

State of Punjab

Vs

Wassan Singh and Others

Criminal Appeal No. 499 of 1976

(R. S. Sarkaria, E.S. Venkataramiah JJ)

15.01.1981

JUDGMENT

SARKARIA, J. –

1. This appeal by the State of Punjab is directed against a judgment, dated July 22, 1975, of the High Court of Punjab & Haryana, whereby the appeal of the respondents (hereinafter referred to as 'the accused') was accepted and they were acquitted of the double-murder charge against them. The prosecution story narrated by Resham Singh (PW 2), who claims to be an eyewitness of the occurrence, runs as follows :
2. Resham Singh (PW 2) used to live with his brother-in-law Hazara Singh deceased, in a hamlet, in the fields outside the habitation of village Cheema. One Ajit Singh of village Dhual was murdered, and Wassan Singh accused and his party men were tried therefor. At the trial, Hazara Singh deceased appeared as an eyewitness of that murder. The trial Court convicted Wassan Singh and his companions in that case. They went in appeal to the High Court. Pending the appeal the High Court enlarged Wassan Singh accused on bail. The occurrence now in question in the instant case took place when Wassan Singh was on bail.
3. The lands of Avtar Singh, Mukhtar Singh and Harbhajan Singh accused (respondents) adjoin the lands of Hazara Singh deceased. Three or four day prior to the incident in question, the cattle of these accused persons trespassed on the land of Hazara Singh and damaged his cotton crop. Thereupon, a sharp altercation took place between Hazara Singh and Resham Singh on one side and Harbhajan Singh and Mukhtar Singh on the other. Gajjan Singh son of Gopal Singh resident of the village interceded and pacified the parties. Joginder Singh accused-respondent is the brother of Mukhtar Singh accused-respondent, while Harbhajan Singh respondent is their first cousin. Mukhtar Singh and Harbhajan Singh accused are alleged to be party men of Wassan Singh.
4. On August, 4, 1973 at about 3.30 p. m., Resham Singh (PW2), Resham Singh (deceased) son of another Hazara Singh and Hazara Singh deceased were proceeding by the footpath from the Bus Stand, Amarkot to their hamlet. On the way Bachan Singh, brother of Hazara Singh, met them and proceeded along with them. When they reached near the fields of Jarmaj Singh Sarpanch of Mahmoodpura, all the six accused, namely, Wassan Singh, Baj Singh, Meja Singh, Joginder Singh, Mukhtar Singh and Harbhajan Singh emerged from the sann crop and came to the bank of the watercourse. Baj Singh was armed with a pistol and the other five accused were armed with rifles. Wassan Singh, Joginder Singh and Mukhtar Singh fired their rifles at Hazara Singh. The rifle-shots hit Hazara Singh on the left side of his head, and he dropped dead. Resham Singh (PW 2), Bachan Singh and Resham Singh deceased started running towards the ploughed fields. Meja Singh,

Harbhajan Singh and Baj Singh chased them. Meja Singh and Harbhajan Singh encircled Resham Singh deceased and shot him dead with rifle-shots. Baj Singh chased Resham Singh (PW 2) and Bachan Singh (PW 3) and fired at them with his pistol. When these two were running away, the other two accused also fired at them. Resham Singh and Bachan Singh, however, succeeded in escaping unhurt. Resham Singh (PW 2) immediately reached the Bus Stand, Amarkot, picked up his, motor cycle which was lying there at a stop and drove fast to Police Station, Valtoha, where he lodged the first information report (Ex. PE) at 4.30 p. m. Police sub-Inspector Bishamber Lal recorded the report of Resham Singh and sent a copy of the same as a special report to the superior officers, including the Judicial Magistrate, First Class at Patti, who received the copy of the FIR at 6.30 p. m., on the same day. While running away from the spot, Resham Singh (PW 2) had left behind his shoe (Ex. P-1) near the scene of murders.

5. Sub-Inspector Bishamber Lal reached the scene of occurrence at 5.30 p. m. and started investigation. He prepared the inquest reports regarding the deaths of Hazara Singh and Resham Singh deceased persons. He also took into possession blood-stained earth and other relevant articles lying near the two dead bodies. He found two empty cartridge cases at the scene of Hazara Singh's murder. He took them into possession and sealed them into a parcel. He also seized two pairs of shoes lying at the spot.

6. After his arrest, Mukhtar Singh accused was interrogated by the Investing Officer on August 31, 1973. After making a statement, Mukhtar Singh accused, in the presence of witnesses, led the police to the discovery of the rifle (Ex. P-7) and some live cartridges. The rifle and the empty cartridges earlier found at the scene of crime were sent to the ballistic expert for examination and opinion. After examination, the ballistic expert of the Forensic Science Laboratory, Chandigarh, reported (vide Ex. PQ) that the 303 fired cartridge marked C1 had been fired through the 303 rifle marked 'A' by him. But no definite opinion could be given regarding the linkage of the fired cartridge, marked C2, with the 303 rifle marked 'A', due to lack of sufficient individual characteristic marks on C2.

