

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.1535-1538 OF 2004

Balbir

...Appellant

Versus

Vazir & Ors.

...Respondents

WITH

CRIMINAL APPEAL NO.1539 OF 2004

State of Rajasthan

...Appellant

Versus

Lichman & Anr

...Respondents

WITH

CRIMINAL APPEAL NO.1540 OF 2004

State of Rajasthan

...Appellant

Versus

Vazir & Ors.

...Respondents

WITH

CRIMINAL APPEAL NO. 1541 OF 2004

State of Rajasthan

...Appellant

Versus

Hoshiyar Singh & Ors.

...Respondents

J U D G M E N T**(SMT.) RANJANA PRAKASH DESAI, J.**

1. These appeals arise out of a common judgment and order dated 23/1/2004 passed by the Rajasthan High Court in D.B. Murder Reference No. 1 of 2002, D.B. Criminal Appeal No. 781 of 2002, D.B. Criminal Appeal No. 718 of 2002 and D.B. Criminal Appeal No. 105 of 2003. Criminal Appeals No. 1535-1538 of 2004 are filed by PW-4 Balbir and Criminal Appeal Nos. 1539, 1540 and 1541 of 2004 are filed by the State of Rajasthan against the acquittal of the accused. Since these appeals arise out of the same judgment they are being disposed of by this common judgment.

Gist of the prosecution case:

2. Deceased Krishna Gir (also referred to as '**Krishna Gir**') was the Head Priest of 'Balakdera Ashram' situated at Hissar in Haryana. Krishna Gir was also having ultimate supervision and control over other Ashrams associated with this Ashram. Baba Lal Gir Ashram at village Rampura in Rajasthan where the incident occurred was also one of such Ashrams which was under the supervision and control of 'Balakdera Ashram'. Amongst others, one Pokhar-Khedi Ashram situated at village Pokhar-Khedi in Jind District of Haryana and its Priest were also under the control and supervision of 'Balakdera Ashram'. Pokhar-Khedi Ashram had about 100 acres of land. In the past, it was managed by its Priest Mangeram. Priest Mangeram transferred that land in the names of his nephew Joragir and other members of his family. He also executed a Will in respect of the said land. When this fact came to the knowledge of Krishna Gir through the villagers of Pokhar-Khedi, he filed a civil suit for cancellation of the transfer of said land made by Priest

Mangeram. The civil suit was decreed in favour of Krishna Gir. The decree was maintained by the Punjab and Haryana High Court as well as by the Supreme Court. During the pendency of the said litigation, Priest Mangeram died. Joragir, the nephew of Priest Mangeram, claimed to be his successor but he was not allowed to take charge. Subsequently, Krishna Gir was appointed as Priest of Pokhar-Khedi Ashram. Krishna Gir recovered the possession of the land of Pokhar-Khedi Ashram in execution of the decree. Because of this dispute there was enmity between Krishna Gir and the accused. An attempt was made on the life of Krishna Gir in Jind Court premises. The accused party tried to regain possession of the land. In that dispute one child died. Thereafter, Krishna Gir was assaulted with knife at Balakdera. Cases in relation to all these incidents are stated to be pending in different courts in Haryana State. It is the prosecution case that on 12.7.2000 a conspiracy was hatched in the house of accused Hoshiyar Singh at Pokhar Khedi whereby Hoshiyar Singh, Rajmal, Jage Gir, Joragir, Vazir, Sohan Gir and Lichman conspired to kill Krishna Gir. In

pursuance of the said conspiracy Krishna Gir and his disciple Sewanand Gir were shot dead on 23.7.2000 at 11.05 A.M at Baba Lalgiri Ashram in village Rampura.

3. **FIR relating to the incident:**

On 23/07/2000 at 11.05 a.m. PW-23 Lakhma Ram Rathore, Station House Officer of RPS, Hamirvas, Rajasthan received an intimation from Police Station In-charge, Rajgarh, District Churu, Rajasthan that there was firing at the Ashram of Baba Lal Giri in Rampura Village. On the basis of this information, PW-23 Lakhma Ram Rathore along with one ASI and police force reached the site of occurrence where PW-1 Puranmal submitted a written report. According to this report, Baba Lalgiri Ashram is situated in village Rampura, Tehsil Rajgarh, District Churu, Rajasthan and there is a 'Samadhi' of Baba Lalgiri. The Ashram was under the supervision of Priest Mangal Gir. Every year, at the Samadhi, on the occasion of death anniversary of Baba Lalgiri, a 'Yagya' was being performed. Following the said tradition, on 17/7/2000, a 'Yagya' was arranged at the Baba Lalgiri

