

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : April 19th, 2018

Date of Decision : July 03, 2018

+ **CRL.A. 1402/2014**

JASWINDER SINGH @ JASSA

..... Appellant

Through: Mr.Ashok Agrwal, Ms.Sridevi
Panikkar and Ms.Devyani Bhatt,
Advocates.

versus

STATE

..... Respondent

Through: Mr.Rajat Katyal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S. TEJI, J.

1. The present appeal has been preferred by the appellant- Jaswinder Singh @ Jassa under Section 374(2) Cr.P.C. against the judgment dated 08.08.2002 and order on sentence dated 12.08.2002 passed by learned Additional Sessions Judge, New Delhi whereby the appellant has been convicted under Section 302 IPC, and sentenced to undergo imprisonment for life and fine of Rs.500/- and, in default of payment of fine, to further undergo imprisonment for six months.

2. The factual matrix, as emerging from the record, is that on 11.09.1997, an information was received in the police station through PCR that a man in house no.1/30, Mehrauli, Opposite Mother Dairy had been shot dead. The said information was lodged vide DD No.17A (Ex. PW-28/A) and was marked to SI N.K. Solanki PW-32, who reached the spot and recorded the statement of Jogeshwar PW-15 vide Ex. PW-15/A. In his statement, Jogeshwar stated that he was the domestic servant in the house of Harish Arora (deceased) at 1/30, Mehrauli for the last 6-7 years. On 11.09.1997 at about 1.00 p.m., when Jogeshwar was working in the kitchen, accused Jaswinder Singh @ Jassa came to meet his employer Harish Arora. Jassa asked Jogeshwar to tell Harish Arora that Jassa had come to meet him. Jogeshwar asked Jassa to sit in the drawing room and he went towards the room of Harish Arora, but Jassa came following him in the room of Harish Arora. Jogeshwar remained outside the room. Jassa said angrily to Harish Arora that he had instigated brother of Jassa, and people in Mehrauli against him. He further said that he had finished Rana, and that he would not let him live. Saying this, Jassa fired from a pistol at Harish Arora, who fell on the floor bleeding.

3. On the basis of the statement of Jogeshwar, case FIR was registered vide Ex. PW-28/D. The crime team reached the spot which included a finger print expert and photographer. From the spot, two empty cartridges and one live cartridge of 7.65 bore were recovered and seized vide Ex. PW-32/B. Blood was lifted from the spot vide

Ex. PW-32/D. The dead body of the deceased was sent for postmortem.

4. During investigation, it emerged that on 11.09.1997 accused Jassa took a Maruti Esteem car No.DL-4CD-4095 of Narender Singh and went to Mehrauli where he first went to the house of his brother Ravinder Rana and shot him dead as he came to know on 10.09.1997 that his brother and Harish Arora had leaked his planning to kidnap a businessman, due to which he could not carry out his plan. After shooting dead his brother, accused Jassa went to the house of Harish Arora and shot him dead. After shooting Harish Arora dead, when accused was climbing down from stairs, he was seen by Smt.Pushpa Arora (PW-24), wife of brother of the deceased, keeping pistol in his pant. Thereafter, accused Jassa along with Narender and Amarjeet, (both co accused, charged u/s 212 IPC in the case— but acquitted by the trial court) took him out of Delhi via Jaipur Highway, and then returned to Delhi and stayed in Hotel Ranjeet. On the night of 16.09.1997, they stayed at Hotel Plaza Solitaire, Sohna, Gurgaon. On 17.09.1997, they stayed at Hotel Swiss Palace, East Patel Nagar. On 18.09.1997, accused Jassa surrendered in the Court and his police remand was obtained. Site plan was prepared by the IO vide Ex. PW-32/E. Exhibits were sent to CFSL. On the disclosure of the accused, one revolver of .32 bore with four live cartridges were recovered from his house for which a separate FIR was registered, being FIR No 543/97. After the completion of investigation, charge sheet was filed in the Court.

5. Charge for the offence under Section 302 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

6. To prove its case, the prosecution had examined 36 witnesses, star witnesses being Jogeshwer (PW15), servant of deceased; Smt.Pushpa Arora (PW24), sister in law (bhaabhi) of deceased, and; PW-13 Dr. M. K. Tayal, neighbour of deceased.

