
(1973) 07 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 766 of 1971

Tarlok Singh and others	Vs	APPELLANT
The State of Punjab		RESPONDENT

Date of Decision : 30-07-1973

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34

Citation : (1973) 07 P&H CK 0001

Hon'ble Judges : Pritam Singh Patter, J; Muni Lal Verma, J

Bench : Division Bench

Advocate : Dara Singh with Mr. Kirpal Singh, for the Appellant; M.P. Singh Gill, Assistant Advocate-General Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Pritam Singh Patter, J.—This is an appeal filed by Tarlok Singh aged 21 years son of Sham Singh, Kashmira Singh aged 18/19 years son of Ram Singh and Satnam Singh, aged 22 years son of Wadhawa Singh, residents of village Chakwalian Police Station, Valtoha, District Amritsar against the judgment dated 13th July, 1971 of Shri J.S. Chatha, Sessions Judge, Patiala ex-officio Additional Session Judge, Amritsar, whereby he convicted and sentenced them as follows:--

(1) Tarlok Singh u/s 302; I.P.C. Sentenced to life imprisonment u/s 323/34, I.P.C. No separate sentence.

(2) Kashmir Singh u/s 323, IP C. Rigorous imprisonment for six months.

(3) Satnam Singh u/s 323/34, I.P.C. Rigorous imprisonment for six months.

2. The prosecution story is that Tarlok Singh and Kashmira Singh appellants are first cousins while Satnam Singh appellant is their uncle. On 12th January, 1970 which was a Lohri day at about 5.30 P.M. Gurdit Singh P.W. 4, Joginder deceased, Mohinder Singh P.W. 5 and Geja Singh were present in the baithak of Gurdit Singh when all the three appellants, namely, Tarlok Singh, Kashmira Singh and

Satnam Singh came there and started raising changars and they abused Joginder Singh Gurdit Singh, Joginder Singh and others also abused the accused and asked them to go away. Tarlok Singh accused challenged Joginder Singh saying that he should wait for 15/20 minutes and he would be taught a lesson. Thereafter the accused went away. Gurdit Singh and Geja Singh went to the house of Gurdit Singh for meals while Joginder Singh and Mohinder Singh remained in the baithak. The prosecution story is that after about half an hour all the three accused returned and at that time, Satnam Singh had a double barrel gun, Tarlok Singh accused had a single barrel gun and Kashmira Singh accused had a gamins. Satnam Singh accused raised a changar and fired a shot in the air. Gurdit Singh came out of his house and Satnam Singh fired another shot in the air and also abused him. Joginder Singh came out of the baithak and Tarlok Singh accused fired a gun shot, which hit him on his left side and arm and he raised an alarm. He fell down on the ground. Joginder Singh was having a Khes around his body. Mohinder Singh P.W. came out of the baithak and he was given a gandas blow by Kashmira Singh accused on his head by the blunt side and he fell down on the ground. Gurdit Singh raised an alarm and the accused went away. Geja Singh was also present at the time of the occurrence. Both Gurdit Singh and Geja Singh put Joginder Singh on cot. In the meantime, Bahal Singh P.W. 6, brother of Joginder Singh deceased, on receipt of the information about this occurrence, also came, Joginder Singh told Bahal Singh P.W. that Tarlok Singh accused had fired a shot at him. Joginder Singh was thereafter taken on a tonga to Khem Karan but no doctor was available there and he was then taken to Gharyala Primary Health Centre in a truck, where he was medically examined by Dr. Harbans Singh P.W. 1. Dr. Harbans Singh sent ruqa Exhibit P.B./3 to the Police Post, Gharyala, which was received by Dewan Chand P.W. 7, Assistant Sub-Inspector Incharge of the Police Post at 9.30 P.M. and he went to the Primary Health Centre. He made application Exhibit P.H. to the doctor whether Joginder Singh was fit to make a statement and the doctor vide his report Exhibit P.B./2 gave the opinion that Joginder Singh was fit to make a statement. Dewan Chand, Assistant Sub Inspector then recorded the statement Exhibit P. 1 at about 10-40 P.M. on 12th January, 1970 of Joginder Singh. It was read over to him and he put his thumb-impression on it after admitting it to be correct. Dewan Chand sent this statement Exhibit P. 1 to the Police Station. Voltoha for registration of a case and on its basis the first information report Exhibit P.J/A was recorded.

Harbans Lal, Assistant Sub-Inspector P.W. 14 started the investigation of this case on 13th January, 1970. He reached village Chakwalian at about 2 A.M. He searched for the accused but they were absent from the village, in the morning he visited the spot and inspected it. He prepared rough site plan Exhibit P.G./1. He took into possession blood-stained earth from a place underneath a cot lying in front of the baithak of Gurdit Singh in the presence of Narain Singh and Kazara Singh and sealed it into a parcel. Gurdit Singh P.W. produced blood-stained Khes Exhibit P. 1, which was sealed and was taken into possession vide memo Exhibit P.A. The Wan of cot Exhibit P. 3 was blood-stained and it was taken into

possession vide memo Exhibit P.L.

