

Pritam Singh And Anr. vs The State Of Punjab on 4 November, 1955

Equivalent citations: AIR1956SC415, 1956CRILJ805, AIR 1956 SUPREME COURT 415

JUDGMENT

Bhagwati, J.

1. This is an appeal with special leave by Pritam Singh, son of Surain Singh, hereinafter called Pritam Singh Fatehpuri, and Pritam Singh, son of Ladha Singh, hereinafter called Pritam Singh Lohara, against their conviction and the sentence of death passed upon them by the learned Additional Sessions Judge, Amritsar, and confirmed by the High Court of Punjab at Simla.

2. Both the appellants were charged that they, along with Kartar Singh alias Mal and Gurdial Singh alias Karnail Singh absconding, on 2-5-1953, in furtherance of the common intention of them all committed the murders of Chanan Singh Orara and Sardul Singh by shooting them with firearms.

3. The story unfolded in the evidence led by the prosecution was that, at about 6 p.m. on 2-5-1953, Pritam Singh Lohara and Kartar Singh got into Lorry No. P. N. A.--2404 at the bus stand at Amritsar. Chanan Singh Orara and his nephew Sardul Singh also travelled in this lorry.

Pritam Singh Fatehpuri and Gurdial Singh got into the lorry on the way and seated themselves with Pritam Singh Lohara and Kartar Singh in the seats which had been already reserved for them by the latter. When the lorry neared the village Bohoru, the driver stopped the lorry on being asked to do so and the two Pritam Singhs and both the absconders got down from the lorry.

Pritam Singh Fatehpuri and Gurdial Singh stood on the right flank of the lorry nearest to the seat on which Chanan Singh was sitting on the front-row of seats just behind the driver while Pritam Singh Lohara and Kartar Singh went over the left flank next to Sardul Singh. All the four whipped out small firearms.

Pritam Singh Fatehpuri and Gurdial Singh fired at Chanan Singh while Pritam Singh Lohara and Kartar Singh fired at Sardul Singh with their respective firearms and both the victims died on the spot. Sardul Singh had a rifle, Ex. P-14 with him which was a licenced one and belonged to Chanan Singh Orara who had given it over to Sardul Singh for carrying it on the journey.

Pritam Singh Fatehpuri caught hold of this rifle. Chanan Singh Orara had a licenced revolver Ex. P-56 hung round his neck and Pritam Singh Lohara removed this revolver. All the four culprits then ran away towards the canal side. They met four cyclists on the way and relieved them of their cycles

in order to hasten their retreat from the spot. The culprits subsequently abandoned these cycles at odd places and made themselves scarce.

4. The driver of the lorry was Pritam Singh, son of Maqsudan Singh. He went to the police station Saddar Amritsar and made the report at 7-45 p.m. that day. Shri Om Prakash the S.H.O., reached the spot at 8-30 p.m. and entered upon the investigation of the offence and recorded the statements of various passengers in the lorry who were on the spot.

Amongst the passengers so examined was a police constable, one Thakar Singh, who gave the clue to the identity of one of the culprits. 8 foot-prints were found in a field near the spot and the moulds of these foot-prints were taken on 3-5-1953. On the same day, moulds of 4 foot-prints in a field near the canal bank at some distance from the spot were also taken.

The identity of Pritam Singh Fatehpuri became known at about noon on 3-5-1953 and his house in Kaulsar in Amritsar City was raided at about 3-30 p.m. that day. Pritam Singh Fatehpuri was not there and his house was locked. The lock was broke open and a search of his house was made in the presence of witnesses. A bush-shirt, Ex. P-34, was found hanging on a peg in the house while a pair of shoes, Ex. P-29, were found laying on the floor. The bush-shirt was blood-stained.

Pritam Singh Fatehpuri could not be found in spite of search at all likely places and proceedings under Sections 87/88, Criminal P. C. were taken against him. On 26-5-1953, Shri Om Prakash received information about the whereabouts of Pritam Singh Fatehpuri and picketed a place on the Ganda Nala in the village area of Gumanapura on the night between the 26th and 27th May 1953.

Pritam Singh Fatehpuri was seen coming at about 3 p.m. from the side of village Gumanapura and was intercepted and caught. He had on him a rifle, Ex. P-14, slung round his shoulder. This rifle along with 15 cartridges in his dab were seized and a memo of recovery was made which was witnessed, amongst others, by Sohan Singh, P.W. 47 and Milka Singh, P.W. 46.

