

Mani Ram and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-01-1994

Reported in : 1994CriLJ3770; 1994(1)WLN161

Judge : J.R. Chopra and; R.P. Saxena, JJ.

Acts : [Arms Act, 1959](#) - Sections 25, 25(1) and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 303, 307, 341, 353, 392, 393, 394, 396, 397 and 411; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cr. Jail Appeal Nos. 375 and 376 of 1990

Appellant : Mani Ram and anr.

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : H.S. Kharliya, Adv.

Disposition : Appeal dismissed

Judgement :

J.R. Chopra, J.

1. These two jail appeals, one filed by Maniram Thore s/o Kesraram- and another by one Ram Swaroop, s/o Jeewan Ram, are directed against the judgment of the

learned Additional Sessions Judge No. 1, Hanumanagarh, Camp Sangariya, dated 30-11-1990.

2. The learned Judge has held the accused appellants guilty of the offences under 302/34 IPC, 307/ 34 IPC, 353/34 IPC and under Sections 25(i)(a) and 27 of the Arms Act and in addition accused Maniram has been held guilty of the offence under Section 411 IPC. For the offence under Section 302/34 IPC both have been sentenced to life imprisonment, along with a fine of Rs. 100/- each. For the offence under Section 307/34 IPC, they have been sentenced to 7 years rigorous imprisonment together with a fine of Rs. 100/-each. For the offence under Section 353/34 IPC both of them have been sentenced to one year's rigorous imprisonment and for the offence under Section 25(1)(a) and Section 27 of the Arms Act, both have been sentenced to one year's rigorous imprisonment on each count along with a fine of Rs. 50/-on each count. For the offence under Section 411 IPC, accused Mani Ram has been sentenced to two years' rigorous imprisonment. In default of payment of the amount of fine, each one of them has been sentenced to one month's rigorous imprisonment. Both of them have been acquitted of the offences under Sections 392 and 397 IPC.

3. Accused Madan Lal was also held guilty of the offence under Section 25(i)(a) of the Arms Act and was sentenced to one year's rigorous imprisonment together with a fine of Rs. 50/-. In default of payment of fine he was ordered to undergo 15 days' rigorous imprisonment. However, he was acquitted of the offence under Sections 302/34 IPC, 307/34 IPC, Section 353 IPC and Section 27 of the Indian Arms Act. He has preferred no appeal.

4. Facts necessary to be noticed for the disposal of these appeals, as are revealed from FIR No. 133/81 lodged by one Ram Rakh, marked as Ex. P/43 and as revealed by the judgment of the learned Addl. Sessions Judge, Sirsa dated 28-12-1982 and the appellate judgment rendered by the Division Bench of the Punjab and Haryana High Court in Cr. Appeal No. 763/82 decided on 4-4-83 show that accused Mani Ram is a previous convict in several cases.

5. The family of Shri Maniram Sinwar who is his relation, was living in a dhani. It is alleged that on July 24, 1981 at about 6.00 p.m. he went to his Dhani. Mani Ram

Sinwar was not available and, therefore, he tied his son and put him in a 'Kotri' and looted the ornaments of Mani Ram Sinwar's wife. About that a Criminal Case No. 133/81 was registered in P. S. Teebi, on a report lodged by Ram Rakh, s/ o Lalu Ram, Jat, r/ o Saharani, who is brother of Mani Ram Sinwar. Dhani of Maniram Sinwar is situated in the precinct of vilalge Sahaarni. Accused Madan is alleged to be the son of one Rajuram Jat of Chutala. Rajuram's daughter was married to Mani Ram's son and it is alleged that Madan was abducted by Maniaram, with the help of present accused Ram Swaroop and he was kept with him forcibly. Be that as it may, this party consisting Mani Ram Thori, Ram Swaroop and Madan, after looting the ornaments of Maniram Sinwar's wife forcibly took away a Ford Tractor HRN 3677 from there and accused Madan was forced to drive it, They then came to the Dhani of Rajaram in village Chutala. There it is alleged that accused Madan was asked to sit on the Tractor which was kept in a starting condition and Mani Ram Thori and Ram Swaroop went inside and killed Rajaram and then they started on this Tractor towards Sangariya. Chutala is situated in the State of Haryana and it is at a distance of about two-three Kms. from Ratanpura Tiraha (triangle), which is situated at some distance from Town Sangariya.

6. It is alleged that S.H.O., Sangariya received instructions from Addl. S.P., Hanumangarh, for the checking of stolen vehicles and, therefore, Shri Gopala Ram, S.H.O., Sangariya, along with Charan Singh, ASI, Manraj, Sultan Singh, Murlidhar, Satya Narain and Ram Niwas, Constables, went to Ratanpura Triangle for Nakabandi, i.e., to check the vehicles there. They went in Jeep No. JKT 5668 which was driven by Raju Ram Raika. After going to Ratanpura Tiraha (Triangle) where Teebi to Sangariya road meets the road Sangariya to Hanumangarh, they stopped the jeep near the Triangle of the road and Shri Gopala Ram, S.H.O., Shri Charan Singh and the Driver were sitting in the jeep and the rest of the police personnel were asked to stand on the road and to check the vehicles. It is alleged that while standing there, these persons heard two shots of gun fire from the side of village Chutala. On this, S.H.O., Gopala Ram, asked his police personnel to keep a strict vigil on the vehicles that are passing that way and after some time they saw that this Tractor H RN 3677 ascending the road from Sangariya to Hanumangarh and coming towards their side. It is alleged that the police party made a sign to the Tractor to stop but it did not stop. The persons sitting on the

