

2026.PHHC:056614-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA D-474-DBA-2004
Date of Decision:16.04.2026
Reserved on:-21.01.2026
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State of Haryana ...Appellant
Vs.
Diwan Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT
HON'BLE MR. JUSTICE H.S.GREWAL

Present: Mr. Rajiv Sidhu, Sr. DAG, Haryana.
Mr. Partap Singh Gill, Advocate (Amicus Curiae)
Mr. Manoj Dhankhar, Advocate and
Mr. Manjeet Singh, Advocate, for the respondents.

N.S.SHEKHAWAT, J.

1. The State of Haryana has preferred the present appeal against the impugned judgment dated 11.09.2003 passed by the Court of Additional District and Sessions Judge (Adhoc) Jhajjar, whereby the respondents were ordered to be acquitted of the charge.
2. The FIR Ex. PA/2 in the present case was registered on the basis of the statement made by Jagdev Singh son of Dhanpat and the relevant extract of the FIR has been reproduced below:

*“The Station House Officer(SHO)
P.S.Beri,*

Distt.Jhajjar

Respectfully, it is requested that I am Jagdev Singh son of Dhanpat caste Jat resident of village Dubaldhan. I have two sons. One of them Virender @ Pappu used to do agricultural work in the village. He resides in the village with his family. I and my younger son Joginder reside in Rohtak. On 14.02.2002 Krishan @ Kala, Ashok, Anil, Diwan, Kitabo wife of Diwan had fired shots at my son Virender, but my son Virender was saved. Due to this grudge, today at about 1.30 A.M. (at the night) Krishan @ Kala, Anil, Diwan, Kitabo wife of Diwan had fired shots on my son in my house and murdered him. I (Jagdev Singh) son of Dhanpat and Ram Chander son of Kewal r/o village Gochhi who was maternal uncle of Virender had come to our house to know about agriculture work. We have witnessed the entire incident with our own eyes. Legal action be taken against them.

Sd/-Jagdev Singh

Applicant

Dt.10.05.2002

Police proceedings :-

Today I(ASI) alongwith HC Jagdish Chander 296 and Satyawar C.No.757 reached at bus stand village Dubaldhan regarding patrolling duty and detection of crime. The above said Jagdev Singh appeared and he produced an application before me (ASI). In pursuance of the application a case/FIR under sections 302, 452, read with section 34 of IPC and 25 of Arms Act is made out. Hence, the original writing is being sent to the police station for registration of the case/FIR through Satyawar C.No.757. Its number be intimated after registration of the

case. Illaqa Magistrate and other higher officers be intimated through special reports. I(ASI) alongwith accompanied HC and complainant become busy in investigation of the case.

At Bus Stand Village Dubaldhan

Sd/-Raj Singh ASI

P.S.Beri

Dt.10.05.2002 at

9.00 A.M.

At police station :-

On receipt of above writing, a case/FIR under the aforesaid offences, having been registered. Carbon copies have been prepared which are being sent to the Illaqa Magistrate, the Superintendent of police and DSP through Daya Kishan C.No.566. Copy of police file(FIR) and original writing is being sent back to the ASI at the spot through incoming constable, for investigation. Received at 12.15 p.m.

Sd/-JMIC,Jhajjar

10.5.2002 Sd/-Jagdish Chander MHC”

In fact, at about 8:30 am, complainant Jagdev Singh was going to Police Station, Beri with his above complaint, but he met ASI Raj Singh at bus stand of village Dubaldhan at 9.00 am and had sent the statement Ex.PA to the police station for registration of the FIR in the present case. After sending the writing Ex.PA to the police station, ASI Raj Singh and other police officials went to the spot in the village accompanied by the complainant and inspected the site. A photographer was arranged and photographs of the dead body were clicked. ASI Raj Singh prepared the inquest report Ex. PG as well as the rough site plan

Ex. PH with correct marginal notes. Three empty cartridges and two fired bullets from the spot were taken into possession vide recovery memo Ex. PB. The blood-stained ropes of the cot and blood-stained earth were also picked and were taken into possession vide recovery memo Ex. PC. The dead body was sent to Civil Hospital, Jhajjar for postmortem examination through HC Jagdish.

