

Prithvi Singh Vs. the State

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SooperKanoon Citation : sooperkanoon.com/756791

Court : Rajasthan

Decided On : Dec-11-1968

Reported in : 1968WLN275

Judge : L.S. Mehta and; C.M. Lodha, JJ.

Appeal No. : D.B. Criminal Appeal No. 10 of 1968

Appellant : Prithvi Singh

Respondent : The State

Judgement :

L.S. Mehta, J.

1. Accused Prithvi Singh, son of Dayal Singh, Jat Sikh resident of Mohalla, District Ganganagar, has been convicted by learned Sessions Judge, Ganganagar, on November 25, 1967, under Section 302, I.P.C, and sentenced to imprisonment for life and to pay a fine of Rs. 100/-∈ default of payment of fine to suffer rigorous imprisonment for a further period of two months. He has further been held guilty under Section 307, Penal Code, and sentenced to rigorous imprisonment for four years. He has also been convicted under Section 25, Indian Arms Act, and sentenced to rigorous imprisonment for one month. All the sentences have been directed to run concurrently. The other accused, Dayal Singh, father of Prithvi Singh, and Mai Singh, brother of Prithvi Singh, have been acquitted of the

offences under Sections 302/34, and 307/34, Penal Code.

2. The prosecution story can be ranged within a narrow compass. The accused Dayal Singh was on inimical terms with Gurumukh Singh. It is alleged that Ajaib Singh, son of Dayal Singh, had been assassinated sometime ago. In that case Dayal Singh wanted Gurumukh Singh to give evidence on behalf of the prosecution. The latter declined to do so. This created enmity between Gurumukh Singh and Dayal Singh. On November 24, 1966, at about 5 pm. the three accused, Prithvi Singh, Mai Singh and Dayal Singh went to Gurumukh Singh's thrashing floor, where he his son Raajeet Singh, and his 'Siri' Joginder Singh were working. Prithvi Singh was armed with a 12 bore gun. He was going ahead towards Gurumukh Singh's land. He was followed by the accused Dayal Singh and Mai Singh. The two accused asked Prithvi Singh not to spare Gurumukh Singh and others. When Prithvi Singh arrived at the place about 15 paces away from the thrashing floor, he fired his gun towards Ranjeet Singh, resulting in certain injuries on his person. Soon after Prithvi Singh fired another shot, which hit Joginder Singh. An alarm was raised by Gurumukh Singh, whereupon Jagtar Singh and others rushed to the spot. Later on, the accused persons took to their heels. The injured Ranjeet Singh and Joginder Singh were taken in a jeep car to the Police Station, Kashringshpur, where first information report of the incident was lodged by Gurumukh Singh. Both the injured persons were then sent to the Primary Health Centre, Karanpur. Their injuries were examined by Dr. Joginder Singh P.W. 4, Medical Officer, that very day at about 11 p.m. following injuries were noticed on the person of Ranjeet Singh:

1. Gun shot wound of entry $1/4 \times 1/4$ ' on the left thigh back in its middle more to the other side.

2. Gun shot wound of exit of injury No. 1, $1/2 \times 1/3$ ' on the left thigh frontier side just at a little higher level than its middle.

3. Gunshot wound of entry $1/4 \times 1/4$ ' on the medial side of the left fore-arm about 2' above the medial condyle of the humerus.

4. Gun shot wound of exit of injury No. 3, 1/2'x 1/4' with anterior medial side of the left arm in its middle.

The Doctor found the two injuries, noted below, on the person of Joginder Singh:

1. Gun shot wound of entry 1/2' X 1/3' on the left side of the abdomen just above the left tubercle of the Polvi bone. Grievous by gun shot.

2. Gun shot wound abrasion 1/2'x1/4'x1/4' on the left thigh inner side upper 1/4' just below the level of left testicle. Simple by a passing shot. No blackening and charring of the skin present.

