

(1994) 03 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No's. 21 and 22 of 1992

Raj Mohammad and Another and Gulzar Ali

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 16-03-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 150
Penal Code, 1860 (IPC) — Section 120B, 302, 34, 506

Citation : (1995) CriLJ 810 : (1995) 1 ShimLC 139

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

Bench : Division Bench

Advocate : Jagdish Vats, in both the Appeals, for the Appellant; Shyama Dogra, D.A.G. in both the appeals, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—We propose to decide both these criminal appeals (Cr. Appeal No. 21 of 1992 and Cr! Appeal No. 22 of 1992) by this judgment since they arise out of the same judgment of conviction by Additional Sessions Judge, Sirmaur, in Sessions trial No. 111/2 of 90/ 22-N/7 of 90, dated 21-3-1992, holding the accused guilty of offences under Sections 302/506/ 34 and 120-B of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for life and to pay a fine of Rs. 3000/- in each case and in default of payment of fine, to undergo simple imprisonment for a period of one year, They have also been sentenced for two years u/s 120-B and six months under Sections 506/34 in each case, ordering the sentence of imprisonment to run concurrently.

2. We may now deal with the facts of the case briefly. The case against the accused is that they hatched a criminal conspiracy in order to eliminate deceased Tara Chand, S/o Balak Ram (P.W. 7), R/o village Nanu Majra, Tehsil Kharar, District Ropar (Punjab), who was working as a domestic servant with Shri Jai Paul (P.W. 13). The two families had strained relations on account of pending litigation. Since the deceased used to intervene in quarrels that would take place

amongst the two families and protected the family of his master, the accused were annoyed with him and wanted to teach him a lesson. On the day of occurrence, all the three accused had threatened Smt. Kiran Chauhan (PW3) in the absence of her husband and the matter was reported to the police and a case under Sections 107/150 of the Code of Criminal Procedure was initiated. Accused Raj Mohammad was serving in the Indian Army and was absconding from his Unit since 6-5-1990. Accused Niaz Ali was working in C.R.P.F. at Pinjore and was on three days leave from 5-5-1990. He was to join his Unit on 9-5-1990, but he did not report to the Unit on the expiry of his leave and was absconding. Accused Gulzar Ali was in search of a job. For that purpose, he was staying with his elder brother accused Raj Mohammad. Thus, according to the prosecution, the three accused had strong motive to eliminate deceased Tara Chand and in order to achieve this, they hatched a conspiracy and made elaborate arrangements before actually executing the same.

3. It was on 9-5-1990 that Ram Singh (P.W. 2), while working in his field at about 6 PM, heard the cry "Hai Re Mar Deya". He was attracted towards the place from where the cry had emanated. When he came running towards this side, he saw all the accused running towards the jungle. On reaching the site, he found the deceased lying in a pool of blood. He was already dead. A darat, without handle, a bale of barseen grass and a wrist watch were lying near the dead body. He went to Jagat Ram, who was thrashing his grams crop, and narrated the incident to him. He requested Jagat Ram to accompany him to the spot and both of them came there. Shamsheer Singh, brother of Ram Singh (PW2), also reached there from Kala-Amb. Ram Singh asked Sher Singh and Jagat Ram to remain at the spot and himself went to inform Jai Paul (P.W. 13). Jai Paul was informed that the three accused had killed his servant and they had run away towards the jungle. Jai Paul accompanied Ram Singh to the spot wherefrom he went to Kala Amb Police-Post to lodge a report. Besides Ram Singh (P.W. 2), his son Sanjiv Kumar (PW 4) had also noticed two accused, namely, Raj Mohammad and Niaz Ali, nearby the place of occurrence and had also heard the cry of the deceased. A report was lodged with Police-Post Kala Amb at 7.15 PM. This formed basis for the registration of First Information Report at Police Station, Nahan. The police started the investigation. It visited the spot, house of Jai Paul and that of the accused, who were not found there. On 9-5-1990, the investigation could not make much headway since it had gone dark due to night. After their arrest, accused Raj Mohammad and Niaz Ali made disclosure statements as a result of which, Gandasi (Ex. P. 2) and Chura (Ex. P. 3) were recovered from two different places. The police took into possession certain letters from the house of the accused. In order to obtain handwriting advice, their specimen handwriting and signatures were obtained and these documents were sent to handwriting expert, whose opinion was obtained. The articles lying near the dead body were also taken into possession. The police also lifted samples of blood-stained earth from the place of occurrence. The recovered articles were sent to chemical examiner and Serologist for their expert opinion.

