

(1994) 04 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Appeal No. 203 of 1992

Mauji Ram

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 156, 162, 162(1)
Evidence Act, 1872 — Section 145, 27, 32, 32(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (1994) CriLJ 3662 : (1995) 1 RCR(Criminal) 470

Hon'ble Judges : L.S. Panta, J; Bhawani Singh, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; Shyama Dogra, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—This appeal is directed against the judgment of Sessions Judge, Sirmaur, in Sessions trial No. 27-N/7 of 1991, dated 24-9-1992. The accused has been convicted for an offence u/s 302 of the Penal Code and sentenced to imprisonment for life and a fine of Rs. 2000/-, in default of payment of fine, to undergo further rigorous imprisonment for six months. The facts of the case may now be summarised.

2. On 9-8-1991, deceased Lal Singh (hereafter "the deceased") was sitting with Mohar Singh (PW 1) and Basti Ram (PW 2) in the courtyard of Basti Ram and Bishan Singh. At about 5 p.m., accused Mauji Ram (hereafter "the accused") came there with a darat. While the deceased was in the process of lighting his beedi, the accused hit him with a darat on the neck. The deceased received cut injury in the neck, fell down and died. He was overpowered by Mohar Singh and Basti Ram. Darat was snatched from him and he was tied with a Pillar. Many People came there. Pradhan of the Gram Panchayat was called to the spot and the Police was informed telephonically and thereafter First Information Report

was registered. The police reached the spot, arrested the accused and took into possession articles connected with the offence. It also recorded the statements of the witnesses and after doing other codal formalities and completing the investigation, the accused was prosecuted for the aforesaid offence.

3. In this case, the prosecution has examined 15 witnesses for substantiating its case against the accused, whose case is that the case against him is false and has been initiated due to enmity. On the basis of the evidence placed before it, the trial court has come to the conclusion that the prosecution has successfully proved the guilt against the accused, beyond all reasonable doubts, therefore, he is liable to be convicted for an offence u/s 302 of the Penal Code and punished accordingly. The accused has serious grievance against the impugned judgment. He has pleaded for its reversal through the present appeal.

4. Shri Kuldip Singh, learned counsel for the accused-appellant, submitted that it is Ex. PH recorded on 9-8-1991 which should be treated First Information Report in this case and the First Information Report (Ex. PK) recorded on the statement of Mohar Singh (P. W. 1) on the spot was during the course of investigation, therefore, is hit by Section 162 of the Criminal P.C. Precisely, the contention is that it is the first information to the police about the commission of the crime. It records the name of the informer, name of the accused and the deceased. It also records the address of the parties.

5. This contention is opposed by Ms. Shyama Dogra, learned Deputy Advocate General, for the State. Her submission is that it is a cryptic information transmitted by Pratap Singh, UP Pradhan, Gram Panchayat, Jamna, on telephone, wanting the police to take action after reaching the spot. In order to appreciate this submission, it is necessary to reproduce Sections 154 and 162 of the Criminal P. C. :

154. Information in cognizable cases. - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an

officer in charge of a police station in relation to that offence.

162. Statements to police not to be signed : Use of statements in evidence. - (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation. - An omission to state a fact or circumstance in the statement referred to in Sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

6. The requirement of Section 154 of the Cri. P.C. is that every such information must relate to the commission of a cognizable offence. It must be made to an officer incharge of a police station. In case it is given orally, the same has to be reduced to writing by him or under his direction. It has to be read over to the informant and in both cases - written or reduced to writing - the same has to be signed by the person giving it. The substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. A copy of this information has to be supplied forthwith, free of cost, to the informant. In case the officer in-charge of the police station refuses to record it, substance of the information may be sent by the aggrieved person to the Superintendent of Police concerned, who, on being satisfied that the information discloses the commission of a cognizable offence, can either investigate the case himself or direct the investigation to be made by a police officer subordinate to him in accordance with the procedure provided in the Code. The officer so authorised has all the powers of an officer in-charge of a police station in relation to that offence.