7. After completion of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which he claimed innocence and denied the entire case of the prosecution. Despite opportunity being granted, the appellant did not choose to lead defense evidence.

8. On appreciation of evidence and material brought on record, the trial court convicted the appellant under Section 302 IPC vide impugned judgment dated 08.08.2002 and sentenced him to life imprisonment vide order on sentence dated 12.08.2002. Feeling aggrieved of the same, the appellant has preferred the instant appeal.

9. Argument advanced by the learned counsel for the appellant is that PW15-Jogeshwar is the alleged eye witness of the incident, but he was not cross-examined. Consequently, it was obligatory for the Court to scrutinize his evidence closely, with caution. This, the Trial Court has failed to do so. PW24-Smt.Pushpa Arora is the sister-in-law of the deceased, but she did not talk about the dog which the accused was allegedly carrying with him. Though,

she stated that she had seen the accused on the stairs, but she did not state that she crossed path with PW15 on the stairs while she was going up. He argues that as per site plan Ex.PW26/A, there was no window in the kitchen, so there was possibility of PW15 seeing the accused from the kitchen window when he was allegedly going down the stairs. Even the kitchen was so small, that it was not possible for PW15 to hide there. It is further argued that apparently the statement of PW24 was recorded after about 5-6 days of the incident, but no explanation has been given for such a delay. It is submitted that PW15-Jogeshwar was not present in the house, as PW24 stated that when she went upstairs, there was no one around except the dead body of Harish Arora. It is further submitted that the conduct of PW12-Pawan Kumar, brother of the deceased was unnatural as he did not go to the police station directly. Instead, he went to the house despite the fact that the police station was situated opposite to the shop of PW12. It has also not been explained as to why PW12 called the doctor first, instead of calling the police. Ld. Counsel further submits that during his cross examination on behalf of the accused, PW-13 stated that when he reached the house of the deceased, only Pawan Arora (PW-12) was present there. It is further submitted that no public witness was examined from the locality to establish the presence of accused at the house of the deceased. It is further argued that since the appellant was the Bad Character of the area, he was roped in the present case.

10. In support of the above contentions, reliance has been placed on ***Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190*** to press the contention that the prosecution has to prove its case beyond reasonable doubt, and that the accused is entitled to the benefit of a reasonable doubt.

“28.The ‘reasonable doubt’ is one which occurs to a prudent and reasonable man...

29. The doubt which the law contemplates is certainly not that of a weak or unduly vacillating, capricious, indolent, drowsy or confused mind. It must be the doubt of a prudent man who is assumed to possess the capacity of “separate the chaff from the grain”. It is doubt of a reasonable, astute and alert mind arrived at after due application of mind to every relevant circumstance of the case appearing from the evidence. It is not a doubt which occurs to a wavering mind.”

11. Next judgment relied upon is in the case of ***Kuna @ Sanjaya Behera v. The State of Odisha 2017 SCC OnLine SC 1336*** in which it was observed that conviction can be based on a testimony of single eye witness if he or she passes the test of reliability and that is not the number of witnesses but the quality of evidence that is important. Ld. counsel argues that the testimonies of PW15 and PW24, who are claimed to be the eye witness and the witness to seeing the appellant leaving the scene of crime soon after the occurrence with a pistol, are not reliable.

12. Next judgment relied upon is in the case of ***Harbeer Singh v. Sheeshpal and others (2016) 16 SCC 418*** in which it was observed that 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. It was further observed that delay in recording of statements of the prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case.

13. Next judgment relied upon is in the case of ***State of West Bengal v. Kajal Kora & ors. 2017 SCC OnLine Cal 6833*** to cast a doubt about the testimony of PW15 and PW24. Learned Counsel for the appellant argued that the presence of the alleged eye witness PW15-Jogeshwar at the spot at the time of the alleged incident has not been established.

