

(2006) 07 P&H CK 0256

In the Punjab And Haryana At Chandigarh

Case No : Murder Reference No. 6 of 2000 and Criminal Appeal No. 515-DB of 2000 Criminal Appeal No. 515-DB of 2000

The State of Punjab

APPELLANT

Vs

Bachittar Singh and others
 Bachittar Singh and others
Vs State of Punjab

RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2006) 07 P&H CK 0256

Hon'ble Judges : H.S. Bedi, J;A.S. Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Harjit Singh Bedi, J.—The facts given by accused Bachittar Singh (the first informant) are as under :

Accused Bachittar Singh son of Shangara Singh, a resident of village Dholewala, was one of three brothers, the others being Sukhwant Singh and Bhupinder Singh, both elder to him. Sukhwant Singh and Bhupinder Singh were residing in the family Haveli whereas Bachittar Singh was residing in a separate house, though in the same village. At about 3.00 A.M. on the night intervening 18/19.4.1994, Bachittar Singh returned home after irrigating his field when his wife, Rajbir Kaur, told him that she had heard the sound of gun fire in the village. Bachittar Singh, however, ignored the information. At about 6.00 A.M., Pipal Singh, Bachittar Singh's cousin, came to Bachittar Singh and told him that at about 1.00 A.M., two unknown persons had murdered Sukhwant Singh and Bhupinder Singh and their families. On receiving this information, Bachittar Singh along with Pipal Singh went to the Haveli and found the dead bodies of Sukhwant Singh, his wife Piar Kaur, and their children Gurjit Kaur (12 years), Gogi (9 years), and Bhupinder Singh, his wife Joginder Kaur and their children Harjinder Singh (6 years) and Devinder (13 years) lying there. Leaving Pipal Singh at the

place to guard the dead bodies, Bachittar Singh rushed to Police Station, Dharamkot, five miles away, and lodged the F.I.R. with P.W-10 SI Surinder Pal giving the above facts. SI Surinder Pal then reached the place of incident and as he was making inquiries, P.W-3 Joginder Singh son of Ajaib Singh, a resident of village Mastewala, reached the place and made his statement, which was recorded u/s 161 of the Code of Criminal Procedure, in which he stated that his sister, Piar Kaur, (deceased) had been married to Sukhwant Singh (deceased) about 15 years earlier but as Sukhwant Singh was a drug addict and physically incapacitated on that account, he had given his land on lease to Bachittar Singh accused but as the latter was not paying the lease money regularly, Sukhwant Singh and his family were in dire financial straits and had decided to give the land on lease to Bhupinder Singh (deceased) and when this proposal had come to Bachittar Singh's notice, he had threatened to kill his brothers and their families. He further stated that about a week earlier, Piar Kaur had come to village Mastewala and told him that the land was not to be given to Bachittar Singh any further on which Joginder Singh along with his father, Ajaib Singh, and several other persons had gone to village Dholewala and had advised Bachittar Singh to vacate the land but Malook Singh accused had, on the contrary, advised Sukhwant Singh to leave the land with Bachittar Singh, which advice was, however, not acceptable to them and that he alongwith Ajaib Singh had thereafter returned to village Mastewala. He further stated that after consulting other relatives, he had returned to village Dholewala on April 18, 1994 and had stayed on with his sister, Piar Kaur, and had slept in a Kotha on the first floor and at about 1.00 A.M. on April 19, 1994, he had heard the sound of gun-shots from the side of the Deory nad on looking down had observed that Bachittar Singh, empty handed, Malook Singh, Sarpanch, armed with a 12 bore DBBL gun and Amarjit Singh armed with a rifle, had entered the Deory and whereas Amarjit Singh accused had gone towards the room occupied by Bhupinder Singh, Malook Singh had gone towards Sukhwant Singh's room and fired several gun shots into them and seeing this he (Joginder Singh), who was unarmed had jumped from the roof and left post-haste for village Mastewala and after disclosing the incident to his family members, he along with several others had returned to village Dholewala and met the police party. During the course of the investigation, P.W-22 ASI Surinder Mohan also lifted one piece of cloth, a Thatha, a turban, several empty cartridges etc. from the place of incident. The accused were arrested on April, 24, 1994 and on their disclosure statements, several items relevant to the prosecution story were recovered. On the completion of the investigation, the accused were charged offences punishable under Sections 460/302/34 of the Indian Penal Code and Bachittar Singh u/s 30 of the Arms Act as well and as they pleaded not guilty, were brought to trial.

