

CASE NO.:
Appeal (crl.) 32 of 1992

PETITIONER:
RAM KUMAR

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 07/10/1994

BENCH:
DR. A.S. ANAND & FAIZAN UDDIN

JUDGMENT:
JUDGMENT

1994 Suppl (4) SCR 335

The Judgment of the Court was delivered by

FAIZAN UDDIN, J.

1. This is an appeal under Section 379 of the Code of Criminal Procedure preferred by the appellant Ram Kumar challenging the judgment and order of the High Court of Punjab & Haryana passed in Criminal Appeal No. 418-DBA of 1986 convicting the appellant under Section 302/34 for causing the murder of Mahinder and sentencing him to life imprisonment as well as under Section 307/34 for attempt to commit murder of Kamla, PW 3 and her son Rajinder, PW 4 sentencing him to undergo rigorous imprisonment for three years on each count directing all the sentences to run concurrently, after reversing the judgment and order of the Session Judge, Hissar in Sessions Trial No. 80/48 A/1985 decided on 7.1.1986 whereby the appellant and the other three co-accused namely, Nanu, Razari and Saatlal were acquitted.

2. The complainant Smt. Kamla, PW 3 was wedded to Ram Kumar, son of co-accused Nanu Ram (since deceased) about 14 years before the occurrence. The father of Nanu Ram owned and possessed 76 killas of land which he had transferred in favour of his grand son Ram Kumar, the husband of Kamla. Ram Kumar executed a will in respect of 50 killas of land in favour of his parents in equal shares, the co-accused Nanu being his father. The rest of 26 killas of land remained with Ram Kumar and on his death about four and a half years before the occurrence the said land came under the cultivation of his wife Smt. Kamla, the daughter-in-law of the co-accused Nanu Ram. During the life time of her husband Ram Kumar, Smt. Kamla started living separate from her in-laws alongwith her husband. She has two sons, namely Dharambir and Rajinder, PW 4 and two daughters. Smt. Kamla was cultivating land with the help of labourers and used to go out for household work against the wishes of her father-in-law, Nanu Ram. Nanu Ram was a source of trouble to her and often created problems in her way in the cultivation of the land for which Kamla reported the matter to the Police as a result of which proceedings under Section 107/151 of the Code of Criminal Procedure were initiated against him and produce of land was given to Kamla. Thereafter the land had to be left uncultivated for one year. This according to the prosecution provided motive to commit the crime.

3. On 23.12.83 Smt. Kamla, PW 3 hired a tractor of one Ram Prasad for ploughing her land and went to the land alongwith her two sons Dharambir aged 9 1/2 years and Rajinder, PW4 aged about 8 years. Deceased Om Prakash was working with her as a labourer who had also gone to the land alongwith them. The tractor was driven by the driver Mahender. After ploughing 2 killas of land it started becoming dark and, therefore, the ploughing was stopped at about 7.00 PM. While returning to the village Kamla alongwith

her two sons named above sat on the left mud-guard of the tractor while Om Prakash was sitting on the right mud-guard of the tractor driven by Mahender. When the tractor reached near the doul (boundary) of the land belonging to Kamla, she saw in tractor light the co-accused Nanu Ram (her father-in-law) and Santlal (who is the husband of daughter of Nanu Ram) armed with pistols and the appellant Ram Kumar (who is the brother of the wife of Nanu Ram) armed with gun. Nanu Ram raised a lalkara that he would teach her a lesson in getting the land cultivated with the help of Other persons. Saying so Nanu Rain from a point blank distance fired a shot from his pistol at Om who fell down from the tractor and died. The driver Mahender turned the tractor aside with speed towards the field of one Mukha Harijan and then brought it to a halt. Kamla, her two sons and the driver Mahender got down from the tractor and hid themselves in cotton crop standing in a nearby field. The accused Nanu Ram and Santlal as well as the appellant Ram Kumar fired three shots at them after they had gone into the hiding place but none of them was hurt. After a shortwhile they rushed towards the bus stand of the village Dhand to a distance of about 19-20 Julias and the accused Nanu Ram, Sandal and the appellant Ram Kumar chased them and again fired three shots at them. One bullet hit the left side of the back of chest of Kamla, PW 3 as a result of which she fell down. Mahinder was hit by a bullet as a result of which he also fell down in a pit on the road side. Rajinder, PW 4 the son of Kamla sustained a bullet injury on his left foot. After a shortwhile Kamla, PW 3 managed to get up and she alongwith her two sons went to a nearby house of one Chhabila where she took shelter during the night. Mahinder succumbed to his injuries on the spot.

