Supreme Court of India
Datar Singh vs The State Of Punjab on 19 December, 1973
Equivalent citations: 1974 AIR 1193, 1974 SCR (2) 808
Author: M H Beg
Bench: Beg, M. Hameedullah

PETITIONER:
DATAR SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT19/12/1973

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
CHANDRACHUD, Y.V.

CITATION:
1974 AIR 1193 1974 SCR (2) 808
1975 SCC (4) 272
CITATOR INFO :
RF 1981 SC 631 (11)

ACT:
Indian Penal Code-S. 302 read with Ss. 25 and 27 of the Arms Act-Appellant convicted for murdering his own father--Concurrent finding of facts-Whether can be reviewed when there is indication of a serious miscarriage of justice.

HEADNOTE:
The appellant was convicted u/s. 302 I.P.C. by the Sessions' Judge for murdering his father and sentenced to death. The High Court accepted the death sentence and dismissed his appeal. He was also convicted for an alleged illegal possession of a gun and his convictions and sentences under secs. 25 and 27 of the Arms Act were upheld by the High Court. The prosecution case was that the deceased was a wealthy landlord whose sister was the Maharani of Patiala. He had executed a will in favour of his wife and two sons on 24-8-1967. He cancelled this will and executed another in favour of his sister, Rani Prem Kaur, on 18-4-1968 and got it registered at a place called Dhuri, probably because P.W. 1, a friend of the deceased, was the Sub Registrar there. The deceased also alienated some property to a minor son of

P.W. 1 sometime before the murder. The elder son of deceased had filed a suit to preempt this sale and the suit was pending hi it the time of the occurrence. The relation between the deceased, s wife and
children were strained and this background was said to provide the motive for murder. It is alleged that the appellant, on the day of occurrence, had entered the room, where the deceased was sitting with 2 of his friends, P.W. 1 and P.W. 2, in the blazing light of electricity and had shot his father with a gun.

Before this Court, the appellant raised several questions of law and contended that there has been a miscarriage of justice because the Courts below have ignored certain basic defects in the prosecution version and misread the evidence.

Allowing the appeal,

HELD : (i) It is not the practice of this Court in appeal by special leave to disturb concurrent findings of fact unless the case discloses some exceptional features indicating that a serious miscarriage of justice has taken place. [809 G-H]

(ii)In criminal cases, it is often difficult for courts of law to arrive at the real truth. The judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crime of patricide. If the pieces of evidence on which the prosecution closes to rest its case are so brittle that they crumble easily, the superstructure built on such insecure foundations also collapses. [810E]

(iii)Ile super-structure of the prosecution case rests
on the testimony of two alleged eye-witnesses whose evidence is not only of an inherently unreliable nature because of features disclosed by evidence, but the artificial and incredible versions of the shooting put forward by them are too unnatural to be accepted.

(iv)P.W. 1 gave a false explanation to accept for his presence at the house of the deceased on the evening of 22-2-1970. He admitted, at the trial that he gave false information as to when he left for Patiala, but he pleaded that he did so at the instance of the S.D.O. who had put pressure on him not to give evidence in the prosecution case against the appellant. If, as he had admitted, he was capable of making a false statement under such pressure, it is not possible to describe this witness as thoroughly reliable. It is also difficult to believe that an S.D.O. will put pressure upon a Naib Tehsildar working under him to commit perjury. Therefore, the testimony of the witness is inherently unreliable. He was both a chance witness and one who admitted having committed, perjury.

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(v)It is also difficult to believe that P.W. 2, another

eye-witness, who came to, the house of the deceased by chance, was really present at the time of the occurrence. Although this witness did not tell a deliberate lie but he had written a letter, exhibit 'X', wherein he stated that he had not witnessed the murder at all, and that the police was harassing him to make a false statement. The handwriting on this letter and the signature below it were denied by the witness who duly proved to be his. There was no reason to discard the evidence of the hand-writing expert on these points. Balbir Singh, P.W. 2. had written this letter he was shown to have done, he could not be relied upon at all when he stated that he witnessed the murder.
(vi)Conflicting statements made about the time of the alleged presence of the witnesses on the scene of murder also show that they were not there at all to witness it.
(vii)Further, from a careful writing of the F.I.R., it seems that the said F.I.R. was written up carefully afterwards. Under the circumstances, the conviction and sentence cannot be sustained.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 4 & 5 of 1973.