Ashram. The 'Yagya' was scheduled to culminate on 23/7/2000. On 23/7/2000, a community lunch was in progress. Number of Saints and community people had gathered to take part in this 'Yagya'. Priest Krishna Gir was supervising the 'Yagya'. Priest Krishna Gir was sitting alone on a wooden bench in the Satsang Hall of Baba Lalgiri Ashram. Disciple Sewanand was sitting on a mat at a distance of 2 feet from the wooden bench. Some other villagers including PW-4 Balbir Singh and PW-5 Pratap Singh were sitting at a distance of 10 feet from the wooden bench. The Priest Mangal Gir was sitting near the gate of the Ashram. PW-1 Puranmal (informant) was sitting in the store room of the Ashram. PW-10 Ummed Singh of Beri village was also sitting in the Ashram. People were moving around for paying their respect to Krishna Gir. All of a sudden, between 10.30 a.m to 10.45 a.m, two persons armed with fire arms entered the Satsang Hall from the rear gate of the Ashram. One of them was wearing pant and bush shirt and another was in kurta pyjama. The man wearing pant and bush shirt fired at Krishna Gir. Resultantly, Krishna Gir

started bleeding profusely. Sewanand tried to grab the person who fired at Krishna Gir. Then the man wearing kurta payjama fired at Sewanand with intention to kill him. Consequently, Sewanand also became unconscious and fell down. Seeing this, PW-1 Puranmal, PW-10 Ummed Singh and Priest Mangal Gir raised cries and ran after the assailants. They noticed one more person standing at the rear gate armed with a double-barrel gun. This was also witnessed by PW-12 Jagdish Prasad, Prajapat of village Rampura and Baba Samundra Gir of Bhiwani. All these three persons ran towards the car which was parked on the road. One person was standing near the parked car. The man armed with double-barrel gun fired in the air after reaching near the car. Those four persons sat in the car and escaped towards railway station. This was witnessed by PW-9 Veer Singh and Krishan Singh. Manish Singh noted the number of car parked on the road as HR-26-G-8928 which was of Ceilo make and of Grey colour. Krishna Gir and Sewanand were taken to 'Bedwal Nursing Home' at Pilani in injured state by two different vehicles. Sewanand ('deceased Sewanand')

died on the way. PW-2 Dr. Tarun Bedwal of 'Bedwal Nursing Home' after giving first aid to Krishna Gir advised to take Krishna Gir either to Hissar or Delhi for further treatment. Krishna Gir was taken to CMC Hospital, Hissar where he succumbed to the injuries.

4. At 12.30 p.m. report was forwarded to Police Station, Hameervas by PW-23 Lakhma Ram Rathore through Constable PW-18 Kunad Ram, which was recorded by PW-19 Sujan Singh at 2.00 p.m. as Case No.130/2000 under Section 302, 307, 120-B read with Section 34 of IPC and Section 3 read with Section 25 of the Arms Act.

5. On completion of investigation, the case was committed to the Sessions Court, Rajgarh for trial and charges were framed against 11 accused persons namely: Vazir (A1), Joragir (A2), Hoshiyar Singh (A3), Rajmal (A4), Jage Gir (A5), Balraj (A6), Lichman (A7), Sohan Gir (A8), Kulveer (A9), Ramniwas (A10) and Lila @ Jogendra (A11). A1 and A2 were charged for the offences punishable under

Sections 148 and 302, 308 of the IPC as well as under Section 3 read with Section 25 of the Arms Act for committing the murder of deceased Krishna Gir and deceased Sewanand. A3, A4, A5, A6, A8 and A9 were charged for the offences punishable under Sections 148 and 120B of the IPC. In addition to charge under Sections 148 and 120B, A4 was also charged under Section 3 read with Section 30 of the Arms Act and A9 was charged under Section 302 read with Section 149 of the IPC. A7, A10 and A11 were charged under Sections 148 and 302 read with Section 149 of the IPC. The prosecution, in support of its case, examined as many as 31 witnesses (PW-1 to PW-31). No defence evidence was adduced. In their statements recorded under Section 313 of the Code of Criminal Procedure, (for short, **“the Cr.P.C.”**), the appellants stated that they were innocent.

6. The trial court convicted A1 and A2 under Sections 120B, 148 and 302 of the IPC for committing the murder of

Krishna Gir and Sewanand. They were sentenced to death for offence punishable under Section 302 of the IPC. They were further sentenced to two years rigorous imprisonment for offence punishable under Section 148 of the IPC. However, A1 and A2 were acquitted of charges under Section 308 of the IPC as well as under Section 3 read with Section 25 of the Arms Act. A6 and A7 were convicted under Sections 120B, 148 and 302 read with Section 149 of the IPC for committing murder of Krishna Gir and Sewanand. They were sentenced to undergo imprisonment for life under Section 302 read with Section 149 of the IPC and to pay Rs. 5,000/- each as fine, in default of payment of fine, to undergo further rigorous imprisonment for 3 months. They were also sentenced to two years rigorous imprisonment for offence punishable under Section 148 of the IPC. Rest of the accused were acquitted of all charges.