7. In our opinion, the mandatory requirement of Sub-section (1) of Section 154 of the Criminal P.C. is that every such information must relate to the commission

of a cognizable offence. The officer in-charge must reduce the same into writing either himself or under his dictation. The remaining requirements of this Section appear to be rather formal in nature. Information can, therefore, be transmitted through telephone. Of course, it is necessary that the same must not be vague or cryptic. No definite principle of universal application can be laid down in this regard. Every information has to be examined by the court in order to decide whether it answers the requirements of Section 154 of the Criminal P.C. or not. In case it is found that it is cryptic or vague, every such information cannot be treated to be the first information in the case. We now refer to some of the decisions which were brought to our notice by the learned counsel for the parties on this question.

8. In *Tapinder Singh Vs. State of Punjab and Another*, the apex Court said that (Para 4, p. 1569) (at. p. 1418 of Cri LJ):

4...He started with an attack on the F.I.R. based on the dying declaration. According to the counsel, the information in regard to the offence had already been conveyed to the police by means of a telephone message and the police had actually started investigation on the basis of that information. This argument was, however, not seriously persisted in and was countered by the respondents on the authority of the decision in *Saroop Singh and Another Vs. The State*, The telephone message was received by Hari Singh, A.S.I., Police Station, City Kotwali at 5.35 p.m. on September 8, 1969. The person conveying the information did not disclose his identity, nor did he give any other particulars and all that is said to have been conveyed was that firing had taken place at the taxi stand, Ludhiana. This was, of course, recorded in the daily diary of the police station by the police officer responding to the telephone call. But prima facie this cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. The mere fact that this information was the first in points of time does not itself clothe it with the character of first information report. The question whether or not a particular document constitutes a first information report has, broadly speaking, to be determined on the relevant facts and circumstances of each case. The appellant's submission is that since the police authorities had actually proceeded to the spot pursuant to this information, however exiguous it may appear to the court, the dying declaration is hit by Section 162, Cr.P.C. This submission is unacceptable on the short ground that Section 162(2), Cr.P.C. in express terms excludes from its purview statement falling within the provisions of Section 32(1), Indian Evidence Act. Indisputably the dying declaration before us falls within Section 32(1), Indian Evidence Act and as such it is both relevant and outside the prohibition contained in Section 162(1), Cr.P.C.

9. In *Raberi Karsan Cova and Others Vs. The State of Gujarat*, it has been held that (at pp. 108-109 of Cri LJ):

4. In *Soma Bhai Vs. State of Gujarat*, the principle which has been laid down is that the first information is the earliest report made to the police officer with a

view to his taking action in the matter. If the receipt of the information of an incident by the police requires the police to take an action in the matter or the investigate into it, then certainly it becomes the information of a cognizable offence. In the instant case, the information which had reached Mehsana Police showed that some incident had taken place in which the deceased had become unconscious and which required police to take action. We are, therefore, of the opinion that the information which was given by the Head Constable Prakash to P. W. Batuksing was an information of a cognizable offence and, therefore, the first information within the meaning of Section 154, Criminal P.C. which led to action being taken by the police. It was after this information was received that the complaint, Ex. 49, was recorded by the police. Since the incident was reported to the police earlier than the complaint, Ex.; 49, was recorded and since the police had taken action in the matter, any other information received by the police subsequently would be hit by Section 162, Criminal P.C. we, are therefore, of the opinion that the learned trial Judge was in error in holding that the complaint, Ex. 49, was not hit by Section 162, Criminal P.C. and was admissible in evidence. In our opinion, since it was hit by Section 162, Criminal P.C. it was inadmissible in evidence and could not have been exhibited by the learned trial Judge. We have therefore ruled it out of our consideration.

