

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-453-DB-2004 (O&M)
Reserved on : January 20, 2020
Date of Decision: July 15, 2020

Mange Ram

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. L.S.Sekhon, Advocate (Legal Aid Counsel) and
Mr. Ashwani Bhardwaj and Ms.Shaveta Sanghi, Advocates
for the appellant.

Ms. Shubhra Singh, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 13.03.2004 rendered by the Additional Sessions Judge (Adhoc) Jhajjar in Sessions Case No.63 of 2001, whereby, the appellant Mange Ram, who was charged with and tried for offence punishable under Sections 148/149/323/452/302/307 of the Indian Penal Code and Section 27 of the Arms Act, has been convicted and sentenced to undergo Imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment fine to undergo further rigorous imprisonment for 03 months, under Section 302 IPC. He was also sentenced to undergo Imprisonment for life and to pay fine of Rs.3,000/-, in default of payment of fine to undergo further rigorous imprisonment for 02 months, under Section 307 IPC. The sentences were

ordered to run concurrently.

2. The other nine accused namely; Shiv Kumar, Rajesh, Kamlesh, Bimla, Munshi Ram, Jagdish, Ram Kishan, Chandro and Partap tried with the appellant were acquitted.

3. The case of the prosecution was initiated on the statement Ex.PB of one Krishan Kumar S/o Ram Chander, aged 22 years, r/o Chota Jhajpur recorded by ASI Umed Singh. Krishan Kumar stated that on 27.03.2001 Bimla Devi w/o Om Parkash had gone to the water tap of the village. At that place she picked up some quarrel with Satpal and Bhartu, brother and uncle respectively of the complainant. Om Parkash also arrived there. In the altercation Satpal and Bhartu sustained injuries. Om Parkash also sustained some injuries. All were admitted in Civil Hospital Jhajjar. On 01.04.2001 his father Ram Chander was going to Civil Hospital at about 10.00 a.m. with the meals of Satpal and Bhartu. When he reached at a place between Jahajpur and Orangpur, Mange Ram and his wife arrived in a Maruti car driven by a third person. They stopped the car near his father. Mange Ram got down from the car and pushed his father who fell down in the ditches on the road side and sustained injuries on his right hip. His mother Bharpai came to the field where the complainant and his brothers Preetpal and Vijay were working. She informed them about the occurrence. Then they all went to their house with their mother. In the meantime Ram Kumar r/o Bara Jahajpur brought his father to their house in a tractor trolley. His brothers Vijay Kumar and Preet Pal started giving massage to his father. The complainant went to the courtyard of the house for bringing glass of milk for his father. At that time he saw Munshi Ram and Subhash armed with a lathis, Ram Kishan armed with pharsa, Bimla wife of Mange Ram, Chandro wife of Munshi Ram and Kamlesh wife of Partap armed with lathies standing at the gate of their house. He saw that Mange

Ram, Partap and Jagdish armed with guns and Shiv Kumar and Bhola having pharsa in their hands were standing at the roof of their house on the outside. Out of fear the complainant entered a room in the house. His brothers Preet Pal and Vijay Kumar went to the roof of the house on the other side. Munge Ram fired a gun shot at Vijay Kumar who after receiving the gun shot jumped down from the roof. Partap fired at his mother who was standing at the door of the room. After sustaining the injuries she fell inside the room. Jagdish fired at Preet Pal who sustained injuries and fell down on the roof. Then Jagdish fired at the complainant but he took shelter behind the shutter of the room and managed to escaped unhurt. The shot hit the wall of the room. After hearing the gun shots many persons from of the village arrived there. All the accused ran away with their respective weapons. He went to his mother and found her dead. He found his brother Vijay Kumar lying dead in the street. Preet Pal was also lying near Vijay Kumar. He was unconscious. He arranged for a vehicle and sent his brother Preet Pal to Civil Hospital Jhajjar. The cause of the attack was the old grudge of the accused against the complainant party.

4. On the basis of the statement FIR Ex.PB/1 was registered. ASI Umed Singh then visited the spot with the complainant . He prepared rough site plan Ex. PBB of the place where the dead body of Bharpai was lying and picked up blood stained earth from there. He prepared the site plan Ex.PCC of the place where the dead body of Vijay Kumar was lying. However no blood was found at that place. He picked up four empty cartridges from the roof of the house. Some pellets and wads were picked up from the street where the dead body of Vijay Kumar was lying. He prepared inquest report of the dead bodies. Post mortem of the dead

bodies was got conducted. The accused were arrested and recoveries were effected

on their disclosure statements. Accused Subhash however could not be arrested and was declared proclaimed offender. Mange Ram accused- appellant was arrested on 5.4.2001. On his disclosure statement Ex. PEE one SBBL gun with two live cartridges was recovered which was taken into possession vide memo Ex. PM. The case property was sent to FSL Madhuban. On completion of investigation the challan was presented against the accused.

5. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations and pleaded false implication. Accused- Appellant Mange Ram stated that he was innocent. He stated that Vijay Kumar deceased had abducted Kamlesh wife of Partap Singh and taken her to some unknown place. They returned after 7-8 days. On 27.03.2001 the complainant party caused injuries to Bimla, Om Parkash and Beena and they were admitted in Civil Hospital. On 1.04.2001 the complainant party came to their house. Krishan (complainant) fired upon him from a country made pistol causing injuries near his eyebrow. The complainant party had come to murder him. In self defence and to scare them away he fired with his licensed gun but the shots did not hit any one including Vijay, Bharpai and Preet Pal. On coming to know that Vijay had expired, Bimla left the hospital without notice at about 6.00 p.m. out of fear. He stated that the complainant had falsely implicated all the members of his family on account of previous enmity. However, he did not lead any evidence in his defence.

6. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

7. We have heard learned counsel for the parties and have gone through the judgment and record.

8. PW1 Dr. Aruna Sangwan deposed that on 6.4.2001 she was posted at CHC Jhajjar. She medico legally examined accused Mange Ram who was in police custody and found the following injuries on his person :

“There was a stitched wound 3.5 x .5 cm and there was an abrasion 1.5 x 1 cm with scab formation above the right eye brow. Duration 4 to 7 days. Patient complained of decreased vision from right eye. No other injury was seen. He was advised surgeon's opinion.”

9. In cross examination by the counsel for the accused she stated that as the wounds had been stitched, it was not possible to opine that they had been caused with some firearm.

10. PW2 Satbir Singh Record Keeper PGIMS Rohtak brought the summoned record of Pritpal.

11. PW3 Krishan son of Ram Chander deposed that on 27.3.2001, Veena Rani wife of Om Parkash had gone to the water tap of the village. There she picked up a quarrel with Satpal, (his brother) and Bhartu (his uncle). Om Parkash had also came there. In that occurrence Satpal, Bhartu and Om Parkash sustained some injuries. All three were got admitted in Civil Hospital, Jhajjar. On 1.4.2001, Ram Chander (father of PW3) was coming to Civil Hospital at about 10 am with meal of Satpal and Bhartu. When he reached at a place between Jahajpur and Orangpur, Mange Ram and his wife Bimla arrived in a Maruti car driven by a third person. They stopped the car near his father. Mange Ram got down from the car and pushed his father. His father (Ram Chander) fell down towards the ditches on the road side and sustained injuries on his right hip. Bharpai (mother of PW3) came to the field where he (PW3), Preetpal and Vijay were working. She disclosed about the occurrence. Then they all went to their house with his mother.

Meanwhile, Ram Kumar resident of Jahajpur brought his father to their house in a tractor trolley. After the arrival of their father, Vijay Kumar and Preetpal (brothers of PW3) started massaging their father. PW3 went to bring a glass of milk for his father. At that time, he saw Ram Kishan and Subhash armed with a Pharsa, Munshi, Chandro, Kamlesh and Bimla armed with lathis in front of the gate of their house. Mange Ram, Partap and Jagdish were seen on the roof on the other side of their house. They had guns in their hands. Shiv Kumar and Bhola (accused) had Pharsa in their hands. Out of fear, PW3 went into the room. His other brothers Preetpal and Vijay Kumar went to the roof of the house on the other side. PW3 was present at the gate of the room. Mange Ram fired a gun shot at Vijay Kumar. On being hit Vijay Kumar fell on the ground. Partap fired at the mother of PW3 who was present near the door of the room. After receiving the firearm injury she fell inside the room. Jagdish fired a shot on Preetpal which hit him causing him to fall on the roof. Then Jagdish fired at PW3 Krishan but he escaped by taking the shelter behind the shutter of room. The bullet struck the wall of the room. On hearing the shots many people assembled there. All the accused ran away with their respective weapons. PW3 went to look at her mother and found her dead. Vijay Kumar was found lying in the street. He too had died. Preetpal was lying on the ground near Vijay Kumar. He was unconscious. PW3 arranged a vehicle and took his brother Preetpal to Civil Hospital, Jhajjar from where he was referred to PGIMS Rohtak. Then, PW3 left Budh Ram and Phool Singh at the spot and went to the police station for reporting the matter. He met the police party at bus stand of Bada Jahajpur and his statement Ex. PB was recorded. He then accompanied the police party to the spot. The police picked

up blood stained earth from the spot Four empty cartridges and three wuds were

picked up from the house of PW3 which were separately sealed and taken into possession vide recovery memo Ex. PD.

