
(1988) 05 RAJ CK 0014

In the Rajasthan High Court

Case No : Criminal Murder Ref. No. 4 and Cr. Appeal No. 322 of 1987

State of Rajasthan

APPELLANT

Vs

Mani Ram and Another and vice versa

RESPONDENT

Date of Decision : 23-05-1988

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 302, 307, 34, 354, 450

Citation : (1988) WLN 589

Hon'ble Judges : N.C. Sharma, J;K.S. Iodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Lodha, J.—The learned Additional Sessions Judge No. 1, Hanumangarh has, by his judgment dated 4-9-87, convicted the, accused Mani Ram and Heeraram under Sections 302 and 302/34, IPC, and sentenced them to death. He has also convicted them u/s 307 IPC and sentenced them to 10 year's R.I. with a fine of Rs. 100/- each and in default of payment of fine to one month's further imprisonment. He further convicted them u/s 450 IPC and sentenced them to 10 years' R.I. and a fine of Rs. 100/- each and in default of payment of fine to 1 month's further imprisonment. They have also been convicted u/s 27 of the Arms Act and sentenced to two year's R.I. each. The learned Additional Sessions Judge has submitted the proceedings for confirmation of the sentence of death passed on both these accused. The Murder Reference has been registered as No. 4/87.

2. Both the accused Mani Ram and Heera Ram have also filed an appeal against their convictions and sentences and that appeal has been registered as 322/87.

3. We have heard learned Counsel for the accused appellants as also the learned Public Prosecutor and have gone through the record.

4. The two appellants Mani Ram and Heera Ram are real brothers. They had more brothers Bhani Ram and Surja Ram. All the four are sons of Purna Ram. Purna Ram had 28 bighas of land. Bhani Ram and Surja Ram each had 1 sq. land (i. e, 25 bighas each). Maniram had 17 bighas of land but Heeraram did not have any land. According to the prosecution story, Punaram gave his 28 bighas of land to Heeraram and on account of this Bhaniram and Surjaram got annoyed. Thus the relations of Purnaram, Heeraram and Maniram got strained with Bhaniram and Surjaram and these strained relations gave rise to criminal reports being filed by Purnaram against Bhaniram and Surjaram as also the son of Bhaniram on 21-8-79 and an earlier report by Heeraram against Bhaniram and his son Kashiram on 19-8-79. In both these reports the fact of the strained relations on account of the 28 bighas of land given to Heeraram has been mentioned and it is alleged that on account of that dispute Surjaram and Bhaniram had been criminally assaulting Purnaram and Heera Ram and had caused injuries to them.

5. The prosecution story briefly stated is that on 7-3-86 at about 10,30 A.M., Surjaram and his son Nathuram along with Surjaram's daughter Kamli, Surjaram's wife Smt. Parmeshwari and Nathuram's father-in-law Laduram were sitting in the court-yatd of the house of Surjaram's when the accused Heeraram, Maniram and Krishnalal came there. Heeraram and Maniram had .12 bore guns in their hands and Krishnalal had a pistol. Maniram climbed on the wall of Surjaram's house and Heeraram also climbed over the "Kotha". Krishnalal kept standing near the wall. Accused Maniram called out Surjaram and Nathu Ram and told them that he will kill them and that they had been roaming about free for quite some time. Saying this, Maniram fired his gun but it did not hit any one. Heeraram fired his gun from the kotha hitting Surja Ram on the back. On receiving the gun shot wound, Surjaram fell down. Nathuram ran away from there and went inside the Kotha and closed the doors. On this Heeraram started removing the roof of the Kotha with the help of "kassi". Maniram and Krishnalal came inside the court-yard Laduram, Smt. Parmeshwari and Kamli requested them not to kill any one, whereupon Maniram told them that he will not let him go and he started giving kicks to the door of the kotha in which Nathuram had taken shelter. The door gave way and thereupon Maniram fired at Nathuram on which Nathuram fell down near the threshold of the Kotha. Both Surjaram and Nathuram died at the spot. It is further alleged that Heera Ram and Maniram then declared that they had killed these two persons and would now kill Bhaniram and his sons and then they proceeded towards Bhaniram's "Dhani". Krishnalal also followed them.

6. Laduram thereupon proceeded to Hanumangarh on foot where Bhaniram had also met him. He narrate the incident to Bhahiram, whereupon Bhaniram also informed him that the accused persons had come to his Dhani also and had opened fire at him and his sons, how ever they escaped and shut themselves up in the Kotha. The accused then tried to remove the roof of the Kotha but in the meantime one Dhannaram came there and pacified them whereupon the accused left that place. After getting this information from Bhaniram, both Laduram and

Bhaniram went to the Police Station Hanumangarh Town, where Laduram lodged a verbal report which was taken down vide Ex. D 1. Bhaniram had also put his signatures on it; In this report it was also mentioned that on the day previous to this incident, also, there had been exchange of words between Heeraram, Krishnalal and Mani-Ram with Surjaram and Nathu Ram on account of the dispute about land but Laduram had intervened Therefore, the quarrel came to an end at that time but the accused Maniram Heeraram and Krishnalal had threatened to kill them one day, on getting an opportunity and it was on that account that this incident had taken place.