10. In 1976 Cri LJ 132, Jagdish B. Rao v. Govt. of the Union Territory of Goa, Daman and Diu, it has been held that (at pp. 133- 134):

8. The learned Sessions Judge in his judgment has addressed himself to the question of admissibility of the telephonic message as a first information report. He has observed that the telephonic report can never be treated as a first information report because the requirements postulated by Section 154, Criminal P.C with regard to obtaining the signature of the person on the report cannot be complied in a telephonic report. There is no authority for this proposition. It is true that a telephonic report cannot be signed as per the requirements of Section 154, Criminal P.C. But this requirement is a technical formality and does not affect the admissibility of the document. On the question whether a telephonic message at the Police Station can constitute a first information report or not their Lordships of the Supreme Court in Tapinder Singh Vs. State of Punjab and Another, observed in para 4 (at p. 1418 of Cri LJ) as follows :-

But prima facie this cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. The mere fact that this information was the first in point of time does not by itself clothe it with the character of first information report. The question whether or not a particular document constitutes a first information report has, broadly speaking, to be determined on the relevant facts and circumstances of each case.

In that case an unknown person had given on telephone a cryptic information about the commission of the offence without disclosing all the facts or the names of the culprits. Their Lordships therefore, refused to treat it as an F.I.R. The question has to be decided with reference to the facts in each case. If a

telephonic message is given by a known person who discloses his identity and it contains all the necessary facts which can constitute an offence, and is reduced to writing by the Station House Officer it can be treated as a first information report (*Shwe Pru v. The King*, AIR 1941 Rang 209 : 43 Cri LJ 157).

11. In *Kamal Kanto Das Vs. The State*, it has been held (at pp. 698-699 of Cri LJ):

15. In the view we take, we have no option, as already pointed out, but to order a retrial. In view of the order we are going to make we have deliberately refrained from making any comments on the evidence in the case lest such comments should prejudice the trial. At the same time, however, certain things have got to be pointed out. The first is that the statement of Ranjit which was treated as the first, information report in the case was not really the first information report because the police had already started investigation on the strength of a telephonic message received from Pankaj Das. Of course there was one Pankaj Das amongst the prosecution witnesses he is P.W. 7. He does not admit having sent a telephonic message to the Police. At the same time Mr. Banerjee has pointed out certain circumstances which according to him would tend to show that it was this very Pankaj Das who had sent this telephonic message. Whether this is so or not, the fact remains that one Pankaj Das sent a telephonic message to the police and on receipt of this telephoni message, S. 1. Kamal Kumar Sen Gupta, P.W. 36, proceeded to the spot; then after having taken Bimal to the hospital he came back to the spot and then examined Ranjit. Evidently, therefore, he had already started investigation so that Ranjit's statement was the statement of a person taken by the police during investigation. It also appears that when Lakshmimoni was coming back home from the police station accompanied by another Sub-Inspector, namely, Amalendu Bhusan Kundu, P.W. 13, she heard from one Tantiburi of the murder of her husband and the officer was then there. It, is possible to say that neither this telephonic message nor the information given by this Tantiburi amounted to a first information contemplated by Section 154 of the Code of Criminal Procedure because the officer to whom Tantiburi gave the information was not the officer-in-charge of a police station and the telephonic message was not a signed by the informant. As a matter of fact, the police did not know who the informant was and the information given by Tantiburi was not an information given by her to an officer- in-charge of a Police Station but whether or not the information given by the Tantiburi or the telephonic message of one Pankaj Das amounted to a first information report within the meaning of the expression in Section 154 of the Code of Criminal Procedure it is obvious that the police had already moved in the matter and started investigation, for u/s 156 of the Code of Criminal Procedure an Officer-in-Charge of the Police Station may investigate any cognizable case even without a formal first information report and this was the view taken in *Chandrama Prasad Chamar v. State* ILR (1951) Cal 539. We respectfully agree with that view. The statement, therefore, of Ranjit by Kamal Kumar Sen Gupta, S.I. is evidently hit by the provisions of Section 162 and should not be treated as

the first information report.

