

Prem Kumar and anr. Vs. State of Bihar

Prem Kumar and anr. Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/663444

Court : Supreme Court of India

Decided On : Mar-02-1995

Reported in : 1995(1)BLJR559; 1995CriLJ2634; JT1995(3)SC123; 1995(2)SCALE50; (1995)3SCC228; [1995]2SCR455

Judge : A.S. Anand and; K.S. Paripoornan, JJ.

Acts : Evidence Act

Appeal No. : Criminal Appeal No. 434 of 1991

Appellant : Prem Kumar and anr.

Respondent : State of Bihar

Advocate for Def. : H.L. Agrawal and ; B.B. Singh, Advs.

Advocate for Pet/Ap. : Rajender Singh and; M.P. Jha, Advs

Prior history : Appeal From the Judgment and Order dated 8-9-1989 of the Patna High Court in Cri. A. No. 90 of 1987(R)

Judgement :

K.S. Paripoornan, J.

1. The appellants in this appeal, Prem Kumar Singh (a), Prem Singh S/o Mundrika Singh and Ramesh Singh S/o Chandrika Singh, are Accused Nos. 1 and 2 in

Sessions Trial No. 219 of 1983, Additional Sessions Judge, Palamau. They have filed this appeal against the affirmance of their conviction under Section 302 of Indian Penal Code, by the Patna High Court, Ranchi Bench, Ranchi, by Judgment dated 8.9.1989. The above two accused, along with one Mundrika Singh, Accused No. 6, father of Accused No. 1 Prem Singh, and eight others were charge-sheeted to stand Sessions Trial for the murder of one Tarkeshwar Prasad Singh on 13.1.1983 at 6.30 p.m. at a place known as Ketat. Accused Nos. 1 and 2 were charged for offence under Section 302 read with Section 34 IPC for causing the murder of Tarkeshwar Prasad Singh. They were also charged for offence under Section 307/34 IPC for attempting to cause murder of Ghanshyam Languri and Rajnath Tewari, two co-passengers, who boarded the bus along with Tarkeshwar Prasad Singh. The remaining nine accused persons were charged for offences under Section 302/149 IPC. Accused No. 6 Mundrika Singh was charged for offence under Section 147 IPC also, whereas the ten other accused persons were further charged for offence under Section 148 IPC read with Section 27 of the Arms Act. All the accused persons pleaded not guilty for each of the charges framed against them. The defence plea was that the death of Tarkeshwar Prasad Singh in the bus, belonging to Santosh Transport Company, might have been caused at the hands of some unknown dacoits and the accused persons have been falsely implicated by the informant because of long drawn enmity between the parties. The plea of alibi was also put forward by Accused No. 6 Mundrika Singh, Accused No. 1 Prem Singh, Accused No. 10 Raja Dixit and Accused No. 7 Muni Dixit. On an analysis of the entire evidence in the case, the Additional Sessions Judge, Palamau, by judgment dated 9.6.1987, held that on instigation given by Accused No. 6 Mundrika Singh to kill Tarkeshwar Prasad Singh, the deceased, Accused No. 1 Prem Singh and Accused No. 2 Ramesh Singh intentionally caused the death of Tarkeshwar Prasad Singh by firing at him with their rifles in consequence of which Tarkeshwar Prasad Singh died instantaneously on the spot. It was also found that in the same act, Accused Nos. 1 and 2 also caused rifle shot injury on PW 5 and 6 knowing fully well that in the circumstances, by their act of firing inside the bus, it was likely to cause the death of other passengers also and such act was an attempt to commit murder of PW5 and 6. The Sessions Judge came to the conclusion that there is absolutely no