Appeals Nos. 1020 and 1021 of 1971 and Murder Reference No. 48 26th May 1972 of the Punjab and Haryana High Court in Criminal Appeals Nos. 1020 and 1021 of 1971 and Murder Reference No. 48 of 1971.

Frank Anthony and Harjinder Singh, for the appellant, R. L. Kohli, for the respondent.

The Judgment of the Court was delivered by BEG, J. :-Datar Singh, appellant, was convicted under Section. 302 Indian Penal Code by the Sessions' Judge of Patiala for murdering his father Thakar Singh at about 9.30 p.m. on 22-2-1970 at Naru House in Patiala, and sentenced to death. The Punjab High Court had accepted the death reference and dismissed his appeal. He was also convicted in a connected trial, for an alleged illegal possession of a gun, and his convictions and sentences of two years' rigorous imprisonment and three years' rigorous imprisonment under Sections 25 p and 27 of Arms' Act were upheld by the High Court. The appellant's applications under Article 134(1) (c) under the Constitution having been rejected by the High Court, he came to this Court and was granted special leave to appeal in both the connected cases which are now before us.

It is not the practice of this Court in appeal by special leave to disturb concurrent findings of fact unless the case discloses some exceptional features indicating that a serious miscarriage of justice has taken place. It has been contended on behalf of the appellant that such a mis- carriage of justice has resulted in this case because Courts ignored certain basic defects in the prosecution version and misread evidence. Several questions of law were also sought to be raised before us. These are :

(1)Whether the prosecution had failed to produce material witnesses in the case so that a presumption against the veracity of any, part of the prosecution version arose due to this non-production ?

(2)Whether there had been a violation of Section 157 Criminal 'Procedure Code, and, if so, what is its effect upon the prosecution case?

(3)Whether there had been a violation of Section 162 of the Criminal Procedure Code by inserting in the site plan information derived from statements made by prosecution witnesses and by annexing their signed statements to inquest reports, and, if so, its effect on the prosecution case ? (4)Whether the prosecution case was damaged by an infringement of the best evidence rule inasmuch as neither the ballistic expert, who examined the cartridges and the gun in the case, supported the prosecution case nor was the gun said to have been used by the appellant for the commission of murder examined for the appellant's finger prints nor was a chick alleged to be hanging outside the door of the room in which the murder took place taken into possession by the Investigating Officer ?.

(5)Whether the prosecution instead of the accused had been given the benefit of doubt on various features of the case on which two views were possible?

(6)Whether different standards of proof had been applied in judging the credibility of the defence evidence as compared with the prosecution evidence ?

It is often difficult for Courts of law to arrive at the real truth in criminal cases. The judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve, the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crimp, of patricide. They cannot even act on some conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence of it on record. If the pieces of evidence on which the prosecution closes to rest its case are so brittle that they crumble when subjected to close and critical examination so that the whole super-structure built on such insecure foundations collapses, proof of some incriminating circumstances, which might have given support to merely defective evidence cannot avert a failure of the prosecution case.

After having been taken through the evidence on record we have come to the conclusion that the superstructure of the prosecution. case is based on the testimony of two alleged eye-witnesses whose evidence is not only of an inherently unreliable nature but the artificial and incredible versions of the shooting put forward by them are too unnatural to be accepted. It seems to us to be quite unsafe to convict the appellant on their testimony despite some circumstances which raise grave suspicion against the appellant. Suspicion, however, grave, cannot be a satisfactory basis for convicting an accused person. We will, therefore, examine the evidence of these two witnesses and set out our reasons for finding them quite unreliable and deal with other questions mentioned above in the course of an examination of evidence the credibility of which is assailed.

