

State of Rajasthan Vs. Manphool

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Court : Rajasthan

Decided On : May-02-1975

Reported in : 1975(8)WLN281

Judge : C.M. Lodha and; D.P. Gupta, JJ.

Appeal No. : D.B. Criminal Appeal No. 40 of 1975

Appellant : State of Rajasthan

Respondent : Manphool

Judgement :

C.M. Lodha, J.

1. The appellant convict Manphool has been convicted by the Additional Sessions Judge Churu under Section 302, IPC for causing the murders of Smt. Shanti and Mst. Kamla and also under Section 307, IPC for attempting to murder PW. 1 Rameshwar. For the offence under Section 302, IPC he has been sentenced to death and the offence under Section 307 IPC he has been sentenced to four years rigorous imprisonment and a fine of Rs. 200/-, in default of payment of fine, further rigorous imprisonment for one week. It may be stated, here, that one Gopal was also tried along with the appellant for abetting the offence under Sections 302 and 307 IPC. He was charged under Sections 302 and 307 read with Section 109, IPC But he was given benefit of doubt and consequently acquitted.

2. Aggrieved by his convictions and sentences Manphool filed appeal to this Court which has been registered as D.B Criminal Appeal No. 40 of 1975. The learned Additional Sessions Judge has made reference to this Court for confirmation of death sentence.

3. The prosecution case is that there was long standing enmity between the convict Manphool on the one hand, and PW. 1 Rameshwar and his father Dulichand on the other regarding certain agricultural land. It appears that Manphool lost his case regarding the land in the trial Court viz Sub-Divisional Officer. Rajearh (vide judgment Ex. P-35 dated 6 December, 1971 at page 301 of the Papar-Book). It further appears from the statement of PW. 1 Duhchand that appeal from the said judgment was pending in Bikaner on the date of occurrence. On account of the dispute about land, Manphool hatched a deep grudge against Dulichand and his family and was out for their blood. With that object in view; he acquired a licenced gun on 22 June, 1972. Dulichand became apprehensive about his own life and the lives of the members of his family on account of acquisition of a gun by Manphool and applied to the Superintendent of Police and the District Magistrate, Chutu to cancel the licence and take back the gun from Manphool. We have it from the statement of PW. 8 Dulichand that an enquiry was instituted on the application made by him for cancellation of license. But meanwhile, the occurrence in question took place.

4. On 10th October, 1972 at about 7.30 a.m. Rameshwar accompanied by his father Dulichand, his uncle Harnarain his wife Smt. Shanti (deceased) and his sister Smt. Kamla (deceased) went to their field situated in village Rejari. Duhchand went back to the village after about 10 to 15 minutes while the rest of them remained on the field. At about 9.30 am, the accused Manphool and Gopal came to Gopal's field, which is situated adjacent to the field of Dulichand and sat down in a hut (tapi). Gopal remained in the hut whereas Manphool came to Dulichand's field where Rameshwar PW. 1 was sowing grain and the two of them ceased. Smt. Shanti and Smt. Kamla, and PW/2 Harnarain were cutting the crop. After challenging Rameshwar, the appellant Manphool, who was armed with a 12-bore double barrel gun, fired at Rameshwar, as a result of which Rameshwar received injury on left-hand palm near the thumb. At that time Gopal is also alleged to have

