

State Vs. Jawan Singh

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Court : Rajasthan

Decided On : Mar-18-1971

Reported in : 1971CriLJ1656; 1971(4)WLN241

Judge : B.P. Beri and; L.S. Mehta, JJ.

Appellant : State

Respondent : Jawan Singh

Judgement :

L.S. Mehta, J.

1. Succinctly put the prosecution story is that P.W. 15 Chenia had a strip of agricultural land, measuring about 53 Bighas (Khasra No. 49), situate within the precincts of village Barri. He wanted to sell the land, The accused Jawan Singh showed curiosity to buy it for a meagre sum of Rs. 300/-. That consideration was not acceptable to its owner, It is alleged that through the efforts of the deceased Patwari Bharu Singh and his brother Chhatar Singh (injured), who was also a Patwari, their brother-in-law Bheru Singh son of Bhur Singh Rajput, resident of Juna, Tebail Desuri, bought it for Rs. 800/-. A registered sale-deed was executed by Chenia in favour of the buyer on March 25, 1966: vide Ex. P. 19| Because of this transaction accused Jawan Singh harboured ill-feeling against Bheru Singh and Chhatar Singh. The accused conveyed his protest to Chenia telling him how sinister consequences would follow. Later on, Bheru Singh deceased and the

accused Jawan Singh met each other in the fair of 'Mahadeoji', near Mevi village. There, the accused took an exception and told Bheru Singh how he had procured for his brother-in-law agricultural land from Chenia. Both of them exchanged hot words but because of the stepping in by Than Singh, P.W. 26, the matter stood dropped for the time being. However, the accused threw a challenge to Bheru Singh, saying that he would have to reap its fatal consequences. On June 23, 1966, Than Singh, P.W. 26 whose son had been betrothed to the deceased Bheru Singh's daughter, sent a message, through his brother-in-law, Bhanwar Singh (P.W. 24) to Bheru Singh to meet him at his residence in village Mevi. Bheru Singh and his brother Chhatar Singh told Bhanwar Singh that both of them would reach Mevi that day by noon. Bhanwar Singh then returned to Mevi and communicated to Than Singh the result of the mission. Bheru Singh and Chhatar Singh left their village Thakurii-ka-Suda for Mevi at about 10 or 11 a. m. They rode their camel. They, at first reached their well 'Bera Padav', within the boundary of village Barri. There they stayed for about half an hour. They met their brother Khuman Singh, P.W. 22, and told him that they had to see Thakur Than Singh at his residence. Thereafter they proceeded towards Mevi, travelling on the road connecting Khinwada with Mevi. After covering a little distance, they saw the accused Jawan Singh riding a camel and proceeding from his village Mataji-ka-Guda towards Bhikarn-jMd-Piou.- He took his camel inside the enclosure of the water-hut and then he got down. He was equipped with a rifle. He ascended the Verandah of the water-hut. From there he challenged Bheru Singh and Chhatar Singh that as they had managed the sale transaction of Chenia's land at favour of their brother-in-law Bheru Singh of Juna, their action would recoil. Bheru Singh and Chhatar Singh, however, continued riding their camel. Bheru Singh was seated on the front-seat and the rear seat was occupied by Chhatar Singh. They told the accused that if he was prepared to pay the cost-price of the land, he could have it. This conciliatory tone instead of cooling him down bestirred him. It resulted in adding fuel to the fire. The accused Jawan Singh aimed his gun towards Bheru Singh and pulled its trigger. The bullet first hit Bheru Singh on his chest. It pierced through and through. It then entered Chhatar Singh's body. Both Bheru Singh and Chhatar Singh fell down from the camel's back. Bheru Singh succumbed to the injuries instantaneously. Soon after the accused fired another shot which hit Bheru Singh's

camel with a atrocious effect, The animal sustained a grievous hurt. It walked limpingly towards etha Teli's field wherein it collapsed, The appellatant then came out of the Verandah. He rode his camel and retreated hurriedly towards Mataji-ka-Guda, The occurrence was witnessed by Indra Chaudhari, Doula Thori, P.W. 16 and 2 girls, namely, Mst. Panni, P. W, 17, and Mst. Chhagam, P, W. 18. On hearing the gun shot report, Khuman Singh, P.W. 22, brother of the deceased Bheru Singh, rushed to the scene of the occurrence from 'Bera Padav', situated nearby at point No. 12 in the site-plan. He saw the accused coming out of the water-hut on his camel's back and proceeding towards Mataji-ka-Guda. He also found his brother Bheru Singh lying dead and his other brother Chhatar Singh lying .injured at places marked (1) and (2) respectively in the site-plan. He asked Doula, P.W. 16, to remain near the place of the incident and he himself proceeded towards the police out-post of Khinwada. He got first information report Ex. P-17 scribed by Kundan Singh, P.W. 21, and submitted, it to Amar Singh, P.W. 30, Head Constable, Police Station, Magar Talab, who happened to be present at the police out-post, Khinvada, Amar Singh sent the report through constable Zalim Singh to the police station Magar Talab, for its registration. Amar Singh along with Head Constable Madan Singh, P.W. 9, stationed at the police out-post Khinwada, reached the place of the occurrence. He, found Bheru Singh lying dead and Chhatar Singh groaning in distress. He prepared site-description memo Ex. P-22, site-plan Ex. P-23, inquest report Ex, P-24, and the description memo of the injuries of Chhatar Singh, Ex. P-3. Later Head Constable Madan Singh took Chhatar Singh to Desuri for treatment in a jeep-car. As no medical officer was available at the Government Dispensary, Desuri, the injured was taken, to Bali hospital. Chhatar Singh's injury was examined by Dr. Rajnarain Kalla, P.W. 1, on June 23, 1966, at 5-30 p.m. He found the following injury on his person:-

Lacerated wound 1 1/2' x 1' x 1 1/2' deep at the outer end of right clavicle in supra clavicular fosse. Clavicle not fractured. Skin around the wound showed no charring. The injury was simple and was caused by a blunt weapon. Its duration was, 12 hours, The injury was the result of a gun shot,

The injury report is Ex. P-36. Chhatar Singh's dying declaration was recorded' by Mr.: M. R, Dhariwal, Second Class Magistrate, Pali, on June 23, 1966, at 545 p.m.