7. A D.B. Murder Reference No. 1/2002 was made by the trial court to the High Court under Section 366 of the Cr.P.C. A1 and A2 filed D.B. Criminal Appeal No. 781/2002 and A6

and A7 filed Criminal Appeal No. 718/2002 before the High Court against their conviction and sentence. The High Court by the impugned order allowed the Criminal Appeals of A1, A2, A6 and A7 and set aside their conviction and sentence awarded by the trial court. The High Court confirmed the acquittal of rest of the accused recorded by the trial court. Hence the instant appeals.

8. We have heard Mr. Rishi Malhotra learned counsel appearing for appellant Balbir, Mr. Ansar Ahmad Chaudhary and Ms. Ruchi Kohli appearing for State of Rajasthan and Mr. Makrand D. Adkar with Mr. Vishwajit Singh appearing for the respondents. We have also perused the written submissions filed by them.

9. **Gist of the submissions on behalf of appellant-Balbir.**

- i) The prosecution case basically hinges upon the evidence of PW-3 Prithvi Gir, PW-4 Balbir Singh and PW-

5 Pratap Singh. The High Court wrongly overlooked their evidence.

- ii) PW-2 Dr. Bedwal had testified that on 23/07/2000 deceased Krishna Gir was brought by PW-3 Prithvi Gir at his nursing home. At that time deceased Krishna Gir was conscious and was in a position to speak.
- iii) PW-3 Prithvi Gir stated that deceased Krishna Gir was taken to the hospital of PW-2 Dr. Bedwal and Krishna Gir made dying declaration in the car. PW-3 Prithvi Gir also stated that deceased Krishna Gir told him that he was shot at by accused Vazir and his disciple Sewanand was shot at by accused-Joragir.
- iv) Eyewitnesses PW-4 Balbir Singh and PW-5 Pratap Singh have corroborated PW-3 Prithvi Gir.
- v) PW-3 Prithvi Gir gave detailed narration of the motive as well as the earlier two attempts made by the accused to kill deceased Krishna Gir. He stated that the accused had grudge against deceased Krishna Gir as he

had taken possession of the Dera Land situated at Village Pokar Kheri from their uncle Mange Giri. He also stated that accused Wazir was a habitual criminal and he had made earlier attempts to kill deceased Krishna Gir. PW-4 Balbir Singh, PW-5 Pratap Singh have corroborated PW-3 Prithvi Gir on the aspect of motive.

- vi) This is a case of strong motive. The accused had lost possession of the Dera land which was taken by deceased Krishna Gir. The complainant cannot be said to have any ill-design as they were already in possession of the land.
- vii) The first attempt on the life of deceased Krishna Gir was made in the year 1996 when the deceased had gone to court to pursue the case against the accused. The second attempt was made in Hissar court. This attempt was also unsuccessful.

- viii) The conduct of accused Vazir speaks for itself as he escaped from jail and killed deceased Krishna Gir in broad daylight. Thus, he has no fear of law.
- ix) The High Court has not come to the conclusion that evidence of PW-4 Balbir Singh and PW-5 Pratap Singh was, in any way, infirm as regards the actual occurrence. The High Court has unnecessarily given much importance to technical flaws in the investigation. The High Court's judgment is perverse. It has acquitted the accused thereby completely effacing the cogent eye-witness account of PW-4 Balbir Singh and PW-5 Pratap Singh, the consistent evidence of PW-3 Prithvi Giri and other relevant evidence on record.
- x) As held in **Swami Shradanand(2) alias Murali Manohar Mishra v. State of Karnataka**¹ at the most sentence could have been commuted to life imprisonment. It could have been altered to 20 years or 30 years imprisonment without remission. The

¹ (2008) 13 SCC 767

accused certainly do not deserve any leniency. Their acquittal is totally erroneous and unjust.

10. **Written submissions on behalf of respondents-accused.**

- i) Deceased Krishna Gir and deceased Sewanand were shot at on 23/07/2000 at 10.30 a.m. Krishna Gir died at 3.10 p.m. in hospital at Hissar and Sewanand died while being taken to hospital. PW-1 Puranmal who was present at the site filed written complaint at 12.30 p.m. and FIR No. 30 of 2000 came to be registered at 2.00 p.m. Written complaint or the FIR does not disclose the names of the assailants, though, they were recorded promptly after the incident.
- ii) There are two prosecution stories, one is introduced by PW-1 Puranmal, who has filed the FIR and the other is introduced by PW-3 Prithvi Gir, 3 days after the incident. These two versions differ.