4. In the morning at about 8/830 AM Kamla, PW 3 hired a Jeep of one Hazari and she along with her injured son Rajinder reached Civil Hospital Adampur at about 9.45 AM where Dr. J.M. Gandhi, PW 2 examined Kamla and her son Rajinder on 24.12.83 at 10.30 AM and 11 AM respectively. Dr. Gandhi sent information Ext. PE to the Police Station, Adampur at 10.15 AM on 24.12.83 stating that Kamla and Rajinder had fire arm injuries on their person. Oh receiving the Information the ASI Bhana Ram, PW6 alongwith some Constables reached the Civil Hospital, Adampur and recorded the statement Ext. PG of Kamla, PW 3 after obtaining the opinion of the doctor the she was fit to make the statement. ASI Bhana Ram collected medico legal reports to the injured witnesses and alongwith the statement of PW 3 forwarded the same to the Police Station, Adampur where FIR PG/2 was registered at 11.40 AM on 24.12.83.

5. Thereafter ASI Bhana Ram proceeded to the place of occurrence and found the dead body of Mahender lying near the bus stand of village Dhand. He prepared the inquest report Ext. PB/3 of the dead body of Mahinder. He then proceeded towards the place where the dead body of Om was lying and prepared the inquest report Ext. PA/3 of deceased Om. He also picked up the blood stained earth from near the dead body of Om and also two empty cartridges from the spot which were seized vide Ext. P-17 and P-18 The tractor standing at some distance from the dead body of Om was also seized. One empty cartridge lying near the dead body of Mahinder was also seized vide memo Ext. PM. After preparing the site plan the two dead bodies were sent for post-mortem examination.

6. Dr. R. P. Shingal, PW 1 performed an autopsy on the dead body of Om on 24.12.83 at 11.30 AM and found the following injuries on his person :-

Lacerated wound 1cm x 1cm with inverted margins on the right parietal region. Blackening and scorching was present around the wound alongwith tattooing. On dissection the doctor found a big haematoma on right and left parietal region of the skull in sub cutaneous tissues. On removing the haematoma fracture of right parietal bone, frontal bone and left parietal bone was found. On removing the vault of skull there was track from right parietal region of brain to opposite parietal region through the brain matter. There was a fracture of left zygomatic and maxillary bone. A metallic piece was found in the sub-cutaneous tissue in left zygomatic

region which was sealed.

In the opinion of the doctor the time that elapsed between the injury and death was instantaneous and the time between the death and post-mortem was within 48 hours. The cause of death was shock and haemorrhage as a result of injury described above which was ante-mortem in nature and sufficient in the ordinary course of nature to cause death.

7. Doctor Shingal also performed an autopsy over the dead body of Mahinder on 25.12.83 at 1230 PM and found the following injury :-

Lacerated wound with inverted margins measuring 1cm x 3/4cm on the back of left side of chest. Tattooing was present around the margins of the wound. No blackening and charring was found. On dissection the doctor found that the left pleura opposite the wound was torn, left pleural cavity was full of blood. There was laceration of the left Lung. A metallic piece was found at site of fracture in second rib. In sub-cutaneous tissue there was sub-cutaneous haemotoma opposite site of fracture of rib on left side of the front of chest. The doctor also found a corresponding tear in the shirt and jersey.