No blood was found on the sample of earth but Gandasi (Ex. P. 2) and Chura (Ex. P. 3) had blood stains on them. The Serologist reported that the blood stains on Gandasi (Ex. P. 2) and Chura (Ex. P. 3) were disintegrated and their blood group was not as certainable for that reason. The vest and dhoti of the deceased were found stained with human blood. So were the darat and the underwear, though the origin could not be determined on account of disintegration. Blood group of the human blood on vest and dhoti of the deceased could not be ascertained as the same was not sufficient for test while it had disintegrated in case of earth, darat and underwear etc.

4. The body was subjected to postmortem examination. The viscera of the deceased was sent to the Chemical Examiner, who detected no poison or alcohol. We may now make mention of the injuries which were found on the dead body of the deceased during postmortem examination. They are described by Dr. S.K. Sablok in his report (Ex. PD):

1. Condition of body:

Stout rigor mortis well developed. Postmortem lividity present on back clothing. Baniyan, underwear, dhoti soiled with blood and mud.

2. Injuries:

1. Incised wound 4 cm x 2 cm. situated in the parietal region just left to the mid line skull-deep.
2. Stab wound ant, exillary line second third inter castal space right side.
3. Incised wound on right forearm 5 cm x 2 cm.
4. Incised wound 4 cm x 2 cm left palm.
5. Incised wound 10 cm x 3 cm left forearm.
6. Stab wound 5 1/2 cm x 3 cm penetrating into abdominal cavity situated in mid exillary line just below rib marginal.
7. Stab wound 5th inter coastal space little left to sterrun 3 x 2 cm in size.
8. An abrasion 3 cm x 5 cm. middle of the back of left arm.
9. An incised wound 4 cm x 2 cm. left epigastrice region muscle deep.

There was also fracture of third rib side. On exploring the injuries, there was cut wound about 3 cm in the right second and third intercoastal space communicating to injury No. 2, a cut in the peritoneum cavity contained blood mixed with semi food particles. There was also a penetrating wound on the greater curvature outer surface of stomach 2 cm x 1 cm.

5. In the opinion of Dr. S.K. Sablok, deceased Tara Chand had died due to penetrating injuries to his chest wall and abdominal wall penetrating into the stomach and haemorrhage from all the injuries leading to shock and death. His

final opinion after going through the reports of the Chemical Examiner also remains the same as was opined by him vide postmortem, report Ex. PB. The time between injuries and death is stated by him to be within one hour and that between death and postmortem to be about 24 hours. According to him, injury No. 1 could be caused by any sharp edged weapon including gandasi Ex. P. 1. and stab wound to the chest and abdominal wound could have been caused with chura (Ex. P. 2). His further testimony is that darat (Ex. P. 3) can cause abrasion and incised wound and Gandasi (Ex. P. 1) and chura (Ex. P. 2) can also cause incised and penetrating wounds, respectively. He further goes on to say that injury No. 1. was skull deep but skull was not fractured. He has finally opined that all the injuries were sufficient in the ordinary course of nature to cause death.

