

Rajinder Singh Vs. the State

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Court : Delhi

Decided On : Sep-07-1973

Reported in : ILR1974Delhi277

Judge : V.S. Deshpande and; S. Rangarajan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 512; [Evidence Act, 1872](#) - Sections 114 and 145

Appeal No. : Criminal Appeal No. 38 of 1972

Appellant : Rajinder Singh

Respondent : The State

Advocate for Pet/Ap. : A.N. Mulla,; D.C. Mathur,; B.R. Singh and;

Judgement :

S. Rangarajan, J.

(1) The appellant (Rajinder Singh) has been convicted by the learned Additional Sessions Judge, Shri O. N. Vohra) under section 302 Indian Penal Code . and sentenced to undergo imprisonment for life. According to the prosecution the deceased (Raghubir Singh) was killed by the appellant, by shooting at him, at about 3 or 4 P.M. on 21-6-1955 on account of various heads of alleged enmity.

(2) The paternal grand father of the appellant, Bhim Singh, had four wives, the appellant's father Narian Singh having been born to the first wife. Bhim Singh's second wife was Smt. Indrawati who had four sons including Dalip Singh Balbir Singh (P.W. 1) and Balwant Singh (P.W. 4). The third wife of Bhim Singh was a sister of Smt. Indrawati; the deceased Raghbir Singh was Bhim Singh's son through his third wife. Through his fourth wife Bhim Singh had yet another son Partap Singh. The wives of Balbir Singh and the deceased were sisters.

(3) The motive for the occurrence is said to be the enmity which sprang up in various ways between the appellant and his father on the one side and the deceased and the children born to Smt. Indrawati, sister of the deceased's mother, on the other. Firstly, when Dalip Singh, brother of Public Witness s 1 and 4, was found murdered in the year 1947 the appellant was suspected the learned Additional Sessions Judge was not inclined to accept this version not only because the deceased was only 14 years old then, but the deceased himself had later on stood surety for the appellant when proceedings had been started for a second time, against the appellant at the instance of his own father Narain Singh under section 107 Criminal Procedure Code . Secondly, the deceased and the appellant had supported rival candidates at an election held about three years prior to the occurrence-a feature considered insignificant by the learned Additional Sessions Judge. Thirdly, the deceased transferred a plot of land in favor of his wife Smt. Anaro to avoid the land being allotted, in consolidation proceedings, to the father of the appellant; the learned Additional Sessions Judge was unable to regard this item of enmity also as having been substantiated because no objection to the consolidation scheme had even been put forward by the parties. Fourthly, the appellant had shot dead a dog of the haveli, where all the members of Bhim Singh's family were living, a few days prior to the occurrence resulting in altercation between the appellant and the deceased, but there having been no reference to this in the F.I.R. the learned Additional Sessions Judge thought that nobody had attached any significance to the above incident. In the result the learned Additional Sessions Judge was unable to regard any of the above as furnishing any motive for the commission of the murder he, however, thought there was grudge between the appellant and the deceased.

(4) The prosecution case is that at about 3 or 4 p.m. on 21-6-1955 P.W.I (Balbir Singh), when he was sitting in his gher at a distance of about 30 paces from the haveli, heard the report of a gun from the rear of the haveli. He ran towards that place and met the deceased at the corner of the haveli with a bleeding injury on his chest. On questioning the deceased he told Public Witness I that Rajinder Singh son of Narain Singh (appellant) injured him with a bullet. Public Witness I led the injured towards his haveli by supporting him. Hari Singh (P.W.2) and Dalel Singh (not examined), who were coming behind the deceased, followed them to the haveli. Meantime Balwant Singh (P.W. 4), Pratap Singh and Smt. Indrawati, who had also heard the report of the gun, were there, when Smt. Indrawati questioned the deceased he again told her about the appellant shooting him; Hari Singh and Dalel Singh also heard the appellant mentioning to Smt. Indrawati about his having been shot at by the appellant. At the suggestion of Balbir Singh, Balwant Singh (P.W.4) went out along with Pratap Singh to bring a cart to take the injured to the hospital or the police station; Public Witness 4 soon returned stating that the appellant was standing near her gher and was issuing a threat that he would shoot any one who ventured to carry away the appellant. The injured breathed his last within a few minutes thereafter.