12. In , *Tehal Singh v. State of Rajasthan*, it has been held (at pp. 1359-1360):

21. To us, it appears that whether a telephonic message can be treated as an F.I.R. or not would depend upon the facts and circumstances of each case. No hard and fast rule can be laid down in this connection. If the telephonic message has been given to officer- in-charge of a police station, the person giving the message is an ascertained one or is capable of being ascertained, the information has been reduced into writing as required by Section 154, Cr.P.C. and it is a faithful record of such information and the information discloses commission of a cognizable offence and is not cryptic one or incomplete in essential details, it should constitute an F.I.R. An anonymous information, or information which is vague or cryptic and lacks in essential details or an information which has not been faithfully recorded, would not constitute in F.I.R. Section 154, Cr.P.C. requires that the oral information given to the officer-in- charge of a police station shall be reduced into writing and shall be read over to the first informant and shall be signed by him. Now, reducing into writing of the information is mandatory; it should be reduced into writing by the officer-in-charge of a police station or by any person under his direction. It should be a true and faithful record of the information given to the officer-in-charge by the informant. Whether it has been read over to him or not or whether it has been signed by him or not would be mere matters of form and . not of substance. The ideas behind reading over the information reduced into writing and obtaining signatures of the first informant thereon are intended to ensure that what has been reduced into writing is a true and faithful version of the information given to the officer-in-charge of the police station. Our view is supported in a good measure by the observation in the case of *Jagdish* 1976 Cri LJ 132 (Goa) (supra), in which it has been held that obtaining signatures of the first informant is a mere technicality of form and does not alter the basic character of the information.

13. In 1980 Cri LJ 1397, *Randhir Singh v. State*, it has been held (at p. 1399 of Cri LJ):

7. In the present case, it is admitted by PW 23 Head Constable Ram Phal that on December 23, 1978, the officer-in-charge of the police station Inspector Vidya Parkash had left to supervise the arrangements of Kisan rally in the morning and arrived back at the police station at 11.25 p.m. The telephonic message (Exhibit PW 4. A) was received in his absence. Sub-Inspector Niader Singh, who was next in rank to the Station House Officer, was present in the police station. As envisaged in Section 2(o) of the Code of Criminal Procedure, he was, for the time being, officer- in-charge of the said police station. He was thus competent to decide to conduct the investigation of the case on receipt of the telephonic message which had already been recorded in the daily diary. As noticed above, the telephonic message not only disclosed the commission of a cognizable offence but had also disclosed the name of the appellant for having committed

that offence. The name of the deceased as well as the place of occurrence namely, cremation ground of village Pooth Kalan were known. Sub-Inspector Niader Singh was, therefore, duty bound to proceed to the said cremation ground. His endorsement on copy of Exhibit PW 4/ A reveals that he had not proceeded to the spot to hold an informal or preliminary inquiry. On arrival at the spot when he found that the appellant was trying to slip away, he apprehended him, who, on interrogation, admitted that the dead body on the Pyre was that of his wife Smt. Bhagwani. In my view, the proceedings conducted by Sub-Inspector Niader Singh at the cremation ground are part of the "investigation" as envisaged in Section 2(h) of the Code,

8. Applying the law laid down by the Supreme Court in *Tapinder Singh Vs. State of Punjab* and *Another*, to the facts and circumstances of the present case, and following the rule laid down by this Court in *Kanu Sanyal Vs. District Magistrate, Darjeeling and Others*, I hold that the telephonic message (Exhibit PW 4/A) constitutes the First Information Report, within the contemplation of Section 154 of the Code. The admission made by the appellant to Sub-Inspector Niader Singh (PW 4) is thus hit by the provisions of Section 162 of the Code as it was made during the investigation of this case. It cannot, therefore, be read against him.

14. Recently, the apex Court has held in *Dhananjay Chatterjee alias Dhana Vs. State of W.B.*, that in case telephonic message sent to the police station is cryptic in nature, it could not be treated as the First Information in the case. The Court found on facts that the Investigating Officer rushed to the spot, recorded the statement of "Y" and started the investigation thereafter, therefore, the statement of "Y" would form First Information Report in the case since the investigation was started thereafter.

