

Singh		Imprisonment		
	307/34 IPC	Five years	Rs.2,000/-	One year
Jarman Singh	302/34 IPC	Life Imprisonment	Rs.5,000/-	Two years
	307 IPC	Seven years	Rs.2,000/-	One year
	27 Arms Act	Three years	Rs.1,000/-	Six months
Rattan Singh	302/34 IPC	Life Imprisonment	Rs.5,000/-	Two years
	307/34 IPC	Five years	Rs.2,000/-	One year

2. The present appeal had been filed by all the four accused, named above, but appellant Gurnam Singh expired during the pendency of the appeal and the proceedings qua him were abated vide order dated 30.01.2020.

3. The case of the prosecution in a nutshell is that on 17.04.2001, a message was received from Mission Hospital, Ferozepur to the effect that Kailash Chander resident of Mamdot was lying admitted in injured condition in the Hospital. On receipt of this message ASI Joginder Singh alongwith other police officials went to Mission Hospital, Ferozepur. ASI Joginder Singh contacted the concerned Medical Officer to record the statement of the injured but at that time the injured was being operated upon and his statement could not be recorded. No other person was available in the Hospital who could get his statement recorded with regard to the occurrence. On 18.04.2001 ASI Joginder Singh again approached the concerned Medical Officer seeking his opinion as to whether injured Kailash Chander was fit to make statement but he was declared unfit to make statement. The doctor further informed that the injured had been referred to C.M.C.Ludhiana. On 19.04.2001, ASI Joginder Singh alongwith other police officials reached C.M.C. Ludhiana from where it was learnt that Kailash Chander was

admitted in Mohan Dai Oswal Cancer Treatment and Research Hospital, Ludhiana. On reaching there, ASI Joginder Singh sought the opinion of the concerned Medical Officer as to whether the injured was fit to make his statement but the doctor opined that he was unfit to make his statement. Then ASI Joginder Singh recorded the statement of PW8 - Rajesh Kumar alias Raju son of Subhash Chander who stated that he was the resident of village Mamdot and was an agriculturist. His uncle (chacha) Kailash Chander was constructing a building in his plot for Co-operative Bank. On 17.04.2001 at about 6.45 P.M. the complainant along with his uncle Kailash Chander was going to the said building. At that time Kailash Chander was empty handed whereas the complainant was armed with his .12 Bore double barrel gun. He stated that he always remained in the company of his uncle. When they reached at a distance of 20-25 Karmas from the said building, they found that Tarsem Singh, Jarman Singh, Rattan Singh and Gurnam Singh accused were unloading loose earth from trolley into their (complainant party's) plot, which adjoined the court-yard of Tarsem Singh etc. His uncle Kailash Chander asked them as to why they were throwing loose earth into their plot, upon which accused Rattan Singh abused him in the name of his mother and asked him what business he had to stop them from unloading the earth as the plot was owned by them. His uncle Kailash Chander and the accused started exchanging hot words. Tarsem Singh, Jarman Singh and Gurnam Singh picked up .12 bore guns from the driver seat of the Tractor. Rattan Singh raised Lalkara that the complainant party be taught a lesson for raising the dispute regarding the plot. Tarsem Singh and Gurnam Singh accused fired from their guns hitting his uncle Kailash Chander in the abdomen. His uncle fell down. Jarman Singh fired towards

the complainant with the intention to kill but the shot did not hit him. When Tarsem Singh was going to again fire from his gun, complainant fired from his licensed gun in his self-defence and in the defence of his uncle. Upon this, all the accused ran away from the spot with their respective weapons. Meanwhile Dr. Naresh also reached there from his shop. He witnessed the whole occurrence. Then, the complainant and Dr. Naresh took Kailash Chander to Mission Hospital, Ferozepur, and got him admitted there. The motive behind the occurrence was that earlier, the accused party wanted to take forcible possession of the plot in question. The complainant party had filed a Civil Suit in the court which was decided in their (complainant party's) favour. The accused wanted to take forcible possession of the said plot. On being prevented by his uncle, they fired shots with intention to kill him and his uncle. On that statement, DDR Ex.P7/B was registered as regarding the same occurrence, FIR No.49 dated 18.04.2001 had already been registered under Section 307 IPC and Sections 25 and 27 of the Arms Act on the complaint of Tarsem Singh accused. Kailash Chander died in the hospital on 20.04.2001 at 1.40 AM and intimation to that effect was sent to the Police Station. On the receipt of that information, report was recorded in DDR and the offence was converted to Section 302 IPC. The ASI went to Oswal Hospital, Ludhiana. He prepared the Inquest Report Ex.P13 in respect of the dead body of the deceased. He got the postmortem examination of the dead body conducted. Ante-mortem injuries were found on the dead body and it was opined that the cause of death was due to septicaemia shock caused by injury to vital organs like small intestine which was sufficient to cause death in the ordinary course of nature. On 11.05.2001 ASI Joginder

Singh arrested Jarman Singh - accused, who produced one .12 bore double

barrel gun. The gun along with his arms license was taken into possession vide memo Ex.P6. After the completion of the investigation the challan was filed.