6. Consequently, the accused were charged for offences under Sections 120-B/302 read with Section 34 and Sections 506/34 of the Indian Penal Code. They pleaded not guilty to the charge and claimed trial. From the side of the prosecution, as many as 25 witnesses have been examined. While appreciating the prosecution case, the trial court has examined it under various points involved in the case and argued before him. These find mention in para 25 of the judgment and the learned counsel for the parties before us confined their submissions to some of these points only, being discussed in the latter part of this judgment. After hearing the learned counsel for the parties, the trial court came to the conclusion that the prosecution had been able to substantiate the charge against all the three accused beyond any reasonable doubt and they were accordingly convicted and punished. This decision has, therefore, been assailed by them before this Court. Now, we proceed to examine the matter. But before dealing with the evidence, it would be important to record at the out-set that there is no eye witness to the occurrence. The prosecution case, therefore, hinges entirely on circumstantial evidence.

7. The learned counsel for the accused submitted that this being a case based on circumstantial evidence, the prosecution must complete the chain of evidence in such a way that it leads to only one conclusion, namely, that the offence has been committed by the accused and accused alone and none else. Reliance was placed on the apex Court decisions like Bakhshish Singh Vs. State of Punjab, ; AIR 1972 SC 110: 1972 Cri LJ 23 , Hukam Singh Vs. State of Rajasthan, , Sharad Birdhichand Sarda Vs. State of Maharashtra, ", Padala Veera Reddy Vs. State of Andhra Pradesh and others, , Padala Veera Reddy v. State of Andhra Pradesh and 1990 (1) SLC 82 , Devinder Singh v. State of Himachal Pradesh, and also contended that mere suspicion, however grave, cannot take place of proof as held by the Supreme Court in State of U.P. Vs. Sukhiasi and Others,

8. From the opposite side, Ms. Shyama Dogra, learned Deputy Advocate General, placed strong reliance on 790 Wasim Khan Vs. The State of Uttar Pradesh, ; Jadunath Singh and Others etc. Vs. State of Uttar Pradesh, ; Jose alias Kolli Jose Vs. The State of Kerala, ; Kailash and Others Vs. State of Uttar Pradesh, Prem

Thakur Vs. State of Punjab, ; Kansa Behera Vs. State of Orissa, ; Phundi Vs. State of M.P., ; Rajesh Thakur Vs. State, ; Rama Nand and Others Vs. State of Himachal Pradesh, ; 1992 Supp (1) SCC 567, S.D. Soni v. State of Gujarat; Nadodi Jayaraman and Others Vs. State of Tamil Nadu, and Kathi Ramku Aligbhai Vs. State of Gujarat, We do not think it necessary to refer to all the decisions but we notice certain decisions here below.

9. In Padala Veera Reddy Vs. State of Andhra Pradesh and others, S. Ratnavel Pandian, J., has said in para 10 that (at p. 81 of AIR): (at p. 608 of Cri LJ).

10. Before advertng to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir Vs. State of Maharashtra,

See also Rama Nand and Others Vs. State of Himachal Pradesh, Prem Thakur Vs. State of Punjab, Gian Singh Vs. State of Punjab, Balwinder Singh alias Dalbir Singh Vs. State of Punjab,

10. In Kishore Chand Vs. State of Himachal Pradesh, the Court said AIR 2 Cri LJ 293

In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be

conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis.

5. In assessing the evidence imaginary possibilities have no role to play. What is to be considered are ordinary human probabilities. In other words when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established. The chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. If any of the circumstances proved in a case are consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt.

6. In assessing the evidence to find these principles, it is necessary to distinguish between facts which may be called primary or basic facts on one hand and inference of facts to be drawn from them, on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way and in appreciation of the evidence in proof of those basic facts or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court has to consider the evidence and decide whether the evidence proves a particular fact or not. Whether that fact leads to the inference of the guilt of the accused or not is another aspect and in dealing with this aspect of the problem, the doctrine of benefit would apply and an inference of guilt can be drawn only if the proved facts are inconsistent with the innocence of the accused and are consistent only with his guilt. There is a long distance between may be true and must be true. The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused and those circumstances should be of conclusive nature and tendency and they should be such as to exclude all hypothesis but the one proposed to be proved by the prosecution. In other words, there must be a chain of evidence so far consistent and complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all probability the act must have been done by the accused and the accused alone.

11. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, the following principles were enunciated (at pp. 1772, 1773 of Cri LJ):

152. A close analysis of this decision would Show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:--

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established,

It may be noted here that this Court indicated that the circumstances concerned

"must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12. Further, in Prem Thakur Vs. State of Punjab, Chief Justice Y.V. Chandrachud, speaking for the Court, observed in para 11 as under:

11. The High Court could not but be aware of the principle that in a case which depends wholly upon circumstantial evidence, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. That is to say, the circumstances relied upon as establishing the involvement of the accused in the crime must clinch the issue of guilt.

13. Again in Kansa Behera Vs. State of Orissa, it was observed as under in para 12 of the judgment (at p. 1859 of Cri LJ):

...It is a settled rule of circumstantial evidence that each one of the circumstances has to be established beyond doubt and all the circumstances put together must lead to the only one inference and that is of the guilt of the accused....

14. Shri Jagdish Vats strongly contended that the accused had no motive to kill the deceased and the evidence of conspiracy and preparation pressed into service by the prosecution is totally weak and unsatisfactory. The deceased was simply a servant and in case the accused had motive to kill, they would have killed either Jai Pal or his wife against whom the prosecution has put up a story of inimical relations. Routine letters do not prove any kind of conspiracy or common intention and even if there was ill-will between the two families, the danger was from the side of the family of Jai Pal and that is why application seeking protection was addressed to the Chief Minister, Himachal Pradesh, and

the Superintendent of Police, Sirmaur. These submissions have been vehemently opposed by the learned Deputy Advocate General. Her contention was that the family of the accused had, in fact, subjected the family of Jai Pal to continued harassment. Wherever they would find any occasion, they would abuse and terrorise his family resulting in initiation of security proceedings against the family of the accused. Preceding the incident, threats were exchanged. A case under Sections 107/150 of the Code of Criminal Procedure was started and was pending. The deceased was helpful to the family of his master since he used to protect them whenever the family of the accused would quarrel with the family of Jai Pal. He being the protector of Jai Pal's family, the accused wanted to finish him so that they could suppress the family of Jai Pal with more vigour and freedom. Referring to letters, the learned counsel contended that the contents of the letters clearly demonstrate the working of the minds of the accused. It is clear from all of them in general, and a few in particular, that the accused had been sharing their common views. They had entered into a conspiracy to eliminate the deceased. They had common intention also to do so and in execution of these activities, the deceased was killed ultimately. The trial court has examined this aspect of the matter quite carefully and meticulously, therefore, it is not desirable to up-turn the findings of this question.

15. We have read all these letters carefully in order to appreciate the submissions of the learned counsel for the parties (Ex. P.W. 20/B, Ex. P.W. 20/C, Ex. P.W. 20/D, Ex. P.W. 20/E, Ex. P.W. 20/ F, Ex. P.W. 23/D, Ex. P.W. 23/E, Ex. P.W. 23/F, Ex. PNN, Ex. PP and Ex. PMM.). We refer to some of them which are quite close and intimate to the question under discussion. Letter dated 8-4-1990 (Ex. PNN) is from accused Raj Mohammad to Niaz Ali. He refers to some incident of 25th and wants the latter to come home on leave on 4th or 5th of April, 1990 along with any weapon or a knife of 14" along with Gulzar. The insistence for bringing the weapon is quite serious and grave since it has been repeated by him time and again. He has been asked to bring sufficient ammunition also. He also wanted confirmation whether pistol was being brought, the idea obviously must be that in case accused Raj Mohammad did not bring the weapon, he would be making some other arrangement therefor. It has rightly been inferred by the trial Judge that the letter of 8-4-1990 may not be referring to the target. However, the same is clear from the application addressed to the Chief Minister, Himachal Pradesh (Ex. PMM) by the same accused. This application dated 2-5-1990 is admitted by him. It is quoted in extenso:

From:

Raj Mohammad C. Company, 524 ASC Battalion,
C/O 56 APO.

To:

The Chief Minister, Government of Himachal Pradesh, Simla.

