CASE NO.:
Appeal (crl.) 767-769 of 2001

PETITIONER:
RACHHPAL SINGH & ANR.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 23/07/2002

BENCH:
ND SManDthoasrhmaHdehgidkea,ri.

JUDGMENT:

SANTOSH HEGDE, J.

The above criminal appeals are preferred by the appellants against the common judgment delivered by the High Court of Punjab & Haryana at Chandigarh in Murder Reference No.2/99, Crl.A. 130-DB to 132-DB/99 and Criminal Revision No.443/99.
The brief facts necessary for disposal of these cases are as follows :

There was a civil dispute pending between the deceased Virsa Singh and his family on the one hand and Kuljinder Singh on the other in regard to a small plot of land which was abutting the residence of the said parties in the village of Srawan Bodla at Police Station Sadar Malout. In the said dispute, appellant No.2 and his family were supporting Kuljinder Singh. On 11.10.1996 the civil case pertaining to the said dispute was listed before the concerned court and in the said proceedings the deceased Virsa Singh had obtained an interim order against the said Kuljinder Singh. On the date of the incident at about 3.30 p.m. there was a verbal fight which also led to the parties grappling with each other but that did not culminate in any serious incident due to the timely intervention of some ladies in the families. It is the prosecution case that thereafter at about 8 p.m. the appellants herein along with 3 other accused persons came in a white Maruti car driven by the second appellant and the said accused persons got down from the car, raising a 'Lalkara' (challenge) that they would teach the complainant party a lesson for obtaining stay in regard to the land in question. Thereafter, it is stated that the first appellant herein who was armed with a .12 bore double barrel gun and the second appellant who was armed with a rifle along with 3 other accused persons who were armed with 'dangs' attacked the deceased Virsa Singh and his younger son Kulwant Singh on the roof of their house. It is stated that during the said attack the first appellant Rachhpal Singh and the second appellant Gurmit Singh fired shots from their respective weapons at Virsa Singh and Kulwant Singh, consequent upon which each one of them received two bullet injuries and died on the spot. This

incident in question was witnessed by Ravinder Singh, PW-3, who is the son of the deceased Virsa Singh and the brother of deceased Kulwant Singh and Darbara Singh, PW-4, who is the mother's sister's husband of PW-3 who resides about a kilometer and a half away from the house of the complainant and was visiting the complainant and his family for returning a trolley which he had borrowed from them. It is the further case of the prosecution that thereafter PW-3 went to the Police Station at Malout which is about 9 kms. from the place of the incident and lodged a complaint at about 11 p.m. with SHO Ranjit Singh which complaint was registered and forwarded to the jurisdictional Magistrate who received the same by 2.45 a.m. on 12.10.1996. Immediately after registering the crime under Sections 302, 148, 149 IPC and Sections 25 and 27 of the Arms Act against the named accused, the said SHO took up the investigation of the case and proceeded to the place of the incident along with PW-10, Assistant Sub-Inspector, Bohar Singh and others. During the course of the said investigation, the said Officer recorded the statements of the witnesses and at the time of the spot inspection he also collected the blood-stained earth which was found underneath the dead bodies of Virsa Singh and Kulwant Singh in the presence of local Panchas. The Investigating Officer also found two empty .12 bore cartridge casings which were sealed as also 3 empties of 44.40 of the bore rifles found near the dead bodies which were also sealed separately. During the course of investigation, the Investigating Officer arrested the said accused persons (except appellant No.1) on 25.10.1996 while they were travelling in a white Maruti car bearing No. CHK 8320 driven by the second appellant near the village of Punnu Khera. During the said arrest they found Gurmit Singh, appellant No.2, in possession of a rifle of 44.40 bore on his shoulder and 4 live cartridges which were seized from his possession by the Investigating Officer. He also took the car in question into his possession under Ex. P-Z. It is stated that on statement made by the concerned accused the Investigating Officer also recovered certain 'dangs' from the places disclosed by them. It is the further case of the prosecution that on 27.10.1996, the first appellant Rachhpal Singh was traced near the Railway Station of village Kabarwala and at the time of his arrest he was in possession of .12 bore double barrel gun and one belt containing 9 live cartridges which was also seized by the investigating agency.