(5) A few Police Constables, Ram Chander (P.W. 17), Raghunath (P.W.6) and Mange Ram (not examined) who were on patrol duty visited village Kadipur at about 5.30 p.m. On being informed that a murder had taken place in the village they went towards the haveli. P.W.I? accompanied Balbir Singh to the Police Post Alipur after asking his companions to guard the dead body. Public Witness I made a report (Ex. P.A.) which was recorded by A.S.I. Teja Singh (P.W.8). Before leaving for the Police Post, Public Witness I also enquired about the names of Hari Singh and Dalel Singh, whom he had not known before, entered their names on a slip of paper (Ex. P.B.) and produced it before Public Witness 8. Public Witness 8 seized it under a memo. Ex. P.C. In the presence of two persons Banwari Lal and Sunder Singh. Public Witness 8 forwarded this report with his own endorsement to Police Station Nerela for registering of a case. S.I. Hota Ram (P.W. 18), who happened to be on duty then, recorded the formal F.I.R. (copy of which is Ex. P.A./2). Public Witness 8 left for the place of occurrence where he prepared the inquest report that very night when he also recorded the statements of Hari Singh

and Dalel Singh. The inquest report (Ex. P.H.) was also attested by Surat Singh, father-in-law of Public Witness 1 who lives in village Bagaan about 21 or 22 miles from Kadipur. He also prepared injury statement (Ex. P.J.).

(6) On the same night D.S.P. Gian Chand (P.W. 21), who reached the scene at about 11.30 p.m. on getting information about the occurrence, conducted a search of the house said to be occupied by the appellant and recovered a double barrelled gun (Ex. P.I) which was lying in the kothari of the house along with 22 live cartridges. The gun was said to emit odour of sulphur indicating that it had been recently fired. The next morning he found blood stains near the jal tree at the place of occurrence which also he recovered under memo Ex. P.F. About 21 yards from the place of occurrence he recovered a fired cartridge (Ex. P.9) under memo Ex. P.E.

(7) Autopsy was conducted by Dr. K. C. Chopra, who was examined as Public Witness 3 before the committing Magistrate and as Public Witness 9 before the Court of Session. He noticed the following injuries:

1. Three circular lacerated wounds $3/10'$ X $2/10'$ and $4/10'$ in diameter in front of the right chest outer upper part. There was no scar on the chest.
2. A lacerated wound $4/10'$ diameter in front of right shoulder.
3. A circular lacerated wound $2/10'$ diameter in with contused edges in front of right arm middle part.
4. Lacerated wound $6/10'$ X $4/10'$ in front of right arm middle part about 1' from No. 3 and at the same level.
5. Lacerated wound $6/10'$ X $5/10'$ on the inner aspect of the right arm middle part.
6. Lacerated wound $2/10'$ X $1/10'$ on the inner aspect of right arm middle part.
7. An abrasion $9/10'$ X $5/10'$ on the right lateral aspect of the chest
8. A contusion $2/10'$ X $3/10'$ on the right lateral aspect of the chest.
9. Two lacerated wound $3/10'$ X $2/10'$ X $1/10'$ right scapular region of the back.
10. An abrasion $3/10'$ X $2/10'$ on the right scapular region of the back upper part with a short embedded in it.
11. A nodule under the skin on the right scapular region of the back with a short under the skin.

(8) Two pellets which was found embedded in injuries Nos. 10 and 11 were also recovered by Dr. Chopra. On dissection he found the following:

'THERE was effusion of blood on the upper outer part of the right chest with laceration of the inter costal muscles in the first second and third right inter costal spaces. The right lung was adherent all over the sides and base and was congested. The lower part of the upper lobe of the right lung was lacerated due to shots having gone through it . The right chest was bruised on the inside both in front and behind. The third right rib was fractured in front while the fifth and seventh right ribs were bored (holed) behind my shots going through them. There was much efusion of blood in the muscles in the back on the right side (whole of the darsan region). Left lung was normal. Heart was empty. There was efusion of blood in muscles of right arm. Brain was normal. Liver kidnies and spleen were normal. Stomach contained water fluid. Rectum and bladder were empty'.

(9) There were four wounds caused by the entry of the pellets, but there were only two exit wounds, the other two pellets having got lodged in the body of the deceased. Death was due to shock as a result of gun shot at the chest and the wounds could have been inflicted by gun fire from beyond a distance of 12 feet.

(10) The Ballistic Expert (Shri D. L. Goel) was not examined. He died before the trial.

(11) The appellant was not available for arrest and proceedings under sections 87 and 88 Criminal Procedure Code . were taken against him. Evidence was recorded under section 512 Criminal Procedure Code . Out of those examined under section 512 Criminal Procedure Code . Smt. Indrawati and Dalel Singh have since died. Hari Singh became hostile to the prosecution and was declared as such.

(12) It was only in the month of March, 1971 that the appellant surrendered in Court. Thereafter an identification parade was held on the request of Inspector Gurbachan Lal (P. W. 20) by the Judicial Magistrate Shri D. P. Sinha (P. W. 10). Of the three persons who took part in this parade Hari Singh and Sant Ram (Public Witness s 2 and 3) failed to identify the appellant; P. W. 1. The appellant's step-uncle alone identified him.