4. The prosecution examined number of witnesses in its support. The statements of the accused under Section 313 Cr.P.C. were recorded. All of them denied the allegations levelled against them.

5. Accused Jarman Singh and Tarsem Singh in their separate statements under Section 313 Cr.P.C. stated that they were brothers and were residing together. Tarsem Singh had brought a trolley of loose earth at 7.00 PM on 17.04.2001 to the plot which was in their possession. Meanwhile, Kailash Chander and Bhola (Parkash) both armed with .12 bore guns and Pappu armed with a spade came there. They started quarrelling with them and exchanged abuses. Raju (Rajesh Kumar) raised lalkara that Tarsem Singh be not allowed to go. On this, Kailash and Bhola, both fired with their guns at Tarsem Singh. The shot hit the forehead, ear and arms of Tarsem Singh. He fell down. Meanwhile, Jarman Singh brought his licensed gun, Raju (Rajesh Kumar) fired from his gun at Jarman Singh, which hit on his chest and arm. Jarman Singh also fired in self defence towards them and raised raula. They left the spot. The injured Jarman Singh and Tarsem Singh were taken to the Civil Hospital, Ferozepur by their maternal uncle. They stated that they had constructed mangers and used to tether their cattle in the disputed plot which was in their possession. The case of the disputed plot had been decided in their favour before this occurrence by the lower court.

6. The appellants were 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 HC Surinder Singh deposed that on 05.07.2001 he was posted as Head Armour in Police Line Ferozepur. On that day, ASI Joginder Singh produced before him one parcel containing .12 bore DBBL gun and another parcel containing .12 DBBL gun, both sealed. One parcel contained DBBL Gun No.44201 and the other parcel contained DBBL Gun No.21155. He tested both the guns mechanically. They were in working condition. He gave his report Ex.P1.

9. PW2 Krishan Lal draftsman stated that he had prepared the scaled site plan Ex.P2 on the pointing out of PW Naresh Kumar by visiting the spot

10. PW3 Rajesh Kumar Puri, Ahlmad Court of District and Sessions Judge, Ferozepur brought the summoned file of Appeal No.259/1998 titled as “Kailash Chander vs. Gurnam Singh” which was decided on 12.09.2001 by the District Judge, Ferozepur. The appeal was against the judgment and decree dated 08.12.1997 of the Ld. Additional Civil Judge (SD), Ferozepur vide which suit of Kailash Chander – plaintiff was dismissed. In cross-examination he stated that the suit was filed against Gurnam Singh s/o Rattan Singh. Tarsem Singh and Jarman Singh sons of Gajjan Singh r/o Mamdot Uttar, Tehsil and District Ferozepur. The appeal was filed on 17.01.1998.

11. PW4 Babu Lal, Clerk office of Tehsildar Jalalabad brought the Arms Licence Register maintained by the office of District Magistrate, Ferozepur. At Sr.No.1692/December/1998/Ferozepur Licence for .12 bore

gun was issued in favour of Jarman Singh s/o Gajjan Singh which was valid

upto 15.12.2001. He proved the licence Ex.P3.

12. PW5 HC Joginder Singh deposed that on 20.04.2001 he had accompanied ASI Joginder Singh to Mohan Devi Oswal Hospital Ludhiana. He got postmortem of the body of Kailash Chander performed at Civil Hospital, Ludhiana. The doctor handed over to him the wearing apparels found on the dead body which were taken into possession by ASI Joginder Singh vide memo Ex.P4.

13. On 24.04.2001, the ASI took into possession a bottle duly sealed containing pellets from the doctor in Mission Hospital vide memo Ex.P5. On 11.05.2001 he along with ASI Joginder Singh was present in Police Station Mamdot. Hazara Singh produced Jarman Singh, Tarsem Singh, Gurnam Singh accused before the ASI. Jarman Singh produced a .12 bore gun which was taken into possession vide memo Ex.P6.

14. PW6 HC Ashwani Kumar deposed that on 18.04.2001 he joined the investigation with ASI Joginder Singh. The ASI collected blood stained earth and ordinary earth from the spot which was put in two different bottles and duly sealed. He further deposed regarding delivery of special report to the Ilaqa Magistrate, SSP and SP. In cross-examination he stated that Rattan Singh s/o Bhag Singh was present when the blood stained earth and ordinary earth was collected.

15. PW7 HC Sukhpal Singh deposed that on 18.04.2001 he was posted as MHC Police Station Mamdot. On that day, ASI Joginder Singh deposited with him two sealed parcels containing blood stained earth and ordinary earth. On 11.05.2001 ASI Joginder Singh deposited with him a sealed parcel containing .12 bore gun. The ASI collected those parcels on

05.07.2001.