Thakar Singh, deceased was a wealthy landlord whose sister was the Maharani of Patiala. He had executed a will in favour of his wife and two sons Avtar Singh, and Datar Singh on 24-8-1967. He cancelled this will and executed another in-favour of his sister Rani Prem Kaur on 18-4-1968 and got it registered at Dhuri probably because Joginder Singh, P.W.1., a friend of his, was the Sub Registrar there. The deceased Thakar Singh had also alienated some property in favour of Jasvinder Singh, minor, aged about 10 or 11 years, a son of Joginder Singh, P.W.1, about a year and a half before the murder. Avtar Singh, the elder son of Thakar Singh, had filed a suit to preempt this sale. The suit was pending at the time of the occurrence. The relations of Thakar Singh deceased with his wife and children were strained. This background was said to provide the motive for murder. If Balbir Singh, P.W.2, could be believed, the wife of Thakar Singh had described her husband as a sweeper's son. Apparently, there was not much love lost between Thakar Singh on one side and his wife and children on the other. The alleged motive for this murder was certainly too old to convincingly appear as the cause of the murder of 22-2-1970 in so melodramatic a style as the alleged eye witnesses would have us believe. Moreover, if a former will had been cancelled and another will executed in favour of a sister of Thakar Singh, it could very well be urged that other persons interested in seeing that Thakar Singh died before he could cancel his last will of 18-4-1968 had a stronger motive to murder him than others who might still be able to persuade him to change his mind. And, if Thakar Singh's strained relations with his wife and children could be a sufficient motive for the murder it is difficult to understand why Datar Singh rather than his elder brother Avtar Singh could have a stronger animus to kill the father. In any case, there is no evidence to show that Datar Singh, appellant, had any special motive or reason of his own for patricide such as a violent quarrel or dispute with his father preceding the murder which could have unhinged his mind. If, as was suggested repeatedly on behalf of the prosecution, the members of the family of Thakar Singh were really influential, it was much easier for them to hire some individual to murder Thakar Singh, assuming that their hostility to Thakar Singh went so far as to impel them to think of getting rid of him like that, rather than for one of them to murder Thakar Singh himself right in front of his two alleged close friends in the blazing light of electricity after rushing into the room in which they were sitting and revealing his identity to witnesses as Datar Singh is alleged to have done. On the whole, the evidence of alleged motive and of Thakar Singh's unhappy relations with his wife and children, all said to be living together in the Naru House with Thakar Singh, hinders rather than helps us in accepting the prosecution version that it was Datar Singh who had committed the murder of his father in the reckless manner set up and not somebody else in a different and less foolish way. Of course, if Joginder Singh, P.W.1, and Balbir Singh, P.W.2, could be implicitly relied upon, the mere absence of a strong enough motive for committing such an unnatural crime as patricide or the mode of its commission could be of no assistance to the appellant.

The evidence of Joginder Singh, P.W.1, not only shows that he was probably the principal adviser and helper to Thakar Singh in such dispositions of properties as Thakar Singh made, but, that he was also, according to his own admissions, capable of making any statements at any time to suit his own purposes. This is clear from the web of lies in which he is shown to have entangled himself in trying to accountfor his presence at Naru House in the company of Thakar Singh atthe time of murder, and the, contradictory and different excuses he gaveon various occasions, such as when applying for leave for absencefrom Sunday on 22-2-1970. He stated in cross-examination that he had left Sunam, where he was posted as Naib Tehsildar, at 2.45 or3 p.m., reaching Patiala by 4 or

5p.m. An order of the Sub Divisional Officer dated 26-2-1970 (ex. DM) shows that an explanation was called for from Joginder Singh for leaving Sunam oil election day as he had sent a wire from Patiala asking for leave. In his explanation (ex.DE), he had stated that he had received a message at Sunam at 4.30 p.m. on 22-2-1970 that his baby was ill so that he proceeded to his home in Patiala by the 5.20 p.m. bus after the polling was over at 5 p.m. When this contradiction was put to him, lie admitted that false explanation was given by him but pleaded that this was done at the instance of the Sub Divisional Officer who had put pressure on him that he should not give evidence in the prosecution case against the appellant. It is difficult to see what connection the alleged pressure had to do with his putting down that he left by bus at 5.20 p.m. If, as he had admitted, he was capable of making a false statement under such pressure, so as to make a deliberately false statement to damage the prosecution case, it is not possible to describe this witness as thoroughly reliable whose testimony could be accepted without demur or satisfactory corroboration. It is difficult to believe that a sub Divisional officer, who is a Magistrate, will put pressure upon the Naib Tehsildar working under him to commit perjury: His statement also shows that he had no hesitation in giving different and contradictory excuses at different times for leaving Sunam. He could state either that his child was ill, or that his wife was ill, or that no one was really ill but that he needed to go to his home in Patiala for some other purpose on 22-2-1970 without realising that it was improper or reckless to make such contradictory statements. We have also noticed that Joginder Singh has used his favourite reply "I do not remember", when cross-examined, no less than 25 times.it is significant that although he stated that be, after meeting Thakar Singh by chance in the course of a walk, at about 8 p.m., so that he was invited to sit and after that to dine with Thakar Singh, and is said to have sat there till about 9 or 9.30 p.m., when the appellant suddenly appeared in the well lit room with a double barrel gun and shot his father twice after shouting "Thakar Singh" at him, yet, he did not remember a single thing about the talk be had with ThakarSingh on that occasion during the course of the chat for an hour or more with the murdered man. Balbir Singh, P.W.2, could also not give any indication of the nature of the talk. It is difficult to believe that this would be so if either this witness or Balbir Singh, P.W.2, who is also said to have come to the house by chance after half an. hour, were really present at the time of the occurrence.

