

Ramchander Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Oct-22-1982

Reported in : 1982WLN(UC)551

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Criminal Appeal No. 790/1976

Appellant : Ramchander

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Kanta Bhatnagar, J.

1. This appeal is directed against the judgment dated August 31, 1976 passed by the Additional sessions Judge, Ganganagar by which appellant Ramchander was convicted for the offence under Sections 302, 307 IPC and Section 27 of Arms Act and sentenced to imprisonment for life and a fine of Rs. 200/-, in default to undergo four months R.I. on the first count, eight years R.I. and a fine of Rs. 200/-, in default to undergo four months R.I. on the second count and two years R.I. on the third count with an order that the substantive sentences awarded to him for the various offences shall run concurrently,

2. Briefly stated, the facts of the case giving rise to this appeal are as under:-- Mahendra Singh, father of deceased Veer Singh and Mool Chand father of accused Ramchander were neighbours. About ten or twelve years prior to the incident Mahendra Singh had entered into a transaction regarding the sale of his land to Mool Chand. Mool Chand did not make the full payment of the cost settled and therefore, Mahendra Singh resold the land to one Kehar Singh. Mool Chand repurchased that land from Kehar Singh. Because of all this, relations between the parties had become strained. Mool Chand along with his family had left Chak 6F where the land was and went to Nainital. After that, about four years prior to the incident Mahendra Singh along with his family returned to Chak 6F and was residing in his house adjacent to the house of Mool Chand where the latter, along with his sons Lal Chand and Ramchander appellants, was residing. Mahendra Singh, his sons Diwan Singh (PW 1) and Veer Singh (deceased), his nephew Mal Singh (PW 10) and Dayal Singh (PW 7) and Shaitan Singh (PW 13) were involved in an excise case for the allegation of instilling illicit liquor. Ramchander appellant was a witness in that case. This also caused annoyance to Veer Singh deceased and his family. The she-buffaloes of Makhan Singh brother of Mahendra Singh had entered the field of Mool Chand and Ramchander. Navil, cousin of Ramchander, working at their field, took off the iron chains of the buffaloes. Mahendra Singh and his neph(sic)w Mal Singh asked Mool Chand to return the chains but could not succeed Thus there is alleged to be a long standing enmity between the family of Mahendra Singh and that of Mool Chand. On April 20, 1975 Veer Singh had gone to his field At about 3.00 or 4.00 P. M. Ramchandra appellant was returning from Ganganagar. When he reached near the field of Shyam Singh, there was hot altercation between him and Ramchander, on the former reprimanding the latter, for making false complaint against him to the Excise Officer. Ramchander returned to Chak 6F. Veer Singh also returned to his house after sometime. At about 7 00 P.M. Ramchander hurled abuses to Veer Singh from the roof of his house. He had a gun with him at that time Veer Singh restrained him from hurling abuses. At this Mool Chand, father of the appellant and Lalchand his brother there in the threshold adjacent to their house instigated Ramchander by giving a 'lalkar' to shoot Veer Singh. Veer Singh by that time reached in the court yard adjacent to the court-yard outside his residential house. Ramchander fired the shot towards

Veer Singh which hit him and he fell down on the ground. Mahendra Singh(PW. 6), Dayal Singh (PW.7), Khan Singh (PW.9), Smt. Rani (PW.3) and Smt. Maya Devi (PW.5) rushed to the place where Veer Singh was lying. Ram Chander fired four more shots with him, causing injuries to the persons mentioned above. Diwan Singh (PW. 1) brother of Veer Singh, was standing in the court-yard outside the residential house near the wall. He and Mal Singh(PW 10) brother injured Veer Singh to their house. Veer Singh succumbed to the gun shot injuries sustained by him. Diwan Singh, with Gurnam Singh went to Chak 6F for fetching a Jeep but could not succeed. They returned and went on the bicycle to Ganga Nagir and brought a Jeep They took the injured persons in the jeep to Ganganagar hospital. Leaving the injured there for treatment, Diwan Singh went to Police Station Matili Rathan and odged an oral report at 3.00 P.M. PW.16 Ranjeet Singh, ASI reduced the report into writing which is Ex.P.I The ASI produced the first information report before the Deputy Superintendent of Police S.P. Khadgawat (PW.15), Incharge of the Circle. The Deputy Superintendent of Police along with Ranjeet Singh, ASI and other staff went to the site at Chak 6F and inspected the site and prepared the site inspectiod memo and the site plan He took the blood stained earth from the site ann prepared the necessary memos. The wads of the cartridges of 12 bore gun were found near about the sire of occurrence which were taken in possession vide memo Ex.P. 14. Some pellets were also recovered from the site and taken in custody vide memo Ex. P. 15. One empty catridge, fired from a 12 bore gun, found on the roof of Ramchander was taken in possession vide memo Ex.P.16. The wrist watch, which the deceased was wearing at the time of the incident was produced by Smt Veera Bai which was taken in possession vide memo Ex. P 17. The pieces of the glass of the wrist watch found at the site were also taken in possession. AH the articles seized during the course of investigation were sealed then and there. The dead body of Veer Singh was sent to Ganganagar Hospital for postmortem examination. Dr. S S. Baxi (PW 17) Medical Jurist at Ganganagar Hospital examined the injured persons in the intervening night of 20th and 21st of April, 1975. He examined Mahendra Singh at 1.20 A.M. and noted following injuries on his person:

(i) Punctured wounds 1/8' x 1/8' on the chest on the 9th intercostal space on the right side in the posterior axillary line.