7. Joginder Singh accused was arrested on August 24, 1973 and Baj Singh accused on December 18, 1973. The post-mortem examination of the dead body of Resham Singh was performed by Dr. Gursharan Kaur on August 5, 1973 at 8 a. m. The doctor found five gunshot injuries on his body. Two of these were wounds of entry, with everted margins on the back of the left chest. No charring was present on any of these gunshot wounds. The death in the opinion of the doctor was due to shock and hemorrhage resulting from gunshot injuries on the chest which were sufficient to cause death in the ordinary course of nature.

8. On the same day, Dr. Gursharan Kaur conducted the autopsy on the dead body of Hazara Singh and found four firearm injuries, two of which were wounds of entry and two were wounds of exit. All these injuries were on the skull. They involved fracture of the skull and damages to the brain. These injuries had been caused with firearm and were sufficient to cause death instantaneously, in the ordinary course of nature.

9. At the trial, the mainstay of the prosecution was the testimony of the two eyewitnesses, Resham Singh (PW 2) and Bachan Singh (PW 3).

10. Examined under Section 342, CrPC, Wassan Singh accused admitted that he along with others was tried for the murder of Ajit Singh of village Dhual and Hazara Singh deceased had appeared against him as eyewitness of that murder; and that he (Wassan Singh) was convicted by the Court of Session, but had been released on bail pending his appeal in the High Court. He denied the rest of

the prosecution case and stated that he had been falsely implicated by the relations of Ajit Singh deceased on suspicion; and that on the day of occurrence, he was working as a Conductor on a truck at Muzaffarnagar.

11. The plea of Baj Singh was one of plain denial of the prosecution case. He stated that his brothers Punjab Singh, Narinder Singh and Bagicha Singh had been prosecuted for the murder of one Puran Singh, who was a relation of Bachan Singh (PW 3); that Punjab Singh and his companions were acquitted in that case. Baj Singh added that he used to look after the defence of the accused in Puran Singh's murder case; and that on account of this, he had been falsely implicated. He further stated that at the time of occurrence, he was residing in U. P.

12. Meja Singh accused, also, denied the prosecution case. He stated that one Balkar Singh of village Ban had been murdered. He (Meja Singh) used to look after the defence of Jarnail Singh, his wife's brother, who was being tried for the murder of Balkar Singh; that on account of this, the relation of the said Balkar Singh had, in connivance with the complainant-party, falsely implicated him in the instant case. The remaining accused, also, denied the circumstances appearing in evidence against them.

13. The learned Additional Sessions Judge, Amritsar, who tried the case against these six accused persons, found that Wassan Singh had a strong motive to murder Hazara Singh deceased, because the latter had appeared as an eyewitness against Wassan Singh in Ajit Singh's murder case. The trial Judge further accepted the prosecution evidence in regard to the fact that a few days before this occurrence in question, there was a quarrel between Hazara Singh deceased and Resham Singh (PW 2) on one side and Mukhtar Singh, and Harbhajan Singh accused on the other, when the cattle of the accused had trespassed on the land of the deceased and damaged his cotton crop; and that on account of this ill will, Joginder Singh, Mukhtar Singh and Harbhajan Singh accused had a sufficient motive to join hands with Wassan Singh accused to murder Hazara Singh deceased. The trial Judge further found that the prosecution had failed to establish the exact nature of the motive which might have actuated Meja Singh and Baj Singh to murder Resham Singh deceased. The trial Judge further held that the FIR which had been lodged by Resham Singh with great promptitude at Police Station, Valtoha, which was about three miles from the place of occurrence, furnished valuable corroboration of the evidence of Resham Singh (PW 2). He accepted the evidence of Resham Singh and Bachan Singh. He further found that sub-Inspector Bishamber Lal had tried to favour Joginder Singh accused by fabricating a note in his zimini at some subsequent stage. This note is to the effect, that Joginder Singh was, in fact, present irrigating his nearby fields and he joined the police investigation on the very day of occurrence and had remained with the police till the investigation by the Deputy Superintendent of Police. The trial Judge disbelieved the plea of alibi set up by the Meja Singh accused. In the absence of independent evidence, the trial Judge was unable to hold from the bare testimony of Bishamber Lal, sub-Inspector, that the rifle (Ex. P-7) had been recovered from Mukhtar Singh accused. He, however, criticised the conduct of sub-Inspector the ballistic expert of the Forensic Laboratory, Chandigarh, with due promptitude. In the result, the trial Judge held that Wassan Singh, Joginder Singh and Mukhtar Singh accused had fired their rifles at Hazara Singh deceased, and had caused his death. He therefore, convicted these three accused for the substantive offence under Section 302, Penal Code. He further held that the common object of the unlawful assembly constituted by the six accused was to murder Hazara Singh deceased. He therefor, further convicted all the six accused under Section 302 read with Section 149, Penal Code, for the murder of Hazara Singh. The trial Judge found that the murder of Resham Singh did not appear to have been caused in prosecution of the common object of the said unlawful assembly. He therefore, convicted Baj Singh, Meja Singh and Harbhajan Singh accused only under Section 302

read with Section 34, Penal Code, for the murder of Resham Singh deceased and sentenced each of them to imprisonment for life and a fine of Rs. 200. In respect of the murder of Hazara Singh, Wassan Singh was sentenced to death, while each of the other five accused were sentenced to imprisonment for life and a fine.

