

(2012) 11 MP CK 0136

In the Madhya Pradesh High Court

Case No : Criminal Appeal No's. 274 and 160 of 2000

Dharm Singh and Others

APPELLANT

Vs

State of Madhya Pradesh
 State of Madhya Pradesh Vs
Vrikhbhan and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 315, 357(3)
Penal Code, 1860 (IPC) — Section 148, 149, 302, 34, 421

Citation : (2012) 11 MP CK 0136

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Prabal Solanki, Public Prosecutor for the State in Criminal Appeal No. 160/2000, for the Appellant; Prabal Solanki, Public Prosecutor, for the State in Criminal Appeal No. 274/2000, Shri R.K. Sharma, Advocate for Respondents No. 1 and 2 and Shri Puran Kulshrestha, Shri Amit Lahoti, Advocates for Respondents No. 3 and 4 in Criminal Appeal No. 160/2000, for the Respondent

Judgement

G.D. Saxena, J.—Criminal Appeal No. 274/2000 arises out of the impugned judgment and order dated 24th November, 1999 of conviction and sentence while Criminal Appeal No. 160/2000 arises out of the same judgment but of acquittal recorded in Sessions Trial No. 166/96 by the Additional Sessions Judge, Sabalgarh, district Morena (M.P.). Since the judgment and order challenged in these two criminal appeals is one, both are herewith taken up together for final disposal. The appellants of Criminal Appeal No. 274/00 herein stood their trial on the charges levelled against them before the learned Additional Sessions Judge and they were convicted for commission of offence u/s 302/34 of I.P.C. and sentenced to suffer imprisonment for life, whereas appellants of other joint appeal stand acquitted of the offence 148, 302/149 and 302/149 of I.P.C.

2. Facts in short as came out from the evidence led before the trial court which are just necessary for the disposal of the appeals are that prior to the incident on 20th February 1996, accused Ramratan, Padam Singh, Gabbar Singh and

Dharam Singh forcibly and against the wishes of complainant were intending to change nature of the field belonging to him into thrashing floor/granary, by the dint of guns, which was reported by the complainant to the police station Kailaras, district Shivpuri. The police after report visited the spot and started investigation in the matter. This was the reason which formed an enmity and made strained relations between the parties. It is alleged that on 22nd February 1996, at about 4 p.m., the complainant Shivraj Singh alongwith his father Bhagwan Singh, brother Yogesh, Satyapal Singh and Padam Singh was going on a tractor-trolley to collect mustered crops from their agricultural field. As they crossed nearby the agricultural field of accused Ramratan, at that juncture, they found the accused Ramratan and Vrikhbhan Singh with mouser guns, Dharam Singh and Padam Singh with twelve bore guns, Mahaveer Singh, Prahalad Singh, and Vijendra Singh with farsas in their hands. Thereafter, all the accused in prosecution of their common object to kill the complainant party, opened fire by their firearms and caused gunshot injuries on the bodies of Satyapal and Padam Singh. Accused Brijendra, Prahalad and Mahaveer Singh also inflicted injuries by means of Axes to Satyapal Singh and Padam Singh. The incident was witnessed by Vishambhar Singh, Shivraj Singh, Bhagwan Singh and Yogesh Singh by hiding themselves. After causing death of Satyapal and Padam on the spot, the accused fled away from the place of occurrence. A written report of the incident vide Ex. P/1 was submitted to the Police Station Kailaras at about 4.30 p.m., on the day of incident by complainant Shivraj Singh. On the basis of written report, an FIR (Ex.P/2) was lodged and registered at Crime No. 58/1996. Marg reports were also written and registered at Nos. 3 & 4. Thereafter investigation was set into motion and the Marg above were also inquired into. The spot map was prepared and incriminating articles were seized. The dead bodies of Satyapal Singh and Padam Singh were sent for postmortem to Government Hospital where postmortem was done. Case-diary statements of eye-witnesses and material witnesses were recorded. The accused were arrested on different dates. The weapons of crime recovered from them were thereafter sent for chemical examination and State Forensic Science Laboratory. After investigation, the charge-sheet was filed and on committal the sessions trial was conducted against the accused. After trial, the trial Judge convicted the present accused while rest were acquitted by the same impugned judgment, hence these appeals before us.

3. In Criminal appeal No. 160/2000 against acquittal of accused Vrikhbhan Singh, Mahaveer Singh, Prahalad Singh and Vijendra Singh, the State has assailed the judgment on the ground that from prosecution evidence it is conclusively proved that prior to the present incident, all accused had inimical relations with the complainant party on forceful construction of thrashing floor/granary, at the agricultural fields of complainant and the complainant-party lodged a criminal complaint to the police on which a cognizance had been taken against the accused. It is submitted that from materials available on record, it is also gathered that in incident, all the accused were present on the spot with firearms and Axes. The accused having guns opened fire which bullets hit

Satyapal Singh and Padam Singh resulting into their death. Both the deceased also received cut wounds on the vital parts of their bodies. It is further argued that the version of the ocular witnesses also gets strengthened by the medical evidence and recovery of the weapons seized from the accused. It is contended that this fact is established from record that all the accused in the incident formed an unlawful assembly and in furtherance of their common object with a view to take revenge, they caused death of Satyapal Singh and Padam Singh. Therefore, the findings recorded by learned trial judge in this state of affairs are not sustainable in law and the acquitted accused are liable to be punished with other convicted accused-appellants of connected criminal appeal. Accordingly, it is prayed that by allowing the appeal, the acquitted accused be properly convicted and sentenced.