On 13-1-1970, the doctor advised that Joginder Singh should be taken to Amritsar. Bahal Singh and others were taking him to Amritsar while he died on the way. The dead-body was left there and Banal Singh contacted the police. Harbans Lal, Assistant Sub-Inspector P.W. 14 accompanied Bahal Singh to a place near village Madal where the dead-body of Joginder Singh was lying. He prepared the inquest report Exhibit P.E. and sent the dead-body for post-mortem examination through Harbans Singh and Gopal Singh constables. The articles which were recovered by him (the A.S.I.) were deposited by him with the Moharrir Head Constable, Khem Karan on P-1-1970. All the three accused were secured from the Court of Judicial Magistrate at Patti on 19-1-1970. Tarlok Singh accused on interrogation in the presence of Atma Singh and Sohan Singh on 20-1-1970 stated that he had kept a gun in his kup of toori in his village and could get it recovered. His statement Exhibit P.N. was recorded and it was attested by the witnesses and also Tarlok Singh accused. Kashmira Singh accused on interrogation stated that he had kept a gandasi concealed in a sugar-cane field and would get it recovered. His statement Exhibit P.O. was recorded which was attested by the accused and the witnesses. Thereafter, the accused were taken to their village Chakwalian along with the witnesses. Tarlok Singh led the police party to his kup of toori and got the gan Exhibit P. 2 recovered, which was sealed into a parcel vide memo Exhibit P.N./1. Its sketch Exhibit P.F./2 was prepared. Kashmira Singh accused led the police party to his sugarcane field and got the gandasi Exhibit P. 3 recovered, which was sealed into a parcel and was taken into possession. The recovered articles were deposited with seals intact with the Moharrir at Police Post Khem Karan. After the completion of the investigation, the accused were challaned and the Judicial Magistrate committed Tarlok Singh accused to stand his trial in the Court of Session u/s 302, Indian Penal Code and Satnam Singh and Kashmira Singh accused u/s 302/34, Indian Penal Code for the murder of Joginder Singh. Kashmira Singh accused was also challaned u/s 323, Indian Penal Code while Tarlok Singh and Satnam Singh accused were challaned u/s 323/34, Indian Penal Code for causing hurt to Mohinder Singh P.W. Shri J.S. Chatha, Sessions Judge, Patiala as ex-officio Additional Sessions Judge, Amritsar convicted Tarlok Singh u/s 302, Indian Penal Code and sentenced him to imprisonment for life. Tarlok Singh was not awarded any sentence u/s 323/34, Indian Penal Code. Kashmira Singh and Satnam Singh were acquitted of the offence u/s 302/34, Indian Penal Code. Kashmira Singh accused was convicted u/s 323, Indian Penal Code and was sentenced to six months' rigorous imprisonment while Satnam Singh accused was convicted u/s 323/34, Indian Penal Code and was sentenced to six months' rigorous imprisonment. Feeling aggrieved, Tarlok Singh, Satnam Singh and Kashmira Singh have filed Criminal Appeal No. 766 of 1971 stating that the decision of the trial Court is wrong and incorrect and it may be set aside and they may be acquitted. The State of Punjab has filed appeal No. 1154 of 1971 against the acquittal of Satnam Singh and Kashmira Singh u/s 302/34, Indian Penal Code

and it was prayed that they may be convicted u/s 302/34, Indian Penal Code and awarded suitable punishment. Both these appeals will be decided by this judgment.

Dr. Harbans Singh Popli P.W. 1, Incharge Primary Health Centre, Gharyala on 12. 1. 1970 at 9. 30 P.M. examined Joginder Singh injured and found the following injuries on his person :--

(1) A gun shot wound of entry 7 cm x 4 cm x peritoneal cavity deep with perforation of the loop of intestines, measuring about 8 cm. long (Omentum and intestines protruding outside, no probing was done).

(2) Gun shot wound of entry 8 cm. x 5 cm x bone deep, with compound comminuted fracture of the lower part of the left ulna.

In his opinion the injury No. 1 was dangerous, to life and injury No. 2 was grievous. Both these injuries were caused by fire-arm within a duration of six hours. Exhibit P.B. is the copy of his medicolegal report and Exhibit P.B/1 is the diagram showing the seats of the injuries.

3. On 13. 1. 1970 at 10.30 P. M., this doctor examined Mohinder Singh P.W. and found the following injury on his person :--

A contused wound 5 cm x 1 cm x bone deep pointing forwards and inwards on the middle part of the left parietal bone.

The injury was simple in nature caused with blunt weapon within 24 hours' duration. Exhibit P.C. is the carbon copy of his medicolegal report and Exhibit P.C./1 is the diagram showing the seats of the injuries

4. On 13.1.1970, in accordance with the advice of the doctor Primary Health Centre, Gharyala, Joginder Singh was taken to Amritsar. However, he died near village Madal in the area of Police Station, Patti at about 1.20 P.M. The Post-mortem on the dead-body was conducted on 14. 1. 1970 at 9.30 A.M. by Dr. S.S. Khara, Incharge Civil Hospital, Tarn Taran. He found following injuries on the dead-body :--

(1) Stitched wound on the back going to inner surface of left fore-arm lower third 3.6". On dissection the margins were irregular and lacerated. Underlying muscles were badly lacerated and fracture of left ulna detected. Four pellets were removed from the wound. The size of the wound was 3.6"x2".

