

Supreme Court of India

Baldev Singh & Anr vs State Of Punjab on 13 October, 1995

Equivalent citations: 1996 AIR 372, 1995 SCC (6) 593

Author: K Paripoornan

Bench: Paripoornan, K.S.(J)

PETITIONER:

BALDEV SINGH & ANR.

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 13/10/1995

BENCH:

PARIPOORNAN, K.S.(J)

BENCH:

PARIPOORNAN, K.S.(J)

ANAND, A.S. (J)

CITATION:

1996 AIR 372

1995 SCC (6) 593

JT 1995 (7) 286

1995 SCALE (5) 703

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PARIPOORNAN, J.

Accused No. 1 Baldev Singh son of Roor Singh and Accused No. 3 Roor Singh son of Khushal Singh in Case No. 49/84 - Trial No. 39/84 of the Court of Shri M.L. Merchea, Judge, Special Court, Ferozepur have filed this appeal under Section 14 of the Terrorists Affected Areas (Special Courts) Act of 1984 (hereinafter referred to as 'Act') against their conviction and sentence dated 3.1.1985. There were four accused in this case. Accused No. 2 Sham Singh son of Roor Singh were acquitted by the same judgment. The State has not filed any appeal against the acquittal of accused Nos. 2 and

4.

2. The deceased No. 1, Balbir Singh and deceased No. 2 Amrik Singh and accused Nos. 1 to 4 are near relations. The following chart will help to understand the relationship of the parties inter se :

Khushal Singh | Amrik Singh Roor Singh (Deceased No. 2) (Accused No. 3) |

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||| Balbir Singh Sham Singh Baldev Singh Shamsheer Singh (Deceased-1) (Accused-2) (Accused-1) Accused-4) The Court below, by its judgment dated 3.1.1985, convicted Accused Nos. 1 and 3 Section 302 read with Section 34 of the Indian Penal Code for committing the murder of Balbir Singh. Baldev Singh, accused No. 1 was convicted under Section 32 of the Indian Penal Code for committing the murder of Amrik Singh, deceased No. 2 and under Section 25 of the Arms Act for being in possession of the Barchha without licence. It is against the said conviction and sentence the accused have filed this appeal under the Act.

3. The prosecution alleged that accused Nos. 1 to 4 committed the murder of Amrik Singh and Balbir Singh, deceased Nos. 1 and 2. The prosecution case is as follows:-

Balbir Singh was in Aalli village cultivating the land of the Government. About 3 years prior to the incident he shifted to village Saddushahwala and took 2-1/2 kilas belonging to his father Roor Singh for cultivation. Father Roor Singh wanted the land in village Aalli from Balbir Singh in lieu of the lands taken over by Balbir Singh. Balbir Singh did not consent to this. On 4.5.1984 at about 8 P.M. Balbir Singh, his son Avtar Singh (PW 6), Daya Singh and Dalip Kaur, widow of Balbir Singh (PW 5), were working in the field collecting bundles of the wheat stacks. When they reached near the field of Roor Singh, Roor Singh armed with Kirpan. Baldev Singh and Shamsheer Singh armed with Barchhas and Sham Singh with a pistol came there. Roor Singh raised lalkara stating that Balbir Singh should not be spared. Sham Singh fired from the pistol aiming at Balbir Singh. But Balbir Singh was not hit. Balbir Singh laid himself on the ground to save himself from the firing. Bundles of wheat-stacks fell on him. Baldev Singh gave barchha blow on the thigh of Balbir Singh. Shamsheer Singh gave barchha thrust in the chest of Balbir Singh. Roor Singh gave kirpan blow in the chest of Balbir Singh. All the accused gave further injuries to Balbir Singh. Amrik Singh, deceased, who was in the nearby field, having heard the alarm, reached the spot and tried to intervene. Baldev Singh gave barchha thrust in the thigh of Amrik Singh. Thereafter the accused ran away with their respective weapons. Balbir Singh died at the spot. Dalip Kaur (PW 5), widow accompanied by one Sher Singh went to Police Station Mallanwala and gave the F.I.R. (Ex.p-7) at 10.20 P.M. A case was registered under Section 302 read with Section 34 of Indian Penal Code and Section 25 of the Arms Act, against the accused. On the other hand, Amrik Singh reached the Rural Dispensary, Mallanwala at 9 A.M. the next day. PW 2, Dr. Raja Singh, doctor, Rural Dispensary, Mallanwala, examined him at 9.45 A.M. In the meanwhile, PW-1, Rattan Singh, Station House Officer, Police Station, Mallanwala proceeded to the spot, found the dead-body of Balbir Singh with multiple injuries lying in the field of Roor Singh, the accused with Daya Singh and Avtar Singh (PW-6) guarding the dead-body. Ex. P- 24 inquest report was prepared. Dead body was despatched for post-mortem examination through ex.p-24/A. Rough site-plan P-6/A was prepared. The shoes of Balbir Singh P/O-8 were collected from the spot under seizure memo Ex. P-25. Blood stained earth was collected under seizure memo Ex P-26. Three stacks of wheats were secured under seizure memo Ex.P-

