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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102)

CRA-D-173-DB-2004 (O & M)

Reserved on: 03.07.2025

Date of Pronouncement:08.07.2025

Om Parkash and others

. ... appellants

V/s

The State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Vinod Ghai, Sr. Advocate, with
Mr. Arnav Ghai, Advocate and
Ms. Kashish Sahni, Advocate, for the appellants.

Mr. Munish Sharma, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 04.02.2004 passed by the Sessions Judge, Bathinda.

2. The instant FIR came to be registered on 27.02.1995. The accused-appellants came to be convicted vide judgment of conviction and order of sentence dated 04.02.2004. The present appeal against the



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judgment of conviction and order of sentence was filed on 10.02.2004. The matter has come up for final hearing now after almost 30 years of the registration of the FIR.

3. Today, at the very outset, the learned State counsel has referred to the order dated 29.09.2017 and submits that since the appellants No.1 and 5, namely, Om Parkash and Darbara Singh have died on 25.01.2014 and 21.04.2017, the appeal qua them be abated.

In view of the aforementioned position, the proceedings qua the appellant No.1-Om Parkash and appellant No.5-Darbara Singh stand abated.

4. The story of the prosecution as emanating from the report under Section 173 of the Code of Criminal Procedure and the documents appended with it culminating into the trial of the case is that on 27.02.1995 Mohinder Singh A.S.I. Incharge Police Post Chautala received information from the doctor of General Hospital, Chautala to the effect that the dead body of Jeet Ram son of Madan Lal Arora, resident of village Chautala was brought to the hospital at about 3.00 a.m. Upon this Mohinder Singh A.S.I. alongwith other police officials reached the Hospital and recorded the statement of Madan Lal son of Raja Ram Arora, Tea Vendor, resident of village Chautala to the effect that Jeet Ram aged about 13-14 years was his son. He was a student of Class 8. On 26.02.1995 the marriage of the son of accused-Om Parkash Hitler was being celebrated in their village. A party was being held for the guests in the evening. There was arrangement of singing of songs as

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well. His (Madan Lal's) brother Munshi Ram was serving the guests of Om Parkash Hitler. His nephew Jagroop Singh was also present in the party. His son Jeet Ram was also enjoying the party. At about 11.30 p.m. accused Om Parkash Hitler sent his man to him (complainant) and he came to the house of accused Om Parkash. He was told by Munshi Ram and accused Om Parkash that Jeet Ram had been injured with a fire arm and a shot had hit his shoulder and he had been taken to Sangria for treatment. Munshi Ram further told him that Jeet Ram was sitting in the chair and was enjoying the dance and songs and some guests were firing shots and one gun shot accidentally hit his son and that he was taken to Sangria by Sandeep and Darbara driver of accused Om Parkash Hitler. At first he was taken to National Nursing Home Sangria. Since the condition of Jeet Ram was serious, he was not admitted in that nursing home. Thereafter, he was being brought to Govt Hospital, Sangria, when he had died on the way. Thereafter, he was brought to the hospital at Chautala. It was further recorded in the statement of Madan Lal that he had no enmity with any person, but the person whose gun shot hit his son was certainly negligent. Mohinder Singh A.S.I. made an endorsement on the statement of Madan Lal and sent it to the police Station, Sadar Dabwali, on the basis of which FIR No. 60 dated 27.02.1995 under section 304-A of the Indian Penal Code was registered. On conclusion of investigation, an un-traced report was prepared on 31.05.1995. It was accepted by the Magistrate on 22.04.1996.



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5. On 13.10.1999 i.e. after three and a half years Madan Lal moved an application (Exh.PL) to Superintendent of Police Sirsa to the effect that on 26.02.1995 his son Jeet Ram had gone to enjoy the dance and songs in the house of accused Om Parkash Hitler and he was murdered by Om Parkash and his three sons, namely, Sanjay, Sandeep and Manoj and Darbara Singh. He had given the information to the police, but no action was taken against the accused till then and that the matter be reinvestigated. The Superintendent of police marked the application on that day to D.S.P., Dabwali vide endorsement (Exh.PL/1), who further marked it to Station House officer, Police Station, Sadar Dabwali vide endorsement (Exh.PL/2). On 15.10.1999 Madan Lal got attested affidavit (Exh.PD) from Shri Ram Sarup Mehta Notary Public Dabwali to the effect that his son Jeet Ram had died due to shots fired by accused Om Parkash on 26.02.1995 and his three sons and Darbara Singh were also with him. His son was asked to serve the guests and he refused. Om Parkash slapped him and abused him. Accused Sanjay, Sandeep, Manoj and Darbara Singh asked Om Parkash that he be taught a lesson for not obeying his order. When his son told that, that he was not at fault, accused Sanjay, Manoj, Sandeep and Darbara Singh asked accused Om Parkash that he be shot and done to death, as he had dared to speak before them. Thereafter, Om Parkash fired at him. There were other persons present there. On receipt of the application and affidavit of Madan Lal, Ram Chander the then Station House Officer, Police Station, Sadar



