



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-733-DB-2004 (O&M)
Reserved on : 25.02.2026
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Pronounced in Full

Gursewak Singh and another
....Appellants
versus
State of Haryana
....Respondent

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

Present: Mr. Akashdeep Singh, Advocate for appellant No.1.

Mr. Partap Singh Gill, Advocate (*Amicus Curiae*)
for appellant No.2.

Mr. Rajiv Sidhu, Senior DAG, Haryana.

H.S.GREWAL, J.

1. By way of filing instant appeal, the appellants have challenged the judgment of conviction and order of sentence dated 14.08.2004 and 18.08.2004 respectively passed by the learned Additional Sessions Judge, Kuruskhetra, in case FIR No.84 dated 07.08.2002, registered under Sections 302 & 392 read with Section 34 IPC at Police Station Jhansa, vide which the appellants had been convicted and sentenced to undergo imprisonment as under:-

Section(s)	Sentenced to	Fine (each)	In default of payment of fine (each)
302/34 IPC	Life imprisonment	Rs.40,000/-	01 year RI
392/34 IPC	07 years RI	Rs.20,000/-	06 months RI
It was ordered that both the sentences shall run concurrently.			

2. The case of the prosecution is based on the statement of Darshan Singh to the effect that on 07.08.2002 at about 02:30 P.M., the appellants, Gursewak Singh @ Sawi and Surender Pal Singh, arrived at the taxi stand at Rajpura. Balkar Singh (since deceased) and the complainant, Darshan Singh, who was also a driver, were present there. The appellants wanted to hire a taxi to go to Kurukshetra. Accordingly, Balkar Singh along with Darshan Singh and the appellants left Rajpura for Kurukshetra in an Esteem car bearing registration No.HR23-8976. When they reached Pipli Chowk, Kurukshetra, one of the appellant asked the driver to stop the car on the pretext of making a telephone call. Balkar Singh stopped the taxi and one of the appellant went to a PCO booth. After returning, he asked to be dropped at the bus stand in Kurukshetra. While going towards the bus stand, the appellant again requested to be dropped in a nearby village and offered to pay an extra fare of Rs. 100/-. At about 05:30 P.M., when they reached near the Power House at village Lukhi, the appellants asked the driver to stop the car as they wanted to urinate. Balkar Singh stopped the car on the side of the road. Balkar Singh and one fair-complexioned accused/appellant got out of the car. After urinating, when Balkar Singh came back near the driver's seat, the said accused/appellant took out a revolver from his pocket, pointed it at Balkar Singh and asked him to hand over the car keys. Balkar Singh pleaded that he was a poor man, but the accused/appellant did not listen and shot him. Upon hearing the gunshot, Darshan Singh and another accused/appellant also got out of the car. The second accused/appellant then snatched the car keys from Balkar Singh. Darshan Singh(complainant) became frightened and ran away from the

spot. Balkar Singh fell on the road after being shot. The appellants, thereafter, took the car and fled towards Pehowa.

3. It is further stated that the villagers working in nearby fields reached the spot and Balkar Singh(deceased) was taken to LNJP Hospital, Kurukshetra in another car came from the side of village Lukhi. Balkar Singh was subsequently referred to PGIMER, Chandigarh.

4. On the basis of aforesaid statement, formal FIR (Ex.PE/1) was registered against the appellants and the investigation proceedings were initiated regarding preparation of site plan, recovery of case property etc.

5. On 23.08.2002, the investigation of the instant FIR was entrusted to SI Raj Kumar, who received an information on 24.08.2002 from CIA Staff, Patiala to the effect that a car bearing registration No.HR-23-8976 (Esteem-1000) had been recovered from the appellants in case FIR No.320 dated 23.08.2002, registered under Sections 411 IPC and Section 25 of the Arms Act at Police Station Kotwali, District Patiala. CIA Staff, Patiala also informed that the appellant had disclosed the commission of offence having the jurisdiction of Police Station Jhansa. Thereafter, the appellants were produced in the Court of JMIC, Kuruskhetra on 29.08.2002 in the instant case.

