

Supreme Court of India

Ram Narain Singh vs The State Of Punjab on 15 July, 1975

Equivalent citations: 1975 AIR 1727, 1976 SCR (1) 27

Author: S M Fazalali

Bench: Fazalali, Syed Murtaza

PETITIONER:

RAM NARAIN SINGH

Vs.

RESPONDENT:

THE STATE OF PUNJAB

DATE OF JUDGMENT 15/07/1975

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

UNTWALIA, N.L.

CITATION:

1975 AIR 1727 1976 SCR (1) 27

1975 SCC (4) 497

CITATOR INFO :

RF 1976 SC1449 (5)

RF 1987 SC 826 (9)

ACT:

Inconsistency between direct evidence and expert evidence When expert evidence prevails

HEADNOTE:

The first appellant was charged with having shot the deceased and killed him. According to the prosecution case he shot at the deceased only once. The Sessions Judge convicted and sentenced him to death and the other appellants, who were alleged to have accompanied the first appellant to various terms of imprisonment. The High Court affirmed the conviction and sentences.

Allowing the appeal to this Court,

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HELD: (1) The evidence of some of the witnesses unmistakably points in the conclusion that the occurrence really took place at 8 P.M. when it was dark, and if that is so, then there is no evidence on the record to show how the appellant could have been identified by the witnesses. [35D]

(2) A combined reading of the report of the medical expert and the ballistic expert in the present case, clearly

established that the deceased died of two gun shot injuries and the prosecution has not been able to explain this important circumstance. the evidence of the two eye witnesses is wholly inconsistent with the medical evidence as also the evidence of the ballistic expert and must be rejected on that ground alone, apart from other inherent improbabilities which appear in the evidence. Where the evidence of the prosecution witnesses is totally inconsistent with the medical evidence or the evidence of the ballistic expert, thus is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. Where the direct evidence is not supported by expert evidence then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence [33C: 36H: 37C]

Mohinder Singh V. The State [1950] S.C.R. 821. followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeals Nos. 258 and 259 of 1974.

Appeals by special leave from the judgment and order dated the 19th February, 1974 of the Punjab and Haryana High Court in Criminal Appeal No. 778 of 1973 and Murder Ref. No. 41 of 1973.

A. N. Mulla, H. S. Marwaha, K. B. Rohtagi and D. R. Gupta, for the appellants. (In CrI. A No. 258/74).

O. P. Sharma and Dewan Balak Ram, for the respondent. The Judgment of the Court was delivered by FAZAL ALI, J. Criminal Appeal No. 258 of 1974 by special leave has been preferred by the appellant Ram Narain Singh who was tried by the Sessions Judge, Bhatinda who convicted the appellant under s. 302 I.P.C. and sentenced him to death and a fine of Rs.2,000/- or in default further rigorous imprisonment for two years. Ram Narain Singh was also convicted under s. 307/34 and sentenced to three years R.I. and a fine of Rs. 300/-, under s. 449 I.P.C. and sentenced to three years R.I. and a fine of Rs. 300/-. There was a further conviction in so far as Ram Narain Singh is concerned under s. 324/34 I.P.C. under which he was sentenced to one year's rigorous imprisonment and under s. 323/34 I.P.C. to six months R.I. All the sentences to run concurrently. The other appellants Jaggar Singh, Hakam Singh and Mal Singh in Criminal Appeal No. 259 of 1974 were convicted under s. 302/34 I.P.C. and sentenced to imprisonment for life and a fine of Rs. 1000/- each or in default one year's R.I. each. Jaggar Singh was also convicted under s. 307 I.P.C. and sentenced to three years R.I. and a fine of Rs. 300/-, under s. 449 I.P.C. to three years R.I. and a fine of Rs. 300, and under s. 324/34 I.P.C. to one year's R.I. Hakam Singh and Mal Singh were also convicted under s. 307/34 I.P.C. and sentenced to three years R.I. and a fine of Rs 300/- each, Hakam Singh was also convicted under s. 324/34 I.P.C. and sentenced to one year's R.I. and under s. 323 I.P.C. and sentenced to six months R.I. while Mal Singh was convicted under s. 324 I.P.C. and

