rai (A-1), Shyam Sunder (A-2),

Satish Kumar (A-3), Purshotam (A-4), Harinder alias Kala (A-5) and Pawan (A-6) — were tried by the Additional Sessions Judge, Jind for the offences punishable under Section 148, Section 302 read with Section 149, Section 307 read with Section 149 and Section 323 read with Section 149 IPC. Four of them were also charged for the offence punishable under Section 27 of the Arms Act, 1959. The trial court vide its judgment dated November 20, 2004 convicted A-2 under Section 302 IPC and sentenced him to suffer life imprisonment and imposed a fine of Rs.25000/- with default stipulation. A-2 was also convicted for the offence under Section 27 of the Arms Act, 1959 and sentenced to undergo imprisonment for a term of one year with a fine of Rs.1000/- with default stipulation. The trial court acquitted A-1, A-3, A-4, A-5 and A-6 of all the charges.

2. Against the judgment of the trial court, two criminal appeals and one criminal revision came to be filed before the High Court of Punjab and Haryana. The State preferred appeal being Criminal Appeal No. 95-DBA of 2006 aggrieved by the acquittal of A-1, A-3, A-4, A-5 and A-6. The complainant party

filed a criminal revision being Criminal Revision No. 578 of 2005 against the acquittal of the five accused and for enhancement of sentence. A-2 preferred criminal appeal being Criminal Appeal No. 42-DB of 2005 against his conviction.

3. The High Court heard all the three matters together and by a common judgment dated September 20, 2006; allowed the appeal of the State and convicted A-1, A-3, A-4, A-5 and A-6 under Section 148 and Section 302 read with Section 149 IPC. A-5 was also convicted under Section 323 IPC. All these five accused have been sentenced to undergo imprisonment for life. A fine of Rs. 10,000/- with default stipulation was also imposed on them. Insofar as A-2 is concerned, the High Court modified his conviction from Section 302 to Section 302 read with Section 149 IPC while maintaining the sentence awarded to him by the trial court. In light of the judgment in the appeal preferred by the State, the criminal revision preferred by the complainant party was dismissed.

4. A-1, A-3, A-4, A-5 and A-6 are the appellants in the two appeals before us filed under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act,

1970 (for short, '1970 Act'). A-2 filed special leave petition against his conviction which came to be dismissed by this Court summarily.

5. The prosecution case in regard to the incident leading to the triple murder is this: On October 2, 2002 at about 9.00 p.m., Sewa Singh (PW-1) and one Subhash Gaba were sitting in their office (Nav Bharat Transport Company) situate at Phuara Bazar, Jind. At that time, A-2, A-3 and A-4, all sons of A-1, passed in front of their office and went towards Chamber Dharamshala. They were armed with firearms. PW-1 suspected their movement as he had long standing truck owners' union rivalry with A-2 and his family. PW-1 came out of his office and saw that A-2 was talking with someone on mobile phone. After about 10/15 minutes, A-1 came there on a motorcycle. He, too, carried firearm with him and was accompanied by a boy. Sensing some danger from A-1, A-2, A-3 and A-4, PW-1 telephoned his brother Rohtas (PW-4) who along with his nephews Chand, Sunil, Pawan, Arun and Rakesh (PW-8) reached the office of PW-1 in about 10/15 minutes. PW-1 told his brother (PW-4) that A-1 and his sons had

gathered nearby and might commit some mischief. On the advise of PW-4, the office was closed and PW-1, PW-4, their nephews and Subhash Gaba left for their homes. Hardly had they started that A-2 fired one shot from behind with a licensed pistol which he was carrying. PW-1 and his nephews ran towards A-2 to catch him but A-2 fired another shot from his pistol that hit Chand on the left side of his chest. A-4 fired a shot from the pistol he was carrying which hit Sunil on the left side of his chest. A-3 and A-1 then started firing shots from their guns. A-2 and A-4 repeated firing from their firearms. As a result of the shots fired by A-2 and A-4, PW-4 and Pawan received injuries. Pawan, Chand, Sunil and PW-4 fell on the ground. A-5 who was armed with sword gave the sword blow to PW-8. All the accused persons then fled from the spot.

6. After the firing, few persons gathered at the place of occurrence and took the injured persons—Chand, Sunil, Pawan and PW-4 to the General Hospital, Jind for treatment. On way to the hospital, Chand and Sunil succumbed to the injuries and died. Pawan and PW-4 were referred to PGI, Rohtak for further

treatment. PW-1 had also informed the Control Room of the incident.

