Paramjeet Singh @ Pamma vs State Of Uttarakhand on 27 September, 2010

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1699 of 2007

Paramjeet Singh @ Pamma ...Appellant

Versus

State of Uttarakhand ...Respondent

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been filed against the judgment and order dated 30.4.2004, passed by the High Court of Uttarakhand at Nainital, dismissing the Criminal Appeal No.1767 of 2001 against the judgment and order of the Sessions Court dated 9.8.2001 in Sessions Case No.254 of 2000 convicting the appellant under Sections 302 and 307 of the Indian Penal Code, 1860 (hereinafter called `IPC') and sentencing him to life imprisonment and 10 years rigorous imprisonment respectively. The Sessions Court had also imposed a fine of Rs.10,000/-, failing which the appellant has to undergo another 3 years rigorous imprisonment.

2. The facts and circumstances giving rise to this case are that an FIR was lodged on 27.4.2000 at 6.40 P.M. with Police Station, Rudrapur, by complainant Ajit Singh (PW.1) alleging that his grand father Hardayal Singh had given certain shares in his immovable properties to his three sons, namely, Gopal Singh, Joginder Singh and Mahender Singh and denied a share to his father Inderjit Singh and uncle Paramjit Singh, the appellant. The appellant had fraudulently sold a plot at Rudrapur and to prevent him from repeating such act, appellant's father Hardayal Singh executed a General Power of Attorney, as well as a Will, dated 27.04.2000 in respect of one of his properties in favour of the complainant's father, Inderjit Singh and thus, the appellant became annoyed. The appellant misbehaved with his father Hardayal Singh and brother Inderjit Singh and threatened them with dire consequences, at the office of the Sub-Registrar at Kichcha.

3. On the same day in the evening at 5.45 P.M., the complainant Ajit Singh (PW.1), his father Inderjit Singh and brothers Surender Singh, Saranjit Singh alongwith Satwant Singh and Gurmit Singh went to drop Hardayal Singh at his residence in Matkawali Gali. When they were alighting from the car, the appellant Paramjit Singh and two or three of his associates were sitting there. The appellant, with an intention to kill them, started firing. Thus, complainant's father Inderjit Singh, his brothers Surender Singh and Saranjit Singh, died on the spot and complainant Ajit Singh (PW.1), his brother Baljit Singh (PW.2) and his grand-father Hardayal Singh got injured. The incident was witnessed by Gurmit Singh (PW.3), Satwant Singh (PW.4) and cousins of complainant Ajit Singh (PW.1), Rajinder Kumar (PW.5), Harpal Singh (PW.6) and Hira Lal (PW.7).

4. The Investigating Officer recovered and prepared the Seizure Memos of plain soil, blood soaked soil, three empty cartridges and a turban. The dead bodies of the aforesaid three persons were recovered vide Panchnama and postmortems were conducted on the bodies of all the three deceased on 28.4.2000 in the Base Hospital, Haldwani. The other injured persons, namely, Ajit Singh (PW.1), Baljit Singh (PW.2) and Hardayal Singh were examined medically.

5. During the investigation on 4.5.2000, the Investigating Officer recovered the licensed Gun of the appellant, on the disclosure made by appellant himself, from an Arms Dealer at Rampur and the recovery memo and site plan of the place of recovery was prepared. The empty cartridges and recovered Gun were sent to the Forensic Science Laboratory, Agra and other materials e.g., blood soaked soil and the clothes etc. of the deceased were also sent to FSL, Agra for chemical analysis.

6. The Investigating Officer completed the investigation and submitted the charge-sheet against the appellant. He denied the charges and claimed trial. The prosecution examined 8 witnesses to substantiate its case before the trial Court. Out of 8 witnesses, 7 turned hostile. After conclusion of the trial, the learned Sessions Court vide its judgment and order dated 9.8.2001 found the appellant guilty of the offences punishable under Sections 302 and 307 IPC and awarded the sentences mentioned hereinabove.