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Dabwali moved an application (Exh.PM) to the Area Magistrate, Dabwali for reinvestigation of the case. The Magistrate ordered the reinvestigation of the case vide endorsement (Exh.PM/1). On 04.11.1999, Ram Chander moved an application to the Magistrate at Dabwali for recording the statement of Madan Lal under section 164 of the Code of Criminal Procedure. Accordingly statement (Exh.PC) was recorded by him. In this statement, the complainant claimed himself to be an eye-witness stating that on hearing his son being slapped by Om Parkash, he went to the party and requested Om Parkash that his son be spared for not serving the guests as he was a child. It was the marriage of Manoj. Then Sanjay, Sandeep and Manoj told their father that Jeet Ram be shot. He (Madan Lal) told them that he would provide the service that they required from Jeet Ram. The three sons stated that Jeet Ram had insulted their father. Then Om Parkash fired a gun shot at Jeet Ram in his (Madan Lal's) presence. He (Madan Lal) became unconscious. Later, his wife expired due to sorrow. Police did not take any action. On 05.11.1999, Ram Chander recorded the statement of Madan Lal under section 161 of the Code of Criminal Procedure. On 06.11.1999, S.I. Ram Chander got recorded the statements of Duli Chand and Bhajan Lal under Section 164 of the Code of Criminal Procedure before the Magistrate as these witnesses were not ready to make statements before the police, since the police had not taken any action earlier. They both claimed to be the prosecution witnesses of the occurrence when Om Parkash



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had fired at the deceased with a DBBL gun in the presence of Madan Lal as well. They stated that they had approached the police but no action was taken by them. Thereafter, the statements of Duli Chand and Bhajan Lal were also recorded under Section 161 of the Code of Criminal procedure. On 10.11.1999, offence under section 302 the Indian Penal Code was added and special report (Exh.PN) was sent to the Judicial Magistrate Dabwali, which was received by him on that day by making endorsement (Exh.PN/1). On 14.11.1999, Balwan Singh was Station House Officer of Police Station, Dabwali. He inspected the place of occurrence. He recorded the statements of the witnesses. He prepared a rough site plan of the place of occurrence. Accused Manoj, Sanjay, Sandeep and Darbara Singh had moved as application in the Hon'ble High Court for anticipatory bail, which was accepted. They were formally arrested by Balwan Singh on 10.12.1999. Mohinder Singh was posted as Station House Officer of Police Station, Sadar Dabwali on 08.01.2000. He also partly investigated the case and recorded the statements of some witnesses. Accused Om Parkash had produced his licenced gun before him on 20.06.2000. After completion of the investigation report under section 173 of the Code of Criminal Procedure was submitted.

6. Charge under section 302 of the Indian Penal Code against accused Om Parkash, whereas under Section 302 read with Section 109 of the Indian



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Penal Code against the remaining accused was framed, to which they pleaded not guilty and claimed trial.

7. In order to prove its case, prosecution examined 14 witnesses.

The gist of their statements is as under:-

PW-1/Duli Chand deposed that Manoj son of accused Om Parkash was to get married in the year 1995. A party was being held by accused Om Parkash, Village Chautala. Songs were being sung by the singing party at night. He had gone to attend the function. At about 11.00 p.m. Jeet Ram son of Madan Lal was there, Sanjay, Sandeep and Darbara Singh had asked Jeet Ram to do some work. He refused to do the same. Thereafter, Sanjay, Sandeep, Manoj and Darbara went to Om Parkash and told him that they had been insulted by Jeet Ram. They exhorted Om Parkash Hitler to shoot Jeet Ram. Madan Lal had also come there. He requested the accused that Jeet Ram be spared and that in case any work was to be done, he would do the same. Om Parkash got up and slapped Jeet Ram. Thereafter, Om Parkash fired a shot with a .12 bore gun at Jeet Ram, who fell down. He and Bhajan Lal were standing near the place of occurrence. They went to Police Post Chautala, where one Thanedar was present. They informed the police about the occurrence, but the Thanedar told them to go and that in case of need they would be called. No action was taken by the police officials. He made a statement before the Judicial Magistrate, Dabwali. Some police official had come to him and had asked that he should



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make a statement before them, but he had replied that even earlier no action was taken by them and on that account, he did not make a statement before the police officials.

