SUPREME COURT OF INDIA

Manjit Singh

Vs.

State of Punjab

Crl.A.No.2042 of 2010

(Dipak Misra and Vikramajit Sen JJ.)

13.09.2013

JUDGMENT

DIPAK MISRA, J.

1. The two appellants, namely, Manjit Singh and Paramjit Singh, were tried along with three others in ST No. 54 of 2001 before the learned Additional Sessions Judge, Kapurthala for the offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code (IPC).

2. The facts which are essential to be stated are that on 8.11.1998 about 12:00 noon Amarjot Singh, the complainant, PW-1, along with his younger brother, Jagmohan Singh, the deceased, was going on a tractor towards Bholath for some domestic work. Jagmohan Singh was driving the tractor, whereas Amarjot Singh was sitting on the left mudguard of the tractor. After they reached village Pandori Arayiyan, they were stopped by a Maruti car bearing registration no. PB-10-X 7079, driven by Accused No. 1, Manjit Singh, who parked it on the road in front of the tractor. On seeing the car, Jagmohan Singh, stopped the tractor in the middle of the road. Manjit Singh, armed with a .315 bore rifle, Paramjit Singh, father-in-law of Manjit Singh, armed with .12 bore gun, Jaswinder kaur, sister of Manjit Singh, and two unknown persons alighted from the car. One of the unknown persons was also armed with a .12 bore gun. After alighting from the car, Jaswinder Kaur raised "lalkara" to eliminate both the sons of Rajinderpal Singh, PW-2, father of the deceased, so that they would understand the consequences of contesting the election of Sarpanch against them. Jagmohan Singh tried to turn the tractor towards the left side and at that juncture Manjit Singh fired a gunshot which hit him on the

right cheek as a result of which he fell down from the tractor in the fields. Paramjit Singh armed with a .12 bore gun had also fired at the two brothers. Amarjot Singh jumped from the tractor and received an injury on his right elbow. He saved himself by taking shelter behind the back wheel of the tractor. In the meantime, Rajinderpal Singh, PW-2, who was present at his tube-well motor situate nearby and Didar Singh s/o Joginder Singh, who was present in his field near the place of occurrence reached the spot and witnessed the incident. All the accused fled away from the scene of crime along with their respective weapons. Jagmohan Singh and Amarjot Singh were shifted to Civil Hospital, Bholath, in a car and in the hospital Jagmohan Singh was declared dead.

3. As the prosecution story further unfurls, the hospital authorities intimated about the death of Jagmohan Singh to the concerned police station whereafter the police party headed by SI, Swaran Singh, PW-5, arrived at the hospital and the SI recorded the Statement of Amarjot Singh on the basis of which a formal FIR was registered. The investigating agency got the post mortem done, prepared the site plan, collected the blood stained earth, the blood stained clothes of the deceased, three empty cartridges of .315 bore rifle and two empty cartridges of .12 bore from the spot and each item was put in separate sealed parcels on the basis of separate memorandum prepared and attested by the witnesses. After taking appropriate steps, accused persons were apprehended and the Maruti car, used in the commission of crime, was seized. A-1, Manjit Singh, while in custody led to recovery of his licenced rifle .315 bore along with the cartridges and the licence in the iron box in the residential house of Jasbir Singh of Village Umarpura, one of his relatives. Similarly Paramjit Singh, A-2, made a disclosure that .12 bore licenced gun used by him had been taken by Sukhpal Singh of Kaki Pind. As per his statement a bag containing the remaining cartridges were kept concealed in the iron box under the clothes in his residential house. On the basis of the said statement, recovery of the iron box, the lock, the cartridges and the licence were recovered. On the basis of disclosure statement of Sukhpal Singh, A-3, who had taken .12 bore gun from Paramjit Singh, A- 2, led to the place of discovery of the weapon hidden underneath the heap of chaff in the Haveli of Manjit Singh, A-1. The seized articles were sent to the FSL at Chandigarh. The investigating agency, after examining the witnesses and completing the other formalities, placed the charge-sheet before the learned Magistrate, who, in turn, committed the matter to the Court of Session.