- iii) PW-1 Puranmal in complaint/FIR specifically says that the assailants could be identified if seen. However, no identification parade was held.
- iv) Presence of PW-3 Prithvi Gir is not mentioned in any contemporaneous documents. The prosecution story introduced in the complaint/FIR is not supported by the evidence of witnesses.
- v) Three days after the incident PW-3 Prithvi Gir came out with the story of oral dying declaration. A bare look at the contents of the dying declaration show that it is a concocted piece of evidence.
- vi) The High Court has correctly analysed the evidence of PW-3 Prithvi Gir, PW-4 Balbir Singh and PW-5 Pratap Singh and rightly come to the conclusion that the entire evidence is concocted and suffers from improvements and contradictions. The High Court has rightly stated that the story is concocted by the successor of

Balakdera i.e. PW-3 Prithvi Gir to implicate as many rivals as possible due to existing bitter rivalry.

- vii) The presence of PW-3 Prithvi Gir, PW-4 Balbir Singh and PW-5 Pratap Singh at the scene of offence is not proved. After perusing the evidence on record and having regard to the other attendant circumstances, the High Court has rightly observed that the said witnesses were not present at all. They directly reached Hissar at about 4.30 p.m. i.e. much after the death of deceased-Krishna Gir.
- viii) The High Court has rightly acquitted the accused after disbelieving the evidence of PW-3 Prithvi Gir and PW-4 Balbir Singh and PW-5 Pratap Singh. The High Court's judgment does not merit any interference.

11. **Gist of submissions on behalf of State of Rajasthan:**

- i) It is an admitted position that there was enmity between the deceased and the accused on account of land dispute which fact has been corroborated by the evidence of PW-3 Prithvi Gir, PW-4 Balbir Singh, PW-5 Pratap Singh, PW-6 Maha Singh. PW-13 SI Chandrabhan, PW-17 Kartar Singh and PW-26 Randhir Singh have confirmed FIRs in cases relating to previous attempts made on the life of deceased Krishna Gir. The High Court has ignored and not dealt with the statements of above mentioned witnesses in relation to motive.
- ii) Both PW-4 Balbir Singh and PW-5 Pratap Singh have given vivid description of how Krishna Gir was killed. They have stated that accused Vazir shot at Krishna Gir and that accused Joragir shot at Sewanand.
- iii) There is no discussion in the impugned judgment as regards the details given by both the prosecution witnesses of the incident of killing of Krishna Gir and

Sewanand by the accused with the use of firearms. The High Court has wrongly overlooked the evidence of PW-4 Balbir Singh and PW-5 Pratap Singh.

- iv) There is nothing unnatural about the dying declaration made by deceased Krishna Gir. Deceased Krishna Gir was taken to hospital at Pilani by PW-3 Prithvi Gir, which is corroborated by the statement of PW-2 Dr. Bedwal. Further, deceased Krishna Gir was with PW-3 Prithvi Gir from 11 a.m. to approximately 3.30 - 3.45 p.m., therefore, the possibility of his making dying declaration during this period cannot be ruled out as he was alive at Pilani. This is corroborated by PW-2 Dr. Bedwal who referred deceased Krishna Gir to Hissar hospital. The High Court fell into a grave error in not believing the dying declaration.
- v) The eye-witnesses were disciples of deceased Krishna Gir and have a reasonable and justified explanation as to why they gave statements on 26/7/2000. The evidence of these witnesses is corroborated by other

evidence on record. There exists no discrepancy in the same and cannot be discarded merely because they were recorded three days after the incident. In the circumstances of the case delay in recording statements of the witnesses does not discredit the prosecution case.

- vi) The accused were identified by PW-4 Balbir Singh and PW-5 Pratap Singh in court. Identification of the accused in court is not bad. Failure to hold Identification Parade would not make inadmissible the evidence of identification in court. The High Court gave undue importance to absence of identification parade. In this connection reliance can be placed on **Malkhansingh and Ors. v. State of M.P.**².

- vii) The High Court's judgment is perverse. The High Court has ignored cogent evidence of eye-witnesses and given undue importance to minor discrepancies. The High Court grossly erred in setting aside the well

² (2003) 5 SCC 746

reasoned judgment of the trial court. This has resulted in grave miscarriage of justice. It is, therefore, necessary to set aside the impugned judgment.

12. We are dealing with an appeal against acquittal. The acquittal is not recorded by the trial court but by the High Court. We shall therefore see whether there were sufficient reasons for the High Court to set aside the conviction. We must however bear in mind that if the view taken by the High Court is a reasonably possible view it should not be disturbed because the acquittal of the accused by the High Court has strengthened the presumption of their innocence. We must also mention that according to the prosecution this is a case of strong motive. Land disputes between the two sides and earlier attacks made on deceased Krishna Gir have been deposed to by the witnesses. The High Court has observed that no documentary evidence is produced by the prosecution in support of this case. However, we cannot dismiss the prosecution case of enmity between the two sides lightly because reference to it is made by several

witnesses. But that by itself does not help the prosecution. Just as there is a possibility of murders having been committed because of motive due to enmity, there is also a possibility of false implication of innocent people to settle past scores. That is why it is said that motive is a double edged weapon. We shall keep this in mind and approach the case.