15. Now, applying the above principles, whether Ex. PH can be treated as the First Information Report in this case ? We answer this question in the affirmative. It is an information relating to the commission of a cognizable case. It is given by ascertained person. It is given to the officer-in-charge of the police station as is clear from the statement of Constable Khem Lal (PW 10). He has stated that on 9-8-1991 at 8.10 p.m. one Pratap Singh, Up-Pradhan of Gram Panchayat, Jamna, gave the information on telephone that one Mouji Ram had murdered one Lal Singh in village Pabar. The telephone message was received by the S.H.O. who dictated the same to him at the same time, which was reduced into writing by him (Khem Lal) in the daily diary report (Ex. PH). The police party left immediately to Pabar Village after receiving the information. The SHO has nowhere stated in his testimony that he started the investigation of the case after recording the statement of Mohar Singh (P W 1). Therefore, we can say that the information discloses commission of a cognizable offence. It is given by Partap Singh to officer-in-charge of the police station. It is reduced into writing. The police machinery is set-in motion. The Investigation Officer takes the Photographer also with him along with other police persons. Therefore, all the essential requirements of Section 154(1) are fulfilled. It is neither vague nor

cryptic. There is no legal requirement that the First Information Report must give detailed history of the case. Hence, telephonic information (Ex. PH) is the First Information in the case and the statement of Mohar Singh (PW 1), which forms basis of the First Information Report in the case, is hit by Section 162 of the Code of Criminal Procedure and is, therefore, inadmissible in evidence.

16. It was then contended that there is no eye-witness to the occurrence. The incident was neither witnessed by Mohar Singh (PW 1) nor by Basti Ram (PW 2). We do not find any merit in this submission.

17. Mohar Singh (PW 1) has stated that he was present in the courtyard of Bishan Singh where the flour mill was located. Deceased and Banshi Ram were also present with him at about 5 p.m. The accused appeared with a darat in his hand. While the deceased was in the process of lighting his beedi, the accused suddenly gave a cutting blow on the neck of the deceased, who fell down uttering "Hai". The accused tried to run away from that place but he ran after the accused along with Basti Ram. The accused was caught by Basti Ram from the back side while he caught the darat, which fell down on the stone flooring of the courtyard. The accused was tied with a rope and they made efforts to stop the bleeding of the deceased by tying cotton, towel and gunny bag to it. The deceased died after half an hour. The darat was handed over to Basti Ram. Up-Pradhan was informed, who came to the spot and asked the accused as to why this had happened. The accused told him that he had killed the deceased and anyone could do anything against him. Police was informed by Partap Singh through telephone and asked everyone present there not to touch anything. Partap Singh returned at about 10 p.m. from Kafota and he was told that the people gathered at the place of incident had given fist blows to the accused, though he tried his best to save him. Police arrived at the spot on the next day and recorded his statement (Ex. PA). It took into possession cotton, towel, cloth and gunny bag from the spot, which were wrapped around the neck of the deceased and were blood stained. A bundle of beedi, having blood stains, was also taken into possession. They were put into parcels and sealed separately, split blood and blood stained earth was also collected in plastic box which was sealed. Basti Ram produced the darat with blood stains in its blade, which was measured and taken into possession and kept in a parcel.

18. The version of Basti Ram (PW 2) is also that he was running the flour mill on the relevant day. He was present in the courtyard near the flour mill along with Mohar Singh and Lal Singh at about 4.40/4.45 p.m., chatting with each other, when the accused came there holding a darat in his hand. While the deceased was in the process of lighting the beedi, the accused suddenly gave the darat blow in the right side of his neck. After uttering "Hai", the deceased fell down. The accused tried to run away. He was caught by him from his back and also held his arms. At that time, Mihar Singh joined him in snatching the darat from the hands of the accused. The accused was tied with a rope to a wooden pole in the verandah of a house. Cotton, pieces of gunny bag, a towel and a cloth sheet