14. Per contra, learned APP for the State has argued that the incident had taken place at about 1.00 PM on 11.09.1997, and the information regarding shooting of the deceased was received in the police station vide DD No.17A, Ex.PW28/A at 1.22 p.m. The

statement of eye witness Jogeshwar was recorded at 3.00 p.m. vide Ex. PW-15/A, and then the rukka (Ex. PW-31/A) was sent to the police station at 3.10 p.m. which led to the registration of the FIR at 4.15 p.m. PW15-Jogeshwar has duly supported the case of the prosecution. He had clearly stated that the accused Jassa had fired a gun shot at his employer Harish Arora in his presence after which he hid himself in the kitchen. PW24-Smt.Pushpa Arora had corroborated that on the day of the incident, she had seen the accused climbing downstairs and keeping the pistol in his pant. It is submitted that the postmortem of the dead body was conducted on 12.09.1997. First IO of the case was PW32-SI Naresh Solanki, and the second IO was PW36-Insp.Saravjit Singh Dhillon to whom the investigation was transferred on 13.09.1997. It has been explained that the second IO tried to record the statement of family members of the deceased, but he was told to come later. On 14.09.1997, IO went to record the statements of the witnesses but he was turned away by the grieving family of the deceased. Statement of PW24-Smt.Pushpa was ultimately recorded on 17.09.1997 and, on the same day, Pawan Kumar-brother of the deceased was also examined. Accused was arrested on 19.09.1997 and on 14.12.1997, statement of PW13-Dr.M.K. Tayal was recorded. Thus, there is no delay in recording the statement of PW24-Smt.Pushpa as alleged. It is submitted that there is enough evidence on record to convict the appellant and the trial court convicted him as the prosecution has been able to prove its case beyond reasonable doubt.

15. We have heard the submissions advanced by learned counsel for the appellant, and by the learned APP for the State. We have also gone through the evidence led by the parties.

16. The most important witness of the present case is eye witness PW15-Jogeshwar who deposed that he was working as a domestic servant in the house of Harish Arora. On 11.09.1997, at about 1 p.m. accused Jaswinder Singh @ Jassa came there with a dog. Accused was correctly identified by the witness. PW15 was working in the kitchen at that time. He came out of the kitchen and accused told him that he wanted to meet Harish Arora. PW15 asked the accused to sit in the drawing room, and that he would call Harish Arora who was in his bed room on the same floor. Accused Jaswinder Singh went ahead of PW-15 with hurried step. Accused told Harish Arora in the presence of PW15, that Harish Arora had provoked entire Mehrauli and even his brother Ravinder Rana against Jaswinder Singh. Harish Arora at that time was talking on a phone while sitting on his bed. Harish Arora told Jaswinder Singh that he had done no such thing. At that time, Jaswinder Singh told Harish Arora “*main apane bhai Rana ka kaam kar aya hun. Main tujhe bhi zinda nahi chhodunga*” (he had finished his brother Rana. He will not leave him alive). As Harish Arora got up and was proceeding towards the accused, accused took out a pistol from beneath his right dub and fired a shot at the head of Harish Arora. Harish Arora received bullet injury and fell down bleeding. PW15 was scared. He fled and concealed himself in the kitchen. From the window of the kitchen, he

saw the accused going hurriedly downstairs with pistol in his hand. When PW15 was satisfied that the accused had gone away, he came down and went to the shop of Kalu Ram & Sons near PS Mehrauli. He met Pawan Arora (PW-12), brother of the deceased in the shop and told him about the incident. PW15 then returned home along with Pawan Arora (PW-12) on his two wheeler scooter. Pawan Arora called a neighbouring doctor (PW-13). Doctor after checking Harish Arora told them that he had died. Pawan Arora informed the police on phone upon which police came. PW15 made his statement Ex.PW15/A to the police.

17. The witness PW15 was put to cross-examination, but the accused did not cross-examine the witness despite repeated opportunity being granted. Consequently, the most important eye witness for the prosecution went unchallenged.