4. Per contra, learned counsel appearing on behalf of the acquitted accused by supporting the judgment under appeal contended that by scrutinising properly the evidence, the learned trial court has come to the conclusion. It is submitted that although the accused were present on the spot with firearms and other weapons but no overt act in incident was attributed to them. Their mere presence on the spot will not make them jointly liable for causing death of Satyapal Singh and Padam Singh. Accordingly, it is prayed that the appeal against acquittal of respondents preferred by the State may be dismissed.

5. In Criminal Appeal No. 274/2000 against conviction and sentence of the accused/appellants Dharm Singh, Ramratan, Padam Singh and Gabbar Singh, the grounds taken by the appellants' learned counsel for assailing the judgment are that the statements of eye-witnesses relating to the incident are not natural because they did not receive any injuries especially when two persons on complainant-side were murdered. It is submitted that from the evidence, it is also appeared that the complainant-party and accused party were related to each other but the relations were not cordial. Several persons died from each side and several amongst them were convicted by the criminal courts and therefore in such scenario, false implication of the accused can not be denied. The learned trial Judge on the basis of the prosecution evidence acquitted some of the accused while convicted rest of the accused, on the same set of evidence and therefore on this ground also, the appellants are liable to acquitted more so when the circumstances appearing from the evidence clearly indicate that the convicted accused are also innocent. Therefore it is prayed that by allowing the present appeal, the appellants/convicted accused be acquitted of the charges framed by the trial court.

6. The learned Public Prosecutor appearing on behalf of State contended that the trial Judge after close scrutiny of the ocular, medical evidence, recovery of the weapons used and recovered from the accused and the report of Chemical and Firearm Expert, found established the involvement of the convicted accused and after hearing the accused on question of sentence passed the appropriate sentence as per law. Thus, by supporting the judgment of conviction and

sentence, it is prayed that the appeal against conviction and sentence filed by the convicted accused/appellants may be dismissed.

7. Heard the learned counsel appearing for the accused/appellants and also the learned Public Prosecutor appearing for the State. We have also perused the prosecution evidence and all documents exhibited and proved by the witnesses and gone through the accused statements recorded u/s 313 of Cr.P.C., together with the statement of defence witness and the documents produced and exhibited from their side.

8. In present Sessions trial, the learned trial Judge framed the charges for offences punishable u/s 148, 302, in alternative 302/149 of I.P.C. against all eight accused and to prove the above charges the prosecution produced the common evidence against all the accused.

9. Since there is no legal impediment in the way of this Court sitting as Appellate Court in the matter of examination of the entire evidence and giving findings of fact, we would proceed to examine evidence first, give our findings and then point out how those findings can be utilised for the purpose of either acquitting or convicting the accused.

10. To prove the prosecution version, witnesses Shivraj Singh (PW-1), elder brother of deceased Satyapal and Padam Singh, Bhagwan Singh (PW-3), father of deceased Satyapal Singh and Padam Singh, Yogesh Singh (PW-4), brother of deceased Satyapal Singh and Padam Singh were examined. As per the case of the prosecution, these witnesses were going to the fields for collecting the reaped mustard crops behind the deceased Satyapal Singh and Padam Singh, who were going ahead to them in a tractor-trolley, driven by deceased Satyapal Singh. Deceased Padam Singh was set on the mudguard of the said tractor. When the tractor crossed the field of accused Ramratan Singh, they found accused Ramratan and Vrikhbhan with Mauser guns, Dharm Singh with twelve bore double barrel gun, Padam Singh and Gabbar Singh with twelve bore guns, Mahaveer, Prahalad and Vijendra with Farsa following them. Thereafter, all the accused fired shots at the deceased causing various injuries. When Satyapal fell down, accused Vijendra gave a blow to him with a farsa, which hit on his neck towards left portion. Accused Prahalad and Mahaveer also caused injuries by farsa to Padam Singh. The aforesaid witnesses and Vishambar Singh (PW-2), who is cousin brother of the deceased also visualized the incident from the nearby places. Dr. F.C. Bansal (PW-5) conducted autopsy on the dead bodies of Satyapal Singh and Padam Singh. J.S. Kushwah (PW-6) In-charge of the Police Station Kailaras conducted the investigation except arrest of the accused Padam Singh, Gabbar Singh, Ramratan Singh and Dharm Singh. Satish Dubey (PW-7) In-charge of the Police Station Kailaras subsequently conducted subsequent part of the investigation and during investigation he arrested accused Padam Singh, Gabbar Singh, Ramratan Singh and Dharm Singh and thereafter seized one twelve bore licensed gun with five live cartridges from accused Padam Singh. He also seized one twelve bore licensed gun with five live cartridges from accused

Dharm Singh. However, no recovery of weapon was made from accused Gabbar Singh.