Subject: Application for protection of life and property of the family of solidier.

Sir,

1. Raj Mohammad son of Shri Ali Mohammad, resident of Khairi, Post Office Trilokpur, Tehsil Nahan, District-Sirmaur (HP) am living far away from home and seek the protection of my home and family.

2. I and my family are suffering due to the atrocious and hateful activities of my cousin Sadhodin, son of Shri Sadokhan, village Khairi, Post Office, Trilokpur, Tehsil Nahan, District Sirmaur. Shri Sadodin is one of the notorious villain of the area. He along with his supporters Jai Pal Singh, son of Shri Jagmohan Singh and dangerous gunda Tara Chand is terrorising me and my family members, the estimation of which can be made by you from the letters dated 26-3-90, 4-4-90 and 20-4-1990 which I have received from my home. The photostat copies of these letters are being sent for drawing your kind attention. Tara Chand is a resident of Punjab and is a terrorist. He has fled to hereafter committing thousands of murders and is hiding himself from police and unnecessarily torturing and harassing the people in this village and its proper inquiry be got conducted. He be shunted out from the village or be punished.

3. That Sododin son of Sodokhan and Jai Pal Singh son of Jagmohan Singh have their breech loading guns. By taking undue advantage of these guns, they harass and beat my family. They always carry their guns. Sododin with the help of his double barrel gun and gundas is adamant to turn us into homeless. He opposes our prosperity. This prosperity is due to the construction of a road by the Govt. which passes through our fields. Due to the provision of a Tube well, they are becoming jealous. As human being it is natural to be jealous, but it does not mean that with the help of gundas and extremists our family should be terrorised and should be forced to turn into homeless.

4. The day by day increasing threats of Sododin it has become difficult for my family to live in peace as per contents of letter dated 20-4-90. I even apprehend outraging the modesty of women folk. In this connection you can personally guess from the letter written by my sister.

According to this very letter, it appears that there is a plan to kill me and my brother, because in the month of May I shall be going on leave for two months to extend help in domestic work. May God, there may not be such an incident with me and my family for which I am afraid of. His terrorism can be confirmed from every male and female of the village.

Hence, I humbly pray you that my family be protected from these extremists. Before this gang commit any incident in the village, necessary steps may be taken against them. I hope I will avail my leave in peace and there will be peace in my family. I shall be grateful for your taking appropriate and immediate action and shall always be well wisher to the Government of Himachal Pradesh.

Dated 2 May 90.

Sd/- (In English) Raj Mohammad No. 13875540. Rank-LAC.NK.

16. Letter Ex. PW20/B has been written by accused Niaz Ali to Raj Mohammad. According to Shri M.L. Sharma (PW 20), it is dated 4-4-1990. This letter also describes the incident of 25th which finds mention in the application (Ex. PMM). It mentions that in the night, Soddo Din, Jai Paul, Tara and Kiran Chauhan climbed the house of the accused persons and started pelting stones. They hurled abuses on which alarm was raised and villagers gathered on which these persons got down and went away. The entire honour had come to an end and that he should inform as to when he was coming or what is to be done and that he should bring Gulzar with him and also the weapon even if the service was to be sacrificed or anything may happen since "Ab Unka Kam Karna Hai". He should be informed soon as to on what date he was coming and that the letter is concluded by the wording "Dil To Aisa Karta Hai Ke Aaj He Bhag Jayon, Par Kya Karyen".

