IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1)

Criminal Appeal No.S-24-SB of 2005 (O&M)
Date of Decision: November 26, 2018

Vinay Kumar and another

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

(2)

Criminal Appeal No.S-135-SB of 2005 (O&M)

Anil

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

(3)

Criminal Appeal No.S-137-SB of 2005 (O&M)

Ramesh and another

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

(4)

Criminal Revision No.393 of 2005 (O&M)

Ram Tirath

.....APPELLANT(s).

VERSUS

State of Haryana and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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Argued by: Mr. Aman Pal and Mr. Vikram Punia, Advocate
for the appellants in CRA-S-24-SB-2005.

Mr. Rajesh Lamba, Advocate
for the appellant in CRA-S-135-SB-2005.

Mr. Bipin Ghai Sr. Advocate with
Mr. Deepanshu Mehta, Advocate
for the appellants in CRA-S-137-SB-2005.

Mr. Amrik Narwal, D.A.G. Haryana.

Mr. S.R. Hooda, Advocate
for complainant in all the appeals and
for petitioner in CRR-393-2005.

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SURINDER GUPTA, J.

All the aforementioned appeals/revision have been taken up together for disposal as the same arise out of common judgment dated 07.12.2004 passed by learned Additional Sessions Judge, Sonepat, convicting the appellants for the offence punishable under Section 307 read with Section 149 of Indian Penal Code (for short-IPC) and sentencing them vide order on quantum of sentence dated 14.12.2004, as follows:-

Sr. No.	Name of convict	Under Section	Sentence.
1	Jasmer, Anil and Ramesh	307 read with 149 IPC	Rigorous imprisonment for a period of **Seven years and to pay fine of Rs.5000/-** each and in default of payment of fine, to further undergo simple imprisonment for a period of three months each.
2	Vinay Kumar @ Meenu and Navin	307 read with 149 IPC	Rigorous imprisonment for a period of **Three years and to pay fine of Rs.2000/-** each and in default of payment of fine, to further undergo simple imprisonment for a period of one month each.

Brief fact of the prosecution case are that FIR was registered on the statement (Ex.PH) of Ram Tirath @ Rishipal son of Satbir Singh,

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wherein he stated that he is an agriculturist. About 5 months before the incident, Umed son of Bhagwana and his 7 other family members had murdered Shamsher son of Kedar Singh, his uncle and all the 8 were in jail for this offence. Satpal son of Kedar Singh, who is posted as Patwari at Kharkhoda, was witness of the crime. On 25.10.2001, Satpal was going for his duty via village Jharothi. Complainant Ram Tirath was accompanying him. At about 8.00 a.m., when he and Satpal reached near the minor (irrigation canal), a Maruti car bearing No. HR-20D-3736 driven by Meenu son of Narain came from behind and stopped near them. Navin son of Rajinder was sitting on front seat with driver while on the rear seat, Jasmer son of Hawa Singh, Ramesh son of Tara Chand and Anil were sitting. All the five gave *Lalkara* to teach a lesson to Satpal to become a witness and they alighted from the car. Jasmer, Ramesh and Anil were having some pistol type weapons in their hands and they started firing at them. Complainant out of fear ran towards his village and was followed by Navin and Meenu. When the distance between the complainant and Navin and Meenu increased, both stopped following him with warning that he had saved himself on that day but will be killed as and when they got chance. Complainant reached his house, took his car and along with Samunder Singh son of Kedar Singh reached the spot. Satpal was found lying on the ground unconscious and was bleeding profusely. Maruti car was lying parked nearby. Satpal was taken to G.D. Sharma Hospital, Sonepat and got admitted there for treatment. On statement of complainant recorded by Killa Singh ASI, ruqa Ex.PH/1 was sent to the police station, whereupon formal FIR Ex.PH/2 was recorded.

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On medical examination, Dr. G.D. Sharma PW2 found following injuries on the person of Satpal:-

> "(1). Left arm wound of entry 8 mm x 8 mm irregular inverted edges. Blackening of skin. 4 cms below and outer aspect of elbow joint. Wound of exit 2 cm x 1.5 cms irregular averted margins. Bleeding.
>
> (2) Left thigh 8 mm x 8 mm wound of entry on the mid level thigh, on the anterior aspect. Wound of exit 1.5 x 2.0 cms on the outer aspect of thigh 8 cms below the wound of entry.
>
> (3) Right scapular area. 8 x 8 mm wound of entry."