The post mortem report and the evidence of Dr. R. S.Randhawa, PW-2, shows that both the deceased persons had lacerated wounds on vital parts of their bodies which had lacerated the lung and the Doctor had opined that the injuries in question were anti-mortem and had been caused by the use of fire-arms.

Learned Sessions Judge considering the material placed before him found the appellants herein and the 3 other accused persons guilty of the offence charged against them and convicted and sentenced appellant Nos. 1 and 2 herein to death for offence under Section 302 IPC while other accused were sentenced to life imprisonment. He also sentenced them to varying terms of imprisonment with fine in regard to other offences and referred the case of appellant Nos. 1 and 2 for confirmation to the High Court.

It is against this conviction and sentence, Murder Reference No.2/99 was lodged before the High Court while Criminal Appeal Nos.130-DB to 132-DB/99 were preferred by

the convicted accused persons challenging their convictions and sentences. The complainant separately preferred a Criminal Revision No.443/99 praying for compensation under Section 357 Cr.P.C. among other reliefs. The High Court as per the impugned judgment, concurred with the finding of the learned Sessions Judge as to the conviction imposed on the appellants herein but came to the conclusion that the imposition of capital punishment was uncalled for since it felt that the case in hand was not one of those rarest of the rare cases and accordingly reduced the sentence to one of life imprisonment in regard to these appellants. The High Court on an analysis of the evidence, disagreed with the finding of the Sessions Court as to the guilt of the 3 other accused persons and acquitted them of the charge under Section 302 read with 148 IPC. It, however, maintained the conviction under Section 449 but reduced the period of sentence to the period already undergone. While considering the claim of the complainant in Criminal Revision No.443/99 for compensation, the High Court felt that this was a fit case for the exercise of its jurisdiction under Section 357 Cr.P.C. and directed each of the appellants to pay a sum of Rs.2 lacs, totalling Rs.4 lacs as compensation and in default it imposed a default sentence of 5 years' RI on each of the appellants and directed that the said sentence should run consecutively with the sentence of life imprisonment.

Mr. K B Sinha, learned senior counsel appearing for the appellants, very strenuously contended that the courts below erred in placing reliance on the evidence of the alleged eye-witnesses PWs.3 and 4. He contended that it is clear from the evidence of these 2 witnesses that they could not have seen the incident in question from the place where they were allegedly standing and their very presence at the place of the incident was highly improbable because if at all PW-3 was present at the place of the incident, he being the son of Virsa Singh and brother of Kulwant Singh would have intervened in the fight. There being no such attempt on the part of PW-3, it is reasonable to presume that he was not present at the time of the incident. In regard to PW-4, he submitted that though he is related to the deceased, he was staying far away from the house of the deceased and his stated reason for being present at the place of the incident having not been established and he having small children with a disabled brother, it was highly improbable that he would have been visiting the deceased at that late hour in the day. In support of this contention, Mr. Sinha pointed out that it was the case of PW-4 that he had come to return a trolley which he had borrowed from the deceased and nowhere in the evidence it is seen that the prosecution has been able to establish that any such trolley was in fact there at the residence of the deceased. He also submitted that the recovery of the bullet casing was not recorded in the recovery Mahazar, therefore, that part of the evidence which connects the discharge bullet from the weapons recovered from the accused cannot be believed.

While Mr. Bimal R. Jad, learned counsel representing the State of Punjab submitted that the trial court as well as the Sessions Court have very carefully considered the evidence adduced by the prosecution and have cited reasons for accepting the same, therefore, there is no ground for interference with such findings of the courts below.

A perusal of the evidence of the doctor shows that there is some discrepancy in his evidence in regard to the nature of the injury on the deceased as to whether the edges of the wound were averted or inverted. But this, in our opinion, is not fatal to