75. Thereafter, in the evening PW-10. Rattan Singh, reached the hospital and made inquiries about Amrik Singh. PW-2, Dr. Raja Singh, opined that Amrik Singh was fit to make a statement. Thereafter, PW-1, Rattan Singh, recorded the statement of Amrik Singh Ex. P-28. Amrik Singh produced his blood-stained shirt and kachha which were taken possession of under Ex.P-29.

4. PW-1 Dr. Jaspal Singh performed the post-mortem on the dead-body of Balbir Singh on 5.5.1984. The post-mortem revealed the following 7 injuries :

- "1. Incised wound 5 cms. x 2 cms. on the front of the left chest in upper part 3 cms. above the nipple with blood clots. On dissection the underlying nib was found cut and left thoracic cavity full of clotted blood. Lower part of the heart stood punctured through and through. The lower part of the lung also lay injured.
2. Incised wound 9 cms. x 3 cms. front and upper part of the right thigh, oblique in direction with blood clots. On dissection the underlying major blood vessels were found completely cut and sub-cutaneous congested.
3. Incised wound 9 cms. x 3 cms. at the outer and upper part of the right thigh with blood clots. On dissection sub-cutaneous tissues were found congested.
4. Incised wound 5 cms. x 2 cms. at the middle of the right thigh with blood clots and sub-cutaneous tissues congested and soft tissues cut.
5. Incised wound 1-1/2 cms. x 1/2 cm. at the middle of the right buttock sub-cutaneous tissues congested.
6. Incised wound 1-1/2 cms. x 2 cm. at the outer and upper part of the left thigh near iliac crest with blood clots.
7. Incised wound 7 cms. x 2 cms. at the back of the abdomen in lower part in middle at lumbo sacral region with blood clots with underlying vertebra partially cut and sub-cutaneous tissues congested."

The Doctor opined that death was due to shock and haemorrhage as a result of multiple injuries which were sufficient in the ordinary course of nature to cause death. He also opined that injury No.1 alone was sufficient in the ordinary course of nature to cause death. Amrik Singh expired on 12.5.1984. An Assistant Sub-Inspector of Police. Police Station Mallanwalla, Gurmel Singh (PW-11), on receipt of the said information, went to the hospital and prepared Inquest Report Ex. P-5. The dead body was despatched for post-mortem through request Ex. P-5/A.

5. Accused Sham Singh, Roor Singh, Shamsheer Singh and Baldev Singh were arrested on 12th and 14th May, 1984. PW-7, Head Constable recovered the loaded pistol and cartridges from Sham Singh under seizure memo Ex. p-8 and Ex. P-9. From Shamsheer Singh a barchha was recovered under seizure memo P-14 and his statement was recorded Ex. P-13. As per Ex. M/O/7 barchha was

recovered from Baldev Singh under seizure memo Ex. P-19. Thereafter, the following charges were framed against the 4 accused persons.