16. PW8 Rajesh Kumar deposed that Kailash Chander was his paternal uncle. He had been constructing a building for bank. On 17.04.2001 at about 6.45 PM, he along with Kailash Chander were going to the site of the construction. At that time, he had a .12 bore gun. Kailash Chander was empty handed. When they were at a distance of 20-25 karams from the building, they found that Tarsem Singh, Jarman Singh, Gurnam Singh and Rattan Singh were putting loose earth in their plot. The plot was situated in front of their field. The accused were unloading the earth from tractor-trolley. Kailash Chander restrained them from doing so. The accused abused Kailash Chander in the name of his mother and asked what business he had to stop them as the plot was owned by them. The accused started exchanging hot words with Kailash Chander. Gurnam Singh, Tarsem Singh and Jarman Singh went towards the tractor. They picked up .12 bore guns from the tractor. Rattan Singh exhorted his co-accused to teach them (complainant party) a lesson for raising a dispute regarding the plot. Tarsem Singh and Gurnam Singh fired towards them with their guns. The shots hit the abdomen of Kailash Chander. He fell down. Jarman Singh also fired a shot from his gun towards them with intention to kill them. Tarsem Singh tried to fire again from his gun. Upon this, he (Rajesh Kumar PW8) fired at Tarsem Singh from his gun in order to save himself. Thereafter, all the accused escaped to their houses. Dr. Naresh came to the spot. He witnessed this occurrence. He removed Kailash Chander to Mission Hospital. A dispute regarding the plot was going on and a case had already been filed in the District Court. From Mission Hospital, Kailash Chander was taken to Oswal Hospital Ludhiana on 18.04.2001. On 19.04.2001 the Police came to that Hospital. He (Rajesh Kumar PW8) got his statement recorded before

the Police. He proved that statement Ex.P7.

17. In cross-examination, he stated that PW 11 Naresh Kumar was the son of the sister of his father. Kailash Chander had two sons, namely Harsh Narang and Sahib Narang. Ramesh and Parkash were his brothers. Both of them as well as he himself were facing trial for offence under Section 307 IPC for having fired at Tarsem Singh and Jarman Singh. Kailash Chander had also been named as an accused in that case. He denied that the gates of the houses of Darbara Singh, Gurbachan Singh, Rattan Singh and Gajjan Singh opened in the plot in dispute. He admitted that there was manure, dung-heaps and place for drinking water in that plot. The plot was about 60 feet x 60 feet. He had stated in his statement to the Police that he fired from his gun in the exercise of his right of private defence and of Kailash Chander. He admitted that suit regarding the plot was decreed by the Trial Court in favour of the accused. At the time of the alleged occurrence, appeal against the said judgment was pending before the District Court. He denied that they were the aggressor party.

18. PW9 Dr.Manmohan Singh deposed that on 20.04.2001 he along with Dr. S.K.Sharma conducted postmortem on the dead body of Kailash Chander. They noted the following injuries :

“1. Stitched surgical wound 14 cm in length in the mid line of the abdomen from epigastrium to pubic region.
2. Multiple oval lacerated wound ¼ cm in diameter on the right flank of the abdomen. Scattered in an area of 8' x 7' and about 12 in number black in colour. On exploration of abdomen small intestine was found operated stitched and anastomosed. Abdominal cavity containing blood stained fluid. Both the lungs on cut section shows the pussyfroth.”

The cause of death in their opinion was due to septicemic shock caused by injury to vital organ i.e. small intestine which was sufficient to cause the death in the ordinary course of nature. Injuries were ante mortem in nature. The probable time that elapsed between the injuries and death was about 2½ days and between death and postmortem was about six hours. He brought the original postmortem record and proved its correct carbon copy Ex.P8.

19. PW10 Dr. Vipin, Medical Officer, Frances Newton Hospital, Ferozepur Cantt. deposed that on 17.04.2001 at 8.15 PM, he had medico-legally examined Kailash Chander and found the following injuries on his person:-

“Anterior Abdominal Wall :-

Multiple penetrating wounds present in periumbilical area, right iliac region and part of hypogastrium, about 50 to 55 in number 0.5 cm in size.

Multiple abrasions present over the abdomen

- 1. 3 cm x 2.5 cm on left side of umbilicus*
- 2. 2 cm x 0.5 cm on right side of umbilicus*
- 3. 2.5 cm x 0.7 cm on right side of umbilicus*
- 4. Multiple abrasions over right inguinal area and right iliac region 0.5 cm x 0.6 – 0.7 cm in size.*

No exit wound present”

The nature of injuries was declared to be dangerous to life and the probable duration of injuries was 1-1½ hours. The injuries were caused by shot gun. He also proved the carbon copy of the MLR Ex.P9, pictorial diagram showing the seat of injuries Ex. P 9/A and the information sent to the SHO Ex.P10.