Next day, i.e., on November 25, 1966, the Doctor, having seen the condition of the injured Joginder Singh precariously serious, sent a letter to the Sub-Divisional Magistrate, Karanpur, for recording his dying declaration. His statement was put in writing that day by Sub-Divisional Magistrate, Karanpur, at 6-45. a. m. There after Joginder Singh died in the hospital at 5. p.m. Autopsy of his dead body was performed by the Doctor at 9 a.m. on November 26, 1966. According to the Doctor, the cause of his death was shock and toxemia due to generalized peritonitis caused by perforation of the intestines as a result of injury No. 1. Bhanwar Lal, S.H.O. Keshringshpur, being on leave initial investigation was taken in hand by Om Prakash, P.W. 6. He went to the spot on November 25, 1966. He found an empty cartridge Ex. 5 and a wad Ex. 7, near the scene of the incident. These articles were seized by him. Site plan Ex. P.19 and a description memo Ex. P.20 were prepared by him. The accused Prithvi Singh was arrested on November 25. 1966. He gave information to the police as to the place, where he had kept the weapon of the offence, 12 bore single barrel country made gun, and empty cartridge and a live cartridge, vide Ex. P.24. The Police recovered all the three articles, i. e., the gun Ex. 3, live cartridge Ex. 5, and empty cartridge Ex. 4 from the house of the accused Prithvi Singh at his instance under memo Ex. P.25. The gun, empty cartridge and the the wad, duly sealed, were sent to the Forensic Laboratory, Chandigarh, for examination. Pellets Ex. 10, recovered from the body of Joginder Singh by the Medical Officer, Primary Health Centre, Karanpur, were also sent to the Ballistic expert for test. The report of the Ballistic expert is that the empty cartridge had been fired from the gun sent to him. It was also opined that

the wad and the pellets could form part of the cartridge received by him. The accused Dayal Singh and Mai Singh were arrested on December 1, 1966. The gun, recovered at the instance of Prithvi Singh, was found to be in his possession without any licence. A case under the Indian Arms Act was registered against him on December 1, 1966. after having obtained requisite sanction for his prosecution from the District Magistrate Ganganagar. A charge-sheet under Sections 302 and 307, read with Section 14, Penal Code, was put up against all the accused in the court of Sub-Divisional Magistrate, Kananpur. The said Magistrate conducted necessary inquiry in accordance with Section 207-A., Cr. P.C, and committed all the three accused to the court of Sessions Judge. Ganganagar. Prithvi Singh was to stand trial under Sections 302 and 307, I.P.C. and under Section 25, Indian Arms Act. The other two accused, Mai Singh and Dayal Singh were to face trial under Section 302, read with Section 34, I.P.C. as also under Sections 307/34 I.P.C. The accused pleaded not guilty to the charges. In support of its case, the prosecution examined 9 witnesses. In their statement, recorded under Section 343, Cr. P.C, the accused persons made total denial of the indictments. They did not produce any evidence in their defence. Eventually, learned Sessions Judge, Ganganagar, by his judgment, dated November 25, 1967, acquitted the accused Dayal Singh and Mai Singh by giving them benefit of doubt, and convicted and sentenced the culprit Prithvi Singh as aforesaid. Aggrieved against the above verdict, Prithvi Singh has filed this appeal. Contention of learned Counsel for the appellant is that the evidence produced by the prosecution in this case is false and concocted. According to learned counsel, Ranjeet Singh P.W. I, though present on the spot didn't see Prithvi Singh actually firing at him & towards Joginder Singh Gurumukh Singh, father of Ranjeet Singh, & Hari Singh, brother of Joginder Singh, learned Counsel adds were not present on the spot. They are subsequent introduction. Counsel has further urged that the dying declaration Ex. P.4 recorded by Sub-Divisional Magistrate, Karanpur, Shri Roshan Lal is not worthy of credence. He then debated that another dying declaration Ex. P.32. recorded by the Police cannot be relied upon as it was simply a statement taken down under Section 161. Cr. P.C. Learned Counsel also argued that Jagtar Singh. Rohel Singh and Ganga Singh were material witnesses in the case, but they have been withheld by the prosecution. Therefore, adverse inference should be drawn

against it. Last contention of the appellant's counsel is that there is no reliable evidence to conclude that gun Ex. 3. live cartridge Ex. 5 and fired cartridge Ex. 4, recovered from the house of the accused, as also empty cartridge case Ex. 6 and wad Ex. 7, seized by the Police on the spot, reached the Ballastic Expert in a sealed condition and that the seals affixed at the time of their recoveries remained intact and were not tampered with in transit. Learned Deputy Government Advocate supported in toto the judgment of the court below.