(13) When examined under section 342 Criminal Procedure Code . the appellant stated that his father and four of his step brothers and members of his family were living at the time in a big haveli, adjoining the portion where the deceased and Balbir Singh (P. W. 1) were living. Since the appellant's father had a domineering and dictatorial nature there were sharp differences between them. His father instituted proceedings under section 107 Criminal Procedure Code . twice against the appellant and two others. The appellant was actually bound down for a period of one year. On the second occasion the deceased himself had stood surety for him. The appellant failed in his B. A. examination for the second time in the year 1955. When the result was announced he had a row with his father and left as his father refused to support him any longer. He could not even get a job on account of the intervention of his father. His father refused to become separate from him. The appellant left Delhi for Meerut where his friend Narinder Kumar lived. Narinder Kumar referred him to his maternal uncle at Calcutta. The appellant got a job in a tea garden at Kurseonj in district Darjeeling. He worked there till 1958. He joined service in the neighbouring tea garden owned by S. P. Betson and served there till February, 1971. His relation Chhajju Singh met him accidentally and persuaded him to go back to Delhi since his father had grown very old and had desired to meet him. On the same day he arrived he learnt that a false case had been registered against him; he had it confirmed from his father that P. W. 1 was responsible for it. He was not suspected in connection with the murder of Dalip Singh. There was no ill-will between him and Raghbir Singh. He only produced certain records, without examining any witness to show that his father was responsible for the proceedings under section 107 Criminal Procedure Code . against him and that no objection had been raised in the consolidation proceedings. He also produced certain electoral rolls to show that there were other persons of the name of Rajinder Singh in the adjoining villages.

(14) One person alone, among the witnesses, Dalel Singh, had stated that he saw the deceased being shot, at his chest, with a gun. The evidence of Dalel Singh was recorded under section 512 Criminal Procedure Code . but he died before the trial commenced. He saw some one standing near the jal tree, about 50 yards from the haveli, fire a round from the gun. He did not know the appellant previously; he thought he might be able to identify him. The reason for Dalel Singh

visiting Kadipur that evening was for the purpose of purchasing buffaloes or bulls. He had, along with Hari Singh P. W. 2 (who was treated as hostile) gone to various places that day for the said purpose Hari Singh lived in village Dilher about 25 or 30 miles from Kadipur whereas Dalel Singh lived in Mangolpur which is about 25 miles from Dilheri; Dilheri and Mangolpur are on two sides of Kadipur. According to P. W. 2 they left village Mangli, a distance of about a mile or a mile and a quarter at about 1.30 or 1.45 p.m.; according to Dalel Singh, however they reached Mangli at about noon and left it for Kadipur at about 2 or 2.30. For walking that distance they must have taken less than about half an hour. According to the time mentioned by Hari Singh they should have been in Kadipur round about 2.30 p.m. at the latest and according to Dalel Singh at about 2.30 or 3 p.m. According to Smt. Indrawati, whose statement was recorded under section 512 Criminal Procedure Code . but who also died before the trial, the occurrence took place at about 4 p.m. It seems to us that an effort has been made to time the occurrence later in the afternoon; the suggestion of the appellant was that the shooting should have taken place even at about 1 or 1.30 p.m., at least before the deceased took his mid-day meal. Autopsy disclosed that his stomach was empty except for liquid. Though there is no evidence as to when the deceased had taken his last meal it is not natural to suppose that the deceased had not taken his meal till about 3 or 4 p.m.-the greater probability is that a cultivator in a village taken his mid-day meal much earlier than 3 or 4 p.m. The occurrence was not reported to the Police till a Police patrol party consisting of Ram Chander (P. W. 17) and two other Constables Raghunath Singh P. W. 6) and Mange Ram reached the village after coming to know about Raghbir Singh having been killed. According to Ram Chander this party reached the village at about 6 or 6.30 p.m.; even here it has been made to appear that the Police party arrived a little earlier, namely, at about 5 p.m. (vide Balwant Singh P. W. 4). It is worth noticing in this context that there is a statement in column 3 of the inquest report (Ex. P. H.) that the 'date and hour of the discovery of death' was on '21-6-1955 at 8.30 p.m.' This has not been explained.

(15) Ram Chander (P. W. 17) took Balbir Singh (P.W.I) to the Police Out-post where a statement (Ex. P. A.) was recorded by A. S. 1. Teja Singh (P. W. 8). It is somewhat curious that Balbir Singh produced a slip (Ex. P. B.) containing the