13. PW-1 Purnamal a resident of Rampura lodged the FIR (Ex.P1) at 12.30 P.M on 23/7/2000. He involved four persons as assailants but did not name them. He turned hostile. We shall advert to the FIR a little later.

14. The prosecution relied on two eye-witnesses. They are PW-4 Balbir Singh and PW-5 Pratap Singh. Before turning to their evidence it is necessary to refer to evidence of PW-3 Prithvi Gir, a disciple of deceased Krishna Gir who deposed about the presence of the eye-witnesses at the scene of offence and also about the dying declaration allegedly made by deceased Krishna Gir to him. PW-3 Prithvi Gir is not an

eye witness to the incident. He stated that deceased Krishna Gir had asked him to come to the Dera of Lalgiri Maharaj situate at Rampura on 23/7/2000, as the Yagya which deceased Krishna Gir was supervising was to conclude on that day. Accordingly, PW-3 Prithvi Gir went to Rampura on 22/7/2000. According to PW-3 Prithvi Gir at 10.30 in the morning of 23/7/2000 deceased Krishna Gir was sitting on a bench in the small Satsang room inside the Dera. Deceased Sewanand was sitting at a distance of 2' from deceased Krishna Gir on a mat. PW-4 Balbir Singh, PW-5 Pratap Singh, Hari Singh, Rajvir Singh were sitting at a distance of 10' from deceased Krishna Gir. Deceased Krishna Gir's driver Leela was also sitting there. PW-3 Prithvi Gir further stated that at 10.30 in the morning there was a sound of gunfire and stampede. He and Ramgiriji ran towards deceased Krishna Gir. They saw him lying on the bench with blood on his body. Deceased Sewanand was lying on the floor with bullet injuries. PW-3 Prithvi Gir further stated that Sewanand was put in one vehicle and deceased Krishna Gir was put in a Sumo vehicle for being taken to hospital at Pilani. Along with

PW-3 Prithvi Gir, Ramgiriji and one person from Rampura were there in the Sumo vehicle. PW-3 Prithvi Gir further stated that deceased Krishna Gir was conscious and told him that he and deceased Sewanand were shot at by Vazir son of Hoshiar Singh, Caste Gosain and Joragir son of Dunigir, caste Gosain, both residents of Pokarkhedi; both of whom he recognized at the spot. According to PW-3 Prithvi Gir deceased Krishna Gir further told him that in this conspiracy to kill him Dalelgiri disciple Ram Gir resident of Maham, Hoshiar Singh, Rajmal, Jageram resident of Pokarkhedi and Sohangir disciple of Gulab Gir, caste Gosain resident of Sukhura, District Jind and Baljit Singh, caste Jat Gosain, village Pokarkhedi and Devnand village Mahiwal, caste Gusain, presently employed with Delhi Police are also involved and Lichman son of Jagannath, caste Gusain, Village Pinjpura, District Kaithal, maternal uncle of Vazir conspired to shoot him. According to PW-3 Prithvi Gir the doctor at the hospital at Pilani asked him to take deceased Krishna Gir to a bigger hospital. He was taken to CMC hospital at Hissar, where he died. Deceased Sewanand died on way to Pilani.

15. The prosecution heavily relied on this dying declaration allegedly made by deceased Krishna Gir to PW-3 Prithvi Gir. It is submitted that the fact that PW-3 Prithvi Gir took deceased Krishna Gir to hospital at Pilani is corroborated by PW-2 Dr. Bedwal. Presence of PW-3 Prithvi Gir has also been mentioned in the inquest proceedings conducted by PW-31 Prem Singh Huda after the death of deceased Krishna Gir. It is submitted that PW-2 Dr. Bedwal stated that deceased Krishna Gir was in a position to talk. Assuming, however, that deceased Krishna Gir could talk and make a dying declaration, the question is how far the narration of the facts contained in the alleged dying declaration is true and whether it inspires any confidence. Deceased Krishna Gir was seriously injured. He succumbed to those injuries in the Hissar hospital. He must have been in great pain. It is inconceivable that deceased Krishna Gir would make such a dying declaration giving minute particulars like fathers name, caste and village of each alleged conspirator when he was on death bed with excruciating pain. It would have

been natural for him to just give the names. But he is stated to have given details of each of the ten alleged conspirators and that makes this dying declaration suspect. A bare reading of this dying declaration makes it evident that it is a doctored document. Such details could not have been given by deceased Krishna Gir at that stage. It is possible that they have been supplied by PW-3 Prithvi Gir. The High Court in our opinion has rightly observed that such a dying declaration does not appear to be natural, but portrays an attempt by the successor of Balakdera i.e. PW-3 Prithvi Gir to plant names of all those with whom Balakdera had axe to grind through the statement attributed to deceased Krishna Gir. We find it difficult to place reliance on this dying declaration.

