

CASE NO.:
Appeal (crl.) 130 of 2000

PETITIONER:
State of Punjab

RESPONDENT:
Hakam Singh

DATE OF JUDGMENT: 31/08/2005

BENCH:
B.N. AGRAWAL & A.K. MATHUR

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

This Criminal Appeal filed by the State of Punjab is directed against the judgment and order of acquittal dated April 18, 1996 whereby the Division Bench of the Punjab & Haryana High Court has acquitted the respondent- accused Hakam Singh from the charge under Section 302 of the Indian Penal Code (hereinafter to be referred to as the 'I.P.C.') for committing the murder of the deceased Harbans Singh. Learned Sessions Judge, Bhatinda convicted the respondent- Hakam Singh under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-. In default of payment of fine the respondent was directed to undergo a further imprisonment for four months. Learned Sessions Judge also convicted the respondent under section 302/34 I.P.C. in respect of the death of Mohinder Singh and sentenced him to undergo imprisonment for life and a fine of Rs.2000/-, the respondent was also convicted under Section 307/34 I.P.C for causing injuries to Sadhu Singh and was sentenced to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.2000/-; in default of payment of fine, the respondent was to undergo further rigorous imprisonment for four months. The respondent was also convicted under Section 449 I.P.C. and was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1000/- ;in default of payment of fine the respondent was to undergo R.I. for two months. All the substantive sentences were directed to run concurrently. Learned Sessions Judge acquitted the remaining accused persons i.e. Mander Singh, Nachhatar Singh and Bikkar Singh. The High Court has dismissed the criminal revision filed by Harbans Kaur-the wife of the deceased, Harbans Singh for compensation. We are not concerned with regard to the acquittal of the remaining accused persons as there is no State appeal before us. Therefore, we are concerned in the present State Appeal with regard to the acquittal of the respondent- Hakam Singh.

The prosecution case, in brief, was that an F.I.R. was registered on the statement of Jagdev Singh (deceased), the brother of deceased Harbans Singh on 25.8.1990. That Jagdev Singh, Harbans Singh and Sadhu Singh were brothers. While Harbans Singh and Jagdev Singh lived in the same house, Sadhu Singh lived in a separate house. Sadhu Singh and Jagdev Singh had licenced .12 bore guns. They purchased about 15 marlas of land on which accused Bikkar Singh and others had heaped their manure. On 24.8.1990 a village Panchayat was convened for getting the land vacated. In the said Panchayat meeting it was decided that they should vacate the land after getting it demarcated by the Patwari. On

25.8.1990 at about 9.30 A.M. Harbans Singh (deceased) and complainant Jagdev Singh were present in their house when respondent \026 Hakam Singh armed with a .303 bore rifle while other accused - Mander Singh and Nachhatar Singh @ Pamma each armed with a .12 bore double barrel gun along with other assailants \026 Darshan Singh armed with a .315 bore rifle and Bhola Singh armed with a .12 bore single barrel gun entered their house raising 'lalkara' (shouting). Bhola Singh immediately on reaching there, fired a shot and abused them saying, "come out, we will deliver you the possession of the place of manure heaps". Harbans Singh rushed into the house and brought a licenced gun of the complainant, Jagdev Singh. Respondent- Hakam Singh then fired a shot with his .303 bore rifle at Harbans Singh which hit his left buttock and pierced through his groins. In that injured condition, Harbans Singh fired a shot with his gun in self defence which hit Bhola Singh. On hearing the noise of the fire shots, other brother Sadhu Singh came out of his house. Accused Darshan Singh fired a shot with his .315 bore rifle at Sadhu Singh which hit him on his right arm. Sadhu Singh ran away from there and entered in his house and thereafter scaling his wall and entered into the house of Mohinder Singh. Mohinder Singh came out from his house and ran towards the street. One of the assailants namely Darshan Singh fired a shot with his .315 bore gun at Mohinder Singh which hit on his back. The accused persons kept on firing shots with their respective guns. Jagdev Singh witnessed the entire incident from the roof of his house clandestinely. It is alleged that on hearing the alarm, P.W.5- Baldev Singh (son of Mohinder Singh, deceased) and others reached there to save them Mohinder Singh and Bhola Singh died at the spot. Jagdev Singh sent his brothers, Sadhu Singh and Harbans Singh to the Civil Hospital, Bhatinda in a tractor trolley along with his sister-in-law, Malkiat Kaur and Harbans Kaur. Jagdev Singh went to the Police- station and lodged the report which was recorded by the S.H.O.- Satwant Singh (P.W.7). The said report was treated as the formal F.I.R. and special report was sent to the Judicial Magistrate on the same day at 8.00 p.m. Though originally Nachhatar Singh was not one of the accused but after the examination of Jagdev Singh, the complainant, accused Nachhatar Singh @ Pamma was also put on trial. But Jagdev Singh died subsequently and therefore, his evidence could not be recorded in the Court. Darshan Singh was declared as a proclaimed offender. The accused persons pleaded not guilty and put their version of the incident.