Tractor fired at the police party which was standing at the opposite side of the road, i.e. towards the western side of the road going from Sangariya to Hanumangarh. When the Tractor did not stop at the sign given by the police personnel, the driver put on the lights of the Jeep which was standing near the Triangle of the road and in the light of that jeep they saw that accused Mani Ram and Ram Swaroop were sitting on the Tractor and the Tractor was being driven by Madan. Mani Ram and Ram Sukh both were armed with rifles and Madan Lal was driving the Tractor. When the Tractor did not stop, then they put their jeep behind the Tractor to chase it and stop it. The jeep went to a distance of about 200 yards behind the Tractor. At that point of time the accused persons stopped the Tractor in the middle of the road with its lights on and took positions on both sides of the road and started firing at the police party. Seeing that the police party is being fired at, they stopped the jeep and took positions. When Shri Raju Ram, driver, was alighting from the Jeep, it is alleged that he was hit by a shot fired by the accused-side and he fell down at place 'G' in Ex. P/16 and died. The encounter took place for about 3 or 3 1/2 hours. When it was informed to the SHO, Shri Gopala Ram that Rajuram has been hit and he has died, he asked the police personnel not to leave the place and in the meanwhile he asked two constables, Shri Satya Narain and Shri Sultan Singh to go to the Police Station and report the matter to the higher authorities and bring extra force. Shri Sultan Singh and Shri Satya Narain, after going to police station, lodged a 'rapat' in the 'Rojnamcha' marked as Ex. P/42, at about 4.00 a.m. They informed the Dy. S. P. Shri Prahlad Rai Jewaria, and he immediately came into action and came to the place of the occurrence, i.e. Ratanpura Tiraha, with a police force in a truck and a jeep. He was informed by these two constables that these three persons i.e. Mani Ram, Ram Swaroop and Madan, accused, have engaged the police in an encounter. When Shri Prahlad Rai reached the spot, the S.H.O. immediately informed him that these three persons who were going on a Tractor have taken positions and are firing on the police party and have engaged them in an encounter, in which a shot fired by them has hit the driver. On this, the Dy. S. P. informed the SHO that he should go to the police station, lodge a 'rapat' of this fact in the Rojnamcha and inform the higher authorities for sending more force and thereafter the police party headed by the Dy. S. P. took position there. On this, Shri Gopala Ram went to Police Station,

Sangariya. There he wrote a'rapat' in the Rojnamcha at 4.45 a.m., marked as Ex. P/15 A on the basis of this an FIR has been recorded by him which is bearing No. 153/81 and which has been registered under Sections 302, 307, 353/34 IPC and Section 27 Arm's Act against accused Mani Ram, Madan and Ram Swaroop. After doing this and informing Addl. S. P. Hanumanagarh, he came back at about 6.00 a.m. The site was inspected and Ex. P/16 site plan was prepared. The firing almost stopped after the Dy. S.P.'s arrival. Thereafter, the Dy. S. P. gave instructions to go in search of the accused persons and they went in search of the accused persons. One Khoji's services were also requisitioned, who met them near Mallad khera and the Dy. S.P. and Jaipal Sharma, AS1, went to village Malladkhera. There they saw accused persons near the canal which is situated near the Dhani of Surjaram and Jalawar Singh. In the meanwhile it is alleged that these accused persons went near Nagrana minor, where the field of one Ramkaran is situated. Ramkaran was ploughing his field with a she camel. That was snatched from him and these three accused persons sat on that she camel and went towards Nagrana minor, and there in the Dhani of Surjaram, they forcibly snatched from him the Eisher tractor and when they were trying to escape with that tractor, they were spotted by the police party and an encounter took place between them. Almost 8 rounds were fired by the accused party on the police party and the police party also returned the fire. There after it is alleged that the accused persons went towards village Pirkamadiya. In the way Ram Swaroop jumped from the tractor and escaped. The Addl. S.P. came from the opposite side and the police party headed by Shri Prahlad Rai ,was also following them from the other side and in this process they were over powered by the police party near village Pirkamadiya, the site plan of which has been prepared and marked as Ex. P/23 and site Inspection Memo has been marked as Ex. P/23 A. Mani Ram Thori jumped on some wooden object known as 'suhaga'. He was injured on account of this fall. Accused Mani Ram was arrested vide Ex. P/17 whereas accused Madan was arrested vide Ex. P/18. The site plan of the place of encounter has been marked as Ex. P/19 and the site Inspection Memo has been marked as Ex. P/19A. The field of 'Ramkaran from where the she camel was snatched has been marked as Ex. P/20 and the site Inspection Memo has been marked as Ex. P/20A. After the arrest, the she camel was recovered vide recovery memo Ex. P/21 and

was given in the Supurdgi of one Jagatpal Jat vide Ex. P/22. The place where the accused persons were over powered and were arrested has been marked as Ex. P/23 and the site Inspection Memo has been marked as Ex. P/23 A. The tractor was seized vide Ex. P/24. After the arrest of the accused, police party headed by the Dy. S.P. came to the place of the occurrence, i.e. Ratanpura Tiraha, and there the site Inspection Memo, Ex. P/ 36 was prepared and tractor Ford bearing No. HRN 3677 was taken in possession vide Ex. P/37. The jeep was seized vide Memo Ex. P/38 and cartidges of 3x3 make which were lying at place marked 'D' in Ex. P/16 from where Mani Ram was firing from his rifle have been seized along with three 3x3 empties bearing mark K.F. on their back were recovered from the place from where Ram Swaroop was firing, vide Ex. P/39. Shri Jewariya went back to the Police Station and there on 25-7-1981 at about 2.00 p.m. he lodged a 'rapat' of the entire incident in the Rojnamcha on the basis of which Ex. P/40, FIR, was prepared. From the place of the occurrence blood smeared soil was also recovered. The post-mortem of the dead body of the deceased was got conducted. The post mortem report has been marked as Ex. P/1. The blood stained clothes of the deceased were also taken into possession and they were sent to the Forensic Science Laboratory for examination. The result of the analysis has been filed as Ex. P/33. The Serologist's report has been produced and has been marked as Ex. P/34. The 3x3 rifle and the empty cartridges were sent to the Forensic Science Laboratory for ballistic examination and its report has been received and has been marked as-Ex. P/35.