(i) "Baldev Singh U/s. 302 I.P.C.

(ii) Sham Singh, Roor Singh U/s. 302 r/w and Shamsheer Singh section 34 I.P.C.

(iii) Baldev Singh, Sham 302 r/w Singh Shamsheer Section Singh and 34 I.P.C.

Roor Singh.

(iv) Baldev Singh 25 Arms Act.

(v) Shamsheer Singh 25 Arms Act.

(Sham Singh accused was charged under Section 25 Arms Act by the Sub-

Divisional Magistrate, Zira.)"

The cases against the accused under the Arms Act were clubbed along with the main case. All the accused pleaded not guilty to the charges.

6. The prosecution examined PW-1 to PW-5 and PW-7 to PW-

11. Affidavits of police officials were also taken into account. PW-1 is Dr. Jaspal Singh, who performed the post mortem on the dead body of Balbir Singh. PW-2, Dr. Raja Singh, examined Amrik Singh (deceased) and gave Ex. P2 medicolegal report. The learned judge, Special Court, after referring to the nature of the injuries, as disclosed in the post mortem certificate, held that the case of the prosecution that Sham Singh the accused fired at Balbir Singh stands belied since there was no fire arm injury on the body of the deceased. He was also acquitted of the charges framed under the Arms Act. The learned Judge also acquitted Shamsheer Singh, holding that the statement of PW- 5 that Shamsheer Singh gave a barchha thrust in the chest of Balbir Singh, finds no mention in the F.I.R. and the participation of Shamsheer Singh in the crime is open to serious doubt. Giving the benefit of doubt, Shamsheer Singh was acquitted. The prosecution has not filed any appeal against the acquittal of Sham Singh. Accused No. 2 and Shamsheer Singh, accused No. 4.

7. The learned Judge of the Special Court heavily relied upon P-7, F.I.R. and testimony of Dalip Kaur, PW-5 and statement of Amrik Singh Ex. P-28, and the medical evidence afforded by PW-1 and PW-2 and relevant certificates issued by them to hold that the cases against Baldev Singh, accused No. 1 and Roor Singh, accused No. 3 have been proved. On the basis of this finding, Baldev Singh and Roor Singh were convicted under Section 302 read with Section 34 of the Penal Code for committing the murder of Balbir Singh. Baldev Singh, accused No. 1 was also convicted under Section 302 I.P.C. for committing the murder of Amrik Singh and under Section 25 of the Arms Act for being in possession of barchha without licence.

8. We heard counsel. The arguments of appellants' Counsel can be summarised thus:-

There is no reliable record to show that deceased Balbir Singh was cultivating the land in the village Saddushahwala belonging to his father. The deceased was not living there. the F.I.R. Ex. P-7 stated that Sham Singh fired from his pistol at Balbir Singh which struck his chest and later all the accused attacked the deceased which resulted in his death. The final act which caused the death is not attributed to any person. Amrik Singh has not seen the incident and the narration in the statement of Amrik Singh, Ex. P-28, is only a surmise. Dalip Kaur, PW-5 while in the box gave a different version regarding the pistol shot of Sham Singh. It was stated that the shot did not hit at Balbir Singh though he fell down. The deposition of PW-5 on this vital aspect is entirely a different story. So, the evidence of PW-5 is not trustworthy. Daya Singh who was said to be present during the incident was not examined. What is more -- the medical evidence disclosed that the pistol shot is not the cause of death. Since there is no independent evidence to show that the appellants/accused Nos. 1 and 3 caused the fatal injuries, their conviction and sentence under Section 302 read with Section 34 I.P.C. cannot be sustained. It is the prosecution case that accused No. 2 fired from the pistol at Balbir Singh, and Shamsheer Singh, accused No. 4, alone gave a thrust in the chest. But, the medical evidence disclosed that injury No. 1 did not result from any pistol shot. If at all, injury No. 1 incised wound in the left chest was attributable only to Shamsheer Singh who was acquitted. It is clear from Ex. P-7, F.I.R. and the evidence of PW-5 that Baldev Singh. The facts stated above do not warrant the sentence and conviction of the appellants, accused Nos. 1 and 3 under Section 302 read with Section 34 I.P.C., nor can the conviction stand scrutiny under the Arms Act. On the other hand, counsel for the prosecution submitted that there was a treacherous attack on the deceased Balbir Singh by accused Nos. 1 to 4 and though it was Sham Singh who used the pistol, the other accused caused severe injuries in important parts of the body which resulted in the instantaneous death of Balbir Singh and so the conviction and sentence awarded to accused Nos. 1 and 3 by the learned Judge, Special Court, are justified.

