

SUPREME COURT OF INDIA

Shingara Singh

Vs.

State of Haryana

CrI.A.Nos.682-683 of 1996

(N. Santosh Hegde and B. P. Singh, JJ.)

04.11.2003

JUDGEMENT

B. P. SINGH, J.:-

1. The appellants in these appeals and special leave petitions are Suba Singh (A-1) and his son Shingara Singh (A-2). They were both tried by the Additional Sessions Judge, Sirsa in Sessions Trial No. 46 of 1991 charged variously of offences under Sections 302, 307, 302/34, 307/34, IPC and under Section 25/27 of the Arms Act. The learned Additional Sessions Judge by his judgment and order dated March 6, 1992 acquitted A-2 of all the charges levelled against him but found A-1 guilty of the offence under Section 304, Part I holding that he had exceeded his right of private defence. Accordingly, he sentenced A-1 to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 50,000/-, in default further to undergo rigorous imprisonment for a period of two years. Both the appellants were acquitted of other charges levelled against them.

2. Aggrieved by the judgment and order of the learned Additional Sessions Judge, Criminal Appeal No. 375-DBA of 1992 was preferred by the State of Haryana before the High Court of Punjab and

Haryana at Chandigarh against the acquittal of A-2 under Sections 302 and 307 read with Section 34, IPC. Suba Singh preferred Criminal Appeal No. 105-SB of 1992 against his conviction under Section 304, Part I, IPC, while the informant Balbir Singh preferred a Criminal Revision No. 68 of 1993 against the same impugned judgment and order acquitting the appellants of the other charges levelled against them. The two Appeals and the Criminal Revision have been disposed of by a common judgment and order of the High Court dated March 6, 1992. The High Court allowed the appeal filed by the State and held A-2 guilty of the offence under Sections 302 and 307, IPC. A-1 was found guilty and convicted under Sections 302/34 and 307/34, IPC. A-1 was also found guilty of the offence under Section 27 of the Arms Act. A-2 has been sentenced to undergo life imprisonment under Section 302, IPC and to pay a fine of Rs. 10,000/- and in default to undergo further rigorous imprisonment for two years. He has also been sentenced to undergo rigorous imprisonment for 10 years under Section 307, IPC and to pay a fine of Rs. 5,000/- in default to undergo further rigorous imprisonment for one year. A-1 has been sentenced to undergo life imprisonment under Section 302/34, IPC and to pay a fine of Rs. 10,000/- in default to undergo further rigorous imprisonment for ten years. Under Section 307/34, IPC he has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- in default to undergo further rigorous imprisonment for one year. While so allowing the appeal preferred by the State the High Court has in a mechanical manner allowed the Criminal Revision preferred by the informant, which in effect had become infructuous since an appeal had been preferred by the State which was ultimately allowed. In any event a Criminal Revision preferred by a private party against an order of acquittal could not result in the conviction of the accused.

3. The Criminal Appeal preferred by A-1 against his conviction under Section 304, Part I was also disposed of in the above terms.

4. The appellant Shingara Singh has preferred Criminal Appeal Nos. 682-683 of 1996 while A-1 Suba Singh has preferred Special Leave Petition Nos.2106-2108 of 1996. In the Special Leave Petition notice was issued with the direction that the matter be heard along with Criminal Appeal Nos.682-683 of 1996 preferred by A-2. In fact, there was no need for A-1 to file a Special Leave Petition since in view of the provisions of Section 380 of the Code of Criminal Procedure, an appealable judgment and order having been passed against co-accused Shingara Singh, A-2, appellant Suba Singh, A-1 also had a right of appeal to this Court. However, we grant special leave to Suba Singh and proceed to dispose of these appeals by this common judgment and order.