6. Upon completion of investigation, firstly challan was presented under Sections 392, 307, 34 IPC on 12.11.2002. However, subsequently when the injured-Balkar Singh expired on 05.01.2003, Section 302 IPC was added and supplementary challan was presented on 06.04.2003. Charges under Sections 302/34, 392 IPC and Section 25 of the Arms Act

were framed against the appellants to which they pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined as many as following 22 witnesses:-

(i) PW1 Raj Kumar, Reader of the Court of the then learned Judicial Magistrate 1st Class, Kurukshetra, proved the Court proceedings made on 27th & 29th of August, 2002 by the then learned Illaqa Magistrate. He deposed that on an application (Ex.PA) moved by police for seeking production warrants of the appellants, the same were issued vide order (Ex.PA/1) dated 29.08.2002. It is further stated that on 29.08.2002, a request (Ex.PB) was made by the police for identification parade of the appellants but both of them denied to participate in the identification parade vide their statements (Ex.PB/1 and Ex.PB/2 respectively), whereon they appended their signatures.

(ii) PW2 ASI Sushil Kumar deposed that he had participated in the investigation on 07.08.2002. On the said date, the doctor on duty in L.N.J.P. Hospital, Kurukshetra had handed over one sealed parcel of clothes of the victim Balkar Singh with one envelope containing sample seal to ASI Teg Singh which articles were taken into police possession vide recovery memo (Ex.PC) in his presence. The said recovery memo was signed by him and by Head Constable Mahesh Kumar. He further deposed that on 08.08.2002, he along with the complainant-Darshan Singh and ASI Teg Singh had reached the spot where the occurrence had allegedly taken place. ASI Teg Singh (Investigating Officer) lifted the blood stained earth from the spot.

After putting the blood stained earth in a match-box, thereafter, the same was sealed with the seal “PS” and the said match-box was taken in possession vide recovery memo (Ex.PD).

(iii) PW3 MHC Raj Pal was a formal witness who had recorded the formal FIR (Ex.PE/1).

(iv) PW4 HC Hardam Singh was also a formal witness.

(v) PW5 SI Avtar Singh deposed that on 12.11.2002, he prepared the challan under Section 307 IPC and on 06.04.2003 after the death of Balkar Singh, he prepared the report under Section 173 Cr.P.C.

(vi) PW6 ASI Ram Uditt deposed that on 30.08.2002, he along with ASI Siya Nand and SI Raj Kumar, joined the investigation. He deposed that in pursuance to the disclosure statement (Ex.PS) of appellant No.1, an empty cartridge of .315 bore was got recovered which was taken into police possession vide recovery memo (Ex. PH). On 31.08.2002, in pursuance to the disclosure statement (Ex.PR) of appellant No.2-Surender Pal, a purse(Ex.P4) with an identity card (Ex.P3) of Balkar Singh(deceased) was recovered.

(vii) PW7 Revenue Patwari Ravinderjit Singh deposed that on the asking of the police, he had visited the spot on 25.10.2002 and had prepared a scaled site plan (Ex. PK).

(viii) PW8 Dr. Harbans Singh, Medical officer, General Hospital, Bhiwani deposed that on 07.08.2003, he was posted in L.N.J.P. Hospital, Kurukshetra. He medico legally examined the victim Balkar Singh on 07.08.2002 and had found the following injuries on his person:-

"1. 2 cms. x 1.2 cm. lacerated wound on the left lateral aspect of lower aspect of chest, 10 cms. above costal margin. Active bleeding was present. Depth piercing in lung tissue. X-ray was advised.

2. 1 cm. x 1/2 cm. lacerated wound on chest right lateral to mid line about 5 cms. on the back of lower part of chest. Active bleeding was present. The depth of the wound was piercing in the lung tissue. Corresponding hole in the shirt was present. Shirt was taken, sealed and handed over to the police."

He opined that the weapon used was *firearm* in both the injuries. On another application (Ex.PL/2) moved by the police on the same day, he had given his opinion vide endorsement Ex.PL/3 that the patient be referred to PGI, Chandigarh.

(ix) PW9 Head Constable Kamal Kumar deposed that on 11.11.2002, he was posted in Police Lines, Patiala. ASI Teg Singh produced one pistol .315 bore and one empty cartridge, before him, which were sealed with the seal 'RK'. After breaking the seal, he had test-fired from the said pistol. He found that the empty cartridge recovered from the spot was a consequence of a shot fired from this pistol. Thereafter both the articles were converted into a separate parcel. However, in his cross-examination, he deposed that he is not a ballistic expert.