The prosecution in its support examined number of witnesses but primarily, the star witness was P.W.1, Dr.Gupta, P.W.2 Dr.Malik and P.W.3- Harbans Kaur the wife of the deceased Harbans Singh. Sadhu Singh, the injured eye witness as P.W.4, Baldev Singh (P.W.5), son of Mohinder Singh, Sub-Inspector- Satwant Singh, S.H.O. as P.W.7 was the Investigating Officer. Though Jagdev Singh was also one of the witnesses on whose complaint the F.I.R. was registered but he died before the trial and as such his statement could not be recorded. Prosecution examined other formal witnesses also.

Learned Sessions Judge after completion of the trial convicted the respondent- Hakam Singh under Section 302 I.P.C. for causing the death of Harbans Singh and also convicted under Section 302 read with Section 34 I.P.C. in respect of the murder of Mohinder Singh and also convicted under Section 449 I.P.C. for entering into the house of Harbans Singh with a view to murder him. The respondent \026 Hakam Singh was also found guilty under Section 307/34 I.P.C. in respect of the injuries caused to Sadhu Singh which were in fact caused by companion Darshan Singh. Aggrieved against this conviction, the respondent- Hakam Singh filed an appeal before the High Court of Punjab & Haryana and no State appeal was filed by the State against acquittal of other accused persons. The High

Court acquitted the respondent- accused Hakam Singh from all the charges. Hence the present State Appeal against acquittal of accused Hakam Singh.

Learned counsel for the appellant- State has taken us to the statements of P.W.3- Harbans Kaur, P.W.4 \026 Sadhu Singh, P.W.5 \026 Baldev Singh and P.W.7- the Investigating Officer. He has submitted that P.W.3- Harbans Kaur who is the wife of the deceased Harbans Singh is a reliable witness and her testimony has been wrongly discarded without proper appreciation of evidence by the High Court as a result of which grave injustice has taken place. As against this, learned Senior counsel for the respondent has seriously contested and submitted that the appreciation of the evidence done by the High Court was correct and there is no reason to reverse the order of acquittal of the respondent- Hakam Singh. Learned counsel for the respondent submitted that it is settled principle of law that the appreciation of evidence which has been done by the High Court if not perverse then this Court should not interfere with the order of acquittal in appeal. Learned counsel further submitted that this Court is always very slow in interfering with the order of acquittal unless there is sufficient reasons. Learned counsel further submitted that the trial court has not believed the evidence of the other witnesses though believed the evidence of P.W.3 and P.W.4 partly. Therefore, the view taken by the High Court in acquitting the respondent is not perverse. The High Court has correctly appreciated the material contradictions in the testimony of P.Ws. 3 and 4 and has rightly given the benefit of doubt to the respondent. Learned counsel for the respondent further submitted that the prosecution story does not tally with the medical evidence. It was also pointed out that there was a delay in sending the report to the Magistrate which reached him at 8.00 P.M. whereas the incidence took place at about 9.30 A.M. and the F.I.R. was lodged at 10.00 A.M. It was pointed out by learned counsel that the defence theory put up by the respondent is more plausible and in the given case the High Court has rightly appreciated the evidence and acquitted the respondent. It was also pointed out that the injuries on Bhola Singh was not explained and as to how Bhola Singh received the second injury with fire arm. It was further pointed that no report was sought for from the Ballistic expert about the guns and recoveries of the empties recovered from the scene of occurrence. It was also pointed out that the blood stained clothes of Harbans Kaur were not seized nor blood stains from all places. Under these circumstances learned counsel for the respondent has submitted that looking to the material contradictions and negligence on the part of the investigating agency in not seizing the arms and ammunitions and not seizing the empties from the site and in not seizing the blood stained clothes of Harbans Kaur, the High Court has rightly given the benefit of doubt to the respondent. Learned counsel for the respondent invited our attention to the following decisions of this Court.