3. During the course of investigation, he also went to the emergency ward of the hospital where Constable Dharmbir was lying admitted, and after he was declared fit to make a statement by the doctor, his statement was also recorded by the police. Constable Dharmbir also produced one missed cartridge and one empty cartridge, and those were also taken into possession and sealed. The Investigation officer had arrested all the three respondents in the present case. The main accused Krishan could not be arrested and later on he was reported to be dead.

4. After completion of investigation, *challan* was presented before the Area Magistrate and copies of *challan* were supplied to the respondents by the Area Magistrate. After commitment, the trial court found a *prima-facie* case under Sections 449, 302, 307 IPC read with Section 34 IPC and they were charge-sheeted accordingly. The respondents pleaded that they had been falsely implicated in the present case and claimed to be tried by the trial court. In support of the charge, the prosecution examined 13 witnesses.

5. The prosecution examined Jagdev as PW-1, who admitted the contents of his initial complaint Ex. PA, which formed the basis of registration of the FIR Ex. PA/2 in the present case. In his cross-examination, he stated that he himself had gone to the bus stand and handed over his complaint Ex. PA before the police officer. He handed over Ex. PA to ASI Raj Singh. On account of tension, he could not mention the weapons which the assailants were having individually. There is a four-wall of his house of the height of 10 feet and there is a gate in the four-wall. It was an iron gate but it could not be shut properly and completely. He had seen the site plan prepared by the police and it was correct at the spot. The gunman was sitting towards the gate side. The gun of the gunman was not in his hand at that time and it was lying by his side. They were sitting in the chowk mostly in front of the gate and were sitting on their cots. His son was also sitting on a cot when he was shot. The accused came from the side of wider gate, which was the main gate. The gallery is also connected with the main gate. No outsider came to their house at the time of occurrence. Gunman also fired at the assailants and ran after them. The fire made by gunman had hit no one. The assailants escaped from the same main gate. One lame person also ran with the other person. During the occurrence, the gunman could not fire at the assailants. Krishan and Anil were ahead of all while escaping. He could see that Krishan was having a revolver, while Anil was having a country-made pistol.

6. The prosecution further examined PW-2 Constable Dharmbir who supported the testimony of PW-1 Jagdev. He stated that in the month of May 2002, he was posted as a guard at the house of Jagdev. At about 1:30 a.m. on the night intervening 9/10th May 2002, he was present in the courtyard of the house of Jagdev and was drinking water. At that time, Diwan, his wife Kitabo, Krishan and Anil entered the house of Jagdev. Some of them gave a *lalkara* that they would not be spared. Two shots were fired, one fire shot had hit Virender, while the other fire shot had hit him. The first shot was fired at him. The assailants then ran away towards the western side and he also ran after them for some distance. However, the assailants made good their escape. He also fired at the assailants when they were running away, but they escaped unhurt. In his cross-examination, he stated that only Krishan was having a revolver, while the other three were empty-handed. In the chowk of Virender, his father Jagdev and one Ram Chander were sitting on their cots, while he was standing near the pitcher of water, when the assailants entered the house. The assailants escaped through the same gate from which they had entered the house. Anil, Devan, and Kitabo ran towards the street when Krishna escaped from the western side. One fire was made by him when he was still in the courtyard, while the other fire was made by him when he was near the gate of garage. The main gate of the courtyard could be shut properly with an angle. The gate was opened by Virender when he called his uncle Azad. He used to sleep in *baithak* near the house of complainant. He left the door open and was

sitting on the cot at the time of occurrence. The occurrence took place after 4/5 minutes. Thereafter, Virender used to call his uncle almost daily to come and sleep. Azad was also called by them for giving company to him as he had to keep a watch over the house during night. By the time he left the village, the police also arrived in the village and he heard the hooter of police vehicle. After 15 minutes, several persons of the village had come to the house of Jagdev. He left the house of Jagdev after about 25 minutes of the occurrence and he was taken to Beri hospital. After reaching hospital, he sent message to the police station regarding the occurrence. The message was given at about 3:30 AM. The doctor treated him and bandage was applied at his wound. The doctor referred him the same night to PGIMS, Rohtak at about 4 AM. The police recorded his statement at PGIMS Rohtak at noon on the next day.