(2) Stitched wound on the other surface of left side abdomen below the left costal margin size 3" long. On dissection the wound was oval in shape with irregular, lacerated and inverted margins with a size of 3" x 1 3/4" with corresponding out in the Khes, jacket, shirt and bunian. Irregular tear was present in the peritoneum, small intestines with a size of 3" x 2" and large intestines through and through with a size of 3" x 2". The left kidney was badly lacerated. Pieces of card board (Wed) and 16" pellets were found from the peritoneal cavity. Intestine and left cavity.

All the injuries were ante-mortem in nature and caused with firearm weapons. Peritoneum had irregular tear under injury No. 2 and peritoneum cavity had clotted blood about 8 to 10 ounces. In his opinion, death was due to shock and haemorrhage on account of injury No, 2 causing injuries to peritoneum, small and large intestines and left kidney and it was sufficient in the ordinary course of nature to cause the death. The probable duration between injury and death was about 16 hours and between death and postmortem about 22 hours. Exhibit P.D. is the copy of his medico-legal report and Exhibit P.D./1 is the diagram showing the seats of the injuries.

5. In this case, the prosecution has examined two eye-witnesses and they are Gurdit Singh P.W. 4, who is the uncle of the deceased and Mohinder Singh P.W. 5, brother of the deceased. Gurdit Singh P.W, 4 reiterated the aforesaid prosecution story. He testified that on the Lohri day i.e. on 12th January 1970 at about 5.30 P.M., he, Joginder Singh deceased, Mohinder Singh and Geja Singh were present in his baithak when all the three appellants came there and were under the influence of liquor at that time and they raised changars and abused Joginder Singh. This witness and his companions abused the accused and asked them to go away. Tarlok Singh appellant challenged Joginder Singh saying that he should wait for 15/20 minutes and he would be taught a lesson and thereafter the accused left that place. Gurdit Singh Ge a Singh went to the house of Gurdit Singh to take meals while Joginder Singh and Mohinder Singh remained in the baithak. After about half an hour, ail the three appellants came and at that time Satnam Singh had a double barrel gun. Tarlok Singh had a single barrel gun and Kashmira Singh had a gandasi. Salaam Singh accused raised a changar and fired a shot in the air. Gurdit Singh came out of the house and Satnam Singh fired another shot in the air and also abused Gurdit Singh. In the meantime, Joginder Singh came out and then Tarlok Singh fired a shot from his gun, which struck Joginder Singh on his left side and arm. On receipt of the injuries, he fell down on the ground. At that time, Joginder Singh was having a khes around his body. Mohinder Singh came out of the baithak and he was given a gandasi blow by Kashmira Singh accused on his head by the blunt side. Gurdit Singh and others raised alarm and the accused went away.

6. Similar is the statement of Mohinder Singh P.W. 5 who is brother of the deceased. This witness is blind. He testified that when all the three accused came in front of their baithak, they all abused them and he identified them from their voices and their names were also given by Joginder Singh deceased on his enquiry. He further deposed that he heard the report of a gun fire and his brother Joginder Singh shouted "Main Mar Giya" and thereupon he went out of the baithak and Joginder Singh told him that Tarlok Singh accused had fired a gun-shot-which struck him on the left side and arm. Mohinder Singh was also given a blow on his head by Kashmira Singh accused. Mohinder Singh P.W. could not see who had fired gun-shot, which injured Joginder Singh but he has testified that he was told by Joginder Singh his brother that Tarlok Singh had fired a gun-shot, which struck him. Mohinder Singh became blind, when he was 5/6 years of

age. He is aged about 30 years. The accused are residents of his village and he could identify them from their voices. In *Kirpal Singh Vs. State of Uttar Pradesh*, , it was held that where the accused is intimately known to the witness and is familiar with his voice then his identification by voice is good identification. Further, in the instant case, Mohinder Singh has testified that on his enquiry as to who fired the gun-shot which caused injuries to him, Joginder Singh deceased told him that Tarlok Singh accused had fired the gun-shot and caused injuries to him.

7. The occurrence took place in front of the baithak of the house of these witnesses and their presence there at the time on a Lohri day is natural and probable. Mohinder Singh P.W. received injury on his head from the blunt side of the gandasi at the hands of Kashmira Singh accused and he is thus a stamped witness of the prosecution and there cannot be any doubt regarding his presence there at that time. The fact that both these witnesses are related to the deceased is no ground to disbelieve their sworn testimony. It is well settled that a close relative would be the last person to screen the real culprit and to falsely implicate an innocent person and, therefore, relationship of the prosecution witnesses with the deceased is no ground for not acting on their testimony, if it is otherwise credible and it is shown that he was present at the place of occurrence and saw the same. If the witness is the relative and shared the victim's hostility to the accused, then the Court should examine the evidence given by such witness carefully and scrutinize all the infirmities before accepting it as correct vide *Dalip Singh and Others Vs. State of Punjab*, , and *Darya Singh and Others Vs. State of Punjab*, . In the instant case, as mentioned above, the occurrence took place in front of the baithak of the house of these prosecution witnesses and their presence there at that time is probable and natural. The statements of both these witnesses are consistent and are free from any infirmity. They stood the test of cross-examination very well and nothing could be elicited from them to shake their testimony. They had no animus to falsely implicate the accused. In his cross-examination, Mohinder Singh P.W. 5 stated that his brothers Joginder Singh and Balvinder Singh used to sell liquor in the village and that two days prior to this occurrence his brother Balvinder Singh had told him that the price of liquor was due to them from the three accused. This fact did not show that there was enmity between the accused and the deceased.