20. PW11 Dr. Naresh Kumar deposed that on 17.04.2001 he was standing outside his clinic situated at Mamdot. At that time, his maternal

uncle Kailash Chander and PW Rajesh Kumar were standing towards Sabji Mandi. Rajesh Kumar was armed with DBBL gun at that time. He used to remain with Kailash Chander all the time. Rattan Singh, Gurnam Singh, Tarsem Singh and Jarman Singh were unloading loose earth from the tractor-trolley at that place. Kailash Chander tried to stop them from doing so. He also went to the spot. Kailash Chander asked the accused why they were unloading the earth in their plot. Rattan Singh accused abused him in the name of his mother and said that the plot was their ownership (ownership of the accused) and that Kailash Chander had no concern with the plot. Rattan Singh raised lalkara, on which Gurnam Singh, Tarsem Singh and Jarman Singh picked up the guns from the driver seat of the tractor. Tarsem Singh and Gurnam Singh accused fired from their guns by aiming at Kailash Chander with intention to kill him. Those shots hit Kailash Chander in the abdomen. He fell down. Then Jarman Singh fired a shot from his gun towards Kailash Chander and Rajesh Kumar. When Tarsem Singh and Gurnam Singh tried to fire again from their guns, Rajesh Kumar fired a shot from his gun in the exercise of his right of self defence and that of Kailash Chander. Then the accused ran away towards their houses along with their weapons. He and Raju (Rajesh Kumar) tied the turban of Kailash Chander around his abdomen. Parkash Chander brought a car within five minutes. Kailash Chander was taken to Mission Hospital and admitted there. He (PW11) then left that place for arranging blood for Kailash Chander. After arranging the blood and money, he came back to the hospital. Next day, Kailash Chander was admitted in Oswal Hospital, Ludhiana. PW11 came back from that place on 19.04.2001. Kailash

Police on 21.04.2001. His statement was also recorded by the Police.

21. In cross-examination, he stated that his statement was also recorded by the DSP. In that statement also he had stated that Rajesh Kumar used to remain with Kailash Chander all the time. In that statement, he had mentioned that Rattan Singh abused Kailash Chander in the name of his mother and told him that he was the owner of the plot and that Kailash Chander had no concern with it. His attention was drawn to the statement Ex.DA recorded by the DSP on 03.05.2001, wherein, it was not so recorded. He had also stated in his statement that Jarman Singh had fired from his gun towards Kailash Chander and Rajesh Kumar. His attention was drawn to the statement Ex.DA, wherein, it was not so recorded. He had not stated in his statement that turban of Kailash Chander was tied around his abdomen. He had also not stated that Parkash Chander came there in a car and Kailash Chander was taken to Mission Hospital in that car. He admitted that Ramesh Kumar is also known as Pappu and Rajesh Kumar is also known as Raju. Only Rajesh was holding an arms licence for .12 bore gun. He did not know if Kailash Chander and Parkash Chander possessed licence for a .12 bore gun. His residential house was at a distance of 200 meters from the place of occurrence. The clinic was about 80-90 feet from that place. He had not given any first aid to Kailash Chander. Civil Hospital, Mamdot was at a distance of 200 meters from the place of occurrence. He admitted that the gate of Darbara Singh and Darshan Singh opened towards the plot in dispute. He, however, denied that the only access to their houses was from the said plot. Sometimes, they passed through the plot. He admitted that there was a tree in the plot and there was manure of cattle under that tree.

He admitted that heap of dung was lying at the spot. The building of Bank

which was got constructed by Kailash Chander was at a distance of 20-22 karams from the place of occurrence. He had not stated in his statement before ASI Joginder Singh that Rajesh Kumar fired in exercise of his right of private defence and that of Kailash Chander. In that statement he had stated that he had tied the turban of Kailash Chander around his abdomen. His attention was drawn to the statement dated 21.10.2001 Ex.DB under Section 161 Cr.P.C., wherein, it was not so recorded.

22. PW12 ASI Joginder Singh deposed that on 17.04.2001 he was posted in Police Station Mamdot. That day, a message was received from Mission Hospital Ferozepur about the admission of Kailash Chander with a fire arm injury. On receipt of the message, he went to the Hospital and submitted application Ex.P11 to enquire about the injured. At that time, Kailash Chander was being operated upon and as such he came back. On 18.04.2001 he again went to the hospital and made application Ex.P12. The doctor made his endorsement on the application that the injured had been referred to Ludhiana. On 19.04.2001, he went to the Hospital at Ludhiana, where PW Rajesh Kumar met him and he recorded his statement Ex.P7. He made his endorsement Ex.P7/A on that statement and sent it to the Police Station on the basis of which an entry Ex.P7/B was recorded in the DDR. On 20.04.2001, he received information about the death of Kailash Chander. He then went to Oswal Hospital, Ludhiana. He prepared inquest report Ex.P13. He got postmortem of the dead body conducted. On 21.04.2001 he went to Mission Hospital, Ferozepur and took into possession MLR and one bottle containing pellets vide memo Ex.P5. He also took into possession the wearing apparel of the deceased vide memo Ex.P4. On 15.05.2001, he

arrested Parkash, Bhola and Pappu. On 18.05.2001 he arrested Rajesh

Kumar. On 11.05.2001, he arrested accused Jarman Singh. The .12 bore gun and the arms licence recovered from him were taken into possession vide memo Ex.P6. That gun was Ex.MO1. On 18.04.2001 he prepared rough site plan of the occurrence. He arrested Tarsem Singh, Gurnam Singh and Rattan Singh accused. After completion of investigation, challan was filed by Arjan Singh, SHO.