2. To prove its case, the prosecution examined inter alia, P.W-1 Dr. Charanjit Singh, who had conducted the post-mortem examination on the dead bodies of Gutjit Kaur, daughter of Sukhwant Singh deceased, and had found four gun shot injuries thereon (two of entry and two of exit), Gogi, Sukhwant Singh's second

daughter with two gun shot injuries thereon, Piar Kaur, his wife with three gun shot injuries (two of entry and one of exit) and Sukhwant Singh himself with two gun shot injuries (one of entry and the other of exit); P.W-2 Dr. Rachpal Singh, who had conducted the post-mortem examination on the dead bodies of Bhupinder Singh and observed two gun shot injuries (one of entry and the other of exit), his son, Harjinder Singh, with two gun shot injuries (one of entry and the other of exit); another son, Devinder Singh, with two gun shot injuries (one of entry and the other of exit), and his wife, Joginder Kaur, with three gun shot injuries (two of entry and the other of exit); P.W.4 Dr. Gian Singh, who had at 8.15 A.M. on April 25, 1994, medico- legally examined Malook Singh accused and had found one simple abrasion on his person; P.W-3 Joginder Singh, the solitary eye-witness; P.W-5 Piara Singh, a relative of Joginder Singh (P.W-3), who was a witness to the recovery of a DBBL gun and three cartridge cases at the instance of Bachittar Singh, one shoe at the instance of Amarjit Singh and a pair of shoes, and some clothes at the instance of Malook Singh; P.W-8 Ajaib Singh, Joginder Singh's father, who stated to the motive for the offence, which had led to the murders; P.W-10 SI Surinder Pal, the main Investigating Officer, who had recorded the F.I.R. and also the statement of Joginder Singh (P.W-3) u/s 161 Cr.P.C., bringing out a different version vis-a-vis the one given by Bachittar Singh in the F.I.R. and had also recovered two cartridge cases from near the dead body of Piar Kaur, a turban (Exh. P-11) from outside the room of Sukhwant Singh, a piece of green cloth (Exh. P-12) entangled in the nail outside Sukhwant Singh's room, a Thatha (Exh. P-15) from inside the room, some hair entangled in the wooden plank of the door, one empty of a 12 bore DBBL gun from near the said room and had also lifted blood stained earth from the place of incident; P.W-11 A.S. Katari, JMIC, Batala, under whose orders the sample of the hair of Malook Singh had been taken; P.W-16 Surinder Singh, SP, who had also associated with the investigation of the case; P.W-20 Jagtar Singh son of Ajaib Singh, who proved the will (Exh. P48) allegedly executed by Sukhwant Singh and Bhupinder Singh deceased jointly on February 10, 1993 in which they had recited that as they feared danger to their lives at the hands of Bachittar Singh, they were leaving their properties to the State Government; P.W-21 Tarsem Singh, Arms Clerk, who proved the licence (Exh. P-37) issued in favour of Bachittar Singh accused for the DBBL gun; P.W-22 ASI Surinder Mohan, who had picked up four spent cases of 303 bore rifle, lying near the dead body of Bhupinder Singh and a shoe (Exh. P-1) from near the dead bodies of Bhupinder Singh and his wife, Joginder Kaur, and further stated that Bachittar Singh had produced a 303 rifle along with 48 cartridges before him on April 19, 1994, which had been taken into possession; P.W-23 Inspector Balkar Singh, who brought the record to show that the 303 rifle had been issued to Bachittar Singh for his security as he was apprehending danger at the hands of terrorists; and P.W-24 Jagjit Singh, Sub Station Operator of the Electricity Board, Dharamkot, who stated that the electricity supply in Dholewala had remained continuous from April 18, 1994 to April 20, 1994 upto 5.00 P.M. The reports of the Forensic Science Laboratory (Exhs. PNNN, Pooo, PQQQ and PRRR) as also the report of the Chemical