8. The prosecution also relies on the dying declaration Exhibit P.I. of Joginder Singh deceased. After the occurrence, Joginder Singh was taken on a tonga to Khem Karan but no doctor was available there and then he was taken in a truck to the Primary Health Centre, Gharyala. After examining his injuries, Dr. Harbans Singh P.W. Incharge of the Centre sent ruqa Exhibit P.B./3 to the Police Post, Gharyala and it was received by Shri Dewan Chand, Assistant Sub Inspector P W. 7, who was incharge of that Police Post at 9:30 P.M. and he went to the Hospital. He made application Exhibit P.H. to the doctor to enquire whether Joginder Singh was fit to make a statement and the doctor vide his endorsement Exhibit P.B./2 gave the opinion that Joginder Singh was fit to make the statement. Dewan

Chand, Assistant Sub-Inspector then recorded the statement Exhibit P.I. at about 10-40 P.M. on 12-1-1970 of Joginder Singh. He testified that this statement Exhibit P.I. was read over to Joginder Singh who admitted it to be correct and thumb marked it. He then sent this statement to Police Station, Valtoha and on its basis the first information report Exhibit P.J./A was recorded. This dying declaration fully proves the prosecution story. In this statement all the details of the occurrence, the names of the accused and the weapons possessed by them were clearly mentioned. It was stated in the dying declaration that Satnam Singh accused fired two shots in the air and stated that they (the accused) would teach a lesson to them for hurling abuses. He went out of his baithak and Tariok Singh fired a gun shot at him and the pellets struck on his left side and the left arm and he fell down on the ground. Kashmir Singh accused gave a gandasi blow on the head of his brother Mohinder Singh, who is blind and on the alarm raised by Gurdit Singh and Geja Singh, the accused ran away from the spot with their weapons.

9. In *Rajindra Kumar Vs. The State*, , it was held that the statement of the deceased recorded u/s 161, Criminal Procedure Code is admissible u/s 32(I) of the Evidence Act even though the deceased died much later and was not in immediate apprehension of death when he made the statement.

10. In *Bishan Singh and others v. The State* (1969) 71 PLR 73, it was observed as follows :--

A statement recorded as dying declaration by a Police officer conducting the investigation if recorded after the medical opinion as to the person making the statement being in a fit condition to make it, would be as good as recorded by a judicial Magistrate provided there is nothing to doubt the veracity of the witness recording the statement and the record of the statement being true and correct as made by the maker.

In the instant case, the occurrence took place at about 6 P.M. on 12th January, 1970 and the dying declaration was recorded at 10 40 P.M. the same day and it was recorded after obtaining the opinion from the doctor that Joginder Singh was in a fit condition to make the statement. On the basis of this statement, the criminal case against the accused was registered and Exhibit P.I. is the true and correct record of the statement made by Joginder Singh.

11. In *Harbans Singh and Another Vs. State of Punjab*, , it was held as under :--

It is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. The evidence furnished by the dying declaration must be considered by the Judge, just as the evidence of any witness, though undoubtedly some special considerations, arise in the assessment of dying declarations, which do not arise in the case of assessing the value of a statement made in court by a person claiming to be a witness of the occurrence. In the first place, the Court has to make sure as to what the statement of the dead man actually was. This itself is

often a difficult task specially where the statement had not been put into writing. In the second place, the Court has to be certain about the identity of the persons named in the dying declarations--a difficult which does not arise where a person gives his depositions in court and identifies the person who is present in court as the person whom he has named. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, but from the fact that the Court, in a given case has come to the conclusion that that particular dying declaration was not free from the infirmities as may be disclosed in evidence in the case.

To the same effect was the law laid down in *Khushal Rai v. State of Bombay* AIR 1958 SC 32.

12. In the instant case, the dying declaration is a true and correct record of the statement made by the deceased about (sic) hours after the occurrence and if does not suffer from any infirmity. According to the aforesaid authorities of the Supreme Court, the conviction of the accused can be based on the dying declaration without any corroboration. However, in the instant case, the dying declaration is corroborated by the ocular evidence of Gurdit Singh P.W. 4 and Mohinder Singh P.W. 5 discussed above

13. In their statements made u/s 342, Criminal Procedure Code, all the three accused denied the allegations made against them in the prosecution story. However, they admitted that Tarlok Singh and Kashmira Singh accused are first cousins and Satnam Singh accused is their uncle. Tarlok Singh accused pleaded alibi. He stated that cattle of Dara Singh of village Maujewala strayed into his field on 8th December, 1969 and the cattle were driven out by Avtar Singh. Dara Singh had a quarrel with him and he made an application against him in the village Panchayat Maujewala and on the Lohri day, the Panchayat decided that case and fined Dara Singh Rs. 25/- and out of it Rs. 15/- were given to him as compensation by the Sarpanch.