The injuries were declared dangerous to life because of massive blood loss, leading to shock. In the opinion of doctor, injuries on the person of Satpal were caused by fire-arm. He was operated for by-pass graft and on 05.11.2001 to remove bullet from his right chest and was discharged from hospital on 19.11.2001. MLR (Ex.PC) about his injuries was prepared and information (Ex.PB) was sent to the police. On being declared fit, police recorded the statement of Satpal in the hospital on 26.10.2001, wherein he stated that on 25.10.2001, he was going to his office with Ram Tirath. On reaching the minor irrigation canal, a Maruti car came from behind from which its occupants, Vinay, Navin, Jasmer, Anil and Ramesh alighted and gave *Lalkara* that they shall teach a lesson to him for being eyewitness in case of murder of his brother Shamsher on 08.06.2001. After *Lalkara,* Jasmer fired a shot from his revolver or pistol which hit on his left arm. Thereafter, Ramesh son of Tara Chand fired shot from pistol or revolver which hit on the back of right scapular region while Anil fired shot, which hit his left leg. He fell down and became unconscious. After the first

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shot, Ram Tirath ran away from the spot and was followed by Vinay and Navin. He succeeded to escape. While giving relations of accused named in this case with the accused in the murder case of his brother Shamsher, injured Satpal stated as follows:-

Sr. No.	Name of accused	Relation with accused in murder case of Shamsher.
1	Jasmer	His father Hawa Singh is brother of accused Umed Singh
2	Navin	Accused Ramesh, Sudesh and Mahavir are brothers of Rajinder father of Navin.
3	Vinay @ Meenu	Accused Anand brother of Narain is father of Vinay @ Meenu.

After arrest of the accused, initially challan was filed against accused Ramesh Pawan and Surinder. Thereafter, supplementary challan was filed against accused Anil while accused Jasmer, Vinay @ Meenu and Navin were not challaned and they were summoned to face trial for the offence punishable under Sections 307, 120-B and 506 read with Section 34 of Indian Penal Code on application of prosecution.

All the accused were charge-sheeted for the offences punishable under Sections 120-B, 307 and 506 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined EHC Maman Singh PW1; Dr. G.D. Sharma PW2; injured Satpal Singh PW3; complainant Ram Tirath PW4; Constable Bijender Singh PW5; Mahabir son of Mauji Ram PW6; Tej Ram son of Meer Singh PW7; Rampat son of Jage Ram PW7; ASI Killa Singh PW9; SI Nar Singh PW10.

Entire incriminating evidence was put to the appellants while recording their statements under Section 313 Code of Criminal Procedure,

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wherein they denied the prosecution allegations and pleaded their false implication. Appellant Vinay Kumar @ Meenu stated in his defence as follows:-

> "A false case against me has been registered. It was reported in the newspaper also on 26.10.2001 that seven unknown persons had opened fire upon Satpal and they had come on two motorcycles and a Maruti Car. The injured Satpal had received three bullet injuries and had also pellet injury on his body. Police had investigated the case and found me innocent."

Similar defence was taken by accused Navin while accused Jasmer stated in his defence as follows:-

> "On 25.10.2001, I was posted as a Constable-Driver with Inspector A.K. Tripathi, CBI. I was on duty at Rohtak at the relevant time from 8 AM to 2 PM on Jeep No.HR-12-C-7693. I have been falsely involved in this case."

In their defence evidence, appellants examined Constable Mukesh Kumar as DW1; Satbir as DW2; Dev Raj as DW3; Virender as DW4; Inspector A.K. Tripathi, CBI as DW5; Raj Pal as DW6 and Shailender Jain son of M.P. Jain as DW7.

Learned trial Court vide its judgment dated 07.12.2004, acquitted accused Pawan and Surinder, while remaining 5 accused (appellants) were convicted and sentenced as mentioned in opening para of this judgment.

Learned counsel for the appellants Jasmer has argued that the police during investigation found Jasmer as innocent. It was duly proved that he was not at the spot at the time of incident. Jasmer Singh was on his duty with Inspector of CBI, A.K. Tripathi on the day of occurrence, and the

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trial Court has committed grave error while ignoring the documentary evidence in support of his plea of alibi.