9. Appellants' counsel attacked Ex. P-7, the F.I.R., statement given by Dalip Kaur, PW-5, an eyewitness as untrue. It was argued that PW-5 was categorical in the FIR that Sham Singh fired from his pistol at Balbir Singh which struck his chest on the left side and he fell down. Thereafter, the other accused attacked the deceased with Barchha and inflicted injuries which resulted in the death of Balbir Singh instantaneously. At the trial, PW-5, however, deposed that Sham Singh fired from the pistol at Balbir Singh, but Balbir Singh fell down and bundles of wheat fell on his head and the other accused inflicted various injuries on other parts of the body of Balbir Singh like thigh, chest, back, etc. There is discrepancy on a very vital aspect of the case -- as to whether Balbir Singh was hit and he fell down when Sham Singh fired from his pistol. The medical evidence disclosed, no fire-arm injury on the injury on the body of the deceased. No M.T. wad or Pallat were recovered from the spot. The above aspects will show that PW-5 cannot be believed, that Ex. P-7, FIR is not a true or proper version of the incident and the details given therein are unfounded. On this basis it is only appropriate to hold that PW-5 is not speaking the truth and if her evidence is excluded, the prosecution case stands on very fragile foundation.

10. We are of the view that there is no discrepancy between Ex.P-7, FIR and the deposition of PW-5 in Court. We should remember that Ex.P-7, FIR was given within two hours of the incident and

PW-5, a lady, would have been in an agitated mind then. In Ex.P-7, PW-5 only stated that Sham Singh fired from his pistol at her husband which struck his chest. That could only be what she inferred. She did not state that her husband died as a result of the above pistol shot. It is because of the various injuries inflicted by the other accused, Balbir Singh, died. And as PW-5, she stated that Balbir Singh was not hit when the accused Sham Singh fired from the pistol at Balbir Singh, but Balbir Singh fell down. Bundles of hay fell on his head and the other accused inflicted various injuries on other parts of the body. Really, there is no contradiction or variation in the deposition of PW-5 from what she stated in FIR, Ex.P-7. We are of the view that the plea of the appellants' counsel fails to reckon the proper value to be attached to the FIR, the customary or essential details to be mentioned therein and the use that can be made of it. There are innumerable decisions of this Court dealing with the above aspects of the FIR. Mention may be made of a few important decisions of this Court on the subject -- Ram Kumar vs. State of M.P. (AIR 1975 SC 126), Bishan Das vs. State of Punjab (AIR 1975 SC 573), Podda Narayana vs. State of A.P. (AIR 1975 SC 1252), Gurnam Kaur vs. Bakshish Singh (AIR 1981 SC 631), State of Haryana vs. Sher Singh (AIR 1981 SC 1021), State of U.P. vs. Ballabh Das & ors. (AIR 1985 SC 1384), Joginder Singh vs. State of Punjab (AIR 1988 SC 628) and Baldev Singh vs. State of Punjab (1990 (4) SCC 692). State briefly, the FIR is not a substantive piece of evidence, it is only relevant in judging the veracity of prosecution case and the value to be attached to it depends on the facts of each case. Only the essential or broad picture need be stated in the FIR and all minute details need not be mentioned therein. It is not a verbatim summary of the prosecution case. It need not contain details of the occurrence as if it were an "encyclopaedia" of the occurrence. It may not be even necessary to catalogue the overact acts therein. Non mentioning of some facts or vague reference to some others are not fatal. We should also bear in mind that the FIR was given by PW-5, who is an illiterate lady soon after the occurrence, when she should have been very emotional and in a disturbed state of mind. We find that the evidence of PW-5 is substantially in accord with Ex. P-7, FIR and the court below was justified in placing reliance on Ex. P7 and the evidence of PW-5. We repel the plea of the appellants' counsel to the contrary.