14. The trial Judge referred the case to the High Court for confirmation of death sentence of Wassan Singh. All the accused, also, appealed against their conviction and sentences. The High Court allowed the appeal, declined the reference and rejected the evidence of the eyewitnesses, Resham Singh (PW 2) and Bachan Singh (PW 3), for these reasons :

- (i) Both these witnesses are closely related to the deceased Hazara Singh, who was the principle target of the accused.
- (ii) (a) Excepting in the case of Wassan Singh who had undoubtedly a grudge against Hazara Singh deceased, it has not been satisfactorily established by the prosecution that the order five accused had any motive to commit the murders in question.

(b) Gajjan Singh, who is said to have interceded and pacified both the parties at the time to alleged quarrel over cattle trespass, three or four days prior to the occurrence, between Mukhtar Singh and Harbhajan Singh on one hand and Hazara Singh deceased and Resham Singh (PW 2) on the other, has not been examined by the prosecution.

(c) There was no mention about this earlier incident in the statement of Bachan Singh (PW 3) before the police during investigation.
- (iii) Both Resham Singh and Bachan Singh, PWs had earlier been involved in case of serious crime, and Bachan Singh was admittedly registered as a bad character with the police. On account of their antecedents, Resham Singh and Bachan Singh do not appear to be reliable people.
- (iv) The prosecution story is highly unnatural. The presence of these two eyewitness along with the deceased persons was unlikely. Had these witnesses been with Hazara Singh deceased, they would have been the target of attack after Hazara Singh was killed and not Resham Singh deceased against whom the accused had no grudge.
- (v) Hazara Singh deceased, Bachan Singh and Resham Singh, PWs, all admittedly reside in the hamlet of Hazara Singh deceased, and if they had to go to Amarkot for making purchases, they would have in all probability gone together. Bachan Singh's version, that he had gone to Amarkot to make enquiries regarding the availability of diesel and on his return journey in the way, met and joined the company of his brother, Hazara Singh deceased, and his companions, was not believable, because there was no need for Bachan Singh to have gone to Amarkot for the purchase of diesel as he could have asked Hazara Singh to make the necessary enquiries.
- (vi) There is a material inconsistency in the testimony of the two eyewitnesses as to when Hazara Singh deceased and Resham Singh (PW2), had left their behak (hamlet). From the statement of Resham Singh (PW 2), it appears that from their behak they had gone to Amarkot that very day for purchasing cloth and on the return journey they met Bachan Singh. As against this, the story told by Bachan Singh is

that a day earlier Hazara Singh deceased and Resham Singh, PW had left their behak for some unknown destination and that a day late they had met him at the adda, after their departure from the behak the previous day. This version completely belies the version of Resham Singh (PW 2) that they had left their behak in order to make purchases of cloth and other articles.

(vii) Another odd feature brought out from the evidence of Resham Singh (PW 2) is the presence of motor cycle at Amarkot on that day. It is surprising that he could afford to maintain a motor cycle from the meagre income that he would have got from his 5 or 6 acres of land. His explanation as to why he left the motor cycle at Amarkot, is also not convincing.

(viii) The investigation of the case conducted by the sub-Inspector Bishamber Lal (PW 13) does not inspire confidence.

(a) The evidence relating to the recovery of empty cartridges (vide Ex. PG) and pair of shoes from the spot near the dead body of Hazara Singh was not reliable, because PW 13 did not mention about the presence of these articles in the inquest report (Ex. PDZ).

(b) Though the empty (crime) cartridges recovered from the spot were sent to the ballistic expert earlier, they were returned to the police station on the plea that the test cartridges had not been sent along with those empties."Even if it was so, there was no need of sending the crime cartridges to the police station, as the test cartridges could be sent for through a separate letter. In this situation, the suggestion that the crime cartridge had been later on fired through rifle (Ex. P-7) when it was recovered cannot be considerable improbable."

(ix) "On arrival at the scene of the incident, PW 13 found Joginder Singh accused at a distance of about 100 yards irrigating his field. According to Bishamber Lal, he interrogated Joginder Singh there and then, but did not arrest him. If Joginder Singh accused had been found near the scene of the crime within a short time, engaged in his normal activities, his participation in the crime would be highly improbable."