12. In cross examination he stated that his father was on foot when he was taking the meal to the hospital. He denied that on 1.4.2001 Bimla and Veena had also sustained injuries. He also denied that on 1.4.2001 when they went to the hospital with injured, Om Parkash Bimla and Veena were already lying admitted in the hospital and there was no question of their being present at the spot. He stated that in their house, there were four rooms. There was a courtyard in between them. There was also a baithak. There was no stair case. For going to the roof they used a ladder. The ladder used to remain in the chowk. The roof of all the rooms and baithak was not joint. There was a wall in between. The side walls were about 6' in height. Vijay and Preetpal had gone to the roof by using the ladder. He admitted that his brother Vijay had taken accused Kamlesh to some unknown place and they had returned after 7-8 days. In regard thereto panchayat was held in the village. The matter was even taken to the police. Preetpal was doing labour job at Delhi. He (PW3) and Preetpal lived with their brother Bhanwar Singh at Delhi. Vijay was residing in the village. The house of Mange Ram accused was about 80 yards from their house. He denied that there was any dispute in Court between them over any plot. However, the dispute was settled with the intervention of village panchayat and possession was given to accused party. He denied that on the day of occurrence he and his other brothers and their mother and father had gone to the house of Mange Ram with the intention of attacking him and that he had fired at Mange Ram with a country made pistol inflicting injuries near his eye brow and forehead and that Mange Ram used his

accused gun in self defence. The bodies of Vijay and Preet Pal who were

unconscious was lying at a distance of 40-50 feet from their house. They were lying near the house of Rama. Munshi, Chandro, Kamlesh, Bimla, Ram Kishan and Subhash who were present at the door of their house did not enter their house. Their house has only one door opening towards the street. The same door leads to the chowk. The baithak also opens in the street. Mange Ram, Jagdish, Shiv Kumar and Bhola were standing at the roof of their house at different places. They climbed the roof from outside. Mange Ram and Jagdish had a single barreled gun. Partap was having a double barreled gun. Vijay, Preetpal and Ram Chander (father of PW3) were in the chowk whereas his mother was inside the room when all the accused appeared. Jagdish was on the roof on one side of the baithak whereas Mange Ram was on the roof of the room on the other side adjoining the baithak. The police arrived in the village at 5.30 pm. His statement was recorded at 6.30 pm.

13. PW4 Preetpal deposed on similar lines as PW3 with regard to incident of 27.3.2001 involving Veena, Satpal and Bhartu, the injuries sustained by them and their admission in Civil Hospital Jhajjar, his father Ram Chnder taking meal for Satpal and Bhartu on 1.4.2001 and being pushed by Mange Ram and falling in the ditch and sustaining injury on his hip. He further deposed that Ram Kumar came from Orangpur side in a tractor trolley and he took his father to their house. His mother came to fields where he (PW4) Vijay Pal and Krishan were working. She disclosed about the occurrence. Then, they all went to their house with their mother. Ram Kumar then reached the house with Ram Chander (father of PW4). After the arrival of their father, PW4 (Preetpal and Vijay Pal) started massaging him. Krishan went to courtyard to bring a glass of milk for their father.

Chandro and Bimla armed with lathis arrived at the gate of their house. Mange Ram, Jagdish and Partap were on the roof of their house with guns in their hands. Shiv Kumar and Rajesh alias Bhola also present on the roof with Pharsa in their hands. On seeing them, PW4 (Preetpal) and Vijay went to the roof on the other side. Krishan took shelter in a room. Their mother was present in the courtyard. She also went towards the room. Mange Ram fired a shot which hit Vijay and he fell down from the roof. Jagdish fired a shot at PW4 -Preetpal which injured him but he jumped from the roof on the other side. Partap fired a shot at his mother. She sustained some injuries. Jagdish fired a shot at Krishan but he was saved as he went behind the shelter. Thereafter, accused ran away with their respective weapons. Vijay and his mother died due to gun shot injuries. PW4 Preetpal had become unconscious. He regained consciousness at PGIMS Rohtak.

14. In cross examination he stated that he, his brothers Krishan and Bhanwar who had been working in Delhi had come to village 5-6 days prior to occurrence. They had come to the village on learning of the occurrence of 27.3.2001. Their mother come to the field at about 11-12 noon. Thereafter, they reached their house within 10 minutes with their mother. Their field is 3-4 acres from the village. The place where his father was pushed by Mange Ram was about 15 killas from their house. The main gate is the only gate which opens in the street. The baithak opens in the street with a door inside the courtyard. Their house consists of four rooms besides a baithak. The width of the chowk of the house is 20-22 paces. They used a ladder for climbing to the roof. Upon seeing the accused on the roof, he and his brother Vijay climbed the roof from the other side with the help of ladder. Their father was lying on the cot in the chowk. The

height of the roof is 10-11 feet. Other than bullet injury, he had not sustained any

other injury. Bimla and Veena had not sustained any injury on 27.3.2001. Partap, Mange Ram and Jagdish were having single barrelled guns. Partap fired one shot from his gun, Jagdish fired two shots and Mange fired one shot. Towards the back of their house, there was open land about 1 acre and then there was house of Kumhar but there was no street. Vijay was lying dead in the street. In his statement recorded by the police regarding the case he had not mentioned that Mange Ram fired on his brother Vijay with his gun and thereafter Partap took that gun from Mange Ram and fired at Bharpai (his mother). He was confronted with his statement Ex.DA wherein it was so recorded. He had also not told the police that thereafter Jagdish took the same gun and fired at him (PW4) Preetpal with that gun on account of which he fell down on the roof. He was confronted with his statement Ex.DA where it was so recorded. He stated that at the time of occurrence, accused Mange Ram, Jagdish and Partap had separate guns.