Although, Balbir Singh, P.W.2, who had apparently, also strayed in by chance into the room where the shooting is alleged to have taken place at about 9 or 9.30 p.m. did not declare himself a liar on any point in the course of his testimony in Court as Joginder Singh, P.W.1, had been forced to do, yet, he had, we think, made an even more serious and damaging declaration in a letter dated 20-4-1970 (Ex. 'X'), He had stated there that he had not witnessed the murder at all and that the police was harassing him to make a false statement. He had denied his handwriting and signature on this letter. Therefore, an application was made by the defence to the District Judge on 26-5-1971 to send this letter to the Director of the Government Department of Questioned Documents so that the official handwriting expert may give his report on the hand-writing. The relevant documents were, however, sent to and examined by Shanti Sarup Jain, D.W.1, a handwriting expert who had given a detailed report for coming to the conclusion that the hand- writing on the letter (Ex. 'X') tallied with the admitted hand-writing of Balbir Singh, P.W.2. We have gone through the report and examined the writings ourselves. We see no reason to discard the evidence of the hand-writing expert. We are sorry to observe that the High Court had misread the evidence in holding that this letter was not put to Balbir Singh at all. It was put to him both in the Committing Court and in the

Trial Court. In both the Courts he had denied his writing and signature on it. If Balbir Singh had written this letter, as we think he did, whatever may be his reason for doing so, Balbir Singh could not be relied upon at all when he stated that he had witnessed the murder. It was also contended on behalf of the appellant that it was most unlikely that Balbir Singh, P.W.2, would go to Thakar Singh as he had written another very acrimonious letter to Thakar Singh dated 24-11-1967 in which he had compared Thakar Singh to 'Kanjars' and 'Kalas' who also "possess money in abundance". No doubt he bad deposed that he had made up with Thakar Singh's since then so much so that he had prepared Thakar Singhs'Income-tax and wealth-tax returns, yet, Balbir Singh's angry lettershowed that he did not have a high opinion of Thakar Singh deceasedwho is said to have disliked Balbir Singh's association with this daughter-in-law called "Bibi", for whom Balbir Singh had expressed great admiration in this letter. Balbir Singh had admitted writing this letter but had refused deliberately to explain some of its contents. He admitted that he had been convicted under Section 409 I.P.C. but he asserted that he was acquitted by the Sessions' Court. The judgment of the Punjab High Court dated 16th February, 1966, in Criminal Appeal No. 610 of 1964 (Ex. DM) shows that the order of acquittal passed by the Sessions' Court was set aside and that of the Trial Court convicting him under Section 409 I.P.C. was restored. The appellant, however, denied knowledge of what happened to this case in the High Court. Furthermore, we find that the name of this witness is not mentioned in the substance of the report entered in the daily diary report at the Police Station (Ex. PN) although his name is mentioned in the F.I.R. which was shown as lodged at Police Station, Civil Lines, Patiala, on 22-2- 1970, as early as 9.55 p.m. We have examined a carbon copy of the very neatly written F.I.R. at Police Station, Civil Lines Patiala, in which the time of the occurrence is given as 9 p.m. It was stated by Balbir Singh that the Police came with Joginder Singh only 20 or 30 minutes after Joginder Singh had gone to the Police Station and that it must have been 10 p.m. by that time. It is difficult to believe that so neatly written and detailed a F.I.R. could have been written up so soon. It is more likely that if Joginder Singh returned so soon with the Police, the F.I.R. was drafted and written up carefully afterwards.