11. On perusal of cross examination of eye-witnesses Vishambhar Singh (PW-2), Bhagwan Singh (PW-3) and Yogesh Singh (PW-4), it appeared that the complainant party and the accused were the members belonging to one family of Bhajan Singh. There were allegations against each other of committing murders of number of family members from either side for which family members from both the sides were convicted by the criminal courts. So, it is proved that there was a grave enmity developed in between the family of complainant party on one side and the accused party on other side. It also appeared that prior to the present incident, there was a land dispute on account of forcibly making the thrashing ground on the disputed agricultural field of complainant which was reported to the police against the accused party and the investigation in that land dispute was under progress.

12. The plea taken by the accused is that they were not present at the time of incident, as they were out of village. At the relevant time, they were in Kailaras town but on the ground of previous enmity with the complainant party they are falsely implicated with the crime. In defence, accused Prahalad Singh got his statement recorded u/s 315 of Cr.P.C. before the trial Judge. He stated that there was a long standing family enmity between his family and the complainant party. There were many criminal cases registered relating to commission of murder of number of persons belonging to their family members which were pending against either of the complainant party or accused party. Apart from it, there was a rivalry over previous panchayat election between the parties. They had no cordial relationship. He specifically stated that on the date of incident he and his son accused Vijendra Singh was not present on the spot.

13. Shivraj Singh (PW-1) stated that two years ago on 22nd February 1996, at about 4 p.m., after noon, he and his father Bhagwan Singh and brother Yogesh were going just behind the tractor driven by his brother Satyapal Singh and his brother Padam Singh set on mudguard of the tractor. As his tractor driven by his brother Satyapal Singh reached nearby way of the agriculture fields (Gait) of accused Ramratan Singh and others, accused Ramratan Singh, Vrikhbhan Singh having mouser guns, Dharm Singh, Padam Singh, Gabbar Singh having twelve bore guns and accused Mahaveer Singh, Prahalad Singh and Vijendra Singh having farsas reached there and they opened fire by their firearms. Many bullets hit in the body of Satyapal Singh and Padam Singh. Thereafter, accused Vijendra caused injuries by farsa on the body of Satyapal Singh. Accused Prahalad Singh and Mahaveer Singh also caused injuries to Padam Singh. Resultantly, both Satyapal Singh and Padam Singh died on the spot, during incident. He deposed when the firing started he, his father Bhagwan Singh and brother Yogesh Singh took shelter inside the house of Bhagchand and by hiding themselves they had seen the incident. Vishambhar Singh (PW-2) also had an occasion to see the incident after rushing at the distance of 10-12 steps. After committing the

incident, all accused ran away from the place. It has further come in the evidence of the witnesses that father Bhagwan Singh, brother Yogesh Singh and Vishambar Singh remained present near the bodies of Satyapal Singh and Padam Singh on the spot and thereafter complainant Shivraj Singh went on a motorcycle to the Police Station Kailaras and submitted a written report (Ex.P/1). On the basis of his written report (Ex.P/1), the FIR as per Ex.P/2 was lodged. It has also come in the evidence that two days before the incident on 20th February 1996, accused Ramratan Singh, Padam Singh, Dharam Singh put their reaped mustered crop at their agriculture fields for cleaning to which complainant made an objection and also submitted a written report (Ex.P/3) at police station and prior to the incident, the police reached the spot for making inquiry.

14. After lodging the FIR by the complainant, the SHO of Police Station with force reached on the spot and thereafter issued Safina Notice (Ex.P/4). The I.O. and witnesses saw the dead bodies of Satyapal Singh and Padam Singh. The memos of dead bodies were prepared vide Ex.P/5 and Ex.P/6. The spot map (Ex.P/7) then was prepared. The dead bodies were shifted for postmortem to a Government Hospital at Kailaras. The I.O. also recorded police statement of the complainant in night of the incident at the Police Station. On 23rd February 1996, next day of incident, in the morning, the police seized the silencer of the tractor damaged by pellets and other used cartridges and other particles of used bullets by seizure memo (Ex.P/9). On that day, accused Prahalad Singh was arrested. On his information regarding weapon used in the incident, the memorandum (Ex.P. 11) was prepared and thereafter the weapon "Farsa" Article "B" was seized on his production by police as per seizure memo (Ex.P/12).