Examiner (Exh. PSSS) were tendered into evidence.

3. The prosecution case was then put to the accused and their statements recorded u/s 313 of the Code of Criminal Procedure. Accused Bachittar Singh stated that he was innocent and had been residing separately, some distance away, from his deceased brothers. He further stated that at about 6.00 A.M. on April 19, 1994, Pipal Singh, who was also living in a part of the Haveli occupied by Sukhwant Singh and Bhupinder Singh, had come to him and had told him that two unknown persons had killed them and their families, on which he had gone to Police Station and lodged the F.I.R. Accused Malook Singh and Amarjit Singh denied the allegations and pleaded innocence.

4. The trial Court held that Joginder Singh's evidence was liable to be believed as he had often been visiting his sister in connection with the dispute with Bachittar Singh. The Court also held that the fact that Joginder Singh had slept on the roof of the house was natural as the incident had happened in the month of April and it was relatively warm at that time. It was further observed that though it was the admitted case that Joginder Singh's Bua stood married to Piara Singh (P.W-5), a resident of village Dholewala, and in normal circumstances, he would have rushed to her house for help but he had admittedly not done so but his presence at the spot could nevertheless be not ruled out on this score as his effort would have been to run far and away to avoid a similar fate. It was further held that though there were apparently two routes to village Mastewala from village Dholewala, one passing close by Police Station, Dharamkot and the other to Police Post, Kot Ise Khan but Joginder Singh's conduct in not stopping at either of the two places was, in the circumstances, not unnatural as his first anxiety would have been to inform his family members as to what had happened. The Court also observed that Joginder Singh had been in a position to identify the three accused as Bachittar Singh was Sukhwant Singh and Bhupinder Singh's brother whereas Malook Singh was the Sarpanch of village Dholewala and had also interceded in the land dispute on behalf of Bachittar Singh, and Amarjit Singh was not only a relative of Malook Singh but he also knew him as he had been running a Dhaba in Baghapurana. It was also found that a Thatha of black colour had been recovered on April 19, 1994 vide recovery memo (Exh. PMM) after the arrest of Bachittar Singh and another Thatha at the instance of Amartjit Singh whereas a turban had also been taken into possession from Bachittar Singh and as per the report (Exh. PNNN) of the Laboratory, they were similar to the material of the turban and it appeared that they had been torn out from two ends of the turban. The Court also observed that one empty of 12 bore gun recovered from the spot on April 19, 1994 and the three empties, three live cartridges and a DBBL gun recovered from Bachittar Singh accused, had been sent to the Forensic Science Laboratory, which vide its report (Exh. PVVV) had opined that the two of the cartridges had been fired from the left and two from the right barrel of the gun, which admittedly was the licensed weapon of Bachittar Singh accused. It was likewise found that the two spent cartridges of a.303 bore rifle recovered from the spot on April 19, 1994

and sent to the Laboratory, had been found (vide its report Exh. PRRR) to have been fired from the rifle given to Bachittar Singh accused by the police for his self-defence. It was held that a Jutti recovered from the scene of crime was found to have matched with the second Jutti recovered from Amarjit Singh accused by the Laboratory vide its report (Exh. PQQQ). The trial Court accordingly convicted and sentenced the accused as under :

All accused

Under Section, 460 IPC

to undergo rigorous, imprisonment for, seven years and to pay a fine of Rs. 10000/- each and in default thereof, to undergo further rigorous, imprisonment for one year

Accused Malook Singh

Under Section 302 IPC.

death penalty for causing, murders of Sukhwant Singh, Piar Singh, GurjitKaur and Gogi.

