

Dharam Singh and Others

Vs

State of Punjab

Criminal Appeal No. 44 of 1982

(K. Jayachandra Reddy, G.N.Ray JJ)

22.10.1992

JUDGMENT

K. JAYACHANDRA REDDY, J.:-

1. This is An appeal under Section 379, Cr. P. C read with S. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. There are five appellants. They were tried by Sessions Judge, Rupnagar for offences punishable under Sections 148, 302/149, 307, 323, 324, 325, I.P.C. and S. 27 of the Indian Arms Act for causing the death of Kaka Singh, the deceased in the case. The trial Court acquitted them. The State preferred an appeal against the said acquittal. The High Court set aside the order of acquittal and convicted each of them under S. 302/ 149, I.P.C. and sentenced to undergo imprisonment for life and also to undergo various other terms of imprisonment for other offences. The sentences were directed to run concurrently. The facts which give rise to this appeal are as follows.

2. The deceased Kaka Singh and the principal witnesses P.Ws. 18 and 19 belong to Village Chao Majra, P.S. Mubarakpur. P.W. 22 Mastan Singh was the Sarpanch of the Village. There was enmity between P.W. 22 and the accused and his family members because of some civil disputes. On 2nd December, 1978, the day of occurrence, the deceased along with his brother Prem Singh, P.W. 19, his son Labh Singh, P.W. 18 and some other persons worked in the field of P.W. 22 the Sarpanch for remodelling the ridges of the potato crop till 5.15 p.m. and then came to the Village. All of them were sitting in the house of the deceased discussing about the next day operation. As they were conversing with each other, brickbats started falling in the courtyard of the house. The deceased climbed on the roof top of his house to ascertain wherefrom the brickbats were coming. The other persons who were there also followed the deceased and went to the roof top. From the roof top the deceased, P.Ws. 18, 19, 22 and one Joginder Singh saw all the five accused coming from the chobara of A-2 Gurdev Singh. Accused Nos. 1, 2, 3 and 4 were armed with barchhas while A-5 was armed with a lathi. Having reached the place where the deceased and others were standing, A-2 Gurdev Singh opened the attack by giving a blow with barchha A the left side of the chest of the deceased. The deceased fell down. Then A-1 Dharam Singh gave two barchha blows on the left abdominal region of the deceased. Then A-3 Sital Singh gave a barchha thrust on the left leg of the deceased. Thereafter he also twisted and fractured the same leg of the deceased. A-5 Bhag Singh gave a lathi blow on the wrist of the deceased. When Prem Singh, P.W. 19 stepped ahead to save his brother Kaka Singh, A-4 Ajmer Singh gave a barchha blow on his back. A-3 Sital Singh gave a barchha blow near the right elbow of P.W. 19 Prem Singh. On receipt of these injuries, P.W. 19 also fell on the ground. The other three persons, P.Ws. 18 and 22 and Joginder Singh raised alarm.

Thereupon the accused left the place, The deceased and P.W. 19 were brought down from the roof top and they were taken to the hospital at Kharar in a truck. On reaching the hospital, P.W. 18 Labh Singh and P.W. 22 Mastan Singh, Sarpanch left for the Police Station and there P.W. 18 Labh Singh lodged a report at about 11 p.m. P.W. 25 the Sub-Inspector of Police recorded the FIR and took up the investigation. As the deceased was not in a fit condition, P.W. 25 could not record his statement. He continued the investigations. Meanwhile the deceased was already referred to P.G.I. Hospital, Chandigarh. P.W. 5 Dr. T. S. Mohant examined the injured deceased and he found an incised wound over the left side of the chest and decided the nature of treatment. Before that another Doctor, P.W. II Dr. N. C. Dass Gupta examined the deceased at 9.30 p.m, and found five injuries. P.W. II also examined P.W. 19 Prem Singh and found two incised wounds which were simple. The deceased, however, died on 8-12-78. P.W. 13 Dr. Inderjit Dewan conducted the post-mortem on the body of the deceased and he found eleven injuries. Some of them are post-operation wounds. Wounds Nos. 1 and 2 were on the abdomen. The third wound was on the left side of the chest going into pleural cavity. There was a lacerated wound on right forearm. The seventh wound was on the abdomen going into peritoneal cavity. The next wound was a lacerated wound on the right leg with a fracture underneath. He opined that the cause of death was septiceamia which was caused due to consolidation of the left lung as a result, of penetrating stab injury and penetrating stab injuries to the abdomen. The accused were arrested and some recoveries were effected. After completion of the investigation, the charge-sheet was filed. The plea of the accused has been one of denial. A-1 Dharam Singh was working as an Officer in the Public Works Department, Irrigation Branch at Chandigarh and he pleaded alibi stating that at the time of occurrence he was at the place of his posting namely at Chandigarh. In support of his alibi he examined D. Ws. 1, 2 and 4. Likewise, A-2 Gurdev Singh claimed that he was working at Patiala and on the day of occurrence he was at Patiala. But he has not examined any witness in support of his plea. The other accused pleaded not guilty.