Learned counsel for the appellants have not disputed that Satpal had suffered bullet injuries but have argued that these were caused to him by some unidentified persons. Ram Tirath PW4 was not present at the spot. The matter was also published in the newspaper *"Dainik Bhaskar"* that some unidentified persons have caused bullet injuries to Satpal. The news was got published regarding the incident by Shailender Jain PW7 after inquiry in the hospital from the relatives of Satpal and the police. It is evident from the news item Ex.D3 that some unidentified persons have caused injuries to Satpal. DW4 Virender son of Narain had stated that on the day of incident, he had found Satpal lying in injured condition near the minor irrigation canal. Satpal had requested to shift him to his house on his tractor. Then he asked him to call someone from his relatives. In the meanwhile, Samunder brother of Satpal came at the spot and Satpal was shifted to his house on the motorcycle being driven by Samunder Singh. He had accompanied Samunder on the motorcycle and Satpal was made to sit on the motorcycle in between them. There is no reason to disbelieve the statement of Virender son of Narain Singh. Admittedly, brother of Satpal was murdered about 6 months back. Appellants were involved deliberately so that they could not pursue the cases of their relatives, who have been falsely involved in murder case. Jasmer is a police Constable, who was on duty with Inspector (CBI) A.K. Tripathi and was performing his duty on the day of incident from 8.00 a.m. to 2.00 p.m. Inspector A.K. Tripathi had appeared as DW5 and stated that Jasmer Singh was with him on the day of

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occurrence and performed his duties up to 2.00 p.m. There is no reason to disbelieve his statement and accept the plea of alibi of accused Jasmer. From the medical evidence, it is evident that only one weapon was used for commission of crime, which was recovered from Anoop, who has not been arrayed as accused in this case. Samunder Singh, who allegedly reached the spot, was neither cited nor examined as prosecution witness. As per statement of Ram Tirath, he had run away from the spot, as such, had no occasion to see the assailants. After the receipt of ruqa sent at 10.30 a.m., police reached the hospital and there is no reason as to why statement of Ram Tirath was not recorded immediately thereafter. The presence of Ram Tirath at the spot was doubtful as he was not present at the hospital where the injured was taken. His version that he ran away from the spot is not believable as accused were young persons and could easily chase him.

Learned State counsel has argued that all the appellants have been named in this case by the complainant as well as injured Satpal. The reason for incident is evident as Satpal was witness in the murder case of his brother Shamsher. The motive of the appellants was to eliminate Satpal. They had left the spot treating Satpal as dead but fortunately, he was saved as he got immediate medical treatment. Learned trial Court has rightly discarded the plea of alibi put forth by Jasmer and Anil. So far as Vinay Kumar @ Meenu and Navin are concerned, they have also followed PW Ram Tirath, who succeeded in escaping. This shows that all the five appellants have come to the spot with their common intention to murder Satpal as well as Ram Tirath. Samunder Singh was not eyewitness, as such his non-examination is not material. Statement of DW4 Virender is just an

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afterthought version, as such cannot be believed. The publication of news item regarding the incident is not based on the testimony of any eye-witness, as such, has no basis. The judgement of conviction and sentence by the trial Court is based on evidence on record and call for no interference in the appeal.

As per the allegations in the FIR, the roles attributed to the appellants is as follows:-

(i) All the appellants came to the spot in a Maruti Car bearing No. HR-20D-3736.

(ii) All the appellants raised *Lalkara* to teach a lesson to Satpal to be an eyewitness in the murder case of his brother.

(iii) After the *Lalkara,* all the appellants alighted from the car.

(iv) Appellants Jasmer, Ramesh and Anil @ Mama were having pistol like weapons in their hands and started firing.

(v) Shot fired from the revolver or pistol of Jasmer hit left arm of Satpal.

(vi) Shot fired from the pistol/revolver of Ramesh hit the back of right scapular region of Satpal.

(vii) Shot fired from the pistol/revolver of Anil hit the thigh of Satpal.

(viii) Appellant Vinay @ Meenu and Navin were unarmed and chased Ram Tirath, who had run away from the spot.