5. An identification parade relating to Pritam Singh Fatehpuri was held in the District Jail at Amritsar on 29-5-1953 by Shri K.K. Puri, then Magistrate First Class, Amritsar. The accused refused to be identified by police constables Thakar Singh and Raj Pal Singh on the ground that Thakar Singh was his enemy and he had been shown to the witnesses already. Of the other witnesses, Gurdip Singh identified the accused as one of the culprits who murdered the two deceased while Dial Singh picked him out as one of the two men who had stopped the lorry at the railway crossing. No other witness called at the parade could identify him correctly.

6. Another identification parade relating to Pritam Singh Fatehpuri was held by Shri M. Isa Das, Magistrate First Class, Amritsar, on 6-6-1953 in the District Jail at Amritsar. None of the witnesses, however, could identify the accused in the parade.

7. Pritam Singh Lohara was arrested on 9-6-1953 at Faridkot and was sent to the Faridkot Jail on the same day. He was interrogated there by Shri Om Prakash on 22-6-1953 and he disclosed that he had buried two revolvers wrapped in a bush-shirt and contained in a tin by the side of a bush in the

vicinity of village Dipsinghwala.

This statement of his was reduced to writing and he then led the police party to a field in the village area of Dipsinghwala where he pointed out a place by the side of a bush and dug out therefrom a tin, Ex. P-57, which was found to contain the revolvers, Ex. P-48 and P-56, wrapped up in a bush-shirt.

The articles recovered were taken into possession. A separate case under the Arms Act was registered in Faridkot against him in respect of these recoveries. The learned Magistrate, First Class, Faridkot, convicted him under Section 19 (f), Arms Act. This conviction was, however, set aside by the learned Additional Sessions Judge, Amritsar, and he was acquitted of the charge leveled against him.

8. On 17-6-1953, an identification parade was held in the District Jail at Faridkot relating to Pritam Singh Lohara. Before the identification parade started, the accused stated that he should not be made to walk during the identification proceedings. 16 witnesses were called, one by one, to pick out the accused from the row in which he and his 12 companions in the parade were made to sit. Out of these, 11 identified the accused correctly but the others failed to do so.

9. On the same day another parade was held in the District Jail, Faridkot, for the identification of the foot-prints of Pritam Singh Lohara. The accused was made to walk with four other men, selected by the accused himself from the inmates of the jail, on a specially prepared sandy ground inside the jail.

The accused and his companions in the parade were made to walk with shoes on. Sohan Singh tracker and Sajjan Singh tracker were asked to identify the foot-prints of the accused and they identified the foot-prints of the accused correctly as the foot-prints of one of the four culprits which they had seen near the spot near village Bohoru.

10. The bush-shirt, Ex. P-34, was sent to the Chemical Examiner and the Serologist, and, according to their reports, it was found stained with human blood.

11. The prosecution led the evidence of some of the passengers who had travelled by the lorry in question. They also examined Pritam Singh, son of Maqsudan Singh, who was the driver of the lorry. They were all eye-witnesses of the occurrence. Out of these witnesses, Thakar Singh, P. W. 1 and Raj Pal P. W. 2, were police constables who were going to Jhabal in the same lorry in plain clothes.

Dial Singh, son of Chanan Singh Orara, also was examined and he deposed that Pritam Singh Fatehpuri and Gurdial Singh had stopped his lorry in order to get in but had allowed the lorry to proceed further when they did not find their companions travelling in the same.

Pritam Singh, the driver of the lorry, turned hostile and had to be cross-examined by the prosecution. He had given the description of the culprits in the F.I.R. but did not identify Pritam Singh Fatehpuri in the identification parade which was held in the District Jail at Amritsar on 29-5-1953. He also deposed that the witnesses who had identified Pritam Singh Lohara at Faridkot

had gone to Faridkot two days before the identification parade and Shri Om Prakash had shown him in the Deorhi of the jail to the witnesses before the parade.

In view of this attitude of the witness the Court looked at the description given by him of the culprits in the F.I.R. and on a comparison of the description with the accused in the dock before it, it came to the conclusion that one of the descriptions fitted Pritam Singh Fatehpuri and thus was sufficient to identify him, observing:

"Anyhow, the description given in the First Information Report is by far more apt than inapt in its application to Pritam Singh Fatehpuri accused'. In regard to the shoes, Ex. P-29 also, Pritam Singh Fatehpuri was asked in his examination under Section 342, Criminal P. C. whether the shoes belonged to him and what happened thereafter can best be described in the form of questions and answers therein recorded:--

"Q. Do the pair of shoes Ex. P-29 and the bush-shirt Ex. P-34 belong to you?

A. No. I have never worn them.

Q. Do the shoes Ex. P-29 fit your feet?

A. I do not know.

Q. Are you prepared to show whether they fit your feet?

A. Yes. "The accused has just put on the pair of shoes Ex. P-29 in Court. (The accused complains that the shoes are too tight for his feet, but to all appearance they quite fit his feet)."

