Supreme Court of India
Sarwan Singh And Ors. vs State Of Punjab on 11 August, 1976
Equivalent citations: AIR 1976 SC 2304, 1976 CriLJ 1757, (1976) 4 SCC 369
Author: S M Ali
Bench: A Gupta, P Bhagwati, S M Ali
JUDGMENT S. Murtaza Fazal Ali, J.

1. This is an appeal by Sarwan Singh, Mukhtiar Singh and Amar Singh under 3. 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and is directed against the order of the High Court of Punjab and Haryana by which the appellant Sarwan Singh has been convicted under Section 302. I.P.C. and sentenced to imprisonment for life, whereas other two appellants Mukhtiar Singh and Amar Singh have been convicted under Section 302/34. I.P.C. and given the same sentence. The appellants along with five others were prosecuted for the offence of murdering Jit Singh deceased and a charge under Section 302/149, I.P.C. and a number of other charges were framed against them. All the accused were tried by the Additional Sessions Judge. Barnala who rejected the prosecution case in its entirety and acquitted all the accused persons of the charges framed against them. The State of Punjab filed an appeal before the High Court against the order of acquittal passed by the trial Court and after hearing the appeal, the High Court maintained the acquittal of the five accused other than the appellants. As regards the appellants, the High Court reversed the order of acquittal passed in their favour by the Additional Sessions Judge and found that the prosecution case against them had been proved beyond reasonable doubt and it accordingly convicted the appellants and sentenced them as indicated aforesaid. We might further mention here that the High Court completely reversed the findings on the merits of the prosecution case and held that generally the prosecution case was fully proved but as there were some doubtful features regarding the five other accused, whose acquittal was maintained, the High Court did not like to interfere but made it clear that this would not cast any reflection on the credibility of the witnesses of the prosecution which had been believed by the High Court.

2. This is rather an unfortunate case which as a result of a serious and deep-rooted rivalry between the two partners of a liquor vend culminated in the murder of the deceased converting one of his friends into a foe who, animated by a desire to wreak vengeance, pounced upon the deceased with a party of eight persons and brutally murdered him.

3. The prosecution case may be summarized as follows:

The appellant Sarwan Singh along with some other persons had obtained a license for sale of country liquor in village Bhadaur and the deceased Jit Singh was also one of the partners in that business. Subsequently, however. Jit Singh was dropped and he started selling illicit liquor which appears to have seriously affected the business of Sarwan Singh's liquor vend and caused him considerable loss. This appears to have been the motive for Sarwan Singh to wreak vengeance on the deceased. According to prosecution, Pal Singh a villager of Bhadaur and an acquaintance of Jit Singh informed him that Bashir Ahmed who was known to the deceased was being prosecuted in an opium case and had requested Jit Singh to arrange for his bail. Jit Singh accordingly took his brother-in-law P.W. Ajaib Singh and P.W. Pal Singh who had given him the information and Gurdev

Singh with him to Phul where Ba-shir Ahmed was to be produced before the Magistrate on July 20,1970. The party of these persons proceeded by bus from village Bhadaur to Phul. Gurdev Singh was to give surety and perhaps Jit Singh and Pal Singh were to be witnesses if the bail was granted to Bashir Ahmed. As it happened, however, the prayer for bail of Bashir Ahmed was rejected by the Magistrate at Phul who remanded him for another four days. The deceased and his party, therefore, returned disappointed and on their way to Bhadaur they alighted from the bus at Salabatpura at about 2 P. M. It may be noted that there does not appear to have been any direct bus service between Bhadaur and Phul and for any person going from Phul to Bhadaur had to change at Salabatpura for another bus. To resume the narrative of the prosecution case when the deceased and his two companions alighted from the bus they were surrounded by the eight accused persons variously armed, out of whom the appellant Amar Singh pulled the hair of Jit Singh and felled him and thereafter Sarwan Singh who was armed with takwa (axe) gave a blow on his hand. The other accused also assaulted the deceased on various parts of his body with their weapons like gandasas, ghops, lathis etc. The accused persons appear to have got down from a car the moment the complainants' party alighted from the bus which seems to indicate that the accused persons were aware that the deceased was bound to get down at Salabatpura in order to catch another bus for Bhadaur and as the accused Sarwan Singh had a liquor vend at Salabatpura he found it convenient to lie in wait in this village in order to attack the deceased. This is what seems to be suggested by the prosecution. The companions of the deceased on seeing the occurrence raised a hue and cry as a result of which the accused fled away and some of whom even tried to chase Gurdev Singh and Pal Singh who concealed themselves and later reached Bhadaur by a side track. Thereafter Aiaib Singh rushed to the police station at Dialpura which is situated at a distance of 21/2 miles from the village Salabatpura and lodged the First Information Report at 3 P. M. narrating the entire occurrence. Soon after recording the F.I.R. the Sub-Inspector along with some of his assistants set out for the place of occurrence for making investigation. During the course of investigation, recoveries of takwa, gandasa and ghop appear to have been made at the instance of some of the accused. After usual investigation, the police submitted a charge-sheet as a result of which the accused were committed to the Court of Session and tried by the learned Additional Sessions Judge. Barnala as indicated above. We might further mention that although the F.I.R. mentioned the offence under Sections 307/148/ 149, I.P.C. the offence was converted into that of murder after the death of the deceased. The Sub-Inspector who visited the spot prepared an inquest report and sent the dead body to the Doctor for post mortem.