In cross-examination, this witness stated that he was an eye-witness in two cases. In the case of State versus Jaan Mohdammad under the Opium Act he had appeared as a witness. Jaan Mohdammad was the gun-man of Om Parkash. Jaan Mohdammad was acquitted. He had been proceeded against by the Sessions Judge, Sirsa for giving false evidence in the case of Hanuman. He had looked after MLAs for Sh. Devi Lal when they were kept at his farm house. He had made a statement before the Magistrate after four and a half years of the present occurrence and prior thereto he had not disclosed the occurrence to the police. Darbara Singh had been living with Om Parakash and his three sons. He was not on visiting terms with Om Parkash and his family. The marriage party was being celebrated in front of the house of Om Parkash and there were about 400-500 people. No one was consuming liquor or firing shots in celebration. He did not know if a criminal case was registered under Section 304-A IPC in the year 1995. He also did not know if the said case was an accidental firing case. He did not remember that if he had made a statement before the Sessions Judge, Sirsa in the year 1995 that in the year 1995, at the marriage of Manoj Kumar, the son of Om Parkash was struck by one accidental shot. When he went to the venue of the marriage, he had not seen any gun in the



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hands of any one except Om Parkash and the said gun was a .12 bore double barrel gun. He had not got recorded before the Magistrate that the gun was a .12 bore DBBL gun. He had not seen Munshi Ram and Jagroop there. He did not meet any higher authority to inform about the occurrence or showed the place of occurrence to the police. It was correct that the case was re-opened when Om Parkash Chautala became Chief Minister in July, 1999. He admitted that prior to Om Parkash Chautala becoming Chief Minister, he did not got to any Magistrate to make any statement. He admitted that he and his father were cultivating the land of Sh. Devi Lal and Om Parkash Chautala. He denied the suggestion that he made a false statement due to political reasons and being a supporter of Om Parkash Chautala. He admitted his brother Chhottu Ram had been appointed as a Wireless Operator during the regime of Devi Lal and one brother Dharamvir had been appointed as a Deputy Superintendent of Central jail, 7-8 months before the Government of Om Parkash Chautala.

PW/2-Bhajan Lal also made a similar statement as that of P.W.1 Duli Chand.

In cross-examination, he stated that no action had been initiated against Om Parkash at his instance. He was cultivating the land of Sahab Ram. He did not initiate any proceeding under Section 107/151 C.P.C. against Om Parkash. He admitted it to be correct that a criminal case had been registered regarding the murder of Ram Chander, gun-man of Om



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Parkash against him, Sahab Ram and Ganesha but stated that he did not know that the same had been registered at the instance of Om Parkash. Allegations were that he had fired at Sahab Ram. He was acquitted. He, however, admitted that Om Parkash had appeared against him as a witness in that case. He did not have any house in village Chautala but lived in the fields of Sahab Ram. He stated that his statements Ex.DC and DD were not read over and explained to him by the Magistrate. He would visit Om Parkash in case he had some work with him. He had not attended the marriage of the elder and middle son of Om Parkash. He did not know if Om Parkash Hitler and Om Parkash Chautala were business rivals.

PW-3/H.C. Rajinder Singh and PW-4/Constable Dalbir Singh are formal witnesses. They proved their affidavits Exh. PA and Exh.PB respectively.

PW-5/Sh.Sanjay Khanduja was the Judicial Magistrate Ist Class, Dabwali on 04.11.1999. He recorded the statement Exh.PC of Madan Lal under Section 164 of the Code of Criminal Procedure on the basis of the application Exh. PC/1 moved by the police. He passed the orders Exh.PC/2 and Exh.PC/3 regarding recording of the statement.

In cross-examination, he stated that the statement of the complainant was recorded on the basis of a police request.

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PW-6/Ram Sarup Mehta, Advocate, Dabwali, stated regarding attestation of affidavit Exh.PD of Madan Lal as Notary Public, and the fact that Madan Lal was identified by Varinder Sihag.

In cross-examination, he stated that he did not know Madan Lal.