sentenced to one year R.I. and under s. 323/34 I.P.C. and sentenced to six months R.I. all the sentences to run concurrently. The learned Sessions Judge has also made a reference to the High Court of Punjab & Haryana for confirmation of the death sentence passed on Ram Narain Singh. All the appellants had filed separate appeals before the High Court which were amalgamated and were heard and decided by one judgment. The High Court dismissed the appeals and affirmed the convictions and sentences passed by the Sessions Judge and on its refusal to grant leave to appeal to the Supreme Court the appellant came up for special leave to this Court which granted special leave. Jaggar Singh, Hakam Singh and Mal Singh have filed a separate appeal to this Court, in which case also special leave was granted by this Court, and as both the appeals arise out of a common judgment, we propose to deal with them by one judgment.

Put briefly the prosecution case is that the appellant Ram Narain Singh was the Sarpanch of the Gram Panchayat of village Hassanpur and is alleged to have forcibly taken possession of 10 Kilos of land belonging to the Panchayat. Despite several attempts by the Panchayat to dislodge the appellant Ram Narain Singh from this land nothing of consequence happened as a result of which the members of the Panchayat filed a complaint against Ram Narain Singh before the Deputy Commissioner seeking ejectment of Ram Narain Singh from the land. The deceased Teja Singh and his brother Surjit Singh being members of the said Panchayat took an active part in the campaign for ousting Ram Narain Singh from the Panchayat and which he had forcibly taken possession of. According to the prosecution, the appellant Ram Narain Singh nursed a serious grudge against the deceased and Surjit Singh for their action. It is also alleged that the deceased had threatened Ram Narain Singh some time before the occurrence that if Ram Narain Singh did not surrender the possession voluntarily he will get him dispossessed. The story of the prosecution further discloses that on the date of occurrence i.e. October 2, 1972 the deceased along with his brothers Surjit Singh and Joginder Singh had gone to attend a fair at village Phaphre Bhaik and after spending a day there they were returning to their own village near about the sun-set, when somewhere on the way Teja Singh stayed behind to answer the call of nature while the other two companions, namely, Surjit Singh and Joginder Singh proceeded to their house. Teja Singh also arrived at the house soon thereafter. Within a few minutes of the arrival of Teja Singh in the house, the accused Ram Narain Singh and Jaggar Singh armed with single barrel guns entered the house along with Mal Singh and Hakam Singh who were armed with Gandas. Mal Singh and Hakam Singh remained at the door of the house, whereas the appellants Ram Narain Singh and Jaggar Singh entered the house. As soon as they entered the house, Jaggar Singh aimed the gun at Surjit Singh P.W. and fired at him. Fortunately the fire missed him. Thereafter Ram Narain Singh fired a shot from his gun which hit Teja Singh on his chest as a result of which he fell down and died on the spot. Thereafter both the accused caught the deceased from his legs and hands and dragged him out of the house at some distance. When Surjit Singh P.W. tried to intervene he was hit by Mal Singh with a Gandasa. Hakam Singh accused also followed suit and inflicted three Gandasa blows on his right leg, right arm and back. Meanwhile Joginder Singh appeared on the scene with a Gandasa in his hand and raised alarm whereupon all the accused ran away from the place of occurrence along with their weapons. The dead body of the deceased Teja Singh was removed to the courtyard of the house and kept there. Surjit Singh P.W. who was one of the injured brothers left the dead body at the spot and proceeded to the police station at Bhikhi through fields and pastures to avoid any confrontation with the accused and lodged the first information report Ext. P.G. at 11-50 P.M. A S.I. Kuldip Singh prepared