It is marked Ex. D-5. Chhatar Singh was then taken to Mahatma Gandhi Hospital, Jodhpur, where he was X-rayed. A number of opaque shadows were found on his person. He remained in the hospital for a couple of days. No operation was performed on his body for extracting out the pieces of bullets. Chhatar Singh was subsequently admitted as an indoor patient to Government Hospital, Bali, on August 16, 1966. Dr. Rajnarain Kalla, P.W. 1, performed operation on Chhatar Singh's wound and took out 2 lead pieces. On August 26, 1966, One more piece of lead shot was taken out from his body. These 3 pieces were put in a phial, which was duly sealed and handed over to the police under memo Ex. P-16, dated August 30, 1966. After some time Chhatar Singh again went to Mahatma Gandhi Hospital, Jodhpur. Dr. Kailash Narain, P.W. 32, noticed multiple metallic radio opaque shadows between his right clavicle and acromion process of right scapula. In his opinion they were gun shot lead piece. The Doctor findings are contained in Ex. P-43. He was subsequently operated upon by Dr. S. N. Gupta, P.W. 6, on September 28, 1966. He removed a foreign body (metallic one) from his right shoulder. It was found lodged in the scapula. Chhatar Singh was admitted to the hospital on September 26, 1966, and was discharged therefrom on October 6, 1966. The metallic pieces' Ex. 9 were duly sealed and made over to the police. Originally there was only one metallic piece; but in the process of chiselling it gave way into 2 pieces.

2. Autopsy on the dead body of Bheru Singh was conducted by Dr. Rajnarain Kalla, P.W. 1, Medical Officer, Government Dispensary, Pali. Following injuries were found on the person of the deceased:-

External:-

1. Circular wound of 1.5" diameter on the right side of chest in the mid clavicular line, 1" below the right clavicle, 2" above and medial to the right nipple, 1 1/2" from mid-sternal line in the third intercostal space. The skin round it was not found charred.

2. Irregular marginal wound 1 1/2"x1" on the back of the right chest, 1 1/2" below and lateral to the angle of the right scapula, 5 1/4" from the mid-line of the back in the 6th intercostal space area. Base of was obliquely divided down

3. Abrasion 1/2 x 1/2 on the posterior aspect left elbow clotted blood at the left angle of the mouth, Internal:-

1. Anterior chest wall right side:

1. Opening in sub-cutaneous tissues 2' x 2' and in the muscles, 3'x2' in the fourth intercostal space shows tears in the muscles (intercostal).

2. Haematoma beneath the skin in the surrounding area of the right side of the chest.

3. Fracture of the third, fourth, fifth ribs between mid-clavicular line and anteroaxillary line.

2. Posterior walls:-

1 Fracture of the 5th, 6th and 7th ribs in the line of angle of scapula opening in the wall oblique.3. Right lung:-

Shows ruptures and tears on the ante-ro-lateral surface of the upper and the middle lobe also shows tears and ruptures of the posterior surface of the same lobes.4. Right thoracic cavity:

Contained blood,5. Liver:Diaphragmatic surface of liver shows rupture projecting into the thoracic cavity through a rent with dome of diaphragm. In the opinion of the Doctor injuries, both internal and external, except injury No. 3, which, is external, were caused as a result of a single bullet shot. External injury No. 1 was entry wound. Its corresponding exit wound was injury No. 2. Injury No. 3 would be caused by a fall from the back -of a camel. The Doctor further expressed the view that as a result of the gun-shot injuries the victim must have died instantaneously. The Doctor, in the end, opined that the cause of death of Bheru Singh was syncope due to haemorrhage ; and that the ante-mortem gun-shot injuries, which the deceased sustained, were sufficient in the ordinary course of nature to have caused his death.

3. Mr. Satya Narain Mathur, P.W. 5, Veterinary Assistant Surgeon, Desuri, examined Bheru Singh's camel, at 2 p.m., on June 27, 1966. He found the

following injuries on its body:-

1. There was a small rounded wound in the inner side of the right fore-leg at the middle of radius ulna.
2. There was about 1' in diameter wound at the back side of the right foreleg at the middle of radius ulna.
3. Bone radius ulna was fractured at 'the distal'extremity and at the middle of the body of the bone. In the opinion of the Veterinary Doctor the cause of injury was due to gun-shot. The camel died on June 29, 1966.
4. The accused Jawan Singh made good his escape after the occurrence. 'Several raids were arranged by the police at sundry places, but they all proved abortive. Eventually, Mr. T. N. Bhargava, Deputy Superintendent of Police, having received information that Jawan Singh was available somewhere near village Kot during the night of June 9 and 10, 1968, arranged a raid and found Jawan Singh sleeping near Khimla Mataji's- temple, which .was situate at a distance of some 2 miles from village Kot. He was arrested by the police. Its memo is marked Ex, P-5. While under' police custody the accused furnished information, on June 17, 1968, to the Deputy Superintendent of Police Mr. Sampat Raj, P.W, 8, that he had concealed the weapon of the offence, i.e., his rifle, beneath a pit, underneath a rock, near his field, situate within the boundary of Mevi village. In pursuance of that 'information the police recovered the gun at the instance of the accused, under memo Ex. P-14, dated June 17, 1968. The gun was identified by the prosecution witness Doula in the course of identification proceedings conducted by Mr. Laxmi Narain Mathur, Additional District Magistrate, Pali, P.W. 34. The identification proceedings were reduced to writing and the document is marked Ex. P-45. After the investigation was concluded, the police put up a challan against the accused in the court of the Civil Judge-cum-Magistrate, First Class, Pali. The Committing Court conducted preliminary inquiry in accordance with the provisions of Section 207-A, Cr.PC, and sent the case to the court of Sessions Judge,-Pali, . for the trial of , the accused Under Sections 302, 307 and 429, I.P;C. On May 26, 1969, the accused was charged by the .trial Court under the said sections of the Indian Penal Code, to which he pleaded not guilty. In support of its case, the prosecution examined 36

witnesses and produced as many as 47 documents. In his statement, recorded Under Section 342, Cr.PC, the accused denied to have committed any offence. His plea was that the prosecution witnesses were telling deliberate lies. He denied the recovery of the rifle. He further said that he had not absconded but had gone in connection with cultivation of his land in village Lakhni, Tehsil Bhinmal. In his defence he examined 6 witnesses, including Dr. Shyam Behari-lal Mathur, D.W. 6. Eventually, the trial Court, relying upon the prosecution evidence and rejecting the defence taken by the accused, convicted the appellant and sentenced him as under:

Section Sentence

1. Under Section 302, I.P.C., He has been sentenced

for murdering to death and to pay a

Bheru Singh fine of Rs. 101/-

2. Under Section 307, I.P.C., He has been sentenced

for causing injury to imprisonment for

to Chhatar Singh life and to pay a fine of

Rs. 101/-.

3. Under Section 429, I.P.C., He has been sentenced

for killing Bheru to two years' rigorous

Singh's camel. imprisonment and to

pay a fine of Rs. 101/-.

The substantive sentences for offences Under Sections 307 and 429, I.P.C., have been directed to run concurrently. The learned Sessions Judge, Pali, has submitted proceedings to this Court for confirmation of the death sentence in accordance with the provisions of Section 374, Cr.PC (D. B. Criminal Murder

Reference No, 4 of 1970). Aggrieved by, the trial Court's On the right side of Bheru Singh's chest 2 fingers distance above the nipple there was injury of gun-shot, which had pierced through the body and emerged out from .the blade of the shoulder.