the case of the prosecution. The doctor while admitting that there was some such confusion in his evidence as well as the post mortem report, in our opinion, has clarified the said position during the course of his examination, though belatedly. From the very nature of the wounds found on the body of the deceased, it is clear that they died of gunshot injuries which is not seriously disputed. What is being disputed by the learned counsel is the points of entry and exit which on facts of this case, would make a very little difference since the other evidence adduced by the prosecution clearly shows that the deceased died out of gunshot injuries. Some discrepancy as to the nature of entry and exit on facts of this case would not make the prosecution case any weaker. It is more so because of the fact that the casings of the bullets which were recovered by the Investigating Officer were positively proved by the ballistic expert as of those bullets which were discharged from the weapons recovered from the appellants and these casings having been found near the bodies of the deceased on the roof of their house would establish that the deceased died of bullets discharged from the weapons seized from the appellants. In such circumstances, the question of entry or exit of the wounds would lose its significance if the presence of the accused persons with these weapons at that place and time is otherwise established by the prosecution. Herein, we must record that while the learned counsel for the appellants is unable to question the correctness of the ballistic expert's opinion, he, however, states that there is no evidence to show that the bullet casings sent to the ballistic expert are actually the same casings that were found near the dead bodies because the Investigating Officer in Ex. DA, the spot Mahazar, has not noted that he had recovered those bullet casings. For this the learned counsel relied on the entry made in Col.23 of Ex. DA. In the said column under the heading 'Articles found near the dead body', nothing is entered. Such omission, if any, in our opinion does not disprove the prosecution case that these bullet casings were found near the dead bodies and were seized, packed and sent to the ballistic expert. Because in the evidence of the Investigating Officer he has in specific terms stated that he found these bullet casings near the bodies of the deceased and he seized, sealed and sent them to the ballistic expert which statement of the Investigating Officer is not challenged in the cross-examination, therefore, mere lack of entry in Col. 23 would not in our opinion make the evidence of the Investigating Officer under oath which is unchallenged as unbelievable. Therefore, we reject this argument of the learned counsel and accept the evidence of the prosecution that the casings sent by the Investigating Officer are of the bullets discharged from the weapons in question.

Coming to the incident in question, learned counsel pointed out from the evidence of PWs.3 and 4 that they had climbed on the roof of the deceased's house from entirely a different way than the one taken by the deceased and the assailants. Therefore, it is contended that it is highly improbable that from the place where these witnesses were standing they would have been able to witness the incident in question. It is also pointed out from their evidence that these witnesses were hiding behind parapet wall therefore definitely they could not have seen the incident in question. Here again we must notice that though it is true that the witnesses have stated that they went to the roof from a different direction they were specific in their evidence as to the visibility of the place of the incident from the place where they were standing. The fact that they were trying to hide themselves from the assailants would not conclusively establish that they were not able to see the assailants. It is not as if they ran away from the place of the

incident or locked themselves in such a manner as not to be able to see the incident. As a matter of fact they did go up to the roof and noticed the incident though they did not make themselves visible to the assailants. The fact that PW-3 did not intervene in the fight would also, in any manner, make his evidence less acceptable. In our opinion PW-3 being the son of Virsa Singh and residing with him was expected to be present in the normal course because it was a time for dinner. Even PW-4 who was a close relative and who was staying just one and a half kilometers away from the house of the deceased, has given good reasons to say why he was present at the place of the incident. He has stated in his evidence that he had borrowed a trolly from the deceased and came to the latter's house to return the same. This evidence cannot be disbelieved merely because the Investigating Officer did not notice the trolly in the house of the deceased at the time of inquest.

Having carefully considered the evidence produced by the prosecution and the reasoning of the court below, we do not find any ground to differ from the same, hence, we reject the challenge of the appellants made in this appeal as to their conviction and sentence.

Learned counsel for the appellants then questioned that part of the judgment by which the High Court had awarded Rs.4 lacs compensation in exercise of its power under Section 357 Cr.P.C. He first of all submitted that his client did not have any court notice of the revision petition filed by the complainant because the same was not actually admitted nor any notice was issued. From the ordersheet of the proceedings of the revision petition it is seen that the court had tagged this revision petition along with the Reference case as well as the criminal appeals at the time of admission though no notice was issued. Parties were aware of this petition because arguments were addressed on this question. Hence, this technical objection cannot be entertained because no prejudice is caused to the appellants on this count. At this stage we may also take note of the objection raised on behalf of the caveator-complainant that the appellants have not preferred any separate appeal against the judgment of the High Court rendered in Crl. Revision No.443/99 and therefore technically there is no challenge to that part of the judgment at all. Learned counsel for the appellants submitted that they have challenged the judgment of the High Court in its entirety, even though the number of the revision petition is not mentioned in the cause title, therefore, this objection should not be entertained. We think both the defects pointed out by learned counsel for the appellants as to non-issuance of the notice by the High Court as also the argument of the respondent that there being no specific appeal against the order of the High Court in Crl. Revision No.443/99 are too technical a matter and none of the parties are prejudiced because of these technical defaults, therefore, we will consider the objection of the appellant as to the grant of compensation by the High Court on its merit. In this regard we have heard Mr. L. K. Pandey, learned counsel appearing for the complainant also. According to Mr. Sinha, learned senior counsel, while exercising the power under Section 357 Cr.P.C. if the court decides to levy a fine then the compensation will have to be paid out of the fine as stipulated under Section 357 (1)(b). In the instance case he points out that the Sessions Judge had awarded a fine of Rs.5,000/- in regard to the offence under Section 302, therefore, the High Court could have in appeal or revision, enhanced that fine to a reasonable extent and awarded a compensation from out of that amount, according to the learned counsel, the court could not have awarded compensation in addition to the fine that is awarded in regard to the same offence. We are not in agreement with this argument