12. As regards Pritam Singh Lohara also, the learned Additional Sessions Judge made him walk before him and observed that when he was made to walk he walked with a distinct limp although on previous occasions this limp was very much less marked and he was of the opinion that ordinarily the limp was slight.

The description of Pritam Singh Lohara as given in the F.I.R. was also considered enough apart from the evidence of other witnesses to fix the identity of this accused as being one of the murderers who took part in the murders of Chanan Singh Orara and Sardul Singh.

13. Having regard to the evidence of eye-witnesses supported as it was by the evidence of identification, foot-prints, recoveries and the circumstances of both the Pritam Singhs having absconded after the occurrence, the learned Additional Sessions Judge came to the conclusion that the guilt of both the Pritam Singhs was established.

The three assessors who had aided in the trial were also unanimous in their opinion that both the accused were guilty of the murders and the learned Additional Sessions Judge accordingly convicted both of them of the offences with which they had been charged and sentenced them to death subject to confirmation by the High Court.

14. The High Court scrutinised the whole of the evidence and considered the various criticisms which were leveled against it by the learned counsel for the accused. So far as Pritam Singh Fatehpuri was concerned, it marshalled the evidence and divided it into 6 categories:

(1) Identification.

(2) Recovery of a revolver from his safe kept in his house along with other things which he admits to belong to him. (3) Recovery of a rifle taken from Sardul Singh deceased.

(4) Track evidence.

(5) Finding of a bush-shirt; and (6) His absconding.

The identification evidence suffered from the disability that out of as many as 16 witnesses who were present at the identification parade held on 29-5-1953, barring the two constables who were refused by the accused, only two, viz., Gurdip Singh and Dial Singh identified the accused, and out of the 5 witnesses who were present at the identification parade held on 6-6-1953 none was able to identify him. Even so, the High Court considered that the identification by Gurdip Singh and Dial Singh was satisfactory and relied upon the same though it observed:

"If this was the only piece of evidence perhaps it would have been unsafe to convict as standing by itself it might not have been sufficient, but as I shall show later there are other pieces of evidence which go to support the case for the prosecution". It further observed:

"In any case, I am satisfied that the identification was carried out in a very straightforward manner and identification by Gurdip Singh and Dial Singh cannot be rejected as being either casual or as a result of mere change".

The recovery of the bush-shirt and the shoes from the house of the accused was also held proved by the evidence of the search witnesses and the bush-shirt Ex. P-34 with stains of human blood upon it was treated as a, further corroboration of the participation of the accused in the offence.

The rifle Ex. P-14 taken from Sardul Singh deceased was held to have been found upon the person of the accused when he was arrested on the night between the 26th and 27th May 1953 and the evidence of the search witnesses Milka Singh P. W. 46 and Sohan Singh P. W. 47 was accepted by the High Court even though they were criticised as stock witnesses who always were at the beck and call of the police and helped them in various raids and searches carried out by him.

The track evidence also was found sufficient to connect the accused with the crime inasmuch as the shoes found in his house were held to belong to him and the moulds of the foot-prints taken on the spot tallied with the impressions made by those shoes. Those shoes were moreover taken to have fitted the accused having regard to the observation made by the learned Additional Sessions Judge when examining the accused under Section 342, Criminal P. C. The case against Pritam Singh Fatehpuri was thus summed up by the High Court:

"Thus the evidence against Pritam Singh Fatehpuri which in my opinion has been established is:

"(1) Foot-prints were found at the spot which correspond to a pair of shoes which fits him and which was recovered from his house along with some other articles which he claims to be his although he gives a different explanation which I have not accepted;
(2) A blood-stained shirt was found from his house;

(3) He was found absconding and when arrested there was found on his the rifle which was being carried by Sardul Singh deceased, but there is no explanation as to how he came into possession of this article.

There is besides this the evidence of identification by one of the passengers of the bus in which he travelled and in which the deceased were travelling and of two constables whose names no doubt do not figure in the First Information Report but who state on oath that they were in the bus and by cross-examination it has not been shown that this statement of theirs is false. Besides this, the description which was given on the First Information Report of this accused does according to the learned trial Judge fit him. I would, therefore, hold that Pritam Singh Fatehpuri accused has been rightly convicted".

15. So far as Pritam Singh Lohara was concerned, the High Court grouped the evidence against him into 5 categories:

(1) Eye-witnesses (2) Witnesses of identification (3) Foot-prints (4) Recovery of a revolver; and (5) Absconding.