7. After registering the case, the Police started investigations Shri Mahaveer Prasad S. I, Hanumangarh Town, PW 10, reached the spot and deputed constable to keep a watch over the dead bodies On the next day, i.e. 8-3-1986, he inspected the site at Surjaram's house and prepared site plan Ex. P. 40 as also the site inspection note Ex. P. 40-A. He also prepared the inquest report of Surjaram and Nathuram Ex. P. 41 and Ex. P. 42 respectively. Two separate reports about the condition of the dead bodies of Surja Ram and Nathuram were also prepared vide Ex. P. 43 and Ex. P 44 respectively. He recovered the blood stained and earth from the spot where the dead bodies were lying. He also recovered pellets, wads etc from the spot. He also recovered an empty of 12 bore lying in the court-yard. Then he proceeded to Bhaniram's Dhani and inspected the site. Post mortem examination of the dead bodies was got conducted. Certain other recoveries, eg., a Kassi from Bhaniram's dhani, the clothes of the deceased and the guns from the two accused, Maniram and Heeraram were made vide Ex.P 30 and Ex P29 respectively. On the post-mortem examination of Surjaram and Nathu Ram, Dr. Rajkumar, found the following injuries on the person of Nathuram:

(1) Lacerated wound of Entry 2-1/2" x 1-1/2" passing deep into chest cavity on Rt. side of chest 7-1/2" below the mid clavicular point near sternum, Direction of wound is Rt. to left;

(2) Lacerated wounds of Entry 1/4" x 3/8" x 1/2" , 1/4" x 3/8" x 1/2" and 1/4" x 3/8" x 1/2" near to each other 1/4" above the superior border of wound No. 1;

(3) Lacerated wound of Entry 3/4" x 1/2" x 1/2", 1" lateral to wound No. 1;

--No blackening or scorching but tatooing present around the wounds. Margins of all the wounds are inverted;

--Wounds Nos. 1,2,3 are in area of 4" x 3";

--Shirt is torn in front corresponding to the side of injuries. Blackening present on shirt;

--All the wounds are ante-mortem in nature;

--Multiple pellets removed from both side of chest-cavity. Cork piece (Card-board) removed from the left side of chest cavity.

8. On internal examination he found as under:

(1) Walls Ribs Walls healthy, Fracture of 7th, and Cartilages: 8th, 9th rib on Rt. side and fracture of sternum lower part and 8th and 9th rib on left side fractured; (2) Pleurae: Healthy. Both sides contain blood Cork Piece present in left side of chest cavity; (3) Larynx and Tracheae: Healthy; (4) Right Lung:) Both lungs multiple punctured (5) Left Lung:) wound present; (6) Pericardium: Lacerated on lower half; (7) Heart: Extensively lacerated.

And the cause of death, according to him was shock due to extensive injuries to vital organs i.e. heart and lungs as a result of fire-arm injuries and on the post-mortem examination of Surja Ram, Dr. Raj Kumar found the following injuries on the person of Surja Ram:

(1) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{4}$ " x $\frac{1}{2}$ " on Rt. lateral side of the body 6" above the highest point of iliac crest;

(2) Lacerated wound of Entry $\frac{3}{8}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ " on Rt. posterior part of chest 2- $\frac{3}{4}$ " below the lower angle of scapula;

(3) Lacerated wound of Entry $\frac{3}{8}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " on Rt. side of back at the level of T 12--4- $\frac{1}{2}$ " away from mid line;

(4) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{4}$ " x $\frac{1}{2}$ " Rt. side of back at the level L2, 3" away from mid line;

(5) Lacerated wounds of Entry $\frac{3}{8}$ " x $\frac{1}{4}$ " x $\frac{1}{2}$ " and $\frac{1}{4}$ " x $\frac{1}{8}$ " x $\frac{1}{4}$ " on Rt. gluteal area upper part both wounds are $\frac{1}{4}$ " apart;

(6) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{8}$ " x $\frac{1}{2}$ " Rt gluteal area 1- $\frac{1}{4}$ " medial to wound No. 5;

(7) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{8}$ " x $\frac{1}{4}$ " on Rt. gluteal area upper part $\frac{1}{2}$ " below the wound No. 6;

(8) Lacerated wound of Entry $\frac{3}{8}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " Rt. gluteal area in middle;

(9) Lacerated wound of Entry $\frac{1}{8}$ " x $\frac{1}{8}$ " $\frac{1}{4}$ " Rt. gluteal area upper part 1- $\frac{1}{2}$ " below No 5;

(10) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{8}$ " x $\frac{1}{2}$ " Rt. gluteal area outer part $\frac{3}{4}$ " lateral to wound No 9;

(11) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{8}$ " x $\frac{1}{2}$ " Rt. gluteal area 1- $\frac{3}{4}$ " below the wound No. 9;

(19) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{8}$ " x $\frac{1}{2}$ " Rt. gluteal area upper part 2- $\frac{1}{2}$ " away from midline;

(13) Lacerated wound of Entry $\frac{1}{4}$ " x $\frac{1}{4}$ " x $\frac{1}{2}$ " on left gluteal area 3" away from mid line;

(14) Lacerated wound of Entry 1/4" x 1/4" x 1/4" left gluteal area outer part 5 1/2" away from mid line.