4. The accused persons pleaded innocence and false implication due to animosity and on that basis claimed to be tried.

5. Be it noted, during the trial an application was moved under Section 319 of the Code of Criminal Procedure, 1973 (for short "the CrPC") to summon Jaswinder Kaur as an accused which was allowed, and during trial she availed the same plea and claimed to be tried.

6. The prosecution, in order to bring home the charges against the accused persons, examined 13 witnesses and got marked number of documents. The principal witnesses are Amarjot Singh, PW-1, the informant, Rajinderpal Singh, PW-2, father of the deceased, who was cited as an eye-witness, Dr. J.N. Dutta, PW-3, who had conducted the post mortem, Swaran Singh, PW-5, the Investigating Officer, and Dr. Narinderpal Singh, PW-7, who had examined Amarjot Singh. The rest of the witnesses are formal witnesses.

7. In their statements under Section 313 of the CrPC the plea of the accused Manjit Singh and Paramjit Singh was that they were arrested from their house on 9.11.1998 and the rifle and gun were also taken into police possession. In essence, they pleaded innocence and false implication. As far as Sukhpal Singh, A-3, is concerned, his version was that he had filed a writ petition against S.S.P. Dinkar Gupta, D.S.P Harmail Singh and S.I. Surjit Singh because he was illegally detained by the police earlier and, therefore, the police had conducted a raid in his house and falsely implicated him in the case. He had also stated that Manjit Singh and other were not known to him. The plea of Jaswinder Kaur was to the effect that after the death of her husband in 1990, she was residing at Jalandhar with her daughter and was suffering from heart ailments and had also suffered a brain haemorrhage. She also took the plea that on the date of occurrence she was away at Harnamdasspur to attend the cremation of a relative. Her further plea was that she had been falsely implicated on account of dispute relating to Panchayat election which was contested by her sister-in-law, wife of Manjit Singh.

8. On the basis of the ocular and documentary evidence brought on record the trial court found that the prosecution had been able to prove its case beyond all reasonable doubt against Manjit Singh, A-1, Paramjit Singh, A-2, and Sukhpal Singh, A-3, for committing the murder of Jagmohan Singh on 8.11.1998. He also found them guilty of firing at Amarjot Singh with the intention of committing murder and, accordingly, recorded conviction under Section 302/307 read with Section 34 of the Indian Penal Code (IPC) and sentenced each of them to undergo rigorous life imprisonment and to pay a fine of Rs.5000/- with a default clause under Section 302 IPC and for one year under Section 307 IPC and to pay a fine of

Rs.2000/- with the default clause. It may be noted that Sukhpal Singh was also separately convicted under Section 307 IPC. The trial court acquitted all the accused persons of the charges under Section 148 IPC. As far as Kamal Kumar, A-4 and Jaswinder Kaur, A-5, are concerned, he recorded an acquittal in respect of all the charges on the ground that the prosecution had not been able to bring home the charges against them.

9. Assailing the aforesaid judgment of conviction and order of sentence Manjit Singh, Paramjit Singh and Sukhpal Singh preferred Criminal Appeal No. 628-DB of 2001 and Sukhpal Singh challenged his individual conviction under Section 307 IPC in Criminal Appeal No. 621-DB of 2001. The acquittal of the accused persons was challenged by the informant Amarjot Singh in Criminal Revision No. 680 of 2002.

10. The High Court, by a common judgment and order dated 12.5.2009 which is impugned herein, affirmed the conviction of Manjit Singh and Paramjit Singh. However, as far as Sukhpal Singh is concerned, taking note of the material brought on record, doubted his presence at the scene of occurrence and, accordingly gave him the benefit of doubt. As he was acquitted in the main appeal, the appeal preferred by him assailing the conviction under Section 307 IPC was treated to have been rendered infructuous. In view of the decisions rendered in the appeal the criminal revision, preferred by Amarjot Singh, the brother of the deceased, stood dismissed.