15. Learned counsel for the appellant vehemently contends that the reasoning of the High Court is manifestly unsound, if not wholly perverse. Great emphasis has been laid on the fact that the first information report in this case was lodged by Resham Singh (PW 2) with utmost promptitude, and even its copy had reached the Magistrate at about 6 or 6.30 p. m. at Patti, on the same day. In the first information report, proceeds the argument, all the material facts including the names of the accused and of the witnesses have been mentioned. It is submitted that since this FIR was made without delay in circumstances in which the informant had no time to concoct a false story, it furnished valuable corroboration of the evidenced of Resham Singh (PW 2), and made his evidence safe enough to be accepted. It is further maintained that in the first place, the prosecution had established that Mukhtar Singh, Harbhajan Singh and Joginder Singh has also a motive to join hands with Wassan Singh to murder Hazara Singh deceased, and that even if it was held that such motive on the part of the companions of Wassan Singh accused had not been substantiated-as the High Court has held-then PWs 2 and 3 had also no motive or animus to falsely implicate them. Counsel have criticised the failure of the High Court to discuss the value and effect of the FIR lodged by PW 2. It is emphasised that the circumstance that the FIR was made without delay was a circumstance of

paramount importance in evaluating Resham Singh's evidence in particular and the prosecution evidence in general. It is argued that the omission on the part of the High Court to deal with and discuss the FIR has caused serious aberration in its approach and vitiated its appreciation of the evidence of the eyewitnesses.

16. On the other hand, Shri R. K. Jain, learned counsel for the respondents, has submitted that since the reasons given by the High Court in support of the acquittal of the accused cannot be called perverse, this Court should not, in keeping with its practice, disturb the acquittal even if it feels inclined to hold that the view of the evidence taken by the trial Court is also reasonable. Shri Jain has further tried to support the reasoning of the High Court.

17. We have carefully considered the contentions canvassed on both sides. We are also not unmindful of the fact we are dealing with an appeal against an order of acquittal in a double-murder case. Even so, we find that the reasons given by the High Court for holding that Resham Singh (PW 2) was not an eyewitness of these murders, are utterly unsustainable. The mere fact that Resham Singh (PW 2) had succeeded in escaping unhurt, or that there are discrepancies in the statements of Resham Singh (PW 2) and Bachan Singh (PW 3), as to whether they had gone to Amarkot with Hazara Singh deceased on the very day of occurrence or a day earlier, was no ground for jumping to the conclusion that PW 2 was not in the company of the deceased or near about the scene of occurrence when Hazara Singh and Resham Singh were shot dead.

18. The occurrence took place on August 4, 1973, while Resham Singh (PW 2) and Bachan Singh (PW 3) were examined at the trial on December 27, 1974; that is to say, 17 months after the incident. Such discrepancies in regard to collateral or subsidiary facts or matters of detail occur even in the statements of truthful witnesses, particularly when they are examined to depose to events which happened long before their examination. Such discrepancies are hardly a ground to reject the evidence of the witnesses when there is general agreement and consistency in regard to the substratum of the prosecution case. As rightly observed by the trial Court, Resham Singh (PW 2) was never cross-examined by the defence regarding his whereabouts and that of Hazara Singh deceased on the previous night. The mere fact that PW 2 did not make any purchases at Amarkot could hardly be a reason to hold that his being in the company of Hazara Singh deceased at the material time, was improbable.

19. It is common ground that there was no love lost between Wassan Singh appellant and Hazara Singh deceased. Wassan Singh, though convicted by the trial Court for the murder of Ajit Singh, was released on bail by the High Court pending his appeal. PW 3 is the brother and PW 2 a relation of the deceased. All these three were living together in the same hamlet in the fields. It is in the evidence of these witnesses that the other accused are party men of Wassan Singh. It is further in evidence that sometime before the occurrence both Hazara Singh and Resham Singh (PW 2) were arrested and handcuffed by Darshan Singh, Police sub-Inspector on the allegation that they were indulging in smuggling and would be liquidated. Both of them however, escaped and appeared with handcuffs on before the Deputy Home Minister and complained against the Police sub-Inspector. Both were prosecuted for smuggling betel leaves across the border. It was therefore, not improbable that this trio consisting of Hazara Singh deceased, PW 2 and PW 3 was, as usual, moving about or carrying on their activities together. Moreover, the deceased Hazara Singh must have known that Wassan Singh accused who was inimically disposed towards him, was at large on bail. This was an added reason for this troika to move about for their security, if not for anything else, in the company of each other.

20. Nor could PW Bachan Singh's presence at the scene of crime be discounted and his evidence discarded merely on the score that there was no necessity for him to go to Amarkot for enquiring about the availability of diesel.

21. There is one towering circumstance which goes a long way to lend assurance to claim of PW 2 that he was an eyewitness of the occurrence. It is that the FIR (Ex. PE) was lodged by him at Police Station, Valtoha, so promptly that he had practically not time to spin out a false story.