The column in the form in which F.I.R. was taken down does not mention the time and date of the dispatch of the report from the Police Station to a Magistrate. The prosecution had tried to prove, by the evidence of Avtar Singh, P.W.15, that the special report was delivered to the Chief Judicial Magistrate at 1 a.m. on the night between 22nd and 23rd February, 1970. The defence had produced Surinder Singh, P.W.5, Reader of the Judicial Magistrate, to whom the report was alleged to have been sent, but we could discover neither the time nor the date of its receipt from the register brought by the Reader who deposed that the report must have been handed to the Investigating Officer Tej Ram, P.W. 19. If so, the copy handed over to the Investigating Officer should have been produced, as it would probably have shown the time of its receipt, but it was not forthcoming for some reason. No one was produced by the prosecution to show what happened to the copy of the report sent to the Magistrate. All we can say is that the mystery surrounding the very quick writing up of and copying out of the F.I.R. and the absence of any entry showing when it was sent to the Magistrate concerned may be due to the fact that the First Information Report was lodged, as learned Counselfor the appellant contends, much later than 9.55 p.m. and after Joginder Singh had convinced the police that the murder was committed by the appellant. We cannot conclude from facts proved, as the High Court had done, that the appellant must have caused the disappearance of the special report. In any case, the appellant could not possibly be responsible for the failure at the Police Station to enter the

date and time of dispatch of information to a magistrate in the column of the F.I.R. meant for it. This omission seems to us to be quite significant in the light of other facts indicating that the F.I.R. must have been drawn up much later than it is actually shown to have been.

Here we may refer to the contradictory and irreconcilable statements made by Joginder Singh and Balbir Singh about the time at which shooting took place. Joginder Singh said that he was passing near the Naru House at 8 p.m. when Thakar Singh met him on the' road side where they` stood for some time,. After that, Thakar Singh is said to have taken him to his house and into a room called Chowbara used as a drawing room. He said that Balbir Singh had joined the two, apparently without any previous appointment, afterwards after an interval of about half an hour. Nevertheless, this witness had stated in the Committing Magistrate's Court that Datar Singh, appellant, came at 8 p.m. with a double barreled gun with which he shot Thakar Singh. The statement in the Committing Magistrate's Court seems to have been brought in as evidence at the trial under Section. 288 of the Criminal Procedure Code. It the time given by him in the Committing Magistrate's Court was correct, it would mar the whole prosecution case. If that were true, it would be clear that Balbir Singh could not have possibly been there when the shooting took place. And, in that case, the whole story of a long chat between 8 p.m. & 9 p.m. or 9.30 p.m. would collapse. Probably, this was the reason for the change of time by this witness at the trial for the entry of the appellant into the Chowbara from 8 p.m. to 9 or 9.30 p.m. Balbir Singh had also stated in the Committing Magistrate's Court that he went to Naru House at 8 p.m., without giving any reason why he should go there although he gave the time at which Datar Singh came as 9 or 9.15 p.m. At the Trial, he gave the time of his own arrival at Nara House as 8.15 p.m. and said that he had sat in the company of Thakar Singh and Joginder Singh for about one or one hour and a half before the appellant entered the room suddenly with a double barrelled gun. if Balbir Singh could have made a correct assessment of the time which elapsed between his arrival and the time of murder, as one to one hour and a half, the murder could have taken place between 9.15 and 9.45 p.m. It is evident that, if this was correct, it would make it very difficult to believe that an F.I.R was neatly written out and then copied out at the Police Station within a few minutes even though the Police Station was only one furlong away.

The most melodramatic part of the prosecution version, put forward both by Joginder Singh and Balbir Singh, consisted of the allegation that Datar Singh, appellant, actually entered the room, Should 'Thakar Singh" at his father, and then fired two shots at him, and then escaped. Both Joginder Singh and Balbir Singh had said that Datar Singh entered the Chowbara by lifting a "chick' hanging outside the door. No such "chick" was either mentioned in the F.I.R. or in the seizure list or in the site plan. It was not taken into his possession by the Investigating Officer who took the gun left outside the Chowbara and other objects, such as the blood stained cloth on the sofa and the sofa itself on which Thakar Singh was sitting, into his possession.

