

(2009) 11 P&H CK 0058
In the Punjab And Haryana At Chandigarh

Pawan Kumar and Jatinder Singh

APPELLANT

Vs

State of Punjab
 Vijay Kumar Vs State of Punjab,
Pawan Kumar and Jatinder Singh

RESPONDENT

Date of Decision : 28-11-2009

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 302, 307, 34, 392

Citation : (2009) 11 P&H CK 0058

Hon'ble Judges : Ram Chand Gupta, J; Mehtab S. Gill, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.—By this common judgment, we will dispose of Criminal Appeal Nos. 638-DB of 2000, 153-DB of 2001 and Criminal Revision No. 275 of 2001, as the same have arisen out of one judgment dated 10.10.2000 passed by the court of Additional Sessions Judge, Bathinda, vide which both the appellants-accused were convicted and sentenced as under:

(i) Appellant-accused Jatinder Singh:

He was convicted for offence u/s 302 of the Indian Penal Code (hereinafter to be referred as "IPC") and sentenced to undergo imprisonment for life and to pay fine of Rs. 1000/-and in default of payment of fine to further undergo rigorous imprisonment for a period of one month. He was also convicted u/s 392 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 1000/-and in default of payment of fine to further undergo rigorous imprisonment for one month.

(ii) Appellant-accused Pawan Kumar

He was convicted for offence u/s 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 1000/-and in default of

payment of fine to further undergo rigorous imprisonment for a period of one month. He was also convicted for offence u/s 392 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

However, substantive sentences of imprisonment awarded to each of the accused were ordered to run concurrently.

2. Briefly stated, the case of the prosecution, as per report Ex.PA, lodged with Gulzar Singh, Sub Inspector, Police Station Kotwali, Bathinda by Vijay Kumar son of Lachhman Dass, complainant, is as under:

3. Vijay Kumar, complainant, alongwith his relative Ramesh Kumar (deceased), used to deal in coal business and their office was situated at Amrik Singh Road, Bathinda. On 24.10.1996 at about 7.15 p.m. Ramesh Kumar alongwith a bag containing Rs. 50,000/-cash and letter pads of Modern Trading Company and on which Modern Trading Company was also printed was going towards his house. Vijay Kumar and Rakesh Kumar, brother of Ramesh Kumar, were following him. When Ramesh Kumar reached in Nehru street, near residence of Dr. Satish Kumar Verma, they were at some distance from him. All of a sudden two persons came there from opposite direction. They were seen by them in the streetlight and the light coming from the nearby houses. One of them was wearing turban and another was wearing helmet and was also wearing a shawl of black colour. Both were long in height and having wheatish complexion and they could identify on appearance before them. Both of them stopped and asked Ramesh Kumar as to whether he was Ramesh Kumar and when he replied that his name was Ramesh Kumar, the young man, who was wearing turban, fired a shot with his .12 bore pistol on the left flank of Ramesh Kumar and the another person, who was wearing helmet snatched the bag being carried by him and they ran away towards Amrik Singh road. They raised alarm 'Mar Ditta Mar Ditta". However, they did not follow the assailants out of fear. Ramesh Kumar fell on the ground after receiving injury. He was removed to hospital immediately thereafter.

4. Statement of Vijay Kumar, complainant, was recorded by SI Gulzar Singh (PW5) at 9.40 p.m., on which he made his endorsement Ex.PA/1 and sent the same to police Station Kotwali, Bathinda, on the basis of which FIR Ex.PA/2 for offences under Sections 307/392 read with Section 34 IPC and under Sections 25 and 27 of the Arms Act was registered at 10.15 p.m., by ASI Darshan Singh. After collecting ruqa Ex.PC from SHO, Incharge, Civil Lines, Bathinda, SI Gulzar Singh visited Civil Hospital, Bathinda, for recording statement of Ramesh Kumar, injured, and moved application Ex.PF seeking opinion regarding fitness of injured to make the statement. However, it was opined by the Medical Officer vide endorsement Ex.PF/1 that patient was still in operation theatre, at 10.50 p.m.. Hence he visited the place of occurrence and the further investigation was conducted by Inspector Gautam Singal, the then SHO, Police Station Kotwali, Bathinda (PW13).