22. The learned trial Judge has accepted, and rightly so, the sworn testimony of Resham Singh (PW 2) and sub-Inspector Bishamber Lal (PW 13), who was then Station House Officer, Valtoha, to the effect, that the FIR (Ex. PE), was recorded in the police station at 4.30 p. m. Police Station, Valtoha is three miles from Bus Stand, Amarkot. According to Resham Singh, the occurrence took place at about 3.30 p. m. On seeing the occurrence and after eluding the pursuit, Resham Singh, as he says, ran to Adda Amarkot through the fields covering a distance of about one kilometer. According to PW 2, his motor cycle was lying at a shop in Amarkot. He picked up his motor cycle from there and drove to the Police Station, Valtoha and without loss of time lodged the first information, there. The endorsement on Ex. PE, bears out that the copy of the first information was in the hands of Shri K. K. Garg, Judicial Magistrate, First Class, Patti, at 6.30 p. m. This circumstance assures the truth of the prosecution evidence on the point that the first information report was made by Resham Singh (PW 2) at the police station at 4.30 p. m., that is, within two hours of the occurrence, without undue delay. The learned Judges of the High Court have not at all dealt with the FIR or the promptitude with which it was made. They doubted Resham Singh's version that from Amarkot he went on his own motor cycle to Valtoha Police Station. The argument employed by the High Court is that Resham Singh owned only four or five kallas of land, and could not acquire and maintain a motor cycle from the income of his petty holding. However, this was not the defence case. In cross-examination, the defence themselves, brought out and tried to establish that he was earning by smuggling betel or other things to Pakistan. Thus, according to the own showing of the defence, PW 2 had a source of income other than his agricultural income. It was, therefore, nothing improbable if Resham Singh owned a motor cycle.

23. Sub-Inspector Bishamber Lal (PW 13) was not questioned in cross-examination as to whether or not Resham Singh had come to the police station on a motor cycle. He (PW 13) was, however, questioned as to what transport he had used for going from the police station to the scene of murders. The witness replied that he went on a motor cycle up to Amarkot and from there went on foot to the scene of occurrence. Resham Singh stated that since it had recently rained, the kacha path from Amarkot to their hamlet in village Ban, had become muddy and unsafe for riding a motor cycle because of the high risk of skidding. That was why, the witness had left the motor cycle at Adda Amarkot with a shopkeeper. It may be noted that the occurrence took place on August 4, 1973 when the rainy season would be in full swing. This explanation of Resham Singh (PW 2) regarding the kacha path from Amarkot to the scene of occurrence, being non-motorable on the day of occurrence, receives inferential support from the fact appearing in the evidence of Bishamber Lal (PW 13), that he had to cover the distance from Adda Amarkot to the place of occurrence, on foot. Thus, the reason employed by the High Court for disbelieving the version of Resham Singh (PW 2) regarding his owning and going on a motor cycle from Amarkot to Police Station, Valtoha, was manifestly unsound.

24. It was argued before the trial Court on behalf of the accused that the occurrence might have taken place at about 2 p. m. when Resham Singh (PW 2) was about 400 or 500 yards away in his hamlet, and that on hearing the report of gun-fire he was attracted to the scene of crime, and he

having seen the dead bodies lying there, went home, took his motor cycle and then drove to the Police Station, Valtoha and brought sub-Inspector Bishamber Lal to the scene of occurrence and the sub-Inspector prepared the FIR at the spot after deliberation with Resham Singh and others. This contention was rightly rejected by the trial Court. As observed earlier, since it had rained a day prior to the occurrence, the kacha path from Amarkot to the scene of occurrence and to the hamlet of the deceased must have been muddy and slippery. Therefore, the very suggestion that from village Ban to Amarkot and thereafter to Valtoha, Resham Singh went on his motor cycle, was improbable.

25. Moreover, from the conduct of the Investigating Officer, Bishamber Lal, it appears that he was not favorably disposed towards the deceased and the informant. Indeed, a suggestion was put to Bishamber Lal (PW 13) by the Police Prosecutor, that he has been unfair in an investigation of the case and tried to favour Joginder Singh and Meja Singh accused. The learned trial Judge found that the investigation conducted by sub-Inspector Bishamber Lal was biased in favour of Joginder Singh and Meja Singh accused persons, and that the sub-Inspector fraudulently interpolated a not in his zimini to help Joginder Singh accused. The High Court has, also, found that this not in the zimini was a fraudulent insertion. This being the case, sub-Inspector Bishamber Lal would be least disposed to join hands with Resham Singh informant in preparing the first information report after deliberation with him (PW 2) at the spot.