This statement is corroborated by Khuman Singh, Zalim Singh and Doula. Kundan Singh, however, became hostile to the prosecution. Dr. Rajnarain. Kalla, P.W. I, was sent for by the police' officer Amar Singh through Head Constable of the police outpost Khinwada, Madan Singh, P.W. 9. The Doctor performed the autopsy on the dead body of Bheru Singh. The injuries which the Doctor noticed have already been set out above. Dr. Kalla says in his statement that excepting injury No. 3; which is external, the rest of the injuries both internal and external were the result of a single bullet-shot. External injury No. 1 was entry wound; while its corresponding exit wound was injury No. 2. The Doctor further expressed the view that the duration of the injuries was 24 hours and that the cause of Bheru Singh's death was syncope due to haemorrhage. The ante-mortem bullet injuries, the Doctor opines, were sufficient in the ordinary course of nature to have caused the death. The Doctor then states that the entry wounds had inverted margins while'the exit wounds had everted margins.

8. It is true that the Doctor did not explicitly rriention in his post-mortem examination report Ex. P-37 that the entry and the exit wounds were the result of gunshot or that the entry wound had inverted and exit wound had everted edges. The post-mortem examination report is a record summarising the salient features observed by a medical man in the course of autopsy, giving his opinion as to the cause of death, Post-mortem report by itself proves nothing, as it is not a substantive piece of evidence. It can only be used by the medical man who conducted the post-mortem examination as an aid to his memory while giving evidence. In other ' words, post-mortem report can be used as a record of what the Doctor observed during the relevant time for the purpose of corroboration or to contradict whatever he .might say in the witness box. Sections 159 to 161 of the Evidence Act permit only limited use' being made of the post-mortem report,, namely, that it can be used by the witness who prepared it for the purpose of refreshing his memory or by the opposite party for the purpose of contradicting the

witness. The substantive evidence is the oral testimony given by the Doctor before the court on oath. , In support of this proposition reference may be made to In re Ramaswami A.I.R. 1938 Mad 336. In that view & the matter, the aforesaid omission would not damage the oral testimony of .Dr. Rajnarain Kalla. Because of the abscondence of the accused, Dr. Kalla could he examined as late as July 1, 1969, though the occurrence took place on June 23, 1966. An expert, who is called as a witness may refresh his memory by reference to the professional treatises or to any other document made by himself during the relevant time, So, a medical man in giving evidence may refresh his memory by referring to his report, which he has made of the post-mortem examination. No time limit is fixed for the oral examination of the expert. As has already been stated, postmortem examination report is not by itself a legal evidence. It is usually placed in the hands of the medical jurist, who refreshes his memory from its contents when giving his testimony. In the present case Dr. Kalla gave his statement before the trial Court, clarifying the nature of the injuries. His oral testimony on the point in question has not sustained any set back in cross-examination. It cannot, therefore, The concluded that because of the late examination of the Doctor, under the above mentioned compelling circumstance, medical evidence should be rejected. Dr. Kalla made a positive statement that the injuries which he had noticed on the person of the deceased Bheru Singh were the result of a gun-shot. The presumption would be that he had a distinct recollection of the facts which he had witnessed. The occurrence took place at about 1 p.m. on June 23, 1966, 'Post-mortem examination was held the same day at about 5-30 p.m. There is nothing wrong in the statement of the Doctor that the duration of injuries was 24 hours.

9. Another comment offered in respect of the medical evidence is that according to the prosecution story Jawan Singh was standing near the water-hut and Bheru 'Singh was riding a camel at the time when the firing was made. The gun-shot in the above position would not have resulted in the circular wound mentioned by the Doctor in his testimony as wound No. 1. The shape of the entrance wound is usually circular if the bullet strikes at right angles to the surface, but tends to become increasingly oval if fired at an angle until the bullet glances across the tissues, producing an injury similar to a cut or lacerated wound: vide P-289 Taylor's Principles and Practice of Medical Jurisprudence, Twelfth Edition, Vol. 1.

If the bullet meets with little resistance, and traverses the body, entrance wounds are usually smaller than the exit wounds. Exit wounds are usually split from within outward and, therefore, they are often bigger. If the wound was to be oval in shape, the indication is that the barrel of the gura was inclined to the surface; the direction of the inclination being indicated by the proximity of the wound to one or the other of the barrel area. Rifle bullet, while passing through the body pierces tissues cleanly and makes a wound of entry of about its own diameter with, inverted edges. In a case like that the wound of exit is ragged and larger and its edges are everted: vide Lyon's Medical Jurisprudence Tenth Edition, Pp. 281-282. In the present case it is in the evidence of P.W. 2 Chhatar Singh that the accused had with him his rifle when he was in the Verandah. Doula, P.W. 16, has stated that the accused went to the Verandah of the water-hut with a gun. He challenged Bheru Singh and then he fired his gun at him. P.W. 30 Amar Singh, who prepared the site-inspection memo, says that the floor of the Verandah was 2 or 1 ft. above the ground, This evidence shows that the rifle was fired almost at a right angle and, therefore, the barrel covered an area circular in shape. We associate ourselves with the views expressed by Dr. Shyam Beharilal Mathur, D.W. 6, that a circular wound is caused a account of a bullet injury when it strikes the target at a right angle. The evidence in the case evinces that the gunner was in front of the victim and the high level of the Verandah shows that the barrel of the rifle was almost horizontal at the time of its discharge- Dr. Kalla has stated that the entrance wound was smaller in size than the exit wound and that the edges of the entry wound were inverted while these of the exit wound were everted.

10. Thus, the argument of learned Counsel that the gun shot injuries on the person of Bheru Singh have not been proved is devoid, of substance and the only irresistible conclusion that can safely be drawn, from the evidence discussed above, is that Bheru Singh sustained gun-shot injuries and he met unnatural death.