an injury statement and got Surjit Singh admitted into the Civil Dispensary, Bhikhi. The A.S.r. Kuldip Singh reached the place of occurrence at 2-30 A.M. On October 3, 1972 and held inquest on the dead body of Teja Singh. The A.S.I. found blood-stained earth from underneath the dead body of the deceased as also from outside the house. He also took possession of two empty cartridges Exts. P-11 and P-12 which were lying near the entrance door. We might also mention here that the definite case of prosecution before the Sessions Judge was that while the shot was fired at the deceased Teja Singh by Ram Narain Singh he had kept the right hand flexed on his chest. It was thus stated by the eye witnesses that at the time of firing, the deceased had put his right hand on his chest. These two additions or embellishments appear to us to have been necessitated in order to bring the evidence of the eye witnesses in consonance with the evidence of the Doctor as also that of the ballistic expert, and we shall deal with this aspect of the matter a little later. In the course of investigation, Karnail Singh P.W. a distant relation of the deceased produced the accused Ram Narain Singh and others before the A.S.I. along with the rifle and a Jhola containing the cartridges as also the blood tailed gandasa. The police after usual investigations submitted charge-sheets against all the accused persons as a result of which they were committed for trial before the learned Sessions Judge who convicted them as indicated above.

The defence of the accused was that the prosecution had concocted a false case against the accused due to enmity and with a view to wreak vengeance on the accused Ram Narain Singh for not giving up possession of the Panchayat land. It was further alleged by the defence that all the witnesses examined in this case were inimically disposed towards the accused. The learned Sessions Judge, after considering the entire evidence on the record, accepted the prosecution case and convicted the accused. The accused then filed an appeal before the High Court which was dismissed and hence these appeals by special leave Mr. A. N. Mulla counsel for the appellants has drawn our attention to certain outstanding features of this case which, according to him, are sufficient to throw doubt on the entire prosecution case. In this connection he has raised the following three important contentions:

Firstly, it was argued that the prosecution witnesses have concealed the true version of the occurrence and even if their statements are taken at their face value it is totally inconsistent with the medical evidence as also the ballistic expert's evidence.

Secondly, it was urged that the prosecution has changed the time and place of occurrence and it was suggested that the deceased may have been assaulted by an unidentified assailant somewhere in the fields and the appellants have been falsely implicated in the offence. 1) Thirdly it was argued that the entire prosecution case was sought to be proved by the partisan evidence which ought not to have been accepted in this case and the dramatic production of the gun and other weapons by all the accused persons at the instance of Karnail Singh P.W. an enemy of the accused smacks of pure concoction and appears to be too good to be true.

Before dealing with the contentions raised by the learned counsel for the appellants we would like to indicate the nature of the evidence led by the prosecution in support of the case. To begin with, there is the central evidence consisting of two eye witnesses Surjit Singh and Joginder Singh the brothers of the deceased who were in the house when the deceased Teja Singh and Surjit Singh were attacked.

This 1. evidence is sought to be corroborated by the evidence of P.W. is Buggar Singh who deposed that he had seen the accused proceeding to the house of Teja Singh armed with a gun and gandasa. Mohinder Singh P.W. 16 another witness for the prosecution seeks to corroborate the evidence of the eye witnesses by stating that immediately after the occurrence Joginder Singh came to him and informed him about the occurrence Finally, there is the evidence of Karnail Singh and the A. S. I. Balwant Singh to prove the production of the guns and the blood stained gandasas by all the accused on which strong reliance has been placed by the courts below.