Accused Bachittar Singh and Amarjit

Under Section, 302/34 IPC

death penalty.

Accused Amadit Singh

Under Section 302 IPC

death penalty for, causing murders of Bhupinder Singh, Harjinder Singh, Devinder and JoginderKaur.

Accused Bachittar Singh and Malook Singh

Under Section 302/34 IPC

death penalty.

Accused Bachittar Singh

Under Section 30 of the Arms Act

to undergo rigorous imprisonment for six months.

All the substantive sentences were, however, ordered to run concurrently. Murder Reference No. 6 of 2000 has been forwarded to this Court u/s 366 of the Code of Criminal Procedure whereas Criminal Appeal No. 515-DB of 2000 has been filed by the accused. Both these matters are being disposed of by this judgment.

It will be noticed from the resume given above that certain broad facts are admitted by both sides. Bachittar Singh accused was the brother of Sukhwant

Singh and Bhupinder Singh deceased. Sukhwant Singh's wife was Piar Kaur and the couple had two children, namely, Gurjit Kaur aged 12 years, and Gugi aged 9 years. Bhupinder Singh's wife was Joginder Kaur and the couple had two children, namely, Davinder Singh aged 13 years and Harjinder Singh aged 6 years (all eight deceased). It is also the admitted position that Joginder Singh (P.W-3) was Piar Kaur's brother, and Ajaib Singh (P.W-10) her father. It is also the conceded position that the DBBL gun (Exh. P-1), allegedly used by Malook Singh, was the licensed weapon of Bachittar Singh whereas the 303 rifle, allegedly used by Amarjit Singh had been issued by the police to Bachittar Singh for his self-defence.

5. Basing himself on the facts as brought out by the prosecution, Mr. R.S. Cheema, the learned counsel appearing for the accused has, first and foremost, argued that the recoveries allegedly made from the place of incident or at the behest of the accused could not be believed and that they were the result of apparent padding in order to create evidence in a case which would undoubtedly have caused deep consternation and concern in the area. It has conversely been submitted that multiple murders had been committed in two residential rooms of the Haveli but as no pellets or spent bullets had been recovered from inside the rooms, it appeared that the material evidence, which could have conclusively established the connection of the accused Singh and Amarjit with the crime, had been withheld. It has also been argued that the killings had been executed in a highly professional manner and by individuals, who knew their business, as eleven shots had led to eight deaths and that the number and description of the injuries clearly suggested that automatic and semi automatic guns had been used and not a bolt action. 303 rifle or a shot gun. It has also been highlighted that there was absolutely no motive with the accused, particularly with Amarjit Singh and Malook Singh to involve themselves in a series of murders as there was no apparent connection between them and Bachittar Singh. The identification of Amarjit Singh had additionally been challenged by arguing that as he was a resident of village Chhuchhak Wind, he was not known to Joginder Singh (P.W-3). It has finally been argued that the presence of Joginder Singh aforesaid, the sole eye-witness, after seeing the murders was wholly unnatural and the circumstances which had allegedly brought him to village Dholewala on the crucial day, had not been proved on record.

6. As against this, Mr. S.S. Randhawa, DAG, appearing for the State, both in the appeal as also in the murder reference, has argued that the presence of Joginder Singh (P.W-3) was absolutely natural as he had come to village Dholewala to settle the dispute between Bachittar Singh and Sukhwant Singh, which had been simmering for quite some time and had erupted into unpleasantness several times on earlier occasions. It was also urged that there was absolutely no doubt with regard to the identity of accused Amarjit Singh and Malook Singh as well, as Malook Singh was the Sarpanch of village Dholewala and was apparently a party man of Bachittar Singh whereas Amarjit Singh was known to Joginder Singh (P.W-3) as he was running a hotel in Baghapurana, a place not too distant.