16. It is well settled that an oral dying declaration can form basis of conviction if the deponent is in a fit condition to make the declaration and if it is found to be truthful. The courts as a matter of prudence look for corroboration to oral dying declaration. As we have already noted, the dying

declaration of deceased Krishna Gir does not inspire confidence. One can perceive an effort to involve number of persons by giving their minute particulars. It does not appear to be a natural voluntary statement of a dying man. The prosecution could have infused some credibility in it if it had examined the driver of the car in which deceased Krishna Gir was taken to the hospital and Ramgiriji who was also in the car. It is not understood why such vital evidence is kept back. Thus, there is no corroboration to lend assurance to the dying declaration of deceased Krishna Gir. In this connection, we may usefully refer to **Heikrujam Chaoba Singh vs. State of Manipur**³ where the deceased was stated to have made a dying declaration to his brother in the ambulance. There were four other persons in the ambulance. None of them was examined. This Court refused to place reliance on the dying declaration as the disinterested persons sitting in the van were not examined. In the instant case, admittedly PW-3 Prithvi Gir was very close to deceased Krishna Gir. He was the successor of

³ (1999) 8 SCC 458

deceased Krishna Gir. There was enmity between the accused and deceased Krishna Gir's followers. The prosecution should have, therefore, examined the driver or Ramgiriji who was in the car. This is an additional reason why alleged dying declaration of deceased Krishna Gir cannot be relied upon. Besides PW-3 Prithvi Gir's statement was recorded three days after the incident casting further doubt on the dying declaration. We shall advert to that aspect now.

17. The dying declaration is allegedly made by deceased Krishna Gir and names of PW-4 Balbir Singh, PW-5 Pratap Singh, Hawa Singh and Rajvir Singh were disclosed by PW-3 Prithvi Gir first time on 26/7/2000 at Balakdera when his statement was recorded by the police. PW-3 Prithvi Gir's silence for three days creates a grave doubt about the truthfulness of prosecution story. He was the principal disciple and successor of deceased Krishna Gir. If deceased Krishna Gir had made a dying declaration and communicated the names of the assailants to him, his devotion to his Guru

should have prompted him to immediately disclose the names of the assailants to the police and others. His silence gives scope to the possibility of his concocting a story involving number of persons from the opposite group as the perpetrators of crime. As already stated by us in this statement recorded three days after the incident PW-3 Prithvi Gir came out with names of four persons as eye-witnesses. If PW-3 Prithvi Gir had so much information, he should not have waited for three days to disclose it. We shall soon go to the evidence of the eye-witnesses named by PW-3 Prithvi Gir. But the fact that their names surfaced three days after the incident creates a doubt as to whether they were really present at the scene of offence or whether this was a conscious decision taken within three days after the incident to create evidence by citing four persons as eye-witnesses.

18. PW-4 Balbir Singh stated that on 23/7/2000 at about 8.00 a.m in the morning, deceased Krishna Gir was sitting on a 'Divan' in Satsang Bhawan. Sewanand was sitting on a

mat and some other saints were also sitting there. He stated that he and other saints were sitting under a Zal tree outside the Satsang Bhawan where deceased Krishna Gir was sitting. But he also added that they were sitting 10 to 12 feet away from deceased Krishna Gir. It is pertinent to note that his statement that he was sitting 10 to 12 feet away from deceased Krishna Gir does not find place in his statement recorded under Section 161 of the Cr.P.C. and, therefore, it is clearly an afterthought. He and the other saints were, therefore, sitting under the Zal tree situated outside the Satsang Bhawan. Before we proceed further, it is necessary to note that the High Court has observed that according to the site plan, the situation of two Zal trees standing in the Ashram is such that from that place it is not possible to see what is happening inside the Satsangh Bhawan. PW-23 Lakmaram Rathore also stated that according to the site plan, it is not possible to see what is happening inside the Satsangh Bhawan from the Zal tree standing outside the Satsang Bhawan. Counsel for the State tried to argue that what is happening inside the Satsang