were tied for stopping bleeding from the injury of the deceased. However, he died. Mohar Singh was sent to call Up Pradhan Partap Singh, who came to the spot and talked to the accused. He went to Kafota along with Up Pradhan Pratap Singh to inform the police and returned to the place of occurrence at about 10 p.m. Many People had collected there. They were angry and gave blows to the accused with fists, slaps and dandas. He was rescued by him and in this process, he also received some blows. The police arrived at the spot the next day in the afternoon, recorded the statement of Mohar Singh and took photographs. The darat which he had kept in his room was handed over to the police which was also taken into possession. Towel, two pieces of gunny bag etc., which were blood stained, were also taken into possession. They were parcelled and sealed, memo was prepared, statements were recorded, sketch of the darat was drawn and it was put into a parcel and sealed separately. The memos bear his signatures. He has also stated that the deceased and Mohar Singh had brought their maize grains for grinding in his flour mill. He has denied the suggestion that at the time of occurrence, he was present inside the flour mill watching its operation. He has also denied that he had not seen the accused coming to that place and he was deposing falsely. We do not see any reason to discard the testimony of this witness, as contended by the learned counsel for the accused.

19. Pratap Singh (PW 3) has stated that on 9-8-1991 at about 3/3.30 p.m., the accused had inquired from him about the whereabouts of the deceased. He was having a darat in his hand. When he told him that he had not seen the deceased, the accused went towards the houses of Dhian Singh and Nain Singh etc. On being asked, the accused had stated that he had some work with the deceased. At 4.30 p.m., when he was present in his house, he was informed by Mohar Singh that the accused had hit the deceased with darat on his neck and the deceased had died. There is flour mill at the house of Bishan Singh where the public goes for grinding their grains. It is running on a single phase electric connection, being a small mill. He went to the house of Bishan Singh, where the dead-body was found lying. The accused was seen tied with a rope to a wooden pole of the house. He asked the accused why he had done it, on which he replied that he had done the mistake and wanted him (Pratap Singh) to save him (accused). He came to the place where the dead-body was lying and asked Mohar Singh and Basti Ram about the matter. Both of them told him that they were present with Lai Singh and the accused came there with darat and gave its blow on the neck of the deceased without there being any talk between them. They heard the sound of "Hai" at this time. Other facts of the case were also narrated. Thereafter, he went to Kafota to inform the police on telephone. He informed the police that the accused had killed the deceased in the village and so it should come there. He returned to the place of occurrence and found many people there. The police arrived at the place of occurrence at about 10 a.m. on the next day. It recorded the statements of Mohar Singh and Basti Ram and thereafter recorded the statement of Shupa Ram and then his statement was recorded. The deadbody was photographed and other necessary articles were

collected from the spot and sealed.

20. Shupa Ram (PW 4) is the brother of the deceased. His version is that he was called from his farm house. On reaching the house of Bishan Singh and Basti Ram, he saw many people there. He also found the deadbody of his brother in the courtyard and saw the accused tied with a rope to a wooden pole of the house and the people present there told him that the accused came there with a darat and inflicted injury on the neck of the deceased, resulting in his death.

21. Hira Mani (PW 6) also came to the spot on hearing hue and cry in the village and noticed cut injury on the neck of the deceased in the courtyard of Bishan Singh where many people were present. He was told by Basti Ram (P W 2) that the accused had inflicted the injury on the neck of the deceased with darat. The accused had killed his brother Sant Ram also in the past.

22. The evidence, therefore, plainly demonstrates that it was accused who had inflicted the injury on the neck of the deceased with darat at the relevant time. The evidence on this question is quite clear and satisfactory, therefore, there is no justification to hold that the incident was not witnessed by any person and the case is based on circumstantial evidence which has not been brought on record by the investigating agency. The version given by the eye-witnesses has been corroborated by the other witnesses who came to the scene of occurrence soonafter the incident. We now proceed to consider the contention about motive.