7. Being aggrieved, the appellant preferred Criminal Appeal No.1767 of 2001 before the High Court of Uttarakhand at Nainital which has been dismissed vide impugned judgment and order dated 30.4.2004. Hence, this appeal.

8. Shri S.R. Bajwa, learned senior counsel appearing for the appellant, has submitted that out of 8 witnesses examined by the prosecution, 7 turned hostile and none of them deposed that the appellant had committed any offence. The Investigating Officer remained the only witness in the trial who had not turned hostile. The gun was allegedly recovered at the disclosure of the appellant as required but it was not in consonance with Section 27 of the Indian Evidence Act, 1872, on the basis of which the recovery of the Gun could be proved. The trial Court as well as the High Court erred in convicting the appellant as none of the alleged pieces of circumstantial evidence could be proved by the prosecution. The courts below committed an error in accepting the inadmissible evidence e.g., confession before Police official; contents of statement recorded under Section 161 of Code of Criminal Procedure, 1973 (hereinafter called `Cr.P.C.'); using the FIR as a substantial piece of evidence; and recovery of 12 Bore Gun from an Arms Dealer at Rampur on the disclosure of the appellant and held the appellant guilty. No witness was examined to prove that the material collected by the Investigating Officer had been placed in safe custody in the Malkhana; the Register maintained by the arms dealer at Rampur had not been produced before the court nor had the arms dealer been examined. None of the relevant incriminating pieces of circumstantial evidence had been put to the appellant by the court while examining him under Section 313 Cr.P.C. The circumstances of the absconding of the appellant for 6 days had been taken to show him as guilty person. In spite of the fact that a compromise by Panchayat was not proved before the trial Court, it had been used against the appellant. More so, no motive or genesis of occurrence could be established on the record of the case. The conviction is totally based on conjectures and surmises, thus, liable to be set aside.

9. Per contra, Shri Sunil Kumar Singh, learned counsel appearing for the State of Uttarakhand has vehemently opposed the appeal contending that appellant had been found guilty of committing murder of 3 members of his own family and injuring 3 other family members. The informant Ajit Singh (PW.1) and Baljit Singh (PW.2) have admitted that they were present at the place of occurrence. They suffered injuries but denied the involvement of the appellant in the crime altogether. The other eye-witnesses even denied their presence at the place of occurrence itself. In such a fact-situation, where all the witnesses had been won over by the appellant, as the family had pardoned the appellant, the case otherwise stood proved by circumstantial evidence. The courts below have rightly convicted the appellant. All relevant questions had been put to the appellant under Section 313 Cr.P.C., and the appellant could not explain his whereabouts at the time of occurrence of the incident. The case of the prosecution has duly been supported by the medical evidence as well as the other material collected by the Investigating Officer during the investigation. The appeal lacks merit and is liable to be dismissed.

10. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

The case is to be decided keeping in mind that as all the seven eye-witnesses turned hostile and none of them involved the appellant in the crime, it remained a case of circumstantial evidence. Legal Issues Standard of Proof:

11. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide : Kashmira Singh v. State of Madhya Pradesh, AIR 1952 SC 159; State of Punjab v. Jagir Singh Baljit Singh & Anr., AIR 1973 SC 2407; Shankarlal Gyarasilal Dixit v. State of Maharashtra, AIR 1981 SC 765; Mousam Singha Roy & Ors. v. State of West Bengal, (2003) 12 SCC 377; and Aloke Nath Dutta & Ors. v. State of West Bengal, (2007) 12 SCC 230).

12. In Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637, this Court observed :

> "Considered as a whole the prosecution story may be true; but between `may be true' and `must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence [before an accused can be convicted]."