The eye-witnesses including the police constables Thakar Singh and Raj Pal were believed by the High Court in spite of the criticisms leveled against them by the counsel for the accused. The identification evidence had been characterised as got up, the accused having alleged that, before the identification parade was held, he was shown by Shri Om Prakash to the witnesses in the Deorhi of Faridkot Jail.

As many as 11 witnesses out of the 16 who were present at the identification parade had identified the accused and it was alleged that most of them looked closely at the face of the accused for some time before they were able to identify him and obviously they were looking for some mark of identification on the face which had been communicated to them by Shri Om Prakash before they could identify him.

All these criticisms, were considered by the High Court and in spite of the same the High Court came to the conclusion that the identification evidence was satisfactory and could be relied upon. The track evidence was also relied upon by the High Court having regard to the fact that the shoes which had been supplied to the accused in the District Jail when the accused was made to walk there on a sandy patch specially prepared for the purpose created impressions which tallied with the moulds of the. foot-prints prepared on the spot.

The limp in the gait of the accused had created impressions which were particularly characteristic of this accused and the High Court was of the opinion that the tracks which were picked up on the spot were the tracks of Pritam Singh Lohara and that went to corroborate the story of the prosecution as to the complicity of the accused in the murders.

In regard to the recovery of Ex. P-14 the learned Additional Sessions Judge had not put any reliance on the acquittal of the accused by the learned Additional Sessions Judge, Faridkot, of the offence under the Arms Act, observing that any expression of opinion contained in the judgment was not only not binding on him but was irrelevant under the Indian Evidence Act.

On a perusal of the evidence led by the prosecution in this behalf he had held that the recovery of Ex. P-14 was proved against the accused and considered that as connecting Pritam Singh Lohara with the incident. The High Court, on the other hand, relied upon the observations of Lord MacDermott at p. 479 in *Sambasivam v. Public Prosecutor, Federal of Malaya*, 1950 A.C. 458 (A):--

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim '*res judicata pro veritate accipitur*' is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial".

Having regard, therefore, to the circumstances attendant upon the recovery of the revolver Ex. P-14 and the acquittal of the accused of the offence under Section 19(f), Arms Act, the High Court was of the opinion that this evidence could not be taken into consideration against him.

The High Court, however, held that the evidence against Pritam Singh Lohara consisting of that of the eye-witnesses who stated that they saw him getting into the bus and then committing the murders and running away from the spot, of identification of footprints and of absconding, which was quite satisfactory, was sufficient to convict him and it accordingly came to the conclusion that he also had been rightly convicted.

16. The High Court accordingly dismissed the appeals of both Pritam Singh Fatehpuri and Pritam Singh Lohara, did not see any ground for interfering with the sentence of death passed upon them

and confirmed the same.

17. Both Pritam Singh Fatehpuri and Pritam Singh Lohara applied for and obtained special leave to appeal from this Court and hence this appeal.

18. Shri J.G. Sethi, learned counsel for the appellants, attacked in the first instance, the recoveries of the revolver Ex. P-56 and the rifle Ex. P-14 and submitted that neither of these recoveries could be relied upon as corroborative evidence against the respective accused.

Exhibit P-56 was recovered pursuant to the information given by Pritam Singh Lohara and was alleged to have been dug out of a field in the vicinity of the village Dipsinghwala. This revolver Ex. P-56 was alleged to have been taken from the person of Sardul Singh by Pritam Singh Lohara after Sardul Singh had been shot in the motor lorry.

The witnesses to the recovery were Shri Om Prakash, the investigating officer, Bakshish Singh and Shamsheer Singh, who along with others, Joginder Singh, Gurcharan Singh and Dara Singh had been examined in the trial of Pritam Singh Lohara for the offence under the Arms Act.

Though the Magistrate, First Class, Faridkot, convicted him in the first instance, the Additional Sessions Judge, Faridkot, in appeal, discussed the evidence of various witnesses and, giving him the benefit of doubt, acquitted him, remarking that the surfeit of defence evidence taken in conjunction with all the circumstances set out in the judgment raised strong doubts in his mind as to whether Pritam Singh Lohara was at all taken out of the police lock-up and taken to the alleged place of recovery and that the whole case appeared to have been conceived in a shadowy setting redolent with mystery.

When the prosecution led the evidence in the present case they had cited Joginder Singh, Gurcharan Singh and Dara Singh but all of them were given up for one reason or other and the only persons examined were Shri Om Prakash and the two witnesses of recovery Bakshish Singh and Shamsheer Singh. Shri Om Prakash was characterised as an unreliable witness and it was pointed out that the circumstance of his having paid Rs. 40 to the driver of the jeep out of his own money and not charging the same to the Government was suggestive of, the fact that he did not go to the spot where the recovery of Ex. P-56 was alleged to have been made nor did he take Pritam Singh Lohara there.