18. PW12-Pawan Kumar corroborated the testimony of PW15. He deposed that on 11.09.1997 at about 1/1.15 p.m., he was present at his shop. Servant of his brother, i.e., PW15 came to him and informed him that his brother Harish Arora was killed by Jaswinder @ Jassa by firing. PW12 went to the house of his brother along with servant Jogeshwar on two wheeler scooter where he saw his brother lying on the floor and blood was oozing from his head. He called Dr.M.K. Tayal (PW-13), who declared his brother as dead. PW12 called the police by dialing number 100. During cross-examination, PW12 stated that in his statement dated 12.09.1997, he had stated that on 11.09.1997 at about 1/1.15 p.m., when he was

present at his shop, Yogeshwar-servant of his brother came and told him that his brother was killed by Jaswinder @ Jassa by firing. He went to the house along with servant Jogeshwar on two wheeler scooter. He reached the spot within 4-5 minutes of receiving the information. PCR Van arrived at the spot after him. He admitted that his shop was in front of the police station. He stated that he had not informed the police before reaching. He voluntarily stated that unless he had ascertained as to what had happened, there was no occasion for him to call the police.

19. PW13-Dr.M.K. Tayal deposed that on 11.09.1997, he came for lunch from his clinic. It was sometime between 1 p.m. and 1.30 p.m. He received a telephone call from Pawan Arora (PW-12) asking him to come and check Harish Arora as he was unwell. Harish Arora lived at 2nd floor. PW13 went to his house and found that he was dead. This witness was declared hostile and during cross-examination by the learned APP for the State, as he was found resiling from his previous statement on the aspect of the injuries found on the body of deceased when he found him dead..

20. PW24-Smt.Pushpa Arora further corroborated the testimony of PW15. She deposed that on 11.09.1997 at about 1/1.15 p.m., she was cooking inside the kitchen of her house at first floor. She heard a sound which appeared to be that of a cracker from upper floor of the same house where Harish Arora, elder brother of her husband used to reside. She came out in the gallery and saw the accused Jaswinder Singh @ Jassa coming downstairs. She saw the

accused putting a pistol in the right side pocket of his trousers. Accused asked her in Hindi about her welfare stating “*Aur bhabhiji kya haal hai*” (how are you sister-in-law). She rushed upstairs and reached the room of Harish Arora and found him lying on the floor in a pool of blood. She raised alarm. After some time, her husband Satish Arora returned home. Ladies also collected and then she was taken to another room. Her statement was recorded by the police 5/6 days after the incident. She correctly identified the accused in the Court. During cross-examination by the defence, PW24 denied that she had carried an idea about the accused putting a pistol in his pocket. She categorically stated that she had seen the accused putting a pistol in his pocket. She did not see any smoke coming out of the pistol. When she went upstairs, there was no one except the dead body of the deceased. She stated that she had not telephonically informed her husband. He had been called by Yogeshwar, servant of Harish Arora. She had seen the accused when she came face to face with him on some occasions when he visited Harish at his house.

21. The first contention of the learned counsel for the appellant is that the presence of PW-15 Jogeshwar, at the house of deceased at the relevant time is doubtful, and his testimony is not trustworthy and reliable to convict the accused inasmuch, as, PW-24 had stated that when she went upstairs, she did not see any one except the dead body of the deceased. He submits that the kitchen was so small, that PW-15 could not have hidden therein. So far as the presence of the witness PW-15 at the house of the deceased at the

time of the incident is concerned, it is established from the testimony of PW24-Smt.Pushpa Arora, sister-in-law of the deceased that PW15-Jogeshwar was working as a domestic servant in the house of her deceased brother-in-law Harish Arora. The employment of Jogeshwar being servant in the house of deceased has also been established from the testimony of PW12-Pawan Kumar, brother of the deceased. So, the fact that PW15 was working as servant in the house of the deceased has duly been established from the testimony of PW12 and PW24.

22. From the testimony of PW12, it is established that on the day of incident at about 1/1.15 p.m., when he was present at his shop, PW15-Jogeshwar, servant of his brother Harish Arora came to his shop and informed that his brother Harish Arora was killed by the accused, upon which he reached the place of occurrence along with PW-15. PW32-SI Naresh Solanki had deposed that on 11.09.1997 at about 1.25 p.m., the information regarding the incident was received by vide DD No.17A and he along with Ct.Chandram, Ct.Kaptan, Ct.Rajender and HC Harphool reached the spot. On enquiry, Jogeshwar PW15, servant of Harish Arora gave his statement which was recorded vide Ex.PW15/A. It was this statement Ex.PW15/A which made the basis for sending the rukka to the police station and registration of case FIR of the instant case. Therefore, testimony of PW32 also establishes the presence of PW15 at the spot immediately after the incident. PW15 is a natural witness. His presence at the house of the deceased was only natural, he being the domestic servant

of the deceased. PW15 has not been cross examined by the accused, despite repeated opportunity. Thus the said witness has not been challenged that he was not present at the flat of the deceased at the time of occurrence, or that he did not witness the same. Thus, we reject this submission of the appellant.