7. The prosecution further examined PW-3 Ranbir Singh, who had identified the dead body of Virender in the hospital at the time of postmortem examination. Jagdish HC was examined as PW-4. On the night intervening of 9/10th May 2002, Raj Singh ASI and Satyawan Constable were also part of the patrolling party. Raj Singh ASI received information regarding the occurrence at the house of Jagdev at about 02.00 a.m., so they all rushed towards the village in a police jeep and reached the place of occurrence. On entering the main gate of the house, they saw the dead body of Virender lying on a cot. Three empty cartridges and two fired bullets were taken into possession by the police.

Even blood-stained earth was picked from the spot besides, some blood stained ropes from the cot. The dead body was sent to Civil Hospital, Jhajjar for postmortem examination. The prosecution further examined PW6 Jai Chand, who prepared the scale site plan Ex. PE. PW7 Daya Chand had delivered the special report. PW8 Ajmer Singh, SI, had prepared the *challan* after recording of statements and forwarded the same to the Court. Hari Singh SI was examined as PW9 and he had also partly investigated the matter. PW10 Jagdish Chander, Head Constable, was working as MHC at the police station and the incriminating evidence was deposited with him in Malkhana. Rajbir (PW11) had identified the dead body of Virender son of Jagdev Singh and Ram Chander was examined as PW12, who stated that his sister was married with Jagdev. The deceased Virender is the son of Jagdev. However, this witness refused to support the case of the prosecution and stated that no occurrence took place in his presence nor nobody shot at Virender in his presence. He did not know anything about the occurrence. He had not made any statement to the police. He was declared hostile and was cross-examined by the public prosecutor. The prosecution further examined Raj Singh ASI as PW13, who had conducted the initial investigation in the present case.

8. After closure of the prosecution evidence, the statements of all the accused were recorded under section 313 Cr.P.C. and the entire incriminating evidence was put to them. However, they pleaded false implication and stated that they would lead the evidence in defence.

However, no witness was examined by any of the accused in the present case.

9. Learned counsel for the State of Punjab vehemently argued that in the present case there was sufficient incriminating evidence against the respondents yet they had been wrongly acquitted by the trial Court. In fact, in the present case, Dharambir PW2 was an injured eyewitness and had seen the occurrence. He was an eyewitness as he was attached with the deceased as a gunman and had no reason to falsely involve any innocent person. Even, his presence could not be doubted as he himself was injured by a gunshot injury fired by Krishan @ Kala, who had died during the trial. Dharambir PW2 also fired in self defence and his presence at the spot could not have been disbelieved. Thus, the respondents have been wrongly acquitted by the trial Court. Moreover, PW1 Jagdev is father of the deceased and had a reason to be present at the place of the occurrence. Even, the trial Court wrongly held that the presence of PW1 Jagdev was doubtful at the place of the occurrence. In fact, both the witnesses had witnessed the occurrence and their testimonies were liable to be believed by the trial Court.

10. On the other hand, learned counsel for the respondents as well as learned amicus curiae have opposed the submissions made by learned State counsel and submitted that the presence of PW1 Jagdev and PW2 Dharambir was doubtful at the place of the occurrence. Moreover, PW12 Ram Chander, was a close relative of the deceased, still he had not supported the case of the prosecution. Apart from that,

the occurrence had taken place at about 02.30 a.m. and the police immediately reached the place of the occurrence. However, the report was lodged at 09.30 a.m. next day and the special report was sent at 12.30 a.m. The delay itself casts a cloud of suspicion on the entire prosecution case.

11. We have heard learned counsel for the parties and perused the record carefully with their able assistance.

12. In the present case, the prosecution examined complainant Jagdev as PW1. He stated that on 09.05.2002, he and his brother-in-law Ram Chander had come to village Dubaldhan and were staying at his house. At about 01.30 a.m. on the night of 9/10th May 2002, they were present at their house and in the meantime, Krishan fired two shots at Virender. One missed him and the other shot hit him at his chest. Anil fired at him but he escaped and rushed to his room for taking his revolver. He got written a complaint Ex. PA regarding the occurrence and gave it to the policeman, when he was present at the bus stand of their village. Admittedly, Ex. PA was submitted by PW1 Jagdev at about 09.00 a.m. on 10.05.2002. Now, it would be appropriate to refer to the testimony of PW4 HC Jagdish, who stated that he was on patrol duty during the night of 9/10th May 2002 along with police officials and they received information regarding the occurrence at the house of Jagdev at about 02.00 a.m. They immediately rushed to the spot and arrived at the spot at 02.30/03.00 a.m. They even effected recoveries at night from the spot itself. Consequently, we failed to understand as to why the

complaint was not made to the police at the time when the entire police team had visited their house and the report was lodged at 09.00 a.m. the next morning. Even the special report reached the Magistrate at 12.30 p.m. Consequently, there was an unexplained delay of about 11 hours in lodging the FIR. Apart from that, even PW2 Dharambir was also shifted to the hospital within 13 minutes of the attack and even the police had reached the place of occurrence. Thus, the delay in registration of the FIR could not be explained by the prosecution.