11. The statement of Amrik Singh Ex. P-28 translated into English is contained at pages 12 and 13 of the paper book. He has categorically stated therein that he heard the pistol shot when he was feeding the crop nearby and he immediately rushed to the field of his brother Roor Singh and found that Balbir Singh was being inflicted with injuries by his brothers and Roor Singh. He has also described the various blows administered to Balbir Singh was murdered at the spot by the culprits. He stated that Sham Singh had earlier fired a shot with his pistol. When he tried to rescue, Balbir Singh, his nephew, Baldev Singh gave him (Amrik Singh) a blow with his barchha from its sharp side towards him, which struck at his right thigh and he fell down. He was brought from village Saddushahwala by Anoop Singh in an injured condition and was admitted in the hospital at Mallanwalla. PW-10, the Investigator recorded the statement after satisfying from the Doctor about the fitness of Amrik Singh to make the statement. The Court below has placed reliance on Ex.P-7, FIR, the statement of PW-5 and the above statement of Amrik Singh, Ex.P-28 and found thus:

"The statement of Dalip Kaur PW-5 is that Baldev Singh gave barchha blow at the thigh of Balbir Singh; that Roor Singh gave Kirpan blow at the back of Balbir Singh and that the accused gave further injuries. The parties are closely relation as is clear from the pedigree table (propounded by me in para 1 of the judgment). Normally no

daughter-in-law would accuse her father-in-law or husband's brother. It is in the statement of Dalip Kaur PW-5 that Baldev Singh gave barchha thrust in the thigh of Balbir Singh. Her statement is corroborated by the medical evidence also. The motive alleged is that previously Balbir Singh was putting up in village Alli, police station Sultanpur, district Kapurthala, and had for the last three years shifted to village Saddushahwala; there he was cultivating the land of Roor Singh and Roor Singh father of Balbir Singh (deceased) wanted that Balbir Singh should part with the land in his occupation in village Alli. Roor Singh accused admits having given the injuries but his plea is one of self defence for which there is not an iota of evidence. There is no injury on the person of Roor Singh. It was urged that the copies of the Khasra Girdawari did not support the possession of Balbir Singh. It is a matter of common knowledge that if a relation cultivates the land of a proprietor the same is shown as self cultivated by the revenue officials at the time of girdawari (crop inspection).

Moreover, there is no presumption of correctness to the entries of the Khasra girdawari within the meaning of section 44 of the Punjab Land Revenue Act. The Fact that the occurrence is shown to have taken place in the field of Roor Singh is of no consequence because the statement of Dalip Kaur PW-5 is that the occurrence had taken place near the vacant field of Roor Singh. The Statement of Amrik Singh Ex. P-28 ..... " (PP.1 1-12 of Paperbook) Again, in paragraphs 30 and 31 (page 15 of the Paperbook), the Court found thus:

"The statement of Dalip Kaur PW-5, witness of the occurrence, and the statement of Amrik Singh Ex. P-28 bring the offence home to Roor Singh and Baldev Singh accused. it cannot be lost sight of that the accused did not prove much less allege any past hostility with Dalip Kaur PW-5. As given earlier the parties are closely related. The statement of Dalip Kaur PW-5 deserves credence. Baldev Singh and Roor Singh accused gave injuries to Balbir Singh resulting in his death and thereby committed an offence punishable under section 32 r/w section 34 of the Penal Code. Amrik Singh was an intervenor and as such section 34 of the Penal Code would not be attracted against Roor Singh. It was Baldev Singh alone who caused injuries to Amrik Singh resulting in his death. Baldev Singh accused was also found in possession of a barchha which would make him liable under section 25 Arms Act. I convict Baldev Singh and Roor Singh accused under section 302 r/w section 34 of the Penal Code for committing the murder of Balbir Singh. Baldev Singh accused is also convicted under section 302 of the penal code for committing the murder of amrik singh under section 25 arms act for being in possession of barchha without licence.