5. He recorded statement of Rakesh Kumar and also prepared rough site plan Ex.PX of the place of occurrence. He also recorded statement of PW Seetal Kumar, who had stated that scooter on which accused had come, was bearing No. 1207 and that alphabet prior to 1207 were smeared with mud on the number plate of the scooter. He received message regarding death of Ramesh Kumar from the Civil Hospital and, hence, offence u/s 302 IPC was added and the special report was sent to the Illaqa Magistrate, which was received by learned Illaqa Magistrate at 2.20 a.m. on the same night. He also conducted inquest proceedings on the dead body of Ramesh Kumar on the next morning which is Ex.PZ and got conducted the post mortem examination vide application Ex.PZ/1. Sealed parcel containing clothes and pellets removed by the Medical Officer at the time of post mortem examination was taken into possession and, thereafter, the investigation was handed over to CIA staff, Bathinda.

6. On 16.8.1997, Inspector Budh Singh (PW10) alongwith other police officials were present near railway station Bathinda in connection with investigation of some other case when scooter bearing No. 1207, on which alphabets were not legible, was seen coming from the side of Gol Digi and the scooter was stopped on suspicion. It was being driven by Vasdev (PW6) and on enquiry, Vasdev told that he had borrowed the scooter from his friends Pawan Kumar and Jatinder alias Ladi accused. The registration certificate of the scooter was in the name of Pawan Kumar accused. The scooter alongwith registration certificate was taken into possession by the Inspector vide Memo Ex.PG. Thereafter, he searched for accused Pawan Kumar and Jatinder Singh. On 19.8.1997 he recorded statement of Gurbax Singh son of Harbans Singh about the fact that both the accused made extra judicial confession of their guilt before him. On 25.8.1997 he was present on Amrik Singh road near hospital of Mela Ram, when two persons were coming from canal side on a scooter. They stopped the scooter. They were Pawan Kumar and Jatinder @ Ladi. Joginder Singh son of Bakshish Singh also joined the investigation. One .12 bore country made pistol alongwith four cartridges was recovered from accused Pawan Kumar on search, which was taken into possession by him and a separate FIR got registered. Similarly .12 bore pistol was also recovered from the possession of Jatinder @ Ladi accused on 25.8.1997 and a separate case against him was also registered.

7. Both the accused were arrested by him and they were directed to keep their faces muffled. On 26.8.1997 accused were produced before the Illaqa Magistrate for seeking their judicial remand for conducting identification parade and accordingly application Ex.PT was given to learned Illaqa Magistrate. Accused also consented to join the identification parade. The Investigating Officer requested SDM Bathinda for arranging the identification parade vide Ex.PH, who vide order Ex.PH/1 directed the Tehsildar, Bathinda to take necessary action. Registration Certificate of scooter is Ex.P9 showing its complete number, i.e., DEQ 1207.

8. On 9.9.1997 accused Pawan Kumar was interrogated by Hardev Singh, SI

(PW9) who suffered disclosure statement Ex.PM that he had kept concealed one helmet, one bag and Rs. 5000/- in a kotha near his house, after wrapping the same in a glazed paper and that nobody else was having knowledge of the same and that he could get the same recovered. In pursuance of the disclosure statement accused Pawan Kumar got recovered helmet Ex.P1, bag Ex.P2, on which word 'MTC' was written, and the same were taken into possession vide Ex.PN.

9. After completion of the investigation report u/s 173 of the Code of Criminal Procedure (hereinafter to be referred as 'Cr.P.C.') was filed against both the accused. Case was committed by the then learned Chief Judicial Magistrate, Bathinda, vide order dated 5.12.1997 to the Court of Sessions.

10. Learned trial Court framed charges against both the accused for offences under Sections 302 and 392 IPC and Section 25 of the Arms Act, to which they did not plead guilty and claimed trial.

11. In order to substantiate the allegation against the accused, the prosecution has examined as many as 13 PWs.

12. PW1 is Vijay Kumar son of Lachhman Dass, complainant, who lodged complaint Ex.PA with the police. He had given detailed account of the occurrence, as stated above. He specifically deposed that he and Rakesh Kumar were following Ramesh Kumar from a distance of about 4/5 karams, when both the accused, present in the Court, were seen coming from the opposite direction on a scooter and that they enquired from Ramesh Kumar about his name and when Ramesh Kumar replied that he was Ramesh Kumar, accused Jatinder, present in the Court, took out .12 bore pistol and fired on the left side below the ribs of deceased Ramesh Kumar and that other accused Pawan Kumar snatched bag containing currency notes from the hands of Ramesh Kumar and, thereafter both of them ran towards Amrik Singh road. He also identified helmet Ex.P1 being worn by accused Pawan Kumar at that time and bag Ex.P2 on which word 'MTC' was written, which was snatched by accused Pawan Kumar from Ramesh Kumar.