23. The contention of the appellant is that the kitchen was too small for a person to hide therein, and that in the site plan, there is no mention of any window in the kitchen (through which PW15 allegedly saw the accused go down the stairs), which creates doubt about the case of the prosecution.

24. Though it is correct that in the site plans Ex.PW32/E and Ex.PW26/A, there is no mention of any window in the kitchen, but a perusal of site plans shows that there is no mention of any window in any of the rooms or the passage, let alone in the kitchen. It is quite common to have a window in the kitchen which either opens outside, or in the shaft, for ventilation and for smoke to go out. In our opinion, non-mentioning of window in the site plan does not wash away the entire case of the prosecution, when it was specifically stated by the eye witness PW15 that he had seen the accused going from the window of the kitchen. PW15 was not cross examined, and it was not suggested to him that there was no window in the kitchen through which he could see any person going down the stairs. Pertinently, PW32, SI Naresh Solanki, who prepared the rough site plan Ex. PW32/E was not questioned to say that there was no window in the kitchen. Similarly, PW26, Inspector Devinder Singh, who stated that

he took the measurements and prepared the scaled site plan Ex.PW26/A was not questioned about the absence of any windows in the kitchen. Thus, we find no merit in this submission of the appellant.

25. So far the doubt raised by the appellant regarding hiding of PW15 in the kitchen— on account of it being too small, is concerned, it is without any basis. It has come on record that the witness (PW15) had been working as servant in the house of the deceased and when the accused came there, he was in the kitchen. When a person can work in a kitchen, he can also hide himself in it to save from the wrath of a murderer. It may be that by hiding, PW15 only managed to get out of the sight of the accused as he exited the flat of the deceased. It is not the case of the prosecution, or the defence of the accused, that either the accused, or PW-24 went inside the kitchen to look for PW15 or any other person who might be there. PW-15 has not been challenged by the accused, and it has not been suggested to him that he could not have hidden in the kitchen. Thus, we reject this submission of the appellant.

26. The next contention of the learned counsel for the appellant is that the testimony of PW24 is not believable, that she had seen the accused on the staircase on the day of the incident, and that there is no explanation for recording her statement after about 5-6 days of the incident— which creates doubt about the prosecution story. So far as the first part of the above contention is concerned, it has come on record that PW24 was a housewife. She had stated that at

about 1/1.15 p.m. she was in the kitchen and heard a sound as that of a cracker coming from the upper floor of the house where her deceased brother-in-law Harish Arora used to reside. She came in the gallery and saw the accused coming downstairs putting a pistol in the right side pocket of his trousers. The accused asked for the well being of the witness as well. No dispute can be raised to the presence of PW24 at her house at the time of the incident as it was around 1/1.15 p.m., and it was quite natural for a housewife to be present in the kitchen to prepare the meals.

27. It has been argued by the counsel for the appellant that PW24 had not stated that smoke was coming from the pistol. There is no basis for the said argument, for the reasons that the shot was fired inside the house of the deceased, and the accused was seen by Smt.Pushpa Arora (PW24) while he was coming downstairs, and it is not even the case of the prosecution that the accused fired gun shot at the staircase, so as to claim that the pistol would still be emanating any smoke at that time.

28. It is also argued by the learned counsel for the appellant that PW24 stated that when she went to the room of the deceased, no one was there except the dead body, which creates doubt about the presence of PW15 at the spot. We are not agreeable with this contention of the appellant, for the reasons that PW15 has stated that he was hiding in the kitchen out of fear of the accused, and PW24-in quick succession saw the accused coming down the staircase and she climbed up to see what had happened. Thus, there was hardly any

time lag between the exit of the accused from the flat of the deceased, and the entry of PW-24. Thus, when PW-24 entered the flat of the deceased, PW-15 was still hiding. She has not claimed that she first looked for PW-15, or any other person. She straight headed for the room of the deceased, where she saw his dead body. So, there was no occasion for PW-24 to see anybody in the room of the deceased at that time, or cross path with PW-15 in the staircase.