13. Thus, the law on the point may be summarised to the effect that in a criminal trial involving a serious offence of a brutal nature, the court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the court that its case has been proved beyond reasonable doubt. Circumstantial Evidence:

14. Though a conviction may be based solely on circumstantial evidence, this is something that the court must bear in mind while deciding a case involving the commission of a serious offence in a gruesome manner. In Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622, this Court observed that it is well settled that the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are in themselves complete. This Court also discussed the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone and held as under:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and
(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

15. A similar view has been reiterated by this Court in State of Uttar Pradesh v. Satish, (2005) 3 SCC 114; Krishnan v. State represented by Inspector of Police, (2008) 15 SCC 430; Ramesh Bhai & Anr. v. State of Rajasthan, (2009) 12 SCC 603; Subramaniam v. State of Tamil Nadu & Anr., (2009) 14 SCC 415; and Babu v. State of Kerala, JT 2010 (8) SC 560, observing that the evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable.
Hostile Witness:

16. In State of Gujarat v. Anirudhsing, (1997) 6 SCC 514, this Court observed as under :

"Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the commission of cognizable offence has a duty to lay information before the police and cooperate with the investigating officer who is enjoined to collect the evidence and if necessary summon the witnesses to give evidence. He is further enjoined to adopt scientific and all fair means to unearth the real offender, lay the charge-sheet before the court competent to take cognizance of the offence. The charge-sheet needs to contain the facts constituting the offence/s charged. The accused is entitled to a fair trial. Every citizen who assists the investigation is further duty-bound to appear before the Court of Session or competent criminal court, tender his ocular evidence as a dutiful and truthful citizen to unfold the prosecution case as given in his statement. Any betrayal in that behalf is a step to destabilise social peace, order and progress."

17. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide : State of Rajasthan v. Bhawani & Anr., (2003) 7 SCC 291)

18. This Court while deciding with the issue in Radha Mohan Singh @ Lal Saheb & Ors. v. State of U.P., (2006) 2 SCC 450, observed as under:

> ".....It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof..."

19. In Mahesh v. State of Maharashtra, (2008) 13 SCC 271, this Court considered the value of the deposition of a hostile witness and held as under:

> ".....If PW 1, the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW.1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution".

20. In Rajendra & Anr. v. State of Uttar Pradesh, (2009) 13 SCC 480, this Court observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable.

21. This Court reiterated a similar view in Govindappa & Ors. v. State of Karnataka, (2010) 6 SCC 533, observing that the deposition of a hostile witness can be relied upon at least upto the extent he supported the case of the prosecution.

22. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution. Section 313 Cr.P.C.:

23. An accused can be questioned under Section 313 Cr.P.C. only for the purpose of enabling him personally to explain any circumstance appearing in the evidence against him. No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material, it is the duty of the Court to examine the accused and seek his explanation on incriminating material which has surfaced against him. Section 313 Cr.P.C. is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such

incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him and have to be excluded from consideration. (Vide Sharad Birdhichand (Supra); and State of Maharashtra v. Sukhdev Singh & Anr., AIR 1992 SC 2100).

24. In S. Harnam Singh v. State (Delhi Admn.), AIR 1976 SC 2140, this Court held that non-indication of inculpatory material and its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. The recording of the statement of the accused under Section 313 Cr.P.C. is not a purposeless exercise.

25. If any appellate Court or revisional court comes across the fact that the trial Court had not put any question to an accused, even if it is of a vital nature, such an omission alone should not result in the setting aside of the conviction and sentence as an inevitable consequence. An inadequate examination cannot be presumed to have caused prejudice. Every error or omission in compliance of the provisions of Section 313 Cr.P.C., does not necessarily vitiate trial. Such errors fall within category of curable irregularities and the question as to whether the trial is vitiated, in each case depends upon the degree of error and upon whether prejudice has been or is likely to have been caused to accused. Efforts should be made to undo or correct the lapse. (Vide: Wasim Khan v. State of Uttar Pradesh, AIR 1956 SC 400; Bhoor Singh & Anr. v. State of Punjab, AIR 1974 SC 1256; Labhchand Dhanpat Singh Jain v. State of Maharashtra, AIR 1975 SC 182; State of Punjab v. Naib Din, AIR 2001 SC 3955; and Parsuram Pandey & Ors. v. State of Bihar, (2004) 13 SCC 189).

26. In Asraf Ali v. State of Assam, (2008) 16 SCC 328, this Court observed:

> "Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced."

27. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, AIR 1973 SC 2622, this Court observed as under :

> "It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the

> circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction." (Emphasis added).