7. At about 11.30 p.m., the doctor on duty at General Hospital, Jind sent two rukkhas (Ex. PP and Ex. PQ) to the Police Station City, Jind informing them that Sunil and Chand were brought dead while Pawan and PW-4 were brought injured. On receipt of the two rukkhas, Haricharan (PW-20) who was Sub-Inspector left the Police Station for General Hospital, Jind along with two constables. At the main gate of the General Hospital, PW-20 met PW-1 who gave his statement which was reduced into writing. Based on the statement of PW-1, the first information report was registered in the midnight at 12.30 a.m. (October 3, 2002) under Sections 302/307/148/149 IPC and the Arms Act.

8. PW-20 commenced investigation and visited the place of occurrence. The office of Nav Bharat Transport Company is adjacent to the Chamber Dharamshala situate in the busy market area which has shops, offices and hospitals. The Chamber Dharamshala has seven shops, four on the one side and three on the other. At the place of occurrence, PW-20

recovered one belcha, one sword, four pair of chappals, one Maruti car, one scooter, two Hero Honda motorcycles (one of which was without registration number), one wrist watch and three empties of used .32 calibre bullets. PW-20 also conducted inquest on the dead bodies of Chand and Sunil on October 3, 2002 before they were handed over for autopsy.

9. Dr. Kuldeep Singh Rana (PW-5), Medical Officer, General Hospital, Jind conducted the post-mortem examination on the dead body of Sunil on October 3, 2002 at 9.00 a.m. In the post-mortem report, he recorded as follows :

“There is a penetrating entry wound 0.75 cm in diameter over the left side of chest, 2.5 cm below and slightly lateral to the left nipple. Margins are inverted, tattooing around the wound present in about 3-4 mm. surrounding the wound. Corresponding part of shirt torned.

On dissection find that the bullet has followed the path starting with anterior chest wall, traversing the left anterior pleura, middle lob of left lung which was lacerated, then passing through the left ventricle of heart and coming out through the right ventricle posteriori and bullet found stucked in the muscles just lateral to sixth thoracic vertebrae of left side.

1.5 liter of dark clotted blood found in the mediastinal and pleural cavity.”

In the opinion of PW-5, the cause of death of Sunil was due to shock and haemorrhage because of firearm injuries to vital organs. He opined that the injuries were ante mortem and sufficient to cause death in normal course of nature.

10. On the same day at about 9.30 a.m., PW-5 conducted post-mortem examination on the dead body of Chand. He found the following injury on the dead body of Chand:

“There is a penetrating wound 0.75 cm in diameter on the left mid axillary line between 7/ 8 inter-costal space. Margins are inverted tattooing in 3-4 mm. area surrounding the wound.

On dissection, path traversed by the bullet is as lateral of left chest wall to lateral left pleural cavity and left lung which is highly lacerated, then to right pleural cavity and right lung which was lacerated, then bullet found stucked in muscle of right lateral wall of chest at level of 7/8 inter-costal space or posterior border of axillary space.”

In the opinion of PW-5, the cause of death of Chand was due to shock and haemorrhage because of firearm injury to vital organs.

11. Pawan was medically examined by Dr. Rajesh Gandhi (PW-6) on October 2, 2002 at about 10 p.m. as soon as

he was brought to the General Hospital, Jind. On the person of Pawan, PW-6 found the following injury:

“Deep penetrating wound on anterior surface of chest; 2cm medial to left nipple and 1 cm below nipple. Margins were inverted. Singeing is present.....”

He advised X-ray and Surgeon's opinion.

12. PW-6 also examined PW-4 on October 2, 2002 at about 10.15 p.m. and found the following injury on his person:

“Deep penetrating wound is present on the Abdomen in the centre, 3 cm above the symphysis pubis. Margins are inverted. Blackening is present. Size : 1 x .5 c.m.....”

13. PW-6 examined PW-8 on October 3, 2002 at about 3.40 p.m. and the following injury was found on his person.

“Lacerated wound on the right side of skull 6 cm above ear margin, placed vertically, size : 2 x 1 x muscle deep.....”.

14. On October 5, 2002, the investigation of the case was entrusted to Inspector Wazir Singh (PW-23). He conducted further investigation. PW-23 sought to record the statements of PW-4 and injured Pawan but both were not fit to give

statements. Pawan succumbed to injuries on October 6, 2002 and his statement could not be recorded.

