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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1202 of 1987

Reserved on 03.02.2026

Delivered on 18.03.2026

Harcharan

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Keshav Sahai, Rajesh Kumar Mishra
Counsel for Respondent(s)	:	A.G.A.

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.

HON'BLE DEVENDRA SINGH-I, J.

(Delivered by Hon'ble Devendra Singh-I, J.)

1. The instant appeal has been preferred against the judgment and order dated 23.04.1987 passed by Additional Sessions Judge, Court No.2, Rampur in S.T. No. 97 of 1984 (State vs. Harcharan and another), under Sections 302/307 IPC, Police Station-Milak, District-Rampur.

2. The appellant no.1 (Harcharan), for the offence punishable under section 302/34 and 307 IPC, was convicted and sentenced as under:

(i) Rigorous imprisonment for life and fine of Rs.1000/- for the offence under section 302 read with section 34 IPC and in default of payment of fine, three months additional imprisonment.

(ii) Rigorous imprisonment for five years and fine of Rs.500/- for the offence under section 307 IPC and in default of payment of fine, one month additional imprisonment.

3. The appellant no.2 (Sewa Singh), for the offence punishable under section 302 and 307/34 IPC, was convicted and sentenced as under:

(i) Rigorous imprisonment for life and fine of Rs.1000/- for the offence under section 302 and in default of payment of fine, three months

additional imprisonment.

(ii) Rigorous imprisonment for five years and fine of Rs.500/- for the offence under section 307 IPC read with section 34 IPC and in default of payment of fine, one month additional imprisonment.

All the sentences were directed to be run concurrently.

4. The appeal against appellant no.2 (Sewa Singh) has already been abated vide order dated 07.01.2026. Hence, the present appeal survives only against appellant no.1 (Harcharan).

5. According to prosecution version, there was land related enmity between the complainant (Gurvachan Singh), deceased (Sardar Singh), who is real brother of the complainant/informant and the accused persons. It is alleged that on intervening night of 11/12.06.1983 at around 1:00 AM, while complainant and his brother (Sardar Singh)/deceased were sleeping at his house, the lamp was burning as usual, then appellants along with other co-accused persons namely, Sewa Singh, Banta Singh, Harcharan @ Charan Singh and Kaka Singh, came to his house, listening the sound of knocking, he shone the torchlight and asked who it was, at that point of time, accused (Sewa Singh) has opened fire upon the brother of the informant/complainant (Sardar Singh) with the intention to kill him, which hit his forehead, due to which, he died on the spot. Another co-accused-persons, namely, Banta Singh, Kaka Singh and Harcharan @ Charan Singh had also fired upon the complainant/informant with the intention to kill him, which hit his right shoulder. It is further alleged that he and other witnesses have clearly seen the accused-persons in the light of torches and lanterns, at the spot.

6. Complainant (Gurvachan Singh) reported the matter to the police by submitting a Tehrir (Ex.Ka-1) and on that basis, case was registered on 12.06.1983 at 06.10 am against all the four accused persons under Sections 302 and 307 of IPC vide FIR Ex. Ka-3.

7. Inquest proceedings were conducted by PW-5 (Om Prakash) and dead body of the deceased was sealed and sent for postmortem.

8. Post-mortem on the dead body of the deceased was conducted on 12.06.83 by PW-6, Dr. H.B. Bhat (M.O.) and following ante-mortem

injuries were found on the person of deceased:

"(I) Entry wound of firearm 4 cm x 4 cm brain cavity deep on right side of head fort above right ear, no scorching, tattooing & blacking of skin, which is connected wound of exit in a area of 20 cm x 10 cm on right side of head 3 cm above of root of nose.

Internal examination

- 1. all the skull bones are fractured into multiple pieces.*
- 2. The membranes and brain were not present.*
- 3. The base of (M) was broken.*
- 4. Right and left lungs were found congested.*
- 5. The right side of the heart was full, while the left side was empty. The weight was 230 grams.*
- 6. Half-digested food was present in the stomach.*
- 7 Spleen and kidney were found congested.*

In my opinion the cause of death was Coma due to head injury sustained before death."

9. During investigation, one empty cartridge found at the spot, which was seized vide seizure memo Ex.Ka-11. One blood-stained Pillow and 'Gadda' was also seized vide seizure memo Ex.Ka-13. During investigation blood stained bed sheet & 'Ban' was also recovered and taken into possession vide recovery memo Ex.Ka-12. Also blood stained soil and plain soil from place of incident was taken in possession vide recovery memo Ex.Ka-14.