3. In this case the prosecution has relied upon 3 sets of evidence, namely, (1) eye-witness, P.W. 1. Ranjeet Singh, P.W. 2, Gurmukh Singh and P.W. 5 Hari Sineh, (2) two dying declarations, Ex. P. 4 dated November 25, 1966, recorded by Sub-Divisional Magistrate, Karanpur. and Ex. P.32, put in writing by the Investigating Officer, on November 24, 1966; and (3) recovery of the gun Ex. 3 live cartridge Ex. 5, and the fired cartridge Ex. 4, as also recovery of empty case Ex. 6 and wad Ex. 7 together with the statement of Dr. B.R. Sharma, P.W. 3, Director Forensic Science Laboratory, Chandigarh.

4. We may first take up the first set of evidence. Learned Counsel for the accused has argued that Ranjeet Singh P.W. 1. was, no doubt, present on the spot, but according to him his face was towards the south whereas firing was done from the north-west, Ranjeet Singh received certain injuries at the place of the occurrence, According to the Doctor Joginder Singh P.W. 4, he sustained the injuries mentioned above. The duration of the injuries was within 24 hours and the injuries were caused by gun shot and were simple in nature. These injuries could have been the result of a single fire. In this context there can be no feeling of uncertainty that he was present on the spot. There is also nothing on the record to show that Ranjeet Singh had any axe to grind against the appellant. Ranjeet Singh has indubitably said in his statement Ex. D. 3 that when Prithvi Singh was about 10 paces away from him, Dayal Singh and Mai Singh threw a challenge. In the trial court he says that the distance between him and Prithvi Singh was 15 to 18 paces. The site inspection memo contains that the distance between 'A', where the witness was standing, and the spot marked 'F', where from Prithvi Singh fired, is 32 paces. From this inconsistency it cannot be inferred that Ranjeet Singh is a liar. He is a villager and the estimate given by him is based on a rough calculation. It

cannot be concluded therefore that the assailant was inside Balbir Singh's Bara, shown in the site plan Ex. P.19, or that he might be standing in the nearby 'nullah'. It appears from Ranjeet Singh's deposition that the 'Nohra' of Balbir Singh is head-high. If some one else was in the 'Nohara' or in the nearby 'nullah', as shown in the plan, the pellets would have hit the upper portions of the bodies of the victim and not the lower ones. The witnesses positively stated that it is not a fact that the gun was fired from inside the 'Nohna' of Balbir Singh. Learned Counsel for the appellant has pointed out that Ranjeet Singh's face was towards the south and the gun was fired from towards the north west and as such he could not have seen the firer. The witness has deposed that when Prithvi Singh fired, his face was towards the south. He has further stated that immediately before the fire he was standing facing east. Later on he has said that at the time of the second fire he was facing towards Prithvi Singh and that the second fire was made within a minute or a half after the first fire. It was but natural for the witness that even if he was facing towards the south and the injury which he sustained was not his back, he would curiously look back as to who was the assailant. At any rate, there is his positive statement that when the second fire was shot, he did see the accused Prithvi Singh. He might have gone to the nearby 'Bara' situated, as shown in the site plan, at No. 17 where the blood stains were found, but that does not necessarily mean that he could not have seen Prithvi Singh, specially when the walls of the Bara were having a wall of 9' high only. Learned Counsel for the appellant has pointed out that it is in the evidence of the Station House Officer, Om Prakash, P.W. 5, that the empty cartridge was found at the place 'H' in the site plan. If Prithvi Singh was standing at the place 'F', the fired cartridge could not have been found at the place 'H'. In this connection suffice it to say that the empty cartridge after the first fire might have remained in the barrel or might have been discharged near the place where Prithvi Singh was standing. There is the possibility that the accused might have taken out the empty cartridge near the place where from the gun was fired, while reloading it. There is further possibility that the empty cartridge might have tossed upto the place 'H' before the recovery memo prepared. From the fact that empty cartridge was found at the place 'H', it cannot be inferred that the gun was not fired from the place 'F'. The 'nullah' is at a distance of 7 or 8 paces away from the place 'F', but there is no evidence to suggest that the firer was standing in the