17. Learned Counsel for the accused submitted that these letters have not been proved to have been written by the accused to whom they have been assigned by the prosecution. In support, the expert opinion of Shri N.K. Jain (DW1) has been referred. We do not see any substance in this submission of the reason that Shri M.L. Sharma (PW 20) has clearly pointed out that these communications are in the handwriting of the accused. Looking to the statements of these experts, proving their expert opinion, we prefer to depend on the opinion given by Shri M.L. Sharma (PW 20), Government Examiner on Questioned Documents. It is more satisfactory and satisfying. It is more reasonable and dependable. It is more scientific as compared to the opinion of Shri N.K. Jain (DW1), which is not so thorough and convincing, It is neither reasoned nor satisfactory. There is natural tendency on the part of the expert to support the view of the person whom had called him. It can, therefore, be said that there is sufficient material on the record for coming to the conclusion that the accused were conspiring with each other and the object of conspiracy was not only the family of Jai Paul but also the deceased. The common object of the conspiracy has been established and the accused had an intention to eliminate the deceased. As to motive, we have already noticed that the families were at loggerheads. They had been fighting with each other and their relations were totally inimical, therefore, it is hardly possible to say that there was no motive for the commission of crime by the accused.

18. Next it was contended that evidence as to the actual commission of crime is thoroughly weak and undependable. We do not think so. Although the trial Judge has not placed much reliance on the testimony of Nazar Din (PW-6A), however, we are of the opinion that witnessing of the accused going to the place of occurrence by this witness is a strong factor preceding the incident. It is essential since it is intimately connected with the later part of the facts when the two accused were seen by Sanjiv Kumar (PW 4) near the scene of occurrence. This witness noticed them at about 5 PM on the day of occurrence and the contention

that he noticed them at a place where the path could lead to different places is not of much significance since they were ultimately found near the place of occurrence. They were first noticed near the place of occurrence by Sanjiv Kumar (PW 4). He is son of Ram Singh (PW2). He has been found to be competent witness by the trial court. On the day of occurrence, at about 5/5.30 PM, he was ploughing his fields when he heard a rattling noise in the Khalla and went towards that side whereupon he saw accused Raj Mohammad and Niaz Ali sitting there. They called him by a signal, but he did not go there and instead came back and started ploughing his field. At about 5.40/6 PM, he heard a cry "Hai Mar Deya". His father was also working in the field at that time and ran from his fields toward the place from where he had heard the cry. He was told by his father that he would look into the matter himself and asked him to stay back. This witness has been put to quite a serious cross-examination, however without success. The presence of this witness ploughing his fields is quite natural in agriculturist families and the submission that a boy of this age can hardly plough the land is not convincing, as rightly held by the trial court. He has categorically stated that his father was there in the fields. He has also specifically stated that the three accused persons, present in the court at the time of his statement, were the same persons who were seen by him immediately after hearing the cry "Hai Re Mar Deya" running towards the jungle from a distance of 10/12 steps. Shri Jagdish Vats, learned counsel for the accused, contended that it was not possible for this witness to recognise the running accused from this distance but we see no substance in it. The witness has not been asked any question on this aspect of the case. Such questions should have been asked from Ram Singh (P.W. 2) when he was in the witness box. Even otherwise, they could be recognised because the distance was not too much, more particularly when the accused belong to a village located at a short distance. Further, this witness is not related to the deceased nor to the family of Jai Paul. He had no interest in supporting the case of the prosecution. The names of all the accused were slated to Jai Paul and were later on reported to the police. The contention of Shri Jagdish Vats that Sanjiv Kumar (P.W. 4) noticed only two accused in the Khalla does not improve the case of the accused. It can be that two accused were sitting jointly and other at a distance close by in the khalla.

19. The other crucial evidence against the accused is disclosure statement of Raj Mohammad and Niaz Ali regarding the weapons of offence and their recovery at their instance. It was contended by Shri Jagdish Vats that the recoveries are fake since the accused could not have concealed the weapons of offence at two different places in opposite direction. If we look to the statement of recovery witnesses, the disclosure statements (Ex. PX and Ex. PAA) have been satisfactorily proved by Munshi Ram (P.W. 8) and Shamsheer Singh (P.W. 9). Consequent to these disclosure statements, Gandasi (Ex. P. 1) has been recovered at the instance of Raj Mohammad and Chura (Ex. P. 2) at the instance of Niaz Ali. It was contended that other recovery witnesses have not been examined nor other independent witnesses associated. Reference was made to

Munshi Ram (P.W. 8) and Shamsher Singh (P.W. 9) and it was submitted that both these witnesses had been in the Police Department, therefore, reliance should not be placed on their versions. Moreover, Shamsher Singh (P.W. 9) was the real brother of Ram Singh (P.W. 2). We reject this submission. Simply because these witnesses were working in the Police Department, their testimony is not rendered inconsequential and unsatisfactory. If we look at their statements, no bias against the accused can be inferred from them. Relation with Ram Singh (P.W. 2) may be there, but it is no ground to set aside the statement which is otherwise truthful. Recoveries suffer no fault and the finding of the trial Judge is, therefore, upheld.