7. We have examined Mr. Cheema's arguments in seriatim.

We have absolutely no doubt that the recoveries made from the accused and from the spot clearly involve the accused in the murders despite the minor discrepancies pointed out by Mr. Cheema. It is true that one empty of a DBBL gun picked up from near the dead body of Sukhwant Singh was not mentioned in his inquest report (Exh. PM) but to our mind, no adverse inference can be drawn on this account. Bachittar Singh had made a disclosure statement on April 27, 1994 and on its basis his licensed DBBL gun and three empties (Exhs. P-3 to P-5) had been recovered. The empties along with the 112 bore gun had reached the Laboratory together first on April 27, 1994 and had been returned to the police station and again received in the Laboratory on May 2, 1994. The Laboratory in its report (Exh. PVVV) opined that two of the cartridges had been fired from the left and the other two from the right barrel of the 12 bore DBBL gun in question. Admittedly, this weapon was the licensed weapon of Bachittar Singh but said to have been used by Malook Singh. It is also the admitted position that the 303 rifle had been given to Bachittar Singh by the police for his self-defence as per the evidence of Inspector Balkar Singh (P.W-23) and this rifle had been handed over by Bachittar Singh to ASI Surinder Mohan on April 19, 1994, i.e., on the day of the murders. We also observe that four empties of 303 rifle recovered from near the dead body of Bhupinder Singh had been duly noted in Column No. 23 of the inquest report (Exh. PN/5) and two other empties recovered by SI Surinder Pal (P.W-10) from near the dead body of Piar Kaur too had been entered in her inquest report (Exh. PJ). As per the report of the Laboratory (Exh. PRRR), these six cartridges had been fired from the 303 rifle, the weapon, allegedly used by Amarjit Singh.

8. Mr. Cheema has also argued that a bare look at the inquest reports (Exhs. PJ and PN/5) of Piar Kaur and Bhupinder Singh would show that serious interpolations had been made in Column No. 23 and the factum of recovery of the empties incorporated at a later stage.

9. We have perused the original documents on the file very carefully and find that no such categoric opinion can be given in the case of Piar Kaur, there is absolutely no doubt that no interpolation has been made.

10. There are certain other recoveries which, to our mind, are particularly relevant. A piece of cloth stuck to a nail had been recovered from the place of incident at the time of site inspection by SI Surinder Pal (P.W-10). A Kurta taken from Malook Singh had also been sent to the Laboratory for its comparison with the aforesaid piece of cloth. Vide report (Exh. PNNN), the Laboratory opined that the piece of cloth was a part of the Kurta. It is true that ASI Surinder Mohan did say that the piece of cloth recovered from the nail was green in colour whereas in the recovery memo (Exh. PKK), it had been given as cream but this appears to be an over-sight on the part of the ASI as he was the officer, who had recovered the said piece of cloth as well. It is further to be noted that the incident had happened on April 19, 1994 whereas his evidence had been partly recorded in

1996 and thereafter in the year 1999. These minor discrepancies are bound to occur in the evidence in this situation. Likewise, a similar objection had been raised by Mr. Cheema with regard to the Thatha (Ex. PAA/6), a piece of cloth, recovered at the instance of Amarjit Singh accused. In this recovery memo, a black Thatha is stated to have been recovered whereas in his evidence in Court, SI Surinder Pal (P.W-10) stated that the piece of cloth recovered was white in colour. The answer to this objection raised by Mr. Cheema has already been given just above. It is, however, significant that the piece of cloth/Thatha recovered from Amarjit Singh was found by the Laboratory in its report (Exh. PNNN) to be part of and torn out from the turban recovered from Bachittar Singh. Likewise a Gurgabi recovered at the instance of Malook Singh was found to be stained with human blood.