7. Ram Swaroop was absconding even when the case was being tried by the learned Addl. Sessions Judge, Sirsa and when the appeal was heard by the Division Bench of the Punjab & Haryana High Court. He was arrested by an ASI, Gurmel Singh of P. S. Nokha on 22-10-1982 on the information supplied to him by somebody and from his possession one 3x3 rifle was recovered along with 12 live cartridges, which were lying in his small suit case. The seized s, along with the ornaments etc. were deposited in the malkhana of the Police Station. A case under Sections 25 and 27 of the Arms Act was registered against Shri Ram Swaroop, s/o Jeevan Ram, r/o Kavlisar at police station Nokha. Copy of the FIR has been marked as Ex. P/44. The report which was lodged by Shri Ram Rakh of Saharni in P. S. Tibi has been filed as Ex. P/43.

8. After usual investigation the case was challaned by the police of Sangariya, in the court of learned Munsif and Judicial Magistrate, Sangariya, from where it was committed for trial to the learned Addl. Sessions Judge, Hanumangarh. In the meanwhile, the accused Ramswaroop, alias Ram Sukh, was arrested. He was also put for trial. The permission for prosecuting them for the offence under Section 25/27 of the Arms Act was obtained from the District Magistrate, Sriganganagar and they have been filed and have been marked as Ex. P/30, 31 and 32 in relation to accused Madan, Ram Swaroop, alias Ram Sukh, alias Kalia and Mani Ram, respectively. Initially a charge was also framed against Mani Ram accused for the offence under Section 303 IPC but later it was dropped. The accused persons did not plead guilty to the charges, whereupon the prosecution examined in all 14 witnesses. Statements of the accused persons were recorded. They examined none in their defence and hence, after hearing the parties, the learned Sessions Judge has decided the case as aforesaid and hence these appeals by these two accused persons, who have been convicted and sentenced as mentioned herein above.

9. We have heard Shri H. S. Kharlia, appearing for the accused appellants and Shri Vishal Raj Mehta, Public Prosecutor for the State and have bestowed our utmost consideration to the record of the case & to the rival submissions made at the Bar.

10. It was first submitted by Shri Kharlia that in this case accused persons have been held guilty of the offence under Section 302/34 IPC for the murder of Shri Rajuram. It has been claimed that the testimony of the eye witnesses is contradictory, they have resiled from their earlier stand and their testimony about the shot with which Shri Rajuram was hit, does not conform with the medical testimony and, therefore, the learned Sessions Judge was wrong in convicting the accused persons of the offence under Section 302/34 IPC. It was further claimed that firstly it is a case of mistaken identity. The witnesses were not personally known to the accused persons and therefore, evidence about their identification is not very satisfactory and, therefore, without a previous identification these accused persons could not have been held guilty of any offence but still if it is felt that these accused persons have taken part in the occurrence then too they were really trying

to escape and, therefore, offence under Sections 307/34 IPC and 353 IPC is not made out against them. It was also claimed that accused Mani Ram was armed with a 12 bore gun because 12 bore empties have been deposited in the malkhana and, therefore, he cannot be credited with the possession of a rifle and, therefore, the evidence of the Ballistic Expert that the empties recovered from the place of the occurrence, marked as Ex. P/16, have been fired from the rifle of Maniram cannot be read against Mani Ram because he was not in possession of this rifle.

11. As regards Ram Swaroop also it has been claimed that it is a case of totally mistaken identity so far as Ram Swaroop is concerned and, therefore, he also could not have been convicted of the offence under Sections 307/353 IPC because his participation in the occurrence has not been proved. The witnesses are not reliable and in this case the complainants have acted as the Investigating Officers and, therefore, the investigation is tainted and much reliance cannot be placed on it and hence the accused persons deserve acquittal.

12. The contention of Shri Vishal Raj Mehta, Public Prosecutor appearing for the State is that it is a fool proof case, it is not at all a case of mistaken identity. The accused persons were previously known to the witnesses and they have named them from the very beginning. They have been identified in the jeep light and, thereafter they have been caught red handed by the police party and, therefore, it is not at all a case of mistaken identity.

13. So far as Ram Swaroop is concerned Shri Gurmel Singh, PW/14, has categorically stated that on investigation he found that although initially he gave out his name as Ram Sukh, he has three names, i.e. Ram Sukh alias Ram Swaroop, alias Kalia and therefore learned P. P. submitted that it is he who has taken part in the occurrence. This statement of Shri Gurmel Singh has not been challenged by the accused-side and more over accused Ram Swaroop has not stated in his statement under Section 313 Cr.P.C. that he is not the person who took part in the occurrence but he is Ram Sukh of Kanvlisar and not an accused wanted in the case, i.e. Ram Swaroop of Badopal.