If we assume, for the sake of argument, that there was actually a "chick" hanging outside the' room, it would be evident that only a person driven to the verge of insane recklessness could think of entering the Chowbara and shooting at Thakar Singh when he could have easily done so by merely inserting the barrel of his gun by the side of the "chick" and taken a good aim at a fairly close range at Thakar Singh sitting right in front in blazing electric light so that the assailant's face and body are concealed behind the wall adjoining the entrance. Perhaps that is bow the shooting took place. At

that time, the sofa on which Thakar Singh was said to be siting, was quite near the door and almost facing anyone who would try to look in from the side of the chick farthest removed from the sofa. There is nothing on the record to show that the appellant was suddenly so incensed and gripped by a passion to shoot his father as to have become oblivious to the consequences of revealing his identity by rushing into the Chowbara to shoot at Thakar Singh. If he did so he would risk being caught by the two 12-L748SupCI/74 allegedly good friends of Thakar Singh one of whom had been invited to stay on for dinner and the other, Balbir Singh, who although it was not certain whether he bad been invited to dine or not, had, nevertheless, stayed on. Both Joginder Singh and Balbir Singh stated that they tried to run after the appellant and "over-power" him. It they had really tried to over-power him they could have shown some evidence of the attempt to over-power such as the gun snatched from the appellant or a button wrenched from the clothing. Perhaps they realised this, and, therefore, they proceeded to depose that they had only run after him and did' not even see him place the gun found outside the Chowbara, although they heard a cluttering sound when the gun was dropped on a bench from which they inferred that the particular gun, the weapon found there, was used for the murder.

The sofa on which Thakar Singh was sitting was quite near the door. Its distance from the door was given by Balbir Singh as only 2 ft. Joginder Singh had stated that the length of the gun from end to end was 4 ft. and that it was at a distance of 2 ft. when Thakar Sing was fired at. If the gun was fired from a distance of 2 ft. only from the sofa and if that was also the distance of the sofa from the door, the assailant would also be at the door and not inside when Thakar Singh was fired at. Apart from the difficulties created by the medical evidence in accepting such a picture of the shooting even from 2 ft.. we find that the site plan also does not show that the shooting took place from any place inside the Chowbara but gives the position taken up by the murderer to be in the middle of a line across the entrance, that is to say, in the middle of the doorstep. That would not be evidence of where the murderer shot from. But, we mention it to indicate the shifting of prosecution version on the point. Balbir Singh had stated that the murderer was neither inside nor outside the door. According to this witness. one foot of the appellant was inside and the other was outside the threshold, probably because it was felt that a shooting after entry into the Chowbara would conflict with medical evidence. The position given by Balbir Singh destroys the whole account of a melodramatic entry of Datar Singh into the Chowbara itself to murder Thakar Singh by shooting at a very close range. Could this be the state of evidence if these were really eye-witnesses ?

Another difficulty which arises in imagining a shooting from the middle of the door-step with one foot of the murderer inside and the other outside the door is that, in such a position, the "chick", which was said to be there, would operate as an obstacle to shooting unless it was neatly thrown behind resting on the back of the murderer. Tile act of arranging "chick" in this peculiar position, so as to prevent the "chick" from hindering the shooting, would itself take so much time as to enable the three men inside the room easily to take some step to arrest or grapple with or resist the murderer. It is inconceivable that such a cumbersome procedure would be adopted by a murderer out to shoot hastily and then to run way when he could have shot more easily and effectively by inserting the barrel of the gun from a side of the "chick". The witnesses do not give any such account of the shooting which could make it appear credible.

It is much more likely that the "chick" was not there at all. The witnesses admitted that it was pitch dark outside, The assailant could, therefore, very well shoot at Thakar Singh from outside without revealing his identity by being seen. It appears to us that the "chick" was deliberately introduced to show that the murderer had to enter the Chowbara and be seen shooting as alleged by the two eye witnesses to conceal the truth that the shooting had taken place from the dark outside in circumstances in which it was impossible or very difficult to make out the identity of the actual murderer.