14. Satnam Singh accused stated that one day prior to the Lohri in the year 1970, he and Kashmira Singh accused passed in front of the house of Joginder Singh where Joginder Singh and Balvinder Singh were present and Joginder Singh demanded money from them saying that the sum was due as price of the liquor from them but they replied that they had cleared the account, Joginder Singh then said that they would force them to pay and there was an exchange of abuses and Joginder Singh threatened them that he would teach them a lesson. On the Lohri day at 4/5 P.M. he and Kashmira Singh were returning to the fields and at that time Bahal Singh P.W. was standing with a gun on the roof of the baithak of Joginder Singh, Joginder Singh with a spear, Balvinder Singh with a gandasi, Mohinder Singh, Daya Singh, Dial Singh, Major Singh and Hazara Singh with lathis were present near the baithak and on seeing them Bahal Singh fired two shots but they escaped and ran away Joginder Singh and the other six persons who were present in the baithak, ran after them and they encircled them near the house of Mazhabis Kashmira Singh gave a blunt gandasi blow on the

head of Mohinder Singh in defence, Balvinder Singh gave a blunt gandasi blow from the blunt side on his right arm (Satnam Singh"s) and at that time he was holding a pistol, which went off and injuries were caused to Joginder Singh whose other companions ran away. At that time, Swaraj Singh, Risal Singh, Charan Singh and Kundan Singh were present. To the same effect was the statement made by Kashmira Singh accused.

15. To prove their defence version, Satnam Singh and Kashmira Singh accused examined three witnesses. Subhash Chander Sibal, Platoon Commandor Home Guard, Jhabal F. Company DW 4 simply stated that Bahal Singh son of (sic) Singh of village Chakwalian had a rifle and he deposited the same in the Home Guards on 13th January, 1970. Rasal Singh D.W. 5 testified that on the day of occurrence he, Swaraj Singh and others were present near the Thathi Mazhbian when they heard reports of two gun-shots and Satnam Singh and Kashmira Singh came running towards that Thathi where they were followed by Joginder Singh. Mohinder Singh, Balwinder Singh, Daya Singh, Dial Singh Major Singh and Hazara Singh and they were all armed and they encircled the accused, Satnam Singh and Kashmira Singh. Kashmira Singh gave a gandasi blow from the blunt side on the head of Mohinder Singh, Balwinder Singh gave a gandasi blow from the blunt side on the head of Satnam Singh and the pistol of Satnam Singh accused went off and the injuries were caused to Joginder Singh, who fell down on the ground and then the accused and the other persons ran away. He and his companions put Joginder Singh on a cot and took it to his house and placed it in front of his house, where his relatives came. Similar is the statement of Swaraj Singh D.W. 6 who is a Mazhbi.

16. Bahal Singh P.W. 6, who was alleged to be armed with a gun at the time of the occurrence is the brother of Joginder Singh deceased. It is unlikely that if he had fired shots at Satnam Singh and Kashmira Singh accused, the same would not have struck any of them. Further, if Joginder Singh, Mohinder Singh and others ran after Satnam Singh and Kashmira Singh accused, Bahal Singh P.W. would have also run after them with his gun and would have fired shots at them. All these facts would go to show that the defence version is wrong. Rasal Singh D.W. 5 is a collateral of the accused in the fourth degree and his pretence there at the time of the occurrence in the Thathi of Mazhbian is highly doubtful. According to the defence version, Joginder Singh and others were armed with spears, gandas and lathis and if those seven persons had encircled Kashmira Singh and Satnam Singh accused, then they would not have allowed them to escape and would have caused them numerous injuries and it is impossible to believe that Satnam Singh accused would have suffered only one injury. Further, Mohinder Singh P.W. is the brother of Joginder Singh deceased and he is blind. According to the defence version, he also ran after these two accused along with Joginder Singh and others upto the Thathi Mazhabi an, which is at a considerable distance from the house of Joginder Singh. A blind man cannot run after the accused in the manner alleged in the defence version and this shows the false nature of the defence version. Swaraj Singh D.W. 6 is a Mazhabi and he was challenged in a

murder case along with one Gurdip Singh, who is stated to be a collateral of the accused. Kashmira Singh did not suffer any injury at the time of the recurrence although he was alleged to have been encircled by seven persons armed with various weapons. For all these reasons, we hold that Rasal Singh D.W. 5 and Swaraj Singh D.W. 6 are got-up witnesses and their statements were rightly rejected as unreliable by the trial Court.