15. Vishambhar Singh (PW-2) states that on 22nd February 1996 at about 4 p.m., after noon, he set outside of his house nearby the place of incident. He saw that Satyapal Singh and Padam Singh were going on a tractor. Thereafter, he heard the noise of firing. He rushed to the spot and from the distance of 10-12 steps he saw that Ramratan Singh, Dharam Singh, Padam Singh, Gabbar Singh and Vrikkbhan Singh were firing by their mouser guns and twelve-bore guns towards Satyapal Singh and Padam Singh, who were on the tractor. Thereafter, accused Prahalad Singh caused injuries on the body of Satyapal Singh by means of farsa and accused Mahaveer Singh and Vijendra Singh caused injuries on the body of Padam Singh. The accused shouted taking the name of Goddess Durga that they had taken revenge and thereafter fled away inside the forest place. He also deposed that witnesses Shivraj Singh, Bhagwan Singh and Yogesh were seeing the incident from nearby place of house of Bhagchand. After incident, he and other witnesses reached on the spot. They saw that Satyapal Singh and Padamsingh were lying dead on the tractor. He stated that witness Shivraj Singh went to the police Station to lodge the FIR and after that police reached on the spot and issued Safina Form and prepared memos of dead bodies of Satyapal Singh and Padam Singh. The spot map and seizure memos were also prepared on the day of incident. On next day in the police station, accused Prahalad Singh was arrested and in custody, on his information the weapon of crime "Farsa" was

recovered.

16. Bhagwan Singh (PW-3) deposed that on the day of incident at about 4 p.m., in afternoon he, Yogesh and Shivraj on foot, at a distance of 10-20 steps away from his sons Satyapal, who was driving tractor and Padam Singh, who set on mudguard of the tractor were going from thrashing ground to their agricultural field for transporting their reaped mustered crops. He saw accused Ramratan and Vrikhbhan Singh having mouser guns, Gabbar Singh and Padam Singh having twelve bore guns, accused Prahalad Singh, Mahaveer Singh and Vijendra Singh having "Farsas" rushing towards them. Then, accused started firing from their guns. The gun shots fired from firearms of the above accused hit the various parts of Satyapal Singh and Padam Singh, who were on the tractor. Accused Vijendra caused injuries on the neck of Satyapal. Accused Mahaveer inflicted injuries on the face and temple region, accused Prahalad caused injuries hitting upper side of shoulder and towards neck of Padam Singh by "Farsa". The beginning of the incident was seen by Bhagwan Singh, Shivraj and Yogesh by taking shelter in the ruined house of Bhagchand, which was just nearby the spot. However, Vishambhar saw the incident while standing in the agricultural field of mustard crops. Injured Satyapal and Padam Singh (his sons) died on the spot. After committing the incident, all the accused ran away towards forest. Thereafter, all the three witnesses including Vishambhar reached near the dead bodies of Satyapal and Padam Singh. After that his son Shivraj went on motorcycle to lodge the FIR at the Police Station. As per the witness, the motive behind the incident was on account of creating the harvesting ground on the unfertile land (Banjar), belonging to the complainant party with a view to put their reaped mustered crops on the complainant's land. He deposed that on 20th February 1996, the report was made to the police by his son.

17. Yogesh Singh (PW-4) deposed that two years ago on the day of incident, at about 4 p.m., in afternoon, he his father Bhagwan Singh brothers Satyapal Singh, Padam Singh and Shivraj Singh went to their agricultural field for transporting the reaped mustered crop on their tractor trolley. The tractor was driven by his brother Satyapal Singh and Padam Singh was set on the mudguard while rest, i.e., he, father Bhagwan Singh and Shivraj Singh were set on the trolley. Near well they (he, Bhagwan Singh and Shivraj) stepped down from trolley for drinking water and thereafter started going on foot behind the tractor, driven by Satyapal. As they reached near the fields of accused Ramratan Singh, he found accused Ramratan and Vrikhbhan having mouser guns, accused Dharm Singh, Padam Singh and Gabbar Singh having twelve bore guns, accused Mahaveer, Prahalad and Vijendra Singh having "Farsas" coming to them for attacking. Then accused having firearms opened fire which bullets hit and caused injuries on the various parts of the body of Satyapal, who was driving the tractor and Padam Singh, who was sitting on the mudguard of the tractor. Soon thereafter, accused Mahaveer and Prahalad Singh caused injuries on the face, temporal region and right shoulder of Padam Singh. Accused Vijendra Singh caused injuries on left side of neck of Satyapal Singh. Satyapal Singh and Padam

Singh died on the spot. He saw the whole incident with Shivraj Singh and Bhagwan Singh by hiding themselves in the house of Bhagchand, situated adjacent to the spot. All the accused shouted for their victory and then fled away inside the forest. After incident his brother Shivraj went to the Police Station for lodging the FIR. After sometime, the police also reached on the spot for investigation.

18. Dr. F.C. Bansal (PW-5) deposed that on 22nd February 1996, he was posted as an Assistant Surgeon in the Primary Health Centre Kailaras. On that day, at about 7.30 p.m., two dead bodies of Padam Singh and Satyapal Singh, sons of Bhagwan Singh were brought by a Head Constable No. 649 namely, Shri Pannalal. Since there was evening, those dead bodies were kept in the centre itself. On 23rd February 1996 at about 9.30 a.m., he performed autopsy on the dead body of Padam Singh, which was identified by Bhagwan Singh, father of deceased and found following ante-mortem injuries, during external examination :-

(1) Gun Shot Injuries:-

(a) (i) Entry wound of size $1\frac{1}{2} \times 1\frac{1}{2} \times 4$ inches upto wound of exit on upper $\frac{1}{3}$ rd part of back of chest and 4 inch away from mid line (ii) Exit wound of size $2\frac{1}{2} \times 2\frac{1}{2}$ on left side of chest in mid axillary line.