23. In cross-examination, he stated that on 17.04.2001 he had recorded the statement Ex.DC of Tarsem Singh accused in Civil Hospital, Ferozepur, on the basis whereof, FIR Ex.DC/A was registered. During investigation, a .12 bore gun was recovered from PW Rajesh Kumar which was taken into possession vide memo Ex.DD. He had inspected the plot in dispute where the occurrence had taken place. There were mangers and pegs of Jarman Singh and Tarsem Singh and they had been tethering their cattle there. The complainant party had been challaned for the offence under Section 307 IPC. PW Naresh Kumar was not challaned in that case. The house of Kailash Chander, the site where the building for the Bank was under construction and the clinic of Naresh Kumar had not been shown by him in the rough site plan. The clinic was at a distance of 15-20 karams from the place of occurrence. When he had gone to Oswal Hospital on the first day, no eye witness of the occurrence including Rajesh Kumar had met him there.

24. PW13 Dr.Satish Jain, Medical Director and Chief of Surgery Mohan Dai Oswal Memorial Hospital, Ludhiana brought the summoned record pertaining to Kailash Chander. As per the record, Kailash Chander was admitted in the Hospital on 18.04.2001 at 6.49 PM. He expired on

20.04.2001 at 10.40 AM.

25. DW1 Dr.Pritam Singh Seona, Senior Medical Officer In-charge, Civil Hospital, Ferozepur deposed that an application dated 05.05.2001 was moved by the Police for obtaining his opinion regarding the nature of injuries on the person of Tarsem Singh. He had given his opinion that the injuries could be dangerous to life as the fire arm head injuries were on the vital part of the body. He proved his report Ex.DE.

26. DW2 Dr.Ramesh Kumar, Medical Officer, School Health, Civil Surgeon Office, Ferozepur stated that on 17.04.2001 he was posted as Emergency Medical Officer, Civil Hospital, Ferozepur. On that day at 8.20 P.M., he conducted the medico-legal examination on patient Tarsem Singh and found the following injuries :-

- “1. Lacerated punctured wound 0.5 cm x 0.5 cm with an abrasion on margin on left side of his fore-head. Fresh bleeding was present and x-ray was advised.*
- 2. Lacerated punctured wound 0.5 cm x 0.5 cm with abrasion on margin on mid line of fore-head. Fresh bleeding was present. X-ray was advised.*
- 3. Lacerated punctured wound 0.5 cm x 0.5 cm with abrasion on margin on right side of face just below right eye. Fresh bleeding was present. X-ray was advised.*
- 4. Lacerated punctured wound 0.5 cm x 0.5 cm with an abrasion on margin of wound on right side of face 4 cm later to right eye. Fresh bleeding was present. X-ray was advised.*
- 5. Lacerated punctured wound 0.5 x 0.5 cm on right cheek. Fresh bleeding was present. X-ray was advised.*
- 6. Lacerated punctured wound 0.5 x 0.5 cm with an abrasion on margin on right side of upper lip. Fresh bleeding was present. X-ray was advised.*

7. *Lacerated punctured wound 0.5 x 0.5 cm on left eye brow. Fresh bleeding was present and x-ray was advised.*
8. *Lacerated wounds two in number close to each other on left cheek. Fresh bleeding was present and x-ray was advised.*
9. *Lacerated punctured wound 0.5 x 0.5 cm with an abrasion on margin on middle of left ear. Fresh bleeding was present. X-ray was advised.*
10. *Lacerated punctured wound 0.5 cm x 0.5 cm on outer side of middle of left arm. Fresh bleeding was present and x-ray was advised.*
11. *Lacerated punctured wound 0.5 cm x 0.5 cm on outer side of left arm close to elbow joint. Fresh bleeding was present and x-ray was advised.*
12. *Abrasion 0.5 cm x 0.5 cm on left side of back on its middle.*
13. *Abrasion 3 cm x 0.5 cm on left side of back on its upper part.”*

Injuries No.1 to 11 were kept under observation. Injuries no.12 and 13 were declared simple. All the injuries were caused by fire arm weapon and were within six hours of duration. He brought the original medico-legal report and proved its copy on record as Ex.DF as also the pictorial diagram showing the seat of injuries as Ex.DF/1. He also testified that Tarsem Singh accused present in Court, was the same person, whom he had medico-legally examined.

27. On the same day at 9.20 P.M. he conducted medico-legal examination on patient Jarman Singh son of Gajjan Singh and found the following injuries :-

- “1. Multiple lacerated punctured wounds each measuring 0.5 cm x 0.5 cm in size on all over the outer side of right arm. Fresh bleeding was present and x-ray was advised.
2. Lacerated punctured wound 0.5 x 0.5 cm on inner side of right arm on its middle. Fresh bleeding was present.
3. Reddish contusion 2 x 2 cm round in shape on right chest 6 cm from nipple.”

Injuries No.1 and 2 were kept under observation and injury no.3 was simple in nature. Injuries were caused by fire arm and were within six hour of duration. He brought the original M.L.R and proved its copy Ex.PG and also the pictorial diagram showing the seat of injuries Ex.PG/1. He identified accused Jarman Singh as the same person, whom he had medico-legally examined. After receipt of X-ray report he declared injuries No.1 to 11 on patient Tarsem Singh as simple in nature and after X-ray he declared injuries No.1 and 2 on patient Jarman Singh as simple in nature.