come to the scene of occurrence and commanded Manphool to finish Rameshwar and his relations working in the field. When Rameshwar stated running for his life, and the appellant was chasing him, the deceased Smt. Shanti and Smt. Kamla interrupted the assailant Manphool. Manphool fired at Smt. Shanti who received injury in her neck and died at the spot. Smt. Kamla while trying to save her brother Rameshwar, also received a gunshot wound in her abdomen. Manphool ran after Rameshwar and fled twice at him, but both the fires missed the target. Rameshwar then ran through the field of Moola Sarpanch PW. 6, where Moola's co-sharer Goopl Harijan PW/9 was working and took the way to village Ramsartal, and then from Ramsartal, he went to Kishanpurabas where his maternal uncle Ranpat PW/7 was living. He reached Ranpat's house at about 1.30 p.m. Soon after, his father Dulichand P/8, having received information about the occurrence from one Chandgiram CW 1, also arrived there with the injured Smt. Kamla in a Jeep accompanied by Moolaram PW/6 and Sheonath PW/5. From there the party left for Police Station, Rajgarh which is at a distance of 30 miles from the place of occurrence, but on the way Smt. Kamla expired PW/1. Rameshwar lodged first information report of the occurrence (Ex. P.11) with the SHO PW/11 Sumer Singh at Police Station Rajgarh at 3.15 PM. Sumer Singh registered a case against the accused Manphool and Gopal under Sections 302 and 307 read with Section 109 IPC and sent Rameshwar as well as the dead body of Smt. Kamla to Rajgarh Hospital for medical examination. He went to the place of occurrence on 11th October, 1972 and recovered the dead body of Smt. Shanti and certain other articles including four empties, marked Articles 16 to 19, a pair of shoe alleged to be of Rameshwar, one B jolya, blood-stained earth etc. The dead body of Smt. Shanti was sent for post-mortem examination on the same day.

Manphool was arrested on 15th October, 1972 in the jungle of village Gotta (vide arrest memo Ex. P/17). At the time of arrest, Manphool was carrying on his person a 12-ore double barrel gun No. 82407, as also a bag (sic) eight live cartridges, and a licence of the gun. The Station House Officer seized the gun as well as the bag (vide seizure memo Ex. P/18). Thereafter he sent the gun, the empties and the live cartridges to the Director-Cum-Chemical Examiner to the Government of India, Central Forensic Laboratory, Calcutta for examination. The shirt and Dhoti alleged to be worn by Rameshwar were also taken possession of (vide seizure memo Ex.

P/12). Thus, after the investigation was complete, both the accused were challaned in the Court of Munsiff Magistrate first Class, Rajgarh, who committed them for trial to the Court of Additional Sessions Judge, Churu.

5. The prosecution examined in all 11 witnesses and relied on a number of documents at the trial. Statement of Or. S.K. Narula recorded in the committing Court was transferred to the his of the trial Court. The court the examined one Chandgiram as Court witness No I Both the accused Henied having committed any offence. The appellant Manphool in his statement under Section 342, Cr. P.C. admitted recovery of the gun and the bag containing cartridges and a licence from his possession at the time of his arrest, but pleaded alibi and stated 'hat he had gone to village Patodhi (Haryana) since 15 to 20 days before the occurrence and had been arrested in Patodhi with the gun and the bag In support of his plea of alibi, Manphool examined 5 witnesses The learned trial Court held the case against the accused appellant Minphool proved beyond reasonable doubt and convicted and Sentenced him as stated above. The other accused Gopal was given benefit of doubt and acquitted and since the State is not aggrieved of his acquittal, we shall confine our discussion of the prosecution evidence to the case against the appellant Manphool, only.

6. We hive gone through the judgment under appeal as well as the recorded of the case. The trial Court has no doubt not properly discussed the evidence But that is not of much importance as we nave ourselves thoroughly examined the record and heard counsel for the parties at considerable length.

7. That Smt. Shanti dad Smt. Kamla died of gun-shot injuries on the day of occurrence is beyond dispute. Similarly, it is beyond dispute that the dead body of Smt. Shanti was recovered from the field of Dulichand. The question is whether the appellant Manphool is responsible for gun-shot injuries on Smt. Shanti and Smt. Kamla and whether the alleged gun shot injury found on the left hind palm of PW/1 Rameshwar was also caused at the place of occurrence by the appellant Manphool.

8. The prosecution has proved by direct as well as circumstantial evidence against the appellant, and we propose to deal with each piece of evidence relied upon by

the prosecution in some details. We may first deal with the direct evidence consisting of the statements of PW/1 Rameshwar, PW/2 Harnarain, and CW/1 Chandgiram.