Bhawan is visible from the Zal tree. We are not inclined to disturb this finding of fact recorded by the High Court which we are sure has been recorded after carefully perusing the evidence on record and scrutinizing the site plan. If the witnesses including PW-4 Balbir Singh were sitting under a Zal tree from where what was happening inside the Satsang Bhawan was not visible, their claim that they saw the incident become suspect. Even otherwise, the tenor of their evidence and their conduct make their evidence suspect. PW-4 Balbir Singh stated that at around 10.30 a.m two persons came through the crowd near deceased Krishna Gir. The man in front was wearing pant and shirt and he fired as soon as he reached near the door of the Satsangh Bhawan. He fired three to four times. Sewanand grabbed the person who had fired at deceased Krishna Gir. The man, who was behind the man in pant and shirt and who was wearing kurta pyjama fired at Sewanand and Sewanand fell down. The assailants ran towards the gate. They went out firing at a wall. He further stated that he recognized them when they turned around. According to him, the man who fired at

deceased Krishna Gir was Vazir s/o Hoshiar Singh, and the man who fired at Sewanand was Jora Giri s/o Duni Gosain. He stated that he along with Pratap Singh, Hawa Singh and Rajveer followed the assailants after the assailants had gone out of the gate. He stated that at the gate, Balraj s/o Krishan Chand was firing in the air with his double-barrel gun. At some distance, Lachman s/o Jagannath was standing. At some distance, a car was parked. Two persons were standing near the car, whom he could not identify. Thus, according to PW-4 Balbir Singh, there were in all six persons whereas as per FIR Ex. P/1, only four persons were involved in the incident. It is pertinent to note that PW-4 Balbir Singh stated that all of them reached Hissar at about 4.30 to 5.00 p.m. By that time, deceased Krishna Gir had died and after they reached the hospital, Hissar Police came there. But PW-4 Balbir Singh did not tell anything to the police. He further stated that he had met Mangal Gir immediately after the incident and he had told Mangal Gir about the entire incident. If Mangal Gir was communicated the names of the assailants Mangal Gir should have disclosed them to the

police. Mangal Gir's statement was recorded only on 30/8/2000, in which, Mangal Gir did not disclose the names of assailants. Therefore, PW-4 Balbir Singh's claim that he disclosed the names to Mangal Gir is suspect. Moreover, Mangal Gir was not examined by the prosecution. He further stated that when he went inside the Satsangh Bhawan deceased Krishna Gir was talking. He had heard deceased Krishna Gir. If that was so he should have reported the incident to the police. He did not do so. His statement came to be recorded after three days on 26/7/2000 after PW-3 Prithvi Gir disclosed the dying declaration to the police and names of the eye-witnesses. The High Court has referred to several inconsistencies in the evidence of PW-4 Balbir Singh. In our opinion, the High Court has rightly not placed reliance on his statement. Evidence of PW-5 Pratap Singh also suffers from the same infirmities. His statement was also recorded three days after the incident. No reliance can be placed on his evidence. The other two witnesses Rajveer Singh and Hawa Singh named by PW-3 Prithvi Gir have not

been examined by the prosecution. Thus, the evidence of so-called eye-witnesses does not inspire confidence.

19. We have already noted that PW-1 Puranmal who claimed to be at the scene of offence lodged FIR (Ex.P1). He turned hostile. It is, however, pertinent to note that in the FIR, PW-1 Puranmal involved four persons. He did not name them but he stated that he could identify them. According to the FIR, deceased Krishna Gir and deceased Sewanand were sent in a Ceilo Car to Pilani. This version differs from the version of PW-3 Prithvi Gir because PW-3 Prithvi Gir states that they were taken in two different cars. The FIR further states that on the way Sewanand died and deceased Krishna Gir was taken to hospital at Hissar. Thus, when the FIR was written at 12.30 P.M on 23/7/2000, information about Sewanand's death and departure of deceased Krishna Gir to Hissar was conveyed at Rampura village. No names of persons who accompanied the deceased to hospital were stated in the FIR. Names of Ummed Singh, Jagdish Prakash, Baba Samundra Gir, Veer Singh, Krishna Singh and Manish

Singh were mentioned as persons who had seen the incident. Out of them Veer Singh was examined as PW-9, Ummed Singh was examined as PW-10 and Jagdish Prakash was examined as PW-12. Rest of the persons were not examined. The persons named in the FIR did not know the assailants. They stated that they could identify the assailants if they are brought before them. However, no identification parade was held. We shall advert to the absence of identification parade a little later. PW-9 Veer Singh, PW-1 Ummed Singh and PW-12 Jagdish Prakash turned hostile and hence their evidence is of no use to the prosecution.