28. In cross-examination, he stated that both patients were brought by Rattan Singh. Injuries on the person of both the injured could be possible by one shot if both the patients are standing close to each other.

29. DW3 Dr. Hardutt Jyoti, Radiologist, Civil Hospital, Ferozepur stated that on 17.04.2001 he was working as Radiologist in Civil Hospital, Ferozepur. On that day he had conducted x-ray examination of Tarsem Singh vide M.L.R. RKB/107/2001 dated 18.04.2001 for the following injuries :-

- “1. Injury no. 1,2,7 and 9 which were on the skull showed multiple metallic radio opaque shadows in the region of injury no. 1,2,7 and 9.
2. For injuries no. 3,4,5,6 and 8 which were on the face showed also multiple metallic radio opaque shadows in the

region of the said injuries.

3. *Injuries no. 10 and 11 which were on the left arm also showed two metallic radio opaque shadows in the region of said injuries.”*

He brought the original M.L.C. x-ray register with him and proved its copy Ex.DH.

30. On the same day he conducted X-ray examination on Jarman Singh son of Gajjan Singh resident of Mamdot, vide M.L.R. RKB/105/2001 dated 17.04.2001 for the following injuries :-

1. *Injuries no. 1 and 2 which were on the right arm showed multiple metallic radio opaque shadows in the region of said injuries.*

He had brought the original M.L.C. x-ray Register with him. He proved its copy Ex.DJ .

31. The dispute between the parties centers around a plot, 60 feet x 60 feet. Regarding this plot a Civil Suit had been instituted by deceased Kailash Chander against accused Gurnam Singh s/o Rattan Singh. Tarsem Singh and Jarman Singh sons of Gajjan Singh. The civil suit was dismissed by the Ld. Additional Civil Judge (SD), Ferozepur vide judgment and decree dated 08.12.1997. Against this Appeal No.259/1998 titled as “Kailash Chander vs. Gurnam Singh” was filed by the deceased which was decided on 12.09.2001 by the District Judge, Ferozepur i.e, after the occurrence. This is clear from the deposition of PW3 Rajesh Kumar Puri, Ahlmad who brought the relevant record.

32. The case against the accused was registered on the statement Ex.P7 of PW8 Rajesh Kumar before ASI Joginder Singh on 19.04.2001

when the latter had gone to Mohan Dai Oswal Hospital, Ludhiana where deceased Kailash Chander was undergoing treatment. PW 8 Rajesh Kumar deposed that Kailash Chander was his paternal uncle. He had been constructing a building for bank. On 17.04.2001 at about 6.45 PM, he along with Kailash Chander were going to the site of construction. At that time he had a .12 bore gun. Kailash Chander was empty handed. When they were at a distance of 20-25 karams from the building, they found that Tarsem Singh, Jarman Singh, Gurnam Singh and Rattan Singh were unloading the earth from tractor-trolley into their plot. Kailash Chander restrained them from doing so. The accused abused Kailash Chander in the name of his mother and asked what business he had to stop them as the plot was owned by them. The accused started exchanging hot words with Kailash Chander. Gurnam Singh, Tarsem Singh and Jarman Singh went towards the tractor. They picked up .12 bore guns from the tractor. Rattan Singh exhorted his co-accused to teach them (complainant party) a lesson for raising a dispute regarding the plot. Tarsem Singh and Gurnam Singh fired towards them with their guns. The shots hit the abdomen of Kailash Chander. He fell down. Jarman Singh also fired a shot from his gun towards them with intention to kill them. Tarsem Singh tried to fire again from his gun. Upon this, he (Rajesh Kumar PW8) fired at Tarsem Singh from his gun in order to save himself. Thereafter, all the accused escaped to their houses. PW 11 Dr. Naresh Kumar came to the spot. He witnessed this occurrence. Kailash Chander was taken to Mission Hospital, Ludhiana. From there he was referred to Oswal Hospital where he died on 20.04. 2001.

33. PW 11 Dr. Naresh Kumar who is the son of the sister of the

deceased corroborated the version of PW 8 regarding the incident.

34. As deposed by PW 12 ASI Joginder Singh in his cross-examination, before the recording of DDR Ex. P 7/B on the statement of PW 8 Rajesh Kumar, FIR Ex.DC/A under Section 307 IPC etc. had already been registered against the complainant party on statement Ex.DC of Tarsem Singh recorded in Civil Hospital, Ferozepur on 17.04.2001. The case of the accused as per the separate statements under Section 313 of accused Jarman Singh and Tarsem Singh was that they were brothers and were residing together. Tarsem Singh had brought a trolley of loose earth at 7.00 PM on 17.04.2001 to the plot which was in their possession. Meanwhile, Kailash Chander and Bhola both armed with .12 bore guns and Pappu armed with a spade came there. They started quarrelling with them and exchanged abuses. Raju raised lalkara that Tarsem Singh be not allowed to go. On this, Kailash and Bhola both fired with their guns at Tarsem Singh. The shot hit the forehead, ear and arms of Tarsem Singh. He fell down. Meanwhile, Jarman Singh brought his licenced gun, Raju (Rajesh Kumar) fired from his gun at Jarman Singh, which hit on his chest and arm. Jarman Singh also fired in self defence towards them and raised raula. They left the spot. The injured Jarman Singh and Tarsem Singh were taken to the Civil Hospital Ferozepur by their maternal uncle. They stated that they had constructed mangers and used to tether their cattle in the disputed plot which was in their possession. The case of the disputed plot had been decided in their favour before this occurrence by the lower court.