9. PW/1 Rameshwar has supported the prosecution case in all details. The criticism advanced by the learned Counsel for the appellant in respect of this witness is that he was not present at the scene of occurrence and that he did not receive any gun-shot injury on his left-hand palm. His evidence has been attacked on the ground that he lodged the first Information Report after considerable delay and after consultation and deliberations with his kith and kin. He has stated that the occurrence took place to about 9.30 AM in his field situated in village Rejari and that Manphool fired the shot at him first. A suggestion was made to PW/1 Rameshwar in cross examination that the injury received by him was self-inflicted and he suffered it voluntarily in order to become an eye-witness. Rameshwar emphatically denied this suggestion. Curiously enough, no such suggestion was made to Dr S.K. Narula, who examined the injury. Dr. Narula has stated that he examined the body of PW/1 Rameshwar on 10th October 1972 i.e. the day of occurrence at 8 00 p.m. and found the following injuries on his person:

I. WOUND OF ENTRANCE:

(1) size and number; There was one wound of entrance situated on the outer aspect of the left hand near the base of the thumb of the size of 1/2' x 1 1/2' x muscle deep, shape of the wound was rectangular. Edges of the wound were inverted and acchymosed, skin surrounding the wound was normal, direction of the wound was upwards and inwards.

II WOUND OF EXIT:

There was one wound of exit situated on the thenar eminence of the left palm 1 1/2' above and medial to the wound of entrance, size 1/2' x 1/2' x muscle deep, irregular in shape, the edges were everted and torn & the skin surrounding the wound was normal. Direction of the wound of exit was downwards and outwards.

He has stated that both the wounds were caused by gun-shot, the duration of which was about 10 hours and, that, in his opinion, the fire arm was discharged from a distance of 30 feet or so. He has proved the injury report of Rameshwar prepared by him (marked Ex. P/2 in the committing Court). There is absolutely no evidence to show that the injuries found on the person of PW/1 Rameshwar were self-inflicted. In view of the positive statement of Dr. S.K. Narula that the two wounds found on the left hand palm of Rameshwar were caused by gun-shot, we do not see any reason to accept the argument made by learned Counsel for the appellant that these were self-inflicted injuries. Learned Counsel in this connection has laid great stress on the statement of PW/11 Sumer Singh therein Sumer Singh has stated that there were no holes in the injured palm of Rameshwar, but there was clotted blood on the palm, From this statement we are completely unable to infer that there were no wounds on Rameshwar's palm as described by Dr. S.K. Narula. The holes may not have been visible to Sumer Singh distinctly on account of bleeding from the palm. It is important to note that Rameshwar was examined by the Doctor the same day at 8.00 PM. Sumer Singh has clearly deposed that when Rameshwar presented himself at the Police Station at 3.15 PM. his palm was injured and bleeding.

10. Another criticism of the learned Counsel for the appellant in this connection is that if the gun had been fired from a distance of 15 to 20 'pawndas' (75 to 100 feet) as narrated by PW/1 Rameshwar, there would have been a considerable dispersal of pellets and more injuries would have been received on different parts of the body of Rameshwar. It is true that no other injury was found on the person of Rameshwar except the wounds of entrance and exit as described above. But the explanation given by PW/1 Rameshwar is that some of the pellets struck the 'Bijoliya' i.e. the bag containing seeds which he was carrying with him while ploughing the field. He also states that some pellets struck left lower portion of his shirt but did not strike his private parts. He further states that when the pellets struck his left hand palm his hand was on the handle of the plough. Thus according to him, a few pellets instead of striking his body, struck the handle of the plough and also passed through his clothes i.e., the shirt and the dhoti but did not strike other parts of his body. This in our opinion, is quite possible. Some of the pellets may not have struck any part of his body and may have fallen on the ground.

the We are, there fore, of opinion that the prosecution has succeeded in proving that the injuries found on the left hand palm of Rameshwar were caused by a gunshot.

11. Then it has been argued that Rameshwar's behaviour after the alleged firing at him s unnatural and improbable, in an much as instead of going to his village Rajeri he went towards Ramsartal and then to his maternal uncle who was at Kishanpurbas. It should be remembered that the prosecution case is that after having fired at two Indies, Manphool made two fires at Rameshwar but he missed the target In such a situation, it is quite understandable that on account of the fear of being chased by his assailant, instead of going to his own village, he an toward another direction i.e. towards Ramsartal for his life. This is the explanation given by Rameshwar in his statement (as page 15 of the paper book), and we do not see anything unnatural about the behaviour of Rameshwar in running towards Ramsartal.