15. PW5 Dr. Raman Gupta, Medical Officer, General Hospital, Panchkula deposed that on 01.04.2001 he medico- legally examined Preet Pal s/o Ram Chander 20 years, who was brought in the hospital with alleged history of firearm injury. He found the following injuries:

“There was multiple overall to round lacerated wound, spreading over anterior aspect of right chest below right nipple, abdomen antro lateral aspect of right thigh, antero medial aspect of left lower arm, left elbow, antro medial aspect of left forearm, medial and anterior aspect of left thigh and penis. Tattooing marks were present. Corresponding holes where present on pant and shirt. All the injuries were firearm injuries caused within duration of 24 hours. Injuries were kept under observation.”

He proved his medico- legal report Ex. PJ.

After medical examination he sent ruqua Ex.PK to the Incharge,

Police Post PGIMS Rohtak informing the police regarding the arrival of the injured.

17. PW6 Dr. Gajender Singh, Private Practitioner at Gurgaon deposed that on 01.04.2001 he was posted as Registrar Deptt. Of Surgery, PGIMS Rohtak in Ward No.6. Patient Preet Pal was admitted with alleged history of firearm injuries over right side of the chest, abdomen antero- lateral aspect of right thigh, antero- medial aspect of left lower arm, left elbow, antero- medial aspect of left forearm, medial and anterior aspect of left thigh. Patient was investigated and x-ray of the body parts showed multiple radio opaque shadow of metallic density. Ultrasound shows right side plueral effusion and left kidney shows grasv-II hydronafrosis with a calculous of size 2 cm. The patient was kept on conservative treatment. Patient condition improved and was discharged on 04.04.2001. Treatment file is Ex.PK.

18. PW7 Bhanwar Singh son of Ram Chander deposed regarding the recovery of double barrel gun and two cartridges on 7.4.2002 by Mange Ram which was taken into police possession vide recovery memo Ex.PM.

19. PW8 Ranbir Singh Constable P.P. Khalwar deposed regarding deposit of medical ruqa, medico- legal report of Pritpal, one sealed parcel and one envelop to the investigating officer which were taken into possession by him vide recovery memo Ex.PN.

20. PW9 Rohtash Singh, HC PP Industrial Area Jhajjar deposed that on 1.4.2001 he was posted at PS Jhajjar. Inder Kumar Sarpanch of village Imlota informed them about the incident whereupon he accompanied SI Umed Singh to the spot at village Jahajpur. He deposed about the inspection of site by SI Umed Singh, picking up of four cartridges and wads from the spot beside some pellets

from the place where the dead bodies were lying which were sealed with his seal RS. SI Umed Singh also picked up blood stained earth from the place where the dead bodies were lying which were sealed in two sealed parcels and taken into possession vide Ex.PB and Ex.PC. He also deposed regarding post mortem examination of dead bodies of deceased Vijay and Bharpai got conducted from General Hospital Jhajjar, the receipt of sealed parcels of clothes of deceased Bharpai and sealed vial containing the pellets recovered from her body, the clothes of Vijaypal and a sealed vial of pellets recovered from his body, the post mortem report, inquest report signed by doctor which he then handed over to HC Mohinder Singh at the police station which were taken into possession vide recovery memo Ex.PQ. He also deposed regarding recovery of Pharsa on the disclosure statement of accused Rajesh, recovery of Pharsa on the disclosure statement Shiv Kumar, recovery of lathi on the disclosure statement of Bimla, recovery of lathi on the disclosure statement of accused Kamlesh.

21. In cross examination, he stated that the telephone of Sarpanch was received in the PS Jhajjar at about 6.30 pm. The police party arrived in the village at 6.45 pm and went to the spot. The cartridges and pellets were lying near the dead bodies. The dead bodies were lying in the courtyard (angan) of the house of Ram Chander.

22. PW10 HC Jai Bhagwan PS Sampla brought the file of FIR No. 134 dated 28.3.2001 under Section 323, 324/34 IPC registered at PS Jhajjar.

23. PW11 HC Surender Kumar Photographer PS Jhajjar deposed that on 1.4.2001, he went to village Jahajpur and took photographs of dead bodies and place of occurrence. He proved the photographs Ex.P8 to Ex.P17.

of Krishan recorded by Umed Singh he had recorded FIR Ex.PB/1.

25. PW13 Ram Kumar son of Rattan Singh stated that he did not know anything about this case and stated that nothing had happened in his presence. On the request of learned PP he was declared hostile.