PW-7/Dr.R.K. Kaushal Senior Scientific Officer, Ballistic Forensic Science Laboratory, Haryana, Maduban Karnal stated that one sealed parcel was received by him on 11.11.1999, which was marked as 'I' by him. It was duly sealed. It contained clothes i.e. white shawl, pair of shoes, half sleeves sweater, brown pant, silkan shirt and pair of socks of deceased Jeet Ram. Clothes were first examined in the Ballistic Division and then in the Serology Division for blood examination. Lead was detected from the margins of holes on Shawl, shirt and sweater. Clothes were also examined under Stereo Microscope. The result was as under:

- (1) Holes on Shawl, Sweater and Shirt had been caused by lead projectiles, fired from a smooth bore fire-arm including .12 bore gun.*
- (2) Distance of firing was in close range i.e. within blackening range.*
- (3) Firing was angular in nature.*

Another sealed parcel was received in the Laboratory on 03.08.2000. It contained a .12 bore DBBL gun stated to have been



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recovered from Om Parkash. It was marked as W/1 by him. Based on the examination, his opinion was as under:-

1. The .12 DBBL gun is a fire arm as defined in Arms Act, 1959. Its firing mechanism was found in working order.

(2) .12 DBBL gun had been fired through. However, scientifically the time of its last firing cannot be given.

His report to this effect was Exh.PF.

In cross-examination, this witness stated that the margins of the holes created by a rifle projectile and projectile of smooth bore guns in close range are similar. He had performed the lead test on the margins of the holes on cloth and the test was positive. The possibility of fire shot if the assailant was standing and the victim was also standing was less. In his opinion, the victim was a little in bent position. Firing could be from a considerable distance. After a distance from 5-6 feet, pellets of cartridges of .12 bore start scattering if fired from a standard gun. Ex. P1 was a standard gun. Inside the body, the pellets may or may not scatter. In case the pellets hit the bone, they would certainly scatter. Exit may be due to the wad. In that case also, there would be a single exit hole. It was wrong to suggest that in such a situation, some pellets would remain in the body. It was wrong to suggest that after passing the body, the pellets would remain in the clothes when the firing is from close range. In case the cartridge used in this case was of .12 bore, the pellets of the cartridge should be available in the body. It was correct that in case the shot was fired from a .12 bore gun from a distance of 5-6 feet, the



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pellets as well as the wad or single ball lead would go inside the body and that they would go through the exit wound. It was wrong to suggest that in this case, the injury on the person of the deceased was more likely a rifled fire. Volunteered the pattern on the clothes of deceased was suggestive of a .12 bore gun. The injury was most likely to have been caused with a cartridge containing pellet inside of a single ball.

PW-8 Dr. J.S. Punia, conducted the post-mortem examination on the dead body of Jeet Ram and found the following injuries:-

(1) A wound was present over the left shoulder region posteriorly and was 27 cms below the top of the head. Bone Deep 1"x1" oval in shape. Wound was everted and surrounding area was blackening in colour. Laceration was present in the wound in the left scapular region.

(2) A wound was present over the back of the body in the chest of the right upper back and 50 cms below the top of the head and was 3" lateral to the mid-spinial cord line and margins having everted and ill-defined. Size of the wound was 4x3" placed horizontally and vertically respectively and was spherically. Blood was oozing from the wound.

This witness also found the following injuries:-

"There was rupture of the ribs on the right side of chest of posterior region and pleura was also ruptured. There was rupture and laceration of the right side of lung in mid and lower chest. Heart was also ruptured in the ventricular region. Iota was also ruptured. There was laceration in the upper Lobe in the liver. There was rupture of muscles in the scapular region



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with fracture of the scapular bone. The other organs were healthy.

The cause of death in this case in his opinion was due to haemorrhage and shock as a result of the injuries described, which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature."

Exh.PG was the copy of the post-mortem report. Exh.PH and Exh.PJ were the police request and inquest report respectively. This witness had sent Exh.PK intimation to the police. Time between death and injuries was within a few minutes and the time that elapsed between death and post-mortem was within 24 hours. The nature of weapon used in this case was fire arm. Entry wound was on the higher side and the exit hole on the lower side.

PW-9/Varinder Sihag a resident of village Chautala identified Madan Lal deponent of affidavit Exh.PD before Shri R.S. Mehta Notary Public, Dabwali and made endorsement Exh. PD/1 on Exh.PD.

In cross-examination, he stated that it was correct that a civil suit had been pending against him in the Civil Courts at Dabwali regarding the change of khasra girdawari and the same had been filed by the accused.

PW-10/Ram Chander S.H.O. Police Station, Sadar Dabwali, partly investigated the case and gave the details of the investigation. He investigated the case till 14.11.1999.