3. The prosecution mainly relied on the evidence of the eye-witnesses P.Ws. 18, 19 and 22. The trial Court held that the presence of P.W. 18 Labh Singh was doubtful and P.W. 19, though injured, was an interested witness and P.W. 22 was inimical towards the accused. The trial Court also pointed out some infirmities in their evidence and accordingly acquitted the accused. The High Court, on the other hand, held that the trial Court rejected the evidence of the injured witness P.W. 19, Prem Singh on untenable grounds and that his evidence is supported by the evidence of other two eye-witnesses and that their version is consistent and stands corroborated. The High Court rejected the alibi evidence as uninspiring and accordingly reversed the order of acquittal. Hence the present appeal.

4. Learned counsel for the appellants submitted that P.W. 22 was highly inimical towards the accused and at his instance after due consultations the FIR was lodged and the contents of the report intrinsically reveal that it was a fabricated document done in a clever manner. P.W. 19 Prem Singh was injured and he was examined after a week and he simply has fallen in line with the version already set up by the interested witnesses. His further submission has been that the trial Court has considered the entire evidence carefully and has given very sound reasons for not acting upon the same and the trial Court had the advantage of watching the demeanour of the witnesses and therefore its views are entitled to greater weight and the appellate Court ought not to have reversed the order of acquittal even if another view was possible. The further submission has been that the alibi set up by Dharam Singh, A-1 is fully, established by the evidence of D.Ws. 1, 2 and 4 and that he has been falsely implicated. This very false implication by the witnesses renders their evidence tainted and merits no acceptance. Likewise A-2 Gurdev Singh was admittedly a Government servant at Patiala which is about 40 miles away and he would not have been present at the scene of occurrence. At any rate his presence at the scene of occurrence is highly improbable.