(ii) Two punctured wounds with crepitus and swelling (fracture of humerus) 1/8th diameter each with a distance of 3/4' each on the right arm lower part,

(iii) Two punctured wounds 1/8' x 1/8' each with a distance of 2' each on the right scapular region.

3. Injury no 2 was grievous and injury no. 1 and 3 were simple. All the injuries were inflicted by some fire arm. X-ray was advised for these injuries. The injury report is Ex. P. 32.

4. That very night Dr. Baxi examined Pahalwan Singh and prepared the injury report Ex. P. 33. Following injury was found on his person:

Two punctured wounds 1/8' x 1/8' about 1' apart on the right fronto parietal region.

The injury was simple in nature, inflicted by fire arm.

5. In the same night the Doctor examined the injuries of Rano and noted following injuries on his person:

1. Two punctured wounds 1/8' x 1/8' each 3/4' distance on the right leg lower one third posteriorly.

2. Two punctured wounds 1/8' x 1/8' each on the right leg lower one third laterally.

3. Two punctured wounds 1/8' x 1/8' each on the right leg lower one third 2' above the injury no. 2.

4. Two punctured wounds 1/8' x 1/8' each about 1 1/2' apart on the right leg medial lower one third.

5. Four punctured wounds on the right leg upper half 1/8' x 1/8' each.

6. Punctured wounds three 1/8' x 1/8' each on the left leg lower one third laterally.

6. All the injuries were simple in nature and were inflicted by some fire arm. The injury report is Ex. P. 34.

1. Injuries of Harnam Singh were also examined by Dr. Baxi in the same night. His injury report is Ex.P.35. The Doctor (sic)oted following injuries on his person:

1. Five punctured wounds $1/8'$ x $1/8'$ each on the left leg lower one third.
2. Punctured wound one $1/8'$ x $1/8'$ on the right leg lower one third anteriorly.

All the injuries were simple in nature and were caused by some fire arm,

8 Dayal Singh was also examined by the Doctor and following injuries were noted on his person:

1. Lacerated wound $1\ 1/2'$ x $1/2'\ 3/4$ near the left als of the nose.
2. Punctured wound $1/8'$ x $1/8'$ on the right arm upper one third laterally.
3. Punctured wounds four in number $1/8'$ x $1/8'$ each on the left leg posteriorly $1\ 1/2$ and $1/2'$ apart,
- 4, Punctured wound $1/8'$ x $1/8'$ on the left leg upper one third laterally.

9. All the injuries were simple in nature and inflicted by some fire arm. The injury report is Ex. P. 36.

10. Khan Singh was also examined by the Doctor in that night and following injury was noted on his person:

1. Punctured wound $1/8'$ x $1/8'$ on the right arm upper one third medially.

11. The injury was simple in nature and caused by some fire arm. The injury report is Ex. P.37.

12. Dr. Baxi examined Smt. Maya Bibi also and noted following injury on her person:

Two punctured wounds $1/8'$ x $1/8'$ each about 3' apart on the left leg posteriorly.

12. The injury was simple in nature and caused by some fire arm. The injury report is Ex P. 38.

14. The duration of all the injuries sustained by the above referred persons was 6 to 8 hours according to the Doctor. Dr. S.S. Bhargava (PW 18) Radiologist, General Hospital, Sri-Ganganagar took the x-rays of the injuries of the above referred persons on April 22, 1975 and found radio opaque metallic pellet like shadows scattered at the site of the injuries sustained by them.

15. On April 21, 1975 at 11.50 Dr. S.S. Baxi (PW 17) conducted autopsy over the dead body of Veer Singh at the requisition of Police Station Matili Rathan. The Doctor noted multiple punctured wounds about 46 in number on the chest and abdomen, 9 on the right upper extremity and 11 in number on the left extremity, 16 on the right hip and thigh and one on the left thigh upper part. On opening the thorax the Doctor found multiple punctured wounds on the wall of the chest. The pleuras were full of blood. Right lung and the left lung showed multiple punctured wounds about 8 to 9 in number. On examining the abdomen, the Doctor found that the walls had multiple punctured wounds. The peritoneum was full of blood. The stomach showed 5 to 6 punctured wounds and was empty. The small intestines & the large intestines showed multiple punctured wounds. The liver showed 7 punctured wounds. There were three punctured wounds in spleen. There were multiple punctured wounds on the right kidney while left kidney was healthy. The bladder had multiple punctured wounds.