Dr. G.D. Sharma while appearing as PW2, has stated that injured was brought to his hospital by his brother Samunder Singh. He was not able to tell as to whether all the three injuries on the person of Satpal

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were caused by one fire arm or different fire arms.

Injured Satpal PW3 has stated that he knew all the accused as they belong to his village. Jasmer had fired first shot on him. After his receiving first fire shot injury, Ram Tirath ran away from the spot towards village Bhadana. He has also admitted that he along with Ram Tirath, Ramesh, Mahabir sons of Balbir were accused in a case in which Ram Tirath, Ramesh and Mahabir were convicted and sentenced and their appeal is pending before this Court. He has further admitted that accused Ramesh is not related to Umed accused in murder case of his brother Shamsher. He was confronted with news item published in the newspaper which stated that unknown persons had fired at him. Though the motive for occurrence is stated to be the murder case against relative of appellants but Satpal had admitted that besides him there were other eyewitnesses in the murder case as well. PW4 Ram Tirath, who appeared as PW4 has stated that first shot was fired by Jasmer but he was confronted with his statement Ex.PH recorded by the police, wherein it was not so recorded. Both the prosecution witnesses namely Satpal PW3 and Ram Tirath PW4 have, however, supported the prosecution version as given in the FIR.

The first question, which arise for consideration in this appeal, is as to whether Jasmer and Anil have been able to prove their plea of alibi as put forth by them. Learned trial Court discussed the plea of alibi as put forth by Jasmer and Anil. The case of Jasmer Singh throughout is that he was on his duty on the day of occurrence with Inspector A.K. Tripathi of CBI as his driver on jeep No.HR-12C-7693. Inspector A.K. Tripathi appeared in this case as DW5 and has stated as follows:-

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> " On 25.10.2001, I was investigating case RC-9(s) 2001SICI and was camping at MDU Rohtak with the CBI Team. The SP Rohtak had provided one jeep, with driver, zepsy (Gypsy) and a motorcycle alongwith drivers. Log book was being maintained about the movement of the vehicles by their drivers and were counter-signed by me. Jasmer Singh HC was posted as driver on zepsy (Gypsy) and had reported on duty at 8 AM on 25.10.2001 and remained on duty uptill 2 PM. I had initialed the log book filled up by the driver of the zepsy (Gypsy). I have seen my signatures on document Ex.D1."

From the statement of Inspector A.K. Tripathi, who is an independent witness, it is proved that Jasmer Singh had reported for his duty on 25.10.2001 at 8.00 a.m. and remained with him on duty upto 2.00 p.m. The occurrence in this case allegedly took place at about 8.00/8.15 a.m. as per statement of injured Satpal. Constable Mukesh Kumar had produced the record of police line, Rohtak to prove that Jasmer Singh was posted as driver on 25.10.2001 on vehicle No.HR-12C-7693 (Govt. Gypsy), which was given to CBI team headed by Inspector A.K. Tripathi, who investigated a case at Meham. As per this witness, the jeep was performing duty from 8.00 a.m. to 2.00 p.m. and accused Jasmer was deputed as driver on this jeep. The distance between Rohtak and village Bhadana, where the occurrence took place is about 40 kms. On the day of occurrence, the vehicle had not gone to Meham. A.K. Tripathi on the basis of entry in the log-book had stated that vehicle (Gypsy) had come from the police line to Guest house, work-shop and then returned to the police line. Learned trial Court after taking note of the statement of A.K. Tripathi DW5 has observed

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in para 61 and 64 of the judgment as follows:-

> "61. DW5, Sh. A.K. Tripathee Inspector has deposed that Jasmer Singh accused was posted as driver on the Government Zypsy (Gypsy) and had reported for his duty at 8.00 A.M. on 25.10.2001, he remained on duty till 2.00 P.M. It is also deposed by him that he had also initialed the entry of his log book (Ex.D1) on that day.
>
> 64. In view of the testimony of DW5 Inspector A.K. Tripathee and DW1 Constable Mukesh Kumar, it is made out that accused Jasmer Singh was driver on Government Zepsy(Gypsy) from 8.00 A.M. to 2.00 P.M. On 25.10.2001 and the said vehicle was driven under the Control of DW5 Inspector A.K. Tripathee who was the head of the C.B.I. Team and they were investigating a case at Meham (Rohtak)."