12. On an anxious consideration of the materials available in the case in particular ex. p7 (fir), Ex. P28 (statement by amrik singh), evidence of pw-5 (widow of deceased balbir singh) and the medical evidence, we are satisfied that the court below was justified in holding that Baldev Singh (accused No.1) and Roor Singh (accused No. 3) caused injuries to Balbir Singh (deceased No. 1), which resulted in his death. We are also satisfied that the court below was justified in holding that Baldev Singh (accused No. 1) alone caused injuries to Amrik Singh (deceased No. 2) resulting in his death.

13. Now, about the conviction and sentence, the court below held:-

1. That Baldev Singh (accused No.1) and Roor Singh (accused No. 3) are guilty under section 302 read with section 34 IPC in causing the death of Baldev Singh and sentenced them to imprisonment for life;
2. That Baldev Singh (accused No. 1) is guilty under section 302 IPC in causing the death of Amrik Singh and sentenced him to imprisonment for life; and
3. That Baldev Singh was guilty of possession of barchha without licence under section 25 of Arms Act.

14. In evaluating the legality and propriety of the conviction sentence so passed by the court below, the following facts highlighted before us by appellants' counsel deserve consideration. The accused as also the victims (deceased) are members of the same family (near relations) (father and sons). The feud in the family centered round the entitlement to property. According to the prosecution, the deceased Balbir Singh moved to Saddushahwala village three years prior to the incident and was cultivating two and half kilas of property, admittedly belonging to the father (family) and it is in evidence that father Roor Singh (accused No. 3) wanted properties in Alli village in lieu of the property taken over by deceased in Saddushahwala village, which was not heeded to. While deceased Balbir Singh was carrying on cultivation in Saddushahwala property, the father Roor Singh (Accused No. 3) and his other sons appeared in the scene and shouted about the unauthorised cultivation carried on by Balbir Singh. The accused, no doubt had arms (Kirpan, barchhas) and in the final analysis, the finding is that accused Nos. 1 and 3, only inflicted wounds in the thigh and back. The plea of the accused, though not accepted, was a right of self-defence. No doubt, the wounds inflicted by the accused caused the death of Balbir Singh. In the context and nature of the several injuries inflicted, it could, at best, be (assumed) stated that the bodily injuries inflicted were likely to cause the death of Balbir Singh and the acts committed by the accused amounts to culpable homicide as defined in section 299 IPC. It is not proved nor does any material exists to state that the accused had in intention to cause the death of Balbir Singh or had the knowledge that in inflicting the injuries, that death was likely to be caused. So, it was argued that the facts proved will not bring the case within section 300 IPC punishable under section 302 IPC and, if at all, the accused can be convicted and sentenced only under section 299 read with section 304 (first part) of IPC only. It was further submitted that the father Roor Singh was more than 80 years of age, that he is possessed of valuable properties, and the dispute itself having stemmed from the right to property, this is a fit and proper case where the court should consider, mitigative circumstances and substitute the sentence of imprisonment awarded by the award of reasonable and appropriate compensation under section 357 Cr.P.C. to the heirs of the victim, who are none other than their near relations. Out attention was invited to the decision of this Court in State of Andhra Pradesh vs. Rayavarapu Punnayya (1977 (1) SCR 601), at pp.608-609 to contend, that, if at all, the conviction and sentence can be, only under section 299 read with section 304 I Part IPC and stress was laid on the following passage :



"...whenever a count is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in s.

299. If the answer to this question is Prima facie found in the affirmative, the stage for considering the operation of s. 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder contained in s.

300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of s.304, depending, respectively, on whether the second or the third Clause of s. 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in s.300, the offence would still be 'culpable homicide not amounting to murder.' punishable under the First Part of s.304, Penal Code."