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In cross-examination, he stated that he did not know if Om Parkash Hitler was heading the Congress party in village Chautala. He had gone through the case file. He did not remember if according to the contents of the FIR, the complainant was not an eye-witness to the occurrence. He did not remember if Munshi Ram and Jagroop had been shown as eye-witnesses. He had not joined Munshi Ram and Jagroop in the investigation of the case. Witnesses Duli Chand, Bhajan Lal had come to him on their own and stated that they were eye-witnesses to the occurrence. Before their arrival, he did not know that who the eye-witnesses of the occurrence were. He did not join the residence of village Chautala in the investigation.

PW-11/Ram Kumar Reader of Sub Divisional Magistrate, Dabwali brought Licence Register. As per his statement, accused Om Parkash was licence holder of .12 bore gun, his son Manoj Sihag was licence holder of NPB bore rifle, accused Sandeep Sihag was licence holder of three arms i.e. .12 bore DBBL Gun, Revolver/pistol and rifle. Accused Sanjay Sihag was licence holder of three arms. i.e. NPB bore rifle, revolver/pistol and .12 bore gun.

In cross-examination, he stated that .12 bore DBBL was entered in the licence of Om Parkash son of Mani Ram on 19.12.1995.

PW-12/Balwan Singh the S.H.O., Police Station Sadar Dabwali on 14.11.1999 partly investigated this case.



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In cross-examination, he stated that he did not show the place in the rough site plan from where Om Parkash had fired the shot.

PW-13 Mohinder Singh S.H.O., Police Station, Sadar Dabwali on 08.01.2000 also partly investigated this case.

In cross-examination, he stated that the licensed gun was of Om Parkash-accused. FIR No.54 dated 21.04.2000 under Sections 379 IPC Exh.DE was registered by him against Sanjay Kumar son of Om Parkash and Manoj Kumar son of Om Parkash. It was correct that FIR No.114 dated 10.07.2000 under Sections 364, 342, 148, 149 and 506 IPC Exh.DF was registered against Om Parkash, Manoj Kumar, Sanjay and Darbara Singh. Chhotu Ram was the person who was abducted. FIR No.71 dated 16.05.2000 under Sections 302 and 120-B IPC was registered against Krishan, Ala and Dara Ram. He could not say without seeing the file that after 48 days, Sanjay, Manoj and Darbara were added as accused under Section 120-B IPC.

PW-14/ Mohinder Singh A.S.I., posted as Head Constable in Police Station, Sadar Dabwali as M.H.C., proved his affidavit Exh. PP.

The prosecution also tendered in a evidence report Exh.PQ of Forensic Science Laboratory.

8. On conclusion of the prosecution evidence, the accused were examined under section 313 of the Code of Criminal Procedure and all the



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incriminating circumstances, which appeared against them were put to them. They denied them.

The plea of accused Om Parkash was that he belonged to village Chautala, the native village of Haryana Chief Minister Shri Om Parkash Chautala, who was president of Indian National Lok Dal. He was a leader of the Congress and an Arch rival of Shri Om Parkash Chautala, Chief Minister Haryana. Whenever Shri Om Parkash Chautala came into power, he harassed him by way of registering many false cases. As and when he came into power he and his sons were implicated by him in many false cases. Due to the intervention of the Hon'ble Supreme Court and Hon'ble Punjab & Haryana High Court further proceedings of the other cases have already been stayed. He and his co-accused had been falsely implicated. As a matter of fact Jeet Ram died due to accidental shot fired from the crowd, which had gathered to celebrate the marriage ceremony. So many people at the marriage party were firing in the air when the celebration of the marriage party was going on. They came to know when the injured was removed to the hospital.

Almost similar pleas were taken by the other accused persons.

9. The accused examined DW-1/Dr. B.R. Sharma, Former Director, Central Forensic Science Laboratory, Chandigarh. His statement was that he had received photo copies of the various documents relating to this case on 13.01.2004 and they have been mentioned in the list in his



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report Exh.DG on pages 1 and 2. It was further in his statement that he was required to examine these documents and to find out if the prosecution version that the victim was killed with .12 bore smooth shot gun fire when the distance between the assailant and the victim was 3-4 feet as given by the eye witnesses was consistent or in-consistent with the Scientific Ballistics and medico legal evidence inter-se and to ascertain if the eye witnesses had really observed the occurrence or they had been planted to create or strengthen the prosecution case. He further deposed that after careful study, examination and evaluation of the total evidence, Scientific and other related evidence in the documents, he came to the conclusion mentioned at page No.15 of his report Exh.DG, which is as under:-

(1) A Smooth bore firearm, in-depth study and careful evaluations of the Scientific evidence vis-a-vis 'eye-witnesses' account, as given above, indicate;

. No wads at the scene or in the body (or in the clothes), were recovered in spite of the fact that there are Four wads in a .12 bore cartridge;

. No multiple exit wounds.