28. In Ganesh Gogoi v. State of Assam, (2009) 7 SCC 404, this Court relying upon its earlier decision in Basavaraj R. Patil & Ors.v. State of Karnataka, (2000) 8 SCC 740, held that the provisions of Section 313 Cr.P.C. are not meant to nail the accused to his disadvantage but are meant for his benefit. The provisions are based on the salutary principles of natural justice and the maxim "audi alteram partem" has been enshrined in them. Therefore, an examination under Section 313 Cr.P.C. has to be of utmost fairness.

29. In Shaikh Maqsood v. State of Maharashtra, (2009) 6 SCC 583; and Ranvir Yadav v. State of Bihar (2009) 6 SCC 595, this Court held that it is the duty of the trial court to indicate incriminating material to the accused. Section 313 Cr.P.C. is not an empty formality. An improper examination/inadequate questioning under Section 313 Cr.P.C. amounts to a serious lapse on the part of the trial Court and is a ground for interference with the conviction.

30. In Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420, this Court rejected the submission that as no question had been put to the accused on motive, no motive for the commission of the crime could be attributed to the accused, nor the same could be reckoned as circumstance against him observing that it could not be pointed out as to what in fact was the real prejudice caused to the accused by omission to question the accused on the motive for the crime. No material was placed before the court to show as to what and in what manner the prejudice, if any, was caused to the accused. More so, the accused/appellant was aware of accusation and charge against him.

31. Thus, it is evident from the above that the provisions of Section 313 Cr.P.C make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non- examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court.

Abscondance of Accused :

> 32. In Matru @ Girish Chandra v. The State of U.P., AIR 1971 SC 1050, this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person, observing as under:

> "The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self- preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence."

33. A similar view has been reiterated by this Court in Rahman v. State of U.P., AIR 1972 SC 110; State of M.P. v. Paltan Mallah & Ors., AIR 2005 SC 733; and Bipin Kumar Mondal v. State of West Bengal, JT 2010 (7) SC 379.

34. Abscondance by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, mere abscondance by the appellant after commission of the crime and remaining untraceable for a period of six days itself cannot establish his guilt. Absconding by itself is not conclusive proof of either of guilt or of a guilty conscience. Present case:

35. The present case requires to be examined in light of the aforesaid certain legal propositions.

The offence as alleged, has been committed by the appellant, killing three persons and injuring three other persons who were members of his own family. The alleged motive had been annoyance because of the denial of his share in the immovable property by his father, Hardayal Singh. An earlier incident had occurred in the morning in the office of the Sub-Registrar at Kichcha and the offence was allegedly committed by the appellant on the same day in the evening at about 5.45 P.M. An FIR had been lodged promptly at 6.40 P.M. at Police Station: Rudrapur, which is located at 14 kms. away from the place of occurrence. Complainant Ajit Singh (PW.1) in his deposition, admitted his presence at the place of occurrence and also that he had suffered injuries in the same incident, however, he had denied the participation of the appellant in the crime. He had also admitted that FIR (Ex. K-1) was lodged by him and the same had been in his handwriting. He also admitted that in the document Ex. K-1, he had stated that the appellant had committed the offence. On being cross-examined by the public prosecutor, he furnished the explanation for changing his stand, stating that he had named the appellant for the killing of Inderjit Singh, Surender Singh and Saranjit Singh and causing injuries to three others including the complainant at the behest of the members of the crowd present there, whereas he had not seen the appellant firing at the spot. He denied the suggestion that there was a compromise in the family and because of that he had been falsely deposing to save the appellant. However, he had admitted that he was medically examined.

His version in the FIR stands corroborated by the medical evidence. The statement recorded by the Investigating Officer under Section 161 Cr.P.C. has been in consonance with his version made in the FIR.