In the opinion of the doctor the time that elapsed between injury and death was within a few minutes and between death and post-mortem 48 hours. The cause of death was shock and hemorrhage as a result of injury described above which was ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

8. On 24.12.83 at 10.30 AM Dr. J.M. Gandhi, PW 2 medically examined Rajender, PW 4 and found the following injuries on his person:-

1. Lacerated wound 1.5cm x 1cm x bone deep on the interior aspect of left foot, fresh bleeding and margins were inverted.

2. A lacerated wound 2cm x 2cm x bone deep on the left foot near the heel with irregular margins, crushed tissues.

3. A lacerated wound 2cm x 2cm x bone deep on the posterior aspect of left big toe just below the nail and fresh bleeding. These injuries were caused within 24 hours by firearm. All the injuries were simple in nature.

9. On the same day Dr. Gandhi had examined Kamla, PW 3 at 11 AM and found the following injury on her person :-

"A lacerated wound 2cm x 2cm x cavity deep over chest back of left side, just below the lower end of scapula with irregular margins. The margins of the wound were inverted. There was also corresponding hole over the sweater, shirt and banian with blood stains. There was a burn mark over the sweater in the hole."

In the opinion of the doctor the probable duration of the injury was within 24 hours caused by a firearm. After X-ray fracture of 8th rib was detected and foreign body was present on the left side chest.

10. After the occurrence the accused persons could not be apprehended and it was only on 27.9.84 after about 9 months that the Inspector Om Prakash, DSP Kirpal Singh and ASI Krishan Chand apprehended the accused Nanu, the appellant Ram Kumar and Hazari while going to Bhatookala from Adampur. At the time of arrest the co-accused Nanu was carrying a 12 bore licensed gun seized as per Ext. P-20 with two cartridges Ext. P-21 and P-22. The appellant Ram Kumar was carrying a pistol P-23 and 2 live cartridges Ext. P-24 and P-25, while acquitted accused Hazari was carrying a pistol Ext. P-26 and 3 live cartridges Exts. P-27, P-28 and P-29. After receiving the reports of the Ballistic Expert and Serologist charge sheet against the accused Nanu, the appellant Ram Kumar and Hazari

was put up to stand the trial under Sections 302, 302/34 and 307/34 of the Penal Code as well as under Section 25/27 of the Arms Act. Later on by an application dated 14.2.85 filed by the complainant Kamla, PW 3, 4th accused Santlal was also summoned by the Sessions Judge by his order dated 28.2.85 to stand the trial alongwith the above named accused per-sons.

11. At the trial the appellant as well as the other accused persons adjured their guilt and pleaded false implication. They also adduced evidence in defence vide DW 1, Parmanand, DSP Fatehabad who had inspected the spot on 25.12.83 and L.A, Kumar, DW 2, Assistant Director Ballistics, F.S.L. Madhuban, Karnai.

12. On 7.5.85 the Public Prosecutor gave up some of the prosecution witnesses including Pappu, Dalip, Ranbir and Sohanial as according to the prosecution they were won over. But after the close of the evidence when arguments were heard the learned Trial Judge found it expedient to examine the aforementioned persons given up by prosecution as according to the learned Trial Judge they were the eye witnesses to the incident and could throw light on the prosecution case and, therefore, Pappu, CW 1, Dalip, CW 2, Ranbir, CW 3 and Sohanial, CW 4 were examined as Court witnesses. The appellants were again given an opportunity to adduce further evidence in defence and the accused persons examined Shri J.C. Sethi, DW 3, an advocate who had filed a criminal complaint on behalf of Ram Pratap, the father of deceased Mahinder against Harchand and others under Sections 302/148, 149 and 304 of the Penal Code.

13. On evaluation of the entire evidence and the material on record the learned Trial Judge acquitted the appellant as well as the three co-accused, namely, Nanu, Hazari Lal and Santlal holding that the statement Ext. PG said to have been made by Kamla, PW 3 in the hospital to ASI Bhana Ram, PW 6 was ante-timed, there was unexplained delay of 32 hours in sending the report to the Magistrate concerned, the inquest reports were also not prepared at the alleged time, ASI Bhana Ram, PW 6 did not mention in the inquest reports the location of the empties found lying by the side of the dead bodies and that the deceased Om would not have been fired from close range as deposed by Kamla, PW 3. On these findings the learned Trial Judge took the view that the prosecution had failed to bring home the guilt against any of the accused persons including the appellant and, therefore, acquitted them all from the offences they were charged with.