11. We may now deal with the injuries on the person of Chhatar Singh. Police Officer Amar Singh, P.W. 30, first prepared the description memo of the injuries of Chhatar Singh (Ex. P-3) in the presence of Kundan Singh, P.W. 21, and Zalim Singh P.W. 23 (Sarpanch, Panota). Amar Singh and Zalim Singh have deposed

that they saw a gun-shot wound on the right shoulder of Chhatar Singh. He was examined by Dr. Rajnarain Kalla, Medical Officer, Pali, P.W. 1, on June 23, 1966. The Doctor found on his person a lacerated wound at the outer end of the right clavicle in supra clavicular fosse, Its duration was 12 hours. The Doctor says in his oral testimony that it was a gun-shot injury, as mentioned in the injury report Ex. P-38. On August 20, 1966, Dr. Kalla took out from Chhatar Singh's body two lead pieces by operation. Another lead piece was extracted by the same Doctor on August 26, 1966. The 3 pieces were put into a phial, Which was duly sealed and, they, were subsequently made Over to the police . under memo Ex. P-16, dated August 30, 1966. The Doctor has , definitely stated that Chhatar Singh P.W. 2, present before the court, was the same person who was operated upon and from whose body the said lead pieces were recovered. Dr. S. M. Gupta, (P.W. 6), Civil Surgeon, Mahatma Gandhi Hospital, Jodhpur, operated upon Chhatar Singh on September 28, 1966. He removed a foreign body (metallic one) from his right shoulder. It - was found, lodged in thq scapula. The witness recognised the 2 pieces of .metallic Ex. 9, which he had taken out from the body of Chhatar Singh. While extracting out the metallic piece, it, in the process of chiselling, gave way to 2 pieces. P,W. 33 Amritlal Gandhi, Compounder, Mahatma Gandhi Hospital, Jodhpur, says that Dr. S. M. Gupta performed operation .on Chhatar Singh on September 28, 1966 and the metallic substance Ex. 9, which was taken out of his body, was made over to Medico Legal Department. P.W. 36 Zorawarmal, Compounder of the _Medico-Legal Section says that 2 pieces of a pellet were received by him duly sealed from Amritlal, Compounder, and that packet was handed over to the police in a sealed condition. Till he gave the packet to the Sub-Inspector, it remained untarnpered with. Dr. Shyam Beharilal Mathur, P.W. 2, states that he was posted as Head of the Department of Forensic Science, Medical College, Jodhpur and Medical Jurist, Associated Group of Hospitals, Jodhpur. On June 27, 1968, he handed over the sealed packet of the lead pieces to the police on June 22, 1968, along with his report Ex. P-30.

12. From the statement of the injured Chhatar Singh, P.W. 2, and the eyewitness Doula, P.W. 16, coupled with the above medical evidence, it is manifest that Chhatar Singh sustained a gun shot injury on June 23, 1966. The pieces of the bullet, which have been pulled out, by the aforesaid 2 Doctors, directly related to

that injury. Both the Doctors, i.e., Dr. Rajnarain, P.W. 1 and Dr. S. M. Gupta, P.W, 6, have identified the respective pieces of the bullet before the trial Court. It is thus clear that Chhatar Singh sustained gun-shot injury at the time of the occurrence.

13. We may now switch over to the injury of the deceased Bheru Singh's camel. Police Officer Amar Singh, P.W. 30, says that, when he reached the spot, he found the camel sitting in the field of Jetha Teli. On its right fore-leg and above knee joint 'he found a bullet injury through and through,. Blood from that injury was coming out. He prepared relevant memo of the wounded camel on June 23, 1966 (Ex. P-27), in the presence of Zalim Singh (Sarpanch, Panota), P.W. 23, and Kundan Singh, P.W. 21. The statement of Amar Singh gets unqualified support from the above 2 witnesses. The camel'was examined by Veterinary Assistant Surgeon, Dr. Satyanarain Mathur, P.W. 5. He says that on June 26, 1966, he found a wound in the inner side of the right fore-leg of the camel. The wound was through and through. The corresponding exit wound was in the radius-ulna in the middle portion on the back side. Its diameter was 1'. The third injury was the fracture of the right ulna at the middle of the bone at the distal extremity. In the opinion of the Doctor the 3 injuries were the result of a gun-shot wound. The right fore-leg of the camel was completely in a swollen condition. A large quantity of blood from the camel's body had oozed out. The duration was 3 or 4 days. The injury report is marked Ex. P-8, dated June 28, 1966. The Veracity of this statement has not been assailed on behalf of the appellant. It is in the evidence of P.W. 9 Madan Singh that the camel died on June 29, 1966. He sent information to that effect to the Station House Officer Magar Talab, on July 3, 1966: vide his report Ex. P-15.

14. From the above evidence it is abundantly apparent that Bheru Singh's camel sustained gun-shot injuries on June 23, 1966, and that it died as a result' of such injuries on June 29, 1966.

15. The question that survives for consideration is whether or not it was the accused Jawan. Singh who fired 2 gun-shots, one of which hit both Bheru Singh and Chhatar Singh and the other struck the camel.

16. First information report of the occurrence was lodged by Khuman Singh, P.W. 22, with the police out-post Khin-wada. It was submitted soon after the occurrence when the informant's memory was 'fresh and it was also unlikely that he had had opportunities for fabrication. It gives a detailed account of the whole incident. It mentions not only the name of the accused Jawan Singh, but also that of the eye-witness Doula, P.W, 16. Further the report gives a clue to the motive for which Jawan Singh killed Bheru Singh and injured Chhatar Singh. Counsel for the appellant challenged this report on the ground that it does not contain the description of the dialogue which was alleged to have taken place between the injured Chhatar Singh and the informant Khuman; Singh. First information report is not a ,substantive piece of evidence. It can only be used to corroborate or contradict the evidence of the informant given in court or to impeach his credit: vide State of Bombay v. Busy Mistry, : [1960]2SCR117 . First information report need not contain minute details, nor is it the last word in the 'prosecution case. The terms of the first information report which are perhaps given under circumstances of haste, should not be viewed too narrowly. In that context, we cannot view with suspicion the contents of the first information report on the basis of a minor omission therein regarding the talk alleged to have taken place between Chhatar Singh and the informant.

17. Counsel for the appellant then submitted that the prosecution has not established precise motive for the crime; Both Chhatar Singh, P.W. 2, and Doula, P.W. 16, have unequivocally stated that when Jawan Singh challenged Bheru Singh about the transaction of Chenia's land, the latter replied that, if he wanted to buy the property, he could do so on payment of its price. This was a conciliatory tone, which could not have provoked Jawan Singh so as to resort to firing. learned Counsel then submitted that in the circumstances of the case clear proof of motive was a 'sine qua non'.

18. The decisive evidence in regard to motive is that of Chenia, P.W. 15. He says that he had had about 52 or 53 Bighas of agricultural land within the precincts of village Barri. He sold that land to Bheru Singh of village Juna. That land was given through Ranjit Singh, father of the deceased Bheru Singh and the injured Chhatar Singh. The sale-deed was executed and registered in Tehsil Desuri. The name of

the field was 'Dolawa'. Its sale price was Rs. 800/-. Sale-deed Ex. P-19, dated March 25, 1966, bears his thumb impression. 2 or 3 months before the , sale transaction the accused Jawan Singh had asked him to sell the land to him. He demanded Rs. 1000/-, but Jawan Singh was prepared to pay him only Rs. 300/-. He, therefore, refused to sell the property to' him. After the sale transaction with Bheru Singh of Juna was over, Jawan Singh again met him and told him that he would realise what consequences the sale would entail. The witness further states that Bheru Singh deceased got the land sold in favour of his brother-in-law Bheru Singh of Juna and that was the grievance of the accused. The statement of Chenia gets corroboration from the documentary evidence Ex. P-19. The buyer of the land Bheru Singh', son of Bhur Singh of village Juna, P.W. 14, has also been examined, by the prosecution. He has stated that he purchased the agricultural land (Khasra No. 49), measuring about 56 bighas, for Rs. 800/-, in the month of Chet from Chenia Choudhari. The statement of Chenia is further streng- thehed by Chhatar Singh, P.W. 2. He says:

Accused Jawan Singh challenged us by saying that you two brothers had managed a transaction of land belonging to Chenia son of Khima resident of Barri in favour of your brother-in-law Bheru Singh which he (accused) wanted to purchase. Now he had a gun, They should know its (transaction) consequence. Saying these Words, accused fired gun shot from the front.