11. Questioning the legal propriety of the said judgment and order Manjit Singh and Paramjit Singh have preferred Criminal Appeal No. 2042 of 2010 by special leave and the informant has preferred Criminal Appeal Nos. 2276-2278 of 2010 on obtaining permission to challenge the judgment of acquittal.

12. We have heard Mr. U.U. Lalit, learned senior counsel for the convicted appellants, Mr. Jayant K. Sud, learned Additional Advocate General for the State of Punjab, Mr. S.C. Paul, learned counsel for the informant in his criminal appeals and Mr. J.P. Dhanda, learned counsel for the respondent No. 5 in criminal appeal preferred by Amarjot Singh.

13. Criticizing the appreciation of evidence and the findings recorded by the learned trial Judge as well as by the High Court Mr. Lalit, learned senior counsel, has contended that two crucial witnesses, namely, Didar Singh, an independent eye witness, who had not only witnessed the incident but had brought the car in which

the deceased was shifted to the hospital and the site plan was prepared at his instructions, and Malkiat Singh, who had brought the deceased to the hospital, have not been examined and their non-examination creates a grave doubt about the version set forth by the prosecution. His further submission is that three others, namely, Kamal Kumar, Jaswinder Kaur and Sukhpal Singh were falsely roped in and that supports the plea advanced by the defence that there had been false implication of the accused persons in the crime. It is canvassed by him that the presence of PWs-1 and 2 at the place of occurrence is extremely doubtful, for according to the prosecution, seven gunshots were fired but none had hit the PW-1. That apart, PWs-1 and 2 claimed to have taken the deceased to the hospital in a condition when the seats of the car and their clothes were stained with blood, but the Investigating Officer, PW-5, has categorically deposed that he did not notice the clothes of PWs-1 and 2 to say that there were any blood stains on their clothes.

14. The learned senior counsel would submit that their carrying of the deceased to the hospital is also surrounded with immense suspicion inasmuch as the doctor who had conducted the post mortem has clearly stated that it was Malkiat Singh who had brought the deceased to the hospital and no document has been brought on record that PWs-1 and 2, who claimed to be eye-witnesses, had brought the deceased to the hospital. It is argued that the Investigating Officer did not find any pellets marks on the tractor and he did not take into possession the clothes and blood samples on the car seats for chemical examination, which go a long way to create a dent in the prosecution story. He has further emphatically put forth that when the tractor had turned towards left, it is difficult to discern that the deceased sustained injury in the right cheek and the person sitting on the left mudguard did not get affected. It is next submitted by him that there has been blackening of wounds which would indicate that the injuries were caused from firing from a close range but the oral testimonies of PWs-1 and 2 evinces that the accused Manjit Singh had fired from the distance of one and half "karms". The last plank of argument of Mr. Lalit is that the appellant No. 2 could not have been convicted in aid of Section 34 IPC since he had not participated in the assault on the deceased, and further there was no recovery of the alleged .12 bore rifle.

15. Mr. Jayant K. Sud, learned Additional Advocate General for the State of Punjab, supporting the judgment of the High Court, has contended that the reappreciation of the evidence by the High Court while exercising appellate jurisdiction, cannot be faulted. The learned counsel would further submit that the learned trial Judge as well as the High Court has correctly placed reliance on the testimonies of PWs- 1 and 2 as they are unimpeachable. It is also urged by him that

the corroboration of injury by the medical evidence, the factum of recovery of weapons and other circumstances clearly establish the guilt of the accused and hence, the analysis made by the High Court can really not be flawed.

16. Mr. J.P. Dhanda, learned counsel for the informant, in support of the appeal preferred by him, contended that the High Court has fallen into grave error by affirming the acquittal recorded by the learned trial Judge in respect of two accused and has further committed serious illegality by acquitting Sukhpal Singh, A-3, despite the irreproachable evidence against him. It is submitted by him that the prosecution has clearly and specifically brought the motive into the forefront and despite definite roles being attributed to each of the accused persons, the learned trial Judge acquitted the accused persons, namely, Kamal Kumar, A-4, and Jaswinder Kaur, A-5 and the High Court totally erroneously gave the stamp of approval to the same.