5. A-1, Suba Singh and Gurdeep Singh (father of the deceased) lived in adjoining houses in village Chak Sahban. Suba Singh, A-1 and Gurdeep Singh are married to two sisters and are therefore related as co-brothers. A-2, Shingara Singh is the son of Suba Singh while the deceased Surinder Singh was the son-in-law of Gurdeep Singh. It is not in dispute that the courtyard of the two houses are adjacent divided by a common wall. The courtyard of Gurdeep Singh is at a slightly higher level than the courtyard of A-1, Suba Singh. The case of the prosecution is that Gurdeep Singh sold away his lands in village Chak Sahban and purchased lands in village Mallewala. He also intended to sell his house in village Chak Sahban and with that house in village Chak Sahban and with that in view he had entered into an agreement with A-1, Suba Singh to sell his house in the village for a sum of

Rs. 52,000/-. According to the prosecution, A-1 Suba Singh failed to pay the amount within the time stipulated and therefore a dispute arose between him and Gurdeep Singh. On July 1, 1991 the matter was settled by a Panchayat consisting of relatives of the parties who are themselves interrelated. In Panchayat it was settled that A-1 Subba Singh will purchase the house and will pay a sum of Rs. 45,000/- by way of consideration. It is not in dispute that immediately after the decision of the Panchayat A-1, Suba Singh actually paid a sum of Rs. 45,000/- to Gurdeep Singh and honoured the decision of the Panchayat.

6. The case of the prosecution is that later in the day at about 6.30 p.m. Balbir Singh, PW-5 Raghbir Singh son of Gurdeep Singh, Rur Singh, PW-6, Jagdip Singh and Gurdeep Singh were taking meals in the courtyard of Gurdeep Singh. According to the evidence produced by the prosecution there were cots on which food was being served by Gian Kaur, PW-7, wife of Gurdeep Singh. The case of the prosecution is that Surender Singh (deceased) son-in-law of Gurdeep Singh wanted to take away his cycle which rested against the common wall of his courtyard. While he was doing so the appellants climbed up the common wall with the help of a ladder. While A-1 was empty handed, A-2 was carrying a licenced gun belonging to his father. A-1, exhorted his son to kill Surinder Singh since he had been helping his father-in-law in the dispute relating to the purchase of the house in the village. A-2, thereafter fired at Surinder Singh injuring him on his forehead as a result of which he fell down. Gian Kaur, PW-7 rushed to the rescue of her son-in-law but A-2 shot at her also causing injury on the dorsal aspect of her right hand. On alarm being raised both the appellants ran away.

7. After leaving the dead body in the care of Jeet Singh who had come thereby then, Balbir Singh, PW-5 left for the police station. After covering a distance of two kilometers he boarded a tractor and came to Sirsa where he met Sukhdev Singh to whom he narrated the incident. They, thereafter, went to the police station Sadar and PW-5 lodged a report at 10 p.m.

8. Sub-Inspector, Pohp Singh, PW-10, the Investigating Officer came to the place of occurrence and held inquest over the body of Surinder Singh. He, thereafter arranged to get the body sent for post-mortem examination. He also lifted blood-stained earth from the place of occurrence. Thereafter, he went to the hospital and in the early morning of July 2, 1991 recorded the statement of Gian Kaur, PW-7 and Rur Singh, PW-6. He again came back to the place of occurrence and prepared a rough site plan Ex. RR.

9. Dr. Beena Garg, PW-1 conducted the post-mortem examination on the body of Surinder Singh at the General Hospital, Sirsa on July 2, 1991 at 10 a.m. She found the following ante-mortem injuries on the person of deceased, Surinder Singh.

"1. A lacerated wound with inverted margins of 2.5 cm. x 2 cm. on the middle of forehead 4 cm. above the base of nose on mid line. Abrasion of 2 cm. area in size was present surrounding this wound. Underlying bones were fractured. Brain matter was seen to the whole on dissection.

Underlying bone fractured. Direction of the wound was upward and posteriorly. There was opening of 1.5 cm. x 1 cm. on the top of occipital bone in the midline. There was fracture of frontal both parietal and occipital bone. Small pieces of bone were present in fractured area of occipital bone. Two flat metallic pieces were recovered from this area. These pieces were sealed and handed over to the police.

2.2.5 cm. x 1 cm. lacerated wound with everted margins present over the left frontal area, 5 cm. above the lateral margins of left eye brow. Underlying bones were fractured. On dissection there was communication of injuries Nos. 2 and 3. Direction of the track was slightly upward-backward and medially.