26. In cross examination he denied that he had made any statement before the police on 1.4.2001. He stated that Ram Chander was lying in the ditches on the side of the road leading from the village Jahajpur to Orangpur. He was in injured condition. He (Ram Chander) had told him (Ram Kumar PW13) that he had been pushed and thrown by Mange Ram son of Munshi Ram. He however denied that he had made any statement to the police that Ram Chander had some injury on his hip and was unable to walk and that he had taken him to his house (Ram Chander's house) on his tractor.

27. PW14 Ved Parkash HC PS Jhajjar deposed that on 1.4.2001 he was posted as MHC PS Jhajjar. He deposed regarding the deposit with him of a sealed parcel of blood stained earth, sealed parcel of empty cartridges on 1.4.2001 by SI Mohinder Singh, the deposit of sealed parcel of clothes of Bharpai, a sealed parcel of pellets duly sealed with the seal of doctor, sealed parcel of clothes of Vijay, sealed parcel of clothes of Preetpal by SI Mohinder Singh on 2.4.2001. On 7.4.2001, Mohinder Singh deposited with him one SBB gun and one sealed parcel of cartridge sealed with seal MS. On 25.4.2001 he handed over the above said sealed parcels to C. Sanjeev Kumar for depositing it in FSL Madhuban.

28. PW15 C. Jai Chand Draftsman SP Office, Jhajjar deposed that on 20.5.2001 he visited the spot where the dead bodies of Vijay Kumar and Bharpai were lying and prepared scaled site plans Ex. PZ and Ex. PAA respectively.

PW16 Umed Singh SI deposed that on 1.4.2001 he was posted in PS

Jhajjar. He received telephonic message from Inder Parkash Ex.Sarpanch of village Mootlodha to the effect that Balmikis of village Jahaj had opened fire on some persons and in that occurrence one male and one female had expired at the spot and one person had sustained injuries. On receipt of the information, he went to the spot accompanied by ASI Om Parkash, and some constables and Photographer C. Surinder Singh. He got the dead bodies lying in the street photographed. He recorded the statement of Krishan son of Ram Chander Ex.PB. He made endorsement EX.PB/2 and sent the same to police station whereupon formal FIR Ex.PB/1 was recorded. He then inspected the site, prepared the rough site plan (Ex. PBB) of the place where dead body of Bharpai was lying and rough site place (Ex. PCC) of the place where dead body of Vijay son of Ram Chander was lying. He picked up the blood stained earth (Ex. PC) from the place where the dead body of Bharpai was lying. No blood was available at the place where dead body of Vijay was lying. He also picked up four empty cartridges from the roof of the house of Ram Chander. Some pellets and wads were picked up from the street where the dead bodies were lying which were taken into possession vide recovery memo Ex. PD. He further deposed regarding the recovery of one gandasi on 3.4.2001 on the disclosure statement of Rajesh which was taken into possession vide recovery memo Ex.PH/1, the recovery of Pharsi on the disclosure statement of accused Shiv Kumar which was taken into possession vide recovery memo Ex. PE/1, recovery of lathi on the disclosure statement of accused Bimla which was taken into possession vide recovery memo Ex. PF/1, recovery of lathi on the disclosure statement of accused Kamlesh which was taken into possession vide recovery memo Ex.PG/1.

Parkash was received at 3.20 pm. Krishan met them at about 4.30 pm. They arrived in the village at about 4.45 pm. Krishan had mentioned the names of three persons who fired at the victims. He had not mentioned that they fired from a single gun. He denied that it had come out during investigation that Krishan and his brother, father etc. had gone to the house of Mange Ram accused and that Krishan had fired at Mange Ram hitting at his eye brow and that Mange Ram in his self defence had fired at them with his licenced gun.

31. PW17 Laxmi Narayan Constable deposited regarding delivery of special report of the case at the residence of Illaqa Magistrate and SP/DSP.

32. PW18 ASI Om Parkash deposited regarding the arrest of accused Partap by him on 17.04.2001.

33. PW19 deposited regarding the arrest of accused Mange Ram on 5.4.2001 by ASI Umed Singh and the recovery of his licenced Single Barreled gun on his disclosure statement Ex. PEE.

34. PW21 Dr.J.S.Punia, Medical Officer, Civil Hospital, Sonapat deposited that on 02.04.2001 he was posted as Medical officer in Civil Hospital, Jhajjar. He conducted Post Mortem examination over the dead body of Vijay Kumar . He found the following injuries on his person:-

“The dead body of 27 years male 5'7".,. He had as per police papers Rigor mortis present. Eyes and mouth semi opened. There were multiple pallets holes size about. 5 cm each present over the front of chest, abdomen, right side of scalp, upper 1/3rd of left thigh and the holes were black in colour.

Lungs, pleura and heart were ruptured and having multiple holes. Also the multiple hole present in lung, abdominal wall, small intestines and liver were also lacerated. Rest organs were healthy.”