evidence of any other attack by the remaining accused persons (other than Accused Nos. 1, 2 and 6). The offence under Section 27 of the Arms Act was also not proved against such persons. In the result Accused No. 6 Mundrika Singh was found guilty under Section 302 read with Section 34 IPC and convicted thereunder. Accused Nos. 1 and 2 were found guilty for offence under Section 302 IPC for causing the murder of Tarkeshwar Prasad Singh and they were convicted thereunder. They were also found guilty for offence under Section 307 IPC for attempting to commit the murder of PW5 and 6 and were accordingly convicted. Except accused Nos. 1 and 2 and 6, the other accused were not found guilty for any of the charges framed against them and they were acquitted and discharged from the liability of their respective bail bonds. Accused Nos. 1 and 2 were sentenced to imprisonment for life under Section 302 IPC. Accused No. 6 was also sentenced to imprisonment for life under Section 302 read with Section 34 IPC. Accused Nos. 1 and 2 were further sentenced to undergo rigorous imprisonment for seven years for their conviction under Section 307 IPC. It was further held that both the sentences passed against the Accused Nos. 1 and 2 shall run concurrently. Accused Nos. 1, 2 and 6 filed Criminal Appeal No. 90 of 1987 before the High Court of Patna, Ranchi Bench, Ranchi. A Division Bench of the High Court, after a very detailed discussion of the entire evidence, by judgment dated 8.9.1989, acquitted accused No. 6 Mundrika Singh and confirmed the conviction of Accused Nos. 1 and 2 under Section 302 of the Indian Penal Code. The conviction of Accused Nos. 1 and 2 under Section 307 IPC was set aside. The High Court observed that case of Accused No. 6 Mundrika Singh is not free from doubt and the case against him appears to be similar to the other co-accused, who were acquitted by the Sessions judge. In this view, the conviction of Accused No. 6 Mundrika Singh, appellant No. 3 before the High Court, was set aside and he was acquitted of the charge. But as regards Accused Nos. 1 and 2 the High Court came to the conclusion that though their conviction and sentence under Section 307 of the Indian Penal Code are liable to be set aside, their conviction and sentence under Section 302 IPC were justified. It is against the aforesaid Judgment of the High Court dated 8.9.1989 Accused Nos. 1 and 2 have filed the above Criminal Appeal before this Court as per special leave granted in SLP (Crl.) No. 2059/89 dated 22.7.1991.

2. We heard Sri Rajender Singh, learned senior counsel for the appellants and Sri H.L. Agrawal, learned senior counsel for the respondent. Accused No. 6 Mundrika Singh and one Chandrika Singh are brothers. Accused No. 1 Prem Singh is the son of Mundrika Singh. Accused No. 2 Ramesh Singh is the son of Chandrika Singh. It is alleged that one Rajan, brother of Accused No. 1 Prem Singh, and Bishwanath, brother of Accused No. 2 Ramesh Singh, were murdered by Tarkeshwar Prasad Singh and others on 2.10.1982. The case was still pending when the incident relevant to the instant case happened on 13.1.1983 at about 6.30 p.m. at Ketat. It is fairly clear from the evidence in the case, that enmity exists between the members of the appellants' family and those of the deceased family. The prosecution alleged that on 13.1.1983 after attending the hearing of the murder case of Rajan and Bishwanath at Daltonganj, Tarkeshwar Prasad Singh accompanied by Bashishth Narain Singh, PW 1, Ran Vijay Pratap Deo, PW 2 and Dudhnath Singh, PW 8, as also Sheo Pratap Singh and Ramadhar Pathak, boarded the bus bearing Registration No. BRO 3555 of Santosh Transport Company, for returning to Rehla at 5.30 p.m., and the bus stopped for a while at the stop of Ketat, when car bearing Registration No. WMB 5989 came from behind and stopped in front of the bus. The time was about 6.30 p.m. Then Accused Nos. 2 and 6 and their colleagues Satyender Singh, Muni Dixit and Raja Dixit go down from the car. Accused No. 6 was empty handed but the remaining persons were armed with rifles. In the meanwhile Jeep bearing Registration No. BRO 2770, which also arrived from the side of Daltonganj, stopped in front of the bus. From that jeep, Accused No. 1, armed with a rifle, and his colleagues Rajeshwar Singh, Bishwanath Singh, Parsuram Dixit, Basistha Dixit, Fakira Dixit and Chandardhan Singh and two other unknown persons, all armed with guns alike, alighted. The accused and other co-culprits started proclaiming that as Tarkeshwar Prasad Singh was inside the bus, he should be cut into pieces. On hearing this, the passengers of the bus were struck with terror and started fleeing away. Passengers were in the process of getting down from front and rear entrances. At that time Accused Nos. 1 and 2 came inside the bus from the front entrance. PW 8 Dudhnath Singh, in order to hide his identity, had wrapped his face with the chadar and rushed towards the back door of the bus, when he saw Accused Nos. 1 and 2 firing indiscriminately at Tarkeshwar Prasad Singh. In that firing Ram Raj Pandey -