Reliance was placed on an article appearing in the issue of The Tribune dated 11-5-1953, Ex. D-A, which stated that Chanan Singh Orara's murder had been traced, that the arrest of Dara, a notorious smuggler by the local police had led to the recovery of three pistols hanging on the wall of a village well in Lopoki police station, that one of the pistols had been identified as having been worn by Jathedar Chanan Singh who, along with his nephew Sardul Singh, was shot dead in a bus on 2-5-1953 and that the police had also recovered from Chogawan a rifle which was carried by Sardul Singh.

It was urged that if this news item was correct Ex. P-56 could not have been recovered from the field near the village Dipsinghwala as alleged and must have been foisted on Pritam Singh Lohara by the

police in order to provide a circumstantial piece of evidence against him.

The observations of the High Court, in appeal, were also relied upon to show that this circumstance could not be used against Pritam Singh Lohara having regard to the position in law as set out in the passage from the judgment of Lord MacDermott cited above and if that circumstance was of no avail to the prosecution as against Pritam Singh Lohara, the recovery of the rifle Ex. P-14 was similarly of no consequence there having been a joint trial of both the accused and Ex. P-14 having been one of the pistols alleged to have been recovered from the wall of the village well in Lopoki police station after the arrest of Dara.

Milka Singh and Sohan Singh who were the two witnesses of the recovery of Ex. P-14 from the person of Pritam Singh Fatehpuri when he was arrested on the night between the 26th and 27th May 1953 were also characterised as the henchmen of the police who were readily available to them for all the searches and raids which they carried out in the locality. Milka Singh had been shown to have taken part in 4 searches and Sohan Singh was shown to have taken part in as many as 7 raids and searches all within one year and were therefore stock witnesses whose evidence could not be relied upon at all.

The manner in which the High Court brushed aside the criticisms against these witnesses was, it was urged, very unsatisfactory as the High Court did not take into account the fact that both these witnesses had taken part in raids and searches conducted by the police on numerous occasions and the absence of any pecuniary gratification to these witnesses which the High Court considered sufficient to rehabilitate their evidence could not be a true test of their veracity.

We were invited by the learned counsel to take an over-all picture of the circumstances attendant upon both these searches and to come to the conclusion that neither the recovery of Ex. P-56 nor the recovery of Ex. P-14 was satisfactorily established and these pieces of circumstantial evidence relied upon by the prosecution against both the accused were of no value at all.

19. Whatever be the position in regard to the recovery of Ex. P-56 and the admissibility of evidence in regard to the same as against Pritam Singh Lohara in the present case, the position in regard to the recovery of the rifle Ex. P-14 from the person of Pritam Singh Fatehpuri when he was arrested as aforesaid, stood on a different footing.

No reliance could be placed on the article in the issue of The Tribune dated 11-5-1953 and beyond the fact that such an article did appear in that issue, nothing was established to show that 3 pistols including the revolver Ex. P-56 and the rifle Ex. P-14 had been recovered from a wall of the village well in Lopoki police station. The only manner in which the contents of that article could be utilised by the defence was that somebody whose identity was not traced had, in his capacity as the correspondent of The Tribune, published a news-item containing that information and that publication would put the Court on an enquiry into the circumstances of the alleged recoveries and that the Court would scrutinise with great care the evidence led by the prosecution in regard to the same.

The evidence of Shri Om Prakash certainly could not be viewed with suspicion merely because the learned Additional Sessions Judge, Faridkot, had acquitted the accused Pritam Singh Lohara of the charge under the Arms Act and the evidence of the other witnesses also could not suffer in consequence of such acquittal.

The evidence of these witnesses, Bakshish Singh and Shamsher Singh in regard to the recovery of Ex. P-56 and of Milka Singh and Sohan Singh in regard to the recovery of Ex. P-14 would have to be considered independently and the latter could be considered against the accused only if the Court was satisfied that it was reliable. The evidence of Milka Singh and Sohan Singh was scrutinised both by the learned Additional Sessions Judge and also by the High Court and both these Courts came to the conclusion that they could rely upon the same in spite of the criticisms which had been leveled against it by the counsel for the defence.

The reasons given by the High Court for rejecting the criticisms against their evidence were no doubt not as satisfactory as they should have been but the fact remains that both these witnesses were believed by the trial Court as also by the High Court and we, exercising our jurisdiction in special leave appeal, are not prepared to differ from that appreciation of the evidence by the Courts below.