17. Harbans Lal, Assistant Sub-Inspector P.W. 14, Police Post, Khem Karan reached the spot at 2 A.M. on 13th January, 1970. He took into possession blood-stained earth from a place underneath a cot lying in front of the baithak of Joginder Singh deceased. It is in the evidence of the prosecution witnesses that after the injuries were caused to Joginder Singh, he was placed on a cot. The sealed parcel of this blood-stained earth was sent to the Chemical Examiner, Punjab Government, who in his report Exhibit P.T. opined that blood was found on the earth Pieces therefrom were sent to the Serologist, Government of India, who in his report Exhibit P.U. gave the opinion that the earth was stained with human blood. This recovery of the bloodstained earth lends support to the prosecution story regarding the place of occurrence. It was admitted by Swaraj Singh D.W. 6 that some blood had fallen at the alleged place of occurrence in the Thathi Mazhabial but no blood-stained earth was taken in to possession by the police from that place. The witnesses produced by the accused did not state that the blood stained each from that place was shown to the police or not. The fact that the defence story was given to the police during investigation does not go to show that the occurrence took place in the manner alleged by the accused When the police went to the village, the relatives and supporters of the accused in order to destroy the prosecution story might have appeared before the police.

18. It was then contended by the counsel for the accused that the injuries on the person of Satnam Singh accused have not been explained by the prosecution witnesses. The occurrence took place on 12th January, 1970. Satnam Singh accused got his injuries examined on 15th January, 1970 in the evening as a private case from Dr. Kuldeep Singh Bindra P.W. 2. There was a bluish black contusion over back of right hand and whole of the hand was swollen. Besides this, he found an abrasion on the right side of the forehead above the right eye-brow. On X-ray examination, a fracture of second metacarpal bone of right hand was found and injury No. 1 was declared grievous while the other injury was simple in nature. It is not explained why he did not appear before the police and made a report to the police regarding the occurrence He has not explained why he got the injuries examined by a doctor after three days. The counsel for the appellants relied on Mohar Rai and Bharath Rai Vs. The State of Bihar, , in support of his contention. In that ruling, it was held that if the accused sustained injuries during the occurrence and the injuries are not self-inflicted, then the prosecution is bound to explain the same and if the prosecution fails to explain how those injuries were cause a then it is fatal and the prosecution version is not proved. In that case, the accused suffered the injuries during the occurrence and therefore, this point assumed Importance because the accused may take plea of

self-defence. However, in the instant case, it has been held above that Satnam Singh accused did not receive any injury at the time of the occurrence. In *Bankey Lal and Others Vs. State of U.P.*, it was held that if the prosecution witnesses have not deposed truly in all respects, Court should scrutinise their evidence with care. But simply because prosecution did not explain injuries on the person of accused, Court cannot discard the entire prosecution evidence. In this ruling *Mohar Rai's* case was distinguished. In the instant case, Satnam Singh did not receive any injury at the spot at the time of occurrence and thus the question of the prosecution explaining those injuries on his person did not arise.

19. For the reasons given above, it is held that the defence version of Satnam Singh and Kashmira Singh accused is false and was rightly rejected by the Additional Sessions Judge.

20. In order to prove his defence, Tarlok Singh accused examined four witnesses and they are Major Singh D.W. 1, who is the Secretary of the Panchayat of village Maujewala, Teja Singh D.W. 3, Sarpanch of that Panchayat and Avtar Singh D.W. 2, who was alleged to have been produced by the accused as a witness in the Panchayat on 12th January, 1970 in support of his allegations. Jagjit Singh D.W. 7 is a resident of village Maujewala, who was alleged to have written the application Exhibit D.D. made by Tarlok Singh accused against Dara Singh. This witness stated that Tarlok Singh accused is illiterate and at his instance he signed this application Exhibit D.D. However, in his statement made u/s 342, Criminal Procedure Code in the trial Court in answer to Question No. 14, he stated that he got that application written from Jagga Singh and gave it to the Sarpanch at Maujewala. Jagga Singh has not been produced. Jagjit Singh has not signed the application Exhibit D.D. as a scribe. He is an unreliable witness.

21. Major Singh D.W. 1 deposed that this application was received by the Sarpanch on 8th December, 1969 and the case was fixed for 12th December 1969 and on that day statement of Tarlok Singh was recorded and Dara Singh accused was summoned for 27th December, 1969. The statement of Tarlok Singh was recorded on 27th December, 1969 and this case was adjourned to 12th January, 1970 when Tarlok Singh examined Avtar Singh D.W. 2 as a witness. The accused pleaded guilty and was fined and that sum of Rs. 15/- was paid to Tarlok Singh on the next day i.e. 13th January, 1970 at 10 A.M. The Panchayat held its meeting on 12th January, 1970 at 4.30 P.M. and Tarlok Singh remained there upto 6 P.M. Similar is the statement of Teja Singh Sarpanch D.W. 3. This village Maujewala is situated in Tehsil Zira District Ferozepur. According to Baldev Singh, Sub-Inspector P.W. 12 the distance between this village and village Maujewala, District Amritsar is about 40 miles and they are connected by pucca roads. However it is in evidence that the distance between the two villages is very short if they go by crossing the river. This Major Singh D.W. 1 is related to Tarlok Singh accused. The sister of the father of Tarlok Singh accused is married to the brother of Major Singh D.W. 1. The Sarpanch Teja Singh is an illiterate person.

and he could not give any date of hearing and had no knowledge of the records of the Panchayat, which are prepared by Major Singh D.W. 1. The records of the Panchayat did not show that the Panchayat met at 4.30 P.M. on 12th January, 1970. These records could be manufactured by Major Singh D.W. 1 to help his relative Tarlok Singh accused in a murder case. Therefore, the finding of the learned Additional Section Judge that all these records may have been manufactured by Major Singh D.W. 1 to help Tarlok Singh is correct. The plea of alibi of Tarlok Singh accused was rightly rejected by the trial Court.