5. Since this is a regular appeal provided under the statute we would like to refer to the evidence of the material witnesses for a better appreciation of the submissions made by the learned defence counsel. As already mentioned the prosecution mainly relied on the evidence of P.Ws. 18, 19 and 22 the alleged eye-witnesses. P.W. 18 is no other than the son of the deceased. He is a young boy aged about 16 years. He deposed that on 2-12-78 he along with his uncle Prem Singh P.W. 19 and his father, the deceased had gone to the fields of their co-villager Mastan Singh Sarpanch, P.W. 22 to assist him for re-modelling the ridges, sown with potato crop. They returned at 7 p.m. to their house. Mastan Singh Sarpanch, P.W. 22 also came along with them and was with them in the house and one Joginder Singh also, who worked in the fields, was present. As they were sitting in the court-yard they saw brickbats falling emanating from the direction of the house of A-2 Gurdev Singh. The deceased and the other persons went on the top of the house to find out. He stated that just then A-1 to A-4 armed with barchhas and A-5 armed with lathi came where they were standing and started attacking the deceased. A-2 gave a barchha thrust on the left side of the chest of the deceased. Then A-1 gave two blows with barchha causing two injuries on the left side of the abdominal region. A-3 gave one barchha blow on the left leg of the deceased below the knee. After that A-3 twisted the same leg of the deceased and fractured it. A-5 gave a lathi blow on the right wrist of the deceased. A-4 did not inflict any injury on the deceased but when Prem Singh, P.W. 19 intervened, he gave him a barchha. thrust on his back and A-3 also gave a barchha blow near the right elbow and Prem Singh, P.W. 19 fell down. P.W. 19 raised an alarm. He deposed that in the light of electric bulbs installed at the place of occurrence, he witnessed the occurrence. After the accused left, they brought down the deceased and P.W. 19 from the house top. Then they carried them to the hospital in a truck. From the hospital, according to P.W. 18, he and Mastan Singh Sarpanch, P.W. 22 left for the police station at Mubarakpur and reached the same at about 11 p.m. There he gave a report recorded by S.I., P.W. 25 and P.W. 18 subscribed his signatures. In the cross-examination, P.W. 18 stated that he has studied up to matric. He admitted that A-2 Gurdev Singh was employed in the Punjab Irrigation Department at Patiala and A-1 Dharam Singh was similarly employed in the same department as a draftman in Chandigarh but he admitted that he saw both of them for the first time at 7 p.m. on the day of occurrence. He denied the suggestion that both of them were not in the village. P.W. 18 also admitted that the distance between his village and Patiala may be 40/45 miles and Chandigarh is only 10 miles from the village. He further admitted that he was studying on the day of occurrence but he had taken leave from his school by submitting an application. He also admitted that it took one hour for recording the FIR. P.W. 19 Prem Singh is the brother of the deceased. He gave a version which is verbatim the same as that of P.W. 18 in his chief-examination. He, however, further stated that A-1 and A-2 forcibly and unauthorisedly dug a water channel in the land of the deceased and himself and that the former gave a report against the accused. Thereafter a panchayat was held and compromise was brought about. He further admitted that even now the channel dug unauthorisedly is still there and is being used by A-1 and A-2. In the cross-examination he admitted that none of them received any injury due to the throwing of brickbats. Some contradictions and omissions also have been brought about in his cross-examination. He was only examined by the police one week later. We find that the omissions and contradictions in the evidence of these two witnesses are identical. P.W. 22 Mastan Singh is another eye-witness and is the Sarpanch of the Village. His version is also verbatim the same as of the other two witnesses regarding the occurrence. He deposed that they removed the injured in a truck to the hospital at Kharar and from there he and P.W. 18 went to the police station and there a report was given. He admitted in the cross-examination that the two sons of Joginder Singh were co-sharers in the joint khata of the land in which the channel was dug. He further admitted that he was cultivating as a tenant the land of a Dera of Udasi Sect of Sadhus of Village Manoli and the management of the Dera threatened to oust him illegally. He admittedly filed a suit for injunction, though he denies but

as per the defence, the father of A-1 and A-2 was a defendant therein. He was further cross-examined regarding his presence at the scene of occurrence. The only reason given is that since the deceased and his family members worked in his fields, he went there to talk about as to the next day work and when he should work in their fields. He further admitted that he cannot tell the month or the dates on which he worked later with the deceased and P.W. 19 for giving them a helping hand. In the further cross-examination he admitted that Kharar is at a distance of 30 kms. from Mubarakpur. He denied the suggestion that he himself and P.W. 18 did not go to the police station and the FIR was prepared much later after due consultations.

6. This in brief is the evidence of these three eye-witnesses. We have carefully gone through their evidence. As pointed out by learned defence counsel, the version given by these three witnesses regarding the occurrence is verbatim the same. Learned counsel took pains to take us through the evidence of P. W. 25 the investigating officer and also the contents of the FIR in support of his submission that the earliest report was the result of consultations and the version was brought into existence after ascertaining the nature of injuries on the deceased and P.W. 19 after they were admitted into the hospital. P.W. 25 in his chief examination stated that P. Ws. 18 and 22 came to the police station and recording of the FIR was concluded by 11. 50 p.m. Thereafter they went to Kharar hospital. He wanted to record the statement of P.W, 19 and wanted a certificate from the doctor to the effect that he was not in a fit condition to make the statement. He further stated that he also went to P.G.I., Chandigarh for ascertaining if the deceased has improved in his condition as to make a statement but the doctor told him that he was not in a condition to make the statement. He came to know about the death of the deceased on 8-12-78 only at 4 p.m. In the cross-examination he admitted that he sent a special report of the occurrence. The trial Court has very carefully examined the question of delay in making the report in a detailed manner. Admittedly P.W. 18 Labh Singh and P.W. 22 Mastan Singh went to the hospital along with the injured for getting them medical treatment. Thereafter they covered a distance of nearly 40 miles and reached the police station. According to the defence the FIR was recorded in the following morning at about 8 a.m. and the same has been ante-timed. The trial Court held that this submission is not wholly devoid of force in view of the entries made in the DDR. In this context it may also be noted that the distance between Kharar and the place of occurrence admittedly is only 8 or 9 miles. Further there is no explanation whatsoever as to why the statement of P.W. 22 throughout at the hospital as well as at police station was not recorded. Therefore there is any amount of doubt as to the time with regard to the lodging of the FIR. With this background we shall examine the contents of the FIR. The relevant portion of the FIR given by P.W. 18 reads as under:

"Today at about 7.30 p.m., I along with my father Kaka Singh, my paternal uncle Prem Singh, and other persons had returned after remodelling the ridges of the potato crop field of Mastan Singh, Sarpanch. Mastan Singh Sarpanch and Joginder Singh son of Narain Singh, Jat, by caste, were still present in our house when brick-bats fell in our courtyard from the side of the house of Gurdev Singh. Thereupon my father Kaka Singh went to the roof in order to see it. We also followed him to the roof. Electric light was on inside and outside the Chaubara of Gurdev Singh. Gurdev Singh, Dharam Singh sons of Bakhtaur Singh, armed with Barchhas (spears). Sital Singh son of Ram Singh, Jat, by caste, armed with a Barchha (spear), Ajmer Singh s/o Inder Singh, Jat, by caste, also armed with a Barchha (spear), and Bhag Singh son of Sadhu Ram, Jat, by caste, armed with a lathi (stick) came out and started raising Lalkaras and hurling abuses. Ajmer Singh and Bhag Singh raised a Lalkara saying that Kaka Singh should not be allowed to escape and that he should be finished. Thereupon Gurdev Singh gave a Barcha (spear) blow to my father, Kaka Singh,

hitting his chest towards the left side he fell down. While he was lying fallen down Dharam Singh gave him two Barchha (spear) blows on his abdomen towards the left side. Bhag Singh gave a lathi (stick) blow hitting his right wrist. Sital Singh gave a blow with Barchha hitting below his left knee and fractured his leg by placing his leg over it. Ajmer Singh gave a Barchha (spear) blow on the left side of the back of my paternal uncle, Prem Singh who tried to lift my father. Sital Singh gave a Barchha (spear) blow hitting the lower side of the right elbow. Prem Singh also fell down. All of us raised an alarm saying "Na Maro: Na Maro (Do not kill, do not kill)". Thereupon, all of them went away while raising Lalkaras. Thereafter, we removed my father, Kaka Singh and my uncle Prem Singh to the hospital at Kharar in a truck. Leaving them at the hospital, I have come to lodge a report. The condition of my father is very serious due to the injuries inflicted upon him. They have inflicted injuries to kill him The cause of grudge is that we have a dispute over a water channel with Gurdev Singh etc. Action may be taken."

On a careful examination of the contents of this report, a strong suspicion arises namely that the distribution of overt acts attributed to the respective accused must have been done only after coming to know the nature of the injuries. The injuries on Kaka Singh, the deceased as noticed by P.W. 11, the Doctor who first examined him are described as under:

- " 1. Incised wound 2" long over the left iliac region anteriorly and through the wound, Omentum and large intestines were coming out. The injury was dangerous to the life of Kaka Singh.
2. Incised wound 1-1/2" x 1/ 6" skin deep on the left side of abdomen, lower part.
3. Incised wound 1 " x 1/ 2" over the left side of chest communicating with the lung, 3" above the left nipple.
4. Incised wound 1 " x 1/ 2" over the anterior aspect of left leg 4" below the knee. There was open fracture of the tibia. X-ray was advised.
5. Lacerated wound 1/2" x 1/6" over the lateral aspect of the right fore-arm on lower aspect. There was gross deformity."

P.W. 11 who also examined P.W. 19 Prem Singh found the following injuries:

- "I. Incised wound 2" x 1" skin deep with radial aspect right fore-arm mid region.
2. Incised wound 1.1/2" x 1/4" over the lower border, left scapula whole skin deep."

If we examine the contents of the FIR in juxtaposition with the injuries as described by the Doctor on the two injured, it cannot but be inferred that the description of the weapons in the hands of each of the accused and the distribution of the overt acts to each of them and the nature of the blows and the parts of the body on which they were inflicted including two simple injuries on P.W. 19 Prem Singh must have been done after due consultations after coming to know the nature of the injuries as per the examination done by the Doctors on that night. It is rather strange that even the fracture on the leg of the deceased and as to how it was caused was mentioned. The Doctor has described injury No. 4 as incised wound 1" x 1/ 2" on the left leg 4" below the knee. He also noted that there was an open fracture of the tibia and x-ray was advised. He did not notice any contusion but on external