14. As per him it is not the case of an escape, but it is a case where the accused persons, after taking position have fired at the police party and have killed Raju Ram and their bullet shots have hit the jeep also and thereafter they have also fired at the police party headed by Dr. S.P. near Nagrana minor, and, thereafter when they were trying to escape they have been over powered by the Addl. S. P. Shri Mohan Singh. They have engaged themselves in a series of incidents starting from the house of Mani Ram Sinwar, whose wife's ornaments were looted and these looted ornaments have been found in the possession of the accused. Thereafter they have killed Raja Ram of Chutala, who is father of accused Madan and thereafter when they were proceeding towards Hanumangarh, they were intercepted by the police party near Ratanpura triangle. When the tractor was not stopped by them on the sign given by the police party, they were identified by the police party in the light of the jeep and, thereafter, they took position and started firing at the police party and, therefore, they have caused hindrance in the duty which was to be performed by the police party at the orders of Addl, S.P. and have tried to fire at them with their rifles and, therefore, offences under Sections 307/ 34 and 353/34 IPC are also fully made out against them. They were found in possession of unlicensed rifles which have been used in the occurrence and, therefore, they have been rightly held guilty of the offences under Sections 25(i)(a) and 27 of the Arms Act.

15. We have carefully considered the rival submissions made at the Bar and have critically gone through the record of the case. In this case, PW/8 Gopala Ram is the most material witness, who is the S.H.O. of Sangariya. It was he who was directed by the Addl. S.P., Hanumangarh, to check the vehicles which have been illegally lifted or stolen and accordingly, it has been stated by him that he went to Ratanpura Tiraha in the night of 24th and 25th of July 1981 at about 10.00 p.m. This fact of their going for the checking purpose is recorded in Ex. P/13, Rapat Rojnamcha, which was recorded at 10.00 p.m. at the police station, Sangariya and has been proved by Gopala Ram. It is recorded in Ex. P/13 that they went in the jeep driven by Raju Ram bearing No. JKT 5668. They went and halted near the road crossing, where the road coming from Tibi to Sangariya meets with the road going from Sangariya to Hanumangarh. The place where the jeep was stopped is marked as 'A' in Ex. P/16. The jeep was facing the road. It has been stated by

PW/1 Charan Singh, ASI, and PW/8 Gopala Ram as also by PW/6 Mam Raj and PW/12 Murlidhar that they went out in 'Gusth duty' at that time in that jeep. PW/1 Charan Singh, PW/8 Gopala Ram and driver Raju Ram were sitting in the jeep and rest of the staff were out on the 'gusth duty'. At about 12.00 they heard the noise of two shots fired from a gun from the side of village Chutala which is situated at a distance of about 2, 3 Kms. from Ratanpura Tiraha. At this, it has been alleged by Gopal Ram that he told the police party that they should be very careful because some vehicle may come from Chutala side. After sometime they saw that one tractor, after crossing the 'kutchra' track came from Chutala side and came on pucca road coming from Sangariya and going towards Hanumangarh side. It was driven quite fast. Ram Niwas, Satya Narain and Mam Raj, who were put on checking duty gave a sign to the tractor to stop but the tractor did not stop but a shot was fired at the police party, whereupon it is alleged that Raju Ram, driver, put on the lights of the jeep. As soon as the lights of the jeep fell on the tractor, these persons were identified by all of them. It is stated by Gopala Ram and Charan Singh that Madan was driving the tractor and Mani Ram was sitting on the left mud-guard of the tractor with a rifle and Ram Swaroop was sitting on the right mud-guard of the tractor with a rifle and Madan was driving the tractor. This is what has been stated by PW/6 Mamraj and PW/12 Murlidhar also.

16. At this stage, it was argued by Shri Kharlia that initially the case of the prosecution was that the sign to stop the tractor was given by putting on the lights of the jeep. This is what has been recorded by Shri Sultan Singh and Satya Narain in Ex. P/42 at 4.00 a.m., this is what has been recorded by Raju Ram in Ex. P/15 and the FIR Ex. P/14. This fact is further supported by the Inquest Report of Raju Ram, marked as Ex. P/25 and, therefore, they have tried to change their stand that first a sign was given by the police party from place 'B' in the Ex. P/16, where they were standing and the tractor did not stop, then the lights of the jeep were put on by Raju Ram and in that light the accused persons were identified. It was claimed by him that the tractor was going quite fast and, therefore, the tractor could not come in the purview of the jeep light. This assertion made by him' stands totally discredited by the testimony of the eye witnesses. They have categorically stated that first a sign was given by the police party consisting of Satya Narain and Mam Raj etc. and when the tractor did not stop and when it fired towards the police

party and as soon as the fire was made, Raju Ram put on the lights of the jeep and in that light, persons sitting on the tractor were visible and they have been recognised and it was stated by Gopala Ram, Charan Singh, Mamraj and, Murlidhar that Mani Ram was sitting on the left mud-guard of the tractor and Ram Swaroop was sitting on the right mud-guard of the tractor and Madan was driving the tractor. Their testimony about this identification could not be shaken inspite of thorough cross-examination. This fact is further corroborated by the Rojnamacha, Ex. P/42 which was recorded at 4.00 a.m. by the police party consisting of Sultan Singh and Satya Narain, in which they have named these three accused persons as Mani Ram, Madan and Ram Swaroop. Not only that they have informed about the participation of these three accused to the Dy. S. P. Shri Jewariya, whom they met at Sangariya for sending additional police force and that fact has been corroborated by the testimony of PW/11 Shri Prahlad Rai Jewaria. This fact is further corroborated by the testimony of Prahlad Rai Jewaria, who states that as soon as he reached the place of occurrence at 4.30 a.m., Gopala Ram, SHO, met him and told him that when they were checking the tractor, they found Mani Ram, Madan and Ram Swaroop sitting on the tractor. They were coming from the side of Chutala and were going towards Hanumangarh side. This fact has been recorded by Shri Gopala Ram in the Rojnamcha Ex. P/15 and the FIR Ex. P/14. It has not been asked to Shri Gopala Ram that he does not know these accused persons and thus, it is not at all a case of mistaken identity as claimed by Shri Kharlia. Simply because there is a slight variation in the testimony of the witnesses that first the accused persons were given a sign by the police party to stop and when it did not stop the lights of the jeep were put on, it does not mean that jeep lights were not-put on and the accused persons were not identified. All these documents categorically support the identification of the accused persons and moreover they were caught red handed in a hot pursuit, except Ram Swaroop. As regards the identity of Ram Swaroop, PW/14 Gurmel Singh has categorically stated that when he made the investigation it was found that Ram Swaroop has three names, i.e. Ram Swaroop alias Ram Sukh, alias Kalia. It has been stated by Gopala Ram, as also by Shri Gurmel Singh that this man limps and that fact has not been controverted. Shri Ram Swaroop in his statement under Section 313 Cr.P.C. has no where stated that he is not Ram Swaroop but he is Ram Sukh s/o Jeevan Ram