names of Hari Singh (P. W. 2) and Dalel Singh which is also said to have been recovered by a memo (Ex. P. C.) None of the attestors of this memo have been examined. On the face of it Hari Singh and Dalel Singh were chance witnesses; their presence at the scene at least seems doubtful. Hari Singh village Dilheri is only four miles from village Bagaan where Surat Singh the father-in-law of Balbir Singh, lives. It is worth recalling that Surat Singh is the father-in-law of the deceased. His another daughter is married to Balbir Singh (P. W. 1). Sardar Singh, who figures prominently in all the recoveries made in this case is the son in law of the brother of Surat Singh; Sardar Singh has not been examined. It is obvious that Surat Singh had come to the village that very night because he has attested the inquest report (Ex. P. H.) which must have been prepared on the night of 21-6-1955 itself. The corpse had been handed over by Constable Sundar Singh, to whom it was entrusted by A. S. 1. Teja Singh, after the inquest, to the doctor in charge of Police Hospital, Delhi at 8.45 p.m. on 22-6-55. Unless the corpse was handed over on the night of 21-6-1955 it could not have been brought to Delhi, covering what is stated to be a distance of about 9 miles at that early hour of the morning of 22nd. According to P. W. 8 (A. S. 1. Teja Singh) the corpse was sent in a bullock cart. The statement of the widow of the deceased Mst. Anaro (P. W. 5) that she, her father (Surat Singh) and other members of her family left her parental village only the following morning and reached Kadipur at 7.30 a.m. is belied by the fact that her father had already been an attestor to the inquest report; the inquest could not surely have been held after 7.30 a.m. but it could have taken place on the night of the 21st itself. It is not likely that on learning about the occurrence Surat Singh alone would have proceeded to the scene of occurrence without taking his daughter, the widow of the deceased along with him: that is not the evidence of P. W. 5 either.

(16) The Explanation for not reporting the occurrence to the Police earlier than the time when the Police petrolling party is stated to have reached the village also seems difficult to accept. The reason alleged in the F. 1. R. is that the appellant was standing on the way carrying a gun and threatening that no one should go for lodging a report on threat of killing the one who went to report. According to Ram Chander (P. W. 17) even when he reached the village at about 6 or 6.30 p.m. Partap Singh (not examined), Balbir Singh (P. W. 1) and Balwant Singh (P. W. 4)

told him about the appellant standing outside the haveli with a gun; when he searched for the appellant he was not there. Balbir Singh himself did not see the appellant threatening any one; it was only reported to him like that by Balwant Singh (P. W. 4) and Partap Singh (not examined). Though Balwant Singh would not speak about the appellant having made the above said threat with a gun it is significant that in his statement under section 512 Criminal Procedure Code . he did not say anything about the appellant having uttered such a threat. The positive testimony of Dalel Singh, examined under section 512 Criminal Procedure Code ., was that immediately after firing the assailant ran away. Dalel Singh was one of those who was detained by Balbir Singh along with Hari Singh; they were not allowed to go away that night. He should have surely known about the alleged threat by the appellant if it was true. Neither Smt. Indrawati nor Balwant Singh had in their statements recorded under section 512 Criminal Procedure Code . referred to the presence of Dalel Singh and Hari Singh. They were the only two persons who did not belong to village Kadipur. It is only natural to expect that if both of them had been at the scene of occurrence that evening Smt. Indrawati and Balwant Singh (P. W. 4) would not have omitted to make mention of it when they were examined under section 512 Criminal Procedure Code .

(17) A few observations concerning how the statements of witnesses, who are alive, but recorded under section 512 Criminal Procedure Code ., have been exhibited in this case will be in order at this stage. For instance the statement of Balwant Singh (P. W. 4) has been marked as Ex. D. B.; of Sant Ram (P. W. 3) as Ex. D. A.; of Chander Bhan (P. W. 7; as Ex. D. C. and of P. W.2 Hari Singh (who was treated as hostile) as Ex, Public Witness 2 B. The manner in which the statements under section 512 Criminal Procedure Code . of living witnesses have been exhibited, is not what is permitted by section 512 Criminal Procedure Code . Any deposition of any person recorded under section 512 Criminal Procedure Code . in the absence of the accused who had absconded, may on the arrest of such person be given in evidence against that person in any subsequent trial only. if the deponent is incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience, which in the circumstances of the case would be unreasonable in the case of any witness whose evidence was recorded under section 512 Criminal

Procedure Code ., but who later on gives evidence that could only be used for the purpose of contradicting that witness as provided under section 145 of the Evidence Act or when the witness turns hostiles under section 154 of the Evidence Act. Even in the case of a witness who is examined under section 512 Criminal Procedure Code . who later on becomes hostiles, his previous statement under section 512 Criminal Procedure Code . cannot be read as substantive evidence. Use of the statements recorded under section 512 Criminal Procedure Code . at a later trial when the accused who was then absconding was arrested should be within the above limits.