Learned trial Court, however, discarded the plea of alibi as raised by Jasmer with the observation that jeep No.HR-12C-7693 had not gone to Meham on 25.10.2001. Learned trial Court was not sure that if Inspector A.K. Tripathi had himself gone to the place of his work i.e. Meham and had drawn the conclusion that Gypsy was not taken to Meham on 25.10.2001. It was also observed that there was no record that HC Jasmer Singh had performed his duty from 8.00 p.m. To 2.00 p.m. on 25.10.2001. About driving of vehicle from police line to Guest House, City Area, Workshop and return to police line, learned trial Court concluded that this driving may be completed within half an hour; the occurrence had taken place at about 8.00 a.m. and it was not proved that Jasmer Singh had reported for his duty at 8.00 a.m. itself and remained continuously on his duty up to 2.00 p.m.

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In view of the above facts and taking note of distance between village Bhadana and Rohtak, which is about 40 kms, learned trial Court observed that presence of accused Jasmer Singh at place of occurrence cannot be excluded absolutely.

On careful consideration of the evidence, I find no reason to agree with the observation recorded by learned trial Court. Inspector A.K. Tripathi DW5 has categorically stated that on 25.10.2001 appellant Jasmer had reported for his duty at 8.00 a.m. and remained present till 2.00 p.m. It is not material that Inspector A.K. Tripathi had not gone to Meham on that day but there is no reason to disbelieve his testimony that Jasmer Singh was with him on duty. His statement finds support from the testimony of DW1 Mukesh Kumar, who deposed that on that day, appellant Jasmer Singh was on duty from 8.00 am to 2.00 p.m. on Govt. vehicle bearing registration No.HR-12C-7693 which was with Inspector A.K. Tripathi. Learned trial Court has gone hyper technical while discarding the statement of Inspector A.K. Tripathi and Constable Mukesh Kumar. Jasmer Singh being a police constable had to report for duty and it was for the department to record his presence. His duty was recorded in the record of police line, Rohtak. Inspector A.K. Tripathi verified that he was present on duty on 25.10.2001. In these circumstances, there was no reason to disbelieve or discard their statement and to reach any other conclusion except that Constable Jasmer Singh was on duty from 8.00 a.m. to 2.00 p.m. on 25.10.2001 and his plea of alibi is duly proved in this case. No weapon of offence was recovered from Jasmer Singh, enmity between parties exist and there was every reason for implication of accused Jasmer in this case particularly when he is

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a Government employee and was posted as Constable.

In view of the overwhelming evidence that has come on record, I am of the opinion that learned trial Court has committed grave error while discarding the plea of alibi set up by appellant Jasmer Singh. It is proved on record that he was not at the spot when the occurrence took place, rather he was performing his duty with Inspector A.K. Tripathi at Rohtak.

Appellant Anil has also set up plea of alibi. He had examined DW2 Satbir and DW3Devraj to prove his plea of alibi. DW2 Satbir has stated that he had seen Anil at some construction site, which was in progress in village Kasandi at 7.00 a.m. The distance of village Kasandi and Sonipat is about 20 kms, however, he was not aware about distance between village Kasandi and Bhadana.

Devraj DW3 has stated that he had seen Anil at his house where some construction was in progress. He is grand-father of Anil. Learned trial Court discarded evidence produced by Anil to prove his plea of alibi with observations in para 78 and 79 as follows:-

> "78. From a careful perusal of the testimony of DW2 Satbir Singh and DW3 Dev Raj, it is not at all proved on record that the presence of accused Anil can be completely excluded from the place of occurrence at the relevant time, specifically, under the circumstances when accused Anil is the grandson of DW3 Devraj.
>
> 79. Thus, the testimony of the defence witnesses examined by accused Anil in order to set up his plea of alibi do not inspire any confidence. It can not be held in any eventuality even by stretch of imagination what to say of absolute certainty that accused Anil was not present on the relevant time, date and place of

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> occurrence. Accordingly, his plea of alibi is accordingly rejected."