. No pellets/projectiles or their fragments in the body in spite of the fact that there are a number of broken bones;

. A single exit even after long travel of the bullet and devastating damage to body organs;

. The line of fire excludes the abuse of long barrelled firearms (like standard smooth bore shotgun) in the death of the victim.



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(2) The 'eye witnesses' accounts (Same by the two), in addition to the above, are incompatible with the Scientific evidence for the reason:

. The distance of 3-4 feet between the assailant and the victim can cause only contact or near contact entry wound, which should cause muzzle print, burning, singeing and dense blackening. None is observed even on the white Shawl;

. The line of fire, deduced from the injuries, could not be caused with a long barrelled weapon in the alleged positions and postures of the assailant and the victim, as the line of fire is drastically angular (50°). This angle cannot be achieved with a long-barrelled firearm under the given descriptions of the witnesses.

It appears the 'eye witnesses were not present at the scene to observe the occurrence."

10. Besides this, accused Om Parkash tendered in evidence certified copy of the Judgment dated 28.07.1989 Exh.DH, certified copy of the statement dated 29.11.2002 Exh.D-1 recorded in ND & PS case No.120-SC of 2002, Ex.DJ certified copy of the Judgment in ND & PS Act Case No. 120-SC of 2002 decided on 29.01.2003, Exh.DK certified copy of the order dated 22.08.2003 passed by Hon'ble Division Bench in Criminal Misc. No. 181-MA of 2003, Exh.DL copy of the Judgment in Sessions Case No.35/22 of 1962 Sessions trial No.26 of 1962 decided on 21.04.1962, Exh.DM copy of the report under Section 173 of the Code of Criminal Procedure in Sessions Case No.1-PA of 1996/1998/2000 decided on 08.08.2003, Exh.DN



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copy of the Judgment dated 08.08.2003 in Sessions case No.1-PA of 1996/2002, Exh.DO copy of the report under Section 173 of the Code of Criminal Procedure in Criminal Case No.210-1/28-10-2003 State Vs. Krishan Lal and others, Exh.DP certified copy of the report under Section 173 of the Code of Criminal Procedure in Criminal case No.840-1/17-12-2003 State Vs. Hardeep Singh an others, Exh. DQ certified copy of the order dated 16.02.2002 passed by Addl. Sessions Judge, Hisar regarding the anticipatory bail to Sanjay, Exh. DR certified copy of the order dated 14.08.2001 passed by Hon'ble Mr. Justice V.M. Jain in Criminal Misc. No. 31003 M of 2001, Exh. DS certified copy of the order dated 04.04.2002 passed by Hon'ble Mr. Justice K.S. Garewal in Criminal Misc. No. 13537-M of 2002 Exh.DT copy of the statement of Ravinder Kumar and Exh.DU certified copy of the order dated 22.09.2003 passed by Shri Rajesh Garg, Judicial Magistrate Ist Class, Dabwali.

11. Based on the evidence led, the accused-appellants came to be convicted and sentenced by the Court of the Sessions Judge, Bathinda, vide judgment of conviction and order of sentence dated 04.02.2004 as under:-

Name of the convict(s)	Offence under Section	Sentence	Fine	In default of payment of fine
Om Parkash	302 IPC	Imprisonment for life	Rs.1,000/-	RI 03 months
Manoj Kumar Sihag, Sanjay Sihag, Sandeep Sihag and Darbara Singh	302 read with 109 IPC	Imprisonment for life each	Rs.1,000/- each	RI 03 months each



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12. The aforementioned judgment of conviction and order of sentence dated 04.02.2004 passed by the Sessions Judge, Bathinda is under challenge before this Court.

13. During the pendency of this appeal, the sentences of the accused-appellants No.2 to 4, namely, Manoj Kumar Sihag, Sanjay Sihag and Sandeep Sihag, were suspended by this Court vide order dated 18.03.2004.