15. Similarly for the mitigation of the sentence of imprisonment and for applying section 357 of Cr.P.C. the following passage occurring in B.B. Mitra's Code of Criminal Procedure - 18th Edition (1995) at pages 1240-1241 was relied on:--

"S. 357 (a) Scope - ....The power of courts to award compensation to victims under sec. 357, is not ancillary to other sentences but is an addition thereto. It is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. it is, to some extent, a constructive approach to crimes, a step forward in our criminal justice system. Therefore, all courts are recommended to exercise this power liberally so as to meet the ends of justice in a better way. Any such measure which would give the victim succor is far better than a sentence by deterrence. Sub-sec. (3) of sec. 357 provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentences but it is in addition thereto ..... In awarding compensation the court has to decide whether the case is fit one in which compensation has to be awarded. If it is found that compensation should be paid then the capacity of the accused to pay compensation has to be determined. It is the duty of the court to take into account the nature of crime, the injury suffered, the justness of the claim for compensation and other relevant circumstances in fixing the amount of compensation."

Reference was also made to the decisions of this Court in Hari Singh v. Sukhbir Singh [1988 (4) SCC 551], Dr. Jacob George v. State [1994 (3) SCC 430], and Balraj v. State of U.P. [1994 (4) SCC 29].

16. We are of the view that the submissions made as stated hereinabove, are entitled to acceptance. The medical evidence negatives any wound as having been sustained by deceased Balbir Singh, by pistol. The arms possessed by the accused are not inherently dangerous to infer that the intention of the accused was to cause death or that the accused had knowledge that inflicting the injuries as was done, death was likely to be caused. There is no evidence or finding as to who caused the fatal injuries which resulted in the death of Balbir Singh. The appellants-accused inflicted injuries only on the thigh and at the back. The incident happened nearly 11 years ago (4.5.1984). The injuries inflicted on the thigh of Amrik Singh by Baldev Singh have not been proved to be serious or fatal and Amrik Singh died nearly 8 days after the incident on account of cumulative effect of the injuries. The passage of time should have its impact in taking an over all view of the matter. The appellants have served the sentence of imprisonment for more than two years, till they were allowed bail by this Court by order dated 17.11.1987. Balbir Singh is an unfortunate victim. The property dispute between the father and son has led to the unfortunate incident. PW-5, widow and children of Balbir Singh, are the persons to suffer and they should not be forgotten and by merely maintaining the sentence of imprisonment on the accused, the victim or his heirs are not benefited. Considering the nature of the crime, the fact that the accused and the victim are near relations, that it is a property issue which ended in the calamity, the fact that the accused are admittedly in a position to pay, we are of the view that this is a fit case, in which section 357 (3) Cr. P.C. can be invoked and a just and reasonable compensation given to the family of Balbir Singh - (PW-5 and children). In the circumstances, while upholding the conviction of the appellants for the offence under section 299 read with section 304, Part-I, IPC, we give the further following directions in the interests of justice:-

1. That the appellants are found guilty and sentenced under Section 299 read with section 304, Part-I of the Indian Penal Code to a term of imprisonment, which will be limited to the period they have already undergone for causing the death of Balbir Singh and Amrik Singh.
2. In addition to the above, we order that the two appellants/accused Nos. 1 and 3 shall pay by way of compensation a sum of Rs.35,000/- each to PW-5 and her children who have suffered the irreparable loss due to the death of Balbir Singh for which the appellants/accused persons have been sentenced to the term of imprisonment already undergone by them.
3. The amount of compensation ordered by us shall be paid to PW-5 and her children within a period of 3 months from today. If it is not so paid, the amount shall be recovered by the persons entitled to the amount from the appellants as if the direction contained herein is a decree passed against them by this Court. If not recovered, the accused shall suffer the balance of the term of imprisonment as imposed by the trial court, which shall stand revived.
4. The conviction and sentence under Arms Act is set aside.

The appeal is disposed of as above.