15. The post-mortem examination on the dead body of Pawan was conducted by Dr. R.K. Nandal (PW-9) on October 6, 2002. At the time of post-mortem examination, he found the following injuries on the body of Pawan:

- “1. A wound on front of Abdomen stitched with 16 stitches.
2. An oval punctured wound of size 1 x .75 cm. Blackening present : 5 cm lateral to mid sternum and 3 cm medio inferior to left nipple.
3. The bullet was directed downwards and inward piercing the structure left lung diaphragm and stomach and thereby lodged with anterior chest wall at the level of T 11 vertebra.
4. Two stitched wounds in the stomach.
5. Two stitched wounds on left side of chest and left iliac region for draining.
6. Haemo thorax and Haemo peritoneum present.”

In his opinion, the cause of death of Pawan was firearm injury which had caused haemo peritoneum and haemo thorax thereby leading to shock.

16. The statement of PW-4 was recorded by PW-23 on October 8, 2002.

17. PW-23 arrested A-1 on October 14, 2002 while A-2 and A-3 were arrested on October 26, 2002. Based on the disclosure statement of A-2, PW-23 recovered one licensed pistol of .32 bore and one licensed rifle of .22 bore. In pursuance of the disclosure statement of A-3, one licensed pistol of .32 bore and one rifle of .12 bore were recovered by PW-23.

18. The bullets recovered from the dead bodies, the empties of bullets picked up by PW-20 from the place of occurrence, the firearms seized pursuant to disclosure statements and the clothes of dead persons were sent for forensic/ballistic examination by PW-23 on November 14, 2002 to the Forensic Science Laboratory Haryana, Madhuban (Karnal).

19. On completion of investigation, the challan was submitted against A-1, A-2, A-3, A-4, A-5 and A-6 in the Court of Chief Judicial Magistrate, Jind who, by his order dated

January 7, 2003, committed them for trial by the Court of Sessions, Jind.

20. The Sessions Judge, Jind framed the charges against the six accused persons (A-1, A-2, A-3, A-4, A-5 and A-6) on April 18, 2003 as follows :

“That on 2.10.2002 at about 10 p.m., in the area of City Jind, you all the accused were members of an unlawful assembly, and did, in prosecution of the common object of such assembly, and at that time you were armed with deadly weapons and thereby committed an offence of rioting punishable under-Section 148 of the Indian Penal Code and within the cognizance of this court.

That, secondly, on the aforesaid date, time and place, you all the accused in prosecution of common object of such unlawful assembly, did commit murder by intentionally causing the death of Chand Singh, Sunil Kumar and Pawan Kumar, residents of Subhash Nagar, Jind, and thereby committed an offence punishable under Section 302 IPC read with Section 149 IPC and within the cognizance of this court.

That, thirdly, on the aforesaid date, time and place and in prosecution of common object of such unlawful assembly, you all the accused caused injuries to Rohtas with such intention or knowledge and under such circumstances that if by that act, you had caused the death of said Rohtas, you would have been guilty of murder and thereby committed an offence punishable under Section 307 IPC read with section 149 IPC and within the cognizance of this court.

That, fourthly, you accused Harender alias Kala, in prosecution of common object of your co-accused, namely, Jalpat Rai, Sham Sunder, Purshotam, Satish

Kumar and Pawan Kumar, caused injuries to Subhash Gaba and Rakesh PWs and thereby you accused Harender alias Kala committed an offence punishable under-Section 323 IPC while the remaining accused, namely, Jalpat Rai, Sham Sunder, Purshotam, Satish Kumar and Pawan Kumar committed an offence punishable under Section 323 IPC read with section 149 IPC and within the cognizance of this court.

That, lastly, you accused Sham Sunder and Purshotam, on 2.10.2002, in the area of City Jind, used your respective licenced revolvers for unlawful purpose i.e. for committing the murder of Chand Singh, Sunil and Pawan Kumar and also for causing injuries to Rohtas complainant with the intention to commit his murder while you accused Jalpat Rai and Satish, on the aforesaid date, time and place, used your respective licenced guns for unlawful purpose i.e. for committing the murder of Chand Singh, Sunil and Pawan Kumar and also for causing gun shot injuries to Rohtas complainant with the intention to commit his murder and thereby you accused Sham Sunder, Purshotam, Jalpat Rai and Satish Kumar committed an offence punishable under Section 27 of the Indian Arms Act and within the cognizance of this court.”

21. The prosecution in support of its case examined 23 witnesses in all . Three of these witnesses, PW-1, PW-4 and PW-8 were tendered as eye-witnesses to the occurrence. Inter-alia, Inquest Reports, Post-mortem Reports, Forensic Science Laboratory Examination Reports, Site Plans [rough

plan prepared by IO and the other by draftsman) were got exhibited.

22. The statement of the accused persons was recorded under Section 313, Cr.P.C. The accused persons denied their involvement in the crime and stated that they have been falsely implicated.