35. Thus, there is no dispute that an incident had taken place on 17.04.2001 at about 6.45 PM. There is also no dispute between the parties with regard to the place of occurrence. In the incident Kailash Chander

(deceased) had suffered fire arm injuries which resulted in his death on

20.04.2001. From the side of the accused Tarsem Singh and Jarman Singh had sustained injuries. As per DW2 Dr. Ramesh Kumar, Medical Officer, School Health, Civil Surgeon Office, Ferozepur who was posted as Emergency Medical Officer, Civil Hospital, Ferozepur and had medico legally examined them, the injuries in both of them were fire arm injuries. Tarsem Singh had 13 injuries and Jarman Singh had three injuries. Injuries No. 12 and 13 of Tarsem Singh were declared simple and Injury Nos 1 to 11 were kept under observation. In case of Jarman Singh Injuries No.1 and 2 were kept under observation and injury no.3 was simple in nature. After receipt of X-ray report he declared injuries No.1 to 11 on patient Tarsem Singh as simple in nature and after X-ray he declared injuries No.1 and 2 on patient Jarman Singh as simple in nature. In cross-examination, he stated injuries on the person of both the injured could be possible by one shot if both the patients were standing close to each other.

36. The case of the complainant is that the accused party (Tarsem Singh and Gurnam Singh) fired at them first with intention to kill and PW 8 Rajesh Kumar later fired one shot in self defence when the Tarsem Singh tried to fire again at them. The shot fired by PW 8 in self defence caused injuries to Jarman Singh and Tarsem Singh. The case of the accused on the other hand was that Kailash and Bhola both fired with their guns at Tarsem Singh. The shot hit the forehead, ear and arms of Tarsem Singh. He fell down. Meanwhile, Jarman Singh brought his licenced gun, Raju (Rajesh Kumar) fired from his gun at Jarman Singh, which hit on his chest and arm. Jarman Singh also fired in self defence towards them and raised raula.

37. Though the complainant party claimed that the plot in dispute was in their possession yet from the evidence it is clear that the possession

of the plot was with the accused. PW 8 Rajesh Kumar in his cross examination admitted that there was manure, dung-heaps and place for drinking water in that plot. The plot was about 60 feet x 60 feet. He admitted that suit regarding the plot was decreed by the Trial Court in favour of the accused. At the time of the alleged occurrence, appeal against the said judgment was pending before the District Court. PW 11 Dr. Naresh Kumar admitted that the gates of Darbara Singh and Darshan Singh opened towards the plot in dispute. Though he denied that the only access to their houses was from the said plot but he admitted that sometimes, they passed through the plot. He admitted that there was a tree in the plot and there was manure of cattle under that tree. He admitted that heap of dung was lying at the spot. PW 12 ASI Joginder Singh in his cross examination stated that he had inspected the plot in dispute where the occurrence had taken place. There were mangers and pegs of Jarman Singh and Tarsem Singh and they had been tethering their cattle there.

38. From the evidence, it appears that on 17.04.2001 at about 6.45 PM Tarsem Singh and Jarman Singh had brought a tractor trolley and they were putting loose earth in the plot. Kailash Chander (deceased) and PW 8 Rajesh Kumar reached there. PW 8 Rajesh Kumar was carrying a gun. Kailash Chander asked Tarsem Singh and Jarman Singh to stop putting earth in the plot. There was an exchange of hot words between them. The verbal exchange aggravated to a stage where shots were fired by both sides against each other. Both allege that the first shot were fired by the other party. Both sides claim to have fired in exercise of the right of private defence. Kailash Chander died due to the fire arm injuries sustained by him. Tarsem Singh

and Jarman Singh sustained injuries.

39. It is the case of the PW 8- Rajesh Kumar and PW 11- Dr. Naresh Kumar that hot words were exchanged between Kailash Chander and the accused. Then Gurnam Singh, Tarsem Singh and Jarman Singh went to the tractor and picked up .12 bore guns from the tractor. Rattan Singh exhorted his co-accused to teach them (complainant party) a lesson for raising a dispute regarding the plot. Tarsem Singh and Gurnam Singh fired towards them with their guns. The shots hit the abdomen of Kailash Chander. He fell down. Jarman Singh also fired a shot from his gun towards them with intention to kill them. Tarsem Singh tried to fire again from his gun. Upon this, he (PW8 -Rajesh Kumar) fired at Tarsem Singh from his gun in order to save himself and his uncle.