PW 5, a forest guard, and Ghanshyam Languri - PW 6, a police official, also received injuries. PW 8 Dudhnath Singh had by that time managed to get down from the bus like many other passengers and he concealed himself nearby in thick bushes. On knowing that Tarkeshwar Prasad Singh had died, the accused and others raised victory slogans and fled towards Daltonganj in their car and jeep. On hearing the news, Sub Inspector Sachchidanand Deo, PW 14, entered the information as Entry No. 195 (Ex. 4) at 7.00 p.m. in Rehla Police Station and rushed to the place of occurrence, arriving there at 7.15 p.m. On seeing the Police PW 8 Dudhnath Singh came out of the hiding and made a statement (Ex.5) which was sent to the Police Station, Bishrampur and on this basis the case was registered vide FIR (Ex.7) at 9.00 p.m. PW 5 and 6 were transported to Daltonganj hospital. Though the search was made for the culprits they were not found. The Sub Inspector returned to the spot at about 1.30 a.m. and prepared the inquest report with respect to the dead body of Tarkeshwar Prasad Singh.- He lifted three live gun cartridges, one of such empty cartridge and 4 empty rifle cartridges vide seizure memo Ex. 9. PW 1 Bashishth Narain Singh and Bipin Bihari Singh attested the documents prepared at the spot. The dead body of Tarkeshwar Prasad Singh was subjected to post-mortem examination by Dr. R.K.P. Pandey (PW 4). One Dr. K. Singh conducted medical examination of PW 5 and 6. Statements of driver, conductor and other witnesses were recorded. The accused surrendered in court and were arrested later and charge-sheeted. One of the accused Chandardhan Singh was subsequently murdered on 23.6.1983. Accused Nos. 1, 2 and 6 were sentenced and other accused were acquitted by Sessions Judge.

3. The post-mortem examination of Tarkeshwar Prasad Singh was conducted by PW 4 on 14.1.1983 at 10.50 a.m. at Sub-divisional Hospital, Daltonganj. The record relating thereto discloses the following injuries.

1. Six oval lacerated wounds with inverted margins of the sizes varying from 1/4' to 1/2' in diameter on the middle and left side of the front of the chest;
2. One oval lacerated wound with inverted margins of the size 3/4' in diameter on the upper part of the left side of abdomen with two metal pieces of embodied in the wound;

3. Three circular lacerated wounds with inverted margins of the sizes varying from 1/4' to 1/2' in diameter on the right shoulder with blackening of the skin around the wound.

Fractures of the body of the external bones of third, fourth, fifth and sixth ribs and cartilages on the right side, as well as the fourth, fifth and sixth ribs and on the left side were noticed. The third and the fourth thoracic vertebra, the right clavicle, right scapula, and the upper part of the humerus on the right side were also found fractured.

Injury Nos. 1 and 3 referred to above were wounds of entry, while injury No. 2 was the wound of exit. All the above injuries were caused by fire arms. Death of Tarkeshwar Singh had been caused by shock and hemorrhage as a result of above noted injuries. The time elapsed since death was with 12 to 18 hours of the post-mortem examination. All the injuries individually were sufficient to cause death in the ordinary course of nature. Ext. 3 is the post-mortem examination.

The medical examination of PW5 Ram Raj Pandey on 13.1.1983 conducted by Dr. K. Singh disclosed the following.

Lacerated wound on left side of neck '1' x 1/2' surrounded by charring of skin. The X-ray plate dated 14.1.1983 showed a big oblique subset with small radio opaque particle. (was a skin (deep) injury caused by a fire arm, may be a rifle) Age of the injury was within 24 hours. Ex. 2 is medico legal certificate.

Dr. K. Singh, who examined PW6 found the following injury:

One lacerated wound on left side of the shoulder 3' x 1'. The depth could not be probed. This injury was surrounded by charring skin. The x-ray plate No. 41 dated 14.1.1983 showed three shots on the upper left side of back. It was simple in nature caused by a fire arm such as a rifle or gun. Age of the injury was within 12 hours. Ext. 2/1 is the medico legal certificate.

4. As stated earlier, the plea of the appellants was that the prosecution allegations are untrue and that they were innocent. Accused Nos. 1 and 6 and two other accused advanced the plea of alibi and examined DW1 to 3 in support of the

same. The said evidence did not find favour with the trial court. The appellants also examined DW 4 Kuldip Roy and DW 5 Priya Brat Singh to show that Tarkeshwar Prasad Singh was a terror.