3. Lacerated wound 2.5 cm. x 1.5 cm. with everted margins over the left temporal region of scalp, 6 cm. from the pinna of left ear. On dissection, the underlying bone was found fractured."

10. According to PW-1, the death was due to injuries to the brain caused by fire arms. The injuries were sufficient to cause death in the ordinary course of nature and the time that elapsed between the death and the post-mortem examination was 12 to 24 hours. Having regard to the nature of injuries she opined that firing must have been done from lower level to higher level. Deceased must have been at a higher level than the person firing the gun. There were no blackening scars around the wounds.

11. The case of the prosecution is that the accused were arrested on July 3, 1991. Shingara Singh, A-2 produced before the Investigating Officer the licenced gun of his father (A-1) which was taken into possession by the Investigating Officer. Suba Singh, A-1 is said to have produced two empty and four live cartridges which were also taken into possession.

12. On July 4, 1991 the site plan was drawn up by the draftsman, PW-4 which was marked Exh. P-E. The said site plan shows that the height of the wall on the side of the courtyard of Gurdeep Singh was 4 feet 4 inches. According to PW-4 he prepared the site plan as pointed out to him by Balbir Singh, PW-5 and Raghbir Singh.

13. After investigation, the appellants were put up for trial variously charged as noticed earlier. The defence of the appellant Suba Singh as stated by him in his examination under Section 313, Cr.P.C. was that the occurrence did not take place in the manner alleged by the prosecution. He admitted that a Panchayat was convened for resolving the dispute relating to the purchase of land by him. He also admitted that in view of the settlement arrived at he paid a sum of Rs. 45,000/- to Gurdeep Singh. However, he denied that he climbed up the wall with the help of a ladder and exhorted his son Shingara Singh to kill Surinder Singh, who was taking away his cycle which rested against the

common wall. He stated that it was Surinder Singh (deceased) who had climbed the wall and was resorting to brick batting. With folded hands he requested him not to do so. At that time his son Shingara Singh, A-2 was not present. Despite his pleadings, Surinder Singh (deceased) removed the bricks from the wall and threw them at him which hit him. Gian Kuar, PW-7 was supplying brick bats to Surinder Singh from the wall. Surinder Singh (deceased) shouted that he had got the amount reduced by Rs. 7,000/-. When this was happening he went inside his house, brought his gun and fired shots in his self-defence which might have hit him. He stated that he had himself produced the gun before the Investigating Officer as also the two empties on the very first day i.e. July 1, 1991. A false case has been made out against him and his son. In fact, his son was in the fields at the time of occurrence but he had been falsely implicated on account of his being his only son. Witness PW-6, Rur Singh had old enmity with him and he had also appeared as a witness against him in a civil case prior to the occurrence.

14. Same is the defence of Shingara Singh, A-2.

15. At the trial, the prosecution mainly relied upon the testimony of three alleged eye-witnesses viz. Balbir Singh PW-5, Rur Singh PW-6 and Gian Kaur, PW-7. It also appears from the record that though some other witnesses were cited by the prosecution they were given up as being unnecessary which included Gurdeep Singh, Raghbir Singh, Jagbir Singh and some others.