and not of Badopal but of Kanvlisar. Rather he has given his name as Ram Swaroop s/o Jewan Ram and his place of residence as Badopal, District Ganganagar, and thus, this contention of the learned counsel that it is a case of mistaken identity does not stand scrutiny. Even Shri Madan, accused in his statement has categorical stated that both these accused persons were with him when he was driving the tractor.

17. It was next contended by him that in this case accused has been asked to be kept 'baparda'. If the accused persons were known where was the necessity to keep them baparda? So far as Mani Ram is concerned, he was caught red handed in an encounter and, therefore, there was no question about his mistaken identity. The accused was ordered to be kept baparda so that the owner of the she camel or for that matter the owner of the Eisher tractor may be able to identify him and if this precaution has been taken it does not mean that he was not identified by the witnesses, who claim that they immediately identified them in the jeep light.

18. So far as Ram Swaroop is concerned he was not kept baparda at any point of time. He was arrested by the police with the gun vide Memo Ex. P/45 and the police of Sangariya has arrested him vide Ex. P/46, in which he has disclosed his name as Ram Swaroop. Under these circumstances, the argument that why Mani Ram was kept baparda has no significance whatsoever.

19. So far as the offence under Section 302 IPC for the murder of Raju Ram, driver, is concerned, the contention of Shri Kharlia is that he has not been killed by any fire made by the accused party. It has been admitted by Gopala Ram and further it will be clear from the site plan Ex. P/16 named with site Inspection Memo Ex. P/36 that the distance between place 'D' and place 'E' was somewhere near 420 ft. and the distance between place 'D' to 'G' is about 435 paces or feet.

20. It is true that all the prosecution witnesses, i.e. PW/1 Charan Singh, PW/6 Mamraj, PW/8 Gopala Ram and PW/12 Murlidhar have stated that Shri Raju Ram, while he was taking a position behind the jeep, was hit by the shot fired from the place where Shri Mani Ram had taken a position. Initially the version of the prosecution was that Shri Raju Ram was alighting from the jeep at the time when the accused persons had started firing on the police party. He stopped the jeep at

place 'E' and when he was alighting from the jeep he was shot at place 'E' shown in Ex. P/16 and fell down at place 'G' where lot of blood was found. This is mentioned in Ex.P./14, the FIR recorded by Gopala Ram and Ex. P/25, Inquest Memo of the dead body of Raju Ram. It has also been disclosed in Ex. P/36, site Inspection memo and the site plan Ex. P/16. The site inspection memo further discloses that he was hit at place 'E' when he was alighting from the jeep and fell down at place G at some distance away from the jeep. Now, this position was changed during investigation and during investigation they have taken the stand that after they had taken the position, Raju Ram was hit by the shot fired by Shri Mani Ram and at the trial their stand is that Raju Ram was hit when he was taking the position. In this respect these witnesses have been confronted with their earlier police statement. Charan Singh has been confronted with his police statement, Ex. P/1 and Mam Raj with his police statement Ex, P/2 and Gopal Lal with his police statement Ex. P/3. They have resiled from their statements. Be that as it may, firstly the distance between place 'D' 'G' in Ex. P/16 is about 435 feet and the jeep intervenes between the two points, therefore, if any shot has been fired from place 'D' it could not have hit Raju Ram at place 'G' It was a right hand side driven jeep, as admitted by the witnesses and if he was alighting from the jeep, then too he could not have been hit with the shot fired from place D on right side of his chest. Moreover, PW/2 Dr. B.C. Sodhi who has conducted his post-mortem has opined that there was a gun shot wound of the size of 1 1/3 cm x 1 1/3 cm with inversion of skin edges on the right side chest at the level of 4th rib on the right side in mid-axillary region. If a man alights from the jeep which is right hand driven jeep then a man alighting from the right hand side will have his left side facing towards the place 'D' and, therefore, if any fire comes from place D and if at all it can hit him then it will hit him on his left side and not on his right side. As per the doctor, there are two lacerated wounds. First is a lacerated wound of 12 cm. x 4 cm x 5 1/2 cm deep below the chin and right sub-medibular region. Edges of the wound everted on the anterior part of the wound with visible fracture of mandible at chin. Muscles and sub-cutaneous tissues coming out of the wound in anterior part. There was another lacerated wound with eversion of skin edges and sprouting subcutaneous tissue 2 1/2 cm x 2 cm in size in the middle of root of neck on the right side. Of course, there was a contusion of 3 cm x 2 cm on the right supra clavicular region

of neck with the fracture of right clavical in the middle and on examination of the thorax it was found that the right chest wall at the level of 4th rib contained a fracture of 4th rib and there was a fracture of the 1st right rib in middle of anterior aspect. Fracture of clavical in middle in multiple pieces. As regards the first injury of the lacerated wound, the doctor has further opined that there was a slight depression and inversion of skin-edges at the posterior end of the wound with skin charring. Now, charring of the skin, as per the learned Author of the Book 'Fire Arms in Criminal Investigation and Trials, 'First Edition, pages 175 and 176, is equal to scorching and burning, which is the burning effect of flame or hot gases produced in the combustion of powder. Charring is often confused with blakening, tattooing, dirt ring or even with contusion rings. But it is different from blakening. Blakening can be removed with a cotton swab, whereas charring cannot be.