5. Certain crucial aspects appearing in the case deserve to be highlighted. Tarkeshwar Prasad Singh was shot dead inside the bus bearing Registration No. BRO 3555 at the bus stop Ketat at about 6.30 p.m. on 13.1.1983. The deceased met with instantaneous death. PW 1, PW 2, PW 5 and PW 8 are the eye witnesses. PW 8 lodged FIR on the same day at 7.30 p.m. PW 5, a forest guard, was a co-passenger and an independent witness. He also speaks about the incident and he was injured in the act of firing by Accused Nos. 1 and 2. The post-mortem report and the evidence of PW 4 proves that the injury resulted due to shots of fire arms. There was, admittedly enmity between the family of the informants and that of the accused. Deceased Tarkeshwar Prasad Singh, along with PW 1, 2, 8 and PW 5 and 6, and few others was returning in the bus, belonging to Santosh Transport Company on 13.1.1983, after attending the murder case of Rajan and Bishwanath. The prosecution states that Prem Singh and Ramesh Singh (Accused Nos. 1 and 2), who came from behind in the jeep and the car along with few others, fired fatal shots at Tarkeshwar Prasad Singh with their rifles in furtherance of common intention of the other accused persons, which caused the instantaneous death of Tarkeshwar Prasad Singh. The courts below have concurrently held that the motive suggested by the prosecution against the accused persons is established. When there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the court. It is true that this Court has held in *State of U.P. v. Moti Ram and Ors.* : 1990 CriLJ1710 , that in a case where the prosecution party and the accused party were in animosity on account of series of incidents over a considerable length of time, the motive is a double-edged weapon and the key question for consideration is whether the prosecution had convincingly and satisfactorily established the guilt of all or any of the accused beyond reasonable doubt by letting in reliable and cogent evidence. Very often, a motive is alleged to indicate the high degree of probability, that the offence was committed by the person, who was prompted by the motive. In our opinion, in a case when motive alleged against the accused is fully established, it provides a foundational material

to connect the chain of circumstances. We hold that if motive is proved or established, it affords a key or pointer, to scan the evidence in the case, in that perspective and as a satisfactory circumstance of corroboration. It is a very relevant, and important aspect (a) to highlight the intention of the accused and (b) the approach to be made in appreciating the totality of the circumstances, including the evidence disclosed in the case. The relevance of motive and the importance or value to be given to it are tersely stated by Shamsul Huda in delivering the Tagore Law Lectures (1902) - The Principles of the Law of Crimes in British India, at page 176, as follows:

But proof of the existence of a motive is not necessary for a conviction for any offence. But where the motive is proved it is evidence of the evil intent and is also relevant to show that the person who had the motive to. commit a crime actually committed, it, although such evidence along would not ordinarily be sufficient. Under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

In these circumstances, the only crucial factor that falls for determination is to see whether satisfactory evidence was available on record for bringing home the guilt of the appellants/accused persons. We shall discuss in brief the evidence of the four eye-witnesses PW 1, 2, 5, and 8, to the extent it is necessary to show how far the prosecution has established its case.

6. The main arguments advanced before us on behalf of the appellants-accused are (a) PW 1 to 8 are not really eye witnesses and they were not able to depose, who fired the final shot and when; (b) the shot received by Tarkeshwar Prasad Singh is of the gun and not of the rifle as spoken to the prosecution witness; (c) there is inconsistency in the prosecution evidence, and what is more the statement in FIR is not fully substantiated.

7. We were taken through the evidence of PW 1, 2 and 4 (medical witness), PW 5 - independent witness (Forest Guard) and PW 8 - first informant and PW 12. We have also gone through the FIR appearing at pages 51-54 (paper book No. III - Annexure P-10) and also the statement given by the accused in their examination under Section 313 of Criminal Procedure Code. We shall not advert to the salient

features disclosed by the said evidence appearing in the case.