(18) In this context it will be revealing to note how the prosecution sought to introduce witness who did not belong to Kadipur Sant Ram (P. W. 3) is resident of Hiranki village, about 2 or 2-1/2 miles from Kadipur. According to his present evidence he was proceeding to Delhi from his village on a cycle. When he was about 100 yards from Kadipur he heard the report of a gun; when he went a further 60 yards he saw the appellant coming from the side of a jal tree. (back of the haveli) carrying a double barrel gun. The appellant went away to the field on the left; he also saw two other persons Dalel Singh and Hari Singh (P. W, 2) going towards the haveli. It is significant that when P. W. 3 was examined under section 512 Criminal Procedure Code . he had merely referred to the appellant 'going out of a jal tree'; he only thought that he had fired a gun shot in the usual course. The next day when a Constable came to his village in search of the appellant he made a statement to him. Apart from there being no worthwhile Explanation as to how the Police was able to trace him-a casual passerby, whose presence there was not noticed by any-he has been guilty of deliberate improvement in that he also referred to his having seen Dalel Singh and Hari Singh (P.W. 2) in an obvious effort to make it appear that Dalel Singh and Hari Singh were also there at the time of the occurrence. He was not able to identify the appellant the reason given by him was that the appellant had covered the lower portion of his face, up to his mouth; he was questioned whether he had stated before the committing Magistrate about the assailant having covered the whole of his face. He denied it. Though this portion of his testimony in the committing court has been omitted to be marked we have looked into the record and we find that he had made such a statement. If the assailant had covered his face how then could he or any other

witness identify the assailant as the appellant? No other person said that the assailant had covered his face or any part thereof.

(19) We may next turn to the evidence pertaining to the oral dying declarations said to have been made by the deceased. Even on this aspect the statement of Smt. Indrawati, made under section 512 Cr. P. C., excludes the presence of any other except herself Partap Singh (not examined), Balwant Singh (P. W. 4) and Balbir Singh (P.W. 1) inside the deorhi of Public Witness 1. She was positive that when she heard the report of a gun she was sitting along with Partap and Balwant. Neither the statement made by Smt. Indrawati nor even by Balwant Singh (P. W. 4) under section 512 Criminal Procedure Code . support the present prosecution case that the above said statement was made by the deceased to any one other than Balbir Singh (P. W. 1), Balwant Singh (P. W. 4), Smt. Indrawati and Partap Singh (not examined). Realizing that the case for the prosecution may be weak if such a statement was made by the deceased only to his own kith and kin an obvious effort has been made to enlist two other witnesses Hari Singh (P. W. 2) and Dalel Singh also as persons who had heard the alleged oral dying declaration.

(20) Serious doubts on the above-said version of the prosecution, namely, that the deceased was able to walk some distance and then make such a statement about his having been shot at by the appellant are cast by the medical evidence. The two injuries on the right lateral aspect of the chest of the deceased, as injuries No. 7 and 8, could be the result of a fall on the ground, he must have fallen on the ground on his right side. It is worth setting them out once again separately :

7. An abrasion 9/10' X 5/10' on the right lateral aspect of the chest. 8. A contusion 2/10' X 3/10' on the right lateral aspect of the chest'.

(21) Both these injuries were obviously not gun shot wounds and Dr. K. C. Chopra was of the view that they could have been caused by a fall. Dr. Chopra was also positive, when he was examined in the committing Court, that the injured could not have walked after falling down, after being shot at. This important aspect, we are afraid, has been completely missed so far. The up-shot of his evidence is that those injuries (No. 7 and 8) were not caused by shooting with a gun but in the act of the deceased falling on the ground; the impact must have been so great as to

make him fall down with such force as to cause those injuries. The dimensions of those injuries, abrasion and contusion, do convey in some measure the force with which he must have fallen down.

(22) It is even needless to pursue, for our purpose, the hypothetical question as to whether the deceased would have been in a position to walk any distance after receipt of those injuries if he had not fallen down because it seems certain from the medical evidence itself that if the deceased had fallen down being shot at he would not have been in a position to get up and walk afterwards. The two pellets which were lodged in the body of the deceased but taken out are fairly heavy (about 5-1/2 grammes each) and round.

(23) There is actually no evidence on record concerning the distance from which the deceased is alleged to have been shot at. In the plan (Ex. P.U.) the distance between the place from where the assailant is said to have shot at the deceased is said to be 18 feet, but actually we have not been told on what basis the said distance was marked. Public Witness 8 has sworn that he recovered the used cartridge from near a bush there being a few small ones at the place marked '4' in the said plan stated to be at a distance of 62 feet from where the assailant is alleged to have shot. It being not possible to doubt the fact that the deceased had also come by two injuries on the lateral side of the right chest, one of them being a contusion and the other an abrasion, it seems very probable that those injuries were caused by a fall especially when the prosecution has not even explained how the above said abrasion and contusion were caused. Dr. K. C. Chopra when he was examined in the committing Court (his evidence before that Court having been transferred to the record of the case before the Court of Session) was of the view that the deceased could have fallen down after he was shot at. Dr. Chopra was sure that the injured could not have got up and walked after receiving those gun shot injuries. It is in the light of this very important circumstance that the positive testimony given by P. Ws 1 to 4, Dalel Singh and Smt. Indrawati (the latter marked under section 512 Criminal Procedure Code .) has to be appreciated. It is the positive case of P. W. 1 that he ran towards the haveli, a distance of 30 paces from where he was sitting, on hearing the report of a gun and that when he reached the corner of the haveli he saw the deceased who was coming towards