(x) PW10 Head Constable Sahib Singh deposed that on 23.08.2002 Inspector Shamsheer Singh of CIA Staff, Patiala had deposited a car (Esteem-1000) bearing registration no.HR-23-A-8976 with him and a parcel of pistol. This case property pertained to FIR No.320 dated 23.08.2002. He further deposed that on

23.08.2002, he had produced the release order (Ex.PG) which was taken into police possession vide recovery memo (Ex.PG/1). He also identified the car which was brought outside the Court at the time of his examination.

(xi) PW11 Sub Inspector Rulda Singh deposed that on 23.08.2002, he alongwith Inspector Shamsheer Singh and ASI Jai Pal Singh joined the investigation of this case. He is a witness of presentation of both the appellants and recovery memo (Ex.PN) of the Esteem Car. He deposed that one country made pistol of .315 bore alongwith one cartridge was effected from the possession of appellant No.1 which was taken into police possession vide recovery memo (Ex. PN/1). He prepared the sketch of the pistol (Ex.PN/2).

(xii) PW12 Dr. A.B. Parbhu, Senior Resident, Department of General Surgery, PGI, Chandigarh deposed that on 08.08.2002, he treated the patient-Balkar Singh who was admitted with a bullet injury in left portion of chest and back. He further deposed that on surgery, following injuries were found on his person:-

- “1. *Shattered spleen,*
2. *Diaphragmatic tear with haemoperitoneum (blood in abdomen)*
3. *There was injury to dorsal lumbar spine with paraplegia.”*

He deposed that after treatment, the patient was discharged on 21.08.2002. It is also deposed that subsequently Balkar Singh was re-admitted in the hospital on 23.12.2002 and died on 05.01.2003.

The cause of death was opined “septicaemia” due to infection of blood on account of the injuries sustained by Balkar Singh.

(xiii) PW13 EHC Jitender Pal tendered his affidavit (Ex.PQ) confirming that the case property remained intact while it was in his custody.

(xiv) PW14 ASI Siya Ram deposed that on 29.08.2002, he had joined the investigation team. SI Raj Kumar in his presence interrogated the appellants. Surender Pal made a disclosure statement (Ex.PR) regarding keeping of purse (Ex.P4) and identity card (Ex.P3) of the victim Balkar Singh. On 31.08.2002 pursuant to his disclosure statement (Ex.PR), purse and the identity card of the Balkar Singh recovered from the informed place which were taken into possession vide recovery memo (Ex.PH/1). Similarly pursuant to the disclosure statement (Ex.PS) of appellant No.1, on 30.08.2002, empty cover of cartridge was recovered which was taken into police possession vide recovery memo (Ex.PH).

(xv) PW15 EHC Roshan Lal deposed that on 05.01.2003, he had delivered the special report of this case to the higher authorities, without any delay.

(xvi) PW16 Kulwinder Singh deposed that he is the owner of car bearing registration no.HR-23A-8976 (Esteem-1000). On 07.08.2002 victim Balkar Singh was driver of the said car which was later recovered by the police as being involved in case FIR No.320 of 2002. It was taken on *superdari* by him. He used to ply it as a taxi.

(xvii) PW17 Sahab Singh deposed that Balkar Singh was his nephew. He identified the dead-body of Balkar Singh in PGI, Chandigarh on 06.01.2003 and signed the receipt (Ex.PW17/A).

(xviii) PW18 Darshan Singh, complainant of this case, reiterated the version as given in the FIR and affirmed his statement (Ex.PW18/A), recorded by ASI Teg Singh (Investigating Officer). He deposed that he was closely associated with the investigation of this case. He had visited the site with ASI Teg Singh where the site-plan was prepared. He also deposed that he had accompanied the investigating team again with DSP Pehowa to the site. He proved the Identity card (Ex.P3) and the photo on the identity card (Ex.P3) of the victim Balkar Singh. He also identified the car which was brought outside the Court.