Doula, P.W. 16, states:

Accused Jawan Singh told Bheru Singh that he had purchased the land which he (accused) was purchasing. He challenged him by saying 'Dekhtahun Kiya Natija H6ga' (would see what its consequences would be).

Khuman Singh, P.W. 22, brother of the: deceased Bheru Singh, testifies:

There was some land of Chenia Choudhri in the limits of village Burri. That land Jawan Singh wanted to purchase but by the intervention of my father, my brother-in-law Bheru Singh of village Juna purchased it.

From the above oral as also the documentary evidence it is convincingly . proved that the accused Jawan Singh was interested in buying Chenia Chaudhari's land for which he had offered only Rs. 300. Through ,the good offices, of the deceased¹ Bheru singh; Patwari god his father Ranjit Singh the land had. been, purchased by another Bheru Singh of the village Juna for a sum of Rs, 800/-, and it is for this : reason that Jawan Singh wanted to, exact retribution on the intermediary.

19. So far as the motive is concerned, the prosecution may prove, but is. not bound to prove, the motive for a crime; and, even in cases where innocence of intention is a defence an innocent or praiseworthy motive, if the necessary intent is proved, is irrelevant and affords no defence: vide 2 Stephens' History of Criminal Law 110 and Halsburys' Laws of England, Third Edition, Vol. 10, P. 283. Wills in his monumental work, Principles of Criminal and Circumstantial Evidence, Seventh Edition, writes at pages 67-68:

It occasionally happens that actions of great enormity are committed for which no apparent motive is discoverable. The actor is held to be legally accountable for his actions.

Wigmore in his treatise on the Anglo-American System of Evidence, Volume 1, S.'118, P. 559, opines:

It is sometimes popularly supposed that in order to establish a charge of crime, the prosecution must show a possible motive. But this notion is without foundation.

Assuming for the purpose of argument that every act must have a motive, yet it is always possible that this necessary omission may be undiscoverable. But failure to discover it does not signify its non-existence. There may be plan to do the act, but there may be no evidence of the preparation; yet the remaining facts may furnish ample proof and the failure to produce evidence of some appropriate motive may result in failure of justice. As observed by their Lordships of the Supreme Court in Criminal Appeal No. 97 of 1968. decided on March 25, 1970 : (reported in A.I.R. 1971 SC 1656). N. N. Naik y. State of Maharashtra, when Court is satisfied about the accused being the assailant of the victim, the Court need not consider the

question of motive. Thus,, it is apparent that there is no more necessity to discover and establish the particular exciting notion or motive when the positive evidence is clear, cogent and reliable. In the present case the prosecution, even if motive is required, has succeeded in an ample measure in showing what motive the accused had when he attacked his victims. Conciliatory reply given by Bheru Singh and Chhatar Singh did not result in lessening the heat of excitement in the mind of the accused.

20. learned Counsel for the appellant then challenged the recovery of the rifle Ex. 10 on the information and at the instance of the accused on the ground that as it was not examined by a ballistic expert, it does not connect the accused with the crime. The accused was arrested on June 10, 1968: vide Ex. P-5. While in the police custody he furnished information to the Deputy Superintendent of Police, Mr. Sampat Raj, P,W. 8, that he had concealed the rifle in a pit: near a stone 'Chhat' by putting pieces of stones over it in a brook towards the south-west of his own field situate within the boundary of the village Mevi Khurd. That information was reduced to writing and is marked Ex. P-13. In pursuance of the information the police recovered the gun at the instance of the accused under memo Ex. P-14 in the presence of S. I. Hari Sing and Mangilal, P.W. 10. This recovery could not be effected earlier for the simple reason that soon after the occurrence the accused made good his escape. No useful purpose could have been served by sending the rifle to a ballistic expert at such a late stage. The rifle so recovered was duly sealed on the spot and was sent to Shri Laxmi Narain Mathur, P.W. 34, Additional District Magistrate, Pali, for the purpose of getting it identified. Mr. Mathur held identification proceedings on July 28, 1968. He sent for 5 other guns of almost the same description and mixed these guns with the incriminating article. .The seal on the gun to be identified was broken in his presence. Thereafter witness Doula was asked to identify the gun and he 'correctly identified it. An identification memo was prepared. It is marked Ex, P-45. Mr. Mathur deposed that all necessary precautions were taken in holding the identification parade. Doula, P.W. 16, states:

The gun Ex, 10 shown to me today is the same. The gun which the accused used in the occurrence as mentioned above was like this.

In the cross-examination the witness has explained the reason as to how he could identify the gun. He states:

I was acquainted with that gun because I had seen previously on several occasions that gun with the accused who used to bring that gun for Shikar.

It is a settled law that it is not necessary that in every case where an accused person is charged with the murder caused with a lethal weapon the prosecution case can succeed in proving the charge only if an expert is examined: vide *Gurcharan Singh v. State of Punjab* : [1963]3SCR585 . It cannot be laid down as a general proposition that in every case where a fire-arm is alleged to have been used by an accused person, prosecution must, in addition to the direct evidence, lead the evidence of a ballistic expert. In *Mohinder Singh v. The State* : [1950]1SCR821 , their Lordships of the Supreme Court held that where the prosecution case was that the accused shot the deceased with a gun but, it appeared likely that the injury on the deceased were inflicted by rifle and there was no evidence of a duly qualified expert to prove that the injuries were caused by a gun and that the nature of the injuries was such that the shot must have been fired by more than one person and not by one person only and there was no evidence to show that another person also shot and the real evidence was such which was not disinterested, the failure to examine an expert was considered to be a serious infirmity. It should be noticed that these observations were made in the case where the prosecution suffered from severe infirmities and these observations did not purport to lay down any inflexible rule that in every case where an accused person is charged with the crime of murder, the prosecution can succeed in proving the case only if an expert is examined. As has been stated above, there is the cogent evidence of Doula that he saw the appellant firing the rifle. He identified the weapon both in the identification proceedings and the trial Court. It is true that owing to the belated discovery it could not be sent to ballistic expert. The deceased and the injured Chhatar Singh received one injury each. Evidently no other weapon except the gun had been used against the deceased and the injured. This would show that the rifle Ex. 10, which was recovered on the information and at the instance of the accused, was used by the assailant with calamitous effect.