There can be no doubt that the deceased had been assaulted in a most brutal and dastardly manner by the accused as would appear from the number of injuries received by the deceased. According to P.W. 1 Dr. Prem Nath who performed the post mortem examination of the dead body, the following injuries were found on the deceased:

1. Incised wound curved measuring 5" x 1/2" gaping on the right side of scalp in the parietal region. The underlying bone was cut and the brain matter was coming out. The wound went deep for 2". Posterior part of the wound was 1" above the right ear.

2. A Punctured wound with clean cut margins 1/2"xi"xlVa" deep on the outer side of middle of left arm, 4" above the left elbow Joint.

3. A contusion 3" x -J" on the outer side of middle of right arm. Underlying bone was broken.

4. Contusion l'/2" x 1/2" on the outer side of right arm. 2" below injury No. 3. Underlying bone was broken.

5. Punctured wound 1/2" x 1/3" and 1" deep on the outer side of middle of right arm. 1/2" below injury No. 3.

6. Punctured wound with clean cut margins 1/2" x 1/3" and 1" deep on the outer side of lower part of right arm: 1below injury No, 5.

7. Contusion 2" x 1" on the outer side of right fore-arm 4" above the wrist joint.

8. A lacerated wound 11/4" x 1/2" on the front of upper part of right leg. 3" below the right knee joint. The underlying bone was broken.

9. Lacerated wound |" x 1/2" bone deep on the front of upper part of right leg 11/4" below the right knee joint.

10. Incised wound 5" x 1/3" and 1/2" deep on the front of right leg. 2" below injury No. 8(?)

11. Punctured wound with clean cut margins V2" x 1/3" and 1" deep on the front of right leg 1/2" below and inner to injury No. 10.

12. Punctured wound 1/2" x 1/3" and 1" deep on the front of lower part of right leg. 1" below injury No. 11.

13. Punctured wound 1/2" x 1/3" and 1/2" deep on the inner part of lower part of right leg. 3" above the right ankle joint.

14. Punctured wound 1/2" x 1/3" x |" deep on the inner part of right leg 1/2" below injury No. 13.

15. Punctured wound 3/4" x 1/2" x 1" deep going laterally on the front of upper part of left leg. 2" below the left knee joint.

16. Contusion I1/2" x 1" on the front of left leg. 1" below injury No. 15. Underlying bone was broken.

17. A lacerated wound 1/2" x 1/3" with contusion around about on the middle of front of left leg. The wound was bone deep and the underlying bone was broken.

18. A lacerated wound 1" x 1/3" on the inner part of left leg. 21/2" be-low and inner to injury No. 17. Underlying bone was broken.

19. Incised wound 1/2" x 1/3" and 1/2" deep on the inner side of lower part of left leg. 21/2" above the left ankle joint.

An analysis of these injuries would show that there were three incised wounds being injuries Nos. 1, 10 and 19, eight punctured wounds being injuries Nos. 2, 5, 6 and 11 to 15, four lacerated wounds being injuries Nos. 8, 9, 17 and 18 and four contusions being injuries Nos. 3. 4, 7 and 16. The medical evidence in the present case is a very important piece of evidence because it has been relied upon both by the defence and the prosecution.