8. PW 1, Bashishth Narain Singh is the father-in-law of Tarkeshwar Prasad Singh. He deposed before the Court that himself, PW 2, PW 8 and the few others were in the Santosh Bus when it stopped at Ketat village, a jeep and a car came from behind and 10-15 persons armed with rifles and guns got down from both the vehicles and shouted that Tarkeshwar Prasad Singh is in the bus and he should be cut. He was trying to get down from the bus to run away when Prem Singh and Ramesh Singh, Accused Nos. 1 and 2, came from the front gate with rifles along with Mundrika Singh (A-6). There were, amongst passengers, one Forest Department Official (PW 5) and another police official (OPW 6). He knew Mundrika Singh, Ramesh Singh and Prem Singh for a long time. No doubt he had developed weakness in the eyes two months prior to the date of examination, but he had clear vision and his eyes were alright at the time of the occurrence. He admitted that he had given statement before the police that Ramesh Singh and Prem Singh started firing at Tarkeshwar Prasad Singh after entering into the bus. He heard the noise of firing when he was fleeing from the bus and also heard the shout of Tarkeshwar Prasad Singh to save him. PW 2 Ran Vijay Pratap Deo, deposed that he boarded Santosh Bus in the evening to come back to Rehla along with PW 1, PW 8 and Tarkeshwar Prasad Singh and when the bus halted near Ketat village to drop some passengers, a Fiat car came from Daltonganj direction and stopped before the bus. Accused Ramesh Singh and others with rifles in their hands, and Mundrika Singh got down. Mundrika Singh's hands were empty. A jeep also came from behind and Prem Singh and others got down from the jeep with the rifles. The jeep and the car surrounded the bus and thereafter, he heard the noise of firing from the bus gate. Prem Singh and Ramesh Singh were standing near the front gate of the bus with rifle. The moment he came out of the bus, he heard the noise of firing and simultaneously the shout of Tarkeshwar Prasad Singh. He also speaks about the enmity between the accused and Tarkeshwar Prasad Singh. According to him, there was indiscriminate firing in the bus. PW 5, a forest officer and independent witness, stated before the Court that he boarded Santosh Bus at Daltonganj bus stand on 13.1.1983 and when the bus stopped in front of Ketat village, 5-6 persons surrounded the bus and started firing indiscriminately. He was injured due to firing. Tarkeshwar Prasad Singh died inside the bus, hit by the

bullet. Persons firing were outside the bus next to the bus door and were firing inside. The bullet hit the witness after breaking the glass of the bus window. He knew Tarkeshwar Prasad Singh before since he was a forest contractor. PW 8 - Dudhnath Singh, who gave the FIR available at pages 51-54 of Volume III of the paper book, is the brother-in-law of the deceased Tarkeshwar Prasad Singh. In the FIR he has stated that along with Tarkeshwar Prasad Singh, PW 1, 2 and others, they boarded the bus at Daltonganj and when the bus reached Ketat village at about 6.45 in the evening to drop a passenger, a car, belonging to Chandrika Singh, bearing No. WHB 5989, came overtaking the bus and stopped in front of it. The passengers, sitting in it, got down and were armed with guns and rifles. He recognised those persons. Among them Ramesh Singh, Accused No. 2 and others had rifles. Immediately after this the jeep, bearing No. BRO 2770, came and Prem Singh, Accused No. 1, and others got down with rifles in hand. All the persons in the car and the jeep surrounded the standing bus and said that 'sala' Tarkeshwar Prasad Singh is in it, he should be taken out and cut into pieces. The persons travelling inside the bus started begging for life and started fleeing. Prem Singh and Ramesh Singh were identifying the passengers and PW 8, by hiding his face, got down from the rear gate. Tarkeshwar Prasad Singh was in the back. As soon as the witness reached the rear gate, he saw Prem Singh and Ramesh Singh entering the bus from the front gate with their rifles and started indiscriminate firing on Tarkeshwar Prasad Singh. The witness ran outside to save his life, but while running he heard Tarkeshwar Singh's shouts from inside the bus. He hid himself in nearby bushes. The reason for this murder is that Prem Singh, Ramesh Singh and others had enmity towards Tarkeshwar Prasad Singh and wanted to take revenge due to the pending murder case of Rajan and Bishwanath in Daltonganj. As PW 8, the witness, substantially corroborated what he stated in the FIR. He deposed that he was travelling along with Tarkeshwar Prasad Singh, PW 1 and others in the bus belonging to Santosh Transport Company. At about 6.45 p.m. at Ketat village the bus stopped to drop a passenger when a Fiat car bearing No. WHB 5989 stopped in front of the bus and Ramesh Singh and others came out of the same with rifles and thereafter a jeep bearing No. BRO 2770 came and Prem Singh and others got down out of the jeep with rifles and all of them abusing Tarkeshwar Prasad Singh stated that he should be cut into pieces.