12. Another critician of Rimeshwar's evidence is that he went to Kishanpurabas for having consultation with his maternal uncle Ranpat and then lodged the first information Report after considerable delay We are cot impressed by this argument. The dist nee between the scene of occurrence and the Police Station is 30 miles and having given up the idea of going to his village if he proceeded to Kishanpurabas to seek the help of a very close relation of his viz his maternal uncle Ranpat, It cannot be said that the story narrated by this witness is false. He narrated the incident to PW/7 Ranpat, and there after when his father Dulichaud arrived there along with the injured Smt. Kamla, they all left for Police Station, Rajgarh and lodged the First Information Report, Looking to the distance between the place of occurrence and the Police Station, Rajgarh and the time which would have naturally been taken up by the party in reaching Rajgarh, it cannot be said that the First Information Report was made after delay.

13. Another point of criticism advanced against this witness is that he is an arch enemy of the accused Manphool on account of long standing dispute about land, and, therefore, it suited him very well to implicate Manphool falsely in the offence It is true 'hat there was enmity between Rameshwar and his father Dulichand on the

one hind and Manphool on the other. Enmity is a double edged weapon and it is to be decided, to the facts and circumstances of each case, whether the prosecution witnesses have falsely implicated the accused on account of enmity or whether the accused on account of enmity has committed the offence. If we are convinced of the truth of the prosecution case against the accused, then there is no room for holding that Rameshwar and other prosecution witnesses have falsely implicated the accused on account of enmity. If, on the other hand, we find the evidence to be unreliable, we may be persuaded to come to conclusion that it is on account of enmity that the accused has been implicated. But as we shall presently point out the evidence of Rameshwar, corroborated by other eye witnesses and the circumstantial evidence has led us to the conclusion that the substratum of the prosecution story is true and we see no reason for accepting the argument that the appellant has been falsely implicated on account of enmity.

14. One major point of criticism advanced by the learned Counsel for the appellant against PW/2 Rameshwar as also other eye-witnesses is that they have falsely implicated Gopal, who has been acquitted by the lower Court, and therefore, their evidence should be rejected. We have applied our minds to this aspect of the case with all the care and attention it deserves. We may point out that the learned trial Court has given six reasons for giving benefit of doubt to the accused Gopal. It has been observed, in the first instance, that it was doubtful that the accused Gopal should have given a command to Manphool to fire at Rameshwar, particularly when Manphool had already taken the initiative by challenging Rameshwar and firing at him. The second point made out by the Court below '88 that the Court-witness Chandgi-ram has not implicated Gopal at all. The third argument is that it is doubtful whether Gopal was at all in the hut of his field or at the spot. Another argument is that foot prints of the accused Gopal were not found on the boundary of the field, and that no serious quarrel or enmity had been shown between Gopal and Rameshwar and last that if Gopal wanted to kill Manphool, he should have armed himself with some weapon. On the aforesaid reasoning the learned trial Judge has given Gopal benefit of doubt.

15. It need hardly be pointed out that if the evidence of a witness or witnesses in respect of the co accused is not found convincing, then his or their evidence is not

liable to be rejected against the other accused on that ground alone. One may rarely come across a witness whose evidence; may be flawless from start to the finish and may contain the whole truth and tot ling but he truth Over implication, embroidery and embellishments are a common phenomenon which courts do come arrows day in and day out, and in such circumstances, it is the duty of the Court to scrutinise the evidence carefully and find out whether there are other circumstances proved in the case which may lend assurance to the mind of the Court regarding the complicity of the other accused We may, here, recall that in the first place the accused Gopal has been given only the benefit of doubt. But apart from that it will be our Endeavour to find out whether there are assuring circumstances brought forth on the record to corroborate the testimony of the witnesses against the appellant We cannot therefore, reject the testimony of Rameshwar or for that matter of other witnesses merely because their evidence has not been considered sufficient or convincing against Gopal (co accused) We may, state that after a very close examination of (sic) evidence of PW/1 Rameshwar and other eye-witnesses viz. Harnarain and Chandgiram, we have come to the conclusion that there are no much material discrepancies or inherent infirmities in their statements so as to brandish these witnesses as unreliable, We will now proceed to give reasons in support of this conclusion. At this stage, we may refer to the other evidence, which has lent assurance to the presence of Rameshwar at the spot at the relevant time.