21. learned Counsel for the appellant vehemently argued that the trial Court went wrong in drawing an adverse inference from the absconding away of the accused, learned Counsel further submitted that the conclusion of the trial Court that the accused was an absconder is also erroneous. P.W. 9 Head Constable Madan Singh states that both he and Head Constable Amar Singh, accompanied by police force, went in pursuit of the accused, but he could not be traced out. Police officer Amar Singh, P.W. 30, states:

We searched the accused in village Mataji-ka-Guda both at his house as well as in the village but he was not traceable I had left Khuman Singh and Fakir Mohd. with the instructions that they should go to village Kolpura and Dhamli in order to search the accused Jawan Singh.

Mr. Gopal Lai Gupta, P.W. 7, Munsiff-Magistrate, Bali-curn-Dasuri, issued, on July 14. 1966, a warrant of arrest (Ex. P-10) against the accused Jawan Singh. The witness says:

Due to untraceability of the accused as per report he was found absconding from place of his residence. The warrant was returned unserved. On 5-8-66 I recorded the statement of Motilal H. C. which is Ex. P. 11 and declared accused Jawan Singh absconding: vide order dated 5-8-66 Ex. P-12,

Motiram, P.W. 19, Head Constable of the police out-post, Kot, deposes that he received the warrant of arrest of the accused Jawan Singh, which is Ex. P-10, from the police station, Magar Talab. On July 19, 1966, he went to Khinwada. Thereafter he went to Mataji-ka-Guda, Mevi, Gajni-pura, Panota, Kolpura, Omji-ka-Guda, Soeni and Asanpiua in connection with the execution of the warrant, but Jawan Singh could not be traced out. The witness further states:

I also went to his house to execute the warrant, but he was not available there. There were no chances of accused's arrest. I endorsed report A to B on Ex. P-10 on the back of the warrant.

Arjun Singh, P.W. 31, Station House Officer, Magar Talab, says:

After the occurrence, myself and my staff several times made attempts to arrest him. Myself and my staff visited Mataji-ka-Guda and other adjoining villages in order to arrest the accused but he was found absconding on account of fear of getting himself arrested. On 14-7-66 I obtained warrant of arrest from the Munsiff-Magistrate Court, Desuri. That warrant was sent to Motiram Head Constable, in charge O. P. Kot, but accused was not traceable.... On 13-8-66, I myself went to execute warrant of attachment to village Mataii-ka-Gudha where T attached both movable and immovable property of the accused. That warrant is Ex. P-10.

The above evidence reveals that the accused absconded soon after the occurrence. A warrant of arrest (Ex. P40) was issued against him by the court of the Munsiff-Magistrate, Bali-cum-Dasuri, on July 14, 1966, but despite hectic efforts made by the police, the same could not be served. Thereafter proclamation was issued by the Munsiff-Magistrate, Desuri, on August 5, 1966; see Ex. P-12. Then an attachment order was issued by the same court on August 9, 1966 (vide Ex. P-34). In pursuance of the attachment order certain movable and immovable properties of the accused were attached. But all these efforts proved ineffectual. Eventually the Deputy Superintendent of Police, Mr. T. N. Bhargava, P.W. 3, arranged for several raids and when the accused Jawan Singh was sleeping in front of the temple of Khimla Mata at a distance of about 2 miles from village Kot, he was taken back by the police and was arrested under memo Ex. P-5 dated June 10, 1968. The accused in his statement recorded Under Section 342 Cr.PC says:

I did not abscond but had as usual gone for getting the cultivation done in village Lakhni, Tehsil Bhinmal. After my arrest I came to know of the attachment.' Daryav Singh, D.W. 1, resident of Sarvani, states that during the relevant period the accused cultivated his land, situated on Bhanwria well'. He remained in village Lakhni and did not go away from that village. The witness is not a resident of Lakhni. The distance between his village and Mataji-ka-Guda is about 140 miles. Besides, no reason has been assigned how the accused left his own agricultural land in the village Mataii-ka-Guda and went to a distant village Lakhni to till the land of Daryav Singh. His other witness is Pep Singh (D.W. 2). He is a resident of Asa-pura. He says that he saw Jawan Singh in village Mataji-ka-Guda during the

summer season some 3 and 3 1/2 years back. Jawan Singh told the witness that he was going to village Lakhni to cultivate land. After that he did not see Jawan Singh. In the cross-examination the witness states that he had had no occasion to visit the village Lakhni. The witness also does not remember the year of his meeting with Jawan Singh. His evidence hardly inspires any confidence. The third defence witness is Gopal Singh (D.W. 3), a resident of Mataji-ka-Guda. He says that the police people came to his village and inquired about Jawan Singh. In the village Maha-deoji's fair was celebrated, but the accused did not participate therein. In the cross-examination the witness says that he did not inquire from the accused as to why he was going to village Lakhni, nor did he tell him the reason for leaving the village. The witness does not unequivocally support the plea of the accused that he had gone to village Lakhni during the relevant period in connection with husbandry,

22. The disappearance of the accused after the commission of the alleged crime is a circumstance, which, in the absence of any plausible explanation, goes against the appellant. We are in agreement with the reasoning of learned Counsel for the appellant that mere absconding by itself cannot form the basis of conviction. But, where, as here, there is other evidence to connect the accused with the crime, absconding is a useful piece of corroborative evidence and facts tending to explain the fact of absconding would be relevant Under Section 9 of the Evidence Act: vide illustration (c) to Section 9 of the Act. In support of this proposition reliance is placed on Chandrika Prasad v. Emperor A.I.R. 1930 Oudh 324. The relevant portion is excerpted below:-

When once the Crown has established the guilt of the accused by the evidence of prosecution witnesses then such subsequent conduct may be utilised as furnishing further proof of the correctness of the conclusion as to the guilt of the accused drawn from the evidence of the prosecution witnesses; by itself, however, it can furnish no legitimate proof of the guilt of the accused.

We associate ourselves with the above view and are, in the circumstances of this case, in agreement with the trial Court that the abscondence of the accused here does furnish a corroborative piece of evidence.

23. learned Counsel then challenged the testimony of the 3 witnesses, namely, Chhatar Singh, P.W. 2, Doula, P.W. 16, and Khuman Singh, P.W. 22. About Chhatar Singh his argument is that he being a brother of the deceased Bheru Singh is an interested witness. He admits that his relations with the accused were amicable. How then he became the target of the accused has not been explained. The learned Counsel adds that the witness made certain improvements in his statement in respect of the narration of the incident to Khuman Singh, although the same is not available in the dying declaration Ex. D-5. learned Counsel further submitted that Chhatar Singh has not explained how his relation Than Singh of village Mevi Kalan came to know of his arrival from his place of posting in village Kotri to village Thakur-ji-ka-Guda.