22. According to the prosecution, at the time of the occurrence, Satnam Singh accused was armed with a double barrel gun. Tarlok Singh accused was armed with a single barrel gun and Kashmira Singh accused was armed with a gandasi. Gurdit Singh P.W. 4 stated that on 12th January, 1970 at about 5.30 P.M. he, Joginder Singh deceased Mohinder Singh and Geja Singh were present in his baithak when all these three accused, who were drunk, come there and started raising Changars and abused Joginder Singh and that they all abused the accused and asked them to go away. Tarlok Singh then challenged Joginder Singh saying that he should wait for 15/20 minutes and they would teach him a lesson and then the accused went away. After a bout half an hour all the three accused armed with the above mentioned weapons came there and Satnam Singh accused raised a changar and fired a shot in the air. Gurdit Singh P.W. 4 testified that he then come out of his house and Satnam Singh accused fired another shot in the air and also abused him. But, strangely enough, he did not fire the shot at him. In the meantime Joginder Singh deceased came out of the house and Tarlok Singh accused fired a shot with his gun at him which struck him on his left side and arm. Mohinder Singh P.W. came out of his house and Kashmira Singh gave a gandasi blow to him from its blunt side on his head but neither on the deceased nor on the witnesses Satnam Singh accused fired any shot. If Satnam Singh had been present at that place, he would have fired shots on the prosecution witnesses and the deceased. His presence there at the time of occurrence seems to be highly doubtful. The tendency to include the innocent with the guilty is peculiarly present in India and it is very difficult for the Courts to guard against this danger. The only real safe guard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence, which in some measures implicates such accused vide Kashmira Singh Vs. State of Madhya Pradesh, No recovery of any weapon was made from Satnam Singh accused. He did not cause any injury to any person. If he was present at the time of the occurrence armed with a double barreled gun, he would have caused injuries with gunshots to the prosecution witnesses and Joginder Singh deceased. The possibility of his false implication along with his nephews in the case cannot be excluded. Therefore, by way of abundant caution we are of the view that the presence of Satnam Singh at the time of occurrence is highly doubtful. Giving him the benefit of doubt, the appeal of Satnam Singh appellant is accepted and his conviction and sentence u/s 323/34, Indian Penal Code are set aside and he is acquitted. The State Appeal No. 1154 of 1971

against him is dismissed.

23. As regards Kashmira Singh accused, his presence at the time of the occurrence with a gandasi in his hand is established beyond any reasonable doubt. He caused injuries from the blunt side of his gandasi on the head of Mohinder Singh P.W. The learned Additional Sessions Judge remarked in para No. 18 of his judgment that if the intention of Kashmira Singh accused was to commit murder, then he would have used his weapon from the sharp side and that this would mean that there was no existence of common intention to commit murder and the charge u/s 302/34, Indian Penal Code was not made out against him. This finding of the Additional Sessions Judge is wrong and cannot be sustained and he wrongly acquitted Kashmira Singh accused of the offence u/s 302/34, Indian Penal Code. The Government has filed an appeal against his acquittal u/s 302/34, Indian Penal Code. In *Laxman Kalu Nikalje Vs. The State of Maharashtra*, it was held as under :--

The powers of the High Court in an appeal against the acquittal are not different from the powers of the same court in hearing an appeal against a conviction. The High Court in dealing with such an appeal can go into all questions of fact and law and reach its own conclusions on evidence provided it pays due regard to the fact that the matter had been before the Court of Session and the Sessions Judge had the chance and opportunity of seeing the witnesses depose to the facts. Further the High Court in reversing the judgment of the Sessions Judge must pay due regard to all the reasons given by the Sessions Judge for disbelieving a particular witness and must attempt to dispel those reasons effectively before taking a contrary view of the matter. It may also be pointed out that an accused starts with a presumption of innocence when he is put up for trial and his acquittal in no sense weakens that presumption, and this presumption must also receive adequate consideration from the High Court.

To the same effect was the law laid down in *Khedu Mohton and Others Vs. State of Bihar*, and *Keshuv Ganga Ram Navge and another v. The State of Maharashtra* AIR 1971 SC 963. These authorities give the High Courts power in dealing with appeals against acquittal.

24. Section 34 Indian Penal Code reads as follows:--

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

To invoke the aid of section 34, Indian Penal Code, it must be shown that the criminal act was done by one of several accused in furtherance of the common intention of all. The common intention within the meaning of section 34, Indian Penal Code implies a pre-arranged plan and it should be proved that the act was done in pursuance of the prearranged plan. It is no doubt difficult if not impossible to procure direct evidence to prove the intention of an individual. It has to be inferred from his act or conduct or other relevant circumstances of the

case. Care must be taken not to confuse the same or similar intention with common intention. The inference of common intention within the meaning of section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case, vide AIR 1945 118 (Privy Council) . Barendra Kumar Ghosh v. King Emperor AIR 1923 PC 1 , Bashir Vs. State, , and State Vs. Saidu Khan and Another, .