40. The allegation is that the shots fired by Tarsem Singh and Gurnam Singh hit the abdomen of Kailash Chander. Jarman Singh is also alleged to have fired a shot at the complainant party however the same did not hit either the deceased or PW 8- Rajesh Kumar. Rattan Singh is only alleged to have raised a Lalkara. Though as per the prosecution three guns were used by the accused in the incident, however during investigation only the licenced DBBL gun along with arms licence of the accused Jarman Singh was recovered. A licensed DBBL gun of PW 8 Rajesh Kumar was also recovered. As per the report of the PW 1 HC Surinder Singh Head Armourer, Police Lines, Ferozepur both guns were in working condition. The prosecution version regarding the accused having three guns does not appear to be correct and appears to be an exaggeration with a view to implicate all the accused with whom Kailash Chander deceased had litigation regarding the plot. Gurnam Singh has died during the pendency

41. Rattan Singh and Jarman Singh are not alleged to have caused any injury to the deceased. They have been convicted with the aid of Section 34 IPC. From the facts and circumstances the invocation of Section 34 does not appear to be justified. The accused were throwing loose earth in the plot which was in their possession. Kailash Chander came and restrained them. Hot words were exchanged. Tarsem Singh and Gurnam Singh are alleged to have fired upon the complainant party on a lalkara being raised by accused Rattan Singh. Kailash Chander sustained bullet injuries and died due to them. There was civil litigation between the parties. The suit filed by Kailash Chander deceased against the accused party had been dismissed. Appeal was pending. The accused were in possession of the plot. They did not know that the complainant party would come and restrain them from putting loose earth into the plot. The incident happened all of a sudden. There was no pre-meditation. There is no basis to infer that all the accused shared a common intention to cause death. The shot allegedly fired by Jarman Singh did not hit anybody. No empties attributable to the gun shot fired by him were recovered from the spot. It is not proved that Jarman Singh actually fired any shot. The fatal shots are attributed to accused Tarsem Singh and Gurnam Singh. Only a lalkara has been attributed to Rattan Singh.

42. It is well settled that evidence of exhortation/lalkara is in the very nature of things a weak piece of evidence. There is often a tendency to implicate some person in addition to the actual assailant by attributing to to him a lalkara.

43. A Division Bench of this Court in **State of Punjab v. Darshan**

Singh (1992) 3 RCR (Cri) 381, referred to various decisions on this point:

“In Fatta v. Emperor, AIR 1931 Lahore 63, it was observed:—

“When the prosecution are unable to prove satisfactorily the intention or knowledge of an accused person they generally ascribe to him certain words which he is supposed to have spoken in order to supply the missing proof. This method is more often adopted in cases in which certain person is sought to be punished for constructive liability as regards the commission of crime of violence. It is highly unlikely that the accused would be so foolish as to proclaim his intentions before committing the attack, as by doing so he was sure to be thwarted by the persons present.”

7. In Garib Singh v. State of Punjab, (1972) 3 SCC 418 : AIR 1973 Supreme Court 460, it was observed:—

.“Allegations of participation by giving lalkaras are sometime; made only to show additional overt acts so as to take in at least five persons and make out the ingredients of an offence under Section 147 IPC against all of them”

8. In Amar Singh v. State of Haryana, (1974) 3 SCC 81 : AIR 1973 Supreme Court 2221, it was observed:—

“If the appellant had shouted lalkaras it would be difficult to sustain the conviction.”

9. In Jainul Haque v. State of Bihar, (1974) 3 SCC 543 : AIR 1974 Supreme Court 45, it was observed:—

“The evidence of exhortation is in the very nature of things a weak piece of evidence. There is quite often a tendency to implicate some person in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim.”

Thus, the case is not proved against Rattan Singh and Jarman Singh. They

are acquitted of the charges.

44. It is clear that the accused were in settled possession of the plot and were using it for their purposes. Litigation regarding the same was pending. The trial court had decided in their favour. Appeal of the deceased was pending. There was no justification for the deceased to have gone to the plot accompanied by an armed person (PW8) and restrain the accused from using the plot. Hot words were exchanged. The accused were intimidated by the presence of an armed person trying to dislodge them from the plot. They legitimately had the right to protect their person and property. However, it did not extend to causing death. Accused Tarsem Singh fired at the deceased with a .12 bore DBBL gun which hit him on the abdomen resulting in his death. He had the knowledge that the injury would result in death. He has exceeded the right of private defence. Accordingly, he is guilty of the offence under Section 304 Part I of the Indian Penal Code.

45. Accordingly, the appeal qua Rattan Singh and Jarman Singh is allowed. They are acquitted of all the charges framed against them. Sentence of Rattan Singh and Jarman Singh had been suspended vide orders dated 17.02.2006 and 16.09.2009, respectively. Their bail bonds stand discharged.

46. Qua Tarsem Singh, the appeal is partly allowed. His conviction is converted from 302 IPC to Section 304 Part I IPC. He is acquitted of the charges under Section 307/34 IPC.

47. Sentence of Tarsem Singh was suspended vide order dated 11.09.2008 wherein, it has been recorded that he had already undergone sentence of 06 years 05 months and 19 days as on 19.08.2008.

47.

List the matter on 21.07.2020 to hear the accused - appellant

Tarsem Singh/his counsel on the quantum of sentence.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 15, 2020
gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No