17. The first submission of Mr. U.U. Lalit is that the non-examination of two crucial witnesses, namely, Didar Singh and Malkiat Singh creates a great doubt in the prosecution version which makes it absolutely incredible. On a perusal of the material on record it is clear that Didar Singh had come to the spot along with Rajinderpal Singh, PW-2, and had arranged a car to take the deceased and the injured to the hospital and at his instance the site plan was prepared. As far as Malkiat Singh is concerned, the assertion is that he had carried the deceased and the injured to the hospital but the evidence in this regard is extremely sketchy. Be that as it may, thrust of the matter is whether non-examination of these two witnesses materially affects the trustworthiness of the prosecution version or put it differently whether it really creates a dent in the testimony of the other eye witnesses and the surrounding circumstances on which the prosecution has placed reliance to bring home the guilt of the accused.

18. In this context, a passage from Masalti v. State of U.P.[1] may fruitfully be reproduced:-

> "In the present case, however, we are satisfied that there is no substance in the contention which Mr Sawhney seeks to raise before us. It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the court. It

is undoubtedly the duty of the prosecution to lay before the court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised."

19. In Namdeo v. State of Maharashtra[2], it has been laid down that neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. The legal system in this country has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses.

20. In Bipin Kumar Mondal v. State of W.B.[3] the Court reiterated the principle stating that it is not the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy and reliable.

21. In State of H.P. v. Gian Chand[4] it has been ruled that non- examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution.

22. In Takhaji Hiraji v. Thakore Kubersing Chamansing[5] the Court has opined that it is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not [pic]convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of

facts must ask itself—whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court? If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.

23. In Dahari v. State of U.P.[6] while discussing about the non- examination of material witness, the Court has ruled that when the witness was not the only competent witness who would have been fully capable of explaining the factual situation correctly, and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Similar principle has been reiterated in Harivadan Babubhai Patel v. State of Gujrat[7].

24. From the aforesaid exposition of law, it is quite clear that it is not the number and quantity, but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness (see: State of U.P. v. Iftikhar Khan and others[8]).

25. In the case at hand we find the plea taken is that it was Malkiat Singh, who had taken the deceased and injured to the hospital and, therefore he is a material witness. The question that is required to be put whether the evidence of the said witness is essential to record a conviction or his non-examination would affect the trustworthiness of PWs-1 and 2 and other witnesses. As we perceive, it can reasonably be stated that Malkiat Singh is not a material witness in that sense. As far as Didar Singh is concerned, tested on the parameters of the authorities referred to above, if the testimony of other witness inspires confidence, his non-examination would not create a concavity in the case of the prosecution. We may state here that the acceptance of testimonies of PWs-1 and 2, in the case at hand, would stand on their own and would not depend upon the version that could have come from Didar Singh. It is so as he is not the only competent witness who would have been fully capable of explaining the factual situation correctly. Quite apart

from the above, it is worth noting here that during the cross-examination of investigating officer, none of the accused persons had voiced their concerns by raising any apprehension regarding non-examination of the material witnesses. We may repeat that on a studied scrutiny we find that, in fact, there is no cross-examination in that regard. Thus, the aforesaid submission of the learned counsel is not acceptable.

26. The next limb of submission of the learned senior counsel for the appellant is that on apposite appreciation of the evidence in entirety it is clearly demonstrable that the falsehood rings in the statements of all the witnesses. Bolstering the said aspect, it is urged by him that the prosecution has falsely implicated three accused persons including a lady and that shows the extent of falsehood that has been taken recourse to by the informant, PW-1, and other witnesses. In essence, it is his proponement that testimonies of so-called eye- witnesses cannot be regarded as cogent, reliable and trustworthy.

27. It is well settled in law that unless the entire case of the prosecution suffers from infirmities, discrepancies and material contradictions and the prosecution utterly fails to establish its case, acquittal of some accused persons cannot be a relevant facet to determine the guilt of other accused persons. In Dalbir Singh v. State of Haryana[9], a two-Judge Bench reproduced para 51 fromKrishna Mochi and Others v. State of Bihar[10] wherein it has been stated that the maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be disregarded. Thereafter, the Bench proceeded to state as follows:-

> "Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab[11].) The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however

> true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P.[12] and Ugar Ahir v. State of Bihar[13].)"