4. According to the evidence of the Doctor in his cross-examination the ghops recovered from some of the accused could not have caused injuries Nos. 2, 5, 6 and 11 to 15. Thus the direct evidence of the Doctor regarding the injuries caused by ghops on the deceased was undoubtedly inconsistent with the medical evidence. We shall, however, dilate on this matter a little later.

5. The accused pleaded innocence and their main defence was that they had been falsely implicated due to factional animus. The learned Additional Sessions Judge, on a consideration of evidence led before him, discarded the prosecution case on several grounds which have been carefully catalogued by the High Court in its judgment at pp. 7 to 8 of Paper Book No. I. Although the Additional Sessions Judge relied on a number of circumstances, some of them are not at all material and have not been pressed, and in our opinion rightly by Mr. Hardy learned Counsel appearing for the appellants. Before however considering the main comments of the learned Additional Sessions Judge we would like to indicate the evidence against the appellants. The fact that there was rancor and rivalry between Sarwan Singh and the deceased which led the accused to wreak vengeance on the deceased has been expressly mentioned in the F.I.R. which was lodged promptly within an hour of the occurrence. Some of the prosecution witnesses have also testified to this fact. Apart from this, there is definite evidence of three eye-witnesses, namely, P.W. 2 Aiaib Singh, P.W. 8 Gurdev Singh and P.W. 9 Pal Singh who have testified to the murderous assault on the deceased by the accused persons, Third piece of evidence which was produced by the prosecution consists of the recovery of ghops, tawas and gandasas at the instance of the accused, which seeks to corroborate the oral evidence regarding the assault by the accused persons on the deceased. Finally, there is the medical evidence which generally corroborates the fact that the deceased was assaulted by various weapons including sharp-cutting weapons, piercing weapons and blunt weapons. The High Court while disagreeing with the Additional Sessions Judge, has accepted the categories of evidence indicated above, and has held that the prosecution has proved its case against the accused, but it gave benefit of doubt to five of the accused without however casting any reflection on the credibility of the witnesses or without holding that the evidence of the witnesses was false in some respects. In other words, the High Court's finding is not that the witnesses chose to falsely implicate innocent persons but it held that in view of the infirmity appearing from the medical and other evidence it would not be safe to confirm the conviction of some of the accused but that did not affect at all the credibility of the witnesses.

6. We have been taken through the entire record and the judgment of the Additional Sessions Judge as also that of the High Court and we are of the opinion that the judgment of the High Court is substantially correct. The Additional Sessions Judge appears to have relied on certain circumstances

which were not at all material and which j did not admit of any adverse inference against the prosecution. Some of the reasons given by the Additional Sessions Judge were based on pure speculation. In giving some findings the learned Additional Sessions Judge completely overlooked certain important evidence which was led before the Court.