14. The learned Senior counsel for the accused-appellants No.2 to 4 contends that the FIR was registered immediately on 27.02.1995 under Section 304-A IPC on the allegations that it was an accidental shot that had been fired by someone in the crowd. As per the initial version, Madan Lal-complainant stated that his son about 13-14 years had gone for the wedding party of the son of accused-appellant No.1/Om Parkash (since deceased) wherein he received gun shot injuries. His nephew-Jagroop Singh who was present at the party and Munshi Ram, his brother had informed him about the same. Neither Jagroop nor Munshi Ram were examined or joined in investigation. An untraced report had been filed and accepted the version of Munshi Ram who had not witnessed the occurrence, would amount to *hear say* evidence. It was only after four and a half years that Munshi Ram claimed to be eye-witness. Even otherwise, Munshi Ram had since passed away. Duli Chand and Bhajan Lal became eye-witnesses to the occurrence in November 1999 i.e. more than four and a half years of the occurrence,



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immediately after Munshi Ram had approached the police. It was a case of political rivalry between Om Parkash on the one hand and Om Parkash Chautala on the other, both of whom belonged to different political parties. Admittedly, the re-investigation began after Om Parkash Chautala became the Chief Minister in July, 1999 and these two prosecution witnesses were set up as eye-witnesses to the occurrence. Duli Chand/PW-1 has admitted that he got registered an FIR against Jaan Mohdammad, a gun-man of Om Parkash-accused No.1. In the said case, the accused had been acquitted. Similarly, Bhajan Lal/PW-2 admitted that he was an accused in a murder case where Om Parkash was a prosecution witness and he had been acquitted in that case. He contends that both these witnesses were not only inimical to the family of accused No.1-Om Parkash but had close relations with the then Chief Minister Shri Om Parkash Chautala. In fact, accused No.1-Om Parkash and Om Parkash Chautala were descendants of common ancestors. While accused No.1 was the leader of the Congress Party in village Chautala, Om Parkash Chautala was the leader of a rival political party. He contends that the complainant-Madan Lal had died without being examined in Court. The best evidence by way of the eye version account of Jagroop and Munshi Ram ought to have been brought on record which had not been done so. He, thus, contends that the impugned judgment was liable to be set aside. In the alternative, he contends that taking the allegations to be true, it is apparent that the fatal shot had been fired by Om Parkash-



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accused No.1 whereas his sons allegedly exhorted him to fire the shot and the allegations of this kind were easy to level. In fact, there was hardly any need for exhortation without any prior enmity between the accused on the one side and the deceased, who was a young boy on the other. He, therefore, contends that the impugned judgment was liable to be set aside qua the accused-appellants No.2 to 4 even if the prosecution case was accepted qua the deceased/accused No.1-Om Parkash.

15. The learned counsel for the State, on the other hand, contends that the allegations against all the accused- appellants No.2 to 4 are grave. When the FIR had been registered, at that time, they had been able to manipulate the investigation. It was only later that the complainant gathered the courage to approach the investigating agency once again. The offence stood established beyond reasonable doubt even on the part of the surviving accused-appellants No.2 to 4 as they exhorted their father to commit the offence. He, thus, contends that the present appeal was liable to be dismissed.

16. We have heard the learned counsel for the parties and examined the record.

17. As per the first version of Madan Lal-complainant leading to the registration of the FIR, he was at his home and was told about the occurrence of the accidental shooting of his son by his brother-Munshi Ram and nephew-Jagroop. There was no allegation against any of the accused for



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having committed the offence. Munshi Ram and Jagroop, who were closely related to the complainant and the deceased, and were present at the place of occurrence and who saw the deceased being shot in accidental firing were never cited as witnesses and examined at any stage of proceedings. Therefore, an untraced report was presented and accepted by the Court on 22.04.1996. Further, neither Duli Chandi nor Bhajan Lal were ever mentioned as eye-witnesses. Subsequently, it was only on 13.10.1996 i.e. after three and a half years of the occurrence was an application moved by the complainant-Madan Lal claiming that his son had been murdered by Om Parkash and his three sons along with Darbara Singh. There is no reference of any witness of the occurrence i.e. Duli Chand and Bhajan Lal and neither does he claim to be an eye-witness himself. Subsequently, he filed an affidavit against the accused persons where he again did not claim to be an eye-witness and did not name Duli Chand or Bhajan Lal as eye-witnesses. Strangely, when the statement of Madan Lal-complainant was recorded under Section 164 Cr.P.C. on 04.11.1999, even at that time, there was no reference of any eye-witnesses, though, he now claimed to have witnessed the occurrence of shooting. On the very next day, the statements of Duli Chand and Bhajan Lal were recorded under Section 161 Cr.P.C. and thereafter, under Section 164 Cr.P.C. wherein they claimed to have witnessed the occurrence of Om Parkash having shot the deceased and the other accused having exhorted him. Be that as it may, we may point out here that



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Madan Lal died prior to deposing in the instant case. As mentioned above, Munshi Ram and Jagroop were never examined as prosecution witnesses and therefore, we are left with the testimonies of PW-1/Duli Chand and PW-2/Bhajan Lal, the purported eye-witnesses of the occurrence.