(b) (i) Entry wound measuring $\frac{1}{2} \times \frac{1}{2}$ upto exit wound on right forearm medially $\frac{1}{3}$ rd in dorsal aspect. (ii) Exit wound of size 1×1 inch on outer aspect. The pellets were inside the wound which were removed.

(c) Wound of pellet entry on chest lower $\frac{1}{3}$ rd right side on 10th rib middle line of size $\frac{1}{2} \times \frac{1}{2}$ inch which was found 3 inch away in wound of entry. The pellet was removed from the wound.

(d) Pellet entry wound of size $\frac{1}{2} \times \frac{1}{2}$ on 7th inter coastal space in mid clavicle line. Its lodges 2" away from entry wound.

(e) Pellet entry wound of size $\frac{1}{2} \times \frac{1}{2}$ over chest left side of mid clavicle line. No exit wound was found and the pellet was placed in wound which was removed.

(f) Pellet entry wound of size $\frac{1}{2} \times \frac{1}{2}$ over left leg upper $\frac{1}{3}$ rd on medial aspect. No exit wound was found and pellet was placed in its inner back part. The bullet was removed from wound.

(2) Incised wound of size $5" \times 2"$ x mussel deep on right shoulder transverse on 5th cervical upto humorous region. Clotted blood was found.

(3) Incised wound on right side of face. It was lacerated in length and $\frac{1}{4}"$ was wide upto mussels and bone deep. Right mandible bone, right canine teeth and premolar teeth were fractured.

(4) one big size of brush on left side of size $6" \times 4"$ on the skull, as result of

which, Frontal and Parietal bone were fractured.

Internal examination:- Left Frontal, Parietal bone, right mandible bone, right canine teeth and premolar teeth were fractured. Brain membrane, brain were crashed badly. Right lung, two chambers of heart were torn.

19. The doctor opined that the cause of death was haemorrhage and shock due to injury to vital organs (heart, lung and brain) associated with fractures of above bones. The nature of death was homicidal and all injuries in ordinary course of nature were sufficient to cause death. Postmortem Report is (Ex.P/17) which bears his signature. The doctor sealed the clothes found on dead body and five pallets removed from the above wound which were handed over to the police for chemical examination and for examination by the Experts.

20. Dr. F.C. Bansal (PW-5) deposed that on that day at 8 a.m., he also conducted autopsy on the dead body of Satyapal Singh, resident of village Pachkha and found following ante-mortem injuries on his person, during external examination :-

(A) Gun Shot Injuries :-

(i) Entry wound of size 1 1/2 x 1 1/4 x 6" on left side of skull temporal bone, on upper part of exit ear and through brain matter. The bullet lodges in right side of neck 2" below right ear on lower part.

(ii) Gun shot exit wound on left side of face near ear left lateral edge of left eye admeasuring 1 1/2 x 1 1/4 x 3" through mouth come out and broke right mandible, canine and premolar teeth.

(iii) Entry wound of size 1 1/2 x 1 1/4 x 4" on Sterno clavicle notch and the bullet through and through lodges near and broke 5th inter-coastal space. The bullet was placed and found in left lung.

(iv) Gun shot entry wound of size 1 x 1 x 2" on left hand near bone of 1st metacarpal and passed through on palm in middle.

(v) Gun shot entry wound of size 1 1/2 x 1 1/4 x 3" on left hip bone which was placed inside the wound in left thigh.

(B) (1) Incised wound of size 4 x 1 1/2 x mussel deep transversely on left neck; blood clots were deposited.

Internal examination :- (i) Left temporal and left frontal bones were fractured. (ii) Brain membrane was congested, brain matter was torn and crushed badly (iii) mouth, esophagus, wind pipe and left lung were torn (iv) Liver and kidney were congested.

21. The doctor opined that cause of death of Satyapal Singh was severe haemorrhage and shock due to injury to vital parts i.e. brain, left lung, fracture in mandible and left femur bone. The mode of death was homicidal. The injuries were sufficient in ordinary course of nature to cause death. Postmortem report is

Ex.P/19, which bears his signature. The doctor sealed the clothes found on the dead body and one part of bullet removed from above wound for being handed over to the police for chemical examination and for examination by the Experts.