1. (2002) 9 SCC 356- State of Haryana v. Sher Singh & Ors.
2. (2004) 9 SCC 310 \026 State of U.P. v. Ram Bahadur Singh and others.
3. (2004) 12 SCC 398- Chanakya Dhibar (Dead) v. State of WB.& Ors.
4. JT 2004 (4) SC 80- Vijaybhai Bhanabhai Patel v. Navnitbhai Nathubhai Patel & Ors.

In fact, all these cases which have been cited by learned counsel for the respondent are with regard to the principle laid down by this Court. As far as legal propositions are concerned, there is no two opinion in our mind. But whether the ratio of these decisions will help the respondent in the present case will be examined by us herein after.

In order to appreciate the prosecution case we shall examine the statement of P.W.3- Harbans Kaur, the wife of the deceased Harbans Singh who unfolded the whole drama as it happened in her house. In fact, we are primarily concerned in the present appeal against acquittal of Hakam Singh only.

P.W.3- Harbans Kaur has deposed that on the fateful day at about 9.30 A.M. when her husband, Harbans Singh the deceased and his brother Jagdev Singh were present in their house at that time Darshan Singh, Bhola Singh (deceased), Nachhatar Singh @ Pamma Singh, Mander Singh and Hakam Singh came in front of their house and all of them entered inside the outer gate of the house. Hakam Singh and Darshan Singh had rifles while the remaining accused were armed with 12 bore guns. It is alleged that at the time of entering into their house Darshan Singh and Bhola Singh started raising 'Lalkar' saying that they would teach them a lesson for taking possession of the plot of Bikker Singh. First of all Bhola Singh fired a shot from his gun. That shot was aimed at them i.e. her and her husband but it did not hit. Meanwhile, her husband, Harbans Singh picked up the licensed gun of his younger brother Jagdev Singh from inside the house. Her husband Harbans Singh stepped forward up to a distance of 5/7 Karams towards the side of the accused with the licensed gun of Jagdev Singh but Hakam Singh aimed the gun towards her husband. Thereafter, her husband-Harbans Singh retraced his steps and took a turn, but respondent Hakam Singh fired a shot from his gun hitting on the back side of the buttock of her husband, Harbans Singh. Then Harbans Singh fired two shots from the licensed gun of Jagdev Singh in self-defence. One shot hit on the flank and the other on the head of Bhola Singh. The accused party then started taking care of their companion Bhola Singh who was injured. Thereafter, she put a jaffa around her husband, Harbans Singh and took him inside the baithak for his safety and bolted the door from inside. Thereafter, it is alleged that multiple shots were fired but she did not open the door. After some time accused persons left that place. Thereafter Jagdev Singh came down and knocked the door and on recognizing his voice she opened the door. Jagdev Singh left the house to find out the welfare of Sadhu Singh who is the brother of the deceased, Harbans Singh and he came to know that Sadhu Singh has also received injuries. Thereafter a tractor trolley was brought and Harbans Singh was placed in injured condition inside the tractor trolley along with Sadhu Singh and they took them to the hospital. Jagdev Singh went to the Police-station to lodged the F.I.R. Meanwhile, Harbans Singh died on the way. This is the long and short story of P.W.3, Harbans Kaur an eye witness who has seen the death of her husband and she unsuccessfully tried to save her husband. Her testimony has been put to a very close cross-examination and during the cross-examination she was confronted with her statement under Section 161 of the Code of Criminal Procedure. Attempt was made to discredit her testimony as to the fire arms used by the respondent i.e. whether the gun from which the respondent fired was a .303 bore rifle or a 12 bore double barrel gun and the manner of firing in which Bhola Singh received two injuries; one from the gun and the other from the rifle and that whether the deceased Harbans Singh was competent to fire the shot and that her blood stained clothes were not recovered by the Police, in order to discredit her testimony. After closely going through the statement of P.W.3 we are of the opinion that P.W.3 is a truthful witness and unsuccessful attempt of the defence to confront her with different types of fire arms i.e. whether it was a rifle or it was a gun shot injury fired through 12 bore gun or .303 rifle; all this cross-examination was directed against this rustic villager in order to discredit her testimony. This is most unrealistic approach. We fail to appreciate how can a rustic village lady would explain about bore of gun or rifle. P.W.3 whose presence in the house was quite natural