18. PW-1/Duli Chand deposed that he was at the wedding function of accused-Manoj son of Om Parkash. Jeet Ram deceased was asked to do some work by Sanjay, Sandeep and Darbara Singh. On refusal, Sanjay, Sandeep, Manoj and Darbara Singh went to Om Parkash and stated that they had been insulted. They exhorted Om Parkash to shoot at Jeet Ram. Madan Lal came there and pleaded with the accused that his son be spared and that if any work was to be done, he (Madan Lal) would do the same. Om Parkash got up and slapped Jeet Ram and thereafter, fired at him with his .12 bore gun. On seeing the occurrence, he (Duli Chand) had gone to the Police Post, Chautala where he was told that he would be called if so needed. Pertinently, this person is not mentioned as a witness in any prior statement of Madan Lal, the complainant. He chose to keep silent for three and a half years and has categorically admitted that he had not disclosed the occurrence to the police earlier. He also admitted that he was not on visiting terms with Om Parkash and his family. He did not know if a criminal case had been registered under Section 304-A IPC in the year 1995 and that the case was initially of an accidental firing. He did not approach any higher authority to inform about the occurrence. He admitted that he was an eye-witness in a



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case titled as State versus Jaan Mohammed registered under the Opium Act where Jaan Mohammed, the gun-man of Om Parkash was subsequently acquitted. He also admitted that he had looked after the MLAs for Sh. Devi Lal (father of Om Parkash Chautala) so as to prevent them from poaching by the opposite party lead by Chaudhary Bhajan Lal who was being supported by Om Parkash, when they were confined at the farm house of Sh. Devi Lal. He admitted that families of Om Parkash Hitler and Om Parkash Chautala were collaterals. He admitted that the case had been re-opened when Om Parkash Chautala became the Chief Minister in July 1999. He also admitted that he and his family were cultivating land of Om Parkash Chautala and family and that his family members had obtained Government employment. Therefore, the connection of this prosecution witness with the family of Om Parkash Chautala is writ large. Apparently, the statement of this witness has been procured belatedly at the behest of the investigating agency possibly on account of political interference.

19. As regards the deposition of PW-2/Bhajan Lal, his version is similar to that of PW-1/Duli Chand. He also admitted that he had not filed any prior complaint to the investigating agency regarding the occurrence. He admitted that a criminal case of murder had been registered against him, Sahab Ram whose land he (this witness) was cultivating and Ganesha for the murder of Ram Chander, the gun-man of Om Parkash wherein he had been acquitted, though, Om Parkash had appeared as a witness against him. He



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admitted that he had not attended the marriage of the other sons of Om Parkash. The deposition of this witness alongwith his cross-examination would also show that his statement has also been procured more than three and a half years of the untraced report and he also appears to be not only inimical to the accused party but also aligned with the family of then Chief Minister of Haryana.

20. PW-11/Ram Kumar, Reader of the SDM, Dabwali produced the record regarding the gun licences in the names of the accused persons. The .12 bore DBBL gun No.2818 was entered in the licence of Om Parkash on 19.12.1995 i.e. after the occurrence on 26.02.1995. As per the prosecution case, this weapon was recovered from the accused Om Parkash and was purportedly used in the occurrence as is evident from the deposition of PW-7/Dr. R.K. Kaushal, the Ballistic expert who examined it. The Trial Court rejected the argument that the gun was entered in the licence of Om Parkash after the occurrence by observing that there were other licensees for .12. bore weapons within the family thereby alluding to the fact that some other .12 bore weapon could have been used. Significantly, the prosecution has not sought to establish if any other weapon, licensed or unlicensed was used in the occurrence.

21. Thus, the evidence brought on record cannot be said to be of such sterling quality so as to unequivocally points towards the guilt of the

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accused. Quite to the contrary, the possibility of their false implication cannot be ruled out.

22. Keeping in view the aforementioned facts and circumstances of the case, we find considerable merit in the present appeal. The same is accepted. The impugned judgment of conviction and order of sentence dated 04.02.2004 passed by the Sessions Judge, Bathinda, is set aside and the accused-appellants No.2 to 4, namely, Manoj Kumar Sihag, Sanjay Sihag and Sandeep Sihag are acquitted of the charges framed against them.

23. The pending applications, if any, shall stand disposed of accordingly.

**(GURVINDER SINGH GILL)
JUDGE**

08.07.2025
sukhpreet

**(JASJIT SINGH BEDI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No