13. PW2 is Rakesh Kumar son of Bhim Sain, who corroborated the version of Vijay Kumar (PW1). He also deposed that both the accused, i.e., Pawan Kumar and Jatinder Singh came from opposite direction and that after being satisfied that name of his brother was Ramesh Kumar, accused Jatinder fired shot from .12 bore pistol, which hit him on his left flank and Pawan Kumar accused snatched the bag containing money. He also identified helmet Ex P1 and Bag Ex.P2. In the cross-examination he clarified that they used to walk down to their house daily and on that day as well they were walking as usual and that Ramesh Kumar was at a distance of 4/5 karams from them. He also clarified that the helmet being worn by Pawan Kumar was having broken glass and that he could identify his face even while wearing helmet.

14. PW3 is Seetal Kumar son of Om Prakash, who deposed that on 24.10.1996 he had gone to Ahata Sidhu Market for shopping and that at about 7.30 p.m. he

heard noise of gun shot in Nehru street and that he had seen both the accused, present in the Court, coming from the side of Nehru street. He also deposed that one of them was wearing turban and another was wearing helmet Ex.P1 and the person who was wearing helmet was having bag Ex.P2, which was handed over by him, i.e., accused Pawan Kumar, present in the Court, to accused Jatinder Singh. He also deposed that scooter bearing No. 1207 was lying parked and that however alphabet prior to 1207 were smeared with mud on the number plate of the scooter and that thereafter both the accused present in the Court ran away on the same scooter towards Sidhu Ahata Market and that he had gone towards Nehru street where he found Ramesh Kumar with fire shot injuries and that Vijay Kumar and Rakesh Kumar were taking care of him. He specifically deposed that accused Pawan Kumar present in the Court was wearing helmet Ex.P1 and that accused Jatinder Singh was wearing a turban and that Jatinder Singh was armed with a pistol. He also deposed that his statement was recorded by the police on the spot on the same night. In the cross-examination he clarified that his residence is at a distance of 1.5 kms from the place of occurrence and that however, he used to purchase articles from the shop situated in Sidhus Ahata.

15. PW4 is Dr. Kasturi Lal, who medico legally examined Ramesh Kumar son of Bhim Sain (deceased) on 24.10.1996 at 7.45 p.m. and found the following injuries on his person.

A lacerated wound 4 cm x 3-1/2 cm with inverted and contused margins present in the left iliac fossa with 35 lacerated wounds of the size of 0.5 cm x .4 cm inverted margins all around the abovesaid wounds. More small these wounds on the medial side of main wound. Fresh bleeding was present. The total area of these wounds was 5 x 4.

16. He further deposed that the probable duration of the injury was fresh and the kind of weapon used was fire-arm. He also proved carbon copy of the medico legal report as Ex.PB and the pictorial diagram, showing the seat of injuries, as Ex.PB/1. He also sent information to the police immediately vide Ex.PC.

17. He further deposed that injured expired in the hospital at 11.40 p.m. on the same day, i.e., on 24.10.1996 and that information regarding death was sent to police vide letter Ex.PD.

18. He again deposed that on 25.10.1996 he conducted post mortem examination on the dead body of Ramesh Kumar at 12.10 p.m. and observed as under:

The dead body was 5x8, moderately built and well nourished of a male. The eyes and mouth were closed. The body was wearing underwear. Post mortem staining was present on the back of the body sparing pressure spot. Rigor mortis was present all over the body. Surgical dressing was done over the abdomen.

1) Lacerated wound 4 cms x 3-1/2 cm inverted and contused margin present on the left iliac fossa with 35 lacerated wounds of the size of .5 cm x .4 cm with

inverted margins all around the above said wound. More small these wounds were present on the medial aspect of the main wound. Main wound was plugged with surgical gauze. Clotted blood was present all around the wound.

2) 23 cms stitched with eleven stitches surgical wound was present just right to the umbilicus in the midline of abdomen.