14. The State of Haryana preferred an appeal against the judgment and order of acquittal The co-accused Nanu Ram died during the pendency of the appeal before the High Court and, therefore, the appeal against him abated. The High Court maintained the acquittal of the co-accused Hazari and Santlal but reversed and set aside the findings with regard to the co-accused Nanu Ram and the appellant. The High Court took the view that the co-accused deceased Nanu Ram was liable to be convicted under Sections 302 and 302/34 for causing death of Om and Mahinder and also under Section 307/34 for causing injuries to Kamla and Rajinder but since he died on 25.10.90 the appeal against him had abated. The appellant Ram Kumar has been convicted under Section 302/34 of the Penal Code for causing the death of Om and, therefore, he has been sentenced to undergo life imprisonment and to pay a fine of Rs. 5000; in default of payment of fine to undergo further rigorous imprisonment for two years. The High Court has further directed that in case of recovery of fine the same will be paid to the heirs of deceased Om. The appellant has been further convicted under Section 307/34 of the Penal Code on two counts for causing injuries to Kamla, PW 3 and her son Rajinder, PW 4 for which he has been sentenced to undergo rigorous imprisonment for three years on each count. All the sentences had been directed to run concurrently. It is against these convictions and sentences that the appellant Ram Kumar has preferred this appeal before this Court.

15. Learned counsel for the appellant contended that the Trial Court had recorded the order of acquittal of all the accused persons including the

appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 Cr.P.C, are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. We shall, therefore, examine the evidence and the material on record to see whether the conclusions recorded by the Trial Court in acquitting the appellant are reasonable and plausible or the same are vitiated by some manifest illegality or the conclusion recorded by the Trial Court are such which could not have been possibly arrived at by any Court acting reasonably and judiciously which may in other words be characterised as perverse.

16. Learned counsel appearing for the appellant first contended that the First Information Report Ext. PG/2 was ante-timed as held by the learned Trial Judge which demolishes the entire prosecution story but the said finding has been unreasonably disturbed by the High Court. We have perused the relevant evidence and the material on record in this behalf and find that the learned Trial Judge had fallen in serious error in rejecting the First Information Report by holding that it was unduly delayed and ante-timed. It is no doubt true that there was some delay in lodging the First Information Report. But it may be noted that the incident had occurred at about 7.30 PM on 23.12.83 and the report Ext, PG was made by Smt. Kamla, PW 3 next day i.e. 24.12.83 at 10.30 AM to ASI Bhana Ram, PW 6 while she was in Civil Hospital, Adampur. But this delay has been adequately explained by the prosecution which has not been appreciated by the learned Trial Judge in right perspective. As stated earlier the occurrence took place in the evening of 23.12.83 in the out-skirts of village Dhand and the Police Station, Adampur is at a distance of about 18 kms. from village Dhand. Admittedly the injured Smt. Kamla, PW 3 is a widow having four minor children one of whom was also injured in the occurrence. After she and her son Rajinder, PW 4 received bullet injuries they saved their lives by taking shelter in the house of one Chhabila, There was no other major male member in her family except her two minor sons and the only male member in the family was the accused Nanu since deceased. One who had gone with her for ploughing the land and Mahinder the driver of the tractor, both were killed in the occurrence. In such circumstances it could not be expected from a widow and injured lady Kamla without risk to her life to proceed to Police Station in the dead of night and that too in the winter season to lodge the report. She was thus forced by the circumstances not to hazard to go and make the report same night in order to avoid the delay. Next morning, however, at about 8.30 AM she hired the jeep and proceeded from the village alongwith her injured son Rajinder, PW 4 and the other son Dharambir and reached the Primary Health Centre, Adampur at about 10.30 AM where Kamla, PW 3 and her injured son Rajinder, PW 4 were medically examined by Dr. J.M. Gandhi, PW 2 at 10.30 and 11 AM respectively. In response to the intimation sent by Dr. Gandhi to the Station House Officer, Adampur, the ASI Bhana Ram, PW 6 arrived at the Health Centre at about 10.30 AM on 24.12.83 and recorded the statement Ext. PG of Smt. Kamla, PW 3 at 11.30 AM on the basis of which First Information Report Ext, PG/2 was recorded in the Police Station and offence was registered. The learned Trial Judge totally oblivious of all these facts and circumstances which led to the delay in making the First Information Report, took a very hyper-technical and unrealistic view in holding that the delay was not explained