The cause of death in his opinion was due to the injuries to the vital organs and

associated abrasions as a result of firearm injury.

35. On the same day he conducted post mortem examination over the dead body of Bharpai w/o Ram Chander, 65 years female r/o Jahajpur. He found the following injuries:-

“Multiple pallets holes of size 5 cm.present front of the chest neck and the holes were black in colour. Both lungs, Pleura and heart were lacerated at the multiple sides throat cavity was full of blood. Laceration also present on the superior surface of liver. Rest organs were healthy.”

The cause of death in this case in his opinion was due to injuries to the vital organs and associated haemorrhage and shock as a result of firearm injury which was sufficient to cause death in normal course of nature. All the injuries were ante-mortem in nature.

The duration between death and Post Mortem was within 24 hours. He proved the Post Mortem report Ex.PHH.

36. On 01.04.2001 he also conducted the medico legal examination on patient Ram Chander, S/o Rampat, 60 years, Male R/o Jahajpur and observed as under:

“The patient was conscious and cooperative. Pulse 82 P.M. B.P. 120/80.

Injury:- There was history of pain in the both buttock region and on the right pelvic area. On examination tenderness present and a diffused swelling present on the right side of hip. Injury was suggested for X- ray. The weapon used was blunt.”

He proved the medico legal report Ex. PJJ.

37. In cross examination he stated that the fire arm injury on the person of Vijay could be from a distance of around 3 feet. The distance of the fire arm injury

in the case of Bharpai was also around 3 feet.

38. PW23 Dr.J.P.Sharma, Radiologist at Narula Ultrasound CT Scan Centre, Rohtak deposed that on the night of 31st March 2001 he radio-logically examined the patient Preet Pal S/o Ram Chander R/o Jhajjar aged about 20 years. There were multiple radio opaque shadows of metallic density in left arm, forearm and hand region suggestive of multiple pellets. X-ray Palvis of the aforesaid injured and that of thigh, knee and other thigh showed multiple radio opaque shadow of metallic density which all were suggestive the presence of pellets. The X-ray of abdomen also showed radio opaque shadow of metallic density in the right side of pelvis. However, no fracture was seen. The X-ray of heart showed that the heart was of normal size but there was radio opaque shadow of metallic density on the left side of the chest which suggested presence of pallets. However, no fracture was seen in that region. He proved his report Ex.PQQ and the X-ray films Ex.P33 to P44.

39. As per FSL Report the fired cartridge case marked C/1 picked up from the spot was found to have been fired from 12 bore SBBL gun W/1 stated to have been recovered from accused Mange Ram. The pellets stated to have been taken out from the body of deceased Vijay Kumar contained in parcel IV said to be usually loaded in shotgun cartridges including 12 bore.

40. Ld. Trial Court held that the enmity between the complainant party and the accused party was well established. PW3 Krishan Kumar complainant admitted in his cross examination that his brother Vijay had taken Kamlesh wife of accused Partap to some unknown place and they had returned after 7-8 days. In regard thereto panchayat was held in the village. The matter was even taken to the

police. This was also stated by the accused Mange Ram in his statement under

Section 313 Cr. P.C. It was also established that on 27.03.2001 a quarrel took place between the two parties in which Satpal and Bhartu from the complainant side and Om Parkash from the side of the accused suffered injuries. They were admitted in Civil Hospital. Regarding that incident FIR No.134 dated 28.03.2001 u/s 323, 324/34 IPC had been got registered by Om Parkash against the complainant party. But the Ld. Trial Court concluded that the occurrence of 01.04.2001 in which two persons from the side of the complainant died and one sustained injuries did not happen in the manner as depicted by the prosecution. The Ld. Trial Court concluded that there appeared to be much exaggeration and concoction in the version of the prosecution and the established facts contradicted it. As per the version of PW 3 Krishan Kumar, Mange Ram and his wife came in a Maruti car and pushed Ram Chander, the father of the complainant, in the ditches when he was taking the meals to the hospital for Satpal and Bhartu. At that time the complainant and his brother were working in the fields. Their mother came and informed them about the incident. Thereafter instead of immediately going to the aid of their father, they went to their house. The father of the complainant was brought to their house by Ram Kumar in a tractor trolley. The trial court did not find this version credible. It found this conduct of the complainant and his brother in not immediately rushing to their injured father unnatural and consequently did not believe this version. Moreover Ram Kumar who appeared as PW 13 did not support this version that he had taken Ram Chander to the house of the complainant in a tractor trolley. Ram Chander himself was not examined.