(xix) PW19 SI Raj Kumar deposed that on 23.08.2002, investigation of this case was entrusted to him. He deposed that on 24.08.2002, he received information from CIA Staff, Patiala regarding recovery of Esteem-1000 Car bearing registration no. HR-23-8976 from the appellants in case FIR No.320 of 23.08.2002, under Section 411 IPC and Sections 25/54/59 of the Arms Act. It was also informed that the appellants had disclosed the commission of offence having the jurisdiction of Police Station Jhansa. Thereafter, PW19 reached CIA Staff, Patiala where he met Inspector Shamsher Singh. Both the accused were in custody in CIA Staff, Patiala. He had produced the photocopy of case diary of the case FIR No. 320 of 2002 to the Inspector of the police. Thereafter he had

come back to Kurukshetra. On 27.08.2002, he moved an application (Ex.PA) before the then learned JMIC, Kurukshetra, seeking issuance of production warrants of both the appellants, whereupon said warrants had been issued. On 28.08.2002, he sent Constable Karnail Singh for execution of warrants and himself went to PGI, Chandigarh for recording the statement of victim Balkar Singh. He moved an application (Ex.PW19/A) seeking opinion of the treating doctor in PGI, Chandigarh about fitness of the injured. Vide endorsement (Ex.PW19/B) the treating doctor had informed him that victim Balkar Singh has since been discharged on 21.08.2002. Thereafter, he visited the house of Balkar Singh in Neelpura town (Rajpura) where his statement (Ex.PW19/C) was recorded. On 29.8.2002 he reached the Courts at Kurukshetra and moved an application (Ex.PW19/D) seeking permission to join the appellants in the investigation. After obtaining orders from the Court, the appellants were interrogated. Appellant No.1 suffered disclosure statement (Ex.PS) and appellant No.2 suffered disclosure statement (Ex.PR). In pursuance to their statements, recoveries of the articles were effected. During the course of investigations, the appellants refused to participate in the identification parade. He deposed that the case property was deposited with MHC, CIA Staff, Kurukshetra and the investigation of this case was transferred to Police Station, Jhansa.

(xx) PW20 Dr. Rajesh Gupta, Assistant Professor, Department of General Surgery, PGI Chandigarh, deposed that on

08.08.2002, Balkar Singh was admitted in PGI, Chandigarh for treatment with bullet injury on left side of his chest with shattered spleen with hemoperitoneum with diaphragmatic tear with injury to the dorso lumber spine with paraplegia with bed sore. He deposed that the victim was operated on 08.08.2002 which involved exploratory laparotomy, splenectomy and repair of diaphragmatic tear. The injury was declared as dangerous to life. Balkar Singh was discharged on 21.07.2002. He further deposed that the patient was re-admitted in PGI, Chandigarh, on 23.12.2002 with diagnosis of recurrent sub-acute intestinal obstruction with anemia with massive bed sores on sacrum and bilateral trochanteric area. Balkar Singh died on 05.01.2003. He proved the medico legal summary (Ex. PO/1). He opined that the complications which later arose with the victim were the natural consequences of injuries earlier sustained by Balkar Singh.

(xxi) PW21 Dr. Sreenives, Senior Resident, Department of Forensic Medicine, PGI, Chandigarh deposed that on 06.01.2003, he conducted the post-mortem examination on the dead body of Balkar Singh and found the following injuries on his person:-

- “1. Scar of healed incised wound on the front of abdomen in the mid-line extending from the xiphoid to 7 cms. below the umbilicus;*
- 2. Partially stitched wounds was present in the lumber regions of both sides;*
- 3. Septic wound measuring 20 x 15 cms in the sacral region;*
- 4. Septic wound measuring 10 x 6 cm on the right buttock;*

5. *Septic wound measuring 20 x 11 cms on the left thigh, external aspect upper 1/3rd.*”

He further deposed that all the septic wounds having irregular margins with dirty looking unhealthy granulation tissue present at the margins and the basis of the wounds were necrotic and covered with slough and foul smelling greenish yellow pus like material was present in the subdural space extensively. Surgical sutures were present in the anterior abdominal wall. Greenish yellow pus like material was present in the peritoneal cavity. Peritoneum hypertrophied. Mesogastrium, mesentery, hypertrophied and having pocket of pus like material at places. Multiple adhesions were present between the loops of small intestines, Dilated large intestinal loopse containing faeces of gases. Liver was having a yellowish appearance paren-chyma. Spleen was surgical operated. He also deposed that all the injuries were ante-mortem in nature. The cause of death was opined due to “septicemis consequent to infected wound”.