16. The trial Court on consideration of the evidence on record came to the conclusion that the prosecution case as alleged was not true and that the occurrence took place in all probability in the manner alleged by the defence. It noticed that all the three aforesaid eye-witnesses had stated earlier that both the appellants had climbed the common wall and from there the firing took place resulting in injuries to Surinder Singh (deceased) and Gian Kaur, PW-7. This version was given by PW-5 in his FIR and the same version was repeated by PWs-6 and 7 in their statements recorded under Section 161, Cr. P.C. However, at the trial all the three witnesses consistently gave a different version so as to bring the prosecution case in accord with the findings of the Medical Officer who had opined, having regard to the nature of injuries, that the injured must have been at a higher level than the person using the firearm. If really, the appellants had climbed the wall and A-2 fired at Surinder Singh, trajectory of the pellets would have shown a downward movement and not an upward movement as found by the Medical Officer. At the trial all the three witnesses changed their version by stating that only A-1, Suba Singh climbed on the wall with the help of a ladder, while his son Shingara Singh, A-2 was still on the ladder and had not climbed the wall. He was standing on the ladder in a manner that only his face was visible from the courtyard of Gurdeep Singh. He placed the barrel of the gun on the wall and without resting the butt of the gun against his shoulder, fired at Surinder Singh. In this manner, it was sought to be projected that Surinder Singh was at a higher level than the level of the weapon of Shingara Singh, A-2 when he fired the gun. The trial Court concluded that the tailored version given by the witnesses for the first time in the witness-box was only with a view to bring the prosecution case in accord with the medical evidence on record and to negative the case of the defence that it was Surinder Singh, who was standing on the wall while the firing took place from the ground level.

17. The trial Court also found that Suba Singh, A-1 had six injuries on his person. On being arrested he was sent for medical examination by the Investigating Officer and was examined by Dr. Chaudhary, DW-1 who found the following injuries on his person:-

"1. A bruise 4 x 2 cm. on dorso lateral aspect of metacarpal of index finger, with abrasion 1 cm. x linear in the space between right index finger and thumb on dorsal aspect. Soft scalp of light brown colour was present and colour of bruise was brownish. Tenderness was present and X-ray was advised.

2. A lacerated wound 2 cm. x 2 cm. x skin and tissue deep on the back of the left leg, on lateral side, 7 cm. above the sole of the left foot. Scious fluid exuded from the wound. The granulation tissue was visible at places and edges of the wound were irregular and inflamed, with swelling of adjacent parts.

3. Swelling 2 x 1 cm. on the top of scalp, left to the midline and 12 cm. from the base of nose.

4. Bruise 4 x 2 cm. on left scapular region above its upper border, placed horizontally of brownish colour.

5. Complaint of pain on the right side of chest and infera axillary region, with tenderness.

6. Abrasion 1/2 cm. x linear on the back of the right elbow."

18. It will be noticed from the above injuries that one of the injuries was on the scalp and caused by a blunt substance. The possibility of these injuries being caused by brick-bats could not be ruled out. In cross-examination Dr. Chaudhary admitted that the possibility of all the injuries except No. 3 having been caused by friendly hands could not be ruled out. The trial Court, therefore, concluded that the presence of injuries on Suba Singh, A-1 which had not been explained by the prosecution supported the defence version and rendered it probable. Though the injuries were found to be simple in nature and could have been self-inflicted as well, it was difficult to believe that so many injuries could be self suffered by the accused.

19. The trial Court found that the other evidence on record also supported the defence version and rendered it probable. The Investigating Officer, PW-10 admitted in his cross-examination that when

he visited the place of occurrence he had found that some of the bricks had been removed from the common wall. It was the case of the defence that Surinder Singh (deceased) had thrown bricks at Suba Singh, A-1 from top of the wall. Though it was the case of the prosecution that A-1 climbed the wall and A-2 stood on the ladder and fired at the deceased, in the site plan Exh. P-R which was prepared by the Investigating Officer on July 2, 1991, the ladder has not been shown at all. A second site plan was drawn to scale on July 4, 1991 by PW-4 which is Exh. P-E. In that plan the point where the cycle of the deceased had been kept has not been shown. PW-10 explained by saying that in the site plan drawn by him Exh. P-R the cycle was shown at 'J'. He, however, admitted that the cycle was not taken into possession. The trial Court found that point J the last point shown in the marginal notes, seems to have been interpolated later. These facts, therefore do not support the case of the prosecution that Surinder Singh had gone to take his bicycle when he was fired upon by A-2 who had climbed on top of the wall with the help of a ladder. The medical evidence was only consistent with the hypothesis, that having regard to the direction of the injury on the head of Surinder Singh, he must have been at a higher level when fired upon by someone who was at a lower level. This was consistent with the case of the defence that firing was resorted to from the ground level when Surinder Singh (deceased) was throwing brick bats after climbing the common wall. The trial Court also found that Rur Singh did not appear to be a reliable witness because he denied the fact that A-1 had deposed against him in a Civil Suit. This statement was proved to be false and the deposition of A-1 was produced before the Court which proved the fact that A-1 had deposed against him in a Civil suit and this also established that Rur Singh was not on good terms with A-1.