24. The fact that Chhatar Singh is 'the brother of Bheru Singh does not detract from the value to be attached to his evidence, Naturally enough Chhatar Singh is interested in seeing that the real culprit should be convicted of the offences. He cannot be looked for to adopt a course by which some innocent person would be substituted for the person really guilty of the crime and that too when no enmity as such has been proved to have existed between the witness and the accused as would induce him to give false evidence and to substitute him as the culprit in place of the real culprit, As has been observed by their Lordships of the Supreme Court in Bhupen-dra Singh v. 1438 his feelings would be the strongest against the real culprit and consequently his evidence cannot be discarded on the mere ground of his close interest in the deceased. The fact how Than Singh, P.W. 26, sent for Chhatar Singh in village Thakurji-ka-Guda stands explained by him. He says:-

Two days before the date of occurrence, Lakhma Bhambi resident of my village informed me that he had gone to Khinwada where he saw Bheru Singh deceased getting down from the bus. On the basis of the information, I had come to know that Bheru Singh had come in the village.... By the way, I told Bhan-war Singh that in case Chhatar Singh had also come, he might inform him also to come with Bheru Singh for meeting.

In his statement before the trial court Chhatar Singh has said:

After the accused had gone away from the place Dolia Thori and Bhuman Singh came near him. I narrated the incident to my brother Khuman Singh in the presence of Dolia under what circumstances accused Jawan Singh had fired gun-shot at him as well as at his brother and at the camel.

In the dying declaration Ex. D-5 such a narration is not available, nor is there any mention of the challenge initially thrown by Jawan Singh. This is a mere omission. It would not tantamount to contradiction. The reason assigned by the accused for the omission is that he was then in a perturbed condition. That apart, under the law dying declaration need not be exhaustive and disclose all the surrounding circumstances. It cannot be ruled out because of an omission to refer to a particular circumstance of the transaction, nor can any argument be built upon what the declarant has not said in his declaration. In *Abdul Sattar v. Mysore State* A.I.R. 1956 SC 168, it has been observed that even if the dying man is incomplete, the statement of the dying man in so far as it went to implicate the accused would be relevant. Therefore, the omissions in question are of little importance. Chhatar Singh sustained a gun-shot injury on June 23, 1966. This fact lends assurance to his presence on the spot. He gives a graphic account of the whole prosecution story. He has deposed how the accused Jawan Singh was interested in Chenia's land, and now he and his brother were going from village Thakurji-ka-Guda to Mevi to see Thakur Than Singh in connection with the matrimonial alliance of Bheru Singh's daughter with Than Singh's son. Chhatar Singh further states how he and his brother Bheru Singh were challenged by the accused Jawan Singh at Bhikamji-ki-Piou and how he had fired his rifle at his brother Bheru Singh and at himself. The witness has also given a vividly descriptive account of the second fire resorted to by the accused, as a result of which his camel was hit. Chhatar Singh then says that Dolia Thori was an eye witness of the event and that he narrated the whole happening to his brother Khuman Singh (P.W. 22), who arrived at the spot soon after the occurrence. His cross-examination does not in any manner damage his version. In our view the trial court rightly placed reliance upon the testimony of this witness.

25. learned Counsel for the appellant attacked the testimony of Doula on the ground that he is a mere chance witness. How Chhalar Singh addressed Khuman

Singh on the latter's arrival on the spot is not given in his statement before the Munsiff-Magistrate, Desuri (Ex. D-10). The witness, counsel adds, admits that he made a wrong statement before the Committing Court regarding the identification of the

26. We decline to agree with the learned Counsel for the appellant that Doula is a chance witness. The witness says that he cultivates lands of 'Bera Padav', which is just close to the place of the occurrence. From 'Bera Padav' he went to Mevi village to get seeds from Thakur Than Singh. This fact is corroborated by Thakur Than Singh, P.W. 26. He states:

That day that is on the day of occurrence at about 10 or 11 A. M. Dola Naik had come at my house situate in Mevi village in order to have seed of maize. It gave him 8 'Nonas' of the seed equivalent to one maund.

His presence on the spot is further corroborated by Chhatar Singh, P.W. 2, and Khuman Singh, P.W. 22. Zalim Singh, P.W. 23, was called as a 'Motbir' by the police to be associated with preparing requisite documents on the spot. 'The place of the occurrence,' according to this witness, 'was shown to the police by Doula, resident of Barri.' Similarly P.W. 30 Amar Singh, who conducted investigation of the case, found Doula on the spot and he showed to him the place of the incident. The oral evidence about the presence of Doula on the scene of the crime is further strengthened by documentary evidence. Doula's signatures are found in the site description memo, Ex. P-22 and inquest report Ex. P-24. In the face of such an overwhelming evidence about the presence of Doula on the spot the argument of learned Counsel for the accused that Doula should be treated as a mere chance witness is untenable. True, he has not stated in his deposition, recorded by the Munsiff-Magistrate, Desuri, Ex. D-10 the details of the dialogue between Chhatar Singh and his brother Khuman Singh. But that is a mere omission. Such an omission is not of any material consequence. In the examination-in-chief the witness stated that the gun Ex. 10 shown to him was the same which the accused was having, Subsequently he stated:

The gun which the accused the occurrence as mentioned above was like this.

These 2 statements, by no stretch of imagination, can be said to be contradictory. It is not disputed that Doula cultivated the land at 'Bera Padav', where Khuman Singh and Than Singh were also having their agricultural lands. But that fact is not enough to indicate that Doula is the witness of partisan character. We have looked into his cross-examination with requisite concern. There is no indication that he springs from sources which are likely to be tainted, or that he bears any animosity against the accused to wish to implicate him falsely. He has got his land near about the place of the occurrence and that is a sure guarantee of his presence on the spot. He gives a convincingly detailed account of the whole happening. He saw Jawan Singh sitting in the Verandah. He offered him greetings. He saw the accused firing first shot towards Bheru Singh as a result of which both Bheru Singh and Chhatar Singh sustained injuries and both of them fell down from the camel. He also saw Jawan Singh firing second shot towards Bheru Singh's camel. In his presence Chhatar Singh told Khuman Singh as to who had hit him and his brother. The trial Judge watched and knew the demeanour of the witness. The appellate court should not ordinarily interfere with the trial court's opinion as to the credibility of a witness, as the trial Judge alone can appreciate the manner in which the questions were answered, whether with honest candour or with doubtful plausibility. In the instant case the finding of the trial court is that the witness has emerged with credit as a truthful witness and there is no reason why a contrary view should be taken in the matter.