25. In Nazir and others v. Emperor, AIR 1944 All 229 the facts were--

Where the common intention of the accused persons was to abduct a woman and to give such a beating to her husband with tubal and lathi as to disable him from successfully obstructing the intended abduction and the beating resulted in the death of the husband :

Held that the use of tabal and lathis as weapons of attack should impute the knowledge of the likelihood of the causing of injuries which may be simple, grievous or such as be sufficient in the ordinary course of nature to cause death. As the common intention of the accused extended to give a good beating to the husband without any clear conception of the precise nature of the injuries which would be caused, ail the accused persons were liable for the offence u/s 302 in view of the provisions of section 34 and it was not necessary that the common intention must have been to cause death or such other intention as is mentioned in section 300.

It was further held as under :--

It is not necessary far the liability of the persons joining in the commission of a criminal act that they must have the common in-tension about the exact result which was to follow from the act or about the offence which would be made out on account of the actual physical act and its result. Thus the others would be liable for such acts of the other confederates as were likely to be committed in the carrying out of the common intention and which would have been normally foreseen and even contemplated by those persons. Only such acts are not to be deemed to be the acts done in furtherance of the common intention as could not have taken place ordinarily in the carrying out of the common intention. Such acts would be mostly unpremeditated ones by some of the parsons joining in criminal act and for such an unpremeditated act of one person the others would not be liable.

The criminal act is not equivalent to an offence which is composed of physical act, its effect and the intention or knowledge with which the physical act was perfumed. It is the result of a criminal act which is a criminal offence. Section 34 refers to the physical act only.

26. In Rishideo Pande Vs. State of Uttar Pradesh, it was held that even where the accused convicted u/s 302/34, Indian Penal Code did not inflict any blow on the deceased, yet if it is found that he shared the common intention to kill him and actually participated in the criminal act by being present on the spot armed with

a Lathi, than in the eye of the law, he is as much guilty of the whole criminal act as is his co-accused, who actually dealt the fatal blow on the sleeping man.

27. The legal position, therefore, is that to invoke the aid of section 34, Indian Penal Code, it must be shown that the criminal act was done by any of the several accused in furtherance of the common intention of all. The common intention implies a pre-arranged plan and it should be proved that the criminal act was done in pursuance of that pre arranged plan. It is no doubt difficult to procure direct evidence to prove that intention of an individual, it has to be inferred from his act or conduct or other relevant circumstances of the case. Section 34, Indian Penal Code, makes it quite clear that the liability of all the accused extends to the result flowing from the criminal act actually done in furtherance of their common intention. The criminal act is not equivalent to an offence, which is composed of physical act, its effect and the intention or knowledge with which the physical act was performed. It is the result of the criminal act, which is a criminal offence. Section 34 refers to the physical act only. Therefore, if the common intention of the accused was to cause simple or grievous hurt and the simple or grievous hurt caused by them resulted in death, they will be liable for causing death.

28. The law laid down in these authorities is fully applicable to the present case. In the Instant case, the accused first came in front of the house of Joginder Singh deceased and raised changars, whereupon Joginder Singh deceased, Gurdit Singh P.W. 4 and others abused them and asked them to go away. Tarlok Singh accused challenged Joginder Singh saying that he should wait for 15/20 minutes and he would be taught a lesson. After about half an hour Tarlok Singh accused appeared with a single barrel gun and Kashmira Singh accused armed with a gandasi came in front of the house of Joginder Singh and he fired a gunshot at him, which struck Joginder Singh as a result of which he died. On hearing the gun report, his brother Mohinder Singh P.W. came out and Kashmira Singh accused gave a gandasi blow from the blunt side on his head. All these facts and circumstances would go to show that the common intention of these two accused was to cause injuries to Joginder Singh and others with their weapons i.e. the gun and the gandasi. Every person is pressured to know the probable and natural consequences of his act. The murder of Joginder Singh was committed by Tarlok Singh accused in furtherance of the common intention of Tarlok Singh and Kashmira Singh and, therefore, the latter i.e. Kashmira Singh accused is liable for the murder and he is guilty of offence u/s "02/34, Indian Penal Code. Therefore, we hold that the decision of the trial Court that he was not guilty of offence u/s 302/34, Indian Penal Code is wrong and is set aside.

29. As a result, the appeal No. 1154 of 1971 by the State of Punjab against Kashmira Singh accused is accepted and his acquittal u/s 302/34, Indian Penal Code is set aside and he is convicted of that offence and is sentenced to imprisonment for life. He is on bail. He shall surrender to bail to undergo the term of imprisonment. The conviction of Tarlok Singh u/s 302, Indian Penal Code

is well based and the sentence awarded to him is not excessive. The conviction and sentence of Tarlok Singh accused are confirmed. The Criminal Appeal No. 766 of 1971 filed by Tarlok Singh and Kashmiri Singh appellants is dismissed.