him with the bleeding injury on his chest. It was at this juncture that he saw two more persons (P. W. 2 and Dalel Singh) coming after the deceased at a distance of about 15 or 20 paces. It was at that point that the deceased told him that he had been shot at by Rajinder Singh son of Narain Singh. The entire evidence of P. W. 1 becomes unacceptable if according to the medical testimony, the deceased fell down on receiving injuries 7 and 8 and was not, therefore, in a position to get up and walk. Once this part of the testimony is not possible to safely act upon the further testimony of P. W. 2, supported by Dalel Singh recorded under section 512 Criminal Procedure Code . and of Smt. Indrawati (also recorded under section 512 Criminal Procedure Code .) also becomes unacceptable. The evidence of P. W. 3 has already been set out and discussed fully. It seems to us that an unfortunate effort has been made to enable Dalel Singh as well as P. Ws 2 and 3, who did not belong to the haveli, to figure as witnesses in this case; that is probably why the prosecution has resorted to the version of the deceased walking some distance, even after receiving the gun shot injuries. P. W. 2 as well as Dalel Singh were chance witnesses, P. W. 2 was a taxi driver. Dalel Singh and P. W. 3, live at a distance of more than 20 miles from each other. The entire story of their having come together, without even disclosing where and how they came together, for the purpose of purchasing cattle, seems artificial in the extreme. The version that the names of P. W. 2 and Dalel Singh were noted on a slip of paper by P. W. 1 and handed over and seized by the Police appears still more artificial. Shri Mulla pointed out that even that slip (Ex P. B.) containing the names of those two persons itself contains inherent evidence of manipulation. Whereas the tehsil and the district of P. W. 2 have been given in that slip these particulars have not been given in the case of Dalel Singh who is merely said to be a resident of Mangolepur. The point that Shri Mulla made out was that if the places of residence of these two persons had been gathered from them directly, before they were written on that slip (as it should have been) there has been no explanation why the tehsil and district of Dalel Singh were omitted surely Dalip Singh also would have been able to give his tehsil and district. Chance witnesses observed Sir George Rankin, speaking for the Judicial Committee of the Privy Council in *Ismail Ahmed veepadi v. Momin Bibi* are not necessarily false witnesses, but it is proverbially rash to rely upon such evidence. Particularly when what they speak to

is *priina facie* rendered unacceptable by the medical testimony it would not at all be safe to act upon they say.

(24) It is not without significance that an application was moved by the S. H. O. Gian Chand (P. W. 21) before the Judicial Magistrate for permitting Balbir Singh (P. W. 1) father of the uncle of the appellant also to join the identification parade for the purpose of enabling Hari Singh (P. W. 2) and Sant Ram (P. W. 3) to identify the appellant after he was apprehended (Dalel Singh having died earlier). Neither P. W. 2 nor P. W. 3 was able to identify the appellant at the parade held by Shri D. P. Sinha (P. W. 10) on 10-4-71. The reason which Public Witness 20 gave for Balbir Singh also being asked to take part in the identification parade, namely that he was an eye witness, is unconvincing; on the other hand the suggestion to him-which has greater force-was that this was a device to provide him with an opportunity to influence or help P. W. 2 and 3 to identify the appellant. This will have to be borne in mind along with his (P. W. 1) having filed a revision (Cr. Rev. 188/72) in this Court to enhance the sentence imposed on the appellant.

(25) The manner in which the occurrence was reported only serves to heighten the suspicion which is even otherwise grave. It has been seen that Public Witness s. 2 and 3 were introduced as witnesses by the not so common mode of furnishing their names in a slip. It may be seen further from Ex. P. A./ I, the note made by P. W. 8 while forwarding Ex. P. A. from Alipur Outpost to Narela Police Station that Ex. P. A. was sent to Narela from Alipur through Constable Ram Chander (P. W. 17) for registering a case under section 302 Indian Penal Code . W. 17 stated that he remembered having gone back to the village Kadipur from Police Outpost Alipur though he could not recollect whether Balbir Singh also returned along with him to the village. According to Ragunath (P. W. 6), the other Constable who went along with P. W. 17 to patrol Kadipur, he accompanied Ram Chander and Balbir Singh to Alipur Outpost from Kadipur and P. W. 8, who is in charge of the Police Outpost at Alipur, reached village Kadipur at about 9 or 9.30 p.m.; both Balbir Singh and P. W. 17 had returned to village Kadipur about 15 minutes prior to the arrival of P. W. 8 at Kadipur. The distance between Alipur and Narela is four miles. The F.I.R. is seen to have been dispatched from Alipur at about 8.30 p.m. and is stated to have been received at Narela at 9.30 p.m. It was urged by Shri Mulla that

if Ram Chander (P. W. 17) was back at Kadipur from Alipur at about 9 p.m. he could not have taken the F.I.R. from Alipur to Narela as it is endorsed on Ex. P.A. itself by Public Witness 8. In this context Shri Mulla also drew our attention to the admission obtained from S. 1. Hota Ram (P.W. 18), the Moharrir Head Constable at Narela at that time, that the F.I.R. in this case bears the date 17th June, 1955 and the one following it bears a date 23rd June, 1955. Shri Mulla conceded that merely because there was thus opportunity to make entries to suit the needs of the present case it would not follow that such opportunity was availed of; he nevertheless urged that having regard to the obvious effort made to make it appear that the shooting itself took place at about 3 or 4 p.m. and not earlier and the manner in which the F.I.R. is seen to have been prepared and despatched from Alipur to Narela suspicion becomes even graver.