29. Even the statement of the witness PW-24— that she saw the accused come down the staircase soon after she heard the gunshot (which she thought was a cracker burst), and she also saw him put his gun in his right side pocket of his trouser, is sufficient to convict the accused, as she had seen the accused coming downstairs keeping a pistol in his pant pocket immediately after the gunshot sound, and when she went to the room of her brother-in-law, she found him dead in a pool of blood.

30. So far as the contention of the appellant regarding delay in recording statement of PW24 is concerned, the learned APP for the State has sufficiently explained that immediately after the incident, the IO tried to record the statement of family members of the deceased but he was told to come later. On 13.09.1997, PW-36 Inspector Saravjit Singh Dhillon became the I.O. of the case. On 14.09.1997, PW-36 went to record the statements of the witnesses but he was turned away by the grieving family of the deceased. Statement of PW24-Smt.Pushpa was ultimately recorded on 17.09.1997. It was quite natural for the family members of the deceased, who were in

such a state of shock and terror, that they could not reconcile with their loss and were not in a fit state of mind to give their statement to the police at the time when the police wanted to record their statements soon after the incident. Apart from the shock and trauma of the death, there are other post-death rituals also which might have prevented the family members of the deceased to get their statements recorded— including that of PW-24, soon after the occurrence. There was nothing strange in the explanation given by the State with regard to delay caused in recording the statement of PW-24. In any event, the statement of PW15 was recorded on the same day.

31. So far as the submission of learned counsel for the appellant with regard to PW13 turning hostile is concerned, we are of the considered view that the same is not of much relevance. In fact, his hostile testimony is unreliable. Firstly, he disowned his earlier statement completely even though, he had earlier stated that he had seen blood oozing out from the body of the deceased Harish Arora. In his examination-in-chief, he admitted that he had been called by PW-12 Pawan Kumar to check on his brother. He had gone to the second floor of the premises and found the deceased dead. Even though, the deceased was found shot in the head and there is ample evidence placed on record to show that there was blood spilled on the floor, surprisingly, he states that he does not remember if he saw any bleeding on the person of the deceased Harish Arora. This, itself, discredits PW-13. Pertinently, he denies the suggestion that Pawan Arora had told him that Harish Arora had been shot dead by the

accused Jaswinder. Thus, his clear endeavour was to steer clear of the controversy, since he did not want to face the wrath of the accused. The possibility of his being coerced or influenced by the accused-who was a bad character of the area, cannot be ruled out. It is in this context that his statement in his cross-examination- that when he reached the house of Harish Arora on second floor, there was only Pawan Arora present besides the dead body, has to be viewed. As noticed hereinabove, there is ample evidence to conclusively establish that not only Pawan Arora but PW-15 Jogeshwar and PW-24 Pushpa Arora were also present at the site. Thus, in our view, the appellant cannot derive any benefit of the said hostile testimony of PW-13. The said testimony does not dent the case of the prosecution with regard to the presence of PW-15 in the premises of the deceased when the deceased was shot by the accused.

32. Next point of argument advanced by the learned counsel for the appellant is that the conduct of witness PW12-brother of the deceased, was not natural as instead of informing the police, he went to the spot and instead of calling the police at the first instance after seeing the deceased, he called the doctor first.

33. The explanation given by PW12 is that when the servant of his brother Harish Arora PW15 informed about the killing of his brother, he went along with him to the house of his deceased brother, as *“unless I have ascertained as to what had happened there was no occasion for me to call the police”*. The other thing is the calling of the doctor before calling the police. It is quite natural that to save a

dying person, first thing one would do is to give him medical treatment as early as possible. It might be for this reason the witness (PW-12)– to ensure immediate treatment of his brother, called the doctor (PW-13) who was residing in the neighbourhood. When PW-13 declared Harish Arora dead, he immediately informed the police which is apparent from DD No.17A recorded at 1.22 p.m. The conduct of PW-12 cannot be said to be so unusual as to be denoted as suspect. Different persons may react differently to the same fact situation. There can be no “standard” reaction to such like sudden developments. So, no adverse inference can be drawn with regard to conduct of the witness (PW-12).