--No blackening, scorching or tatooing present around the wounds;

--Margins of all the above mentioned wounds are iaverted;

--All the wounds are ante mortem in nature;

--X ray of dead body was taken multiple foreign body metallic shadows suggestive of pellets seen;

--One metallic pallet removed from the posterior wall of abdomen. Sealed and handed over the Police;

--All the injuries are due to fire arms.

9. On internal examination he found as under:

Pleurae: Left cavity healthy, Rt. side contains blood; Peritoneum: Lacerated on liver on Rt. side and on kindney Rt. side; Liver: Rt. side of liver is lacerated in area 1" x 3/4" on posterior lower aspect and lacerated 1-1/2" x 1/2" on Rt. inferior aspect; Kidenys: Lt. pale--Rt. is lacerated at middle 1/2" x 1/2" posteriorly.

And the cause of death was shock due to internal haemorrhage due to injury to liver and right kidney as a result of fire-arms injuries.

10. After completing investigations, the Police put up a challan against the two accused Mani Ram and Heeraram for offences under Sections 302, 307, 450 IPC and Section 27 of the Arms Act. Krishna Lal being a child aged less than 16, was put up before the Childern"s Court. The learned Addl. Chief Judicial Magistrate committed the two accused to the court of the learned Addl. Sessions Judge for trial.

11. Charges for offences under Sections 302, 302 read with Section 34, 450 and 307, IPC as also u/s 27 of the Arms Act were framed against the two accused. They pleaded not guilty and thereupon they were tried. The prosecution examined 11 witnesses and produced a number of documents. The accused when examined u/s 313, Cr. PC, denied the prosecution story and alleged that they had falsely been implicated on account of animosity. They, how ever, did not produce any evidence in defence. The learned Addl. Sessions Judge has found them guilty and has sentenced them as aforesaid. Hence the Reference and the Appeal by the accused persons.

12. The learned Addl. Sessions Judge has relied upon the evidence of the two eye witnesses, namely, Kamli PW 5 and Ladu Ram PW 4 and has further found support to their statements from the medical evidence. He has also found that there was motive for the accused on account of the dispute regarding land. He also found that the two accused had also made extra judicial confession before Bhani Ram and Kashi Ram and that the report of the ballistic expert also

supported the prosecution story.

13. For offence u/s 307 IPC he relied upon the evidence of Bhani Ram and Kashi Ram.

14. The learned Counsel for the accused appellants has vehemently urged that both the eye witnesses to the alleged murder of Surja Ram and Nathu Ram are not at all reliable, the medical evidence also contradicts their testimony, the ballistic expert's report is of no help to the prosecution and the evidence regarding the extra judicial confession is a concocted one and the dispute regarding land could not furnish a motive for the accused to kill Surja Ram and Nathu Ram, on the other band, it could be a motive for the prosecution to falsely implicate the accused. He advanced various reasons in support of his contentions. We shall presently deal with them. The learned Public Prosecutor on the other hand, supported the findings of the learned Addl. Sessions Judge. At the close of the arguments, the learned Counsel for the appellants urged that even if the accused are held guilty u/s 302 IPC, the sentence of death awarded to them is not called for and the lesser penalty would meet the ends of justice.

15. We have given our anxious consideration to the contentions raised before us.

16. PW 5 Kamli is the daughter of deceased Surja Ram and real sister of the other deceased Nathu Ram. She is 14 years of age. The two accused Heera Ram and Mani Ram are her real uncles. She has given a graphic description of the incident. She states that when about 9 or 10 in the morning of the day of the occurrence, she, Ladu Ram, her mother Smt. Parmeshwari, her father Surja Ram and his brother Nathu Ram were sitting in the court yard of their house, the accused Heera Ram and Mani Ram and Krishna Lal, who is son of Heera Ram, came there. Heera Ram and Mani Ram had a 12 bore single barrel gun each and Krishna Lal was holding a pistol. As soon as they reached the spot, Mani Ram called out that the enemies had been roaming about for many days but would not be left loose now and saying this he fired the gun but did not hit any one, then Heera Ram, who had climbed the Kotha, fired his gun which hit Surja Ram on the back. Surja Ram fell down. Nathu Ram ran and went into the Kotha and shut the doors She further states that she and the others who were present implored the accused not to kill Nathu Ram as they had already killed Surja Ram but Heera Ram said that they would not leave Nathu Ram. Heera Ram then started removing the roof of the Kotha in which Nathu Ram was there and Mani Ram started giving kicks to the doors of that Kotha. The door was thus broken open on account of the kicks and then Mani Ram fired at Nathu Ram hitting him on the chest. Nathu Ram fell down near the threshold. Krishna Lal tried to fire the pistol but it did not hit any one, then Mani Ram and Heera Ram said that they had killed these two persons and would now kill Bhani Ram and his sons and then they left the place. She also states that the two accused had killed her father and brother on account of the dispute about land.