(26) Even making allowance for the fact that the witnesses have been examined 17 years after the occurrence and investigation of this case by the Police, some of the recoveries said to have been made in this case are not beyond reasonable suspicion. The earliest recovery from or near the scene of occurrence was the double barrel gun (Ex. P.I.) along with 22 live cartridges from the kothari of the house under a seizure memo (Ex. P.O.) by D.S.P. Gian Chand (P.W. 21). The gun was kept inside a cover and was lying near the western wall of a small room, said to be 'owned and possessed by the appellant'.

(27) The learned Additional Sessions Judge has accepted without question the evidence of D.S.P. Gian Chand (P.W. 21) and of Chander Bhan (P.W.7) that the gun (Ex. P.I) smelt of sulphur which indicated that it had been fired recently. This is a very rough test which cannot by itself conclusively establish that the gun had been fired shortly prior to its recovery. It is instructive to note what is stated in Taylor's Principles and Practice of Medical Jurisprudence (Vol. 1. Twelfth Edition, pages 312-13); it is possible on Chemical analysis of the products of decomposition in the gun-barrel, to obtain information about the time when the weapon was last discharged. It is also stated therein that for a number of hours there is smell of hydrogen sulphide; Chemical examination of the fouling would yield a reaction for sulphides for five or six hours. Sulphates are found only in traces for the first few days; they then gradually increase, and as they increase the

thiosulphates and thiocyanates diminish. Iron salts in the ferrous state are usually found in traces in the early stages, and gradually become converted into ferric salts. But no such analysis having been done in this case it is not possible to place much reliance on the inference made from merely smelling the gun. Major Sir Gerald Burrard in his book on The Identification of Fire Arms and Forensic Ballistics (1962 Edition, page 83) observes : 'The truth is that it is absolutely impossible to fix the date of discharge with any scientific accuracy after the lapse of a comparatively few hours. It may sound very impressive to declare that a weapon has been 'recently' discharged. But 'recently' is too vague a word to merit serious attention. A really experienced expert will probably be able to form a fairly accurate idea as to whether the amount of corrosion in the bore of a fired weapon indicated a lapse of days or months, but that is all'. In the present case days or months did not intervene. There is no evidence that Public Witness 8 was such an expert, or that the estimate of time was based on the amount of corrosion in the bore of the fired weapon; the estimate was based on mere smell. Major Gerald Burrard also discusses the possibilities of backing such opinion by Chemical analysis and factors which may affect the rusting itself like the type of steel used etc. Besides, the gun may be in frequent use by agriculturists for shooting game.

(28) The parcel containing the gun and the cartridges was sealed by Gian Chand and the seal was handed over to Sardar Singh (the brother's son-in-law of Surat Singh), who was one of the attestors of Ex. P.G. (the process of handing over the seal to Sardar Singh after sealing every item recovered from time to time was repeated). Chander Bhan (P.W. 7, yet another attestator) a resident of village Khera Kalan had also attested Ex. P.G. Next morning an empty cartridge of a similar description as the live ones recovered the previous night was recovered 21 yards from the place of occurrence under a memo (Ex. P.E.) which was also attested by Chander Bhan (P.W. 7) among others, Gian Chand (P.W. 21) admitted that he kept the gun with him after the recovery, till 7.30 P.M. on 23rd June, when alone he sent it to the Malkhana. Blood-stained earth was also recovered from near the jal tree under a memo. (Ex. P.F.) These recoveries were made on the morning of 22nd before 10 a.m. but the clothes of the deceased were brought from the hospital to the scene of occurrence at 6.30 in the evening on 22nd and these were seized under a memo. (Ex. P.D.) which was also stated to be attested by

Chander Bhan (P.W. 7). Chander Bhan stated that he had left Kadipur village an hour or two after the recovery of the cart- ridge, but yet it has not been explained how he came to attest the memo. Ex. P.D., which was only prepared that evening after he left. Chander Bhan was positive that he did not join the investigation of this case subsequently. Chander Bhan's grand mother married Bharat Singh father of Sardar Singh. Ex. P.D., therefore, is at least a pointer to the manner in which the recoveries appear to have been made.