34. The next point of argument advanced is that no public person was examined by the prosecution to establish the presence of accused at the spot at the time of the incident. We do not find any merit in this contention of the appellant. Since the police was having the statement of the eye witness (PW-15), who stated that the accused committed the murder of his employer in his presence, and the statement of another witness Smt.Pushpa Arora (PW-24) who had seen the accused coming downstairs immediately after she heard the gunshot and he was seen by her keeping the pistol in his pant pocket, there was no need for the prosecution to record the statement of any other witness to establish the presence of the accused at the spot at the time of the incident.

35. It is argued on behalf of the appellant that since he was a Bad Character of the area, therefore, he was roped in the present case.

Admittedly, besides the FIR of the instant case, another FIR No.507/1997 under Section 302/201 IPC was registered against the appellant for commission of murder of his brother Ravinder Rana. The recording of FIR No.507/1997 further corroborates the testimony of PW15 to the effect that when accused came in the house, he told the deceased that he had finished his brother that day and he would kill him too. Pertinently, this was so stated by PW-15 at the earliest opportunity i.e, when his statement Ex.PW 15/A was recorded. He being a domestic servant of the deceased, who was present in the house of the deceased, would not have been aware, and could not have imagined this fact, unless he heard it from the accused, since the murder of the brother of the accused-Rana had taken place on the same day, in respect whereof FIR No. 507/1997 was registered. There is no force in the contention of the appellant that since he was Bad Character of the area, for that reason he has been falsely implicated in the present case.

36. So far as the death of the deceased being homicidal is concerned, the postmortem on the dead body of the deceased was conducted by PW4-Dr.Milotabin vide report Ex.PW4/A. As per the report Ex.PW4/A, there was a fire arm entry wound with dimension of 0.8 x 0.9 cm with braded colour in front part which was darkened and blackish in look. There was deposition of unburn gun powder particle in an area of 5x5 cm. The wound was situated 7.5 cm above the upper margin of right eye brow, 7 cm from midline, 8x5 cm above right ear pinner. As per the opinion of the doctor, the cause of death was due

to craniocerebral damage (head injury) caused by discharged bullet from rifled firearm weapon. The injury was ante mortem in nature and was sufficient to cause death in ordinary course of nature. So, from the testimony of PW4 and the postmortem report Ex.PW4/A of the deceased, it stands duly proved that the death of the deceased was homicidal in nature. Even no dispute with regard to cause of death of the deceased has been raised by the appellant.

37. In view of the testimony of the eye witness PW15, who had stated that the accused fired a gunshot at the deceased and the death of the deceased was caused from the fire arm- as reflected from the postmortem report Ex.PW4/A, there remains no room for any doubt about the case of the prosecution that on the day of the incident, accused entered the house of the deceased and committed his murder by firing a gunshot at him. In our view, the testimony of the eye witness (PW15) is quite natural, reliable and trustworthy, and that alone is sufficient to convict the appellant. No controversy can be raised to the unrebutted, unimpeached and unchallenged testimony of PW15 inasmuch as no cross-examination of this witness was done by the appellant despite availing opportunity to cross-examine him at his expense and at the expense of the State too. Moreover, in the present case, the presence of the accused in the house of the deceased at the time and place of the incident has also been established from the testimony of PW24-Smt.Pushpa Arora. In our considered view, both PW15 and PW24 are natural, trustworthy and reliable witnesses. The prosecution has successfully established its case against the appellant

beyond any reasonable doubt. Therefore, the judgments relied upon by the appellant in the cases of *Vijayee Singh* (supra), *Kuna @ Sanjaya Behera* (supra), *Harbeer Singh* (supra) and *Kajal Kora* (supra) are of no help to him in the facts and circumstances of the present case.

38. In view of the totality of the discussion made above, we do not find any merit in the present appeal. Therefore, the judgment and sentence passed by the trial court are upheld and sustained.

39. Accordingly, the instant appeal is dismissed.

P.S. TEJI, J

VIPIN SANGHI, J

JULY 03, 2018