17. The learned Sessions Judge has relied upon the statement of this witness

and on a careful scrutiny of the evidence we are also inclined to accept her testimony without any hesitation. The learned Counsel for the accused appellants has, how ever, attacked the evidence of this witness on a number of grounds. It will be proper to deal those grounds here. The first ground of attack made by the learned Counsel for the appellants on the statement of Kamli is that she is a child witness aged about 14 and therefore, prudence requires that unless there is material corroboration of her evidence, it should not be relied upon. In this connection he has placed reliance upon *Bharvad Bhikha Valu and Others Vs. The State of Gujarat*, . The decision of their Lordship does support the contention of the learned Counsel to the extent that as a matter of prudence, corroboration of child witness aged about 14 should be looked for. How ever, it does not say that as a matter of law, the statement of such a witness cannot be accepted without corroboration. It is only as a measure of caution and prudence that corroboration of such a witness would be sought. In the present case, the statement of this witness Kamli inspires confidence as her presence at the spot appears to be quite natural. It does not stand to reason that she would falsely implicate her own uncles and would leave the real assailants to go scot free. Further her evidence gets ample corroboration not only from the statement of Laduram PW 4 but also from the medical evidence and, therefore, her evidence cannot be discarded merely on the ground that she is a child witness.

18. The second ground of attack by the learned Counsel for the appellants is that Smt. Parmeshwari, mother of this witness is alleged to be present at the time of this incident but the prosecution has not produced her, therefore a very strong presumption arises against the prosecution that if she had been produced, she would not have supported the story given by Kamli. He, therefore, urges that on that account also, the mere testimony of Kamli should not be relied upon. We are unable to accept this contention. It is true that Smt. Parmeshwari is alleged to be present at the time of this incident and was thus a material witness and we should have expected the prosecution to have produced her but in the circumstances of the case, we do not think that the non-production of this witness should give rise to such an adverse inference against the prosecution that the statement of Kamli which otherwise appears to be natural and convincing should be discarded. It is well established that if there are a number of witnesses who may depose the same facts then it is not always necessary for the prosecution to produce all of them, if the prosecution story is fully unfolded by one or more witnesses who are produced by the prosecution. Multiplicity of the same type of evidence is not necessary. The whole prosecution story has already been unfolded by Kamli and the statement of Smt. Parmeshwari would only have been a repetition of the same story, she is the mother of this witness and normally it cannot be expected that she would have given a statement contrary to that of Kamli and in these circumstances, we are clearly of the opinion that the non-examination of Smt. Parmeshwari cannot detract from the evidence of Kamli.

19. Then it was urged that both Maniram and Heeraram were armed with guns

and had fired them at least thrice. In the circumstances, apart from hitting Surjaram and Nathuram, the guns shots must have caused injuries to other persons present there, namely, Kamli. Laduram and Smt. Parmeshwari but none of them is alleged to have been so hit, and therefore, the statement of Kamli about this incident becomes doubtful. To us, this contention also does not appear to hold any water. The dispute was with Surjaram and the accused, therefore, must have only tried to hit Surjaram and his son Nathuram. They need not have hit the ladies or Laduram who was the father-in-law of Nathuram. The guns were fired at Surjaram and Nathu Ram alone and not at random and, therefore, Kamli, Smt. Parmeshwari or Laduram could not be expected to have received any injuries. The absence of injuries on the persons of Kamli or her mother or that of Laduram cannot be any ground to discard their evidence.

20. It was also contended by the learned Counsel for the appellants that Kamli alleged that when Nathuram had taken shelter in the Kotha, Heera Ram started removing the roof with a Kassi but she does not say that when Heeraram came there, he had a kassi with him and, therefore, this story of removing the roof with a Kassi is a concoction which makes the statement of Kamli doubtful. We are not impressed by this contention as well. In the first place, the fact of Heeraram, trying to remove the roof of the Kotha is not such an act which would have any great bearing on the prosecution story because it is not stated that whole roof had been removed and Heeraram got into the Kotha and, therefore, it should not be expected that Kamli should have unnecessarily introduced this story. The fact that a part of the roof had been removed and a hole had been created finds mention in the site inspection note which does corroborate the statement of Kamli. She, of course, does not state that Heera Ram had the Kassi with him when he came to the spot but that cannot lead to the conclusion that he did not remove the part of the roof by the Kassi as it is possible that he may have got the kassi lying on the roof of the Kotha as it not uncommon that in the houses of the agriculturists, Kassis and axes can be found lying in the court-yard or on the roof. Therefore, on this count also, the evidence of Kamli cannot be discarded.

21. The learned Counsel for the appellants then vehemently urged that Kamli is a highly interested witness being the daughter of Surjaram and sister of Nathuram, both deceased and she had also an axe to grind against the two accused who had dispute about land with the father and brother of this witness. In these circumstances her evidence should not be relied upon. It is well settled that a witness cannot be discarded merely on account of the fact that he or she is closely related to the deceased and all that is required is that the evidence of such a witness should be scrutinised carefully and cautiously. As already stated above, the presence of this witness at the spot is quite natural and it does not stand to reason that she would allow the real culprits who had murdered her father and brother to go scot free and falsely implicate her own uncles. The dispute about land between the accused and the deceased cannot be deemed to be a reason for the daughter of the deceased who was not directly involved in the dispute to falsely implicate the accused who after all are her own uncles It

may also be added that the accused also did not have any enmity towards Kamli or her mother Smt. Parmeshwari otherwise when they had attacked Surjaram and Nathuram they would not have spared Kamli or her mother.