21. Shri R.L. Gupta, in his book 'Ballistic fire Arms and Jurisprudence' IIIrd Edition, pages 232 and 233 has observed that scorching is also called burning or charring. It can appear only when the fire is made from a very close distance of 6' or within the limits of a normal person's arms length. At ranges greater than a few feet these features are no longer present. As such, charring is not possible if one is hit from a distance of more than 400 feet. This is also the view of the learned author Modi in his book 'Medical Juisprudence and Toxicology 20th Ed. pages 227 and 228 and the learned author Taylor in his book 'Principles and Practice of Medical Jurisprudence 10th Edition page 441.

22. Shri Kharlia has also placed reliance on a decision rendered by their Lordships of the Supreme Court in Santa Singh v. State of Punjab MANC/0167/1976, wherein their Lordships have observed that if there were burnt edges of the wound, the distance between the muzzle and the victim would only be a few inches and not more than nine inches. Thus, firstly it is a case of close range firing and no charring can occur by a shot fired from a distance of more than 400 feet. Moreover it appears to be a case of two shots hitting the victim because while describing injury No. 1, doctor has also found charring with slight depression and inversion of the skin edges at the posterior end of the wound. As stated earlier, charring is the result of burning effect of flame or hot gases produced in the combustion of powder and, therefore, no charring can occur in an exit wound even

if a bullet is fired from a rifle. Therefore, if charring was found with inversion of skin edges in injury No. 1, it means that deceased received two gun shot injuries, both from a very close range which have resulted in charring of the skin and, therefore, when the testimony of the witness does not accord with the medical testimony then that testimony has to be rejected and in this, respect Shri Kharlia has relied upon a decision of their Lordships of the Supreme Court in Ram Narain; Jaggar Singh v. The State of Punjab. : 1975 CriLJ1500 .

23. We are convinced that it simply cannot be a case of a shot fired from a distance of more than 400 ft. then it could not have resulted in any charring, it is a case of close range fire and, therefore, judging and scanning the evidence of the witnesses from any angle, it Cannot be believed that Raju Ram died because of the gun shot injury received by him from a fire made by Mani Ram or for thtit matter Ram Swaroop and, therefore, the accused persons could not have been held guiltyof the offence under Section 302/34, IPC.

24. Now, so far as theroffence under Section 307/ 34, IPC is concerned, the contention of Shri Kharlia is that in this case, the accused persons were escaping and, therefore, if they have firedany shot then it was not with the intention to kill. In this respect he has placed reliance on a Division Bench decision rendered in The State v. Sadhu Singh, 1972 Raj LW 667. That was a case in which when after unsuccessful attempt of dacoity the accused persons were making good their escape they fired at the party which was pursuing them and it was not known by whose fire the deceased has been hit and, therefore, it was held that it was not a case in which- accused persons could be convicted of the offence under Section 396 or 302, IPC. I his decision has no application to the present case. Here it is not a case of firing by the accused persons while escaping. Here they have stopped their tractor, and have taken position and thereafter they have fired at the police party with a particular aim. In this case, the lights of the jeep as also of the tractor were on and it was because of this fact that the 'morchas' of both sides were visible to each other and it is because of this that the fire has hit the front tire and mud guard of the jeep and has punctured it and, therefore, it is not a case of firing in darkness as claimed by Shri Kharlia and, therefore, the decision of their Lordships of the Supreme Court in Hazara Singh v. State of Punjab, 1971 SCC

(Cri) 237 does not help the case of the accused at all. Here the shots were fired not while escaping but after taking position and then in the lights of the jeep and the tractor the morchas were visible to each other and the shots were fired from rifles which have a firing range of about 1000 feet and, therefore, it can definitely be concluded that, the accused party fired at the police party in order to kill them and, therefore, the learned Addl. Sessions Judge, Hanumangarh was rightly justified in holding the accused guilty for the offence under Section 307/34, IPC. Even thereafter the accused persons have made an encounter with the Dy. S.P. and fired 8 rounds near Gagrana minor. The 8 empties which have been recovered from place 'D' in Ex. P, 16 have been fired from the rifle of Mani Ram, and, therefore, that recovery connects Mani Ram with the crime. Of course, the empties recovered from place J (11) in Ex. P/16 where Ram Swaroop has taken position could not be sent along with the rifle recovered from Ram Swaroop for ballistic examination but that does not mean that he did not fire at the police party because three empties were found at the place where he has taken position. There is a great dispersion of the light from the Tractor and Jeep and, therefore, the accused persons who have taken their positions near both sides of the road, a little away from the tractor, could certainly be visible to the police party because of the tractor lights and the jeep lights which were on. Even if there were certain bushes existing, it does not mean that in that flood light of the tractor and the jeep, accused persons could not have been seen and located while firing from their positions. This firing continued for more than three hours and there was ample opportunity to locate who was taking position at which place. Simply because to prove this fact there is an evidence only of the police witnesses, who alone naturally could have been there at that moment because they were on checking duty, it cannot be said that it is a case of tainted ocular evidence given by interested witnesses who are not truthful and, therefore, the decision of their Lordships of the Supreme Court in *Biri Singh v. State of U.P.*, : 1992 CriLJ1510, has no application so far as the facts of this case are concerned.