22. J.S. Kushwah (PW-6) deposed that on 22nd February 1996, he was posted as Inspector/In-charge of the Police Station Kailaras. On that day complainant Shivraj Singh produced a written report (Ex.P/1) on which report he lodged the FIR (Ex.P/2) and Marg Report (Ex.P/2-A). One copy of the FIR was transmitted to the concerned JMFC Court. He stated that prior to the present incident, a written report (Ex.P/3) was produced by the complainant Shivraj Singh which was given for conducting inquiry to ASI. He stated that on the day of incident, he reached on the spot at about 5.15 p.m. and thereafter issued Safina Notices to the witnesses. He prepared the memos of dead bodies of Padam Singh and Satyapal Singh on the spot. He sent the dead body of Padam Singh for postmortem vide Memo (Ex.P. 17-A) and dead body of Satyapal Singh vide Memo (Ex. P. 19-A) to the Medical Officer, Kailaras. He prepared map (Ex.P/7), at the instance of complainant Shivraj Singh on the spot. On that day, he seized the particles of gunshot bullets, one damaged silencer of the tractor and blood soaked and simple soil from the spot as per seizure memo Ex.P/9, Ex.P/21 and P/22. On next day of incident on 23rd February 1996, he arrested accused Prahalad Singh vide arrest memo (Ex.P/10) and thereafter on his information, weapon of crime "Farsa " was seized by seizure memo (Ex.P/12). On 3rd March 1996, accused Vijendra Singh was arrested and on his information as recorded in the Memo (Ex.P/14) "Farsa" was recovered on his production from his house at village Pachekha vide seizure memo (Ex.P/13). On 9th March 1996, accused Vrikhbhan was arrested vide arrest memo (Ex.P/25), and under custody on his production from his house at village Kailaras, a weapon of crime a NP bore No. 113895 mouser with its broken belt was seized on 10th March 1996 vide seizure memo (Ex.P/15). On 9th March 1996, accused Mahaveer was arrested by arrest memo (Ex.P/26) and thereafter on his information contained in Ex.P/23, a weapon of crime was seized by seizure memo (Ex.P/24). All weapons after recovery were sealed including the articles seized from the spot; the clothes of deceased and particles of bullet and pallets removed from the dead bodies of Padam Singh and Satyapal Singh by the Medical Officer and sent to the Director of the State Forensic Science Laboratory Sagar, vide Ex.P/28. The report of the Senior Scientific Officer-cum-Assistant Chemical Examiner, F.S.L., Sagar and the report of Serologist and the Chemical Examiner to the Government of India are Ex.P/29 to Ex.P/32 on record.

23. Satish Dubey (PW-7) deposed that on 21st March 1996 he was posted as Inspector/In-charge of the police station Kailaras. On that day, on information, he arrested accused Ramratan Singh vide arrest-memo (Ex.P/33) and on his information he seized one rifle 306 bore with three live cartridges vide seizure-memo (Ex.P/34). He arrested accused Padam Singh, vide arrest memo (Ex.P. 35), and on his information he seized 12 bore gun with four live cartridges vide seizure memo Ex.P/36. He arrested accused Dharm Singh vide arrest memo

(Ex.P/37) and weapon of crime, namely, one gun 12 bore with four live cartridges was seized from him vide seizure memo Ex.P/ 38. He arrested accused Gabbar Singh but no weapon was seized from him. He again deposed that the firearms seized from the accused were licensed weapons and he sealed the weapons at the time of their seizure on the spot.

24. On perusal of the report of the Senior Scientific Officer-cum-Assistant Chemical Examiner, Forensic Science Laboratory Sagar (Ex.P/29), it appears that Gun marked as A-2 make Indian (BSA) No. A-7054 Y-82 12 bore Breach loading with live cartridges marked as Articles LR-5 to LR-8 placed in the laboratory during examination (means Article H-1 and seized cartridges Article H-2 to H-5 by Inspector J.S. Kushwah at the time of sending the articles to FSL Sagar), seized from accused Dharam Singh were the same and cartridges of "Shaktiman Express" which may be fired from twelve bore gun like Art. A-2 or Art. A-3. Article A-1, twelve bore breach loading single bore gun make Indian No. A-7054 Y -82 seized from accused Padam Singh were actionable and test cartridges can be said to be successfully fired. It was also opined that empty cartridges marked as EG to EG 10 were fired by gun A-2, make Indian (BSA) No. A-7054 Y-82. Particles and pellets seized from the spot and removed from the dead body of deceased Padam Singh during autopsy were the parts of cartridges marked as Article EG to EG-10 fired by above twelve bore gun Art-A-2. The wholes dictated on clothes of deceased Padam Singh and Satyapal Singh and silencer of the tractor driven by deceased Padam Singh were caused on passing or hit by P-1 to P-17 led projectiles.

25. On perusal of the report of Assistant Chemical Examiner of Forensic Science Laboratory Sagar M.P., it further appears that Articles A-1 blood soaked soil from spot and C-1 to C-16 particles and pellets causing damage to the silencer of the tractor seized from spot and pellets removed from dead bodies of deceased Padam Singh and Satapal Singh and clothes of deceased marked as Articles D-1 to D-12 were blood stained. This report stands confirmed by the report Ex.P/32 of the Assistant Serologist and Chemical Examiner of Government of India. It also reveals that no blood stains were found on Farsas Article E-1, F-1 and K-1 seized from accused Prahalad, Vijendra and Mahaveer.

26. Looking to the grave enmity between the accused party and the complaint party, to ascertain the role of each accused in the crime of murder of Satyapal Singh and Padam we have to scrutinize the entire ocular, medical evidence, recovery of the of weapon of crime and the reports of the Forensic Experts in relation with the weapon of crime seized from the accused.