16. Apart from what Rameshwar has himself stated, we find that there are other circumstances which go to show that he was present at the spot at the relevant time. We may mention, in the first instance, the presence of gun shot injury on his left hand palm Then, there is the evidence of PW/2 Harnarain, CW/1 Chandgiram arid PW/9 Gopal Harijan, all of whom have deposed to the presence of PW/1 Rameshwar at the spot. PW/2 Harnarain states that be was cutting the crop in Dulichand's field at the relevant time when Manphool came with a gun and fired at Rameshwar and thereafter be shot at Smt Shanti and Smt. Kamla and then chased Rameshwar who managed to escape and ran towards Ramsartal, PW/9 Gopal has stated that he saw Rameshwar running towards Ramsartal village and though he called out Rimeshwar, but the latter did not stop. He further states that at that time he climbed the boundary wall of the fitted and saw Manphool with a

gun in Dulichand filed CW/1 Chandgiram has stated that he saw Manohool accused running after Rameshwar with a gun in his hand in the field of Dulichand. We have scrutinised the evidence of these witnesses. No doubt. Hamarain is a close relation of Rameshwar but for that reason alone, his testimony cannot be rejected. His presence in the field was most natural as he had come with Rameshwar to cut the crop in the field. PW/9 Gopal Harijan is a co sharer of Moola and, therefore, his presence in Moola's field nearby is also natural. The names of Hamarain and Gopal Harijan have been mentioned in the first information report. We do not see any reason for discarding the evidence of these witnesses about the presence of Rameshwar at the spot. Chandgiram has been examined as a Court-witness. He is the person who informed Dulichand of the occurrence and Dulichand also corroborates this fact.

17. Another corroborative circumstance is the recovery of 'Bijolia' Article 10 (vide seizure memo Ex. P/11). It was found stained with human blood vide Serilogist's Report Ex. P/33. The clothes taken from the body of Rameshwar, viz, a shirt and a dhoti were also found stained with human blood and there were holes in them. Now, it may be recalled that PW/1 Rameshwar has stated that at the time when the gun was fired at him by Manphool, he was carrying a Bijolia on his person. Then, we have the statement of Ranpat PW/7 who has stated that Rameshwar came to him at about midday and narrated the whole incident to him and that he also saw an injury on his left hand palm. Lastly, the first information report was lodged by PW/1 Rameshwar at Police Station Rajgarh at 3.15 PM the same day. These circumstances, in our opinion, corroborate the testimony of Rameshwar that he was present at the spot and a gun-shot fired at him by Manphool caused injury on his left-hand palm. We are, therefore, convinced that Rameshwar was present at the spot at the relevant time and a gun-shot injury was caused to him. The question then is, for what reason he would leave out the real culprit and would falsely implicate another man. Chances of mistaken identification are completely nil, because it was broad day light - 9.30 AM in the morning of October and the occurrence took place in an open field. In these circumstances we accept the testimony of Rameshwar to the effect that he was present at the spot and was fired at by Manphool accused.

18. The next eye witness is PW/2 Harnarain. He has corroborated the statement of PW/1 Rameshwar in all material particulars. He has stated that he had gone with Rameshwar to the field of Dulichand on the day of occurrence at about 7 30 AM in the company of Rameshwar, Smt. Shanti, Smt. Kamla and Dulichand. Dulichand went back to the village after about 20 minutes. He further states that at about 9.30 AM when Rameshwar was sowing gram and he Smt. Kamla and Smt. Saanti were cutting the crop. He heard sound of a gun-fire coming from the boundary of the field of Gopal and then he knew that the accused Manphool was chasing Rameshwar with a gun in his hand. Thereupon, he asked Smt Kamla and Smt. Shanti to run and get Rameshwar rescued since his foot was ailing on account of wound in his knee. It is then stated that Smt, Shanti and Smt. Kamla who tried to come in between Manphool and Rameshwar in order to save the latter were fired at by Manphool and Rameshwar ran away.