7. With this preface we now proceed to deal with the arguments advanced before us by learned Counsel for the parties.

8. The first contention raised by Mr. Hardy, learned Counsel for the appellants, was that the F.I.R. itself appears to have been lodged not at the time mentioned in the F.I.R. but much later and after due deliberations and after preparation of the inquest report. Counsel derived support to this argument from the fact that even though the F.I.R. was lodged on July 20,970 at 3 P. M. it is mentioned in another column that it was dispatched on July 21,970 through Dak. The evidence further shows that it was received by the Magistrate on July 21,970 at about 7 A, M. It is also proved that the F.I.R. was not actually sent by post but was sent through a constable who had appeared as a witness to prove this fact. It was submitted that having regard to the fact that the F.I.R. gives a very detailed and graphic description of injuries inflicted on the deceased and the weapons with which the accused were armed and other details, this must have been copied out from the inquest report after the injuries on the deceased were fully examined by the Sub-Inspector at the spot. The learned Additional Sessions Judge appears to have readily accepted this argument and held that the delay in dispatch of the F.I.R. to the Magistrate not having been satisfactorily explained, there is a manifest defect in the prosecution case which throws a great deal of suspicion on the truth of the prosecution case. In giving this finding the learned Additional Sessions Judge appears to have overlooked some very important circumstances appearing from the evidence. In the first place, while it is true that under Section 157 of the CrPC as also under the Rules made by the State Government, the F.I.R. should be despatched forthwith, there is nothing to show that there was any deliberate delay on the part of the Sub-Inspector in despatching the F.I.R. The evidence of Sub-Inspector P.W. 12 Gurdial Singh shows that immediately after recording the F.I.R. he left for the spot at 3.50 P.M. along with his assistants. After reaching the spot he examined the eye-witnesses and other persons, took charge of the broken gun of the deceased, the bloodstained earth, prepared the inquest report and made arrangements for sending the dead body to the Doctor for post-mortem examination. This fact is corroborated by two documents produced before the Court and the evidence of P.W. 10 Gurdas Singh Head Constable when he stated that after completing the F.I.R. the Sub-Inspector left the police station Dialpura. He deposed that in the Daily Diary dated July 20, 1970 at S. No. 17 there is a report about the completion of the F.I.R. and the time of departure of the Sub-Inspector for the spot is given as 3.50 P.M. There is a note by the Court that entry No. 17 of the original Daily Diary Report which was produced before the Court was seen by counsel for all the accused. Further more, Exts. P.W. 10/D.A. and P.W. 10/D.B. which are copies of the originals produced by the witness and copies of which were prepared by him clearly show that these facts are correct. These documents are printed at pp. 37 and 38 of the Paper Book No. II. Entry at S. No, 17 in Ext. P.W. 10/D. A. clearly shows that the F.I.R. had already been lodged and that the Sub-Inspector along with Ravinder Singh and others decided to proceed to the spot. Exhibit P.W. 10/D.B. shows at S. No. 15 that the F.I.R. No. 63 was actually lodged and entry of this fact was made in the concerned Register, These two documents fully corroborate the oral evidence of P.W. 10 and the S. I. P.W. 12 that after recording

the F.I.R. the police party proceeded to the spot. Lastly there is absolutely no suggestion put to P.W. 10 by the accused to the effect that he fabricated or manufactured the documents referred to. The" genuineness of these documents not having been challenged, we do not, see any reason to distrust them. The] evidence of P.W. 10 corroborated as \ it is by the documentary evidence \ referred to above clearly shows that the delay in the despatch of the F.I.R. has been adequately explain-ed. Further, there is nothing to show that apart from the F. I. R., the Sub-Inspector could have got any information from any other source regarding the murder of the deceased which necessitated his visit to the spot. In these circumstances, therefore, by the time the Investigating Officer returned, to the police station it must have been sufficiently late and therefore the actual despatch oft the F.I.R. had to be delayed. In these circumstances, therefore, we are fully satisfied that the prosecution has given a very cogent and reasonable explanation for the delays in despatch of the F. I. R.

9. Apart from this, it is well settled that mere delay in despatch of the F.I.R. is not a circumstance which can throw out the prosecution case in its entirety. The matter was considered by this Court in P[sic]a Singh v. State of Punjab where this Court observed as follows:

But when we find in this case that the F.I.R. was actually recorded without delay and the investigation started on the basis of that F. I. R and there is no other infirmity brought to our notice, then, however improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

The observations of this Court aptly apply to the facts of the present case as discussed above. In these circumstances, therefore, we agree with the learned Judges of the High Court that the Additional Sessions Judge was not at all justified in rejecting the prosecution case on the ground of the delay in despatch of the F.I.R. in the peculiar circumstances of this case.

10. The next argument by learned Counsel for the appellants was that the evidence of the eye-witnesses consisted of partisan evidence and should not, therefore, be relied upon, particularly because the evidence showed that there were two opposing factions in the village - one led by the deceased and the other by the accused. Mr. Hardy, however, fairly conceded that even though the eye-witnesses may have belonged to the group of the deceased there was nothing to show that the two groups were on inimical terms with each other, but he contended that the fact that the witnesses came from one particular group was by itself sufficient to show the interested nature of the evidence. In our opinion this argument is not based on a correct appreciation of the evidence. To begin with, it cannot be said that P.W. 8 Gurdev Singh and P.W. 9 Pal Singh were interested or partisan witnesses. All that the accused have been able to show is that P.W. 8 Gurdev Singh was on visiting terms with the deceased. In villages where population is scanty every villager is usually on visiting terms with another villager, unless there is animus between them. That by itself is not sufficient to label him as being a partisan witness. So far as P.W. 9 Pal Singh is concerned, there is positive evidence to show that he was not at all an interested witness but was a completely independent witness P W. 2 Ajaib Singh the first eve-witness has stated at page 40 of Paner Book No. II that Pal Singh was not on visiting terms with Jit Singh prior to the occurrence. When Mr Hardy drew our attention to this statement he seemed to suggest that the word "not" was printed by mistake and what really was