13. Still further, the case of the prosecution was primarily based on the testimonies of PW1 Jagdev, PW2 Dharambir complainant and PW12 Ram Chander in the present case. Even though Ram Chander is close relative of PW1 Jagdev and Virender, deceased, but still he did not support the case of the prosecution and had stated that he had not seen the occurrence at all and nothing had happened in his presence. Apart from that, we also find that the testimonies of PW1 Jagdev was also highly suspicious. Apart from that, a cumulative reading of statements of PW1 Jagdev and PW2 Dharambir would clearly show that there were serious contradictions in the statements of both the witnesses and there was a possibility that they were not present at the place of the alleged occurrence. As per PW2 Dharambir, he was taking picture of water at the time of the occurrence, whereas PW1 Jagdev stated that the gunman was sitting near the main gate and the gun was lying by his side. Still further, there was a serious threat to the life of Virender deceased and PW2 Dharambir was attached as gunman with him. However, even

upon seeing four persons entering the house of the deceased and that too duly armed, he did not retaliate and did not even fire a single shot at them. Still further, he could not even cause injury to any of the accused while they were fleeing from the place of the occurrence. Apart from that, even his testimony was totally contrary to the statement of PW1 Jagdev Singh. According to PW2 Dharambir, Krishan ran in one direction whereas three persons ran in other direction. However, Jagdev PW1 stated that Krishan and Anil were ahead of them while they were running away. Even Anil is lame by one leg and it is unbelievable that PW1 Jagdev and PW2 Dharambir, gunman, who is a policeman could not have caused any injury to Anil. Apart from that, even the prosecution story is highly improbable and unbelievable. As per PW2 Dharambir, Virender, deceased apprehended threat to his life. Still, Virender, deceased went to call his uncle Azad Singh from some distance and even Dharambir PW2 did not bother to go with him. Even after returning to his house, Virender, deceased, left the door open at 01:00 a.m. and he stayed on the gate in the courtyard. His father Jagdev PW1 and maternal uncle Ram Chander PW12 were sitting till 01:30 a.m. Even, it is unbelievable that rustic villagers in this part of the country were awaking at 01.30 a.m. without any reason. The prosecution has not found the presence of Azad Singh at the place of the occurrence. Thus, the entire prosecution story is highly unbelievable and it appears that PW1 Jagdev and PW2 Dharambir were interested eyewitnesses in the present case. Even otherwise, we have gone through the impugned

judgment dated 11.09.2003 passed by the Court of Additional District and Sessions Judge (Adhoc) Jhajjar and found no illegality, irregularity and perversity in the same.

14. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra"**, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228 as follows:-

"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal.

The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. *In Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:*

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above

question in the negative the order of acquittal is not to be disturbed."

16. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

17.

In view of the above discussion and the law laid down by the Hon'ble Supreme Court, we find no merit in the present appeal and the same is ordered to be dismissed.
18.

As a consequence of above discussion, the impugned judgment dated 11.09.2003 passed by the Court of Additional District and Sessions Judge (Adhoc) Jhajjar, is ordered to be upheld.
19.

This Court records its appreciation for Mr. Partap Singh Gill, Amicus Curiae, who has rendered able assistance to the Court on behalf of the respondents. His fee is assessed Rs. 20,000/-, which shall be paid by the Secretary, High Court Legal Services Committee.
20.

All pending applications, if any, are disposed of, accordingly.
21.

The case property, if any, may be dealt with as per the rules.
22.

Records of the Court below be sent back.

(N.S.SHEKHAWAT)
JUDGE

(H.S.GREWAL)
JUDGE

16.04.2026	Whether reasoned/speaking	: Yes/No
mks/amit rana	Whether reportable	: Yes/No