10. After completion of investigation, only two accused persons (Harcharan Singh @ Charan Singh & Sewa Singh) were charge-sheeted under the aforesaid sections.

11. Learned trial court framed charge under Sections 302/34 and 307 IPC against the present appellant (Harcharan). Accused-appellant pleaded not guilty and claimed trial.

12. In order to bring home the guilt of accused-appellant, prosecution has examined eleven witnesses. Accused-appellant were examined under Section 313 Cr.P.C., wherein he denied prosecution evidence and claimed false implication. In his defence, he has adduced two defence witnesses.

13. After hearing and analysing the evidence on record, the present accused-appellant was convicted under Sections 302/34 and 307 IPC vide impugned judgment and order dated 23.04.1987.

14. Being aggrieved, accused-appellant has preferred the present criminal appeal.

15. Learned counsel for the accused-appellant submits that accused-appellant was named on the basis of enmity. It is further submitted that appellant was not present at the spot and was not involved in committing the aforesaid crime in any manner. It is further submitted that there was no source of light at the place of occurrence. Though, PW-1, in his statement has stated that there was light of torch and lamp, but the said torch and lamp have also not been seized. It is further stated that there is no satisfactory evidence to show that there was enough light to identify the assailants. He has further submitted that as per prosecution evidence, country made pistol was used in the alleged incident but there has been no recovery of the alleged pistol from the possession of the present accused/appellant. It is further submitted that the main accused (Sewa Singh), who has been assigned the main role of firing upon the deceased by PW-1 (Guruvachan Singh), has already been died and so far as the present accused-appellant (Harbachan Singh @ Charan Singh) is concerned, he has been falsely implicated as he is brother-in-law of accused-appellant no.1 (Sewa Singh). It is further submitted that there are serious contradictions and inconsistencies in the prosecution case and medical evidence also does not consistent with the oral evidence. As such, the order passed by the trial court convicting the accused-appellant is wholly illegal, which is liable to be set aside and instant appeal may be allowed.

16. Per contra, learned AGA appearing on behalf of the State has submitted that appellant was involved in committing the aforesaid

offence as is evident from the statements of prosecution witnesses. Prosecution has also proved motive on the part of the accused-appellants to commit this crime as a land dispute was going on between the accused persons and the deceased. It is further submitted that conviction of accused-appellant is based on evidence, as such, the order passed by the learned trial court does not warrant any interference by this Court.

17. We have heard Sri Rajesh Kumar Mishra, learned counsel for the appellant, Mr. S.K. Ojha learned A.G.A-I. for the State-respondent and perused the trial court record.

18. PW-1 (Guruvachan Singh), who is complainant/informant of the case. In his testimony, has stated that accused/appellant no.2 (Sewa Singh) is his real brother and there was a land dispute between him and accused persons. He further stated that on intervening night of 11/12.06.1983 at around 1:00 AM, while complainant and his brother (Sardar Singh)/deceased were sleeping at his house, the lamp was burning as usual, then accused-appellants namely, Sewa Singh, Banta Singh, Charan Singh and Kaka Singh, came to his house, listening the sound of knocking, he shone the torchlight and asked who it was, at that point of time, accused (Sewa Singh) has opened fire upon the brother of the informant/complainant (Sardar Singh) with the intention to kill him, which hit his forehead, due to which, he died on the spot. Another co-accused-persons, namely, Banta Singh, Kaka Singh and Charan Singh had also fired upon the complainant/informant with the intention to kill him, which hit his right shoulder.

19. PW-2, Lalta Prasad has supported the prosecution story and in his examination-in-chief, has stated that he knows the complainant (Guruvachan Singh) and resides in the same village. He Further stated that at time of incident he was sleeping in his house and woke up after the alarm was raised by the shouting of Guruvachan Singh. He saw from the wall of his house that four persons armed with pistols have entered the house of Guruvachan Singh and the accused Sewa Singh fired upon Sardar Singh (deceased), who had died on the spot. Though, in his cross-examination, he has stated that he went at the spot when villagers reached there, hearing the voice of

PW-1. All other persons had also fired bullets upon Guruvachan Singh (PW-1).

20. PW-3 (Bhagwan Das), in his testimony, has also supported the prosecution story. He has stated that after hearing a noise from the house of PW-1/complainant, he went on the spot and saw the dead body of the deceased (Sardar Singh). He has further stated that on the request of PW-1, he had written the report whatever PW-1 had said and signed on it.

21. PW-4, K.P. Singh, in his testimony, he has stated that at the time of the incident he was posted as SO Milak Police Station. He has further stated that after completion of investigation, he had filed the charge-sheet. He proved it as Ext.Ka-2(A).