(xxii) PW22 ASI Tej Singh deposed that on 07.08.2002, on receipt of a telephonic message that near Power House, Lukhi, there was an incident of firing and snatching of a car, he had reached the spot and came to know that the injured had been shifted to L.N.J.P. Hospital, Kurukshetra, he then had gone there. Medical Ruqqa (Ex. PL/1) with Medico Legal Report (Ex.PL) of the victim Balkar Singh was presented to him. It is further deposed that moving an application (Ex.PL/2), he sought opinion of the doctor about fitness of the injured but vide endorsement (Ex.PL/3) he was informed that

the victim Balkar Singh had been shifted to PGI, Chandigarh. Darshan Singh, a companion of the victim, was found there and his statement (Ex.PW18/A) was recorded. After making his endorsement (Ex.PE), he had sent the information through Constable Gulzar Singh to the police station for registration of the case, vide which formal FIR (Ex.PE/1) was registered. Thereafter, the treating doctor of L.N.J.P. Hospital, Kurukshetra produced before him a sealed cloth parcel and one envelope containing sample seal which were taken into police possession vide recovery memo (Ex.PC) in presence of HCs Mahesh Kumar and Sushil Kumar, whose statements under Section 161 Cr.P.C. were recorded. He lifted blood stained earth in a match box and sealed the same. The said match box was taken into possession vide recovery memo (Ex.PD) in presence of HC Sushil Kumar and PW Darshan Singh, whose statements were recorded under Section 161 Cr.P.C. Site plan (Ex.PW22/A) was prepared by him. It is further deposed that on 09.08.2002, he reached PGI, Chandigarh and moved an application (Ex.PW22/B) seeking opinion of the treating doctor about fitness of the injured to make statement. Vide his endorsement (Ex.PW22/C), it was opined that he was unfit to make statement. On 13.08.2002, the investigation of this case was transferred to CIA Staff, Kurukshetra. On 05.09.2002, investigation was again entrusted to him and on that day he recorded the statements of MHC Raj Pal and EHC Jitender Singh. He further deposed about the investigation proceedings including on 08.11.2002, he visited FSL, Madhuban and

took the “empty” and sample seal which he later deposited with the MHC of Police Station, Jhansa. On 11.11.2002, he took parcel of “empty” along with sample seal from MHC, Police Station, Jhansa and reached Police Station, Kotwali (Patiala) where MHC Sahab Singh was available who had produced copy of order (Ex.PG) which was taken into police possession vide recovery memo (Ex.PG/1). He further deposed that .315 bore revolver and a live cartridge of the same bore was received by him from MHC Sahab Singh. He had then reached the Police Lines, Patiala and made an application (Ex. PN) to the Armourer Kamal Kumar and produced revolver, empty and a live cartridge. After testing the same, Armourer Kamal Kumar had made his report (Ex.PM/1). Before conducting the test, Armourer Kamal Kumar had broken the seal and after examination had re-sealed these articles. He again went to Police Station, Kotwali where pistol and live cartridge of .315 bore were deposited back with the MHC Sahab Singh.

8. After closing the prosecution evidence, the statements of the appellants under Section 313 Cr.P.C. were recorded wherein they denied all the allegations and pleaded innocence. They pleaded that they had been falsely implicated in this case at the instance of Gurkirpal Singh, Inspector of Punjab Police (father of PW Kulwinder Singh and owner of Esteem Car bearing no. HR-23-8976) because said Gurkirpal Singh while posted as a Police Officer had killed their relative showing false police encounters and now he got implicated them falsely. It is further pleaded that they were arrested from their house by the Punjab Police and not from Rajpura Road,

Patiala, as alleged and nothing was recovered from them. In their defence, they examined following witnesses:—

(i) DW1 Joga Singh, President of Taxi Union, Rajpura deposed that he did not brought the summoned record as it is not available. This witness was discharged and later given up.