The question which arise for consideration is as to whether the statement of DW2 Satbir, DW3 Devraj prove the plea of alibi taken by accused Anil. I agree with learned trial Court that the evidence produced to prove the plea of alibi taken by Anil is based on very weak evidence while DW2 Satbir is friend of Anil, DW3 Devraj has stated that Anil is his grand son. Besides oral statements of these two witnesses, there is nothing on record to support the plea of alibi raised by Anil.

Injured Satpal has named Anil and has stated that he was on rear seat of Maruti car which came at the spot. He has also attributed fire-shot to Anil, which allegedly hit his left thigh. In his cross-examination by learned defence counsel for accused Anil, no suggestion was given that Anil at the time of occurrence was present at village Kasandi. No suggestion was given to this effect to complainant Ram Tirath, who appeared as PW4.

Keeping in view all the above facts, learned trial Court has committed no error of law while discarding the plea of alibi raised by Anil. Even in his statement under Section 313 Cr.P.C., appellant Anil has not taken the plea that he was not present at the spot at the time of occurrence and was in village Kasandi and was raising some construction at that time.

Now, I take the evidence with regard to appellant Vinay @ Meenu and Navin. There is no evidence that they were armed with any weapon. As per the case of the prosecution, 3 persons namely Jasmer, Anil and Ramesh were armed with pistols/revolvers and they did not follow or fired any shot at Ram Tirath. The testimony of Ram Tirath requires to be examined very carefully to find as to whether he was present at the spot at

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the time of occurrence and the version of occurrence as given by him inspire any confidence.

The occurrence took place at about 8.00/8.15 a.m. on 25.10.2001. Statement of Ram Tirath, on the basis of which FIR was registered, was recorded in the evening at about 5.40 p.m. There is delay of about 9 and half hours in reporting the matter to the police. In normal course, such a delay may not be much relevant if duly explained but in this case, there was enmity, hostility and animosity between the parties as earlier brother of injured Satpal namely Shamsher had been murdered and 8 persons were facing trial in that case. Accused named in this case are alleged to be relatives of the accused facing trial in the murder case. PW4 Ram Tirath admitted that they had strained relations with accused on account of murder of Shamsher. Keeping in view the hostility in the relations between the parties, the possibility of giving an exaggerated version and of false implication of any of the accused requires to be looked into carefully.

As per statement of complainant Ram Tirath, who appeared as PW4, five persons came in a Maruti car, out of whom 3 namely Jasmer, Anil and Ramesh were armed with fire-arms and two i.e. Meenu and Navin were empty handed. While Jasmer, Anil and Ramesh fired shots at Satpal, Navin and Meenu chased him. As already discussed, Jasmer was not present at the spot and has been falsely implicated. This creates doubt about the veracity of the statement of Ram Tirath PW4. It is highly improbable that any of the persons armed with fire-arm did not fire at Ram Tirath or chased him. If the version of Ram Tirath be believed, all the occupants of the car alighted

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when Ram Tirath and Satpal were together, meaning thereby, they were at similar distances from the assailants. In that eventuality, it appears to be doubtful that none of the assailants armed with fire-arm did not fire at Ram Tirath, who had fled away from the spot after seeing the first shot fired by Jasmer on Satpal. He had stated that he returned to the spot at about 9.00/9.15 a.m. i.e. after about one hour of the incident. This also makes version of Ram Tirath improbable and unbelievable as after having seen Satpal being fired upon, he allegedly took time of one hour to reach the spot. As per him, he had seen Satpal falling on the pucca portion of the road after he sustained bullet injuries. When he had entered the premises of G.D. Sharma Hospital, he found that police was present there and had given no reason as to why he did not get his statement recorded immediately after the incident.

DW4 Virender son of Narain Singh has stated that he had seen injured Satpal lying on the way near Khanda Minor, who asked to shift him to his house on his tractor. The examination-in-chief of this witness is as follows:-

> "I know Satpal. About 3-4 years back, I alongwith my Tau was going to my fields. I found Satpal lying injured on the way near Khanda Minor. Satpal had asked me to shift him to his house on my tractor. However, Satpal told me that he was unable to be shifted on tractor and I should call some of this relatives from his house. However, in the meanwhile, Samunder brother of Satpal came at the spot on motorcycle. Thereafter, Satpal was shifted to his house on the motorcycle being driven by Samunder and I was on pillion behind Satpal who was made to sit on the motorcycle in between Samunder and

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myself and he was taken to his house."