recorded by the Judge was that Pal Singh was on visiting terms with Jit Singh We have, however, perused the original record and we find that the word "not" is present there also. What has happened is that the word "on" after "not" seems to have been inadvertently omitted. But then the sentence read as a whole clearly indicates that Pal Singh was not on visiting terms with Jit Singh. There is no evidence to show that Pal Singh was in any way closely connected or interested in the deceased, apart from the fact that he was a co-villager. In these circumstances, J even if the evidence of Ajaib Singh and Gurdev Singh be treated to be interested and partisan, since their evidence is corroborated by the evidence of Pal Singh who is an in- dependent witness. the infirmity | from which the evidence of P.W. 2 Ajaib Singh and P.W. 8 Gurdev Singh suffered disappears. Moreover, it is not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the Courts require as a rule of prudence, ! not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the Court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other, e. g. when an occurrence takes place at mid-night in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. We, however, need not dilate on this point, because assuming as we have said that P.W. 2 Ajaib Singh and P.W. 8 Gurdev Singh were interested witnesses, here we have the fact that their evidence has been clearly and consistently corroborated on all points by P.W. 9 Pal Singh who is an independent witness and who bore no animus whatsoever against the accused. The learned Additional Sessions Judge has, however, overlooked this important aspect of the case and we find no reason whatsoever to distrust the evidence of Pal Singh even on its intrinsic merit. We have carefully perused the evidence of P.W. 2 Ajaib Singh. P.W. 8 Gurdev Singh and P.W. 9 Pal Singh and we are satisfied that their evidence is creditworthy and there are no strong or cogent reasons why their evidence should be completely discarded.

11. Mr. Hardy learned Counsel for the appellants then strongly relied on the fact that the presence of the eye-witnesses and the deceased at Phul has not been proved by production of the necessary record and therefore the genesis of the occurrence disappears. This argument also is based on a serious misconception. In the first place it cannot be doubted that the deceased was found murdered at Salabatpura. There is no evidence or material to indicate any reason why the deceased should have gone to Salabatpura. but there are circumstances leading to an inescapable inference that the deceased had been to Salabatpura as deposed to by the eyewitnesses on his return from Phul as he was to board the bus from Salabatpura to Bhadaur. As regards Bashir Ahmed's matter, defence it-self produce sufficient material to show that the story of the prosecution regarding Bashir Ahmed and that he was produced before the Magistrate at .Phul was correct.

12. Exhibit D. W. 4/B which has been proved by D. W. 4 Har Singh Head Constable clearly shows that Head Constable Gulab Singh set out towards Phul for obtaining remand of Bashir Ahmed in an Opium case at 7.30 A.M. on July 20, 1970 which clearly shows that the prosecution case that Bashir Ahmed was taken to Phul and was in police custody has been proved. Further more, the fact of the

prosecution case that bail was refused to Bashir Ahmed is proved from Ext. D. W. 4/C which is also dated July 20, 1970 which shows that the Head Constable along with Mithu Singh' returned to village Bhadaur after getting further remand of Bashir Ahmed upto July 24, 1970. All the eye-witnesses have deposed to the fact that they had gone to Phul for the purpose of arranging bail for accused Bashir Ahmed and as Bashir Ahmed was further remanded and the bail was not allowed they had to come back. This part of the evidence is clearly supported by the documents produced even by the defence. In these circumstances, therefore, we see no reason at all to distrust the evidence of these witnesses on this point. The learned Additional Sessions Judge failed to consider this important feature which was proved by the accused themselves. Having regard to the cumulative effect of the evidence of the eye-witnesses, the undoubted presence of the deceased as also of the eye-witnesses at the spot as deposed to by the Investigating Officer and the documents discussed above, it has been amply proved that the deceased along with his companions had gone to Phul to arrange for bail of Bashir Ahmed but had to return early as bail was not allowed and while the deceased alighted from the bus at Salabatpura he was attacked by the accused.

13. Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, all though the evidence shows that there were some persons living in that locality like the 'Pakodewalla', Hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr. Hardy has adopted this argument. In our opinion the comments of the Additional Sessions Judge are based on serious misconception of the correct legal position. The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its-witnesses if it is to prove its case. The Court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the Court may draw an adverse inference against the prosecution. But it, is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the Court that the witnesses who had been withheld were eye-witnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters. In the instant case, the evidence of the eye-witnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted a large crowd bad gathered and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country there is a general tendency amongst the witnesses in mofussil to shun giving evidence in Courts because of the cumbersome and dilatory procedure of our Courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the Courts. Therefore nobody wants to be a witness in a murder or in any serious offence if he can avoid it. Although the evidence does show

that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, yet there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes. So far as Pakodewalla and Hotelwalla etc. are concerned there is positive evidence to show that they were interrogated by the police but they expressed ignorance about the occurrence. In this connection the evidence of P.W. 5 Harnek Singh clearly shows that the Investigating Officer interrogated the Hotelwalla and the Pakodewalla but they stated before him that they had not witnessed the occurrence. In these circumstances, therefore, there was no obligation on the prosecution to examine such witnesses who were not at all material. It is not a case where some persons were cited as eye-witnesses by the prosecution on material points and were deliberately withheld from the Court. For these reasons, therefore, the learned Additional Sessions Judge was not at all justified in raising an adverse inference against the prosecution case from this fact and the High Court was right in rejecting this part of the reasoning adopted by the learned Additional Sessions Judge.

14. Reliance was, however, placed by the prosecution upon recovery of Exts. P. L., P. M., P N., P. O., P. Q. & P. R. We are. however, in the present case concerned only with the recovery of weapons from the three appellants which are reflected in Exts. P. L., P.Order and P. R. In the disclosure statement leading to' the recovery of the weapons which are the subject-matter of these documents, there is no statement by the accused that they had committed an offence of murder with the weapons recovered at their instance. It is also clear that none of the weapons recovered from the three appellants bore any bloodstains. In these circumstances, therefore, it seems to us that the mere recovery of the weapons is not a very material circumstance against the accused particularly when every villager is supposed to possess one. Exhibit P. L. is the recovery memo of a gandasa, which is said to have been recovered from the person of Amar Singh on July 25, 1970 while he was coming on the turning of link road of Gurusar. It is obvious that this recovery is absolutely meaningless. The gandasa did not have any bloodstains and all that this recovery shows is that the appellant Amar Singh did undoubtedly possess the gandasa. Exhibit P. 6. is the recovery memo of a takwa which was recovered and produced at the instance of the appellant Sarwan Singh. Here also there was no disclosure statement and all that is proved is that Sarwan Singh was possessed of the takwa in question. Lastly Ext. P. R. is the recovery memo of a ghop recovered at the instance of Mukhtiar Singh from a ditch near the canal minor Kangar. This also shows that Mukhtiar Singh was possessed of the ghop. Thus while these recoveries cannot be treated to be an incriminating evidence against the accused, at least this much is certain that the definite case of the prosecution was that these weapons belonged to the appellants and appear to have been used in the assault on the deceased. The prosecution cannot be allowed to resile from this position. This matter will be explained further when we discuss the medical evidence.

15. Two other circumstances have been relied upon by the Additional Sessions Judge as also by Mr. Hardy learned Counsel for the appellants. In the first place the learned Trial Judge observed that the statements of P.W. 8 Gurdev Singh and P.W. 9 Pal Singh cannot be believed, because according to their evidence they had concealed themselves behind the pulas of Sirkanda reeds in order to save their lives. Both these witnesses did not refer to this fact in their statements before the Committing Magistrate or the police. There appears to be some confusion regarding this matter. It is true that there is no reference to Sirkanda reeds or pullas in the statements of these witnesses before the