11. Mr. Cheema has laid great emphasis on the fact that the entire incident had happened in the rooms of the Haveli and as no pellets, wads or spent bullets had been shown in the record as having been recovered from the rooms, material evidence, which was available to the prosecution, had been withheld. In this connection, he has urged that as the killings had been executed in a very professional manner and eight deaths had been caused by 11 shots, it appeared that some automatic or semi-automatic weapon had been used.

12. We have considered Mr. Cheema's this argument as well and find that it lacks merit. It is true that virtually the entire incident had happened in the two rooms belonging to Sukhwant Singh and Bhupinder Singh and atleast 11 shots had been fired, leading to 8 murders. It further appearing that the killings had been planned and executed with deliberations as the assailants had singled out the most vital parts of the bodies of the victims and that this had been facilitated as they had been fast asleep. We do appreciate that it would have been proper to have made special efforts to pick up the spent bullets etc. which may have been embedded in the floor or in the walls as most of them had clearly pierced through the bodies. The matching of the bullets with the rifle in question would have been a strong piece of evidence with regard to the use of the weapon in question. The recovery of pellets or wads from a shot gun shell would, however, not have advanced the case any further on this aspect as it is still not possible to match a pellet or a wad with a smooth bore shotgun such as the weapon allegedly used by Malook Singh. It bears repetition that the empties of the 12 bore DBBL gun and of the 303 rifle picked up from the spot had been found by the Laboratory to match the two murder weapons, which clearly reveal that these were the weapons that had been used. We also find that there is absolutely no material to suggest that an automatic or a semi- automatic weapon had been used. Mr. Cheema's argument obviously flows from the evidence of Inspector Balkar Singh (P.W- 23) that village Dholewala was a sensitive village due to terrorism and also from the number of shots allegedly fired from the 303 rifle. We are of the opinion, however, that if at all this was so, it was Bachittar Singh accused who was apprehending danger at the hands of terrorists and on this account had been issued a rifle for his self- defence though he already possessed

a shotgun would have been the target and not the innocent victims of this dastardly crime. Moreover, we are of the opinion that the terrorists would not have killed the women and children as that would have been wholly without purpose and contrary to their normal behaviour. We are also of the opinion that 8 or 9 shots could easily have been fired by Amarjit Singh, as ex-serviceman, from the bolt-action rifle equipped with a magazine capable of taking about 11 bullets.

13. Mr. Cheema has also argued that there was absolutely no motive with accused Amarjit Singh and Malook Singh to commit the murders and the story with regard to Bachittar Singh's motive could also not be believed as Joginder Singh (P.W-3) had stated that the lease money was being paid, though belatedly or in instalments, whereas Ajaib Singh had given a different story as he had deposed that for the last two years, no lease money had been paid.

14. We are of the opinion, however, that the motive against Bachittar Singh accused clearly stands proved on record. To our mind, the above noted discrepancy is of little or no consequence as the import of the evidence of both the witnesses is that a dispute between Sukhwant Singh and Bachittar Singh with regard to the lease money had in fact existed over a period of time. Moreover, the motive stems primarily from the fact that Sukhwant Singh had wanted to recover his land from Bachittar Singh and to give it to Bhupinder Singh and that Malook Singh had intervened at one stage to tell Sukhwant Singh and Joginder Singh (P.W-3) that the land should be left with Bachittar Singh as he had been cultivating the same for the last 8-9 years. We also find that though Amarjit Singh was a cousin of Malook Singh but he was, in addition, well known to Joginder Singh (P.W-3). Admittedly, this accused was a resident of village Chuchak Wind, some distance away from village Dholewala, but in his evidence Joginder Singh had stated that he knew accused Amarjit Singh and though he had been running a hotel in village Baghapurana yet he was ordinarily residing in Village Dholewala with Malook Singh. In the course of the cross-examination, certain questions were put to Joginder Singh (P.W-3) regarding the number of years of service put in by Amarjit Singh in the Army and year of his marriage and the details pertaining to his family but he clearly stated that he could not give these particulars. To our mind, this information could not possibly be available with Joginder Singh (P.W-3) as admittedly he and Amarjit Singh accused were not deeply acquainted and had no personal or family connections. No adverse inference can thus be drawn from Joginder Singh's inability to answer such questions. It is true that Malook Singh and Amarjit Singh had no apparent enmity with the deceased and especially with the women and children, but a motive rests in the mind of an accused. It can best be said that these two had joined hands with their friend Bachittar Singh in an attempt to sort out his family problems and in the process to obliterate all claimants to the family property. We also found that Amarjit Singh had allegedly used the 303 rifle and it was this weapon that had caused seven of the eight deaths. In a way Mr. Cheema's argument that the killings appear to have been executed in a professional manner and by a person competent in the use of firearms, proves the presence