We are of the opinion that the evidence of Milk a Singh and Sohan Singh establishes the fact of the recovery of Ex. P-14 from the person of Pritam Singh Fatehpuri when he was arrested on the night between the 26th and 27th May 1953 as aforesaid and this recovery of Ex. P-14 affords a cogent piece of circumstantial evidence against Pritam Singh Fatehpuri.

20. As regards Pritam Singh Lohara, the recovery of Ex. P-56 though supported by the evidence of search witnesses Bakshish Singh and Shamsher Singh amongst others, was not considered enough by the learned Additional Sessions Judge, Faridkot, in appeal, to establish his guilt in regard to the offence under the Arms Act.

Several defence witnesses had been examined by Pritam Singh Lohara in the trial Court including Dara Singh, the notorious smuggler described in the article in The Tribune dated 11-5-1953 above referred to. The learned Additional Sessions Judge, Faridkot, was impressed by that evidence, characterised the evidence of Shri Om Prakash and another police officer as evidence of over-zealous officials and came to the conclusion, having regard to all the circumstances of the case, that there was considerable doubt in his mind as regards the guilt of Pritam Singh Lohara and acquitted him.

The acquittal of Pritam Singh Lohara of that charge was tantamount to a finding that the prosecution had failed to establish the possession of the revolver Ex. P-56 by him. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence with which he had been charged.

That fact was found against the prosecution and having regard to the observations of Lord MacDermott quoted above, could not be proved against Pritam Singh Lohara in any further

proceedings between the Crown and him. We are of the opinion that the High Court was right in rejecting the evidence regarding the recovery of Ex. P-56 against Pritam Singh Lohara and the evidence against him would have to be considered regardless of the alleged recovery of Ex. P-56 at his instance.

21. Learned counsel for the appellants next criticised the identification evidence against both the accused. As regards Pritam Singh Fatehpuri, two identification parades were held, one on 29-5-1953 and the other on 6-6-1953. At the first identification parade, out of 16 Witnesses who were present, the two constables Thakar Singh and Raj Pal were refused by the accused, and, from amongst the rest, only two witnesses, viz., Gurdip Singh and Dial Singh succeeded in identifying him.

It was urged that 17 witnesses failed to identify the accused from amongst whom 5 identified Jagir Singh, a wrong person altogether with the result that about 95 per cent of the witnesses failed to identify him. If the margin of error was thus taken into account, the evidence of Gurdip Singh and Dial Singh alone could not be considered sufficient to identify the accused, particularly when Pritam Singh, the driver, who was expected to have observed the accused at the time of the incident, had given an unsatisfactory description in the F.I.R. and had failed to identify him at the identification parade.

While appreciating the strength of this criticism, we cannot, however, ignore the fact that both the Courts below relied upon the evidence of Gurdip Singh as sufficient to establish the identity of the accused and the evidence of Dial Singh also was similarly considered enough for that purpose. These are concurrent findings of fact reached by both the Courts below in regard to the identification of Pritam Singh Fatehpuri by both these witnesses, Gurdip Singh and Dial Singh, and we are of the opinion that he was satisfactorily identified by both of them and that piece of evidence is available to the prosecution against him.

22. The identification of Pritam Singh Lohara was similarly criticised as unsatisfactory. A charge was leveled against Shri Om Prakash that he had shown Pritam Singh Lohara to the identification witnesses in the Deorhi of Faridkot Jail two days before and that most of the witnesses who succeeded in identifying him at the parade closely scrutinized his face and looked about for some mark on his face before they could identify him. More important in this connection was the limp in the gait of Pritam Singh Lohara.

It was urged that if Pritam Singh Lohara had that limp and one leg of his was shorter than the other it was curious that none of the witnesses who were present in the lorry at the time of the incident noticed it when he made himself scarce thereafter.

We are not impressed by this criticism. The limp was proved before the learned Additional Sessions Judge and in fact he made his own observation in regard to the same commenting that when Pritam Singh Lohara was made to walk in his presence the limp was particularly in evidence though on former occasions it had not been so noticeable.

Though the limp was certainly there, it was not such as to necessarily attract the notice of the witnesses who were present in the lorry at the time of the incident and it is highly probable that, in the flurry, none of these witnesses noticed that one of the culprits had such a limp. Their attention must have been concentrated more on the events that happened in the lorry and the risk to their own persons rather than on the limp in the gait of one of the culprits who, immediately after the incident, ran away snatching the cycles of four persons whom they came across in the course of their flight.