Coming to the evidence of Surjit Singh who has been described by the High Court as a stamped witness as he had been injured by the accused in the course of the occurrence, a careful perusal of his evidence would clearly show that it is replete with inherent improbabilities and full of serious contradictions and meaningful embellishments. After giving the narrative of the occurrence as detailed above, the witness goes on to state that leaving Joginder Singh at the spot he proceeded to police station Bhiki on foot and he traversed through the fields lest he may be way-laid by the accused and killed. The witness does not give any explanation why he did not call any person from the village and ask him to accompany him to the police station if he was afraid of the accused and particularly when he was also injured. Secondly, according to the witness, although the occurrence took place at about 6-30 P.M. he left the village for police station at 8-00 P.M. i.e. after about 1 1/2 hours. He further admits in cross examination at P. 39 of the High Court Paper Book that during this period he did not inform any body in the village regarding the occurrence. Although the witness says in Court that he had asked Joginder Singh to inform the people of the village Panchayat, yet he admits in his cross examination that he did not mention that fact either in the F.I.R. Or in his statement before the Committing Magistrate. The witness further admits that no body else came to the spot so long as he was in the village. We find it difficult to believe that although such a serious occurrence had taken place resulting in gunshot injuries to the deceased and gandasa injuries to Surjit Singh, yet the informant took no steps to inform any body and no body came to the scene of occurrence. Such an unnatural conduct can only be consistent with the fact that the deceased may have been assaulted at a later point of time in the night by some unidentified assailants and then brought to the house. The informant also does not give any explanation why he took full 11 hours to leave the village for the police station. This is yet an intrinsic circumstance to support the theory of the accused that the occurrence must have taken place at 8.00 P.M. and this theory is supported by the other prosecution witnesses, as we shall show hereafter. Another significant fact which may be noted in his evidence is that although two empty cartridges were lying on the spot, he did not take care to collect them and produce the same before the police when he went there to lodge the F.I.R. Finally, he says in his evidence that after firing at the deceased, the accused threw the empties and reloaded their guns but did not fire again. It is not at all understandable as to why this was so. According to his evidence, Surjit Singh himself was the main target of the appellant Jaggar Singh and if the first shot missed him it is not understandable why Jaggar Singh did not make an attempt to fire for the second time after he had reloaded his gun. In fact the story about the reloading of the guns also came to light for the first time in the Sessions Court and does not find place in the statement of this witness either in the F.I.R. before the Police or the Committing Magistrate. But the most important circumstance which discredits the evidence of this witness is the manner in which Ram Narain Singh is said to have assaulted the deceased Teja Singh. It is the consistent evidence of this witness as also of his brother Joginder Singh that when Ram Narain Singh fired a shot from his

gun, Teja Singh had put his arm on the right side of his chest. This particular posture was undoubtedly a most conspicuous fact which could not have been missed by the witness if it was really there. In these circumstances, therefore we should have expected this fact to be mentioned in the F.I.R but is conspicuously absent from the F.I.R., nor was this fact mentioned by either Surjit Singh or his brother Joginder Singh in their statements before the police or before the Committing Magistrate. It seems to us that the theory of the deceased having placed his arm on the right side of his chest has been introduced only after the Doctor who was examined as the second witness in the Sessions Court stated in his examination in-chief that if the elbow of right arm is flexed lying in front of the chest, then injuries Nos. 1 to 4 could be caused with a single fire arm discharge. It would appear that this witness was examined before the Sessions Court on May 14, 1973 and P.W. Surjit Singh was examined on the same day after the evidence of the Doctor was recorded. P.Ws Surjit Singh and Joginder Singh had to introduce the theory of the deceased having put his right arm on his chest to bring the occurrence in tune and in consonance with the evidence of the Doctor. This was undoubtedly a belated idea because if it had been a fact there is no reason why the eye witnesses should not have deposed to it in their statements before the police or even before the Committing Court. Till that time the witnesses were not aware of the injuries said to have been caused to the deceased Ram Narain Singh by a single fire unless the deceased was in a particular posture. This fact came to light for the first time when the Doctor was examined in the Sessions Court and the witnesses in order to corroborate their testimony with the evidence of the Doctor introduced this embellishment in the story of the assault on the deceased. Considered against this back ground, the argument of the learned counsel for the appellants that the evidence of the eye witnesses was inconsistent with the medical evidence appears to be well founded. In other words, the position is that if we discard this part of the evidence of the eye witnesses which has come to light for the first time in the Sessions Court, then according to medical evidence, the deceased would have got two gunshots whereas it was never the prosecution case that Ram Narain Singh or any other accused fired a second shot at the deceased at any time. the medical evidence, therefore, clearly falsifies the prosecution case regarding the manner in which the deceased was hit.