20. Having regard all aspects of the matter the trial Court concluded that the defence version appeared to be more probable. It was also consistent with the medical evidence on record. The prosecution witnesses had made vital improvements in their deposition with a view to make their evidence consistent with the medical evidence on record. The prosecution failed to explain the injuries suffered by A-1. The fact that some bricks had been removed from top of the common wall supported the defence case that Surinder Singh (deceased) had thrown bricks at A-1. The existence of ladder and cycle was rendered doubtful because they were not even shown in the site plans prepared by the prosecution. Moreover, the appellants not only produced the gun but also the empties which were found to have been fired from the same gun. The trial Court also considered the question as to whether there was any motive on the part of the appellants to commit the offence. It found that the appellants could have no motive to commit the offence because the dispute if any was amicably settled by the Panchayat and respecting the decision of the Panchayat A-1 had promptly paid Rs. 45,000/- to Gurdeep Singh. Having done so, there was no reason for them to commit the offence. On the other hand, so far as Gurdeep Singh and his family members are concerned, they may have reconciled to the fact that they had to receive Rs. 7,000/- less than the amount agreed to be paid, but Surinder Singh being a young person was angry and aggrieved on account of the fact that the Panchayat had reduced the price of the house to be sold by his father-in-law. The motive if any could be entertained only by Surinder Singh and not by the appellants. However, as observed by the trial Court motive was not of much significance in a case where the prosecution sought to prove its case by direct evidence of eye-witnesses. The trial Court, therefore, concluded that the occurrence took place in the manner stated by the defence. In all probability Shingara Singh, A-2 was not present when the occurrence took place. However, it held that though A-1, Suba Singh had a right of private defence, he certainly exceeded that right inasmuch as the facts and circumstances did not justify his using the weapon in such a manner as to cause the death of Surinder Singh (deceased). He, therefore, found him guilty of the offence punishable under S. 304, Part I of I.P.C.

21. In the appeals the High Court has reversed the findings recorded by the trial Court. The High Court held that the trial Court was not justified in holding that the defence version was more probable since all the three witnesses had improved upon their statements under S. 161, Cr. P.C. and made significant changes while deposing before the trial Court. The High Court considered the deposition of these three witnesses namely P.Ws. 5, 6 and 7 and came to the conclusion that they had not stated that the firing was resorted to from the ground level. Their deposition in Court proved that Shingara Singh, A-2 while on the ladder fired at Surinder Singh.

22. In our view, the High Court has completely missed the significance of the finding recorded by the trial Court. The trial Court found that in the FIR as also statements recorded under S. 161, Cr. P.C. the witnesses had clearly mentioned that both the appellants had climbed on top of the wall and from there Shingara Singh, A-2 fired at Surinder Singh. If this version were to be accepted, the injury caused would not have been of the nature found by the Medical Officer who was clearly of the opinion, having regard to the trajectory of injuries, that the person firing the fire arm was at a lower level than the victim. Therefore, with a view to bring their case in consonance with the medical evidence on record, all the three witnesses made significant changes while deposing in Court and all of them thereafter consistently stated that while A-1 had climbed on top of the wall A-2 stood on the ladder in such a manner that only his face was visible from across the wall and while standing in that position, keeping the barrel of the gun on the wall and without resting the butt of the gun against his shoulder, he fired at the deceased. There was no dispute that their deposition in Court was consistent, but what as observed by the trial Court was that their version as to the manner of occurrence as deposed to by them was at variance with what was stated in the First Information Report by P.W. 5, and in the statements of P.Ws. 6 and 7 recorded under S. 161, Cr. P.C. When confronted with their earlier statements, they could not give a satisfactory explanation, with the result that their credibility was sufficiently impeached. The change of version by each one of them, and to the same effect, was deliberate and not merely accidental or on account of lapse of memory. It cannot be disputed that this was a very significant change. It cannot also be disputed that the change was deliberately made by all the witnesses, so that the prosecution case became consistent with the medical evidence on record. We, therefore, do not find any error committed by the trial Court in coming to this conclusion.