(29) It is also significant that no blood was recovered from the deorhi of Balbir Singh's house to which place the deceased is said to have been taken, nor was blood lifted from the space between the place of shooting and the deorhi. It is probable that on account of severe bleeding there could have been a trail of blood between the place of shooting and the deohri, where the deceased is said to have been taken by Balbir Singh.

(30) In the result we have not found it possible to act upon the testimony of Public Witness s. 1, 3 and 4 or of Dalel Singh and Smt. Indrawati (both of whom were examined under section 512 Criminal Procedure Code) with any measure of safety, Public Witness 2 was declared hostile. That the appellant had stood surety for the deceased when his own father took proceedings under section 107 Criminal Procedure Code . against him was not only stated by the appellant when he was examined under section 342 Cr. P.C but admitted by Balbir Singh (P.W.I). This not only shows the absence of such enmity but even positive cordiality between the appellant and the deceased. The order in the second proceedings under section 107 Criminal Procedure Code . was made on 30-4-1952; the surety bond must have been executed at that time and must have been in operation for a year from then. It is not stated by the prosecution that there was any enmity between the appellant and the deceased subsequent to the said period of time. All that Smt. Anaro (P.W. 5) widow of the deceased said was that two or three years prior to the occurrence her husband had transferred a plot to her, she could give practically no details concerning the same. She did not appear before the Consolidation Officer. It is common ground that the consolidation proceedings did not disclose any objection on the score of any such transfer. The alleged shooting of a dog belonging to the haveli by the appellant a few days prior to the occurrence

was not even referred to in the F.I.R. as a possible motive for this occurrence. The only two items referred to in the F.I.R. were the appellant who was then only 14 years being suspected in connection with the murder of Public Witness 1's brother Dalip Singh, and illwill owing to appellant pressing Public Witness I and the deceased to vote for Jai Lal Gaur instead of Ch. Hira Singh in the District Board election. While no motive has thus been proved for the appellant shooting at the deceased the very statement made by Public Witness I (though not proved) that the appellant was suspected in connection with the murder of his brother Dalip Singh would, if at all, only furnish a motive for the appellant being implicated. It is this background which required the positive evidence led by the prosecution concerning the occurrence being scrutinised with great care. As we have already explained at length the positive evidence of the prosecution concerning the alleged shooting has completely failed to stand such scrutiny.

(31) We are left only with the appellant not having been available for arrest for so long. Though Public Witness I would now say that the appellant lived with his own father in Kadipur despite proceedings under section 107 Criminal Procedure Code . having been taken, no further corroborative evidence in this regard has been produced before the Court in the shape of the addresses of the appellant which were mentioned at the time of at least initiating the second proceedings under section 107 Cr. P.C. According to the suggestion made to Public Witness I, which he denied and his own statement under section 342 Criminal Procedure Code . the appellant was living in the chaubara of his father at Chandni Chowk. This seems to be not unlikely in view of the fact that he was studying at Delhi. But better evidence, which is possible on this aspect, has not been let in. Even in the view that the appellant absconded for a period as long as about 16 years cannot by itself form the basis of a conviction in the absence of the cogent and acceptable evidence. There is nothing unnatural in a person who is falsely accused of such an offence absconding. There had been admittedly another case of shooting in the family 8 years prior to this occurrence resulting in the murder of Public Witness 1's brother Dalip Singh. No proceedings were taken against the assailant obviously because there was no evidence. Even in the present case if the deceased had been shot at about 1.30P.M.,as suggested by the appellant, when he was probably returning for the mid day meal from the field and nobody had known who

had shot him, there was nothing strange in the appellant being suspected (vide *Matru v. State of U.P.* Air 1971 S.C. 1050). We cannot speculate. The guilt of the appellant can be determined only on the basis of available positive testimony and/or other circumstances. The testimony adduced in this case falls far short of what can be safely accepted. Not merely that : the unfortunate manner in which the prosecution has chosen to unfold the occurrence and the way in which the occurrence was not only reported but investigated has led to a situation where it has become possible for the appellant to throw such serious doubts, nothing is sure except that the appellant met with his end by shooting.

(32) If the direct and positive evidence concerning the occurrence is excluded on the ground of the same not being safe to act upon this is not a case where on the basis of the appellant having absconded coupled with the remaining circumstances it will be possible to draw the inference that the appellant alone shot at the appellant. When all the members of the family of the accused absconded after the matter was reported to the Police it was held in *Raghav Prapanna v. State of U.P.* : [1963]3SCR239 that the proved circumstances were insufficient to draw the inference of the accused having murdered his wife and son (in that case).

(33) We have only to state that none of the various aspects, which we consider crucial, have been even adverted to or discussed by the learned Additional Sessions Judge; we are, therefore, relieved of the necessity of having to deal with his said judgment in detail.

(34) The conviction and sentence imposed by the learned Additional Sessions Judge are set aside and the appellant is directed to be set at liberty unless he is liable to be detained for any other valid cause. The appeal is accordingly allowed.