Even the ballistic expert on a question by the Court deposed as follows:

"In case if it is a straight fire, and if the right arm is kept just in front of the chest, then it is possible that these injuries could be caused by one single fire."

Thus, according to the ballistic expert's evidence, unless there was cogent material and reliable evidence to show that the deceased had kept his right arm in front of his chest, the deceased could not have sustained less than two injuries. The evidence of Surjit Singh and Joginder Singh on this point appears to us to be clearly an afterthought and cannot be accepted. Thus the prosecution has not been able to explain how the deceased died whether by sustaining one gun-shot injury. Further more, the evidence of Dr. S. S. Walia shows that there were two gunshot injuries on Teja Singh, namely, injury No. 1 which by itself was sufficient to cause his death, and injury 1 No 4 which was also the result of the gunshot. The Doctor has further opined in his cross-examination that both injuries Nos. 2 and 4 could have been caused from a distance of less than 4 feet and that there was blackening both on injury Nos. 4 and 2 which were on the Uncovered parts of the body. The Doctor further deposed that there, was corresponding burning of the shirt by injuries Nos. 2, 3 and 4. If

this be the position, then injury No. 4 is not at all explained. The blackening on injury No. 4 clearly indicate that this was also a gunshot injury and the ballistic expert has also testified to the effect at P. 60 of the High Court Paper Book that in case the blackening which has been reported by the doctor in injury No. 2 and injury No. 4 were not the actual blackening due to the powder gases then it is possible that it could be from one single fire. The doctor, however, says nothing of this sort. Thus a combined reading of Dr. Walia the medical Expert and Mr. J. K. Sinha, Ballistic expert, clearly establishes that the deceased died of two gunshot injuries and the prosecution has not been able to explain this important circumstance. For these reasons, therefore, the evidence of two eye witnesses Surjit Singh and Joginder Singh is wholly inconsistent with the medical evidence as also the evidence of ballistic expert and must be rejected on that ground alone, apart from other inherent improbabilities which appear in their evidence and which have already been pointed out..

Apart from the infirmities from which the evidence of Surjit Singh appears to suffer, Joginder Singh's evidence also suffers from the same defects of a vital character. He also, like Surjit Singh, had never mentioned the fact of the deceased having flexed his arm near the right side of his chest either before the police or in his statement before the Committing Magistrate but mentioned it for the first time before the Sessions Court obviously to bring his evidence in line with the Doctor's view. This witness then says that he went to inform the village people and thus contradicts Surjit Singh who stated that no body came to the place of occurrence and who had not said before the police that Jogindar Singh had been sent to inform the members of the Panchayat. Furthermore the story of reloading of the guns and throwing the empty cartridges appears to be an afterthought, because it does not find place either in the F.I.R. Or in the statement before the police or even before the Committing Court. Apart from these, there is one more important intrinsic circumstance appearing from his evidence which establishes without any shadow of doubt that the occurrence could not have taken place at 6-30 P.M. While Joginder Singh was giving his evidence in the Court and was narrating the story that on their return from village Phaphre Bhaike, Teja Singh stayed away to answer call of nature, the observation of the Sessions Judge is that the witness started shaking and he was given time to compose himself. It seems to us that the story of the deceased having gone to answer the call of nature is a faked one and it must be at that time that he may have been attacked by unidentified assailants and killed and as the witness was deposing falsely his conscience pricked him and he started shaking and was given time by the Court of Session to compose himself. Again in his evidence he makes out a new case that after the assault on Surjit Singh he picked up a gandasa, raised lalkara and ran after the accused. This is neither mentioned by Surjit Singh in his evidence nor is it mentioned in the F.I.R. nor has this witness mentioned this fact in his statement before the police. Another important circumstance which throws serious doubt on the credibility of these two witnesses (Surjit Singh and Joginder Singh) is that although both these witnesses stated that two gunshots had been fired one by Jaggar Singh which missed Surjit Singh and the other by the accused Ram Narain Singh which hit the deceased and if the medical evidence is to be believed then there is also a third fire because the deceased had two gunshot injuries Nos. 2 and 4, yet no pellets were found either in the courtyard or in the house or embedded in the wall. What happened to these pellets, no one knows. This is, in our opinion, a very strong circumstance to indicate that the occurrence did not take place in the house at all but had taken place some where in the fields at about 8 P.M. when the injured persons were not in a position to identify the assailants. But the situs of the occurrence has been shifted to the house in order to implicate the accused. For