36. Baljit Singh (PW.2) was also an injured witness, and was also medically examined. The medical report corroborated the case of the prosecution. He named the appellant responsible for the crime while making a statement under Section 161 Cr.P.C., which was recorded by the Investigating Officer, Rajan Tyagi(PW.8). However, he did not support the case of the prosecution when he was examined in the court. He admitted his presence on the spot and admitted that he had suffered injuries. He also admitted that he was medically examined. He admitted that there was a dispute in the family on the issue of sharing the immovable property, but he deposed that the appellant did not cause three deaths or injuries to three others. In his cross- examination, he was confronted with his statement recorded under Section 161 Cr.P.C., wherein he had named the appellant as the person who had committed the crime. He had also denied the suggestion that he was deposing falsely because of the compromise in the family.

37. The other witnesses Gurmit Singh (PW.3), Satwant Singh (PW.4), Rajinder Kumar (PW.5), Harpal Singh (PW.6) and Hira Lal (PW.7) had even denied their presence on the spot. Harpal Singh (PW.6) deposed that he had reached the place of occurrence after the commission of the offence. None of the said eye-witnesses supported the case of the prosecution in spite of the fact that all of them had named the appellant as an assailant in their respective statements made under Section 161 Cr.P.C.

38. Shri Rajan Tyagi, Investigating Officer (PW.8), had proved the statements of all the witnesses recorded by him under Section 161 Cr.P.C. and deposed that it was the complainant, Ajit Singh (PW.1), who had stated that the appellant had caused three deaths and injuries to 3 other family members. He had admitted his signatures on the said statements. He had further stated that Ajit Singh (PW.1) had pointed towards the place of occurrence and on the basis of the same he prepared the site plan, Ex. K-36. The said witness admitted that he had recovered empty cartridges and other materials from the place of occurrence including the piece of cloth, blood soiled earth and ordinary soil. He had supported the postmortem report, that postmortems of the dead bodies were conducted on 27th April, 2000, which was recorded in the case diary. He has further deposed that at 1.30 P.M. on 4th May, 2000 at the instance of a secret informer, the appellant, Paramjeet Singh, was arrested and the appellant had confessed his crime and had told him that the appellant had deposited his licensed gun with M/s J.B. Sales Arms & Ammunition Dealer, Railway Station, Rampur. The Investigating Officer (PW.8) went alongwith the appellant and other police personnel to Rampur railway station for the recovery of the gun used in the offence. The appellant, Paramjeet Singh, had pointed out, from the distance of about 90 paces, the agency of the arms dealer. They alighted from the jeep and the appellant walked towards it and got recovered the gun which was lying in an almirah of the said shop and identified the same. So, it was the appellant at whose behest the gun was recovered. In spite of the extensive cross examination of Shri Rajan Tyagi, Investigating Officer (PW.8), the defence could not make out anything which may discredit his deposition.

39. The case should be examined from another angle also. The postmortem reports of 3 persons, who died in the incident, are part of the record and speak for themselves.

Postmortem Reports :

I. The postmortem report of Sharanjeet Singh (Ex.Ka.27) reads as under:

1) Lacerated wound 1 cm x 1 cm circular, Margins inverted over forehead in between eyebrows.

2) Lacerated wound 1 cm x 1 cm right side chest, 6 cm above right nipple.

3) Lacerated wound 1 cm x 1 cm right side of lower abdomen 6 cm lateral to umbilicus, circular, margins inverted.

4) Lacerated wound 1 cm x 1 cm over right shoulder, margins inverted, circular.

5) Multiple firearm injuries measuring 1 cm x 1 cm in an area of 12 cm x 16 cm over middle of back, margins inverted, cavity deep, pellets and plastic cork recovered (wound of entering).

II. The postmortem report of Surender Singh (Ex. Ka. 28) reads as under:

1) Lacerated would 12 cm x 14 cm right side abdomen 6 cm above and lateral to umbilicus and 10 cm below right nipple, margins crushed and multiple firearm injuries measuring 1 cm x 1 cm around the lacerated wound, margins inverted, muscle deep.

2) Multiple lacerated wounds measuring 1 cm x 1 cm over left chest around nipple some are cavity deep and some skin deep.

3) Lacerated wound 10 cm x 6 cm left abdomen lateral side.