23. The trial court, as indicated above, acquitted the present appellants and convicted A-2 under Section 302 IPC and Section 27 of Arms Act, 1959. The trial court, inter alia, held that the ocular testimony of PW-1, PW-4 and PW-8 was not reliable. It does not get corroborated from the medical evidence and their version is contradictory to the report of the ballistic expert. We intend to refer to the trial court's view about their evidence a little later.

24. The opinion of the High Court differed with that of the trial court. The High Court held that the evidence of PW-1, PW-4 and PW-8 in totality was cogent, convincing and truthful.

25. Mr. Sushil Kumar, learned senior counsel representing A-1, A-3, A-4 and A-5 vehemently assailed the judgment of the High Court. He argued that the acquittal of the

appellants by the trial court was based on proper appreciation of the entire evidence on record. The view taken by the trial court was a reasonable and possible view on consideration of the evidence in totality which the High Court ought not to have disturbed. He relied upon few decisions in this regard, particularly, *Ghurey Lal v. State of Uttar Pradesh*¹ and *Mahtab Singh and Anr. v. State of Uttar Pradesh*².

26. Learned senior counsel, while relying upon the decision in *Mahtab Singh*², also submitted that the first information report (FIR) was not only delayed but was also a suspect and doubtful document. Mr. Sushil Kumar submitted that PW-1 was not an eye-witness and pointed out various discrepancies in the testimony of PW-1 to buttress his argument that PW-1 was not present at the time of incident.

27. As regards the evidence of PW-4, learned senior counsel submitted that he had not disclosed anything to the doctor in the hospital. According to him, PW-4 did not suffer any injury in the incident. He contended that although PW-4 deposed that he was injured by a gunshot but he did not have a

¹ (2008) 10 SCC 450

² (2009) 13 SCC 670

single pellet in his body; his clothes had no perforation. Learned senior counsel submitted that his statement was recorded on October 8, 2002 for the first time as, according to him, he was unconscious upto that date but the medical record showed otherwise.

28. Mr. Sushil Kumar, learned senior counsel was also critical about the deposition of PW-8. He submitted that PW-8 was an introduced witness. His presence is not stated in the FIR. PW-8 does not get himself medically examined at Jind on the day of incident or at Rohtak but goes to a private doctor and tells him that he suffered injuries because he fell accidentally. He, thus, submitted that the evidence of PW-1, PW-4 and PW-8 was not reliable and trustworthy. In support of his submission, he cited *Balakrushna Swain v. State of Orissa*³, *Balak Ram v. State of U.P.*⁴, *Vijaybhai Bhanabhai Patel v. Navnitbhai Nathubhai Patel & Ors.*⁵ and *Darshan Singh v. State of Punjab & Anr.*⁶.

³ (1971) 3 SCC 192

⁴ (1975) 3 SCC 219

⁵ (2004) 10 SCC 583

⁶ (2010) 2 SCC 333

29. Learned senior counsel strenuously urged that the circumstantial evidence on record clearly disproves the prosecution case. No blood was found on the spot and there was absence of blood on the clothes of the person who is said to have carried the injured. The ballistic evidence completely rules out complicity of the appellants. He relied upon the decisions of this Court in the cases of *Khima Vikamshi and others v. State of Gujarat*⁷, *Balwan Singh v. State of Haryana*⁸, *Brijpal Singh v. State of M.P.*⁹, *Ghurey Lal*¹, *Mahendra Pratap Singh v. State of Uttar Pradesh*.¹⁰ and *Darshan Singh*⁶.

30. Learned senior counsel for the appellants also submitted that number of deaths does not matter in appreciation of evidence. According to him, the High Court was unnecessarily influenced by the fact that three murders in the same family had taken place resulting in erroneous appreciation of the evidence. In this regard, he cited *State of*

⁷ (2003) 9 SCC 420

⁸ (2005) 11 SCC 245

⁹ (2003) 11 SCC 219

¹⁰ (2009) 11 SCC 334

*U.P. v. Moti Ram and others*¹¹, *Deepak Kumar v. Ravi Virmani & Anr.*¹² and *Asif Mamu v. State of Madhya Pradesh*.¹³

31. It was also contended by Mr. Sushil Kumar that in the event of conviction of the appellants being set aside, A-2 may also be granted same relief although his SLP has been dismissed. He would contend that SLP filed by A-2 was non-est since he had a right of appeal under Section 2 of the 1970 Act and, therefore, the order of this Court dismissing his SLP is also non-est. In support of his contention, he referred to few decisions of this Court, namely, *Harbans Singh v. State of Uttar Pradesh and others*¹⁴, *A.R. Antulay v. R.S. Nayak and another*¹⁵, *Raja Ram and Ors. v. State of M.P.*¹⁶, *Deepak Kumar*¹², *Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra*¹⁷ and *Shingara Singh v. State of Haryana & another*¹⁸.