'nullah'. It will, therefore, be preposterous to assume that the firer was either in the 'nullah' or in Balbir Singh's 'Nohra' and was not visible to Ranjeet Singh. Another argument stressed by learned Counsel for the appellant is that there was only one fire and that the story that the gun was fired twice is a tissue of lies. Ranjeet Singh has no doubt stated that he did not see the accused reloading the gun after the first fire. Dr. Joginder Singh has also said in his statement that if the dispersion is wide enough to cover both the injured persons, both of them could receive all the injuries by a single fire. According to learned Counsel Ranjeet Singh and Joginder Singh were on the same line and, therefore, both of them could have been hit by one fire. Learned Counsel has further argued that in the dying declaration Joginder Singh has not deposed that two fires had been made. He has also pointed out that as there was enmity between Dayal Singh, on the one hand, Gurumukh Singh, on the other, the second assault could, and ought to have been aimed at Gurumukh Singh, and not towards Joginder Singh. Had the gun been fired twice, two wads should have been found on the spot. In this connection, it may be stated that it is not necessary that Ranjeet Singh should have seen the reloading of the gun. Ranjeet Singh was shot at. It was, therefore, expected of him to have immediately found out as to who the firer was and then to run away for self-preservation. The gun must have been reloaded soon after the first fire and Ranjeet Singh might not have in that hurry seen the accused in doing so. A man in that position could not have minutely discerned the act of reloading. Dr. Joginder Singh P.W. 4, has positively stated that both the injured received their injuries by 4 pellets in all. Ranjeet Singh received injuries on his back and that both the injuries could not have been caused by one shot. In the dying declaration Ex. P. 5, recorded by the Sub-Divisional Magistrate, Karanpur, on November, 25, 1966, there is no insertion that there were two fires. It is in the prosecution evidence of Dr. Joginder Singh, P.W. 4, that at the time of making the dying declaration, the condition of the deponent was deteriorating and grew serious. It was, therefore, hardly possible for him to make a detailed dying declaration. At any rate, he has not s

5. The trial court, which examined the witness Ranjeet Singh and watched his demeanour, believed in his statement. In our opinion, we are not justified in this case in taking a different view of the witnesses credibility from that adopted by the trial Judge. Though learned Counsel for the appellant has enumerated a series of

points on which he wants that we should base our view that this evidence is such that no reliance can be placed upon it, but they are just the sort of points as to which the only person who can effectively form an opinion and draw conclusions is the trial Judge who had the witness before him. The trial Judge knew the demeanour of the witness, he could well appreciate the manner in which questions were answered and he alone could form a reliable opinion as to whether the witness had emerged with credit from cross examination. Be that as it may, we have with caution gone through the evidence & we agree with the trial court. We think, on making all due allowances for the effect on memory of the lapse of time, the prosecution story is, in all main respects, true and reliable, as revealed by this witness.

6. Gurumukh Singh, P.W. 2, is another eye-witness of the event. The incident took place on the field of this witness. It cannot under any stretch of imagination be said that the presence of Gurumukh Singh on his own field was unnatural, more especially when the crop was being harvested. He lodged, with promptitude, first information report within two hours of the occurrence at the police station, Keshrsinghpur, which is situate at a distance of about 5 miles from the place where the murder took place. It is correct that his name has not been specifically mentioned in the dying declaration, Ex. P.4, recorded by Sub-Divisional Magistrate, Karanpur, on November 25, 1966 That declaration was made when the deceased, according to Dr. Joginder Singh, was in a very serious state of health, and it could not be anticipated that he would make a statement given full particulars of the event. However, his name appears in the earlier dying declaration, Ex. P.3. recorded by the police on November, 24, 1966. It is urged by appellant's counsel that hatred or ill-will subsisted with Gurumukh Singh and that when he kept standing in the field, he ought to have been made the first target. According to the statement of Ranjeet Singh, P.W. 1, Gurumukh Singh was at a distance of about 15 paces from him and was closer to Joginder Singh when the shots were fired. He was nearly 10 paces away from Joginder Singh towards the north. Thus, Gurumukh Singh and Joginder Singh were not far away from each other. There is every possibility that the accused might have missed the fire and the pellets went off towards Joginder Singh. Another argument advanced for not believing in the statement of Gurumukh Singh is that he did not take care of his