On dissection of abdomen findings of the Surgeon were confirmed. About 40 cc of clotted blood was present in the peritoneal cavity. All other organs were healthy except small intestines and large intestines. Stomach was empty.

19. He further deposed that in his opinion the death in this case was due to shock and haemorrhage as a result of injury No. 1 which was ante mortem in nature and sufficient to cause death in the ordinary course of nature and the probable time that elapsed between injury and death was within few hours and between death and post mortem was within 24 hours. He had proved carbon copy of the post mortem report as Ex.PE. He had also taken into possession shirt Ex.P3, Banyan Ex.P4 and underwear Ex.P5. He had also handed over to the police a parcel containing wads and pellets vide memo Ex.P6. He also clarified that shot fired from distance of 2-1/2 to 3 feet by a country made pistol could cause injury No. 1.

20. PW5 is SI Gulzar Singh, who recorded statement of the complainant and initially investigated this case, as detailed above.

21. PW6 is Vasdev son of Om Parkash, who deposed that on 16.8.1997 he had borrowed scooter bearing No. DEQ-1207 from accused Pawan Kumar, as he was known to him. He also deposed that accused Jatinder was also known to him, as he was also relative of Pawan Kumar. He further deposed that on that day he was going towards railway station, Bathinda for personal work when he was stopped by police and the scooter alongwith its registration book was taken into possession vide memo Ex.PG. He further deposed that he accompanied police party in search of accused and that they had also gone to the house of accused Pawan Kumar, however, he was not available in his house. He also deposed that accused Jatinder Singh was also not available and that they were informed by wife of Pawan Kumar that accused Pawan Kumar and Jatinder Singh used to come late for the last 8 or 10 days. In the cross-examination he clarified that accused Pawan Kumar was known to him as he used to work on a brick-kiln in Village Lehra Bega from where he used to bring bricks.

22. PW7 is Harbans Singh Sekhon, Naib Tehsildar-cum-Executive Magistrate, Bathinda. He deposed that on 28.7.1997 application Ex.PH was received by him from SDM, Bhatinda, for conducting the identification parade of accused Pawan Kumar and Jatinder Singh. He further deposed that he went to Central Jail, Bathinda on 30.8.1997 and recorded statements of accused Jatinder Singh and Pawan Kumar. However, vide statements Ex.PI and PK, they refused for the identification parade.

23. PW8 is Constable Balwinder Singh, who had carried special report of this case to Illaqa Magistrate and other officers on the night intervening 24/25.10.1996. He specifically deposed that he handed over the special report of this case to CJM, Bathinda at 2.20 a.m.

24. PW9 is SI Hardev Singh who had interrogated accused Pawan Kumar on 9.9.1997 and recorded his disclosure statement and recovered Helmet Ex.P1 and Bag Ex.P2, as per his disclosure statement, as detailed above.

25. PW10 is Inspector Budh Singh to whom investigation of this case was handed over as he was posted in CIA staff, Bathinda. He had taken the scooter used by the accused in the crime in possession. He had also arrested the accused in this case, as detailed above.

26. PW11 is Gurtej Singh, an official from Punjab State Electricity Board, Bathinda, who deposed that as per record, electricity of the area of Amrik Singh road was on from 6.00 a.m. on 24.10.1996 upto 6.00 a.m. on 25.10.1996.

27. PW12 is Constable Hakam Singh, who tendered in evidence affidavit of his statement Ex.PV.

28. PW13 is Insepctor Gautam Singal, who had taken over investigation of this case from SI Gulzar Singh, as detailed above.

29. In statement of the accused recorded u/s 313 Cr.P.C., they denied the incriminating evidence coming against them and pleaded innocence. Accused Pawan Kumar had taken the following plea:

We are innocent and have been falsely implicated in this case by Budh Singh Inspector. I alongwith my wife Neena Rani were going to Bus Stand, Bathinda from where we were picked up by Inspector Budh Singh and police party on 15/16.8.97. We were taken to CIA staff, Bathinda where we were tortured. My co-accused Jatinder Singh, who is my brother-in-law had come to enquire about us alongwith Ganga Singh s/o Sher Singh resident of Vill. Jeeda, Distt. Bathinda, where he was detained and brutally tortured, as a result of which he remained admitted in Hospital at Bathinda and was referred to Rajindera Hospital, Patiala by the learned Chief Judicial Magistrate, Bathinda from where he could not be produced in the court of Shri R.P. Nagrath, PCS, the then learned Chief Judicial Magistrate, Bathinda on 17.10.1997, 4.11.97 and 8.11.1997 as his condition was serious. I and Jatinder Singh were falsely implicated in Arms Act cases by the C.I.A. Staff, Bathinda and I was acquitted by Shri S.K. Garg, PCS, learned Chief Judicial Magistrate, Bathinda on 8.9.1999 while Jatinder Singh was acquitted on 9.12.1998. I was earlier detained by Surinder Singh Inspector of C.I.A. Staff, Bathinda and was let off after interrogation and was shown to the eye witnesses including Sheetal Kumar and Vasudev. Even our photographs were taken by the police. My wife has filed a writ petition in the Punjab & Haryana High Court at Chandigarh regarding her torture and illegal confinement and application were also given to the higher authorities regarding our illegal detention by CIA Staff,

Bathinda. I was employee of Vijay Kumar, Bhim Sain father of the deceased at Brick Kiln, Phus Mandi and I have issued various receipts regarding the sale of bricks to many persons. I and Jatinder Singh were very well known to Lachhman Dass, Bhim Sain and eye witnesses of the case much earlier to this occurrence. As we were brutally tortured and injured and in order to save his own skin, Inspector Budh Singh falsely implicated us in this case. All the witnesses examined in this case are close relatives of deceased or belong to his party. The recovery of currency notes, scooter and helmet were planted by the police in order to strengthen the case. We declined to join the identification parade as we were shown to the eye witnesses who already knew us very well.

30. Accused also examined three witnesses in defence.

31. DW1 is Dr. B.S. Dhaliwal, Medical Officer, Central Jail, Bathinda, who deposed that accused Jatinder Singh was admitted in jail hospital on 27.9.1997 for sciatica left side and was discharged on 1.10.1997 and that however, he was again admitted on the same day and discharged on 9.10.1997.

32. DW2 is Constable Kulwant Singh from SSP Office, Bathinda, who had proved copy of complaint Ex.D1, received from the office of Chief Minister, Punjab, filed by Bhim Sain son of Nikku Mal.

33. DW3 is Smt. Neena Rani wife of Pawan Kumar accused who deposed that her husband had worked as Munim with Vishwakarma brick kiln, Phus Mandi, Bathinda from 1993 to 1995 and the said brick kiln was owned by Mukesh Kumar, Ramesh Kumar and Vijay Kumar and the deceased and eye witnesses were known to her as they used to visit their house in connection with their business. She identified the signatures of her husband on receipts of Vishwakarma brick kiln Ex.D2 to D12. She also deposed that she and her husband were arrested by Inspector Budh Singh on 15/16.8.1997 from Bus stand, Bibi wala, when they were going on a scooter and thereafter her husband was falsely implicated in this case.

34. Accused also tendered in evidence copy of judgment dated 9.12.1998 Ex.DA and judgment dated 8.9.1999 as Ex.DB.

35. Learned trial Court convicted and sentenced the accused vide impugned judgment against which the present appeals and the revision petition have been filed.

36. We have heard learned Counsel for the appellants-accused, learned State counsel and learned Counsel for the revision-petitioner and have gone through the whole record carefully.

37. It has been argued by learned Counsel for the accused that the eye witnesses namely, Vijay Kumar and Rakesh Kumar, were not present at the spot as their presence have not been recorded by the Medical Officer at the time of examination of the injured and that their presence has also not been recorded at the time of preparing inquest proceedings. It has also been argued that both are

chance witnesses and closely related to deceased and hence, no reliance should be placed upon their testimony.

38. It has further been contended that the accused were very well known to these witnesses as one of accused Pawan Kumar used to work as an employee at brick kiln owned by the complainant and hence accused rightly refused to get identification parade done. It has further been argued that it was a blind murder and that accused were falsely implicated in this case later on at the instance of Budh Ram, Inspector.