25. Here in these circumstances only these persons alone could be the witnesses of the occurrence because it was a case of encounter with the police. Nobody takes motbirs when one goes for gusht duty in night. It has come in the evidence of PW/1 Charan Singh, PW/6 Mam Raj, PW/8 Gopala Ram that they tried to stop

the tractor for checking but it was not stopped by the accused persons. They fired at the police party and tried to take away the tractor and the police party therefore chased them in the jeep whereupon the accused party left the tractor, took positions and fired at them and, therefore, this evidence is sufficient to hold them guilty of the offence under Section 353/34, IPC because they tried to desist the police personnel from doing their duty of checking of the vehicles. Even if for arguments's sake it is said that while they were trying to escape near Malladkhera and Peerkamadia, they fired at the police party of the Dy. S.P. in self defence in order to make good their escape, that argument will not be available to them for their encounter with the police near Ratnapura Tiraha, where they have taken position and fired at the police party because they were chasing them to check their vehicle, in the jeep.

26. It is true that the prosecution has to stand on its own legs and has to prove its own case as has been observed by their Lordships of the Supreme Court in State (Delhi Admn.) v. V.C. Shukla, : 1980 CriLJ965 and it is further true that where there is a case of mistaken identity, then ofcourse identification in the court alone without holding a test identification parade will not be of much assistance, but here neither it is a case of mistaken identity nor the presence of the witnesses at the place of occurrence is in any way unnatural. It is a case where the encounter has taken place for more than three to four hours, somuch so that two persons were sent to police station for more additional force, which was made available by the arrival of the Dy. S.P. and then the accused who had left that place were pursued and were spotted near Malladkhera, near about Gagrana Minor and there also one encounter took place and when they were going towards Pirkamadia, the further additional force which was sought by SHO, P.S. Sangariya, PW/8; by informing Addl. S.P., came there and when the accused party saw that they are surrounded on both sides, they had no option but to surrender and accordingly, they were arrested, although in the meanwhile, Ram Swaroop escaped.

27. The occurrence has taken place in different parts and, therefore, it is not a case where it can be said that the matter should not have been investigated by the SHO Police Station, Sangariya, i.e. Gopala Ram. The accused persons were in the process of committing the crimes one after the other. Initially they went to

village Saharni and looted the house of Mani Ram Sinver and, thereafter they came to Chutala and killed Raja Ram and, thereafter they were trying to escape towards Hanumangarh but they were pursued by the police and, thereafter the entire occurrence took place. Initially, the matter was reported to the police by Ram Rakh vide Ex. P/42 and then it was reported by SHO, Gopala Ram, who formally recorded the FIR Ex. P/14, and then about the incident of snatching of she-camel of Ramkaran and taking away the tractor of Surja Ram, the report was lodged by the Dy. S.P. Prahlad Rai Jewaria and the site was inspected with the help of ASI Shri Jai Pal Sharma. Thus, the occurrence has taken place in number of parts, some of which has not been witnessed by Gopala Ram and, therefore, in such a matter if has conducted the investigation. It cannot be said to be an interested investigation. It is not a case where a bribe was given to a particular Head Constable and it was he who reported the matter and investigated the matter and made the police personnel as motbirs, as has been held by their Lordships of the Supreme Court in Bhagwan Singh v. State of Rajasthan, : 1976 CriLJ713 . There, their Lordships felt that the entire matter is shrouded in secrecy and is unnatural. Ofcourse, generally a police officer may not be the Investigating Officer in his own case. But here the occurrence has taken place in so many parts, some of which have not been witnessed by Gopala Ram and, therefore, if he has investigated the case as it pertained to his Police Station it cannot be said that that investigation will make the case of the prosecution doubtful and, therefore, the decision of this Court in Sahi Ram v. The State of Rajasthan 1993 Cri LR (Raj) 281 and the decision of this Court in Uma Kant Bhatt v. The State of Rajasthan 1992 Cri LR (Raj) 491, are of little assistance so far as this case is concerned. It is true that as regards occurrence of snatching the she camel and the Eisher Tractor which have been recovered admittedly its witnesses i.e. PW/3 Ram Karan, PW/4 Suraj Ram and PW/5 Om Prakash, all the three have turned hostile and it is because of this that they have been acquitted of the offence under Sections 393 and 394, IPC but these were the incidents which have not been witnessed by Gopala Ram. Even the encounter that took place with the Dy. S.P. was also not witnessed by him. He reached there later. The encounter with the Addl. S.P. was also not witnessed by Gopala Ram and, therefore, when the occurrence took place, in the jurisdiction of police station, Sangariya, Gopala Ram was the person

concerned who could have investigated the matter and the manner in which he has investigated the matter, we are convinced that neither the investigation was tainted nor it is interested and, therefore, the testimony of the witnesses cannot be disbelieved on that account.

28. It was claimed in this case that photographs were taken but they have been suppressed because their production would have shown that certain bushes were existing there near the place of encounter and in this respect, learned counsel Shri Kharlia has placed reliance on a Division Bench decision rendered in Lal Ram v. State of Rajasthan 1992 Cri LR (Raj) 524.