19. The other eye-witness CW/1 Chandgiram states that he went to Gopal to smoke a 'chilam' at about 9 30 AM on the day of occurrence and both of them, (he and Gopal) sat on a cot lying in the hut of Gopal in his field. He states that he had cultivated a portion of Sheoram's field situated near Dulichand's field. He has deposed that while he and Gopal accused were smoking a 'Chilam', sound of two gun-fires was heard and 'hereupon he and Gopal both came out of the hut and saw from a distance of about 500 yards that the accused Manphool was running after Rameshwar with a gun. He further states that he told Gopal that they should do something to save Rameshwar but Gopal replied that since they were unarmed and Manphool had gun, they were helpless. He also states that thereafter he and Gopal ran towards the village and he informed Dulichand father of Rameshwar about what he had seen in the field.

20. Nothing has been brought out in the cross examination of these two witnesses, Harnarain and Chandgiram so as to discredit their testimony. There are no inconsistencies or material discrepancies in the statements of these witnesses. Harnarain is no doubt an uncle of Rameshwar but as already pointed out above, mere relationship is no ground for discarding the testimony of the witness. Chandgiram had no interestedness or enmity in either of the parties. He has clearly stated in his cross-examination that he does not belong to any party nor had

he evinced interest in the litigation regarding land between them. In these circumstances we do not see any reason to discard the testimony of these two witnesses also.

21. We would now address ourselves to other corroborative evidence against Manphool. This, we may divide under three heads: 1. Manphool having been seen armed with a gun at or near the place of occurrence before the incident. 2. Manphool having been seen armed with a gun near the place of occurrence shortly after the occurrence. 3. Connection of the empties found on the spot with the gun recovered from Manphool at the time of his arrest.

We shall deal with these three types of evidence in the same order in which they have been listed above.

22. PW/5 Sheonath has stated that in the morning of the day of occurrence he was going to his field from village Rejiri and saw Manphool and Gopal accused going ahead of him. Manphool had a gun with him and he had also a bag, hanging in his neck. Gopal was empty handed. He states that his field is contiguous to Dulichand's field where the occurrence took place. He further states that he also saw PW/9 Gopal Harijan going to his field. PW/2 Gopal has stated that while he was going to his field in the morning of the day of occurrence, he saw Manphool and Gopal going ahead of him. Manphool was carrying a 12 bore double barrel gun and a bag with him and that at about 9 or 9.30 AM he heard sound of gun fire. This witness is a co-sharer of Moola whose field is situated only one field away from Dulichand's field.

23. We have gone through the statements of these witnesses and find that their presence near about the field where the occurrence took place was natural as their fields were in the vicinity of the scene of occurrence. We also find a ring of truth in their evidence.

24. Then there are the statements of Chandgiram CW/1 and PW/2 Gopal Harijan who depose to the presence of Manphool near about the place of occurrence soon after the incident. PW/9 Gopal has also stated that he saw Rameshwar running towards Ramsanat village and though he had tried to talk with him, Rameshwar

did not stop. We further states that he saw accused Manahool to the field of Dulichand running towards a hillock. Bath these witnesses saw Manphool running with a gun in his hand after the alleged occurrence. Thus the presence of the accused Manphool with a gun in his hands at or near the place of occurrence a little before and immediately after the occurrence is established.

25. We shall now consider the evidence of the ballistic expert PW/10 Dr. S.M. Chatterjee, who has deposed that the empties which have been marked Ex B/1 and B/3 by him were fired from the left barrel of the gun Article 15, and the empties marked Ex B/2 and B/4 were fired from the right barrel of the gun which has been marked by him as Ex A. He states that he fired in all nine test cartridges out of which he brought two of them in the trial Court. He himself took photos of the empties and the test cartridges. These photos have been maiked Ex. P 25 to P/30. and the negatives are marked Ex. P/29 and Ex P/30. He also prepared a report of his examination Ex. P/24 dated 11th February, 1973, and has proved the same. He has further deposed that firing impressions and he scrape marks on the test cartridges were found to match with those on the empties and his, therefore, concluded that cartridges B1 and B3 bad been fired through the left barrel of the gun and cartridges B2 and B4 had been fired thtough the right barrel of the gun Ex 15,