and she having clearly identified the respondent who fired the gun at her husband should be enough to establish the factum of whole prosecution story. To expect from her to give the description in a photogenic manner is asking too much. The High Court instead of entering into split hairing the testimony of this witness with regard to the fire arms used in the occurrence should have concentrated more on the hard truth of the matter instead of finding fault with her testimony. We fail to understand the manner in which the testimony of this witness has been appreciated by the High Court. Sometimes while appreciating the testimony of rustic villagers we are liable to commit mistake by loosing sight of their rural background and try to appreciate testimony from our rational angle. When a lady is confronted with number of intruder in her house armed with deadly weapons and showering bullets she can not give a very accurate and photogenic version as whole thing happened in a few minutes. Therefore, while appreciating such testimony Court should give due regard to their rural background and the whole scenario in which the incident happened. She has narrated the whole incident as it happened and also stated that her husband also fired and that shot killed Bhola Singh. That lends considerable support to the testimony of this witness. She was only witness at the occurrence and she has stated what has happened in her house and none was there except Jagdev Singh who had escaped for his life by going out of the house but unfortunately he died. An attempt was made to discredit her testimony with regard to the second injury caused to deceased Bhola Singh. It is contended that Bhola Singh received two gun shot injuries; one is gun shot injury and the other is a shot from the rifle. How can she account for rifle injury when there was firing spree was going on and other assailants were armed with guns and rifle. She has categorically stated that her husband fired two shots from the licensed gun of Jagdev Singh in self defence, one shot hit on the flank and the other hit on the head of Bhola Singh, but the attempt made by the defence to discredit her testimony on the score of second injury received by deceased Bhola Singh is of no avail. If she really wanted to give a wrong version of incident she could have totally exonerated her husband. But she has categorically stated that the shot fired by her husband from the gun hit Bhola Singh. Whether both the shots fired by her husband hit Bhola Singh or one, she cannot depose in such a photogenic manner. But she admitted that one of the shots hit Bhola Singh when there was exchange of fire from the accused side. She had categorically deposed that Hakam Singh fired a shot from the rifle hitting on the back side of the buttock of her deceased husband, Harbans Singh. Attempt was also made to discredit her testimony with regard to the medical evidence that when the deceased sustained the injuries from a fire arm from the rifle of Hakam Singh he could not have fired shots from the gun and the Police did not recover the blood from the place of incident and the blood-stained clothes of P.W.3 were also not collected by the Police.

So far as the medical evidence is concerned, P.W.2 is Dr.S.K.Gupta who conducted the post-mortem examination. P.W.2 nowhere says that Harbans Singh was incapable of firing shot, likewise Dr.Malik. Moreover, whenever there is conflict between medical evidence and ocular testimony normally ocular testimony should be preferred unless it belies fundamental facts. Moreover when the ocular testimony of P.W.3 which speaks volume that her husband fired two gun shots which proved fatal so far as Bhola Singh is concerned, that leaves no manner of doubt that the gun shots were fired by Harbans Singh. If this witness wanted she could have saved her husband by saying that the shot fired by her husband did not hit Bhola Singh, the deceased. Therefore, so far as the truthfulness of the testimony of this witness is concerned, it is beyond doubt, secondly why should she wrongly state the facts because her husband was already dead and she would be the least person to wrongly involve a wrong person.

It was also contended the copy of F.I.R. reached Magistrate late. It is true it was belated one but this alone is not enough in the present case to be fatal.