police but the fact that they had concealed themselves on the road to Bhadaur is clearly mentioned by these witnesses before the police. At page 64 of the Paper Book No. II P.W. 12 Gurdial Singh S. H.Order clearly deposes that although there are Pullas on the right side of Sala-batpura-Bhadaur road there is no mention of Pullas in the statements of the P. Ws. before the police. But the fact that they had concealed themselves near that place is clearly mentioned as would be evidenced from their statements Exts. D. B. and D. C. at pages 32 and 33 of the Paper Book No. II. In Ext. D. B. which is the statement of Gurdev Singh before the Sub-Inspector Gurdial Singh it is clearly mentioned that after the occurrence while Aiaib Singh rushed to the police station, the witnesses concealed themselves towards the side of Bhadaur. A similar statement is made by Pal Singh in Ext. D. C. Thus the fact that the two witnesses had concealed themselves towards the side of Bhadaur at Salabatpura has been consistently deposed by the witnesses both before the police and the Sessions Court and the question of the exact spot whether it was behind the reeds or the pullas is a matter of minute detail whose omission would not destroy the credibility of the evidence of these witnesses. When this fact was pointed out to Mr. Hardy he conceded that in view of the statements of the witnesses before the police, this circumstance was not of much consequence. In these circumstances, therefore, the learned Additional Sessions Judge was not at all justified in relying upon this circumstance to discredit the prosecution case.

16. It was then submitted that there was absolutely no motive for the accused to have killed the deceased and the motive given by the prosecution has not been proved. We are, however, unable to agree with this argument. There is overwhelming and consistent evidence to prove the motive alleged by the prosecution which arose out of rivalry between the accused and Jit Singh deceased on the question of sale of illicit liquor by the deceased. To begin with, this fact has been clearly mentioned in the F.I.R. which was lodged within a very short time of the occurrence and therefore it cannot be said that the motive alleged in the F.I.R. was an afterthought. Apart from that P.W. 2 Aiaib Singh has clearly stated at page 42 of the Paper Book No. II that Jit Singh deceased had informed 5 or 7 days prior to the occurrence that Sarwan Singh accused suspected him for causing loss to him by the sale of illicit liquor. He had also stated that the seven accused persons belonged to the faction of Sarwan Singh and were members of his group. The witness had admitted that the deceased may have been selling illicit liquor. It is true that this witness is the brother of the wife of the deceased and was living with the deceased for quite a few years. But that by itself is not a ground to discredit the testimony of this witness, if it is otherwise found to be consistent and true. In this case, particularly, we find that the version given by P.W. 2 Aiaib Singh is fully corroborated by P.W. 9 Pal Singh who is an absolutely independent witness.

17. The next witness on the question of motive is P.W. 8 Gurdev Singh who deposed that Jit Singh originally had a share in the liquor vend of village Jalal and continued to be so for about two years, but as Sarwan Singh did not give any share of the profits to Jit Singh the latter withdrew from the partnership. The witness further deposed that on the baisakhi day, which would be about three months before the occurrence, Sarwan Singh had leveled a charge against Jit Singh that he was selling illicit liquor. This shows that as the deceased had left the partnership of the accused Sarwan Singh and had indulged in selling illicit liquor causing loss to the accused Sarwan Singh he nursed a serious grouse against the deceased Jit Singh and he proclaimed this fact on the Baisakhi day. In these circumstances we do not see any reason to disbelieve the motive attributed by the prosecution

to the accused Sarwan Singh for killing the deceased. In fact, while enmity cuts both ways, according to the evidence led in this case, it shows that it was Sarwan Singh and not the deceased who had harbored ill-will, because the deceased had given a serious grouse to Sarwan Singh by causing loss in his business and that could afford a sufficient motive to Sarwan Singh for committing the murder of the deceased along with his men.

18. Another important circumstance which incriminates Sarwan Singh is the fact that all the P. Ws. have consistently stated that Sarwan Singh was coming out of car No. 5532 and the accused Sarwan Singh admits that this car belongs to his son. The witnesses, however, say that the car belonged to him. This is not of much importance so long as it establishes that the car was in power and possession of Sarwan Singh.

19. Thus after considering the evidence of the three eye-witnesses P.W. 2 Ajaib Singh, P.W. 8 Gurdev Singh and P.W. 9 Pal Singh on their intrinsic merits as also having regard to the facts deposed by them consistently, we are satisfied that their evidence contains a ring of truth and they have undoubtedly proved the prosecution case generally.