27. Counsel for the appellant in the course of his forceful arguments assaulted the evidence of Khuman Singh. Khuman Singh, brother of the deceased Bheru Singh, rushed to the spot after he had heard gun-fire reports. He saw Bheru Singh's injured camel, limping towards the field of Jetha Teli. He also found the 2 brothers Bheru Singh and Chhatar Singh lying injured and the accused Jawan Singh riding his camel near the water-hut with a gun in his hand. He had a talk with Doula and then with his injured brother Chhatar Singh, who had told him that the accused Jawan Singh in connection with the dispute of the land first gave a warning and then fired at both the brothers. Thereafter the witness left the place and went to the police out-post Khinwada to lodge first information report. learned Counsel for the appellant submits that the testimony of Khuman Singh should not be relied upon as his conduct in leaving the place of occurrence without taking care of his

injured brother Chhatar Singh is unnatural. We do not agree .With this submission. Khuman Singh left witness Doula on the spot to take care of the dead body of Bheru Singh and the injured Chhatar Singh. Had he not gone to the police out-post soon after the occurrence, an argument would have been built that the first information report was not lodged promptly or within reasonable time. In this view, his conduct cannot be said to be unnatural. He gives a detailed narrative of the whole happening in the first information report. The Fact of his relationship with the deceased Bheru Singh and the injured Chhatar Singh would add to the value of his evidence, because he would be interested in getting the real culprit rather than an innocent person punished. He had no motive to give wrong evidence against Jawan Singh, We are unable to agree with the learned Counsel for the appellant that from the trend of his evidence an inference should be drawn that Khuman Singh did not reach the place of the occurrence soon after the crime and did not see the assailant there.

28. Counsel for the appellant also argued that according to the two eye-witnesses, Mst. Panni, P.W. 17 and Mst, Chhagni, P.W. 18, three fires were shot, which could mean that the first fire was shot by Bheru Singh and then the accused Jawan Singh fired his rifle in exercise of the right of private defence of his person. In this connection it may be pointed out that Mst. Panni d/o Jetha Teli, P.W. 17, aged 15 years, turned hostile to the prosecution. In her examination-in-chief she said:

At that time we heard 3 reports of gun.... I am acquainted with accused Jawan Singh present in the court. I did not see him at that time.

29. In her police statement Exhibit P-2 she had said that there were only two gun-fire reports and that she had seen accused Jawan Singh of her village, armed with a gun, on the spot. When she was confronted with the particular portions of the police statement, she disowned them-Likewise Mst. Chhagni, P.W. 18, told the court:

I heard 3 reports of gunfire one after the another.... I know accused Jawan Singh present in the court. I did not see him when I heard gun-fire reports as stated above.

30. In the police statement Exhibit P. 1 she had said that she had heard only 2 gun-fires and that 'Jawan Singh, a man of our village was seen going hurriedly on a camel from Bhikam-Chand-Piou towards our village. Jawan Singh had a gun.' When Mst. Chhagni was, confronted with her earlier statement, she said:

I never stated so in my police statement.

We have read and considered the statements of the above two witnesses as a whole in order to find out whether any weight should be attached to them, These witnesses have not given any reasonable explanation as to why they made inconsistent statements at different stages. It is perfectly clear from their depositions that they have been won over by the accused. Bheru Singh and Chhatar Singh were unarmed. No cross-examination of the other prosecution witnesses has been directed towards the plea of the exercise of the right of private defence. It is manifest that two witnesses showed unfair bias in favour of the accused and we decline to believe in their testimony. The accused has also not set up this plea at the trial, The burden was on him to make out that his case fell under any one of the exceptions. Counsel for the accused has not pointed out proper material, justifying a reasonable presumption in regard to the exercise of the right of private defence of person. We accordingly reject this after-thought plea, raised on behalf of the accused.

31. Considering the testimony of the aforesaid 3 eye-witnesses, we express our inability to hold that the trial court fell into error in accepting their testimony as cogent, convincing and credible, From the oral evidence, discussed above, we are firmly of the opinion that offence Under Section 302, IPC for murdering Bheru Singh has been brought home to the accused beyond reasonable doubt. The accused is also guilty Under Section 307, I, P.C., for causing gun-shot injury to Chhatar Singh. Indictment Under Section 429, IPC further stands satisfactorily proved for shooting Bheru Singh's camel, which died subsequently.

32. As a last resort it was contended that ii the conviction of the accused was to be maintained, then the sentence of death imposed Under Section 302, IPC on the appellant was excessive. In this connection counsel's main submission was that there is lack of motive. Counsel further urged that pre-meditation and delay in trial,

causing mental agony to the appellant, are the factors which could justify more lenient sentence. Counsel cited *State v. Vali Mohammad* : AIR1969 Bom294 .

33. We have already given due consideration to the question of pre-meditation and motive. The accused had challenged his victim Bheru Singh just prior to the occurrence through Chenia, P.W. 15, telling him 'see what happens to him (deceased Bheru Singh) now, and how the deceased Bheru Singh got the land sold in favour of his brother-in-law'. The challenge was reiterated to Bheru Singh by the accused in the presence (of Than Singh (P.W. 26) at Mahadeoji's fair near Mevi village. It cannot, therefore, be said that there was no motive for the crime and that the murder was not pre-meditated or calculated. Further, we have already held that after the commission of the crime the accused absconded. He was arrested on June 10, 1968, i. e., about 2 years after the occurrence Delay in trial under the circumstance cannot be considered as an extenuating factor. It would be a dangerous proposition to state that if a murderer succeeds in making himself scarce, he may then hope to escape the extreme penalty of law in a case in which extreme penalty is called for.

34. In Criminal Appeal No. 157 of 1960, *Dharampal v. State of U. P.* (DA 2-2-1970 CSC), their Lordships of the Supreme Court held that even if the accused gave one single blow with a spear and the victim died and the accused was only 22 years of age, it could not be said that these factors constituted mitigating circumstances, justifying the reduction of sentence. In a recent decision of their Lordships of the Supreme Court *Bhagwan Swamp v. State of U. P.* : 1971 CriLJ413 , it has been pointed out:

Age alone could not be taken as sufficient judicial ground for awarding lesser punishment, though it may be taken into consideration in a mercy petition.

Therefore, in the present case, though the accused is 49 years of age, it is not a ground for awarding the lesser punishment.

35. In our view, there exist no circumstances which we can take into account in reducing the capital sentence. The manner in which two repeated shots were fired by the accused, equipped with a formidable weapon, i. e., a rifle, at the

defenceless and unarmed person shows that the offence committed by the accused was cold blooded and deliberate. It is unfortunate that the accused has indulged in such heinous and violent crime so as to commit the murder of an innocent person who had not given him any offence. We are thus unable to find any cogent ground for interference with the capital sentence.

36. In the result, we accept the reference submitted by learned Sessions judge, Pali, and maintain the conviction of the accused Jawan Singh Under Section 302, IPC and confirm the death sentence awarded to him. We further maintain the convictions and sentences of the appellant Under Sections 307 and 429, IPC The sentences of fine imposed by the trial court on all the three counts, being inapposite, are set aside. The appeal filed by the appellant is accordingly dismissed, subject to the above modification.

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