Admittedly, Samunder Singh had taken injured to Hospital of Dr. G.D. Sharma. The version as given by DW4 Virender appears to be more believable and probable than the testimony of PW4 Ram Tirath. It is quite believable that Samunder Singh came to the spot after the incident and with the help of Virender took injured Satpal to his house from where he was shifted to hospital. There was no reason for DW4 Virender to give a false version or to support the accused and nothing has been suggested to him that he has any affinity with the accused or hostility towards the complainant party.

Keeping in view the above facts, I find the statement of Ram Tirath that he was present at the time of incident, doubtful and consequently, his testimony is not worthy of reliance. This also creates doubt about the presence of appellants-accused Navin and Meenu at the spot and the entire role attributed to them appears to be after thought version. Both were also found innocent during police investigation. Hostility amongst the complainant and accused appears to be a reason to implicate them.

The other witness to the occurrence is injured Satpal himself. As per the defence version and the statement of DW4 Virender, he was conscious after suffering bullet injuries and had requested to take him to his house. The accused were not strangers for him and he could easily identify the assailants. Keeping in view the hostility between the parties because of murder of his brother Shamsher, there could be the element of exaggeration and his statement may require scrutiny with caution to find the truth therein

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and to ascertain the real culprit. He has named five assailants, who allegedly came in a Maruti car. As already discussed, the prosecution version regarding presence of Vinay @ Meenu and Navin at the spot is doubtful. The plea of alibi set up by accused Jasmer has also been proved. Testimony of injured Satpal that shots were fired at him by Ramesh and Anil cannot be disbelieved as both these accused were known to him. Here, a question which arise for consideration is as to whether sole testimony of a witness can be relied upon, if so to what extent.

In case of ***Vadivelu Theva Vs. The State of Madras, AIR 1957 Supreme Court 614,*** Hon'ble Apex Court examined the question of reliance on the testimony of sole witness and observed as follows:-

> "On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established:
>
> (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
>
> (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.
>
> (3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends

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upon the judicial discretion of the Judge before whom the case comes.

Hon'ble Apex Court took note of the provisions of Section 134 Indian Evidence Act and observed as follows:-

> “14. ..... Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's I Law of Evidence -9th Edition, at pp. 1 100 and 1 101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that " Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the

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circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

15. In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly

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> encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict,if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

Hon'ble Apex Court again relied and endorsed the observations in above referred case in the case of ***Kartik Malhar Vs. State of Bihar 1996 (1) SCC 614*** and ***Lallu Manjhi and Anr. Vs. State of Jharkhand 2003(2) SCC 401.***

In this case, the accused had motive to eliminate the complainant. He had suffered firearm injuries on his left arm, left thigh and right scapular area. Though these injuries have been separately attributed to accused Jasmer, Anil and Ramesh. From the testimony of this witness, it is proved that he was caused firearm injuries by accused Ramesh and Anil.

Here, learned counsel for the appellants have argued that no

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weapon of offence was recovered from the accused and FSL report (Ex.PG) shows that the bullet of .32 bore taken out from the body of Satpal mark-BC/1 was fired from the countrymade revolver recovered from Anup in case bearing FIR No.337 dated 06.11.2001 registered at Police Station City Sonipat. As per the medical evidence, all the bullet injuries on the person of Satpal were from the same weapon as the entry wound of all the bullet injuries was 8 mm x 8 mm. This shows that only one weapon was used in the occurrence and statement of injured regarding the use of 2 or 3 weapons is not believed.

The police in this case has sent only one bullet recovered from the body of Satpal for comparison, which was reported to have been fired from the countrymade pistol recovered from accused Anup. The other bullet and empty cartridges were not the subject matter of report of FSL. As per statement of Dr. G.D. Sharma, entry wound of all the bullet injuries was 8 mm x 8 mm but it does not suggest that only one firearm was used. The injury of this nature could be caused if shot is fired from different firearms of same bore. The revolver used in this case was recovered from accused Anup but he was not named by any of the witness as assailant. For recovery of weapon, a separate case was registered against him.