23. The High Court then held that the upward direction of the wound could be on account of deflection of the metallic pieces of the bullet after striking the occipital bone. In the first instance there is no basis for this speculation. No such question was put to the doctor P.W. 1, Beena Garg, nor is there any other evidence to support this finding. Moreover, this was not a case of bullet being fired at the deceased. The doctor found pellet injuries caused to the deceased. The pellets having penetrated the skull bone, there was no possibility of its deflection because the brain matter is soft and cannot cause deflection of pellets or bullet. Be that as it may, it cannot be readily inferred, having regard to the evidence of the prosecution itself, that the direction of the injury was otherwise and not as found by P.W. 1. The finding that the pellet must have got deflected is at best speculative.

24. The High Court then found that the failure of the prosecution to explain the injuries on Suba Singh, A-1 did not affect the case of the prosecution. The reason assigned by the High Court is that

he was not medically examined on the same day but was got examined by the police two days later, on July 3, 1991. This reason does not impress us because the medical evidence on record is consistent with the injuries having been caused at about the time of occurrence. The High Court then observed that according to the doctor the injuries except one could be self-suffered. It, therefore, jumped to the conclusion that all the injuries may have been self-suffered. It is possible for one to conjecture that the injuries may have been self-suffered, but that does not provide a good reason for setting aside a finding of fact recorded by the trial Court which came to the conclusion that A-1, Suba Singh resorted to firing when Surinder Singh (deceased) threw brick bats at him. The evidence of the Investigating Officer, P.W. 10 also disclosed that some bricks had been removed from top of the wall where the firing took place. Unfortunately, the Investigating Officer does not appear to have bothered to inspect the courtyard of the accused and, therefore, it is not possible to conjecture as to whether some brick bats were lying in the courtyard of the accused, which may have further supported the defence case. The High Court has observed that no such brick bats were found on the spot, but in doing so the High Court has not correctly appreciated the evidence of the Investigating Officer who does not appear to have at all inspected the courtyard of the accused. The High Court, further, observed that removal of the bricks from the wall would have been shown by the Investigating Officer in the site plan and also by the draftsman who prepared another site plan, but these two witnesses have not shown the removal of the bricks from the wall in the site plans prepared by them. No doubt it is so, but what the High Court has failed to notice is the factual statement made by P.W. 10, the Investigating Officer who after consulting the case diary stated before the Court that he had noted the fact that some of the bricks had been removed from the common wall.

25. If such be the factual position, the failure to show that in the site plans cannot prejudice the case of the defence. The High Court then found that the appellants had a motive to commit the offence and it held so for the reason that A-1, Suba Singh had to make payment and part with money to buy the house after he had backed out of the agreement. In our view, having regard to the fact that the price of the house had been reduced by the Panchayat, Suba Singh, A-1 could hardly entertain a grudge on this account. Moreover, he readily paid Rs. 45,000/- to Gurdeep Singh immediately after the settlement, before the occurrence took place on that day, which only shows that he was more than happy to buy the house at a reduced price. Therefore, in our view, he had no motive to commit the offence and we entirely agree with the finding of the trial Court in this regard.

26. By its impugned judgment the High Court reversed the order of acquittal insofar as Shingara Singh, A-2 is concerned and convicted him of the offence under S. 302, I.P.C. It further convicted accused No. 1-Suba Singh of the offence under S. 302 read with S. 34, I.P.C. instead of S. 304, Part I for which he was convicted by the trial Court. We are of the view that the High Court was not justified in setting aside the order of acquittal of A-2 under S.302, I.P.C. having regard to the facts of the case. It is well settled that in an appeal against acquittal the High Court is entitled to re-appreciate the entire evidence on record but having done so if it finds that the view taken by the trial Court is a possible reasonable view of the evidence on record, it will not substitute its opinion for that of the trial Court. Only in cases where the High Court finds that the findings recorded by the trial Court are unreasonable or perverse or that the Court has committed a serious error of law, or where the trial Court had recorded its findings in ignorance of relevant material on record or by taking into consideration evidence which is not admissible, the High Court may be justified in