32. Mr. Arun Bhardwaj, learned counsel for A-6 contended that A-6 has been falsely implicated in the incident. He referred to the evidence of PW-1 and submitted that not a

¹¹ (1990) 4 SCC 389

¹² (2002) 2 SCC 737

¹³ (2008) 15 SCC 405

¹⁴ (1982) 2 SCC 101

¹⁵ (1988) 2 SCC 602

¹⁶ (1994) 2 SCC 568

¹⁷ (2003) 2 SCC 708

¹⁸ (2003) 12 SCC 758

word is stated by him about the involvement of A-6. He argued that the prosecution evidence does not establish the complicity of A-6 at all and the High Court was in error in reversing the judgment of acquittal as regards him.

33. Ms. June Chaudhari, learned senior counsel for the State opposed the submissions of the learned senior counsel and the learned counsel for the appellants with equal vehemence. She stoutly defended the judgment of the High Court and submitted that from the entire evidence let in by prosecution and considered by the High Court, it is apparent that the view taken by the High Court is the only possible view and the High Court was fully justified in reversing the judgment of the trial court. She submitted that Section 149 IPC was integral part of the charge and the prosecution evidence establishes the unlawful assembly of which A-1, A-3, A-4 and A-5 were members along with A-2 and the three murders were committed in pursuance of its common object. She submitted that all the members of the unlawful assembly were armed with deadly weapons and their conviction by the High Court does not suffer from any legal or factual infirmity.

34. That Chand, Sunil and Pawan died homicidal death is neither in doubt nor in issue. The question that arises for our consideration is whether the High Court was justified in interfering with the order of acquittal passed in favour of the appellants by the trial court. Obviously, if the complicity of the appellants (A-1, A-3, A-4, A-5 and A-6) with the crime is established beyond any reasonable doubt, the view of the High Court would not call for any interference.

35. The two courts – High Court and the trial court — have divergence of opinion with regard to the evidence of eye witnesses. The trial court rejected the evidence of PW-1, PW-4 and PW-8 for the following reasons :

“It is evident from a careful perusal of the evidence led by the prosecution that there is chequered history of unending hostility between the complainant party and the accused in connection with the affairs of the Truck Union. They are all transporters by profession. It seems that there was a brawl between accused Shyam Sunder and some members of the complainant party on that fateful evening. The medical evidence reveals that there was flame effect, blackening and tattooing at the entry wounds on all the three bodies meaning thereby that the shots had been fired from point-blank range. The recovery of the articles like Belcha and Sword at the spot goes to show that accused Shyam Sunder may have found himself in imminent danger and he resorted to firing from his licensed pistol thereby claiming the lives of the three youngmen. Accused Shyam Sunder has not

pleaded the right of private defence of person and property but he has pleaded false implication at the hands of the sworn enemies of the family. The circumstances of the case also do not warrant the extension of such concession to him. He had not suffered any serious injury in the incident and the claim for use of force in defence of person and property has to be completely excluded in this case. P.W. Rohtas did not suffer a firearm injury in the incident. Similarly, P.W. Rakesh had allegedly offered himself for medico legal examination to a private medical practitioner and he had told him that he had suffered the injuries in an accidental fall. It is also evident that complainant Sewa Singh may not have at all witnessed the occurrence but he offered to lodge the First Information Report after due deliberations and consultations. A story was concocted with intent to implicate all the male members of the family of accused Jalpat Rai. A last minute efforts was made to rope in his other two sons namely, Vinod and Sushil by moving an application under Section 319 of the Criminal Procedure Code which was eventually withdrawn by the learned Public Prosecutor on prevalence of better counsel upon him. All the three alleged eye witnesses have rendered highly contradictory versions and their evidence does not receive corroboration from the medical evidence and the ballistic expert's report. It shall be absolutely absurd to say that multiple firearms were used in the incident. All the three deaths were caused by the use of .32 bore licensed pistol (Exp. 22) owned by accused Shyam Sunder and this court has very valid reasons to believe that he had pressed the trigger each time. Let it be made absolutely clear here that it is not the case of the prosecution that the licensed firearm of accused Shyam Sunder had been taken away from him by any other accused or that it had been used for gunning down the three victims. It is the case of the prosecution that accused Shyam Sunder had triggered off the incident by firing a shot from his pistol even as the complainant and his companions were walking away from him. It is also the case of the prosecution that the complainant and his companions

turned about and rushed to nab accused Shyam Sunder but he fired a shot at Chand which hit him in the left flank and killed him. The same weapon was used for causing firearm injuries to deceased Sunil and deceased Pawan. Therefore, there should be no manner of doubt about the direct involvement of accused Shyam Sunder in the commission of the alleged crime.”