ignoring the relevant reasons and attending circumstances by reason of which the report was delayed. The High Court took into consideration all these factors and took a realistic view that the delay was sufficiently explained and, in our opinion rightly so.

17. The reasons which weighed with the learned Trial Judge in holding that the report was ante-timed are that the maker of the report Kamla, PW 3 did not know that Om and Mahinder had died as she made no inquiries as to what had happened to them after the firing and whether they were dead or alive yet she stated in the report Ext, PG that Om and Mahinder had died. The learned Trial Judge also observed that while taking shelter in the night in the house of Chhabila she did not ascertain the condition of Om and Mahinder and had not established any contact with them before making the report yet she made a statement in the report that they were dead and this fact according to the learned Session Judge was indicative of the fact that the report was ante-timed. In our opinion the view taken by learned Session Judge is absolutely unreasonable and devoid of logic and, therefore, the High Court was justified in reversing this finding as well for the reason that Kamla had left the village Dhand for the Primary Health Centre, Adampur at about 8.30 AM and by that time it was known to all the villagers including Kamla that Om and Mahinder had succumbed to their bullet injuries. There was, therefore nothing unusual in the report in which Kamla stated that Om and Mahinder both had died in the occurrence having received bullet injuries.

18. The learned counsel for the appellant then urged that the special report of the occurrence was not sent to the Magistrate concerned forthwith in accordance with the provisions of Section 157 of the Code of Criminal Procedure which also cast a doubt on the First Information Report as to the time and manner of occurrence. In this connection it may be noted that the report was received by the Magistrate concerned at about 2.30 AM on 25.12.83 which was sent through the Constable Satya Pal, PW 7. Satya Pal deposed that he first went to Fatehabad. He delivered the special report to the Superintendent of Police at 8.00 AM as Superintendent of Police was not available before 8.00 AM and, therefore, he had to wait till then. He then proceeded to Hissar from Fatehabad to deliver the report to the Magistrate concerned. When he reached Hisar he found the house of Chief Judicial Magistrate locked. He then went to the Police Station, Sadar where he learnt that Mrs. Snehlata Sharma was the Duty Magistrate and, therefore, he reached her residence at 2.30 AM and delivered the report. Under these facts and circumstances it could not be said that the sending of the report was unduly delayed. Even if we assume that there was some delay it was on account of constable Satya Pal, PW 7. The learned counsel appearing for the appellant was unable to point out any possible prejudice that may have been caused to the appellant particularly when the statement of Kamla was recorded at 10.30 AM and on the basis of which First Information Report was also reduced into writing at 11.30 AM on 24.12.83. The ASI Bhana Ram, PW 6 had reached the place of occurrence and the inquest report of both the dead bodies were also prepared on 24.12.83 and seizure of incriminating articles were effected.

19. Learned counsel for the appellant next contended that the learned Trial Judge had rejected the evidence of Smt. Kamla, PW 3 and her son Rajinder, PW 4 having found the same contradictory to each other having concealed the true version from the Court and their testimony was inconsistent with the medical evidence and Ballistic Expert but the High Court committed a grave error in accepting their version as truthful in basing the convictions of the appellant. It was submitted that in fact it had become dark at the time when the occurrence took place and there being no source of light it was not possible for the said witnesses to identify the assailants and they had falsely implicated the accused persons including the appellant. Learned counsel further urged that in any case there were independent witnesses who were withheld by the prosecution and who were ultimately examined as Court witnesses and thus prosecution preferred only to examine the partisan witnesses who had a clear motive

to falsely implicate the appellant and, therefore, the Trial Court was justified in rejecting their evidence. After giving a careful consideration to the submissions made by the learned counsel for the appellant and after making a dose and careful scrutiny of the evidence of Smt. Kamla, PW 3 and her son Rajinder, PW 4 besides other evidence available on record, we find that all the aforementioned submissions advanced by the learned counsel for the appellant are without any substance or merit.