these reasons, therefore. we are satisfied that the evidence of P.Ws Surjit Singh and Joginder Singh is not worthy of credence and, therefore, no reliance can be placed on their evidence. If we disbelieve their evidence, then it follows that the evidence of Mohinder Singh and other witnesses which is only of corroborative type would not in any way improve the prosecution case. the first contention of the learned counsel for the appellants that the prosecution version is inconsistent with the medical evidence must, therefore, prevail and on this ground alone the prosecution case is fit to be rejected.

This brings us to the other aspects of the case, namely, whether or not the prosecution had tried to change the time and place of occurrence, as contended by the learned counsel for the appellants. There is no direct evidence to show that the occurrence took place at 8-00 P.M. but there are certain strong circumstances which lead to the irresistible inference and an inescapable conclusion that the occurrence must have taken place at about P.M. In the first place, the informant himself has categorically stated in his evidence that he had left for the police station at 8-00 P.M. although the occurrence had taken place at 6-30 P.M. He has not given any explanation why he waited in the village for hours if he eventually decided to go to the police station alone without taking any escort. This clearly shows that the occurrence must have taken place at about 8- 00 P.M. and the time has been shifted to 6-30 P.M. Only with a view to make it appear that the occurrence took place in the house where the accused could be properly identified. Another important circumstance which supports this inference is that according to the evidence of Surjit Singh who stated at P. 41 of the High Court Paper Book that they had taken their food at village Phaphre Bhaike about an hour before the occurrence. Here he is completely belied by the medical evidence of Dr. Walia which shows that undigested food was found in the stomach of the deceased and according to him the deceased must have taken his food only five minutes before his death or at the most within half an hour of his death. Doctor's evidence therefore clearly shows that he must have taken his food at 8-00 P.M. which is also the usual time when the villagers take their food. Another important circumstance which shows that the occurrence must have taken place at 8-00 P.M. is the evidence of P.W. 15 Baggar Singh that after hearing about the occurrence he came out of his house after about four hours of the alleged firing and went to the spot about 1 1/2 hours before the police arrived. the witness states that the police arrived at the spot about 1 1/2 hours after he had gone to the spot. According to the evidence of the A.S.I. he had proceeded to the village Hassanpur at about 2-30 A.M. On October 3, 1972. This means that the witness must have reached the spot at about 1-00 A.M. This would put the occurrence at about 9-00 P.M. On October 2, 1972 as the witness stirred out of his house four hour after the occurrence. This version also belies the version of the two eye witnesses that the occurrence took place in their house at about 6-30 P.M.

Finally, there is the evidence of Mohinder Singh P.W. 16 who deposed in very clear terms that it was about 8.00 or 8-30 P.M. when he was present in his house when Joginder Singh came there and informed him that Jaggar Singh had fired at Surjit Singh but the shot had not hit him and thereafter Ram Narain Singh had shot dead Teja Singh and that Mal Singh and Hakam Singh had injured Surjit Singh. This also places the occurrence between 8.00 to 8-30 P.M. The cumulative effect of all these circumstances, unmistakably point out to the conclusion that the occurrence really took place at 8-00 P.M. and if that is so then there is no evidence on the record to show how the appellants could have been identified by the witnesses.