(ii) DW2 Rajinder Kumar deposed that he was then Pardhan of his Basti Baba Jiwan Singh where appellant No.2-Surinder Singh @ Sonu was residing. He deposed that Surinder Singh @ Sonu was apprehended by the police on 16.08.2002 from his house. Younger brother of Surinder Singh came to him to attend the police party and then he reached the spot. He asked the police party as to why Surinder Singh had been arrested, upon which query they replied that they wanted him in some case. In the evening on the same day, the respectables of the Basti including him went to CIA Staff, Patiala but they were not allowed to enter the premises of CIA Staff, Patiala, rather they were told to visit Police Station, Kotwali (Patiala). Repeated visits were made by them for six days but the police did not allow them to see Surinder Pal Singh. Lastly, they were told that a case had been registered against him in the jurisdiction of Police Station Kotwali.

(iii) DW3 Harchand Singh, Member Panchayat and resident of village Nolakha where appellant-Gursewak was residing. He deposed that on 16.8.2002, Gursewak was apprehended by the police party headed by Inspector Gurkirpal Singh, Punjab Police, from his house in his presence, stating that he was required in some case.

They had visited many times to Police Station Kotwali and CIA Staff, Ambala for knowing whereabouts of Gursewak. After seven days, they were informed by the Kotwali Police that a case had been registered against Gursewak.

9. The trial Court, after considering the statements of all the witnesses and taking into account the evidence led by both the sides, had convicted the appellants vide the impugned judgment for the aforesaid period.

10. Learned counsel for the appellants submitted that the impugned judgment is unsustainable inasmuch as there is no reliable evidence against the appellants. It is submitted that material witnesses were not examined, including the owner of the car that took the injured to the hospital, the villagers who reached the spot, the Sarpanch who informed the police, and the STD booth owner. It is further submitted that although a telephonic message was recorded in DDR No.20 at 05:45 PM but the statement of the Sarpanch to this effect was not recorded and the DDR was not exhibited, thereby raising doubt regarding suppression of the material facts. It is further submitted that the occurrence is stated to have taken place at 05:30 PM and the ruqa for registration of FIR was sent at 09:40 PM i.e. after an unexplained delay of 04 hours and the said delay was used to falsely introduce an eyewitness. It is also submitted that there was no eye-witness to the alleged incident because it is unnatural for two drivers to accompany a customer for such a short journey. Further while the FIR states that Darshan Singh admitted the injured to the hospital but the medico-legal report shows that the injured was admitted by an unknown person.

11. It is further submitted by learned counsel for the appellants that there is contradiction between the ocular and medical evidence. The complainant-Darshan Singh deposed that only one shot was fired, whereas the medical evidence indicated two firearm injuries caused by two separate shots. The recovery of the car and weapon is also questionable as the car was allegedly recovered after about 15 days in Patiala without any alteration of number plate. It is unlikely that the accused would retain both the car and the weapon for so long. Moreover, no independent witnesses were joined in the recovery, the weapon was not sent for forensic examination and no bullet was recovered from the body. Thus, there is no scientific evidence connecting the appellants with the alleged offence as well.

12. Learned counsel for the appellants also submitted that although separate FIR was registered in Patiala on the basis of secret information, neither the Investigating Officer of that case was examined nor the secret informer was produced, thereby rendering the alleged recovery doubtful. It is further submitted that the recovery of the deceased's ID card from the house of appellant No.2 after 15 days is unnatural, especially when no such allegation was made in the FIR that personal belongings were stolen. It is also submitted that the alleged owner of the car was not the owner on the date of occurrence, as the vehicle was transferred in his name later. In this regard, it is pointed out that PW16 Kulwinder Singh, while appearing as PW-4 in the trial of aforesaid another FIR No.320, deposed that the car was transferred in his name on 28.08.2002 which clearly indicates that he was not the owner of the car at the time of occurrence

i.e. 07.08.2002. PW-16 Kulwinder Singh, in his cross-examination, categorically admitted that his father (Gurkirpal Singh) is also a police officer in Patiala. On the aforesaid submissions, learned counsel prayed that the appeal be allowed and the appellants be acquitted of the charges.