26. Dr. Gursharan Kaur (PW 1) who performed the post-mortem examination of the dead bodies of Resham Singh and Hazara Singh on August 4, 1973 between 8 a. m. and 9 a. m. respectively, opined that the time which elapsed between these deaths and their post-mortem examination was about 18 hours. Thus, according to the doctor's opinion, also, the deaths took place at about 2 or 3 p. m. on August 4, 1973. The opinion of the medical witness thus corroborated the version of Resham Singh (PW 2), inasmuch as the latter has testified that the murders took place at about 3.30 p. m. This means, that the statement of Resham Singh (PW 2) in the first information report was made without undue delay, and, as such, furnished very valuable corroboration of his testimony at the trial, in all material particulars.

27. If the presence of Resham Singh (PW 2) and Bachan Singh (PW 3) at the time and place of murders was probable, the further question would be, how far their evidence could be safely accepted against each of the accused persons?

28. It is true that both these witnesses are related to the deceased, and, as such, are interested witnesses. Their antecedents, also, are of a questionable nature. But their antecedents or mere interestedness was not a valid ground to reject their evidence. Persons with such antecedents are not necessarily untruthful witness. Nor mere relationship with the deceased was a good ground for discarding their testimony, when, as we have already held, their presence at the scene of occurrence was probable. All that was necessary was to scrutinise their evidence with more than ordinary care and circumspection with reference to the part or role assigned to each of the accused. An effort should have been made to sift the grain from the chaff; to accept what appeared to be true and to reject the rest. The High Court did not adopt this methodology in appreciating their evidence. Instead, it took a short cut to disposal, and rejected their evidence wholesale against all the accused, for reasons which, as already discussed, are manifestly untenable.

29. Keeping the principle enunciated above, we have scrutinised the entire material on record with particular focus on the evidence of PW 2 and PW 3, against each of the accused. Excepting the immaterial discrepancies considered earlier, the evidence of PW 2 and Pw 3 was consistent, and their presence as already mentioned, at the time and place of murders was probable. Even, so, as a

matter of abundant caution, it will be safe to act their interested evidence to the extent to which some assurance is coming from surrounding circumstances or other evidence.

30. The story narrated by the eyewitnesses Resham Singh and Bachan Singh is that Wassan Singh, Mukhtar Singh and Joginder Singh first fired a volley of rifle-shots at Hazara Singh deceased as a result of which he dropped dead on the spot. The evidence of the doctor who performed the autopsy on the dead body of Hazara Singh is to the effect that there were two bullet wounds of entry on the left side side of the head. These wounds were located at a distance of 2 1 /2 cms from, each other. There were two corresponding wounds of exit. There was no blackening or charring around these wounds of entry. This indicates that these injuries were caused by bullets fired almost simultaneously from two separate rifles from a distance beyond 6 feet. This means at least the rifles fired by two of the three aforesaid accused did find their mark causing instantaneous death of the deceased. Now, both the courts below have concurrently found that Wassan Singh had a strong motive to murder Hazara Singh deceased. This circumstance, by itself, is sufficient to lend the necessary assurance to the evidence of Resham Singh (PW 2) and Bachan Singh (PW 3) and make it a safe basis for convicting Wassan Singh accused of the murder of Hazara Singh.

31. The trial Court had accepted the evidence of Resham Singh (PW 2) in regard to the quarrel over cattle trespass Mukhtar Singh and Harbhajan Singh accused on one side, and Hazara Singh deceased and PW 2 on the other. This story finds particular mention in the FIR (Ex, PE) which was lodged by PW 2 without undue delay. The High Court has rejected this story about this previous quarrel on the three-fold ground, namely : (a) Gajjan Singh who interceded and pacified the parties has not been examined; (b) No evidence of the extent of damage done to the crop or of any so complaint made to village Panchayat has been produced; (c) Bachan Singh (PW 3), did not mention about this earlier incident in his police statement. In our opinion, none of these was a valid ground for rejecting the evidence of Resham Singh (PW 2) in regard to this incident. Resham Singh's consistent testimony on this point corroborated by the FIR (ex. PE) was sufficient to establish this fact beyond doubt. Thus, it was proved by the prosecution that Mukhtar Singh accused had also a motive to join Wassan Singh accused in killing Hazara Singh. The circumstance that Mukhtar Singh had also a motive to participate in the murder of Hazara Singh deceased lends assurance to the testimony of Resham Singh (PW 2) and Bachan Singh (PW 3), and strengthens the inference of guilt against the said accused, also.

32. It is in the evidence of sub-Inspector Bishamber Lal (PW 13) that Mukhtar Singh was arrested on August 18, 1973 and on August 31, 1973 Mukhtar Singh accused, whilst under police custody, made a disclosure statement in the presence of Ajit Singh and Sardul Singh Constables, that he had kept concealed a 303 rifle with 5 cartridges wrapped in a piece of cloth in a bundle of reeds lying inside the courtyard of his house at village Thathiwala and he could get the same discovered. PW 13 recorded that statement (Ex. 1). Thereafter, the accused was taken to village Thathiwala where he led the sub-Inspector in the presence of Sardul Singh and Ajit Singh Constables to that bundle and got discovered the rifle (Ex. P-7) and the cartridges (Exs. p-8 to P-12) therefrom. The sub-Inspector prepared the sketch of the rifle and the memo (Ex. P-M) which was attested by the aforesaid Constables. The rifle and the cartridges were sealed into parcels and were thereafter sent through Constable Ajit Singh, with seals intact, to the police station where they were received by the Moharrir Head Constable Natha Singh (PW 10).