28. In Yanob Sheikh alias Gagu v. State of West Bengal[14], after referring to Dalbir Singh (supra) the Court observed that the acquittal of a co-accused per se is not sufficient to result in acquittal of the other accused. The court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal. The court must examine the entire prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case.

29. In Balraje alias Trimbak v. State of Maharashtra[15] a two-Judge Bench has observed that even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused.

30. Keeping the aforesaid principle in view we are required to test the acceptability of the evidence on record. The learned trial Judge has acquitted Jaswinder Kaur on the ground that she had not contested any election; that she was not even residing in the village in which the elections were held; and that she was residing in her own house at Jalandhar. The allegation in the FIR that she had given lalkara had not really got support from other witnesses and, hence, her presence at the spot was doubted. As far as Kamal Kumar is concerned, in the opinion of the learned trial Judge he had no concern with the accused persons or the deceased as he belongs to Ram Mandi in Jalandhar Cantonment. The learned trial Judge, in essence, has extended benefit of doubt to him inasmuch as he had neither participated in the occurrence nor had he shared the common intention. The High Court has acquitted Sukhpal Singh on the ground that he was not named in the FIR and further he had not carried any weapon. The High Court opined that he had been implicated because he had filed a writ petition against the police officers. If the evidence is scrutinized in proper perspective, it is clear that there has been some

embellishment by the informant and other witnesses but giving such embroidery to a story would not make the whole prosecution version untruthful one. It can be treated to be an exaggeration by the prosecution but the consequence cannot be regarded as fatal. Therefore, we are not persuaded to accept the said submission canvassed on behalf of the appellants.

31. The next contention is that the presence of two eye-witnesses, namely, PWs-1 and 2, at the scene of occurrence is gravely doubtful. It has been urged that the said two witnesses could not have been present at the spot as their statement that they had taken the deceased to the hospital has been belied by the testimony of autopsy surgeon; their blood stained clothes had not been seized; and PW-1, who was sitting on the left mudguard of the tractor, had not received any serious injury despite the tractor had turned towards the left. To appreciate the said contention we have bestowed our anxious consideration and scrutinized the evidence on record. The plea that Malkiat Singh had alone brought the deceased and the injured to the hospital cannot be accepted to be correct. PW-8, Dr. Narender Singh, who had treated Amarjot Singh, had clearly stated that the deceased was brought dead to the hospital with the alleged history of gunshot injuries. At that time he had treated Amarjot Singh. In the cross-examination, he has clearly deposed that the dead body was brought to the hospital at 12.40 p.m. and Amarjot Singh came to the hospital at 12.40 p.m. That apart, it can be said with certitude that whether Amarjot Singh accompanied or not really does not affect the prosecution case. As far as non-seizure of the blood-stained clothes and blood stains from the seat of the car are concerned, it does not create a dent in the prosecution version. In this context, the authority in State of Rajasthan v. Arjun Singh and others[16] can profitably be referred to. In the said decision the Court has opined that absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place. It has been further observed that when there is ample unimpeachable ocular evidence and the same has received corroboration from the medical evidence, even the non-recovery of weapon does not affect the prosecution case. In the case at hand it is perceptible that PWs-1 and 2, brother and father of the deceased, have deposed in a vivid manner about the culpability of the accused persons in the crime. The autopsy surgeon, PW-3, has clearly opined that the deceased had died because of gunshot injuries. The FSL report, Ext. P-AM/1, states with equal clarity that one cartridge was fired from left barrel of DBBL gun No. 56088, the other cartridge from its right barrel and three cartridges were fired from the rifle No. AB 97/5473. It is also brought out in the evidence the gun and the rifle were sent to the Forensic Science Laboratory in sealed parcels. As per the report the shots were fired from the weapons sent to the

laboratory. It has been established by cogent evidence that the weapons belonged to the accused-appellants and licenses were issued in their favour. Thus, the ocular testimony of PWs-1 and 2 has received clear corroboration from the medical evidence as well as from the report of the FSL.