Prem Singh and Ramesh Singh stood near the front door of the bus and fired shots with rifles. PW 8 was successful in fleeing away by covering his face with a chadar. He saw that Tarkeshwar Prasad Singh got injured by the bullet inside the bus. Tarkeshwar Prasad Singh was behind him when firing had taken place. He did not see bullet being fired on any other passenger other than Tarkeshwar Prasad Singh. Another person, who was a forest guard, was injured, hit by a bullet. The FIR available at pages 51-54 of volume III of the paper book and the deposition of the eye witnesses, PW 1, PW 2, PW 5 and PW 8, of whom PW 5 is an independent witness, clearly bring out the fact that Accused Nos. 1 and 2 came in a jeep and a car with rifles, with a few other persons, that they got into the bus from the front and fired indiscriminately at Tarkeshwar Prasad Singh. PW 5, a forest officer as an independent witness, who himself sustained injuries, has also stated that he knew Tarkeshwar Prasad Singh. He also stated that Tarkeshwar Prasad Singh died inside the bus due to hit by the bullets. There is no contradiction with regard to the crucial aspects, namely, that these witnesses travelled along with Tarkeshwar Prasad Singh in the same bus, that the bus stopped at Ketat village to drop a passenger, at that time Accused Nos. 1 and 2 came in a jeep and a car with rifles, from behind, along with others, surrounded the bus and after proclaiming that Tarkeshwar Prasad Singh is inside the bus and he should be cut into pieces, they entered the bus and fired indiscriminately, at Tarkeshwar Prasad Singh, which resulted in the death of Tarkeshwar Prasad Singh instantaneously.

9. PW 4 - Dr. R.K. Pandey, who conducted the post-mortem examination of the dead-body, proved the post-mortem certificate issued by him and also stated that the injuries referred to in the certificate were caused by fire arms. Ext. 3 - certificate - is in his own handwriting and signed by him. Six metallic pieces recovered from the dead-body were properly sealed and sent to the police. All the injuries were caused by some fire arms. The post-mortem report - Annexure P-8 (Volume III of the paper book) - mentions about two metallic pieces embodied in the wounds in the upper left side of the abdomen and also refers to a recovery of total six metallic pieces. The post-mortem report along with the evidence of the medical witness PW 4 substantiates that the injuries sustained by Tarkeshwar Prasad Singh were as a result of shots received from the fire arms and that they

were fatal. Such injuries were sustained by Tarkeshwar Prasad Singh only due to the shots received from the fire arms, employed by the accused against Tarkeshwar Prasad Singh, while in the bus as spoken to by eye witnesses PW 1, PW 2, PW 5 and PW 8. The direct evidence in the case, amply corroborated by the motive of the accused, positively points out the intention of the accused to murder Tarkeshwar Prasad Singh.

10. Sachchidanand Deo, Inspector of Police, PW 14, who recorded the FIR, stated that he had seized two bullet on the front gage foot-steps of the bus and that he did not find any rifle or gun at the place of occurrence or nearby and that he recorded the FIR and other statements from the witnesses etc. It is also important to notice that PW 8 has given the number of the Fiat car and the jeep and PW 12 Chandreshwar Upadhyay, who came along with Prem Singh in jeep has categorically stated that the number of the jeep is BRO 2770 and Prem Singh regularly used to bring him in that jeep.

11. Appellants' counsel made a feeble attempt to contend that it is not clear in this case whether the injuries to Tarkeshwar Prasad Singh were caused by the rifle or by the gun. The plea was that the cartridges recovered were not sent to the ballistic expert nor was any ballistic expert examined. Our attention was invited to the decision of this Court in *Mohinder Singh v. The State* : [1950]1SCR821 , and in particular to the observations of the Court at page 828. We are of the view that the said decision is distinguishable. It will be found from page 825 of the Report that the accused in the said case produced 'a 12 bore gun' Ext. P-16, for which he held the licence. He denied that he had fired with the said gun. His case was that Gurnam Singh, who reached the spot at about the time of incident, had fired at the deceased Dalip Singh. There were certain puzzling features of the injuries of Dalip Singh. It is in that connection the court observed 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.

The above observations were made in a case where the weapon with which the victim sustained injuries was before the Court and there was doubt whether the injuries could have been caused by using that weapon - Ext. P-16, in the reported case. In this case, the rifles used by Accused Nos. 1 and 2 were never recovered. So, the prosecution could not, in the circumstances, allege that a particular identifiable weapon was used in committing the crime. There was nothing to be examined by the ballistic expert. The observations in *Mohinder Singh v. The State* (supra) should be understood in the above peculiar context. There is no merit in this plea.

12. On a careful scrutiny of the evidence in the case, we are candidly of the view that the finding of the courts below that Prem Singh and Ramesh Singh, Accused Nos. 1 and 2, due to enmity, had committed the murder of Tarkeshwar Prasad Singh intentionally by firing repeated shots at him from their respective rifles, is justified and their convictions under Section 302 of the Indian Penal Code is proper and unassailable, there is no merit in this appeal. It is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com