39. On the other hand, it has been argued by learned Counsel for the State as well as learned Counsel for the revision-petitioner that PW1 Vijay Kumar and PW2 Rakesh Kumar are the most natural witnesses of the occurrence as deceased as well as both these witnesses were coming to the house of Ramesh (deceased) situated near their business place and that deceased was going ahead of them when he was attacked by the accused. It is further contended that the accused were also seen by PW3 Seetal Kumar, an independent witness, who also used to reside in a nearby locality and was present in the market at that time and hence, it is argued that their testimony cannot be disbelieved merely on the ground that they are related to the deceased. It is further contended that the injured was removed to the hospital just after 15 minutes of the occurrence and that the version of the occurrence was also given to the police very promptly and the FIR was also recorded promptly and that after Ramesh Kumar succumbed to injuries, special report also reached the Magistrate on the same night at about 2.20 a.m. It is further contended that identification of accused in the Court is substantive piece of evidence and that moreover accused refused to get their test identification parade done though the same was arranged by the Investigating officer. It is further contended that depositions of PW1 Vijay Kumar, PW2 Rakesh Kumar and PW3 Seetal regarding identification of the accused in the Court further find corroboration from the fact that the number of the scooter which was used by both the accused at the time of commission of offence was noted down by PW3 Seetal and the said number was given by him in his statement before the police on the same day and that accused Pawan Kumar was found to be registered owner of the said scooter. It is further contended that their deposition further finds corroboration from the fact that helmet Ex.P1 and Bag Ex.P2 alongwith currency notes of Rs. 5000/- was got recovered by accused Pawan Kumar, as per his disclosure statement. It is further contended that accused have failed to prove that one of the accused, namely, Pawan Kumar, remained employee of Vijay Kumar, complainant and hence it is argued that there is nothing as to why they should have been falsely implicated in this case by the complainant.

40. As already discussed above, FIR in this case has been promptly lodged. The occurrence took place on 24.10.1996 at 7.15 p.m. Injured was removed to hospital just within 15 minutes, i.e., at 7.30 p.m. when he was examined by the Medical Officer. Statement of complainant was recorded at 9.40 p.m. on

24.10.1996 and the FIR was recorded in the police station at 10.15 p.m. Ramesh Kumar succumbed to injuries in the hospital at 11.40 p.m., hence offence u/s 302 IPC was added and thereafter special report was sent to Illaqa Magistrate which was received by him at 2.20 a.m. on the same night. Even statement of Seetal Kumar PW3 in which he had given number of the scooter used by the accused at the time of the occurrence was also recorded on the same night by the Investigating officer.

41. Both the accused were seen by PW1 Vijay Kumar and PW2 Rakesh Kumar at the time of occurrence. They were only at a distance of 4 Karams from Ramesh Kumar when the occurrence took place. It has come on the record that there was street light which was on at that time and light was also coming from nearby houses. The accused had come on scooter from the opposite direction. They stopped their scooter and had a talk with Ramesh Kumar and enquired about his name and the said talk was also heard by PW1 Vijay Kumar and PW2 Rakesh Kumar. The glass of the helmet was broken. Hence face of both the accused were visible to these witnesses. In their statement before the police they had stated that one of the accused was wearing helmet and another was wearing turban. It was also stated that both of them were having wheatish complexion and were long in height and that they could identify them on appearance before them and hence they identified after seeing the accused in the court at the time of their deposition in the Court. It is settled law that identification of the accused in the court by the witnesses is substantive piece of evidence. On the arrest of the accused identification parade of the accused was also arranged by the prosecution and for that purpose judicial remand of the accused was obtained by the Investigating Officer and they were also directed to keep their faces muffled and however when Tehsildar visited the jail for the purpose of identification parade, accused refused to get the identification parade done on the plea that they were known to the witnesses as one of them, i.e., Pawan Kumar remained their employee. However accused have failed to prove the alleged fact that Pawan Kumar accused remained employee of Vijay Kumar complainant.

42. Vijay Kumar complainant categorically denied in the cross examination that accused Pawan Kumar ever remained his employee. The alleged receipts regarding sale of bricks from brick kiln belonging to Vijay Kumar complainant, as produced by wife of accused Pawan Kumar when she appeared as a witness as DW3 were never shown to Vijay Kumar in the cross-examination. No appointment letter of accused Pawan Kumar has been produced. Moreover the receipts like Ex.D2 to D12 are issued to the customers at the time of sale of bricks and hence the same could not be in the possession of Pawan Kumar. These type of receipts can be procured or prepared by the accused, at any time. Hence merely on the basis of these receipts it cannot be said that accused Pawan Kumar ever remained employee of Vijay Kumar, complainant. Moreover had this been the fact, the complainant would have recognized him and would have mentioned his name in his statement before the police after the occurrence. Further there is nothing as to why Vijay Kumar should have falsely implicated the

accused later on in this case.