32. Learned counsel for the appellants has also submitted that wounds would indicate that the shots were fired from a close range but the oral testimony is contrary to the same. That apart, he submits that the person sitting on the left mudguard would have been affected as the tractor turned towards the left and, more so, when the deceased had sustained injury on the right cheek. In our considered opinion, these kind of discrepancies are bound to occur when an occurrence of the present nature takes place and one cannot expect the witnesses to state with precision. Needless to emphasise, on these counts the prosecution version cannot be held to be unbelievable and it cannot be held that the prosecution has not been able to establish the charges beyond reasonable doubt. It is because judicial evaluation of the evidence has to be appropriate regard being had to the totality of the facts and circumstances of the case and not on scrutiny in isolation and further the concept of proof beyond reasonable doubt cannot be made to appear totally unrealistic. In this context, we may profitably reproduce a passage from Inder Singh and another v. The State (Delhi Administration)[17]: -

> "Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal case, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human process. Judicial quest for perfect proof often accounts for police presentations of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic."

33. Thus analysed, the submission in this regard leaves us unimpressed and, accordingly, we repel the same.

34. The last plank of proponement of Mr. Lalit is that the appellant No. 2 could not have been convicted in aid of Section 34 IPC since he had not participated in the assault on the deceased. Apart from participation, he has also emphasised on non-recovery of alleged .12 bore rifle. On a perusal of the evidence of PWs 1 and 2 it is perceptible that Paramjit Singh was named in the FIR and he had accompanied Manjit Singh, his son-in-law. There has been seizure of .12 bore rifle which has been proven to have belonged to Paramjit Singh and the cartridges that have been recovered from the spot have been proven to have been fired from the .12 bore rifle that belonged to Paramjit Singh. There is a distinction in the case of Sukhpal Singh and Kamal Kumar on one hand and Paramjit Singh on the other. Sukhpal Singh was not named in the FIR. There was a litigation going on between him and the police officers. Kamal Kumar was not known to any of the witnesses. There is clear evidence that Paramjit Singh had fired from his .12 bore rifle but it had not hit anyone. From the material brought on record it is vivid that he had gone along with Manjit Singh being armed with the weapon. The submission that is advanced is that he had not participated in the occurrence and, therefore, it could not be said that he had shared the common intention. In this context, we may refer to a three-Judge Bench decision in Shreekantiah Ramayya Munipalli and another v. State of Bombay[18], wherein it has been ruled thus: -

> "..... it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time the crime is actually being committed. The antithesis is between the preliminary stages, the agreement, the preparation, the planning, which is covered by S. 109, and the stage of commission when the plans are put into effect and carried out. Section 34 is concerned with the latter.
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> It is true there must be some sort of preliminary planning which may or may not be at the scene of the crime and which may have taken place long beforehand, but there must be added to it the element of physical presence at the scene of occurrence coupled with actual participation which, of course, can be of a passive character such as standing by a door, provided that is done with the intention of assisting in furtherance of the common intention

of them all and there is a readiness to play his part in the pre-arranged plan when the time comes for him to act."

[Emphasis supplied]

35. In the case of Iftikhar Khan (supra) another three-Judge Bench referred to Mahbub Shah v. King Emperor[19] and thereafter reiterated the principles stated in Pandurang, Tukia and Bhillia v. State of Hyderabad[20] wherein it has been stated that :-

"at bottom, it is a question of fact in every case and however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference, or, as we prefer to put it in the time-honoured way, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis".

36. In Tukaram Ganpat Pandare v. State Maharashtra[21] the Court opined thus: -

"Criminal sharing, overt or covert by active presence or by distant direction, making out a certain measure of jointness in the commission of the act is the essence of Section 34."