33. PW 13 has also, stated that he had on August 4, 1973 on inspecting the scene of murders, found two empty cartridges (Ex. p-3 and Ex. P-40) from near the dead body of Hazara Singh. The witness took them into possession and sealed them into a parcel in the presence of Anokh Singh and Gajjan

Singh witnesses, and prepared the memo (Ex. PG). The parcel containing the empties was later deposited by the sub-Inspector, with seals intact, in the Malkhana of the Police Station.

34. The evidence of sub-Inspector Bishamber Lal, with regard to the seizure of the empty (crime) cartridges from the scene of occurrence on August 4, was supported by Anokh Singh (PW 4) who is an attesting witness of the memo, Ex. PG. The witness is a resident of village Cheema. In cross-examination, he revealed that these two fired cartridges were lying at a distance of 1 1/2 karams (8 or 9 feet) from the dead body of Hazara Singh. Nothing was brought out in cross-examination to show that the witness was in any way interested in the prosecution to show that the witness was in any animus against the accused. Thus, it had been clearly proved that two fired cartridges were picked up from the scene of crime and sealed into parcels which were later deposited with seals intact in the police station. In the memo (Ex. PG), it is mentioned that these fired cartridges were of 303 bore rifle.

35. Ajit Singh Moharrir Head Constable (PW 11) swore in his affidavit that on August 4, 1973, he received the sealed parcel of 2 empty cartridges from sub-inspector Bishamber Lal. The seals on the parcel remained intact so long as the parcel remained in his custody.

36. Then, there are affidavits of Avtar Singh Constable (PW 9) and Natha Singh Moharrir Head Constable showing that on September 24, 1973, the sealed parcels containing the rifle (Ex. p-7) and the five live cartridges were sent through PW 9 to the Forensic Science laboratory, Chandigarh, who delivered the same in the said Laboratory with seals intact.

37. The evidence of PW 13 regarding the discovery of the rifle (Ex. p-7) from Mukhtar Singh accused was fully corroborated by Constable Sardul Singh (PW 12). His cross-examination reveals that Mukhtar Singh was interrogated in the police station at 4-5 a. m. when he made the statement (Ex. PL), leading to the discovery of the rifle (ex. P-7). sub-Inspector Bishamber Lal (PW 13) has stated that the sealed parcel containing the empty cartridges, that had been found at the scene of crime, was sent to the Forensic Science Laboratory, Chandigarh at a date earlier than the one on which the parcel containing the rifle (Ex. P-7) and the five live cartridges was sent to the said Laboratory, but it was returned with the objection that it should have been sent along with the test cartridges; consequently, this parcel containing the empties was again sent to the forensic Laboratory along with the sealed parcel containing the rifle (Ex. P-7) and the live cartridges recovered from Mukhtar Singh accused.

38. In the Report (ex. PQ) of the Ballistic Expert (L. A. Kumar) which was tendered in evidence and admitted without objection, it is opined that the empty (crime) cartridge, marked C1, had been fired through the rifle (Ex. P-7).

39. In cross-examination, the defence suggested to PW 13, that he had proposed to recall the parcel containing the empty cartridges from the Forensic Science Laboratory for creating evidence against the accused and he did so by firing one cartridge through the rifle (ex. P-7). The oblique suggestion was that the cartridge, marked 'C' which in the opinion of the Ballistic Expert had been fired through the rifle (Ex. P-7), was substituted for the original empty cartridge that had been found at the scene of murder. The sub-Inspector emphatically denied the suggestion. It was further suggested to PW 13 that the rifle (Ex. P-7) had, in fact, been handed over to the police by the relations of the deceased after procuring it from some source. This was also stoutly denied by PW 13.

40. The learned trial Judge discarded this evidence relating to the discovery of the rifle (ex. P-7) at the instance of the accused, Mukhtar Singh, for the reason that sub-inspector Bishamber Lal, for no good reason, had failed to join (with him) respectable of the locality to witness rather than the investigating officer". The trial Judge accepted Anokh Singh's statement regarding the recovery of the two fired cartridges from the scenes of Hazara Singh's murder in August 4, but he adversely commented on the conduct of Bishamber Lal in delaying the dispatch of these crime cartridges to the Forensic Science Laboratory, Chandigarh till after the recovery of the rifle. He observed : "in all probability, sub-Inspector Bishamber Lal wanted to held the accused by creating suspicion with respect to the identity of the firing impressions" (on the empties). For this reason, according to the trial Judge, the ballistic evidence "will not be corroborative evidence of the prosecution".