20. Smt, Kamla, PW 3 and Rajinder, PW 4 both sustained bullet injuries in the same occurrence and, therefore, their presence at the time of occurrence cannot be doubted at all. Their presence is even accepted by four persons who were examined as Court witnesses. Smt. Kamla, PW 3 in her statement has given a graphic picture and the sequence of events which took place in which Om and Mahinder lost their lives by gun shot injuries fired by deceased accused Nanu and the appellant as well as the bullet injuries sustained by her and her son Rajinder at the hands of deceased accused Nanu and the appellant. She deposed that she had hired the tractor of Ram Partap of village Dhand on 23.12.83 and went to the field alongwith the deceased Om and her two sons Rajinder and Dharam-bir to plough the land. The deceased Mahinder was driving the tractor. After ploughing the land they started going back home on the tractor at about 7/7.30 PM. She herself and her two sons were seated on the left mud-guard of the tractor while deceased Om was seated on the right mud-guard of the tractor. When they reached at the boundary of her field she saw in the tractor light the deceased accused Nanu, the appellant Ram Kumar and the acquitted accused Santlal standing there armed with pistols and gun. Nanu raised a lalkara that he would teach them a lesson for getting the land cultivated by others. Nanu fired at Om who fell down from the tractor and then the tractor driver Mahinder took the tractor towards the field of Mukha Harijan. There they left the tractor and all of them rushed for hiding themselves to save their lives. They all hid in the cotton crop when three shots were fired towards them but no one was hit. They then proceeded towards the village hiding themselves in the Field and when they reached near the Bus Stand Nanu and the other two accused, namely the appellant Ram Kumar and Santlal again raised a lalkara and all the three started firing. She received the bullet injury on the back On the left side chest and fell down. She further deposed that Mahinder driver and her son Rajinder were also hit and thereafter the accused persons ran away. She along with her two sons, Rajinder and Dharambir took shelter in the night in the house of one chhabila and then next morning proceeded on a jeep to the hospital, Adampur. Similar is the statement made by Rajinder, PW4. Their evidence is consistent and corroborated by the First Information Report and the medical evidence which has been discussed in the early part of this judgment

21. Smt. Kamla PW 3 deposed in cross-examination that the deceased Nanu had fired at Om from a distance of one hand and touching the barrel of his pistol with the head of Om. She further deposed that she herself and Mahinder were hit by bullet from a distance of about 1 or 2 karam only. She received the bullet injury on back on the left side and Mahinder was hit on the back. This statement finds complete corroboration from the medical evidence. Dr. Shingal PW 1 who performed autopsy of dead body of Om found lacerated wound with inverted margins in the right parietal region. Blackening scorching and tattooing was also found around the wound which indicated that Om was shot at from a point Blank range as deposed by Kamla. Similarly Dr. Shingal PW 1 also found lacerated wound with inverted margins on back of left side chest of deceased Mahinder with tattooing marks around the margins of wound. A metallic piece was also found embedded in his second rib. Dr. Gandhi who ex-aminated Kamla PW 3 found a lacerated wound on back of her left side chest and margins of wound were inverted. He also found foreign body em-bedded on her left side chest. The medical evidence thus fully corroborated the statement of Kamla PW 3. It may also be noticed here that the weapons of offence were not recovered and as such the evidence of Ballistic expert L.A. Kumar, Asstt. Director, Forensic Science Laboratory is not of any assistance in this case particularly in view of the fact that the weapons which he examined

were country made pistols which are non-standard weapons while in cross-examination he based his statement on standard weapons.