reversing the order of acquittal. We do not find this case to be one where the High Court was justified in reversing the findings recorded by the trial Court. At best, it may be contended that the view taken by the High Court is also a reasonable view of the evidence on record. However, we cannot say that the view taken by the trial Court was not another reasonable view of the evidence on record. It is well settled that where two views are reasonably possible on the basis of the evidence on record, the one that favours the accused must be accepted. In any event in a case of acquittal if the view of the trial Court is a possible reasonable view of the evidence on record, interference by the High Court may not be justified.

27. Apart from the reasons given by the trial Court we find that there are many other features which create a serious doubt about the truthfulness of the prosecution case. The case of the prosecution was that the prosecution witnesses and others were having their meals at about 6.30 p.m. sitting on cots in the courtyard of Gurdeep Singh. P.W. 5, Balbir Singh has stated that there were three such cots lying in the courtyard of Gurdeep Singh when P.W. 10 the Investigating Officer came there. But he further admits that the existence of these cots is not shown in the site plan prepared by him nor was it shown in the site plan prepared by P.W. 4.

28. The second aspect of the prosecution case is that the cycle of Surinder Singh was resting against the common wall and when he went to bring the cycle he was shot at by Shingara Singh A-2. However, P.W. 10, the Investigating Officer has admitted in his deposition that the cycle was not shown in the site plan prepared by him. He then stated that it was shown in the site plan Ex. PR at J shown in the note. The trial Court looked at the site plan and came to the conclusion that the note in the site plan showing the presence of the bicycle was an interpolation. We also had a look at the site plan Ex. PR and we are not in a position to say that the trial Court was not justified in making that observation.

29. So far as the ladder is concerned, PW-5, Balbir Singh stated that the ladder was in the same position when the Investigating Officer came to the place of occurrence but he could not explain why it was not shown in the site plan prepared by the police. Even PW-10 the Investigating Officer had to admit that in the site plan the position of the ladder was not shown. These features of the prosecution case also support the conclusion reached by the trial Court that the occurrence must have taken place in a manner different than the one deposed to by the alleged eye-witnesses. The evidence on record with regard to the existence of cots in the courtyard of Gurdeep Singh, the existence of a bicycle, as also about the existence of a ladder is rather unsatisfactory and creates a serious doubt as to whether the prosecution witnesses are telling the truth. The omission to show them in both the site plans cannot be attributed to a mere lapse on the part of the investigating agency. In fact so far as the site plans are concerned, the case of the prosecution is that they were prepared in the presence of PW-5 and another witness and on their pointing. However, PW-5 denied that the plans were prepared in his presence. The other witness was not examined.

30. We are, therefore, of the considered view that the High Court was not justified in setting aside

the order of acquittal passed in favour Shingara Singh, A-2. On appreciation of the evidence on record it appears to us that the occurrence in all probability may have taken place in the manner alleged by the defence, and not in the manner alleged by the prosecution. If that be so we must hold that Shingara Singh, A-2 was not even present when the occurrence took place. He, therefore, is entitled to acquittal.

31. However, so far as the case of Suba Singh, A-1 is concerned, we agree with the findings of the trial Court that he had exceeded the right of private defence. In the facts and circumstances of the case there was no justification for using his gun in such a manner as to cause the death of the deceased. We, therefore, find him guilty of the offence under Section 304, Part I, IPC but in the facts and circumstances of the case sentence him to rigorous imprisonment for five years and to pay a fine of Rs. 10,000/-, in default of payment of fine he shall undergo imprisonment for further period of one year.

32. Accordingly the appeals preferred by Shingara Singh, A-2 are allowed. The appeals preferred by Suba Singh, A-1, are partly allowed and he is found guilty of the offence punishable under Section 304, Part I, IPC instead of Section 302, IPC and sentenced as indicated above.

Order accordingly.