27. As mentioned earlier, all eye-witnesses namely, Shivraj Singh (PW-1), Vishambhar Singh (PW-2), Bhagwan Singh (PW-3) and Yogendra Singh (PW-4) deposed that on 22nd February 1996 at about 4 p.m. in afternoon, they, i.e., father Bhagwan Singh brother Yogesh were going just behind the tractor driven by deceased Satyapal Singh whereas his brother Padam Singh set on mudguard of the tractor and when the tractor passed nearby the way of the agriculture

fields (Gait) of Ramratan Singh, all accused, namely, Ramratan Singh, Vrikhbhan Singh having mouser guns, Dharm Singh, Padam Singh, Gabbar Singh, having twelve bore guns and accused Mahaveer Singh, Prahalad Singh and Vijendra Singh having Farsas reached there and they opened fire by their firearms. Many bullets hit the body of Satyapal Singh, driving the tractor and Padam Singh who set on mudguard of the tractor. Thereafter, other accused Vijendra caused injuries by using Farsa on the body of Satyapal Singh, who set on driver seat of the tractor. Accused Prahalad Singh and Mahaveer Singh also caused injuries to Padam Singh, who set on mudguard of the tractor. Resultantly, both Satyapal Singh and Padam Singh died on the spot during incident. After incident, Shivraj Singh on motorcycle went to the Police Station Kailaras and submitted a written report (Ex.P/1), on the basis of which, an FIR (Ex.P/2) was lodged. On perusal of the evidence of Dr. F.C. Bansal (PW-5), who performed autopsy on the dead bodies found six pallet injuries on various parts of body of Padam Singh and also found five pallets in wounds on the said dead body and two incised wounds on the left neck. He also deposed that thereafter he conducted the autopsy on the dead body of Satyapal Singh and found gunshot injuries by bullets and two bullets were found inside the body. He also deposed that after postmortem of Padam Singh and Satyapal Singh, he handed over to the police five pallets having blood stains removed from the dead body of Padam Singh after keeping the same in a sealed bottle. He also sealed the bullets recovered from the body of Satyapal Singh for being handed over to the police.

28. On perusal of the report of Senior Scientist Forensic Science Laboratory Sagar M.P., it appears that used cartridges EG to EG 10 were fired by a gun A-2, alleged to have been recovered from accused Dharm Singh. Therefore, on the basis of Scientific and the medical evidence, it is clear that deceased Padam Singh and Satyapal Singh were died by the gunshot injuries caused by accused Dharm Singh from whose possession the weapon of crime i.e., a gun A-2 make Indian (BSA) No. A-7054 Y-82 twelve bore Breach loading was recovered. The wholes dictated on clothes of deceased Padam Singh and Satyapal Singh and silencer of the tractor driven by deceased Satyapal Singh were caused on passing or hit by P-1 to P-17 led projectiles. So, by the scientific and the medical evidence vis-a-vis the report of Senior Scientist Forensic Science Laboratory Sagar M.P., also it is proved that deceased Padam Singh and Satyapal Singh died by the gunshot injuries caused by accused Dharm Singh. True it is, all eye-witnesses unanimously stated that accused Ramratan Singh, Vrikhbhan Singh having mouser guns, Dharm Singh, Padam Singh, Gabbar Singh, having twelve bore guns, were present on the spot and having twelve bore guns and with their mouser guns they opened fire, but in the absence of cogent evidence, it is difficult to hold otherwise. Therefore, the participation of other convicted accused except Dharm Singh in causing death of Satyapal Singh and Padam Singh could not be established beyond doubts, though they were present on the spot with alleged weapons in incident.

29. Eye-witnesses Shivraj Singh (PW-1), Vishambhar Singh (PW-2) Bhagwan

Singh (PW-3) and Yogesh Singh (PW-4) deposed that "thereafter other accused Vijendra caused injuries by Farsa on the body of Satyapal Singh and thereafter accused Prahalad Singh and Mahaveer Singh caused injuries to Padam Singh." However, a perusal of the FIR lodged on the basis of written report of the complainant/eye-witness Shivraj Singh, just after the incident and his case diary statement (Ex.D/1) together with case diary statements of Vishambhar Singh (Ex.D/2) and Bhagwan Singh (Ex.D/3) recorded on the day of incident by the I.O., namely, J.S. Kushwah (PW-6), clearly postulates that all the above witnesses in their case diary statements including the complainant in his written report (Ex.P/1) and FIR (Ex.P/2) clearly mentioned that "Vijendra caused injury by Farsa on neck of deceased Satyapal" which is corroborated by the report of Senior Scientific Officer-cum-Assistant Chemical Examiner Forensic Science Laboratory Sagar (Ex.P/29), specifically mentioned that there was a cut on front side with blood on sweater worn by deceased Satyapal Singh. It is true that in the report (Ex.P/31), the Assistant Chemical Examiner did not confirm the presence of blood on the weapon Farsa F-1 seized from accused Vijendra Singh. But, from ocular testimonies of evidence of Shivraj Singh (PW-1), Vishambhar Singh (PW-2), Bhagwan Singh (PW-3) and Yogendra Singh (PW-4), the fact of causing injuries by means of Farsa are well supported by the FIR, an earlier version reported to the police and medical evidence, i.e., statement of Dr. F.C. Bansal (PW-5) which establish beyond doubt the participation of accused Vijendra Singh in an incident in causing serious injury by Farsa on the body of deceased Satyapal Singh. There is, therefore, a case where the accused Vijendra Singh having taken undue advantage acted in a cruel or unusual manner. The medical evidence completely supported all possibility of the ocular evidence being true and therefore in such circumstances, the ocular evidence can not be disbelieved, merely on the ground that eye-witnesses are related to the deceased. See: Bhajan Singh @ Harbhajan Singh and Others Vs. State of Haryana, On this point, it would further be relevant to refer the case of Waman and Others Vs. State of Maharashtra, wherein the Hon. Apex Court has been pleased to observe as under:-