43. Moreover depositions of PW1 Vijay Kumar and PW2 Rakesh Kumar, who are related to deceased regarding identification of the accused find corroboration from independent witness Seetal (PW3).

44. Presence of Seetal (PW3) is also natural at the place of occurrence. It has come in evidence that he used to reside in nearby locality situated at a distance of about 1-1/2 kms and he used to visit the said market for house-hold purchases. He deposed that he was present in the market when he heard noise of gun shot. He was attracted towards the place of occurrence. He saw both the accused. He deposed that one was wearing helmet and another was wearing turban. He also noticed that the accused Pawan Kumar was handing over the bag to accused Jatinder and that Jatinder was armed with pistol and that thereafter they fled away. Immediately, thereafter he went to place of occurrence and saw Ramesh lying in injured condition and as complainant and the injured were known to him, he also helped them in removing the injured to the hospital immediately in a car. He also noted down the number of the scooter. Later on scooter was recovered by the police from the possession of Vasdev PW6, who deposed that he had borrowed the same from Pawan Kumar and Jatinder, as they were known to him. It was found that the scooter was registered in the name of Pawan Kumar, accused.

45. Depositions of PW1 Vijay Kumar and PW2 Rakesh Kumar further find corroboration from the fact that helmet Ex.P1 and Bag Ex.P2 belonging to the firm of the complainant were got recovered by accused Pawan Kumar as per his disclosure statement.

46. Hence, in view of these facts identification of the accused for the first time in the Court by PW1 Vijay and PW2 Rakesh Kumar and PW3 Seetal can be relied upon in this case.

47. So far as argument of learned Counsel for the appellants- accused that the names of the witnesses have not been mentioned by the Medical Officer at the time of examination of injured Ramesh Kumar is concerned, the said fact also does not create any doubt in the veracity of the prosecution version as by the time the injured was removed to the Hospital, other relatives also reached there and the doctor mentioned their names as complainant and Rakesh Kumar had already left the hospital immediately after removing the injured to the hospital. Further inquest proceedings on the dead body of the Ramesh Kumar was conducted on the next morning by the Investigating Officer. The investigating Officer was not required to conduct inquest proceedings in the presence of the witnesses of the occurrence. He was only to get the dead body identified in those proceedings and he recorded statement of those relatives of the deceased who were present near the dead body at that time.

48. Further Seetal Kumar PW could only note number of scooter as 1207 as the alphabet were not legible on the number plate. Hence, it was difficult for the

police to locate the scooter. When the scooter was recovered only then exact number was known to the Investigating Officer as DEQ 1207 which is a Delhi Number and which was registered in the name of Pawan Kumar accused. The investigation was conducted by several police Officers. As it was a case of blind murder as the assailants were not known to the witnesses, police took time to trace the culprits. Accused were arrested while coming on some other scooter on 25.8.1997.

49. So far as acquittal of the accused in separate Arms Act cases is concerned, it has rightly been observed by learned trial Court that weapons allegedly recovered from the accused at the time of their arrest are not connected with the present case. Case of prosecution has been proved by other evidence including identification of the accused by the eye witnesses. Hence, acquittal of the accused in separate Arms Act cases registered against them vide judgments Ex.DA and DB on which reliance has been placed on behalf of the accused, does not in any way go to show that the present case against the accused has become doubtful.

50. In view of above discussion we are of the view that prosecution has been able to prove its case against the accused beyond any shadow of reasonable doubt and hence they were rightly convicted and sentenced by learned trial Court.

51. So far as revision petition filed by Vijay Kumar, complainant, for enhancement of sentence is concerned, the same is also devoid of any merit. Learned trial Court already sentenced the accused to undergo imprisonment for life. It is not such a rarest of rare cases in which death penalty should be imposed upon the accused.

52. Hence, we are of the view that there is no merit in the present appeals filed on behalf of the accused as well as in the revision petition filed on behalf of the complainant. Hence, both the appeals as well as the revision petition are, hereby, dismissed being devoid of any merit.