22. It was also urged by the learned Counsel for the appellants that the conduct of Kamli is wholly unnatural in as much as having witnessed such a ghastly incident she does not appear to have raised any hue and cry nor attracted the neighbours and it is not alleged by the prosecution that any of the neighbours had come to the spot. In the circumstances of the case we cannot accept this contention either. In the first place, Kamli being a girl about 14 years of age must have been stunned by the occurrence and, therefore, may not have raised any hue and cry. In the other place, when at least three gun shots were fired, they would have attracted the neighbours and, therefore, they would have come irrespective of the fact whether Kamli raised any hue and cry but it does not appear that any person from neighbours had come to the spot. It will not be out of place to mention here that in Ganganagar District gun fires are so common that hearing reports of guns fire people do not rush to the spot and in the present case the incident is between brothers and therefore, the possibility that the neighbours did not come to the spot even after hearing the reports of the guns fire cannot be ruled out.

23. The contention of the learned Counsel that the medical evidence is contrary to the direct testimony of Kamli, is based on the fact that although the eye-witnesses stated that Heera Ram had fired at Suraj Ram from roof of the Kotha while Surja Ram was in the court-yard. According to Shri Mahaveer Prasad, the distance between the place from where Heera Ram fired and the place where Surja Ram was hit was about 17 ft. and according to Ladu Ram the height of the Kotha was about 10 to 12 ft. In these circumstances the direction of the injury received by Surja Ram should have been from upwards to downwards but according to Dr. Raj Kumar, PW 11. they were not so and he has further stated that if the direction of the injuries had been from upwards to downwards, he would certainly have mentioned this in the postmortem report. Thus, the medical evidence goes contrary to the statement of the eye-witnesses Kamli as well as Ladu Ram and, therefore, this evidence should not be relied upon. In this connection, he has placed reliance upon *Ram Narain Singh Vs. State of Punjab*, , *Kuljeet Singh alias Ranga Vs. Union of India (UOI) and Anr*, , and *State of Rajasthan v. Het Ram and Ors.* 1975 WLN 380. Having carefully examined evidence we are of the opinion that it cannot be said that in this case there is any contradiction between the direct and the medical evidence. Dr. Raj Kumar, of course, says that he has not mentioned in the post-mortem report that the direction of the injuries on the person of Suraj Ram was from upwards to downwards and that if he had found this direction, he would certainly have mentioned so. He further states that in the absence of the specific mention of the direction of the injury in the post-mortem report Ex P 23, the injuries may be of right angle entry but he adds that as the injury gets sealed inside he cannot give definite opinion in this respect. Therefore, it is clear that there is no material on

record to show that the injuries on the person of Surja Ram could not have been caused in the manner alleged by the eye-witnesses. On the other hand, the dispersion of the pellets i.e. the area in which the injuries had been caused by these pellets, would clearly go to show that the fire must have been made while the assailant was at a higher place than the injured. A perusal of the post-mortem report of Surja Ram would go to show that he had received injuries on his back spreading from 3" below the scapula upto his buttock mostly on the right side and it is stated by both Kamli as well as Ladu Ram that Heera Ram had fired from roof of the back of Surja Ram. The area of dispersion, according to doctor, was about 1-1/2 ft to 2 ft., which again goes to show that the fire was from some distance. This also is in conformity with the direct evidence.

24. Lastly it was contended that as a matter of fact Ladu Ram PW 4 was not at all present at the spot and he has been falsely introduced as an eye-witness by Kamli and introduction of false witness by Kamli also detracts from her testimony making it wholly unreliable. In this connection reliance has been placed upon *Bhagwandas Vs. The State of Rajasthan*, and *Ram Jag and Others Vs. The State of U.P.*, . The learned Counsel had further stated reasons why according to him Ladu Ram cannot be accepted as a witness who had seen the incident. We shall deal with those grounds when we come to the statement of Ladu Ram. Here, it would be sufficient to say that according to us, Ladu Ram cannot be said to be a falsely introduced witness and therefore, Kamli's evidence cannot be discarded on the ground that she has been introduced as a false eye-witness. In these circumstances, the authorities relied upon by the learned Counsel for the appellants in this respect cannot be of any avail.

25. Having carefully considered the statement of Kamli we are convinced that she is a witness of truth and can be relied upon un-hesitatingly.

26. We may now come to the statement of Ladu Ram who has been branded as a falsely introduced witness by the learned Counsel for the appellants. In order to show that this witness was not at all present at the time of the incident, the learned Counsel for the appellants urged that he is a resident of village Rampura Matoriya, which is about 35 miles away from the place of the incident. He is the father-in-law of Nathu Ram deceased. It is admitted by him that his daughter i.e. Nathu Ram's wife was not present at the house of the deceased on the day of this incident. In these circumstances his presence at the spot at the time of this incident is not only casual but highly unnatural. According to us, this contention cannot be said to be sound. Being the father-in law of Nathu Ram, his visit to Nathu Ram's house cannot be said to be unnatural or improbable. It is not uncommon that the father in-law may visit his son-in-law even when his daughter is not present at the house of the son-in-law. Therefore, the mere fact that Ladu Ram resides about 35 miles away from the place of occurrence and his daughter was not at the house of Nathu Ram on the day of this incident does not give rise to a conclusion that he could not have been present there.