36. On the other hand, the High Court was not convinced with the reasoning of the trial court and found the evidence of PW-1, PW-4 and PW-8 cogent, convincing and truthful. The High Court with regard to their evidence observed thus :

“.....The learned trial Court has misread and misinterpreted the evidence of the eye-witnesses and the doctors as already discussed above. Occurrence in this case had taken place on 2.10.2002 at 10 p.m. Statement of Sewa Singh PW-1 was recorded on 3.10.2002 at 12.30 a.m. and F.I.R. Ex. PV was recorded on 3.10.2002 at 12.50 a.m. The special report reached the safe hands of C.J.M., Jind on 3.10.2002 at 2.30 a.m. The name of the accused, the weapon of offence, the injuries inflicted, the name of the witnesses are given in detail in the F.I.R. This in fact, goes a long way in proving the case of the prosecution. The complainant party did not get any time to consult and confabulate with each other as to who to falsely implicate. The F.I.R. is prompt and gets corroboration from the other evidence on record.”

37. PW-1 and PW-4 are real brothers. PW-8 and the deceased are nephews of PW-1 and PW-4. The presence of

PW-1, PW-4 and PW-8 at the time of incident, does not appear to us to be doubtful. The trial court has doubted the presence of PW-1 at the place of occurrence but we find it difficult to accept the reasoning of the trial court in this regard. Being transporter, the presence of PW-1 in his office at about 9.00 p.m. was not unnatural. It was his good luck that he did not receive any injury in the incident. We do not think that absence of any injury on his person renders his presence doubtful. The presence of PW-4 and PW-8 at the time of incident also cannot be doubted. Both of them suffered injuries. Both, PW-4 and PW-8, were medically examined by PW-6. PW-4 was examined by PW-6 immediately after the incident at about 10.15 p.m. on October 2, 2002. PW-8 was examined by PW-6 on the next day, i.e. October 3, 2002 in the afternoon. The trial court doubted that the injury suffered by PW-4 was from the firearm but the evidence of Dr. Paryesh Gupta (PW-19) leaves no manner of doubt that PW-4 received firearm injury in the incident. PW-19 deposed that PW-4 was operated upon for a firearm injury in the abdomen on October 3, 2002 in the emergency O.T. and the firearm was used from a close range.

However, the presence of PW-1, PW-4 and PW-8 at the time of incident does not guarantee truthfulness. The question is whether their testimony is trustworthy and reliable insofar as complicity of the appellants with the crime is concerned or they have tried to involve the innocent along with the guilty.

38. Broadly, the evidence of PW-1, PW-4 and PW-8 has been indicated by us while narrating the prosecution case and by reason thereof, we need not reiterate the same except the salient features emerging therefrom. PW-1 had a long standing rivalry with A-1 in connection with Truck Owners' Union. Their rivalry has led to many criminal cases being filed against each other. PW-1 was prosecuted earlier for causing injuries to A-1 and others. On September 12, 2002, i.e., about 20 days prior to the date of present incident, an FIR was registered against PW-1 and his partner under Sections 323, 506, 148 and 454 IPC at Police Station City, Jind for causing injuries to one Shambir. In that incident, A-2 was an eye-witness. Two days later, on September 14, 2002, PW-1 reported to the police against A-2, A-3, A-4 and A-5 by way of counter case but police did not take any action. A complaint

was then lodged by PW-1 party against A-2, A-3, A-4 and A-5 in the Court of Additional Chief Judicial Magistrate, Jind.

39. PW-1, PW-4 and PW-8 are not only much interested in the prosecution case but they are inimically disposed towards the accused party as well. The deep rooted enmity and serious disputes between PW-1 on the one hand and A-1 and his sons on the other and their unflinching interest in the prosecution case necessitate that the evidence of PW-1, PW-4 and PW-8 is considered with care and caution. To find out intrinsic worth of these witnesses, it is appropriate to test their trustworthiness and credibility in light of the collateral and surrounding circumstances as well as the probabilities and in conjunction with all other facts brought out on record. There cannot be a rule of universal application that if the eye-witnesses to the incident are interested in prosecution case and/or are disposed inimically towards the accused persons, there should be corroboration to their evidence. The evidence of eye-witnesses, irrespective of their interestedness, kinship, standing or enmity with the accused, if found credible and of such a caliber as to be regarded as wholly reliable could be