13. *Per contra*, learned State counsel submitted that the learned trial Court, after carefully appreciating the entire evidence available on record, has rightly convicted the appellants and the impugned judgment does not suffer from any illegality or perversity. It is submitted that the prosecution has successfully established its case through reliable oral as well as documentary evidence. The testimony of the complainant and eye-witness PW18 Darshan Singh clearly narrates the manner in which the occurrence took place and the role played by the appellants in committing the crime. It is further submitted that the ocular version put forth by the prosecution stands duly corroborated by the medical evidence on record, which proves that the injuries sustained by the deceased were caused by firearm and were sufficient to cause death in the ordinary course of nature. Learned State counsel also submitted that the recovery of the stolen vehicle, the firearm and other articles at the instance of the appellants gives further assurance to the prosecution case. Moreover, the evidence on record forms a complete chain clearly pointing towards the guilt of the appellants and there is no reason to interfere with the well-reasoned judgment passed by the learned trial Court. Accordingly, learned State counsel prayed that the present appeal, being devoid of merit, deserves to be dismissed and the judgment of conviction and order of sentence passed by the learned trial Court be upheld.

14. We have heard the learned counsel for the parties at length and have carefully perused the entire material available on record, including the evidence led by the parties and the impugned judgment passed by the learned trial Court.

15. At the outset, it is evident that the case of the prosecution primarily rests upon the testimony of sole eye-witness, namely PW18 Darshan Singh, who is stated to have accompanied the deceased-Balkar Singh and the appellants from the taxi stand at Rajpura. However, the presence of the said witness at the place of occurrence appears highly doubtful. According to the prosecution story, both the complainant and the deceased were taxi drivers present at the taxi stand, yet the complainant allegedly accompanied the passengers and the deceased for a short journey to Kurukshetra. Such conduct appears unnatural and improbable, particularly when the vehicle had already been hired by the appellants. Ordinarily, a passenger hiring a taxi would not permit another driver or stranger to accompany them without any plausible reason. The prosecution has failed to furnish any explanation for this unusual circumstance, which renders the presence of the complainant at the spot doubtful.

16. Furthermore, the conduct attributed to PW18 Darshan Singh during the occurrence does not appear to be natural. As per his own version, when one of the appellants (name was not specified) allegedly took out a firearm and pointed it towards the deceased, he became frightened and ran away from the spot. If the intention of the accused/appellants was to commit robbery of the vehicle, it is difficult to accept that they would allow an eye-witness to escape unharmed who could

later identify them. This circumstance further weakens the prosecution case and casts serious doubt upon the credibility of the alleged eye-witness.

17. Another important aspect which creates doubt in the prosecution version is the inconsistency between the ocular and medical evidence. The complainant categorically deposed that only a single gunshot was fired at the deceased-Balkar Singh. However, the medico-legal report and the testimony of the medical experts clearly reveal that the deceased had sustained two firearm injuries, which according to the doctor were caused by two separate shots. This contradiction goes to the root of the prosecution case and makes the ocular version highly unreliable.

18. It is significant that the medico-legal report (Ex.PL) shows that the injured-Balkar Singh was admitted to the hospital by an unknown person at about 06:30 P.M., whereas according to the prosecution story, the complainant-Darshan Singh had accompanied the injured to the hospital. This discrepancy further raises serious doubts regarding the presence of the complainant at the place of occurrence.

19. It is also relevant to note that initially, the case was registered under Section 307 IPC as the injured Balkar Singh had survived the alleged incident and was undergoing treatment. The injured was admitted in the hospital on 07.08.2002, later discharged and ultimately died on 05.01.2003, i.e., after a gap of about five months from the date of the occurrence. The prosecution has attributed the death to septicemia allegedly resulting from the injuries sustained in the incident. However, considering the considerable time gap between the occurrence and the death of the injured, the possibility of intervening medical complications or other contributing

factors cannot be completely ruled out. This circumstance also creates some doubt regarding the direct nexus between the alleged act of the appellants and the eventual death of Balkar Singh, thereby further weakening the prosecution case.

20. There is also a delay in registration of the FIR. The occurrence is stated to have taken place at about 05:30 P.M., whereas the ruqa for registration of the FIR was sent at about 09:40 P.M., i.e., after a delay of about four hours. The prosecution has failed to satisfactorily explain this delay. In criminal cases, such delay often provides time for afterthought and deliberation, which creates doubt about the prosecution story.