The absence of any mention of this limp, therefore, by these witnesses as also by Pritam Singh, the driver, in the F.I.R. which he made to the police immediately thereafter is not of much consequence. Both the Courts were moreover satisfied as regards the result of the identification parade held in regard to Pritam Singh Lohara and found as a fact that he was identified as one of the culprits. The identification of both Pritam Singh Fatehpuri and Pritam Singh Lohara, therefore, stands established and is a piece of circumstantial evidence which can be used against them.

23. It was further urged that the track evidence was quite unsatisfactory and should not have been relied upon by the Courts below. The science of identification of footprints was in a very rudimentary stage and it was submitted that such evidence could not furnish a satisfactory clue to the identity of the culprits.

The shoes which were found in the search at the house of Pritam Singh Fatehpuri had not been established to belong to him and in the absence of any satisfactory evidence as to their ownership, any comparison of the impressions made by those shoes with the moulds prepared from the foot-prints on the spot could not establish the identity of Pritam Singh Fatehpuri as one of the culprits.

There was, moreover, a further circumstance in regard to him which was very vehemently criticised by his learned counsel and it was that in his examination under Section 342, Criminal P. C. the learned Additional Sessions Judge asked him to wear those shoes in order to see whether they fitted him. When he wore the shoes in Court, he complained that they were too tight for him; nevertheless the Court remarked that to all appearances they quite fitted his feet.

This observation of the Court, it was urged, was not legitimate and could not be considered against him. It was, therefore, contended that the track evidence was enough to establish the identity of Pritam Singh Fatehpuri as one of the culprits involved in the affair. We are unable to accept this contention. The science of identification of foot-prints is no doubt a rudimentary science and not much reliance can be placed on the result of such identification. The track evidence, however, can be relied upon as a circumstance which, along with other circumstances, would point to the identity of the culprit though by itself it would not be enough to carry conviction in the minds of the Court.

The shoes had been recovered in the search of the house of the accused and the result of the search was proved by calling the search witnesses whose evidence was believed by both the Courts with the result that these shoes, having been recovered from his house, the ownership of the shoes was prima facie established to be his even though the accused had alleged that he was not staying in the house

but had rented the house for some acquaintance of his.

There was evidence to show that he and his wife were staying there right up to 10 A.M. on 9-6-1953 on which day the search was made and if this evidence was believed it would go to establish his ownership of the shoes. If he was the owner of these shoes it was quite legitimate to compare the impressions made by these shoes with the moulds prepared from the foot-prints on the spot.

The learned Additional Sessions Judge, however, in order to derive further assurance attempted, in the examination of the accused under Section 342. Criminal P. C. to see if these shoes which had been recovered from the house of the accused fitted his feet. If the accused had refused to accede to this suggestion of the learned Additional Sessions Judge he would have been justified in doing so and there is no provision in law by which this demonstration could have been made.

The accused, however, agreed to do so and on the shoes being tried on his feet it appeared that they fitted his feet. Realising, however, that the result of this demonstration would be adverse to his defence he complained that the shoes were too tight for his feet.

The learned Additional Sessions Judge, however, thought otherwise and recorded his impression accordingly. This type of evidence was very strongly criticised by the learned counsel for the appellants as real evidence which was not justified at all by the provisions of Section 539B, Criminal P. C. or otherwise and it was urged that it was a matter which prejudiced the defence of the accused.

The learned Additional Sessions Judge was certainly not entitled to allow his view or observation to take the place of evidence because such view or observation of his could not be tested by cross-examination and the accused would certainly not be in a position to furnish any explanation in regard to the same.

The whole thing appears to have been done with the consent of the accused and the only criticism which could be legitimately leveled was against the observation recorded by the learned Additional Sessions Judge that "to all appearance they quite fitted the feet of the accused even though he complained that the shoes were too tight for his feet".

This observation could not carry the matter any further for the prosecution and the only fact which could be relied, upon by the prosecution was that the shoes apparently fitted the feet of the accused and the learned Additional Sessions Judge and the assessors were entitled only to take into account the fact that the shoes apparently fitted the feet of the accused though he complained that they were too tight for his feet.

This was ocular demonstration and the result of such ocular demonstration could certainly be taken into account by the learned Additional Sessions Judge and the assessors and they were entitled to come to their own conclusions taking into account the further fact that the accused did complain at the time that the shoes were too tight for his feet.

The evidence of the trackers and also the fact that shoes were found in the house of the accused and the impressions made thereby tallied with the moulds prepared from the foot-prints on the spot were even otherwise enough to establish the identity of the foot-prints and point to Pritam Singh Fatehpuri as one of the culprits.