37. In Krishnan and another v. State of Kerala[22], Hansaria, J., in his concurring opinion, stated thus: -

"15. Question is whether it is obligatory on the part of the prosecution to establish commission of an overt act to press into service Section 34 of the Penal Code. It is no doubt true that the court likes to know about an overt act to decide whether the person concerned had shared the common intention in question. Question is whether an overt act has always to be established? I am of the view that establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch as this section gets attracted when "a criminal act is done by several persons in furtherance of the common intention of all". What has to be, therefore, established by the prosecution is that all the persons concerned had shared the common intention. Court's mind regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. But then, there may be a case

where the proved facts would themselves speak of sharing of common intention: res ipso loquitur."

Be it noted, in the said case one of the accused had not caused any injury to the deceased.

38. In Surendra Chauhan v. State of M.P.[23], the Court opined that the existence of a common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the commission of the offence need not be proved in all cases. Thereafter, the learned Judges proceeded to state that to apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.

39. Regard being had to the aforesaid principles, we shall proceed to analyse the fact-situation in the present case. On a scrutiny of the evidence we find that the appellant No. 2 had accompanied appellant No. 1 and was present at the spot; that he had carried a weapon; that it has been established by the prosecution that the cartridges had been fired from his gun; and that both the appellants are closely related. Thus, the cumulative facts would clearly establish that the appellant No. 2 shared the common intention with the appellant No. 1. We will be failing in our duty if we do not notice the authority, namely, Ramashish Yadav and others v. State of Bihar[24], which has been commended to us by Mr. Lalit. In the said case, the Court, after dealing with the applicability of Section 34 IPC, noted the fact that two accused-appellants caught hold of the deceased and thereafter, other accused persons came and assaulted him with 'gandasa' on account of which the deceased died and hence, they could not be roped in with the aid of Section 34 IPC. In our considered opinion the discussion in the said judgment has to be confined to the facts of the said case and cannot be applied as a rule.

40. In view of our aforesaid analysis, the criticism advanced by Mr. Lalit that the appellant No. 2 could not have been convicted in aid of Section 34 IPC, is not well founded.

41. Presently, we shall proceed to deal with the appeal preferred by the informant. We have already noted that the learned trial Judge has categorically opined that the accused persons, namely, Kamal Kumar and Jaswinder Kaur, were not present at the scene of occurrence. Jaswinder Kaur was arrayed as an accused on the basis of an application preferred under Section 319 of the Code of Criminal Procedure and host of material has been brought on record to establish the plea of the defence that she had not contested the election and she was not present at the scene of occurrence. On a studied scrutiny of the evidence, the learned trial Judge has given credence to the same. As far as Kamal Kumar is concerned, he has nothing to do either with the deceased or the accused persons as he belongs to a different village and further he had not carried any weapon. The High Court has acquitted Sukhpal Singh on the foundation that there was animosity between the police officers and Sukhpal Singh and he had not carried any weapon. Thus, the view expressed by the learned trial Judge in acquitting Jaswinder Kaur and Kumar Kumar and further the acquittal recorded by the High Court acquitting Sukhpal Singh is based on cogent reasoning and, in our considered opinion, it is a plausible view. Needless to emphasise that once a plausible view has been expressed and there has been proper appreciation of the evidence on record, the acquittal does not warrant any interference.

42. In view of the above premised reasons, all the appeals are dismissed.

[1] AIR 1965 SC 202
[2] (2007) 14 SCC 150
[3] (2010) 12 SCC 91
[4] (2001) 6 SCC 71
[5] (2001) 6 SCC 145
[6] (2012) 10 SCC 256
[7] (2013) 7 SCC 45
[8] (1973) 1 SCC 512
[9] (2008) 11 SCC 425
[10] (2002) 6 SCC 81
[11] AIR 1956 SC 460
[12] (1972) 3SCC 751
[13] AIR 1965 SC 277

[14] (2013) 6 SCC 428
[15] (2010) 6 SCC 673
[16] (2011) 9 SCC 115
[17] (1978) 4 SCC 161
[18] AIR 1955 SC 287
[19] AIR 1945 PC 118
[20] (1955) 1 SCR 1083
[21] AIR 1974 SC 514
[22] (1996) 10 SCC 508
[23] (2000) 4 SCC 110
[24] (1999) 8 SCC 555