examination he only noticed an incised injury on that part of the left leg of the deceased. However, he detected that there was a fracture. Neither P.W. 11 who examined him in the first instance nor P.W. 13 who conducted the post-mortem indicated as to how the fracture would have been caused except saying that the injuries Nos. 1 to 4 were caused by sharp-edged weapon. P.W. 13, who conducted the post-mortem, only stated in a general way that the death was due to consolidation of the left lung and injuries to the abdomen. It must be noted that Kaka Singh; the deceased was operated upon and injury No. 3 as described by P.W. 13 would indicate that it was partially healed and it is only the "consolidation" of the left lung and the injuries on the abdomen which led to septicemia resulting in death. His evidence also would indicate that the incised injury on the leg could have resulted in fracture but strangely in the FIR it is mentioned that the leg was twisted in such a way that it resulted in fracture. None of the Doctors spoke about this possibility. Obviously from the mere external examination of the injury, no definite cause could be given at that time. Therefore it could only be explained that not knowing the cause of the fracture, it was vaguely mentioned that the leg was twisted. Further it is rather intriguing as to how P.W. 18 could mention in the FIR that there was a fracture of the left leg. A layman cannot detect a fracture by himself unless he is told or comes to know after medical examination that there was such a fracture. This also shows that the version in the FIR in which such details, as mentioned above, were given, must have been a result of consultations among the interested persons after coming to know the nature of injuries. We have adverted to this particular aspect in detail only to show that the FIR should have been a result of consultations after coming to know the number of injuries etc. as mentioned above. Having given such a version in the FIR all the three witnesses have fallen in line with the story set up.

7. Admittedly there was enmity between the accused and the deceased. There was also enmity between P.W. 22 and the accused. Therefore their evidence has to be scrutinised with great care and caution. The version given by them attributing the overt acts in the above manner to each of the accused does not inspire confidence for the reasons stated above. That apart, we find many improbabilities in the said version. First of all the presence of Mastan Singh Sarpanch, P.W. 22 at the scene of occurrence itself is doubtful. Be that as it may, it becomes highly doubtful whether five persons would have participated. According to these witnesses all the five accused came armed. A-1 to A-4 were armed with Barchhas and A-5 was armed with lathi. A-2 Gurdev Singh who led the attack, is alleged to have given only one barchha blow on the chest. But it was not a serious one. It is only A-1 Dharam Singh who is said to have given two barchha blows on the stomach but even those two blows did not prove to be fatal immediately for the deceased died after six days of the occurrence, that too because of an intervening cause like Septicemia, A-5 Bhag Singh has given only one lathi blow on the right wrist of the deceased which was a simple one. A-3 Sital Singh is said to have given only one blow with barchha and that too on the left knee of the deceased. A-4 Ajmer Singh did not touch the deceased but he is said to have caused one simple injury with barchha to P.W. 19 Prem Singh. Then again it is stated that A-3 Sital Singh gave one barchha blow to P.W. 19 Prem Singh. If really the five accused have gone in a body raising lalkaras in the manner described by the witnesses the attack would not have been as simple as that particularly by the persons who were armed with barchhas. No doubt P.W. 19 Prem Singh is an injured witness but he was examined one week later for the first time, according to the police. By that time the prosecution witnesses have put forward a particular version as mentioned above and have committed themselves to the same. P.W. 19 who is also an interested witness cannot be expected to give a different version. However, as noted above the statement of each witness is verbatim the same as that of others. Contradictions and omissions are the same. Narrations and sequence of events are meticulously in the same order. Therefore we think it is not safe to place reliance on the evidence of these witnesses.