III. The postmortem report of Inderjeet Singh (Ex.Ka. 29) reads as under:

1) Lacerated wound 1 cm x 1.5 cm left side chest oval in shape, margins inverted 6 cm above left nipple, cavity deep.

2) Two circular lacerated wound right side chest 6 cm below right nipple, skin deep, margins inverted.

3) Three lacerated wound in an area of 8 cm x 6 cm over right shoulder joint, skin deep, margins inverted.

4) Three lacerated wound 1 cm x 1 cm circular in shape over right lower abdomen 6 cm lateral to umbilicus.

5) Lacerated wound 3 cm x 3.5 cm oval in shape margins averted and irregular over back of chest, left side, track corresponding to injury No. 1, injury No. 5 is wound of exit. R.M. present both upper and lower limbs.

40. Injury Reports :

I. Ajit Singh (PW.1) was medically examined and his injuries' report (Ex.Ka.37) reads as under:

i) Lacerated wound of .3cm x .3cm on the back side of right hand, skin deep. Oozing of blood present.

ii) Multiple firearm wound of entry size .3 x .3cm in the area of 18cm x 9 cm on middle part of the left thigh on the outer side. Black coloured. Jean pant is also torn on the same places. Margins are charred and indication is present around them. Advised X-ray of left thigh.

iii) Multiple firearm wound of entry on the medial and anterior aspect of right thigh, some part of the Jeans is also torn on the same places over the injuries. Margins are charred and indication is present around them. Oozing of blood also present size 13cm x .3cm. Advised X-ray of the right thigh.

II. The injuries' report of Baljit Singh, (PW.2) (Ex.Ka.38) reads as under:

i) Lacerated wound over the right side of face and neck involving the lower jaw and right angle of lip and tongue.

ii) Excessive bleeding through the wound.

iii) Irregular margin defect in the chin cut being received on mandible.

iv) Right lower palpable throughout the wound.

Opinion : The above injuries were caused by fire arm. Fresh. III. The medical examination report of Shri Hardayal Singh (Ex.Ka.36) is as under:

i) Punctured wound 4 mn x 4 round in the left side of temporal area 3 cm above the left extended ear. Bleeding. X-

ray advised.

ii) Punctured wound = cm x = cm round with level of 1st thoracic vertebra. Bleeding. X-ray advised.

iii) Punctured wound = cm x = cm on left scapula.

Bleeding. X-ray advised.

It is evident from the above that the appellant had caused a very large number of injuries.

41. The witnesses i.e. Ajit Singh (PW.1) and Baljit Singh (PW.2) in their respective depositions have admitted their presence at the place of incident and admitted to suffering those injuries. In their statements under Section 161 Cr.P.C. they have also admitted that they suffered the aforesaid injuries at the hands of the appellant. It was at a later stage that they have denied any role of the appellant. Their statements to that effect are not trustworthy for the simple reason that they failed to offer any explanation for why they assigned the said role to the appellant in their statements under Section 161 Cr.P.C. and why the appellant had been named by Ajit Singh (PW.1) while lodging the FIR. It is relevant to note that the witnesses, namely, Ajit Singh (PW.1) and Baljit Singh (PW.2) have also deposed that after the incident, a Panchayat was convened and it pardoned the appellant. The version of convening the Panchayat and grant of pardon to the appellant has duly been supported by Gurmit Singh (PW.3) and Satwant Singh (PW.4).

Gurmit Singh (PW.3) deposed:

> ".....it is correct that accused is my cousin. The matter had been compromised in the Panchayat".

Satwant Singh (PW.4) deposed:

> "....matter had been compromised in the Panchayat. Panchayat had pardoned Pamma accused".

It is pertinent to mention here that injured Hardayal Singh could not be examined as he died of cancer during the trial.

42. It is evident from the above that the view taken by the courts below, that the eye-witnesses turned hostile because of the decision taken in the Panchayat, pardoning the appellant, does not require any interference.