sufficient and enough to bring home the guilt of the accused. But it is reality in life, albeit unfortunate and sad, that human failing tends to exaggerate, over-implicate and distort the true version against the person/s with whom there is rivalry, hostility and enmity. Cases are not unknown where entire family is roped in due to enmity and simmering feelings although one or only few members of that family may be involved in the crime. In the circumstances of the present case, to obviate any chance of false implication due to enmity of the complainant party with the accused party and the interestedness of PW-1, PW-4 and PW-8 in the prosecution case, it is prudent to look for corroboration of their evidence by medical/ballistic evidence and seek adequate assurance from the collateral and surrounding circumstances before acting on their testimony. The lack of corroboration from medical and ballistic evidence and the circumstances brought out on record may ultimately persuade that in fact their evidence cannot be safely acted upon.

40. Besides PW-1, PW-4 and PW-8, who are closely related to the three deceased, no other independent witness

has been examined although the incident occurred in a busy market area. The place of occurrence was visited by PW-20 in the same night after the incident. He found three two-wheelers one bearing no. HR—31—A/5071, the second bearing no. RJ—13—M/7744 and the third without number lying there. One Maruti car bearing no. HR—20—D/8840 with broken glasses was also parked there. The owners of these vehicles have not been examined. At the place of occurrence, one HMT Quartz wrist watch with black strap, one belcha and four pair of chappals were also found. There is no explanation at all by the prosecution with regard to these articles. Nothing has come on record whether four pair of chappals belonged to the accused party or the complainant party or some other persons. Whether HMT Quartz wrist watch that was found at site was worn by one of the accused or one of the members of the complainant party or somebody else is not known. Then, the mystery remains about belcha that was found at site. These circumstances instead of lending any corroboration to the evidence of those three key witnesses, rather suggest that they have not come out with the true and complete disclosure

of the incident.

41. If the evidence of PW-1, PW-4 and PW-8 is to be believed then there was indiscriminate firing by the accused party at the complainant party. PW-1 has said so in so many words. Four members of the accused party – A-1, A-2, A-3 and A-4 – were armed with firearms. According to these witnesses, all of them fired shots from the firearms they were carrying. The first shot was fired by A-2 from the pistol he was carrying (although in the FIR it is recorded that A-2 was armed with revolver but this inconsistency is not very material). That shot did not hit anyone. A-2 then again fired shot that hit Chand. A-4 fired a shot with pistol that hit Sunil. A-3 and A-1 fired shots from their guns and A-2 and A-4 also fired shots from the pistols causing injuries to Pawan and PW-4. However, at the place of occurrence, only three empties were found. Had the firing taken place in the manner deposed by PW-1, PW-4 and PW-8, obviously there should have been more empties at the place of occurrence. It is conjectural to assume, as has been done by High Court, that the Investigating Officer was not able to recover more than three empties because the occurrence

took place in 'chowk' and by the time he reached at the site, a lot of traffic must have passed there. Moreover, at the scene of occurrence, there were no marks of indiscriminate firing.

42. The medical evidence is clear and specific that the three deceased—Chand, Sunil and Pawan received one firearm injury each. The blackening and singeing injuries leave no manner of doubt that shots were fired at the deceased persons from a very close range. As a matter of fact, medical evidence is categorical to that effect. However, the ocular account given by PW-1, PW-4 and PW-8 does not indicate that.

43. The ballistic report records unambiguously and unequivocally that the crime bullets (BC/1 to BC/3) and the cartridge cases (C/1 to C/3) were fired by the pistol stated to have been recovered from A-2 and no other firearm. The cartridge cases and the crime bullets have positively matched to 7.65 mm pistol no. 109033-2002. This pistol is licensed pistol of A-2 and was recovered from him in dismantled condition with parts separated in three pieces. The Forensic Science Laboratory marked the above pistol 'W/2' for the

identification purposes. Based on the examination carried out in the Laboratory, the result of analysis is recorded as under:

“7.65 mm cartridge cases and bullets marked C/1 to C/3 and BC/1 to BC/3 respectively had been fired from 7.65 mm pistol marked W/2 and not from any other firearm even of the same make and calibre because every firearm has got its own individual characteristic marks”.

The ballistic evidence is clearly in conflict with the evidence of PW-1, PW-4 and PW-8 and shatters their evidence completely *vis-à-vis* the appellants. The testimony of PW-1, PW-4 and PW-8 about the role of appellants, thus, is not corroborated by medical and ballistic evidence. Their evidence also does not get support from the collateral circumstances that have come on record.