41. As regards the actual occurrence, the Ld. Trial Court did not believe the version of the prosecution that there were five persons variously armed at the gate of the house of the complainant and five persons at the roof of the house. It

opined there was no reason for the five persons to climb the roof when all of them could have caused injuries to the complainant party by entering from the main gate instead climbing to the roof. It also found the prosecution version that Vijay and Preetpal, brothers of the complainant, climbed to the roof on the other side as not trustworthy. The Trial Court opined that there was no reason for them to climb to the roof instead of seeking shelter in the safety of their own house, when they had already seen the accused, three of whom were armed with guns, on the roof on the other side of the house. As per the prosecution Vijay and Preetpal were fired upon when they were on the roof. The shots were allegedly fired by the accused from the roof on the other side. It has been admitted by PW4 Preetpal that there was a courtyard between the two roofs and the width of the chowk of the house was 20-22 paces.

42. PW5 Dr. Raman Gupta who medico- legally examined Preetpal found tattooing marks on his person. Similarly PW21 Dr. J.S. Punia who conducted the post mortem examination of Vijay and Bharpai found pellet holes of black colour on their bodies. In cross examination he stated that the fire arm injury on the person of Vijay and Bharpai could be from a distance of around 3 feet. This clearly belied the prosecution version that Vijay and Preetpal were on the roof of the inner side of the house and were fired upon by the accused who were on the other side of the roof.

43. It has come in evidence that the height of the roof was about 10'-11'. The evidence of PW 21 that the fire arm injury on Bharpai could be from a distance of about 3 feet also belies the prosecution version that she was entering the room in the courtyard and was fired upon by the accused from the roof.

they had used a ladder for climbing to the roof. The trial Court found it strange as to why the accused would not fire upon Vijay and Preetpal when they were climbing by using the ladder instead of waiting for them to come to the roof. As per PW3 Krishan Kumar, his brother Vijay fell down from the roof on receiving the fire shot. As per PW4 Preetpal he jumped from the roof on sustaining the injuries. Other than the pellet injuries no other injury was found on the person of Vijay and Preetpal. This belies the prosecution version of the shots having been fired on them when they were on the roof, for if they had fallen or jumped from the roof which was 10'-11' in height they would certainly have sustained some other injury.

45. The dead body of Vijay was found in the street at a distance of about 40' from the house whereas the dead body of Bharpai was found lying in the house. There is no explanation as to how the body of Vijay reached there when as per the prosecution version he was shot at in the house. PW 16 ASI Umed Singh testified he picked up the blood stained earth (Ex. PC) from the place where the dead body of Bharpai was lying. No blood was available at the place where dead body of Vijay was lying. He also picked up four empty cartridges from the roof of the house of Ram Chander. Some pellets and wads were picked up from the street where the dead bodies were lying which were taken into possession vide recovery memo Ex.PD.

46. The Trial Court further found contradictions in the prosecution version regarding the shots being fired by accused Partap and Jagdish in addition to Mange Ram. It pointed to the contradiction in the version of PW4 Preetpal in his statement under Section 161 Cr. P. C and his deposition in Court. In his statement

under Section 161 Cr. P. C. he had stated that first Mange Ram fired at Vijay, then

Partap obtained the gun from him and fired at Bharpai and thereafter Jagdish took the gun and fired at him (Preetpal) but while deposing in Court he stated that PW4 Mange Ram, Jagdish and Partap were on the roof of their house with guns in their hands. Mange Ram fired a shot which hit Vijay and he fell down from the roof. Jagdish fired a shot at PW4- Preetpal which injured him but he jumped from the roof on the other side. Partap fired a shot at his mother. She sustained some injuries. Jagdish fired a shot at Krishan but he was saved as he went behind the shelter. Further while the complainant stated that Mange Ram and Jagdish were having SBBL gun and Partap had a DBBL gun according to PW 4 Preetpal all of them had SBBL guns. Further noticing that the only weapon recovered was the gun of Mange Ram, the Ld. Trial Court acquitted all the other accused including Partap and Jagdish as well. Only Mange Ram was convicted.

47. Sh. L.S.Sekhon has vehemently argued that the Ld. Trial Court had itself noticed the falsity of the prosecution version and acquitted nine accused. The appellant could not have been convicted on such evidence which has been demonstrated to be false.

48. There is merit in the submission of the Ld. Counsel. As referred to above the entire prosecution version regarding the incident in which two persons Vijay and Bharpai died and Preetpal sustained injuries has been demonstrated to be false. The version that shots were fired on the deceased and the injured from the roof of the house of the complainant party has been found to be false. The other nine co-accused have been acquitted by the trial court. It has not been brought to our notice that any appeal has been filed against their acquittal.

49. It is well settled that acquittal of co-accused per se is not sufficient to result in acquittal of the other accused. The Court is required to examine the entire

prosecution evidence in its correct perspective before it could conclude on the effect of acquittal of one accused on the other in the facts and circumstances of the given case. The Court is required to separate grain from the chaff, truth from falsehood. However where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed-up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto.