20. Let the question whether Raj Mohammad and Niaz Ali had absconded from their Units before the occurrence and then after the occurrence be now examined. Learned Counsel for the accused has admitted that there is no dispute on the question that all the accused were in the village on the day of occurrence. Shri M.S. Sidhu, Commandant, 43 Battalion C.R.P.F., Amritsar, Punjab, states that accused Niaz Ali was sanctioned casual leave from 5-5-90 to 9-5-90 with permission to avail 6-5-90 and 9-5-90 being Sunday and gazetted holiday respectively. He was to join duties on 9-5-90 but he did not join duties till 17-5-1990. SHO, Nahan, had visited Pinjore in order to find out whether accused Niaz Ali was present at the place of his posting or not. Ultimately, accused Niaz Ali had joined his duties on 10-6-90 after overstaying leave by 32 days. He had already deserted the Unit on 26-6-90. In any case, this accused has admitted in his statement also that he was on leave and was in his village on this day. The fact of the matter, as per evidence, therefore, is that this accused was out of his Unit for a pretty long time and was arrested by the police when he had surrendered himself in the Court of Chief Judicial Magistrate, Nahan. He was arrested by the police on 27-7-90 along with accused Gulzar Ali who had also surrendered in the Court along with Niaz Ali.

21. Learned Counsel for the accused wanted to argue that the allegation of absconding against his clients is not correct. We do not attach much importance to it. Despite evidence pointing out their absconding from their respective Units, the presence of the accused in the village stands proved. Similarly, after the incident, they were not found in their Units and in their houses. Obviously, they were absconding and evading their arrest by the police in connection with this case. In case they had nothing to do with the commission of crime, they would have joined their Units. There was no justification for them to surrender in the Court, so on and so forth. Their conduct preceding and succeeding the commission of crime, further reinforces the allegation against them.

22. Lastly, it was contended that the First Information Report is anti-dated. The police did not record the First Information Report on the day of occurrence. It visited the village, ascertained the facts without recording the statements of any of the witnesses and then after ascertaining the possible persons connected with the crime from Jai Paul, recorded the First Information Report. We reject this

contention in view of the explanation offered by Ms. Shyama Dogra, learned Deputy Advocate General, that the allegation is completely erroneous. The First Information Report, according to her, was the result of report lodged by Jai Paul at Police Post, Kala Amb. It is dated 9-5-1990, recorded at 7.15 PM. Telephonic message was conveyed to SHO, who was at Nahan. He reached the spot late. First Informtion Report was registered on the same day and the investigation had commenced. However, the statements could not be recorded since it was dark on account of night. There was no difficulty in ascertaining the identity of the accused. Their names were given by Nazir Din (PW 6A), then by Ram Singh (P.W. 2) and then by Sanjiv Kumar (P.W. 4). These names were conveyed to Jai Paul by Ram Singh (P.W. 2), who went to Police Post, Kala Amb, straightway and lodged the report, which records these names. They find mention in the First Information Report and have been proved by the witnesses during the course of trial of this case.

23. No other point was argued by the learned counsel for the parties.

24. In view of the aforesaid discussion, we are of the considered opinion that the prosecution has successfully established the crime against all the accused beyond all reasonable doubts. The circumstances point out unerringly that deceased Tara Chand was murdered by the accused and none else. The trial court has examined the evidence quite carefully before drawing conclusions against the accused. We up-hold these findings.

25. There is no merit in these appeals and the same are, therefore, dismissed.