24. The case of Pritam Singh Lohara in regard to the track evidence was no different. In spite of the fact that none of the witnesses of the occurrence nor Pritam Singh, the driver, had stated anywhere before that Pritam Singh Lohara had a limp in his gait, the result of the evidence of the trackers was sufficient to establish that one of the culprits made foot-prints which showed that his way of walking was outwards and he put his right-foot more outwards than the left.

This was quite characteristic of Pritam Singh Lohara by reason of the limp in his gait and this was further demonstrated by the impressions which he made when he walked in the District Jail with the shoes given to him there on the sandy patch which was specially prepared for the purpose.

This evidence in regard to Pritam Singh Lohara also was believed by both the Courts below as sufficient to establish his identity as one of the culprits and we are not prepared to differ from their appreciation of the evidence. The track evidence, therefore, was a circumstance which was available to the prosecution against Pritam Singh Fatehpuri and Pritam Singh Lohara.

25. The evidence of the police constables Thakar Singh and Raj Pal was very severely criticised by the learned counsel for the appellants. Even though Thakar Singh belonged to the police force and Pritam Singh Fatehpuri once belonged to the same and was known to him before the date of the incident, his name was not given out by Thakar Singh when Pritam Singh, the driver, made the enquiries from the passengers on the spot with the result that in the F.I.R. Pritam Singh the driver, gave such description of Pritam Singh Fatehpuri as he could.

The identity of Pritam Singh Fatehpuri was established only later on a clue being furnished by Thakar Singh himself to Shri Om Prakash and even then he was able to give out his name in the first instance but the name was ascertained later. Both these police constables did not reveal their identity on the spot nor did they take charge of the investigations but waited until Shri Om Prakash took their statements when only they disclosed to him who they were.

These criticisms, though they go some way towards creating a doubt about the veracity of these witnesses, do not, in our opinion, destroy the same.

Both these witnesses were, after due consideration of the circumstances and the criticisms leveled against their evidence, believed by both the Courts below and it is not for us to re-weigh or to re-appreciate their evidence and come to a contrary conclusion. Hearing the appeal on special leave, we should not lightly interfere with the appreciation of the evidence by the Courts below and we do not see anything in the circumstance of this case which would compel us to do so.

26. The facial identification of both the accused by the learned Additional Sessions Judge on a comparison of the description in the F.I.R. and the accused appearing in the dock before him was

also very severely criticised by the learned counsel for the appellants and it was urged that this also was on a par with the real evidence furnished by the demonstration of the fitting of the shoes on the feet of Pritam Singh Fatehpuri while he was being examined under Section 342, Criminal P. C. The learned Additional Sessions Judge, it was said, was not entitled to make such a comparison and come to a conclusion in regard to the identity of the accused as the culprits involved in the affair. We have the same remarks to make in connection with this facial identification as we made in connection with the other incident. There is this difference, however, between the two circumstances.

Whereas in the case of the fitting of the shoes the assessors were also witnesses to the demonstration and could have been possibly influenced by the fact of the apparent fitting of the shoes to the feet of the accused, in the case of this facial identification it was only personal to the learned Additional Sessions Judge himself who mentioned it only in his judgment while discussing the various circumstances against the accused.

Nonetheless it must be acknowledged that it was not quite legitimate for the learned Additional Sessions Judge to do so because it would be substituting his view and observations in the place of evidence which could be tested by cross-examination and in respect of which it would be open also to the accused to furnish an explanation if such an explanation was asked for in his examination under Section 342, Criminal P. C. In the absence of such test having been applied and an explanation sought from the accused in regard to the same, we are of the opinion that it was not open to the learned Additional Sessions Judge to incorporate these observations of his in the judgment and base his conclusions on the same.

We are, however, of the opinion that even discarding these observations of the learned Additional Sessions Judge in regard to the facial identification of both the accused, there is abundant evidence on the record which would justify his conclusions against them.

27. The absconding of both the accused after the incident and their having made themselves scarce right from 2-5-1953 up to the night between the 26th and 27th May 1953 in the case of Pritam Singh Fatehpuri and up to 9-6-1953 in the case of Pritam Singh Lohara is a further circumstance against them.

No satisfactory explanation was at all rendered by either of them in regard to their absence from their normal place of residence and, they were not available to the police in spite of all their efforts to trace them. This absconding of the accused, therefore, along with the other incriminating circumstances goes a great way to point to their culpability.

28. Having devoted our anxious thoughts to all the arguments addressed to us by the learned counsel for the appellants, we have come to the conclusion that the High Court was quite correct in the summary of the evidence against each of them and in holding that the prosecution had succeeded in establishing the guilt of the accused in regard to the offences with which they had been charged.

29. We, therefore, dismiss the appeal and confirm the conviction and the sentence of death passed upon each of the accused. The sentences will be carried out according to law.