41. We agree with the trial Court that the investigating officer did not deliberately join with him respectable of the locality to attest the statement (Ex. PL) made by Mukhtar Singh, and to witness the subsequent discovery of the rifle (Ex. P-70 at the instance of Mukhtar Singh. There was substance in the observation of the trial Judge that the investigation was biased in favour of the accused. If that was so, the failure of Bishamber Lal (PW 13) to join with him respectable of the locality was, by, itself, no ground for ruling out the evidence of the discovery of the rifle, altogether. The partiality of Bishamber Lal towards the defence, rather assures the genuineness of the discovery. He was least disposed to 'collaborate' or 'cooperate' with the relations of the deceased to procure this rifle (Ex. P-7) from some other source and then foist it on Mukhtar Singh. For the same reason, it is not possible to hold that he recalled the sealed parcel containing the fired (crime) cartridges from the Laboratory at Chandigarh, for substituting a cartridge fired through the rifle (Ex. P-7) or for fabricating evidence in support of the prosecution. Moreover, the parcel containing evidence the two empties must have been returned by the Director of the forensic Laboratory on his own initiative and not at the instance of the sub-Inspector (PW 13).

42. The omission on the part of this investigating officer to join with him some independent persons or respectables of the locality to witness the recovery, devalues that evidence but does not render it inadmissible. although a suggestion of 'planting' the rifle, and fabricating the evidence of the empty cartridge (C1) was put to sub-inspector Bishamber Lal in cross-examination, no such allegation was made, nor any such plea was set up by mukhtar Singh accused when the evidence relating to the recovery of the two empties from the spot, the discovery of the rifle (Ex. P-7) at his instance and the opinion (Ex. PQ) of the Ballistic Expert was put to this accused in his examination under Section 342, Cr. PC. The circumstance of the recovery of the rifle (Ex. P-7) and the opinion of the Ballistic Expert that the empty cartridge (marked C1) (found on August, 4, at the scene of murder had been fired through the rifle (Ex. P-7), - though feeble it might be - was relevant and furnished a further pointer to the participation of Mukhtar Singh in the commission of Hazara Singh's murder by rifle-fire.

43. In sum, Sufficient assurance of the testimony of PW 2 and Pw 3, was available from the circumstantial evidence discussed above, regarding the participation of Wassan Singh and Mukhtar Singh accused in the murder of Hazara Singh. The evidence of the eyewitnesses therefore, could safely be acted upon for convicting Wassan Singh and Mukhtar Singh accused-respondents of the murder of Hazara Singh.

44. But such assurance of the evidence of these eyewitnesses was not available against the remaining accused regarding either of the murders in question. Joginder Singh accused admittedly was not present when the quarrel over cattle trespass took place between Hazara Singh deceased ad PW 2 on one side, and Mukhtar Singh and Harbhajan Singh accused on the other. It has neither been

alleged nor proved that Joginder Singh had any motive of his own to murder Hazara Singh deceased. Although, the investigation betrays a tilt in favour of the of the accused, and PW 13 made a fraudulent insertion in the zimini to held Joginder Singh accused, it cannot be said that the version of PW 13 to the effect - that when he went to the scene of murders at 5.30 p. m., he found Joginder Singh irrigating his nearby fields at a distance of about 100 yards therefrom and he (PW 13) interrogated him there and then, but did not think if necessary to arrest him, - is necessarily false. The absence of motive, and the presence of Joginder Singh near the scene of crime shortly after the murders, engaged in normal agricultural activities dies case a doubt about his participation in the commission of these murders.

45. PW 2 and PW 3 have stated that started running away from the spot, immediately after Hazara Singh was shot dead. The surrounding circumstances, natural probabilities and the normal course of human conduct also suggest the same inference, that immediately on seeing Hazara Singh being shot down, these witnesses who were following Hazara Singh, ran fast for their lives. Had they tarried for a while at the scene of Hazara Singh's murder, it would have been too late for them to escape unhurt, In such a situation, when they were being pursued by persons armed with firearms, they could, if at all they turned ad looked behind, have only a fleeting glimpse in the distance of the assailants of Resham Singh deceased. That is why Resham (PW 2) is not consistent in his statements as to which of the accused had fired at him when he was running away for his life. Moreover, it has not been established that any of the six accused had any motive, whatever, to murder Resham Singh deceased.

46. For the foregoing reasons, we partly allow this appeal by the State, set aside the acquittal of Wassan Singh and Mukhtar Singh accused (respondents) and convict them under Section 302 read with Section 34, Penal Code for the murder of Hazara Singh deceased and sentence each of them to imprisonment of life. We would, however, accord the benefit of doubt to the rest of the accused (respondents) and maintain their acquittal on all the counts. Wassan Singh and Mukhtar Singh shall surrender to their bail bound to serve out the sentences inflicted on them.

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