of Amarjit Singh as he had served in the Army for several years and a.303 bolt action rifle was normal Army and police issue.

15. Mr. Cheema has then seriously questioned the presence of Joginder Singh (P.W-3), the solitary eye-witness, as the fate of these matters would hinge primarily on his evidence. In this connection, it has been argued that as his presence in village Dholewala had not been corroborated by any other evidence and as his evidence too was shaky, some corroboration, in this situation, was necessary as held by the Supreme Court in Vadivelu Thevar Vs. The State of Madras, . He has also urged that Pipal Singh, aforesaid Sukhwant Singh and Bhupinder Singh's cousin though admittedly living in a part of the Haveli had not been cited as a witness. It has also been submitted that Joginder Singh's Bua, who was married to Piara Singh (P.W-5), was also residing in a house 2/1-2 killas away and though Piara Singh was the owner of a tractor and scooter etc. but Joginder Singh had nevertheless chosen to walk all the way to village Mastewala, 16-17 kms. distant, during the night hours and had thereafter returned to village Dholewala early the next morning made his conduct unnatural and necessarily belied his presence. It has also been urged that there were two routes to village Mastewala from village Dholewala, one of which passed within 4-5 killas of Police Station, Dharamkot and the other very close to Police Post, Kot Ise Khan, (which too fell under the jurisdiction of Police Station, Dharamkot) but Joginder Singh passed them by without lodging a report and had gone on to village Mastewala, which clearly showed that he had not witnessed the occurrence and had been brought to the site in the early morning hours to become a witness.

16. We have considered this argument very carefully and find that it lacks merit. Joginder Singh's name obviously could not figure in the F.I.R. as it had been lodged by Bachittar Singh accused in a bid to sidetrack and confuse the investigation. It has come in Joginder Singh's evidence that he had reached the house of his sister, Piar Kaur, at about 7.30/7.45 P.M. and after having dinner, the families had retired to their respective rooms and Joginder Singh to the room on the first floor. We also find that the atmosphere in the village was hostile and Joginder Singh had advisedly chosen to keep a low profile and it is for this reason that his presence had not been noticed by anybody in the village. It is true that Pipal Singh was also living in a part of the Haveli where the murders had been committed but he was equally related to Bachittar Singh accused and the victims and in this view of the matter, the mere fact that he was not brought in as a prosecution witness would be of no consequence. We find that Joginder Singh's action in running to his village without meeting Piara Singh or his aunt was expected in the circumstances as it was a question of his survival. It also appears that Piara Singh, who was a co-villager with Bachittar Singh, was indifferent to the quarrel between the brothers. This was made clear in Joginder Singh's cross-examination when he stated that initially on 2-3 occasions, Piara Singh had been joining them in trying to settle the dispute between the brothers but subsequently he too had dropped away. Moreover, Piara Singh's house was 2/1-2 killas away from the place of incident. The normal reaction, in these