It may be mentioned here that tile site plan, relied upon by the High Court to give 7 feet as the distance between the door and the place on the sofa where Thakar Singh was sitting, was prepared by a Draftsman, Bakshi Singh, P.W. 10, on 24-2-1970, at a time when the sofa was not there at all. He admitted that he had shown the sofa and its distance from the door only on enquiry from the Investigation Officer. We do not think that such a statement could be admitted in evidence. More,over, even if we assume, for the sake of argument, that this distance was 7 feet and, also that there was a "chick", as deposed by the witnesses, the shooting could easily take place from a distance of 6 feet by inserting the barrel of the gun by the side of the "chick" and taking aim while taking the cover of the wall adjacent to the door. Dr. G. S. Gambhir, the Medical Officer, who had performed the postmortem examination, said, after looking at, the injuries of Thakar Singh : "These injuries were caused when the nozzle of the gun was at a distance of about 6 feet from the body". He also said : "These injuries could not be caused if the nozzle was 4 feet away from the body. By nozzle I mean "muzzle' of the gun barrel".

> "When the distance is less than 4 feet or 4 feet, the pellets enter the body-en-masse. If the distance is more than 4 feet, then the pellets will spread and will enter the body within a diameter of 2 inches from the main hole. In the present case there are three separate openings adjacent to injury No. 1 and there were four small openings around the second injury. I have not noted the exact distance of the various openings with regard to injuries Nos. 1 and 2. Up to a distance of 3 feet the pellets do not spread. My opinion is based on Modi's Medical Jurisprudence". The following injuries were found on the body of Thakar Singh "One circular wound about 2" in diameter with lacerated margins on the front of the chest, slightly on the right side of the middle line. There were three small separate openings adjacent to the main wound.
>
> One circular wound about 1-1/2" in diameter with lacerated margin over the left shoulder joint. There were four small openings adjacent to main wound".

There injuries show that Thakar Singh's bark was probably turned towards the door when he was first hit Perhaps that is why he was first struck on his left shoulder joint. He must have turned slightly after the first shot. Hence, the other injury is on the front of the chest on the right side. If the assailant had actually entered the room and shouted Thakar Singh" and shot the injuries would be right in frontIn that case, there could have been no injury on the left shoulder joint. It may be mentioned here that the F.I.R. lodged by Joginder Singh does not mention that the assailant had shouted Thakar Singh before shooting at him. He admitted this omission but gave no explanation for it.

Medical evidence also revealed that there was no blackening, tatooing, scorching, chaffing or synging around the main wounds. It was, therefore, contended before us that the shooting must have taken place from a distance of more than 3 feet. The High Court had explained the absence of blackening and charring by observing that the cartridge inside the gun bore the word "smoke-less" and opined that the shooting need not have been from a distance of more than 4 feet. It seems to us that the High Court had assumed that the cartridges found in the gun were actually of a kind which would not cause blackening or chaffing or synging and that these were the very cartridges used by the murderer. The requirements of a technically proper proof were wanting on this point. The ballistic expert, called in as a defence witness, was not even questioned on the point, Here, we may refer to the evidence of Ballistic expert Shri J. K. Sinha, D-W. 10. Assistant Director of the Forensic Science Laboratory, who was not produced by the prosecution probably because he had made a report showing that it was not possible to connect the cartridges with the gun as the impressions made by the hammer were too indistinct. The gun was proved, from its licence, to belong to Mohan Singh, the son-in-law of Thakar. Singh. It was not sent for examination of any finger prints on it. Had there been such evidence of the appellant's finger prints on the gun, it would have furnished strong corroborative evidence. In the circumstances of the case, we find it difficult to link the gun with the actual weapon with which the murder was committed. It is not inconceivable that it was left deli- berately outside by someone to confuse the investigating authorities.

According to the prosecution case, members of the family of Thakar Singh, strangely appeared on the scene only after the police had arrived. By then Joginder Singh is said to have already lodged his F.I.R. If their alleged conduct was meant to suggest that members of the family had conspired with the appellant, it may also indicate that another member of the family could commit the murder.

Peareylal (D.W. 8), the domestic servant of Thakar Singh, who asserted that he was the first to come to the Chowbara from the kitchen after the murder deposed that he saw nobody in the Chowbara where the dead body of Thakar Singh lay. He denied the presence of the two alleged eye-witnesses there. He stated, under cross-examination, that no chick was hanging outside the door of the Chowbara. He also stated that the name of the murderer could not be known at night. Furthermore, his statement showed that, although Avtar Singh, the brother of the appellant, as well as the mother of the appellant, were in Naru House at the time of the murder, the appellant was not there. This may have directed suspicion towards the appellant. Pyarelal was disbelieved by the Trial Court and the High Court because he was abandoned by the prosecution on the ground that he had been won over. We do not think that his evidence could, for this reason, be said to be so completely unreliable as that of Joginder Singh and Balbir Singh. At any rate, his statement that he and Joginder, another servant, and Mohan, who kept a tall at the back of the house, and Joti, a shopkeeper who kept a tea stall nearby, came to the Chowbara after the murder, appears more natural than the evidence of Joginder Singh, (P.W. 1), and Balbir Singh, (P.W. 2), that no one came there before the police arrived. Ile statement of this witness that the identity of the murderer was not known during the night is supported by the circumstance that no attempt appears to have been made to stop the flight of the appellant from Patiala by the police during the night between 22nd and 23rd February, 1970.