20. The High Court has rightly noted that when the FIR was lodged by PW-1 Puranmal at about 12.30 P.M, the fact that deceased Sewanand had died on the way to Pilani and deceased Krishna Gir was taken to Hissar was known at the Ashram at Rampura village. By the time, alleged dying declaration was also made by deceased Krishna Gir. Therefore, the names of the assailants also should have

reached Rampura village along with information that deceased Krishna Gir was being taken to Hissar. PW-3 Prithvi Gir should have communicated the names of the assailants. However, names of the assailants were not disclosed by anyone to the police. PW-4 Balbir Singh stated that Sewanand was taken to Pilani by Raghavanand. When he along with others reached Pilani, Raghavanand told him that Krishna Gir has been taken to Hissar. The prosecution should have examined Raghavanand who could have said whether any information about assailants was communicated to him. The prosecution failed to examine Raghavanand. All this casts a shadow of doubt on PW-3 Prithvi Gir's evidence that deceased Krishna Gir made a dying declaration to him in which he disclosed the names of the assailants. It may also be mentioned that PW-12 Jagdish Prakash who turned hostile made a statement that Mangal Gir who was present disclosed the names of the assailants to him, but he did not remember the names. Pertinently Mangal Gir's name is mentioned in the FIR hence he was present at the scene of offence. However, Mangal Gir's

statement was recorded by the police as late as on 30/8/2000 and he was not examined by the prosecution. It bears repetition to state that in his statement recorded on 30/8/2000, Mangal Gir did not disclose names of the assailants.

21. PW-3 Prithvi Gir stated that he disclosed the names of the assailants to PW-31 Prem Singh Huda at Hissar where PW-31 conducted the inquest proceedings. However, the names of the assailants find no mention in inquest report. In fact, PW-31 Prem Singh Huda stated that he had recorded the statement of PW-3 Prithvi Gir, but PW-3 Prithvi Gir had not disclosed to him the dying declaration or the names of the assailants. PW-29 Laxmi Narayan, the Investigating Officer stated that he went to Hissar on 23/7/2000 and met PW-31 Prem Singh Huda. He got a lot of information about the incident from PW-31 Prem Singh Huda except the names of the assailants. According to PW-29 Lakshmi Narayan, he went to Balakdera on 25/7/2000, but nobody disclosed the names of the assailants to him. The names of the alleged

assailants surfaced three days after the incident when the statements of PW-3 Prithvi Gir, PW-4 Balbir Singh and PW-5 Pratap Singh were recorded. No acceptable explanation is given for delay in recording the statements. The reluctance of the prosecution witnesses to come out with the truth and name the assailants, the delay in recording the statements of eye-witnesses and statement of PW-3 Prithvi Gir, the unnatural dying declaration giving minute diverse particulars about the assailants reflect on the credibility of the prosecution case.

22. Another significant aspect of this case is absence of identification parade. Persons who were named in the FIR and others, who had witnessed the incident at different stages did not know all the assailants but they claimed that they could identify the assailants. But the prosecution failed to hold test identification parade. It is argued that identification made in court is sufficient. Reliance is placed on **Malkhansingh** where this Court has held that substantive evidence is the evidence of identification in

court. The test identification parade provides corroboration to the identification of the witness in court if required and what weight must be attached to the evidence of identification in court, is a matter for the court of fact to examine. There can be no dispute about this proposition. But in **Malkhansingh** this Court was dealing with a case of gang rape. This Court noted that courts below had concurrently found the evidence of prosecutrix to be implicitly reliable. This Court noted that the appellants raped the prosecutrix one after another. She was threatened and intimidated. All this must have taken time. This Court noted that it was not a case where the identifying witness had only a fleeting glimpse of the appellants. The prosecutrix had a reason to remember the faces of the appellants as they had committed a heinous offence and put her to shame. She had abundant opportunity to note the appellants features and due to the traumatic experience the faces of the appellants must have been imprinted in her memory and there was no chance of her making a mistake about their identity. The observations of this Court will have

to be read against the backdrop of these facts. Facts of this case are different. The incident does not seem to have lasted for a long time. The eye-witnesses were sitting outside the Satsang hall. It cannot be said that they had sufficient opportunity to see the faces of the accused who were on the run. In such a case failure to hold identification parade is a serious drawback in the prosecution case.

23. Having applied our mind to the evidence on record, we are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. We are mindful of the fact that this case involves two murders and use of firearms. Crime is grave. But the High Court has scrutinized the evidence correctly in light of settled legal principles. The evidence on record creates some suspicion, but does not prove the offence to the hilt. The accused are, therefore, entitled to benefit of doubt. Besides, as we have already noted the instant appeals challenge the order of acquittal. We do not find the High Court's judgment to be perverse. The High Court, in our opinion, was justified in interfering

with the conviction of the accused. The view taken by the High Court is legally unassailable and a factually possible view. We, therefore, affirm it.

24. In the result, the appeals are dismissed.

.....J.
(RANJANA PRAKASH DESAI)

.....J.
(MADAN B. LOKUR)

NEW DELHI;
JULY 01, 2014.



JUDGMENT