22. It is clear from the evidence of PW 3 and PW 4 discussed above that they saw the appellant and the other two co-accused in the tractor light. Both these witnesses have stated that it was Mahinder who was driving the tractor and not Dalip as asserted by the learned counsel for the appellant, Learned Trial Judge rejected the evidence of these two eye-witnesses PW 3 and PW 4 mainly on the ground that neither Smt. Kamla herself nor through Chhabila informed the Sarpanch of Panch of the Village Same night about the occurrence that two persons have been killed and they have been injured nor sent any intimation to the father of deceased Om whose house was nearby. The learned Trial Judge on these reasonings took the view that in fact these two eye-witnesses were not sure about their assailants and it was for this reason that they did not inform anyone in the village. The High Court after analysing the evidence and facts and circumstances of the case rejected this reasoning by taking the view that it was a winter night in which two persons were killed in the village and, therefore, out of fear nobody would have preferred to risk his life to go out during night hours to inform the Panch, Sarpanch or father of deceased Om or any other villagers particularly when the dispute was between the daughter-in-law and father-in-law, In our opinion the view taken by the High Court is the only reasonable view and the Trial Court had fallen in serious error in rejecting the testimony of the two eye-witnesses PW 3 and PW 4 on flimsy and trivial grounds.

23. It may be pointed out that Pappu, Dalip, Ranbir and Sohanlal besides other persons were also cited by the prosecution as witnesses to the incident but they were given up by the prosecution stating that they had been won over by the accused persons. The learned Trial Judge, however, preferred to examine these four persons as CW 1, CW 2, CW 3 and CW 4. Reading of their statement will go to show that they are not truthful witnesses and, therefore, they were rightly given up by the prosecution on the ground that they were won over, Pappu, CW 1 while admitting the presence of Kamla, PW 3 and her sons and also the presence of deceased Om and Mahinder made a false statement that the tractor was driven by Dalip. He deposed that he did not know as to who had fired the shots and the reason for declining to make the correct statement is obvious. In cross-examination he admitted that he was cultivating the land of Nanu, the deceased. Dalip who according to the defence was driving the tractor was examined as CW 2 but interestingly enough he himself did not depose that he was driving the tractor. On the contrary he admits the presence of the deceased Mahinder and Om in the field of Kamla, PW 3. He deposed that he was not aware of the fact as to who had fired shots as a result of which Om and Mahinder died. He also stated that Ranbir, CW 3 and Sohanlal CW 4 were also cultivating the land of the deceased accused Nanu. Ranbir, CW 3 admits his presence at the place of occurrence as well as the presence of deceased Om and Mahinder but stated that he had not seen the assailants. He admitted that he was cultivating the land of the accused Nanu which he had obtained on lease from Panchayat. Similar is the statement of Sohanlal, CW 4.

24. The accused persons had also examined Advocate Sethi as DW 3 who had filed a criminal complaint in the Court of Magistrate, Hissar under Sections 302, 148, 149 and 104 of the Penal Code on behalf of Ram Partap, the father of deceased Om. He admitted that he was engaged by the accused of the instant case. This complaint appears to have been filed at the instance of the accused of the instant case against Harchand and others to show that they were not involved in the occurrence in question but Harchand and others were the persons responsible for the same. Overall assessment of the evidence of all these CWs goes to show that they did not come forward with the true version of the incident and were out to help the deceased accused Nanu as they were closely associated and interested with him as they were cultivating his land. In the facts and circumstances discussed above it is absolutely clear that the findings recorded by the

trial are against the weight of evidence on record and the same are perverse. The learned Trial Judge was wholly unjustified and unreasonable in acquitting the accused appellant. After a dose scrutiny of the evidence and the material on record discussed above we are of the firm opinion that the view taken by the High Court is the only possible view and, therefore, the High Court was fully justified in reversing the judgment and order of acquittal passed by the learned Session Judge and rightly held the deceased accused Nanu and the appellant responsible for the two deaths and an attempt on the life of PW 3 and PW 4.

25. Consequently for the reasons stated above the appeal fails and is hereby dismissed.

JUDIS