26. Learned Counsel for the appellant has strenuously criticized the evidence of this witness on the ground that he is no: an expert in the true sense of the term in as much as he even does not know what 'thumb mark' and 'family thumb marks' on the cartridge cases mean. It has ban argued that he has not given any teas ins in support of his opinion and merely saying that the firing pin impressions and the scrape marks in the test cartridges were found to match with those on the crime cartridges or empties is not sufficient. In order that his evidence may be accepted, submits earned Counsel be should have positively stated that the marks were identical.

27. We have examined the report Ex. P/24 as well as scrutinised the evidence of PW/10 Dr S.M Chatterjee. The two points on the basis of which he has given his opinion are matching of (1) firing pin impressions and (2) scrape marks on the test

cartridges with those of the crime (sic). In the book 'The Identification of firearms and Forensic Ballistics' by Major Sir Gerald Burrard, it is observed at page 29 'In both central and rim fire cartridges the discharge is brought about by striking the cap either directly with the front end of the hammer, or the with the front end of a small rod, or 'pin' which is knocked forward by the hammer, or by what corresponds to the hammer in bolt action weapons. The limb which actually hits the cap is called the striker or firing pin, and, as has just been explained, it may be either an integral part of the hammer or else a separate component. Further at page 121. the learned author observes that 'Scrapes' are comparatively common in cartridges which have been fired from self-loading or automatic weapons. When one cartridge is fired and ejected the next in the magazine is pushed up by the magazine spring and thrust forwards into the chamber by the breach block as it comes forward again after firing. If there is some projection, or even roughness on the front part of the magazine or in the mechanism of the weapon the side of every cartridge may be scraped as it is pushed forward into the chamber, Similarly there may be a burr in the metal of the chamber itself which causes a scrape either as the cartridge is inserted into the chamber or else as it is withdrawn. All scrapes of this nature which have been produced in one weapon will occupy a constant position on the side of the case relative to some fixed markings on the base, such as the ejector mark. The learned author goes on to observe that it is useless to consider scrapes when working at an identification unless the cases are orientated by the base marks in the first place'

28. While dealing with 'fingerprint' or 'thumb mark' the learned author observed at page 106 that the firearm leaves its finger print or thumb mark on every cartridge which it fires. The distinctness with which this thumb mark is imprinted naturally varies with the pressure but its image will always be present even though it is sometimes difficult to detect. If there is any pronounced peculiarity in any particular breach face, this peculiarity must leave its imprint on the base of every cartridge fired from that weapon.

29. 'Breach face' has been defined as follows in the same book at page 16:

'Breach face'-The breach end of the chamber is sealed by a solid flat block of metal against which the barrel comes into position when the weapon is closed for firing, and which is termed the breach face.

30. Now, so far as finger print or thumb mark by the impact of the breach face is concerned, the witness has stated that there were no breach marks in the crime cartridge cases. To our surprise the witness has expressed ignorance regarding the terms 'thumb marks' and 'family thumb marks', which any person claiming to be an expert in the ballistics is supposed to know. He has stated that the scrape marks on the test cartridges were found to match with those on the crime cartridge but he has not taken photographs of these scrape marks and contented himself by only taking photographs of the firing pin impression on the cartridge cases. Consequently, this evidence regarding identity of the scrape marks is of no value. We are left with only the identity of firing pin impressions. But on reading the evidence of this witness as a whole we are not satisfied that his evidence can be safely relied upon. He has stated nothing to show that he is an expert in ballistics. Reasons are conspicuous by their absence both in the report Ex P/24 as also in his statement in support of the conclusions he has drawn. We are, therefore, not prepared to accept his opinion that the crime cartridge carried the gun which was recovered from the possession of the accused.