injured son Ranjeet Singh soon after the event. It is in the statement of Ranjeet Singh that Gurumukh Singh saw his injuries after reaching his house. The conduct on his part, counsel stressed, is unnatural. In this connection it may be pointed out that Gurumukh Singh's son Ranjeet Singh received only simple injuries. Joginder Singh, on the other hand, sustained a fatal blow. The witness, therefore was more concerned with Joginder Singh, and not with Ranjeet Singh. It is in the evidence of Gurumukh Singh that he took Ranjeet Singh and Joginder Singh to the Police Station, Keshringhpur, in a jeep car soon after the occurrence. Gurumukh Singh has further stated that he could not ask the villagers to catch the accused person as he had accompanied the injured. In the first information report Gurumukh Singh stated that the gun which Prithvi Singh used was having a double barrel. In his statement recorded by the trial court he has said that the gun was having only one barrel. Prithvi Singh is alleged to have fired his gun towards Ranjeet Singh from a distance of about 32 paces. It was not expected of the witness to have seen the gun minutely, particularly when his own life was not immune from danger. Similarly it was hardly possible for the witness to exactly remember the different colours of the clothes of the accused persons. Thus, the criticism leveled against the testimony of Gurumukh Singh is not very effective. Our opinion with his credibility, formed after careful consideration, agrees with that of the trial Judge.

7. Another eye-witness is Had Singh P.W. 5. He is the brother of Joginder Singh. A mere relationship is no ground for discarding his evidence. A witness is normally considered to be independent unless he springs from sources which are likely to be tainted & unless the witness has cause such as enmity against the accused, to wish to implicate an innocent person. Ordinarily a close relative would not resort to screening the real culprit & falsely implicating an innocent man : vide Dalip Singh and Ors. v. The State of Punjab : [1954]1SCR145 . As has been held in Gurcharan Singh and Anr. v. State of Punjab : 1956 CriLJ827 , relationship of the prosecution witnesses is no ground for not acting upon their testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses, who can be expected to be here about the place of the occurrence and could have seen what happened there. In this case it is nowhere found on the record that Hari Singh was in any manner on inimical terms with the accused. His presence is mentioned in the first information report Ex. P.1 lodged within two hours of the occurrence. His presence

is further assured by the statements of Ranjeet Singh P.W. 1, and Gurumukh Singh, P.W. 2. According to these witnesses Hari Singh was also working in the field of Gurumukh Singh that day At one place Ranjeet Singh says that Hari Singh was sleeping on the ground, where as Gurumukh Singh says that he was working there. This does not amount to any material contradiction. Ranjeet Singh might have seen Hari Singh lying on the ground, but that does not mean that he was not present there, Another comment offered by learned Counsel for the appellant against Hari Singh is that he did not attend his injured brother Joginder Singh. It is in the evidence of Ranjeet Singh that Joginder Singh went to his house with the support of his brother. Hari Singh also says that he did not bandage the injuries of Joginder Singh as there was no necessary for doing so. This is supported by Dr. Joginder Singh, P.W. 4. who has said that there was no profuse bleeding from the wounds of Joginder Singh. Learned Counsel for the appellant further pointed out that Hari Singh took no steps to go Police Station, Keshringshpur, to lodge first information report, nor did he talk about this matter to other villagers. The first information report was made within two hours after the occurrence by Gurumukh Singh, Therefore, there was no imperative need for Hari Singh to file another report or to ask Jagtar Singh, Rohel Singh or Ganga Singh to make a report. The witness might not have accompanied the injured persons to the Police Station, Keshringshpur, on the date of the occurrence for want of accommodation in the jeep car. But he did go to the hospital the very next day, i.e., on November 25, 1969. From this it cannot be inferred that his conduct is unnatural. The post-mortem examination of Joginder Singh was performed on November 25, 1966, at 9 A.M, in the presence of Hari Singh. There is, therefore, no wonder that Hari Singh could be examined by the police on November 26, 1966. By and liege the trial court has relied upon the statement of Hari Singh and we do not find any substantial reason on the basis of which we may throw over board his testimony.

5. Learned Counsel for the appellant next laid great stress on the point that the statements of the above 3 eye witnesses should be condemned on the ground that they pointed out the presence of the three accused Dayal Singh, Mal Singh & Prihvi Singh, on the spot but this fact was not accepted by the trial court. The judgment of the court below shows that the presence of the two accused, Mal Singh & Dayal Singh, has not been negatived outright. Only benefit of doubt has