It is also evident from the above that the said eye-witnesses have no regard for the truth and concealed the material facts from the court only in order to protect the appellant, for the reasons best known to them. Such an unwarranted attitude on the part of the witnesses disentitles any benefit to the appellant, who has committed a heinous crime. The crime had been committed against the society/State and not only against the family and therefore, the pardon accorded by the family and Panchayat has no significance in such a heinous crime.

43. It has been canvassed on behalf of the appellant that the trial Court committed an error relying upon various factors/incriminating materials which were not pointed out to the appellant while recording his statement under Section 313 Cr.P.C. Such material had been in respect of (i) recovery of gun from arms dealer at Rampur; (ii) motive;

(iii) abscondance of the appellant; and (iv) compromise in Panchayat which pardoned the appellant.

44. So far as the circumstance of recovery of gun from the arms dealer at Rampur is concerned, the trial court had put a question to the appellant and he has answered the same. The question and answer read as under:

> "Q. It has come in evidence that the Investigating Officer prepared a site plan of the place of occurrence which is Exh.K-26. Your licenced gun 17466/96 was recovered at your instance from Rampur and the Recovery Memo was prepared which is K-39, the site plan of the place of recovery is Exh.K-45. The forensic science laboratory report in respect of the case property is Exh. K-44, what have you to say?
>
> Ans. The gun was not recovered at my instance. This number 17466/96 is the number of my licenced gun. I had deposited this gun with a dealer at Rampur. The police has concocted the story of recovery."

It appears that the number of one of the exhibits had wrongly been pointed out as K-44, though it was Exh. K-46. But it is not a case where no question was put to the accused on the said circumstance.

45. So far as the issue of motive is concerned, the case is squarely covered by the judgment of this court in Suresh Chandra Bahri (supra). Therefore, it does not require any further elaborate discussion. More so, if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. (Vide: State of Gujarat v. Anirudhsing [supra])

46. The third circumstance i.e. the abscondance of the appellant has also been taken into consideration by the courts below. We have clarified that it cannot be a circumstance against the appellant. Thus, not putting a question on this particular circumstance to the appellant remained inconsequential. The courts below had considered that the appellant could not furnish any explanation for his absence for about six days. Appellant failed to raise any positive defence and answered all the questions put to him in an evasive manner. Such a view is permissible being in consonance with the law laid down by this Court in Raj Kumar Prasad Tamarkar v. State of Bihar, (2007) 10 SCC 433; and Amarsingh Munnasingh Suryawanshi v. State of Maharashtra, (2007) 15 SCC 455.

47. So far as the fourth circumstance i.e. the compromise in Panchayat and the pardoning of the appellant is concerned, it cannot be labelled as a circumstance charging the appellant with a crime. By no stretch of the imagination can it be held that the said circumstance involved any accusation

towards the appellant. In fact, in cannot be termed as incriminating material, proving the offence against the appellant, rather it had been a circumstance due to which all the seven eye-witnesses turned hostile.

Be that as it may, we are of the considered opinion that not putting questions regarding anyone of the aforesaid circumstances can not be held to be a serious irregularity inasmuch as the same may vitiate the conviction. More so, in the present case, it has not materially prejudiced the appellant nor has it resulted in a miscarriage of justice.

48. If the case is considered in the totality of the circumstances, also taking into consideration the gravity of the charges, the appellant had killed his real brother, Inderjit Singh and his nephews, Surender Singh and Saranjit Singh and injured his father Hardayal Singh and nephews Ajit Singh (PW.1) and Baljit Singh (PW.2) in broad day light. The FIR had been lodged promptly, naming the appellant as the person who committed the offence. All the eye-witnesses, including the injured witnesses, attributed the commission of the offence only to the appellant in their statements under Section 161 Cr.P.C. It is difficult to imagine that the complainant and the eye- witnesses had all falsely named the appellant as being the person responsible for the offence at the initial stage itself. Thus, we do not see any cogent reasons to interfere with the concurrent findings of fact by the courts below. The appeal lacks merit and is hereby dismissed.

.....J. (P. SATHASIVAM) .....

.....J.
New Delhi, (Dr. B.S. CHAUHAN)
September 27, 2010