On the day of the occurrence i.e. October 2, 1972, it would be quite dark at 8-00 P.M. and unless there was some light burning in the house it would be difficult for the witnesses to have identified the assailants and to have given such a graphic description of the occurrence. Thus if the occurrence took place at 8-00 P.M. there can be only two possibilities- (1) that the deceased Teja Singh and the injured Surjit Singh were assaulted near the fields in dark night and they were not able to identify the assailants. It is possible that the appellants may have been the real assailants but the question is on. of identification; and (2) that the occurrence took place inside the house of the deceased . There also the accused could not be identified because there is no evidence of any witness to show that any light was burning there, nor does any of the eye witnesses say that he had identified the accused by voice. For these reasons, therefore, we are convinced that even accepting the prosecution case at its face value, if the occurrence took place at 8-00 P.M. the possibility of mistake in identification cannot be excluded in the present circumstances.

Another important circumstance which throws very serious doubt on the prosecution case and which shows that the prosecution has overstated its case is the dramatic production by the accused persons of the guns and the blood stained gandasa at the instance of Karnail Singh who was by no means favourably inclined towards the accused being a distant relation of the deceased. Karnail Singh states that on October 4, 1972 he produced all the four accused persons before the Investigating officer in the school premises. r The appellant Ram Narain. Singh was carrying his gun Ext. P- 13 and a Jhola Ext. P-14 which contained four live cartridges as also his licence. Similarly Jaggar Singh was carrying another gun Ext. P-20 and a Jhola Ext. P-21 containing live cartridges. Both the guns were sealed into a parcel and seized by the police. Hakam Singh was carrying a Gandasa at that time of his arrest which was blood-stained even at the time. In cross examination the witness admitted that he never produced any other accused before the police prior to the occurrence. He further admitted that the A.S.I. did not see the barrel of the guns in his presence by opening it in his presence, to and out whether it was recently fired. He further admits that some blood was sticking to the blade of the Gandasa produced by the accused Hakam Singh. The story given out by this witness appears to be too good to be true and is full of inherent improbabilities. We do not find any good reason why the accused should have suddenly agreed to enlist the services of this witness particularly when he was a relation of the deceased in order to appear before the police along with the weapons only two days after the commission of the offence. Indeed if the accused were such desperados they could have gone to the police station direct and admitted their guilt. It is also difficult to believe that although the weapons were produced two days after the occurrence the accused would not take the precaution of washing off the blood marks from the Gandasa. It seems to us that there was no such dramatic production before the police. Both the appellants Ram Narain Singh and Jaggar Singh possessed licences for holding guns and although the cartridges found could have been fired from their guns there was no reliable evidence to show that the guns were recently fired. In these circumstances, therefore, the mere possession of the guns and the live cartridges would not connect the accused with the crime. In fact the production of the accused by Karnail Singh clearly shows that the prosecution can go to any extent in concocting, the case against the accused, particularly in the back ground of enmity which existed between the accused and the E; deceased. We are, however, not in a position to believe this as a probable story. The learned counsel for the appellant was, therefore fully justified in submitting that the dramatic production of the accused with their weapons was a meaningful embellishment by the prosecution which cannot be

believed.

The High Court appears to have overlooked most of these circumstances discussed by us which were extremely damaging to the prosecution case. The High Court has lightly brushed aside the inconsistency between the medical evidence and the prosecution version. The question of the time of occurrence having been shifted from 8-00 P.M. to 6-30 P.M. has been blindly believed as also the evidence regarding the production of the weapons by the accused. In view of these striking circumstances, we should have expected the High Court to have approached this case with much more care and caution than it has, particularly when a death sentence was involved.

Where the evidence of the witnesses for the prosecution is totally inconsistent. It with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit entire case. In *Mohinder Singh v. The State*(1) this Court observed in similar circumstances as follows:

"In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle."

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eye witnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the Doctor's evidence with a view to support an incorrect case.

For the reasons given above we were satisfied that the prosecution had not been able to prove its case against any of the accused beyond reasonable doubt and the appellants were, therefore, entitled to an acquittal. By our order passed on May 2, 1975, we had allowed the appeals and set aside the convictions of and the sentences passed on the appellants. They were directed to be set at liberty forthwith. We deliver our reasoned judgment to-day in support of the order of acquittal already passed.

P.B.R.

Appeals allowed.