been given to them Merely because two of the three accused have been acquitted, though the evidence against all of them so far as the direct testimony went, was the same, it does not necessarily follow that the third accused must be similarly acquitted: vide *Gurcharan Singh and Anr. v. State of Punjab* : 1956 CriLJ827 . In the instant case the lower court has differentiated the case of the accused, Mai Singh and Dayal Singh, who have been acquitted, from that of the appellant ∈ addition to that the evidence of the witnesses as against the convicted accused is consistent and unshaken. Thus, there is no sufficient reason for this Court to go behind the finding of the lower court. The occurrence took place during the day time. The three witnesses saw the accused Prithvi Singh firing on the deceased as also towards Ranjeet Singh. That apart the, maxim 'falsus in uno falsus omnibus', (false in one thing, false in every thing) is neither a sound rule of law, nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of falsehood or, at any rate, exaggerations, embroideries or embellishment: vide *Ugar Ahir and Ors. v. The State of Bihar* : AIR 1965 SC277 . That being the settled legal position, it is the duty of the court to scrutinise the evidence carefully and separate the grain from the chaff. In effect, the trial court believed practically the entire version given by the three witnesses in regard to the firing made by the accused Prithvi Singh and the trial court removed the chaff and accepted the grain and convicted the appellant. We find no stout reason to take a different view in the matter.

6. The accused deceased Joginder Singh made two dying declarations. His statement was first recorded in accordance with the provisions of Section 161, Cr. P.C., by the police on November 24, 1966. and is marked Ex. P. 32. Thereafter when his condition became precarious and grave in the hospital, his deposition was recorded on oath by Sub-Divisional Magistrate, Karanpur, in the presence of the Medical Officer, Joginder Singh P.W. 4. Learned Counsel for the appellant has argued that in the dying declaration Ex. P.4 the deceased introduced a rifle. He also stated contrary to the prosecution story that Dayal Singh and Mai Singh told Prithvi Singh to put an end to the Jives of Joginder Singh and Ranjeet Singh and, therefore, that statement must be considered to be a tutored one. In the dying declaration Joginder Singh has positively stated that he had been hit by Prithvisingh with a rifle. Normally, one cannot expect from villagers to understand

subtle difference between a rifle and a 12 bore gun Had Joginder Singh been tutored by his relatives, he would not have deposed that Dayal Singh and Mal Singh told Prithvi Singh to kill Joginder Singh and Ranjeet Singh, at any rate, Joginder Singh has, beyond any manner of doubt, implicated Prithvi Singh.

7. His another dying declaration recorded by the police on November 24, 1966, Ex. P.32 appears on the whole to be immune from flaw. It is in harmony & consonance with the prosecution story. This statement was given by the deceased at the time when his condition was not much too grave and that is why it is not shorn of details. The trial court, therefore, rightly relied upon this declaration. It is not possible to lay down any hard and fast rule when a dying declaration should be accepted, beyond saying that each case must be decided in the light of other facts and the surrounding circumstances. If the court after taking into consideration relevant circumstances, is convinced that the statement is true, it is its duty to convict solely on its basis: vide *In re Guruswami Tevar and Ors.* AIR 1940 Mad. 196 *In Abdul Sattar v. State of Mysore* : 1958 CriLJ106 , Hon'ble Bhagvati J., speaking for the court, observed that in a murder case if the dying declaration in regard to the accused having shot the deceased; is complete in itself, Even though incomplete otherwise, it is complete in so far as the accused having shot the deceased is concerned and can safely be relied on by the; prosecution. *Khushal Rao v. State of Bombay* : 1958 CriLJ106 . is another authoritative pronouncement on the dying declaration. In that case it has been observed by His Lordship Sinha, J. that if once the court comes to the conclusion that the dying declaration is a truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. There is a later decision of the Supreme Court reported as *Muniappan v. State of Madras* : 1961 CriLJ315 . In that case His Lordship, M, Hidayatullah J. (as he then was), delivering the main judgment, has pointed out that where the dying declaration recorded at the police station, was a complete statement against the accused having stabbed the deceased and there was nothing to show that the maker of the statement had anything further to add, but the dying declaration was not complete in the sense that on account of sudden collapse of the deceased his thumb impression to the statement was taken only after his death in the presence of witnesses, the dying declaration was admissible in evidence and could be taken into consideration even

without any corroboration. Thus, it is manifest that corroboration is not always necessary if the dying declaration is complete in its accusation. In the case in hand, apart from the two dying declarations, there is direct evidence which incriminates the accused. The recovery of the gun, alive and a fired cartridge from the house of the accused as also the recovery of a fired cartridge and was on the scene of the occurrence and the report of the ballistic expert that the empty cartridges were fired from the gun recovered furnish important corroborative evidence. In view of these facts we are satisfied that the dying declarations in this case are worthy of trust. The dying declarations are, in our opinion, apart from some minor discrepancies, categorical in character and they unmistakably accuse the appellant of the crime, & we have no hesitation in accepting them.