Learned counsel for the appellants while referring to the statement of DW7 Shailender Jain and the news item published in '*Dainik Bhaskar*' on 26.10.2001, has argued that in fact, Satpal was attacked and caused injuries by some unidentified assailants and this fact was verified by Shailender Jain, on whose reporting, news item Ex.D3 was published in newspaper. Shailender Jain DW7 has stated that on receiving the

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information of the incident, he reached hospital of Dr. G.D.Sharma and talked to friends and relatives of injured. He also made inquiry from the police officials and sent the news item for publication in newspaper which states that Satpal was attacked by some unidentified assailants. On the day of incident, Satpal was being operated by Dr. G.D. Sharma, as such, this news reporter had no occasion to meet him. It is not clear as to who had given him the information about the incident, as such, publication of news that some unidentified assailants had caused bullet injuries to Satpal, in no manner, rebut the testimony of injured Satpal to the extent that he was caused injuries by appellants Ramesh and Anil. Even as per defence of accused and testimony of DW4 Virender, injured Satpal was conscious after suffering bullet injuries, as such, he could identify the assailants and the persons who fired at him. So far as his naming Jasmer, Naveen and Vinay @ Meenu is concerned in view of my above discussion, their presence at the spot is doubtful and statement of Satpal to this extent is to be discarded. However, he was caused 3 bullet injuries and his statement to the extent that appellants Anil and Ramesh attacked and caused him injuries is reliable.

So far as the delay in reporting the matter to the police is concerned, information vide ruqa of the doctor was sent at 10.30 a.m. Statement of complainant Ram Tirath was recorded at 5.40 p.m. Though the delay in recording the statement of complainant could result in giving an exaggerated version of the occurrence but this is not suffice to totally discard the statement of injured, who had seen the assailants and identified them. Satpal has suffered 3 bullet injuries on different parts of his body. Fortunately, he survived. Though the version regarding the incident as

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given by him appear to have some exaggeration but there is no reason to disbelieve his entire statement. I find testimony of injured Satpal reliable and cogent to the extent that he was caused injuries by appellants Anil and Ramesh. Injuries suffered by Satpal were declared dangerous to life, and the trial court has rightly convicted them for the offence punishable under Section 307 read with Section 149 IPC.

As a sequel of my above discussion, appeal filed by Vinay Kumar @ Meenu and Navin (CRA-S-24-SB-2005) has merits and is accepted. The conviction of both the appellants as recorded by the trial Court is set aside and giving benefit of doubt, they are acquitted of the charge framed against them.

Appeal filed by Ramesh and Jasmer (CRA-S-137-SB-2005) is partly accepted. Giving benefit of doubt, appellant Jasmer is acquitted of the charge framed against him. However, conviction of appellant Ramesh as recorded by the trial Court is maintained.

Appeal filed by appellant Anil (CRA-S-135-SB-2005) has no merits and the same is dismissed. His conviction as recorded by the trial Court is maintained.

I have also considered the quantum of sentence awarded to appellants Anil and Ramesh by the trial Court and keeping in view the nature of offence, injuries suffered by injured Satpal and motive behind the occurrence, I find no reason to interfere with the same. Concerned Chief Judicial Magistrate is directed to take appellant Anil and Ramesh into custody and send them to jail to undergo remaining part of their sentence.

CRR-393-2005

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Revision petitioner-complainant Ram Tirath has sought conviction and sentence for all the accused for offences punishable under Sections 120-B and 506 IPC for which they have been acquitted by the trial Court. In addition, he has sought conviction and sentence to respondents Pawan and Surinder, who have been acquitted by the trial Court.

In view of my discussion while disposing of the appeals above, this revision petition has no merits, so far as accused-respondent Navin, Vinay @ Meenu and Jasmer are concerned, prosecution has not been able to produce any evidence about conspiracy hatched by accused Anil and Ramesh so as to record their conviction for the offences punishable under Sections 120-B and 506 IPC.

Neither of the prosecution witness has deposed against respondents Pawan and Surinder. The trial Court has taken into account that only evidence against them was their disclosure statements, which is not admissible in evidence.

Learned counsel for the revision petitioner has not been able to show any evidence so as to record conviction of the accused for the offences in which they have been acquitted by the trial Court.

This revision petition has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

November 26, 2018
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

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