It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinize their evidence meticulously with a little care.

As stated to the evidence of PW-1, there is no material difference in the evidence of PW-2 merely because there is some omission in the statement u/s 161 Cr.P.C. and her evidence before the Court, there is no need to reject her testimony as claimed by the appellants.

We are satisfied that the prosecution has established long standing land and water dispute among the deceased and the accused, the evidence of eye-

witnesses P Ws.1-4 are acceptable, contradictions are trivial in nature and medical evidence corroborate the assertion of prosecution witnesses. All those materials were correctly analyzed and accepted by the trial Court and affirmed by the High Court. On perusal of all the above said materials, we agree with the said conclusion.

30. Having thus considered the evidence, we have come to a definite conclusion that the learned Additional Sessions Judge clearly fell in error in rejecting the eyewitnesses' evidence against accused Vijendra Singh who has been wrongly acquitted. Therefore, the charge for causing death of Satyapal Singh is established beyond doubts against him and the evidence on record also suggested his involvement.

31. So far as the role attributed to accused Mahaveer Singh and Prahalad Singh is concerned, the evidence of complainant and above-named eye-witnesses as mentioned in their court statements is that "accused Prahalad Singh and Mahaveer Singh caused injuries to deceased Padam Singh". This fact of causing injuries by the accused Prahalad Singh and Mahaveer Singh was not reflected either in written report (Ex.P/1) or in above case-diary statements of the witnesses made to the police which seems to be serious lacuna/contradiction and create doubt in placing reliance on their testimonies so far as accused Prahalad Singh and Mahaveer Singh are concerned. Thus, looking to the serious lacuna/contradiction in between their ocular testimonies and court statements of above eye-witnesses in comparison to the FIR, first version lodged by the complainant to police, same create a serious doubt with regard to the role assigned in causing injuries to deceased Padam Singh by accused Prahalad Singh and Mahaveer Singh. Therefore, the acquittal of accused Prahalad Singh and Mahaveer Singh from charge of murder of Padam Singh as recorded by the trial Judge must be maintained.

32. Consequently, on detailed discussion of the factual matrix and legal aspects, we partly allow the State appeal (Criminal Appeal No. 160/2000) and by setting aside that part of the impugned judgment of the learned Sessions Court, alter the conviction of the accused-appellant Vijendra Singh to offence u/s 302/34 of I.P.C. and sentence him to suffer imprisonment for life for commission of murder of Satyapal Singh. Accused-appellant Vijendra Singh through his learned counsel is directed to surrender before the trial court immediately after a period of two weeks from the date of pronouncement of the judgment of this court to serve out remaining part of the sentence, as directed above. The rest part of the judgment of acquittal regarding other accused namely, Vrikhbhan Singh, Mahaveer Singh and Prahalad Singh is however maintained.

33. As regards, Criminal Appeal No. 274/2000 of other convicted accused, we confirm the conviction and sentence of only Dharm Singh for causing murder of Satyapal Singh and Padam Singh for offence u/s 302 of I.P.C. recorded by the trial judge and by allowing the appeal partly acquit the rest convicted accused, namely, Ramratan Singh, Padam Singh and Gabbar Singh from charges of

murder of deceased Satyapal Singh and Padam Singh u/s 302/34 of I.P.C. As appellant-accused Dharm Singh is on bail, he through his learned counsel is directed to surrender before the trial court immediately after a period of two weeks from the date of pronouncement of the judgment of this court to serve out remaining part of the sentence, as directed above. The rest of the appellants, namely, Ramratan, Padam Singh and Gabbar Singh are in custody, therefore, they are directed to be released forthwith, if not warranted in any other criminal case. While exercising the powers u/s 357 (3) of Cr.P.C., we further direct convicted accused Dharam Singh and Vijendra Singh to deposit an amount of Rs. 50,000/- (Rs. Fifty Thousand Only) each in the trial court within two months from the date of this judgment which shall be paid as a compensation to the legal heirs of the deceased. In case the appellants fail to deposit the amount of compensation, the same shall be recovered as fine u/s 421 of I.P.C. from properties of accused Dharm Singh and Vijendra Singh and after recovery of that amount same shall be paid to the legal heirs of deceased Satyapal Singh and Padam Singh.