8. Learned Counsel for the appellant strenuously urged that there is no-motive whatsoever satisfactorily set up by the prosecution in this case. According to Gurumukh Singh, Dayal Singh's son Ajaib Singh had been murdered in the past. Dayal Singh wanted that he should give evidence in that case on behalf of the prosecution, but he refused to do so, consequently, Dayal Singh incurred annoyance against him and he wanted to put an end to his life. Disastrous crimes are committed at times on account of very slight motives. Absence of motive of existence of an inadequate motive is of no importance, where there exists cogent evidence that a crime in fact has been committed by certain persons. That is to say when there is a direct evidence of an eye-witness, motive recedes to the background. Absence of motive involves only this that the other evidence has got to be very closely scrutinised: vide *Atley v. State of Uttar Pradesh* : AIR1955 All328 . In that case it has been pointed out by their Lordships of the Supreme Court that where there is clear proof, of motive for the crime that lends additional support to the finding of the court that the accused was guilty, but the absence of such proof does not necessarily lead to, the contrary conclusion. Similarly, in *Gurcharan Singh and Anr. v. State of Punjab* : 1956 CriLJ827 , it has been laid down that where the positive evidence against the accused is very clear, cogent and reliable, the question of motive has no significance.

9. Another point taken by learned Counsel for the appellant is that Jagtar Singh, Ganga Singh and Rohel Singh, who arrived on the scene of the occurrence, soon

after the firing, have not been examined by the prosecution, and, therefore, adverse inference should be drawn against the prosecution by virtue of illustration (g) to Section 114, Evidence Act. In the course of his arguments learned Counsel adverted to *Mahendrapal and Anr. v. The State* : AIR1955 All328 . It is a fact that the above; named 3 persons reached the spot after the occurrence. When a number of other eye witnesses have been produced, there is no charm in producing and multiplying a number of witnesses to affirm the same fact. Though as a general rule, all. prosecution witnesses should be called to testify at the hearing of the prosecution, there is no obligation compelling the counsel for the prosecution to call all witnesses, who speak to the same facts, which the prosecution desires to prove. Prosecutor has a discretion as to what witnesses should be called for the prosecution and the court; will not interfere with the exercise of that discretion. The court, no doubt, will take into consideration the absence of witnesses whose testimony would be accepted, but it would at the same time Judge the evidence as a whole and arrive at it's; conclusion accordingly, taking into consideration the persuasiveness of the evidence given in the light of such criticism as may be levelled in the absence of possible witnesses These Views get support from the judgments of their Lordships of the Privy Council, reported in *Add Mohammed E1 Dabbah v. Attorney General of Palestine* AIR 1945 P.C. 42 and *Malak Khan v. Emperor* AIR 1946 P.C. 16. There is, thus, no obligation on the prosecution to produce all witnesses to bear evidence to the same fact. The prosecutor has a discretion as to what witnesses should be called and the court will Dot interfere with the exercise of that discretion, unless it can be shown that the. prosecution has been influenced by some oblique motive. The Allahabad case (supra) referred to by learned Counsel for the appellant does not hold him. In that case certain witnesses were examined by the Investigating Officer, but they were not produced in the course of the trial. The court held that the evidence of all these witnesses was material not with a view to prove the actual fact of the murder which was in issue, but to prove the relevant fact namely, that just after the event the eye witnesses disclosed the names of the culprits to those who came and that this relevant' fact was connected with the fact in issue in view of illustration (a) to Section 3, Evidence Act. In the instant case, all these persons did not disclose any useful information to the police at the time of

investigation. They are not the witnesses 'essential to the unfolding of the narrative on which the prosecution was based.' No oblique reason; for their non-production was alleged, least of all proved. There was, therefore, no obligation on the part of the prosecution to examine them : See *Bakhshish Singh v. State of Punjab* : 1957 CriLJ1459 .