29. Of course, in this case, photographer has not been produced to prove those photographs but even if it is held that there were certain bushes existing, that hardly affects the testimony of the eye witnesses because ample lights were available to find out the places where the accused persons had taken positions from where they were firing at the police party. Mani Ram was sitting on the left mudguard of the tractor and Ram Swaroop was sitting on the right side and therefore, it was quite natural for them that they ought to have taken position on their own side because they were hotly chased by the police party in a Jeep. The accused were in possession of arms and no accused has given any explanation for the possession of these arms. They were in possession of these arms without licence and they have used them as stated by the witnesses and, therefore, their conviction under Sections 27 and 25(i)(a) of the Arms Act, cannot also be said to be unsustainable. An argument was also raised that the site plan and the site Inspection Memo Ex. P/16 and Ex. P/36 were not prepared in the morning and the cartridges were not seized at that time. It has come in the evidence of Gopjala Ram, PW/8 and PW/11 Prahlad Rai Jewaria that site was inspected in the morning and site plan Ex./P16 was prepared at that very moment and thereafter police personnel were kept to protect the site and they went in search of the accused persons and the empties were recovered in the day. Even site Inspection Memo was prepared in the day. The manner in which the occurrence has taken place if such a course of action was adopted there is nothing unnatural about it. Such a course was quite probable. Of course, in Ex. P/36 it has been mentioned that the cartridges were seized but it appears that from the evidence of PW/8 Gopala Ram

that this Ex. P/36 was prepared after the accused persons were arrested although the site plan was prepared in the morning. PW/9 Kushal Singh too has stated that the Dy. S.P. inspected the site in his presence but he does not say that any site plan was prepared at that time. Rather he is silent about this. Shri Jewaria has stated that Ex. P/16 was prepared at the instance of Gopala Ram and thereafter they went in search of the accused party.

30. Shri Kharlia also laid stress on the fact that Khoji was called when the accused persons have already been identified. The accused persons had left the place of the occurrence earlier than 6.00 a.m. while it was dark. Gopala Ram arrived at the place of the occurrence at 6.00 a.m. after informing the Addl. S.P. and lodging the FIR. Thereafter the site plan was prepared and then they went in hot pursuit of the accused persons. They wanted the help of the Khoji to keep a track of the way through which the accused persons have gone. So, if the help of the Khoji was taken and if the Khoji has identified that these foot prints are that of all the accused persons, that does not mean that the testimony of the eye witnesses becomes in any way unreliable. The Dy. S.P. as also Gopala Ram, both have stated that they were following the accused persons on the basis of the foot prints. The help of Khoji was not taken to identify the accused persons but they were trying to find out the whereabouts of the accused persons in order to arrest them. However, according to the testimony of the witnesses, Govind Singh, Khoji, met them near Malladkhera canal. He was called at the behest of the Dy. S.P. and, therefore, if he was called to help the police party it was not for the purpose of identification of the accused persons but it was for the purpose of tracing out the whereabouts of the accused persons and, therefore, this argument cannot be allowed to be utilised for the purpose that the accused persons were unknown and, therefore, the Khoji was called.

31. It was also contended by Shri Kharlia that it has come in the evidence of PW/13 Charan Singh that 12 empties of 12 bore gun were also deposited in the Malkhana. The recovery memo of the search of accused Mani Ram has been marked as Ex. P/17 and it does, not disclose that he was in possession of any discharged empties of 12 bore gun. He was, of course, found in possession of 12 bore live cartridges. If any accused is found in possession of such cartridges,

without a gun, it does not mean that he cannot possess those cartridges. When these cartridges were not recovered from him at the time of his arrest then how they have come in the Malkhana is anybody's guess on that account the story of the prosecution to this extent cannot be believed that the accused was in possession of 12 bore gun rather than a Rifle. His arrest memo clearly discloses that he was found in possession of a rifle. Its number has also been recorded in Ex. P/17 and, therefore, it cannot be said that simply because certain empties have been deposited in the Malkhana and find mention in Ex. P/36A, which has been proved by PW/13 Charan Singh, it does not mean that accused Mani Ram was found in possession of a 12 bore gun, rather than a rifle.

32. The identity of the two accused persons has also been certified by accused Madan who has stated in his statement under Section 313 that he was taken by these two persons by force and was made to drive the tractor.

33. Taking an over all view of the entire matter, we are convinced that so far as the conviction of the accused appellants Mani Ram and Ram Swaroop recorded under Section 302/ 341 PC is concerned, it cannot be sustained. Rest of the convictions deserve to be sustained, along with the sentences awarded by the learned Addl. Sessions Judge, Hanumangarh. However, their conviction and sentence recorded for the offence under Section 302/34 IPC against both the appellants and under Section 411 IPC against Mani Ram cannot be sustained and deserves to be set aside.

34. So far as conviction of Mani Ram recorded under Section 411 IPC is concerned, that too cannot be sustained because firstly the lodger of the FIR No. 131/81 Ram Rakh has not been examined. Wife of Mani Ram Sinwar, whose ornaments have been snatched by the accused persons has also not been examined and under these circumstances it cannot be said that these ornaments have been stolen by the accused persons and when there is no evidence about those being stolen, the accused cannot be held guilty for the offence under Section 411 IPC and, therefore, Mani Ram deserves acquittal so far as offence under Section 411 IPC is concerned. These ornaments are a subject matter of a separate case registered by P. S. Tibbi.

35. In the result the conviction and sentence of accused appellants Mani Ram and Ramswaroop under Section 302/34 IPC and the conviction of accused Mani Ram along with sentence recorded under Section 411 IPC are hereby quashed and set aside. As all the sentences recorded under Sections 307/34, 353/ 34 IPC and Section 25(i)(a) & 27 Arms Act have been ordered to run concurrently, thus, if the accused persons are not wanted in any other case or are not undergoing sentence in any other case they be released from custody, if they have served out the sentence imposed against them.

36. Both the appeals stand disposed of accordingly on merits.

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