of the learned counsel. Learned counsel presumes that the High Court has also confirmed the fine of Rs.5,000/- awarded by the learned Sessions Judge for offence under Section 302 IPC. A perusal of the operative part of the judgment of the High Court clearly shows that so far as the punishment under Section 302 is concerned, it has disagreed with the Sessions Court and altered the sentence to one of life imprisonment from death. It has nowhere stated that it is also awarding a fine or that it was confirming the fine awarded by the Sessions Court for the offence under Section 302 IPC. In the absence of any such specific recording in our opinion it should be deemed that the High Court has awarded only a sentence of life imprisonment for an offence under Section 302 IPC. In such cases where the court does not award a fine along with a substantive sentence, Section 357(3) comes into play and it is open to the court to award compensation to the victim or his family. In our opinion it is in the exercise of this power under Section 357(3) that the High Court has awarded the compensation in question, therefore it was well within the jurisdiction of the High Court. The question then is, as contended by the learned counsel for the appellants, was there sufficient material for awarding this sum of Rs.2 lacs each. Learned counsel submits that this figure is arrived at arbitrarily by the High Court without there being any evidence in this regard and that the High Court has not given an opportunity to the appellants to adduce any evidence as to their monetary capability or as to the requirement of victim's family. Therefore, the learned counsel pleads that this exorbitant amount could not have been awarded. In support of this argument learned counsel has relied on Palaniappa Gounder v. The State of Tamil Nadu and Ors. (AIR 1977 SC 1323) and Sarwan Singh & Ors. V. The State of Punjab (AIR 1978 SC 1525). It is true that in those cases this Court while considering the compensation awarded by the courts below held that the compensation in question should commensurate with the capacity of the accused to pay as also other facts and circumstances of that case like the gravity of the offence, the needs of the victim's family etc. While saying so, we notice from these very same judgments cited by the learned counsel that it is clear that the jurisdiction of the court to grant compensation is accepted by this Court.

It is true that the High Court in the instant case did not have sufficient material before it to correctly assess the capacity of the accused to pay the compensation but then keeping the object of the Section in mind as seen from the reasoning of the High Court we think it is a fit case in which the court was justified in invoking Section 357. The question then will be : is the amount of Rs.2 lakhs per accused too exorbitant a figure ? Since the material on record is scanty, the court will have to assess this monetary figure from material available and also taking into consideration the facts, judicial notice of which the court can take note of.

We have perused the records to find out the reasonable amount which would befit the facts of this case as also the capacity of the appellants to pay. It is on record that the appellants are owning agricultural land though the extent and fertility of the same is not available. It is also seen that they own a tractor and a trolly which we can assume are normally owned by farmers having large extent of land. We also notice that they own a Maruti car which also indicates that appellant are reasonably affluent. On this basis, we think it is reasonable to conclude that the appellants are capable of paying at least Rs.1 lac per head as compensation. Therefore, we modify the order of the High Court by reducing the compensation payable from Rs.2 lakhs each to Rs.1 lakh each and direct the appellants to pay the said sum, totalling Rs.2 lakhs, as directed by the

High Court.
With this modification the substantive appeal of the appellants in regard to their conviction and sentence is dismissed and their challenge to the grant of compensation is accepted partly and the compensation granted by the High Court is modified, as stated above.

JUDIS