10. Learned Counsel for the appellant in the end, urged that recovery of the gun and the fired cartridges is of no consequence as there is no evidence that ever since their recovery, their seals remained intact till they reached the hands of the ballistic expert. In so far as the gun is concerned, it was produced before the Station House Officer, Bhanwarlal, P.W. 9, for the purpose of registration by Dayal Singh, father of the accused. The Station House Officer, registered the relevant description of the gun and returned it to Dayal Singh with the receipt Ex. P.12, and he was allowed to keep the gun with him. The witness has identified that this was the very gun which had been produced before him. In so far as the recovery of the fired cartridges is concerned, it is in the evidence of the Station House Officer, Om prakash, P.W. 5, that he seized an empty cartridge and a wad from the place of the occurrence and sealed them then and there. Its recovery memo is Ex. P.22. Sample of the seal was affixed on this memo. The empty cartridge is Ex. 7 and the recovery memo is Ex. P.22. Prithvi Singh accused also gave information that he had placed a 12 bore country made gun, a live cartridge and an empty cartridge in his residential house & that he would get them recovered. This information was reduced into writing and is marked Ex. P.24. Thereafter, accused Prithvi Singh got these articles recovered from his house under the memo Ex. P.25. The empty and the live cartridges were sealed separately by him and a sample of the seal was also affixed on the recovery memo Ex. P.25. He has identified before the trial court that the gun Ex. 3, empty cartridge Ex. 4, and the live cartridge Ex. 5 are the same which Prithvi Singh had got recovered from his 'Kotha'. He has also identified Exs. 6 & 7. Bhanwarlal, P.W. 9. has stated on oath that seal over the articles remained with the Station House Officer at the Police Station and that the packages were dispatched from the Police Station, on December 13, 1966. duly sealed. He has further pointed out that the seals on these articles were intact so long as they remained in his possession. Letter Ex. P.30, which was sent by the Superintendent of Police Ganganagar, to the Director, Forensic Science

Laboratory, Chandigarh, bears the sample of the seal of the Police Station, Keshrisinghpur. The director compared that seal with the seals on the packets and he found that these seals tallied with each other. Learned Counsel for the appellant cited *Ukha Khole v. The State of Maharashtra* AIR 1953 S.C. 1531, wherein there is an observation that the report of the Chemical Examiner mentions that a sealed phial was recovered from the police officer, but there is no evidence that the seal was one, which was of fixed by Dr. Rote on the phial. These undoubtedly were defects in the prosecution, which appeared to have occurred on account of insufficient appreciation of the character of the burden which the prosecution undertakes in proving a case of criminal offence. The facts of the Supreme Court case are distinguishable from those of the case in hand. In the Supreme Court case the report of the Chemical Examiner, did not mention that the seal was one which was put by Dr. Rote. There no evidence was led by the prosecution to prove that the seal put by Dr. Rote remained intact. Here the ballistic expert Dr. BR. Sharma P.W. 3, has been produced into the witness box and he has unequivocally stated that the seals on the parcels were intact and that they tallied with the specimen seal provided to him. He has further pointed out that he fired two test cartridges from the gun Ex. 3. He studied the marks on the test cartridges Exs. 8 & 9 & compared them with those found on Exs. 4 & 6 He found that the marks of the test and the crime cartridges tallied. According to him. cartridges Exs. 4 & 6 had been fired from the gun Ex. 3. The ballistic expert further reveals that the pellet Ex. 10 can form part of the cartridge Ex. 4. That pellet was extracted from the body of Joginder Singh deceased by the Doctor. It was put in a phial and sealed by him. He sent the sealed Phial to the police. He has identified that the shot Ex. 10 is the same which was taken out from the dead body. Thus, there is no manner of suspicion that the recovered gun and the empty cartridges &the; pellet reached the hands of the ballistic expert and their seals were not tampered with in any manner.

11. In the result offences under Sections 302 and 307, I.P.C., are fully proved against the accused Prithvi Singh. As the gun stood in the name of the accused Dayal Singh, father of the accused Prithvi Singh, the latter should not have been convicted under Section 25 of the Indian Arms Act. He is, therefore, acquitted of the offence under the said section. It may also be pointed out that when the

accused has been convicted under Section 302, I.P.C, the court ought not to have imposed a sentence of fine on him. The sentence of fine in a murder case is wholly inapposite.

12. As a result, we partly accept the appeal and acquit the accused under Section 25, Indian Arms Act, and remit the sentence of fine imposed on him under Section 302, I.P.C His convictions and sentences under Section 302 & 307, Penal Code, are maintained. Both the sentences, passed under Sections 302 and 307, I.P.C, shall run concurrently.

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