circumstances, would be to run as far as possible from the scene. It bears reiteration that eight persons had been done to death with the intention of leaving no witness alive. Joginder Singh too could have visualised a similar fate had he hung around the scene. He was, therefore, fully justified in running fast and far for his village to convey to his family as to what had happened and if he had chosen not to stop at Police Station, Dharamkot or Police Post, Kot Ise Khan, it could not be said to be something unusual as normal human conduct can be judged only in normal circumstances. We are of the opinion that the evidence of this witness inspires fully confidence and fully satisfies the tests stipulated by the Supreme Court in Vadivelu Thevar's case (supra) for analysing the evidence of a solitary eye-witnesses.

17. Mr. Cheema has also argued that the investigation in the case was tainted and that this was evident from the attempt to put on record the will (Exh. P48) dated February 10, 1993, alleged to have been executed by the two deceased brothers in which they had made a recital that as they apprehended danger to their lives, their land should be mutated in the name of the State, after their death.

18. We do agree with the learned counsel on this score. The Will is apparently a forged one and does not advance the case of the prosecution any further. It can accordingly be ignored as being a crude attempt to supplement the prosecution evidence, which is, in our view, otherwise sufficient to prove the case against the accused.

19. We have heard Mr. R.S. Cheema and Mr. S.S. Randhawa on the murder reference as well.

20. In this connection, Mr. Cheema has argued that before awarding the death sentence, the Court was required to re- appraise the evidence to come to a conclusion that its quality was such that it could be safely relied upon for awarding it. In support of his assertion, he has cited Raja Ram Yadav and others Vs. State of Bihar, , Suresh Vs. State of U.P., , and Shankar @ Gauri Shankar and Others Vs. State of Tamil Nadu, . We have gone through the cited judgments. The observations of the Hon'ble Supreme Court do underline the learned counsel's argument. We do appreciate that the execution of a death sentence is irreversible and some extra caution, is therefore, called for. We however, find that the quality of evidence in this case makes it possible to award the death sentence. It has also been urged by Mr. Cheema that before awarding the death penalty, the role of each individual must also be minutely examined. In this connection, reliance has been placed upon Nirmal Singh and Another Vs. State of Haryana, . He has submitted that it was not clear from the evidence as to the role that had been ascribed (in particular) to Malook Singh accused as it appeared that all the injuries had been caused with a rifle. To our mind, this argument is without merit. It is clear from the medical evidence that the injuries on the person of Gogi had definitely been caused with a shot gun. We reproduce here the injuries found on her dead body :

1. A gutter shaped wound 14 cms x 10 cms on right side of face and skull involving frontal right parietal and temporal area of skull. Right eye ball was missing. Bone pieces and brain matter were seen protruding out of wound mixed with dark coloured blood.

2. A gutter shaped wound 8 cms x 5 cms on left hand. Left index and middle fingers were missing. Blackening was present. Clotted blood was present.

The extent of damage and the fact that there was no exit wound clearly shows that the injuries had been caused not with a rifle but with a shot gun which is low velocity weapon and that too from a very close range. Moreover, we have already found that from the number of empties recovered, both of. 12 bore DBBL gun and 303 rifle, the use of atleast two weapons has been clearly proved. It is the admitted case that the shot gun belonged to Bachittar Singh accused whereas the rifle had been given to him by the police for his protection. The positive prosecution story is that he had handed over the former to Malook Singh and the latter to Amarjit Singh for the commission of the murders. We are further of the opinion that the motive for the offence was particularly reprehensible and fratricidal and multiple murders in which two families had been wiped out for a few acres of land, leaves absolutely no doubt in our minds that the case falls well within the category of the rarest of rare cases.

21. For the reasons recorded above, we accept the murder reference and confirm the death sentence awarded to the accused. Criminal Appeal No. 515-DB of 2000 filed by the accused is accordingly dismissed.