50. In this regard Hon'ble Supreme Court in ***Jayapal v. State of T.N., (2019) 8 SCC 342*** observed as under:

“15. The question relating to the propriety of conviction of one accused even while the co-accused persons are acquitted has received attention of this Court in several decisions. With reference to the principles enunciated in the past decisions, this Court observed in Yanob Sheikh v. State of W.B. that acquittal of co-accused per se is not sufficient to result in acquittal of the other accused; and the Court ought to examine the entire prosecution evidence in its correct perspective before it could conclude on the effect of acquittal of one accused on the other in the facts and circumstances of the given case.

15.1. In Dalbir Singh v. State of Haryana this Court extracted the principles propounded in Krishna Mochi v. State of Bihar and observed as under: (Dalbir Singh case, SCC pp. 429-30, para 13)

“13. Coming to the applicability of the principle of falsus in uno, falsus in omnibus, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the court has

to carefully screen the evidence: (Krishna Mochi case SCC pp. 113-15, para 51)

'51. ... It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) has not received general acceptance in different jurisdiction nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Ali v. State of U.P. Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab). The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to

be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. and Ugar Ahir v. State of Bihar.) An attempt has to be made to, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed-up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. and Balaka Singh v. State of Punjab.) As observed by this Court in State of Rajasthan v. Kalki normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal and not

expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.'"

15.2. Hence, where this Court found that separation of truth from falsehood was not feasible because of the two being inextricably mixed-up, the prosecution evidence was discarded in toto. However, on the facts of other cases, this Court found that acquittal of the co-accused did not enure to the benefit of the convicted accused.

16. It could be usefully reiterated that in the present case, the prosecution witnesses narrated the happenings in the manner that the deceased was waylaid by the three accused persons on the road and while the two male accused persons (the appellant and Accused 2) assaulted the deceased with respective weapons, Accused 3 prevented the deceased from running away. The chronology or sequence of the actions of the accused persons had occurred slightly different in the different testimonies but those inconsistencies, as such, may not be of material bearing if the witnesses are otherwise found reliable and trustworthy. However, the significant part of the matter is that such accounts by the witnesses stand disbelieved in relation to Accused 2 and Accused 3, both of whom stand acquitted. In our view, when Accused 2 and Accused 3 are removed out of scene, the entire complexion of the prosecution story is altered on material aspects and such an alteration cannot be ignored as being wholly immaterial or irrelevant.

16.1. In other words, if the prosecution case is taken as false (or at least doubtful) as regards Accused 2 and Accused 3, this part of falsehood (or doubtfulness) is difficult to be segregated for the purpose of believing the prosecution case qua the appellant alone. The exercise of sifting the grain from the chaff in this matter would shake, rather annihilate, the fundamentals of the prosecution case;

and an entirely new prosecution story shall have to be assumed that when the deceased was walking down the lane, the appellant alone jumped on him, gave him a blow, threw the weapon towards his own house and ran away. In our view, on the facts and in the circumstances of this case, it would be unsafe to assume such or akin scene of occurrence in replacement of the story propounded by the prosecution.

16.2. As noticed from the decisions aboveresferred, when this Court found that separating the truth from falsehood was not feasible because of the two being inseparably mixed-up, the prosecution case was discarded in toto. However, such a course cannot be adopted in this case and it cannot be held that the appellant was not involved in the occurrence or did not kill the deceased, essentially for the reason that the appellant himself took the defence that he assaulted the deceased in exercise of his right of private defence when the deceased allegedly intruded inside his house and attempted to assault and molest his wife. It is also noticed from the evidence on record that one injury was caused on the person of the deceased, being a vertical stab injury of 5 cm length and 2.5 cm width in front and outside the left collar bone that had pierced the upper portion of lung through the third rib. The medical officer, PW 11 has opined that the injury in the lung was enough to cause death and could have been caused by the spike in question.

17. In view of the above, even after disbelieving the case of prosecution as regards the happenings, but taking into account the admitted case of the appellant that he did inflict injury on the person of the deceased, the matter is required to be examined further on the question as to whether the appellant is entitled to be acquitted for having justifiably acted in exercise of the right of private defence in order to save his wife from the alleged assault and molestation.”

would wholly annihilate, the fundamentals of the prosecution case. An entirely new prosecution story shall have to be assumed about the incident having taken place in the street, in a totally different manner and not in the house of the complainant as projected by the prosecution. It would be unsafe to assume such and replace the story propounded by the prosecution.

52. As per FSL Report the fired cartridge case marked C/1 picked up from the spot was found to have been fired from 12 bore SBBL gun W/1 stated to have been recovered from accused Mange Ram. The pellets stated to have been taken out from the body of deceased Vijay Kumar contained in parcel IV said to be usually loaded in shotgun cartridges including 12 bore. Thus only the fired cartridge case recovered from the spot was found to have been fired from the 12 bore gun recovered from Mange Ram. It is not as if it was established that Vijay Kumar had died due to the shot fired from the gun recovered from accused Mange Ram.

53. Accordingly, the present appeal is allowed. Appellant Mange Ram is acquitted of all the charges framed against him. He is on bail. His bail bonds stand discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 15, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No