31. There is yet another circumstance on account of which we cannot place implicit reliance on this evidence. PW/11 Sumer Singh has stated that the empties and the gun remained lying with him in the Police Station and had been properly sealed. He further states that he sent them to ballistic expert after 20 to 25 days. But in the very next sentence he deposes that he sent the gun as well as the empties to the Superintendent of Police, Churu. But he does not know when the Superintendent of Police, Churu sent them to the ballistic expert. It is further stated that there is no copy of the letter by which the articles were sent by the Superintendent of Police, to the Ballistic Expert and that he was simply deposing by memory that the gun and the empties had been sent to Superintendent of Police, Churu after 20 to 25 days. However, we find from the report of the Forensic Science Laboratory dated 11th May, 1973 Ex. P/24 that the gun and the empties were received by the office of the Director Central Forensic Science Laboratory,

Calcutta on 12-2-1973 through messenger by a letter dated 29-1-1973. This means that the articles were dispatched to be ballistic expert after about four months of (he alleged recovery. It has been held by this Court time and again that such an inordinate lay in sending the articles to the ballistic expert raises a sanction against the prosecution. Reference in this connection may be made to Harnarain v. State 1974 RLW 159. Again in Shan a Singh v. State of Punjab : 1976 CriLJ1875 where an emory case was recovered on 10-9-1954, but it was dispatched for examination to the ballistic expert on 27-10-1954, their Lordships were pleased to hold that there was an inordinate delay on the part of the prosecution in sending the Articles to the ballistic expert and this sort of delay raises a suspicion against the prosecution There is no evidence in the present case that ail chances of tampering with the empties and the gun were excluded during the period they remained in the custody of the Station House Officer as well as the Sup-intendent of Police. We even do not know with whom the seal remained during this long period of abut four months when the gun and empties remained in possession of the police Taking all these factors into consideration, we find it difficult to place much reliance on this evidence. Certainly, better evidence on the ballistic experts could have been produced by the prosecution.

32. But even in absence of ballistic evidence, we have direct evidence of the crime as well as strong circumstantial evidence connecting the accused appellant with it. The fact that the evidence of Rameshwar and Harnarain that Gopal accused gave command to the appellant Manphool to fire at the victims has not been accepted by the lower Court is no ground for jettisoning their evidence altogether. Their evidence against the appellant coupled with other evidence, as discussed above, leads us to the irresistible conclusion the that the appellant caused gun-shot injuries to Ramesbwar, Shani, and Kamal out of whom the latter two died, and therefore the appellant has rightly been held guilt of offences under Section 302.

33. The question that now remains is one of sentence. We have considered this matter rather anxiously But in the circumstances manifest here, the appellant's crime is cruel and inhuman, as a consequence of which there have been two deaths dastardly and pathetic. It is, therefore, a fit case in which death sentence should be confirmed. We are aware of the trend towards abolition of capital

punishment, We are also aware of the recommendation made by the Government that no death sentence may be awarded or executed during the year of 2500th anniversary of Bhagwan Mahaveer commencing from 16th November, 1974. But the Court is bound to award sentence according to law and it is entirely a matter for the clemency of the Governor or the President, if appropriately moved, to commute the sentence or not to commute it.

34. Accordingly, we reject Manphool's appeal and maintain his convictions under Sections 302 and 307. IPC The sentence of four years rigorous imprisonment under Section 307, IPC is maintained, but the sentence of fine is set aside. We also allow the reference and hereby confirm the sentence of death passed on the accused Manphool 1. He shall be hanged by neck till he is dead. Let the sentence be carried out in accordance with law.

35. Learned Counsel for the appellant Manphool prays for grant of leave to appeal to Supreme Court under Article 134(1)(c) of Constitution. The decision of the case turns upon facts and pure appreciation of evidence. No question of law is involved. The prayer for leave to appeal is, therefore, rejected.

36. Learned counsel for the appellant further submits that his client intends to present a petition to the Supreme Court for grant of special leave to appeal under Article 136 of the Constitution. Consequently, we hereby direct under Section 416(3) of the Code of Criminal Procedure, 1973 that execution of the sentence shall be postpaid for 60 days so as to enable the convict to present such petition. Let the Add Sessions Judge, Churu be informed accordingly.