44. The deposition of PW-1, PW-4 and PW-8 suffers from significant improvements and omissions as well. PW-1 deposed that he did not tell the police that Satish had fired from his .12 bore licensed gun, Jalpat had fired from .22 rifle of Shyam Sunder and Purshotam had fired from .32 licensed pistol of Satish but when he was confronted with portion A to A of his statement (Ex. DA) before police, it was found that it was so recorded. He testified that he had stated in his

statement to the police that A-5 had caused injuries to PW-8 but when confronted with that statement, it was found that it was not so stated. PW-4 deposed that he had told the police that A-4 had fired at Sunil from his revolver but when confronted with that statement, it transpired that it was not so stated. He also deposed that he had told the police that A-5 had given a sword blow to PW-8 on his temple but when he was confronted with that statement, it was found that it was not so stated. PW-8 deposed that he had stated before the police that the shots fired by A-3 and A-1 from their guns did not hit anyone but when confronted with that statement, it transpired that he has not so stated.

45. As regards arrival of A-5 at the place of occurrence, the evidence of PW-1 and PW-8 is not consistent. PW-1 has deposed that A-5 was also present with the other accused when the incident started; he was armed with sword and caused injuries with the sword to PW-8. PW-8, on the other hand, has stated that A-5 descended on the scene of occurrence after firing had started.

46. We have indicated broadly some of the more serious infirmities in the evidence of the eye-witnesses (PW-1, PW-4 and PW-8) in order to indicate that their evidence at any rate is not wholly true and it is unsafe to act on their evidence insofar as complicity of A-1, A-3, A-4, A-5 and A-6 is concerned. Brushing the impact of these infirmities aside, the High Court erroneously treated the evidence of PW-1, PW-4 and PW-8 cogent, convincing and truthful. All in all, the evidence of PW-1, PW-4 and PW-8 lacks in credibility and is not of sterling worth to prove the involvement of A-1, A-3, A-4, A-5 and A-6 in the crime beyond any reasonable doubt. As regards A-6, as a matter of fact, it was conceded by the learned senior counsel for the State that there was no reliable evidence to prove his involvement in the crime. The appellants, in our opinion, are entitled to benefit of doubt.

47. Incidentally, Vinod and Sushil (sons of A-1) were also shown as assailants in the FIR. In the investigation, their presence was not established; they were not charge-sheeted. PW-1, PW-4 and PW-8, however, in their deposition before the Court made an attempt to implicate them. Based on their

deposition, the public prosecutor made an application under Section 319 of Cr.P.C. for summoning those two sons of A-1 but that application was eventually withdrawn. This by itself has not much bearing in the case. What it shows is that there has been attempt by PW-1, PW-4 and PW-8 right from the inception to rope in A-1 and all his sons in the incident irrespective of whether all of them were involved in the crime or not.

48. We are not oblivious of the fact that A-2 was convicted by the trial court for the offence under Section 302 IPC but the High Court has altered his conviction from Section 302 to Section 302 IPC read with Section 149 IPC and his special leave petition (SLP) against that judgment has been dismissed summarily. The dismissal of SLP summarily does not mean affirmance of the judgment of the High Court on merits. It has been repeatedly held by this Court that mere dismissal of SLP does not amount to acceptance of correctness of the High Court decision. The order of this Court in A-2's SLP is not an impediment in allowing these two appeals once it is

held that prosecution has failed to prove the complicity of the appellants beyond any reasonable doubt.

49. We are not impressed by the argument of Mr. Sushil Kumar, learned senior counsel, that the SLP preferred by A-2 was non-est since he had a right of appeal under Section 2 of the 1970 Act and, therefore, the order of this Court dismissing the SLP preferred by A-2 is also a non-est. The judgments cited by learned Senior Counsel in support of his submission that in the event of appellants' conviction being set aside, A-2 is also entitled to the same relief although his SLP has been dismissed have no application to the facts of the present case. The case against A-2 stands on a different footing. The ballistic evidence is conclusive against him and leaves no manner of doubt about his involvement in the crime. We need not say any further in this regard as SLP preferred by A-2 against his conviction has already been dismissed.

50. In view of the above discussion, these two appeals are allowed and the judgment of the High Court as regards the present appellants is set aside. The judgment of acquittal

passed in their favour by the trial court is restored. The appellants Jalpat Rai and Pawan are already on bail and accordingly their bail bonds are discharged. The other appellants, Satish Kumar, Purshotam and Harinder alias Kala be released forthwith, if not required in any other case.

.....J.
(Aftab Alam)

..... J.
(R.M. Lodha)

NEW DELHI,
JULY 6, 2011.