Learned Counsel for the appellant drew our attention to the fact that the signed statements of Joginder Singh and Balbir Singh had been annexed to the inquest report and proved by the

prosecution. It is rightly pointed out that this looked like a device adopted to get round the bar of Section 162 Criminal Procedure Code. It also shows that the police was not quite confident about the reliability of the two alleged eye witnesses of the occurrence.

The appellant had given some evidence to support his plea that he was actually at Delhi staying at the Sarai of Gurdwara Sis Ganj on 22-2-1970. He produced, Daya Singh, D.W. 7, to show that his name was entered at serial No. 47 as a person who had come to stay at the Sarai on 21-2-1970 and had left it on 23-2-70. We find that the register brought by this witness showing the names and addresses of the person who had stayed at the Sarai from January to March, 1970, was quite impressive. We do not, however, think that this evidence established that the appellant was actually present at the Sarai during the night on which the murder took place. The defence witness did not state that he actually saw the appellant at the Sarai on 22-2-1970, although there is an entry for 22-2-1970 also showing that Datar Singh had stayed there. The witness stated that at 8- 30 p.m. every evening all persons who wanted to stay went to him for allocation of accommodation. The object of this evidence seemed to be to show that the entry, taken with the practice at the Sarai, would raise the presumption that Datar Singh was actually at the Sarai at Delhi, as he said he was, at 8-30 p.m. on 22-2-1970. This evidence, however, does not appear to us to be strong enough to establish that the appellant was actually at Delhi at the time of the murder. He had not given this defence in the Court of the Committing Magistrate.

Considerable emphasis has been laid by learned Counsel for the State on the fact that the appellant was not traceable or was absconding until he surrendered in a Magistrate's court nearly a year after the murder. it was contended that the family of the appellant was Very influential so that its members would have moved heaven and earth if Joginder Singh had merely appeared on the scene later and taken the responsibility for lodging the F.I.R. and started directing the investigation unless the case was true. It was urged that the fact that the relations of the appellant took no interest on his behalf indicated that the appellant must be guilty.

We do not think that inferences from failure to surrender or even absconding of the appellant and the lack of interest shown by his brother, Avtar Singh, or other relations of the appellant in obstructing the prosecution of the appellant could possibly prove the guilt of the appellant. Indeed, the complaint of the prosecution, which is inconsistent with the last mentioned submission, was that the appellant's relations had succeeded in winning over witnesses so much so that neither the 'Tall Keeper' living behind the Naru House, nor even Harinder Singh, the son of Joginder Singh, who were witnesses of the seizure list, appeared as prosecution witnesses.

We do not think that the appellant needs the support of any presumption from non-production of any of these witnesses. We also do not think that the prosecution can benefit from the merely suspicious circumstance that the appellant did not surrender or was not traceable for nearly a year. Reliance was placed by the appellant's Counsel on Prakash Mahadeo Godse v. State of Maharashtra(1), to contend that conduct of the accused such as hiding after the offence, by itself, does not conclude matters. Even though the acts there were somewhat different, the same principle would apply here. In any case the super-structure of the prosecution case, based on the testimony of two alleged eye witnesses, having crumbled in the case before us, we find it impossible not to give

the appellant the benefit of doubt because of circumstances which could only raise suspicion against him. Sufficient number of very significant features of evidence on record, dealt with by us above, were ignored by the High Court and the Trial Court. Hence, we were compelled to reassess the evidence for ourselves. The result is that we allow this appeal, set aside the convictions of the appellant for murder and as well as for the alleged illegal possession of the gun and we direct that he be released forthwith from custody unless wanted in some other connection.

S.C.

Appeal allowed.

(1) [1969](3) S.C.C. 741.