27. It was then urged by the learned Counsel for the appellants that in the FIR

he had alleged that on the previous day also there had been a quarrel between the brothers and that the accused had threatened to kill Surja Ram on getting an opportunity but in his statement before the court he gives a go-bye to this part of the story and says that there had been no quarrel in his presence before this incident. No doubt, in the statement this witness has stated that no quarrel regarding land had taken place between the brothers in his presence before this incident but he has not been confronted with the part of the FIR Ex D. 1 where in he had stated that there had been a dispute between Surja Ram and Bhani Ram on the one hand and Heera Ram and Mani Ram on the other on the previous day and he had pacified them. Unless the witness was contradicted with this part of the statement in the FIR the said contradiction cannot be availed of by the defence. It may also be stated that the FIR was lodged on 7-3-1986 and the statement of Ladu Ram was recorded on 19-3-1987, after lapse of a year and the possibility that he may have forgotten the earlier incident, cannot be ruled out and in these circumstances his evidence cannot be discarded on this ground.

28 It was also contended by the learned Counsel for the appellants that Ladu Ram has not been able to correctly identify the accused Krishna Lal and this fact also makes his testimony doubtful. According to us, this contention is without substance in as much as it is not disputed that he is father-in-law of Nathu Ram and is quite acquainted with the two accused Mani Ram and Heera Ram So far as Krishna Lal is concerned, he is the minor son of Heera Ram and therefore, may not have come into close contact with this witness and, therefore, he may not have been able to correctly identify him. However, on that account his testimony with regard to the whole incident cannot be discarded.

29. It was also contended that although he states that he had come to the village of the deceased on the day previous to this, PW 5 Kamli states that he had come on the very day of the incident. In our opinion, this contradiction is wholly immaterial. The fact of his coming on the earlier day is mentioned in the FIR also and it is just possible that on that earlier day Kamli may not have met him and, therefore, she may have thought that he had come on that very day.

30. It was then urged by the learned Counsel for the appellants that his conduct is unnatural and abnormal, as having witnessed such an incident he did not raise any hue and cry nor narrated the story to any of the neighbours. He further admits that he did not even go to Bhani Ram's place, although the accused had declared that they would kill Bhani Ram and his sons. He further admits that he put his thumb impression on the memos prepared by the police without caring to know what has been mentioned in them. He also states that he had gone about 25 kms. on foot in order to report the matter to the Police. On a careful scrutiny of the statement of this witness we find that there is nothing abnormal in his conduct. Regarding not having raised any hue and cry or informing the neighbours, we have already discussed the situation while considering the statement of Kamli. Further he was a stranger to the village and, therefore, also, he could not be expected to contact any neighbours. So far as not going to the

place of Bhani Ram is concerned, he could not be expected to have pursued the accused to Bhani Ram's Dhani when the accused were armed with guns and pistol while he was empty handed. So far as his putting thumb impressions on the memos prepared by the Police is concerned, it is a known fact that very few people who sign such memos would ever care to find out the contents of the memos. People generally sign such memos at the instance of the Police. His going on foot to the Police station about 25 kms. away of course, appears to be a little surprising but in the circumstances of the case it cannot be said to be wholly unnatural or improbable. The incident had taken place between the brothers. He was a person who was interested in the deceased and must be scared of the accused. Therefore, he would not have mustered up courage to take a direct route to the Police Station by any public conveyance nor could he have asked any neighbours for conveyance as he was stranger to the place. It is true that some people in the village had jeeps and tractors but he could not have been expected to ask any one of them to lend the same to him as he may not be aware whether those persons having vehicles were interested in the accused or in the deceased. He must, therefore, have stealthily gone to the Police Station to report the matter and this explains his journey on foot for a distance of about 25 kms. The distance of 25 kms. for the villagers is not quite a long distance to cover on foot.

31. Lastly it was urged that he is an interested witness being the father-in-law of the deceased Nathuram and, therefore, should not be relied upon. As already stated above, while, discussing the evidence of Kamli, the evidence should not be discarded as a witness merely on account of his relation ship but his statement has to be considered with caution and care. We have bestowed our careful attention to the statement of this witness and we do not find any reason to discard the evidence of this witness also.

32. The learned Counsel for the accused-appellants urged that the evidence of these two witnesses is further rendered un-reliable on account of the fact that the FIR, in this case was lodged after inordinate delay The incident had taken place at about 10 30 a.m. on 7-3-1986, where as the report was lodged by Laduram at about 5 30 p. m. at Hanumangarh, which is at a distance of about 25 kms. from the place of occurrence thus it has taken about 7 hours. According to us, this delay has clearly been explained by Laduram PW 4, when he states that he had gone on foot to the Police Station and we have already found that his going to the Police Station on foot cannot be regarded to be unnatural in the circumstances of the case.