21. The prosecution has also failed to examine several material witnesses who could have thrown light upon the occurrence. As per the prosecution story, several villagers working in nearby fields had reached the spot after hearing the gunshot and the injured was allegedly shifted to the hospital with the help of those villagers. However, none of those persons were examined during the trial. Similarly, the Sarpanch who allegedly informed the police about the occurrence was not examined. Even the owner of the vehicle which was used to take the injured to the hospital and the owner of the STD/PCO booth where one of the accused allegedly made a phone call were not examined. Non-examination of these material witnesses creates a serious dent in the prosecution case as well as the link evidence.

22. According to the prosecution, the pistol was recovered from the personal search of appellant No.1, whereas an empty cartridge of .315 bore pistol was recovered subsequently pursuant to his disclosure statement

(Ex.PH) from a concealed place i.e. after removing the bricks and brick bats, which were lying adjacent to the southern wall of the Toilet and bathroom situated in front of Hotel Punjabi Dhaba, Hotel Share Punjab. This circumstance appears highly improbable because it is difficult to believe that an accused would conceal the empty cartridge at a distant place while continuing to carry the firearm in his pocket.

23. Most importantly, there is no scientific evidence to connect the alleged weapon with the crime. The prosecution relied on the statement of HC Kamal Kumar, who test-fired the pistol and stated that the empty cartridge could have been fired from that pistol. However, during cross-examination, he admitted that he is not a ballistic expert. Moreover, the weapon was never sent to the Forensic Science Laboratory for proper ballistic examination. Therefore, the prosecution has failed to scientifically link the weapon with the alleged offence.

24. Similarly, the recovery of the purse (Ex.P4) and identity card (Ex.P3) of the deceased from the house of appellant No.2 after about fifteen days of the occurrence also appears unnatural. There was no allegation in the FIR that the personal belongings of the deceased had been stolen. In such circumstances, it is difficult to believe that a person who has committed such a serious offence would keep the purse and identity card of the deceased in his house for many days. Normally, a person would try to destroy or throw away such articles to avoid being connected with the crime.

25. The prosecution case states that the car was snatched on 07.08.2002 and was recovered about two weeks later from the area of

Patiala. However, this version appears doubtful. It is difficult to believe that the accused would continue to use the same car with the same registration number for such a long time after committing such a serious offence. Normally, a person involved in such a crime would either abandon the vehicle, change its number plate, or try to dispose of it as soon as possible to avoid being traced by the police. It is also highly improbable that the accused would bring the same vehicle back to the same area from where it had originally been taken. Such conduct does not appear natural or logical.

26. It is also pertinent to note that the prosecution has relied upon the alleged disclosure statements made by the appellants while they were in custody in another case registered in Patiala. However, the Investigating Officer of that case was not examined and the secret informer who allegedly provided the information leading to the arrest of the appellants was also not produced. In the absence of such evidence, the link evidence connecting the appellants with the present occurrence remains incomplete.

27. It is a settled principle of criminal law that the prosecution must prove its case beyond reasonable doubt. An accused person is presumed to be innocent unless his guilt is clearly established by reliable and convincing evidence. If any reasonable doubt arises from the evidence on record, the benefit of such doubt must go in favour of the accused.

28. Although the present case relates to a blind murder, where the identity of the offenders was initially unknown but the overall evidence on record reveals several inconsistencies, improbabilities and missing links in the prosecution story which cast serious doubt regarding the involvement

of the appellants in the alleged offence. In such a situation, it would be unsafe to uphold their conviction.

29. In light of the above, we are of the considered opinion that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The benefit of doubt must, therefore, go to the appellants.

30. Consequently, the appeal is allowed and the impugned judgment of conviction dated 14.08.2004 and order of sentence dated 18.08.2004 passed by the learned Additional Sessions Judge, Kurukshetra are hereby set aside. The appellants are acquitted of all the charges framed against them by giving them the benefit of doubt. Their bail bonds shall stand discharged. The fine, if paid, be refunded in accordance with law.

31. This Court places on record a note of appreciation for the valuable assistance given by Mr. Partap Singh Gill, Advocate (*Amicus Curiae*), on behalf of appellant No.2. The counsel fee is assessed at Rs.20,000/-, which shall be paid by the Secretary, High Court Legal Services Committee.

32. Pending applications, if any, shall stand disposed of.

(H.S.GREWAL)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

March 20, 2026

Sonia

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*