22. PW-5, Om Prakash Singh, in his testimony, he has stated that, in June, 1983, he was posted at Milak Police Station. He has further submitted that on the basis of written report filed by PW-1, he had written and prepared the report. He proved it as Ext.Ka-3.

23. PW-6, Dr. H.B. Bhatt, who is a doctor and was posted at Rampur Hospital as MO. In his testimony, he has deposed that he has conducted the postmortem of the deceased. He has further deposed that deceased was approximately 45 years old at the time of incident and had died one day prior from the postmortem. He opined that cause of death of the deceased was 'Coma' due to head injury.

24. PW-7, Grees Kumar, who is a constable and was posted at Police Station-Milak on 12.06.1983. In his deposition, he has deposed that he accompanied the I.O. to the scene of the incident and completed the Panchnama of the deceased.

25. PW-8, R.P. Yadav, in his testimony, has stated that in June, 1983, he was posted as Sub-Inspector at Milak Police Station. He has further deposed that he has investigated the matter and during investigation, he has recorded the statements of prosecution witnesses.

26. PW-9, Dr. Sri B.P.L. Saxena, who is currently posted as a ENT Surgeon at District Hospital, Moradabad. In his testimony, he has stated that on 12.06.1983, he was posted as MO at Sadar Hospital.

He had examined the head injuries of PW-1 (Gurvachan Singh) and recommended for X-Ray. He had signed on the report. He proved it as Ext.Ka-22.

27. PW-10, Ram Kumar Singh, on 12.06.1983, he was posted as Head Moharrir at Mal Khana Sadar, Rampur.

28. So far as the statements of PW-1 (Guruvachan Singh) and PW-2 (Lalta Prasad) are concerned, neither any motive nor specific role, whatsoever, has been attributed to the present accused (Harcharan @ Charan Singh). There is no allegation that present accused-appellant has made exhortation to kill the deceased. Further, it also appears doubtful that there was any source of light to identify the assailants. Though, both PW-1 and PW-2 have stated that there was light of torch and lamp, but the Investigating Officer has not collected any evidence to substantiate this fact that there was lamp/torch.

29. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread, which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The apex court has reiterated this principal of criminal justice system in various judgements. In **Kali Ram V. State of Himachal Pradesh; (1973) 2 SCC 808**, the Hon'ble Supreme Court has held as under:

"One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the

accused."

30. In **Upendra Pradhan V. State of Orissa; (2015) 11 SCC 124**, the Hon'ble Apex Court has held as under:

"It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'."

31. In **Golbar Hussain & Ors. V. State of Assam and Anr.; (2015) 11 SCC 242**, the Hon'ble Apex Court has held as under:

"There are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken thirdly, in case of acquittal by the trial judge, the appellate court should take into account the fact that the trial judge had the advantage of looking at the demeanour of witnesses; and fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy-though unwittingly it may be-or is afraid of the logical consequences, if that benefit was not given."

32. In the instant case, considering the entire evidence on record, it appears that it is thoroughly doubtful that PW-1 and PW-2 have seen the presence of the accused-appellant (Harcharan Singh@ Charan Singh). Further, it also appears doubtful that there was any source of light to identify the present accused-appellant. Though, both PW-1 and PW-2 have stated that there was light of torch and lamp, but during investigation, the Investigating Officer has not collected any evidence to substantiate this fact that there was lamp/torch. Neither any motive nor any specific role has been attributed to the present

accused (Harcharan @ Charan Singh) by the prosecution witnesses in their depositions. Further, country made pistol, used in the incident, was not recovered from the accused-appellant. Once a doubt is created regarding presence of the present accused-appellant at spot, it would affect entire prosecution case. Taking cumulative effect of entire facts and evidence, it is apparent that the prosecution has failed to prove its case beyond reasonable doubt, rather present accused-appellant deserves benefit of doubt.

33. The net result of the above discussion is that the prosecution has not been able to prove its case against the accused-appellant beyond reasonable doubt. The trial Court erred in convicting the appellant for the murder of the deceased. Accordingly, the conviction and sentence of the accused-appellant (Harcharan @ Charan Singh), under the aforesaid sections is set aside and the appellant is acquitted of the charges levelled against him.

34. The appeal succeeds and is **allowed**.

35. The accused-appellant (Harcharan @ Charan Singh) is on bail. He need not be surrendered. His personal bonds are cancelled and sureties are discharged.

36. A copy of this judgment be sent to Court concerned forthwith for necessary compliance.

March 18, 2026
Ashutosh

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)