33. It was urged further by the learned Counsel that the copy of the FIR was sent to the Magistrate at his house on 8-3-1986 and this delay also casts doubt on the prosecution story. How ever, it appears that the FIR was lodged at Hanumangarh Town at 5.30 p.m. on 7-3-1986 and its copy may not have reached the Magistrate by same evening as the cburt of the Magistrate is at Hanumangarh at a distance of about 5-7 kms. Therefore, the copy of the FIR

may have reached him on 8-3-1986. It cannot be said to be belated.

34. The learned Counsel also contended that the medical evidence is contrary to the direct evidence and the report of the ballistic expert does not support the prosecution. So far as the question of contradictions between the direct and medical evidence is concerned, we have already considered the matter while discussing the evidence of Kamli and we do not find any such contradiction which may discredit the direct evidence. Rather the medical evidence supports the direct evidence. However, so far as the ballistic report is concerned, we are of the opinion that it does support the prosecution to some extent though it does not go the whole length. It may be mentioned that the ballistic expert's report Ex. P. 58 shows that both the guns said to have been recovered from the accused Heeraram and Maniram were capable of firing. Of course, it does not give a clear finding whether the guns had recently been fired or not, but although the guns are alleged to have been recovered on 8-3-1986, they were examined by the ballistic expert on 10-12-1986 and, therefore, the ballistic expert may not have been in a position to find out as to when the guns were last fired.

35. The report states that the 12 bore cartridge case C 4, recovered from Maniram at the time of his arrest had been fired from his gun W 1, which also had been recovered from him at that time.

36. Similarly it states that the 11 (eleven) pellets (G), 2 wad piece (H), one wad piece (I) recovered from the spot as also the pellets (K) recovered from the body of the deceased Surjaram and the pellets (L) recovered from the dead body of Nathuram could have come out of the cartridge cases, C 1 to C 4. It may be noted that cartridge case C 1 was recovered from the spot; C 2 and C 3 were recovered from Heeraram at the time of his arrest and C4 was recovered from Maniram at the time of his arrest. This evidence shows that these guns had been used in this incident. The facts of recoveries of these articles and their reaching the ballistic expert in sealed condition have not been disputed before us and, therefore, we do not think it necessary to discuss the evidence in this respect.

37. The learned Addl. Sessions Judge has relied upon the extra judicial confession said to have been made by the two accused before Bhani Ram and his son Kashiram when the accused had reached the dhani of Bhani Ram. It is alleged that both the accused had stated that they had already killed Surjaram and Nathuram and would now kill Bhaniram and his son. However, we do not propose to place any reliance on this part of the evidence in as much as the statement of Bhaniram and Kashi Ram are vague. Both of them have merely stated that both the accused were crying that they had killed Surjaram and Nathuram and would now kill Bhaniram and his sons but it is not clear which of the two accused was uttering what words in this respect. The statement appears to show as if both the accused were crying in a chorus. Further the evidence of these witnesses is not corroborated by any other material circumstances as no pellets or empties were found at the spot near the Dhani of Bhani Ram nor there were any marks on the walls although both Bhaniram and Kashiram have stated

that the accused had opened fire at them. Again Bhaniram's conduct in not going to the house of Surjaram and Nathuram after having heard from the accused that they had killed both Surjaram and Nathuram also appears to be unnatural. He is the real brother of Surjaram and his relations with other two brothers, namely, accused are admittedly strained and, therefore, his bias against the accused, cannot be ruled out.

38. It further appears that there was motive for the accused to have killed Surjaram and Nathuram. As Purnaram had given his 28 Bighas of land to Heeraram, Surjaram and Bhaniram were annoyed with Heeraram and Purnaram. They had been harassing them and had also attacked them earlier as well be shown by the two FIRs. Exs. 61A and 62A filed by Purnaram and Heeraram respectively. Being offended, by these attacks and harassment the accused Heeraram must have thought of killing them. Maniram appears to be supporting Heeraram.

39. Thus although we do not place reliance on the statements of Bhaniram and Kashiram regarding the extra judicial confession said to have been made by the accused, we are satisfied that the evidence of Kamli and Laduram supported by the presence of motive and further by the medical evidence as some extent by the ballistic experts report, establishes beyond doubt that the two accused Heeraram and Maniram had caused injuries with gun shot to Surjaram and Nathuram which resulted into their death and according to Dr. Rajkumar the injuries were sufficient in the ordinary course of nature to cause death. The charges u/s 302, IPC are thus fully brought home to the accused so also the charge u/s 450, IPC as they had entered the house, having armed themselves with the guns with the intention of causing death of Surja Ram and Nathuram.

40. So far as charge u/s 307, IPC is concerned, while discussing the evidence of Bhaniram and Kashirarn, we have indicated that we do not propose to place any reliance on them. No injuries have been caused to them nor is there any material except their bare testimony that the accused or any one of them had opened fire on them. The charges u/s 307 cannot be said to have been made out against any of the accused.

41. So far as the charge u/s 27 of the Arms Act is concerned, the learned Counsel for the appellants has not challenged the same.