P.W.4 - Sadhu Singh was injured witness. He has deposed that the whole incident took place in the house of deceased Harbans Singh. He heard the sound of firearm, he came out of his house and he saw all the accused persons and when accused person saw him, Darshan Singh fired two shots immediately. One of the shots hit him on his right arm but somehow he managed to enter his house and bolted from inside. Then he climbed down to the house of Mohinder Singh with the help of his wife. So far as the testimony of P.W.4 is concerned, it stands fully corroborated that these accused persons were firing at the house of his brothers, Harbans Singh and Jagdev Singh and when he came out to find out the cause, he also fell victim to these accused persons. He has only witnessed the incident to the extent of shots being fired by the accused persons. He could not see what happened inside the house. Therefore, he corroborates the testimony of P.W.3 & Harbans Kaur to this extent. Therefore, so far as the testimony of P.W. 3 is concerned, she is truthful witness. She is wholly reliable witness and there is no reason to disbelieve her.

The High Court has disbelieved her testimony on the grounds i.e. on the manner of firing and recovery of the guns, non seizure of blood stained clothes but these short-comings hardly impeach her testimony. In order to impeach her testimony technical questions were asked to her which was not the correct approach for discarding her testimony. Therefore, we are of the opinion that the High Court has committed an error in discarding the testimony of this witness on technical grounds de hors the factual statement given by her.

Learned counsel for the respondent has also tried to make out that the defence version is more probable. The defence version was that in fact Bhola Singh who was coming for bus stop was first attacked by the prosecution party and in retaliation the accused persons went there and that the prosecution could not explain the second injury to the deceased Bhola Singh. We do not think that the defence version improbabilises the prosecution story. It is just an afterthought theory put up by the defence to improbabilise the prosecution story. But the facts as mentioned above particularly the testimony of P.Ws. 3 & 4 sufficiently lend support to the prosecution story.

It was also pointed out by learned counsel for the respondent that no fire arms were recovered and no seizure has been made of empties. It would have been better if this was done and it would have corroborated the prosecution story. Seizure of the fire arms and recovering the empties and sending them for examination by the Ballistic expert would have only corroborated the prosecution case but by not sending them to the Ballistic expert in the present case is not fatal in view of the categorical testimony of P.W. 3 about the whole incident.

During the course of investigation a serious doubt was cast on the fair investigation by the Investigating Officer and the investigating Officer was subsequently changed but that does not render the testimony of P.W.3 unreliable. After going through the testimony of P.W.3, the wife of the deceased, Harbans Kaur it leaves no manner of doubt in our mind that she is a truthful witness and her testimony fully supports the case of the prosecution. The technical grounds sought to be utilized by the High Court in discarding the testimony of this witness nowhere shakes the truthful version given out by P.W.3, Harbans Kaur. Therefore, we are of opinion that the conviction of Hakam Singh under Section 302, I.P.C. by the trial court for causing the death of Harbans Singh was correct and it should not have been

reversed by the High Court.

Now, coming to the question of trespass, that offence also fully stands established on the basis of the testimony of P.W. 3, Harbans Kaur that all alleged trespassed into her house to cause murderous assault on her husband.

The injury caused to Sadhu Singh, there is no two opinion that P.W.4, Sadhu Singh has categorically stated in his testimony that the shots were fired by one Darshan Singh one of which hit him on his arm. Therefore, the conviction of the respondent under Section 307/34 I.P.C. is established and there is no reason to disbelieve this witness.

Now, coming to the conviction of Hakam Singh so far as causing the death of Mohinder Singh under section 302 I.P.C. read with Section 34 I.P.C. is concerned, the only evidence is that of Sadhu Singh and he has deposed that he has seen the whole incident from the house of deceased Mohinder Singh from the iron grill which as per the finding is that there is no iron grill in the house from where he could witness the whole incident. Secondly, the testimony of PW-5 Baldev Singh, son of deceased Mohinder Singh is also not convincing as he could witness the whole incident from long distance. Therefore, we do not think that charge under section 302 I.P.C. read with Section 34 I.P.C. can be upheld against Hakam Singh for causing the death of deceased Mohinder Singh. Therefore, order of the High Court acquitting the respondent of this charge is upheld.

For the foregoing reasons, the appeal is allowed in part, Order of acquittal rendered by the High Court is partly set aside and the judgment of conviction of respondent in relation to the charges under Sections 302, 307/34 and 449 I.P.C. is restored. And if any fine is recovered then that shall be paid to PW-3 Harbans Kaur.

Bail bonds of the respondent are cancelled and he is directed to be taken into custody forthwith to serve out the remaining period of sentence.