8. In any event there is one other aspect namely the alibi set up by and his presence was highly doubtful. A-1 and A-2. A-11 Dharam Singh having denied the offence and also the various circumstances put against him under S. 313, Cr.P.C. statement finally stated that he attended his office till 7.30 p.m. on 2-12-78 at Chandigarh. In support of his alibi, he examined D.Ws. 1, 2 and 4. D.W. 1 Amarjit Singh Gill, is the Executive Engineer, Punjab Irrigation Department, Central Design Office, Chandigarh. He deposed that A-1 Dharam Singh is employed as a Draftman in the Section of Design Office and headquarters being at Chandigarh A-1's office is housed in the same building where D.W. 1 sits. The Punjab Irrigation Department submitted a composite irrigation project for World Bank assistance. A World Bank team came to Chandigarh during November, 1978 for re-appraisal of the project. D.W. 1 and other officials from the Irrigation Department were deputed to process the necessary information for answering the queries made by the team of the World Bank. The World Bank team was expected to go back on 8th or 9th December, 1978. Therefore the Irrigation Department Officers were asked to finalise the compilation of the reports with regard to the queries made by the World Bank team and they were asked to make the same ready by 5th December. D.W. 1 deputed Assistant Engineer Mr. Malik, D.W. 2 to ensure the finalisation of the reports and complete the work and the officers were also asked to do overtime work. Then we have the evidence of D.W. 2 S. R. Malik which is very important. He deposed that he was working as an Assistant Engineer and that on 2-12-78 all the employees of his office attended to their duties and in connection with the impending visit of the World Bank team and in view of the urgency of the matter they had to complete the necessary compilation containing the information needed. D.W. 2 further deposed that D.W. 1 instructed him to see that the report was complete in all respects on that day namely 2-12-78. Pursuant to this order of D.W. 1, D.W. 2 stayed in his office along with A-1 and Bhupinder Singh and Balraj till about 7.30 p.m. on 2-12-78 at which time they completed the report, D.W. 2 categorically stated that A-1 remained in his office till 7.30 p.m. D.W. 4 Bhupinder Singh was another officer working in the same Department. His evidence is also to the effect that A-1 and other officers working in the same department. His evidence is also to the effect that A-1 and other officers along with D.W. 2 worked in their office till 7.30 p.m. on 2-12-78 for the purpose of the completion of the papers including the maps. D.Ws. 2 and 4 who are important witnesses, were cross examined but they asserted that A-1 worked in the office till 7.30 p.m. on 2-12-78. The High Court, however, was not prepared to accept this evidence and observed that having worked till 7.30 p.m. A-1 could have come to the scene of occurrence which is about 10 miles away and participated in the occurrence. Though there is a remote possibility but under the circumstances it does not appear to us to be natural for A-1 to have left office at 7.30 p.m. having worked overtime and be at the scene of occurrence some time round about 7.30 p.m. In the FIR the time of occurrence is mentioned as 7 p.m. If that is so, it would not have been possible for A-1 to be present at the scene of occurrence. The High Court, however, explained away by saying that P.W. 18 as an illiterate could not have given the correct time. But P.W. 18 stated that he has studied up to matric. Therefore we cannot presume that he did not know the time. That apart, if it was such a pre-planned murder one would not have expected A-1 to remain in the office and it was also a chance that he was made to work till 7.30 p.m. on that day in view of the urgency. D.Ws. 2 and 4 are responsible officers and respectable witnesses and when they say that A-1 was with them till 7.30 p.m. there is no need to doubt the same in the circumstances of the case. Therefore, in our view A-1 has been falsely implicated. This false implication again affects the veracity of the alleged eye-witnesses. It only shows that they being interested witnesses were bent upon to implicate A-1 who had some dispute with the deceased family. From the evidence of P.W. 22 it appears that he was also inimical towards A-1 and A-2 and admittedly he was with P.W. 18 throughout and particularly at the time of giving the FIR before the police.

9. A-2 Gurdev Singh who is no other than the brother of A-1 Dharam Singh also pleaded alibi. Admittedly he is also an employee of the Punjab Irrigation Department at Patiala. Having pleaded not guilty he further stated in his statement under S. 313, Cr.P.C. that he had been falsely implicated at the instance of P.W. 22 and Joginder Singh who were hostile to him and to the members of his family. A-2 further stated that he was on duty at Patiala from 10 a.m. to 5 p.m. and even after office hours he remained at Patiala only and during the subsequent days also he had been attending to his duties. No doubt he has not examined any witness in support of his alibi but P.W. 25 the Investigating Officer admitted that he has verified the office records which show that both A-1 and A-2 attended their offices on 2-12-78. It therefore emerges that A-2 was at Patiala and attended his office at least till 5 p.m. and Patiala is about 40 miles away from the scene of occurrence. In such a situation his presence at the scene of occurrence at about 7 p.m. becomes highly doubtful. This circumstance also renders the evidence of the alleged eyewitnesses unreliable.

10. We have perused the judgment of the trial court and the reasons given by the learned Sessions Judge cannot be said to be unsound and the view taken by him appears to be quite reasonable and the High Court, in our view, ought not to have interfered in an appeal against acquittal. In the result the judgment of the High Court is set aside and the one given by trial Court is confirmed. Consequently the appeal is allowed. Appeal allowed.

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