42. Now, comes the question of the sentence. The learned Additional Sessions Judge has sentenced both the accused to death. The question for our consideration is whether in the circumstances of the case, the penalty of death would be justified or not. The learned Counsel for the appellants has urged that there was long drawn enmity between the accused and the deceased on account of the land. Despite the fact that Heera Ram had no land of his and, therefore, his father had given 28 Bighas of land to him, Surja Ram and his brother Bhani Ram were annoyed with Heera Ram. Not only this, even Surja Ram's father Purna Ram and Heera Ram had been beaten by Surja Ram and Bhani Ram

whereupon they had to lodge reports against them before the Police. In these circumstances, if the accused being thus harassed by the deceased Surja Ram, one of them fired at Surja Ram and the other at Nathu Ram, they cannot be said to be guilty of a ghastly murder and the case does not call for the extreme penalty of death. He placed reliance on *Bachan Singh Vs. State of Punjab*, and *Machhi Singh and Others Vs. State of Punjab*. On the other hand the learned Public Prosecutor has urged that the two accused have done away with the male members of the family of Surja Ram, i.e. Surja Ram and his only son Nathu Ram. He also pointed out that the grouse regarding land could have been to Surja Ram and Bhani Ram because they did not get any land from their father but Heera Ram and Mani Ram could not have a grouse against them on that account and, therefore, there was no justification for them to have killed Surja Ram and Nathu Ram and in these circumstances, the penalty of death awarded to them is justified.

43. The question of sentence has engaged our very anxious attention. We carefully considered the criteria laid down by their Lordships of the Supreme Court in *Bachhansingh's* case (supra) as also the later authority in *Machhi Singh's* case (supra). Having regard to the balance-sheet of the aggravating and mitigating circumstances in the present case, we are clearly of the opinion that the case does not fall in the category of the rarest of the rare cases when the alternative option is unquestionably foreclosed. In *Bachhansingh's* case (supra) their Lordships of the Supreme Court, after narrating the aggravating circumstances and the mitigating circumstances, which were pointed out by Dr. Chittelay, observed that there are numerous other circumstances in both the lists and they would not attempt to make an exhaustive enumeration one way or the other. Their Lordships observed:

Nonetheless it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and extensive construction by the courts in accord with the sentencing policy writ large in Section 354(3). The Judges should never be blood-thirsty. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us will discharge onerous function with ever more scrupulous care and human concern directed along the high road of legislative policy outlined in Section 354(3), viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of the human life postulates the resistance to taking a life through Law's instrumentality. That ought not to be done save in the rarest of the rare cases when the alternative option is unquestionably foreclosed.

Again in *Machhi Singh's* case (supra), it was observed that in order to apply these guidelines, the following questions may be asked and answered:

34. (a) Is there something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage of the mitigating circumstances, which speak in favour of the offender?

35. If upon taking an over-all global view of all the circumstances in the light of the aforesaid proposition and taking into account the answer to the questions posed here in above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

44. In the present case, no doubt the accused have killed two male members of a family by fire-arms and Nathu Ram had been killed after he had taken shelter in the "Kotha", the fact remains that there had been long-drawn dispute about the land between Heera Ram and his father Purna Ram on the one hand and the deceased Surja Ram and his brother Bhani Ram on the other, which had given rise to litigation. The deceased Surja Ram and Bhani Ram on earlier occasions had attacked Purna Ram and Heera Ram and had caused injuries to them. In Indian villages, the disputes about lands giving rise to criminal assaults leading even to murders are not uncommon. Therefore, it cannot be said that there was something uncommon about the crime in this case, which renders the sentence of imprisonment for life inadequate and calls for death sentence. Further Heera Ram had no land of own and only 28 Bighas of land belonging to his father Purna Ram had been given to him by his father, still Surja Ram and Bhani Ram, who had already one Murabba of land each, were unhappy with Purna Ram and Heera Ram and had been tutoring them which may have infuriated Heera Ram and Mani Ram. This, in our opinion, does constitute a mitigating circumstance. Further although the accused were armed with guns and had fired at Surja Ram and Nathu Ram, they did not touch Surja Ram's wife Parmeshwari, or his daughter Kamli or Ladu Ram, who is alleged to be present at the time of incident. That goes to show that the manner of the offence did not involve extreme brutality or exceptional depravity nor the murders can be said to have been committed in an grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. The learned Sessions Judge has observed that the accused Mani Ram has no issue and accused Heera Ram has two minor sons, one of whom is Krishna, who is already involved in this very case and is before the Children's Court and other is of a very tender age. In these circumstances also, the penalty of death on both the accused persons would not be justified and lesser penalty would meet the ends of justice.

45. The result, therefore, is that the appeal is partly allowed; both the appellants Mani Ram and Heera Ram are acquitted of the charges of Section 307, IPC. Their convictions u/s 302 and read with Section 34 as also Section 450, IPC and Section 27 of the Arms Act are maintained, but the sentence of death awarded to each u/s 302 and 302/34 IPC is set aside and instead they are sentenced to imprisonment for life. Each of them is further sentenced to fine of Rs. 500/- and in default, six months' RI. Their sentences u/s 450, IPC and Section 27, Arms Act are maintained. All the substantive sentences shall run concurrently.

46. The reference is rejected.