23. It was contended by the learned counsel for the accused-appellant that the accused had no motive to kill the deceased and whatever motive has been pressed into service, is not of the standard on which reliance can be placed to connect the accused with the crime. Ms. Shyama Dogra, learned Deputy Advocate General for the State, contended that where there are eye-witnesses to the occurrence and their evidence is cogent and convincing and the factum of murder of the deceased by the accused is not shrouded by any mystery, motive is not of much importance. Reliance was placed on *Gurcharan Singh and Another Vs. State of Punjab*, , *Narayan Nathu Naik Vs. The State of Maharashtra*, , *Pedda Narayana and Others Vs. State of Andhra Pradesh*, *Faquira Vs. State of U.P.*, *Molu and Others Vs. State of Haryana*, *Jarnail Singh and Another Vs. State of Haryana*, Moreover, motive of the accused cannot be easily ascertained since it is only known to him and none else (See *Subedar Tewari Vs. State of U.P. and Others*, The learned counsel further contended that although proof of motive is not necessary, as submitted, however, the prosecution has been able to substantiate the same in this case. We see substance in this submission of the learned counsel for the State. There is no dispute about the legal principle discussed in the aforesaid decisions, however, we notice in this case that the prosecution has demonstrated quite clearly that the accused had not killed the deceased without any motive. As a matter of fact, evidence points out that the deceased and his brother Shupa Ram had their land adjacent to the land of the accused and the accused had sold his entire land while the deceased and his brother had planted almond and walnut plants on their land. The accused had uprooted the said

plants and the matter had come up before the Panchayat at the instance of Shupa Ram where the accused had admitted his fault and promised to return the plants and to pay the penalty. This version is given by Mohar Singh (PW 1). Basti Ram (PW 2) also supports this version and states that there was a dispute between Shupa Ram and the deceased on the one side and the accused on the other side about the demarcation of the land. Pratap Singh (PW 3) and Shupa Ram (PW 4) has the same thing to state on the question of motive. Patwari Jai Singh (PW 7) has stated that 8/9 months prior to the occurrence Shupa Ram and the deceased had got Tatima prepared from him of their land for the purpose of horticulture and he had gone to the spot. When Guman Singh had purchased the land from the accused, he had gone to the spot to demarcate it.

24. Learned counsel for the accused then contended that the prosecution witnesses have differed on certain vital points. The place of injury on the neck of the deceased was pointed out specifically in this regard. Although we notice some difference here, however, it is not of much significance since it does not affect the substratum of the prosecution case, particularly when Dr. G. P. Divedi (PW 15) has clearly pointed out that:

There was 5" x 3" muscle deep wound present on the right side of the neck extending from angle of the right lower jaw to the nape of neck, margin clean cut tailing towards nape of neck, blood smeared around wound, large vessels of neck were severed, platysma and muscles were divided, wound was deeper at the angle of jaw than nape of neck. No other injury on the person of the deceased.

In his opinion, the doctor states that:

In my opinion, the deceased died due to haemorrhagic shock caused by severance of large vessels of neck. Probable duration between injury and death was 15 to 20 minutes between death and postmortem 18- 48 hours.

25. Minor discrepancies in the statement of witnesses are bound to occur for variety of reasons, for instance, lack of education, social background, nature of witnesses, duration of their observation and the lapse of time they are called upon to make the statements in the court after the incident etc. etc. (See: Kathi Ramku Aligbhai Vs. State of Gujarat,

26. In addition to the evidence discussed above, there is evidence of extra-judicial confession against the accused. It has come in the evidence of Up-Pradhan Pratap Singh that on reaching the spot, he asked the accused as to why he had done it, on which he replied that he had committed the mistake by hitting the deceased and asked him to save him from the public and in the alternative to do anything which the latter wanted to do in the matter. Mohar Singh (PW 1) also states that Up-Pradhan Pratap Singh came to the place of occurrence and talked to the accused asking him as to how and why that had happened; the accused replied that he had killed the man and anyone could do anything against him. There is no reason why these two witnesses should not be believed when they have no enmity with the accused nor they are relations of the deceased and his

brother Shupa Ram. This evidence also connects the accused with the crime.

27. No other point was argued.

28. The cumulative effect of our examination of the matter is that the finding of the trial court holding the accused guilty of the crime is clearly sustainable and there is no justification to differ with this view. In our considered opinion, the prosecution has been able to prove the charge against the accused beyond all reasonable doubts.

29. There is no merit in this appeal and the same is accordingly dismissed.