20. Before concluding this judgment, we must refer to the inconsistency between the prosecution evidence and the medical evidence on which great reliance has been placed by the accused. Dr. Prem Nath P.W. 1 has categorically stated in his cross-examination that so far as the punctured wounds are concerned, they could not have been caused by ghop which was shown to him. In order to get out of this evidence, counsel for the prosecution suggested that the ghop recovered at the instance of the accused may not have been used by them, but some other ghop may have been used in assaulting the deceased. This is, however, contrary to the stand taken by the prosecution at the very inception, because by virtue of the seizure recovery memos the prosecution definitely sought to establish that the accused concerned were in possession of the weapons with which alone they had assaulted the deceased. Normally one villager, in absence of special circumstances, does not possess more than one lethal weapon. Secondly, there is practically no reexamination of the Doctor to explain what type of ghop could have caused the injuries on the deceased. In view of the inconsistency between the direct and the medical evidence, participation of those accused persons who are said to have caused punctured wounds with ghop becomes doubtful and they were, therefore, rightly given the benefit of doubt. The case of the appellant Mukhtiar Singh also falls within this category, because a ghop was recovered from his person and he is said to have given a ghop injury which according to the Doctor could not have been caused by the ghop shown to the Doctor and recovered from the appellant Mukhtiar Singh. On this ground alone, Mukhtiar Singh deserves the benefit of doubt and his acquittal by the Additional Sessions Judge should have been maintained by the High Court. Moreover, being a brother of the accused Sarwan Singh, the possibility that he may have been falsely roped in cannot be excluded. As regards Amar Singh there is practically no overt act attributed against him by the witnesses except that he pulled the hair of the deceased and felled him, Amar Singh is not a relation of the accused and there is nothing to show why he should have participated in the assault. He bears no animus against the deceased either. In these circumstances we are satisfied that while the prosecution case is generally true, but on the state of the evidence in this case, it is not safe to convict Amar Singh and we, therefore, give him the benefit of doubt.

21. So far as Sarwan Singh is concerned, there appears to be overwhelming evidence against him. He was the main hero of the whole show and appears to have planned and engineered the murder of the deceased. His presence at Salabatpura at the time of occurrence is clearly established, not only by the eye-witnesses but also by the presence of the car whose number has been given by the witnesses. The medical evidence also fully supports the injuries caused by him in that the Doctor has clearly stated that injury No. 1 could have been caused by takwa shown to the Doctor. The Doctor says that injury No. 1 could have been caused if the major portion of the sharp edged curved takwa Ext. P. 1 were to strike on the scalp of Jit Singh. There is consistent evidence of all the eye-witnesses that it was Sarwan Singh who gave the blow on the scalp of the deceased. In these circumstances, therefore, the fact that the appellant Sarwan Singh caused the fatal blow on the scalp of the deceased resulting in his death is supported not only by the evidence of the eye-witnesses but also by medical evidence. For these reasons, therefore, we are satisfied that the prosecution has proved its case against Sarwan Singh beyond reasonable doubt and the learned Additional Sessions Judge was wholly wrong in discarding the prosecution case.

22. Lastly it was contended by Mr. Hardy learned Counsel for the appellants that the High Court should not have reversed the acquittal if two views could be taken on the same evidence. On a full and complete discussion of the evidence, we find, however, that the view , taken by the learned Additional Sessions Judge was perverse and was against the weight of the evidence led by the prosecution. The law only requires that the Appellate Court, in reversing the order of acquittal, should be slow and circumspect to disturb a finding of fact, but if it is of the opinion that the finding of fact is wrong and not borne out by the evidence there is no limitation on its power to interfere with the order of acquittal. In Ram Jag v. The State of U.P. this Court observed as follows:

Due regard to the views of the trial Court as to the credibility of witnesses in matters resting on pure appreciation of evidence and the studied slowness of the appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing and hearing the witnesses, where such seeing and hearing can be useful aids to the assessment of evidence, are well-known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction. They are self-imposed limitation's on a power otherwise plenary and like all voluntary restraints, they constitute valuable guidelines. Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate Court deals with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed.

In the instant case we find that the High Court, after considering the entire evidence, has given due regard to the principle of slowness in disturbing a finding of fact, and after having considered the same has come to the conclusion that no other view was possible on the evidence.

23. We, therefore, dismiss the appeal of Sarwan Singh and confirm the conviction as also the sentence imposed on him. We, however, allow the appeal of Mukhtiar Singh and Amar Singh and set aside the order of the High Court convicting these appellants of the offences under Sections 302/34, I.P.C. They are directed to be set at liberty forthwith.