16. In the opinion of the Doctor, the cause of death was syncope due to the multiple punctured wounds by a fire arm in the heart, lungs, liver, spleen, stomach, intestines, kidney and bladder. About 6 lead shots were collected from the abdominal cavity. Rest other shots were deeply embedded in the back muscles. The shirt & 'Tehmed' which the deceased was wearing had multiple perforation & were sent to Forensic Science Laboratory, Rajasthan, Jaipur duly sealed along with the specimen seal. The post mortem examination report is Ex. P. 39.

17. On April 21, 1975 at 3.30 P.M. some constable apprehended Ramchander and brought him to the Dy. S.P. who was conducting the investigation at the site. The Dy. S.P. arrested Ramchander vide memo Ex. P. 19. On the same day Ramchander appellant furnished information Ex. P. 20 to the Dy. S.P for getting recovered double barrel 12 bore gun, licence of which was in his brother Lal

Chand's name, and three empty cartridges of 12 bore gun from the residential 'kotha' of his brother Lal Chand concealed by the appellant beneath a big tin box. In pursuance of that information Kara Chander got recovered 12 bore gun and three empty cartridges of 12 bore gun which the S.H.O. took in possession vide memo Ex. P. 21 and sealed them. On April 23, 1975 injured Pahalwan Singh gave one blood stained shirt, Harnam Singh one blood stained trousers, Mahender Singh one blood stained shirt, Smt. Maya Bai one blood stained Salwar, Smt. Rani Bai one blood stained Salwar, Khan Singh one blood stained shirt & Daval Singh one blood stained shirt and 'chhadar' to the Dy. S.P. which were taken in possession and sealed by him. Two packets containing the gun and the cartridges etc. recovered during the course of investigation were sent through Surender Singh (P.W.14) constable, to Forensic Science Laboratory, Jaipur. The report of the Director Forensic Science Laboratory, Jaipur is Ex. P 28. The examination report shows that the gun was serviceable and the cartridges sent could have been fired from that gun. The wad pieces of the lead pellets contained in another packet sent along with the gun could have come out from the 12 bore cartridges case which could have been fired from the gun under reference. The blood stained articles recovered during the course of investigation were sent for chemical examination. The report of the Serologist is Ex P 29. All the articles except 'Tehmed' and one 'salwar' were found stained with human blood Mool Chand and Lal Chand were also arrested.

18. Upon the completion of necessary investigation, chargesheet against the appellant and the co-accused Mool Chand and Lal Chand was filed in the Court of Munsif & Judicial Magistrate, First Class, Ganganagar. The learned Magistrate finding a prima facie case exclusively triable by the Court of Sessions committed all the three appellants to the Court of Sessions Judge, Sri Ganganagar for trial. The case on transfer reached the Court of the Additional Sessions Judge, Sri Ganganagar who charge sheeted the appellant Ramchander for the offences under Sections 302, 307 IPC and 27 of the Arms Act and the co-accused Mool Chand and Lal Chand for the offences under Sections 302 and 307 read with 114 IPC. Lal Chand was also charge sheeted for the offence under Section 27 of the Arms Act. All the three denied the indictments levelled against them when their plea was recorded. Prosecution examined 18 witnesses in all to substantiate its

case. In their statements under Section 313 Cr. P.C. the accused denied the allegations levelled against them and stated that it was because of enmity that a false case has been concocted. Appellant Ramchander has stated that he had given evidence against Mahender Singh, Veer Singh, Diwan Singh, Sunder Singh, Dayal Singh and Mal Singh in a case of illicit liquor and Mal therefore, he has been falsely implicated in the case. He also stated that on the day of occurrence, he had gone out and when he returned he was informed by Naval, his cousin that at about 9.00 p.m. Mahender Singh, Pahalwan Singh, Veer Singh and Dilip Singh had gone to their house and fired the gun at which Naval Singh went on the roof and fired two shots. No defence witness was examined. The learned trial Judge did not believe the prosecution version against Mool Chand and Lal Chand and, therefore, they were acquitted for the charges levelled against them. The prosecution witnesses were however believed regarding the act of Ramchander and he was held responsible for firing the gun causing fatal injuries to Veer Singh and gun shot injuries to seven others. In view of this finding, the learned trial Judge held the appellant guilty for the aforesaid charges and sentenced him, as stated earlier by the judgment under appeal.

19. Learned Counsel for the appellant has assailed the findings of the learned trial Court on a number of grounds. It has been vehemently stressed by the learned Counsel for the appellant that 5 out of the 11 alleged eyewitnesses have not supported the prosecution case so far as the time of occurrence and the identity of the person firing the shots is concerned. The learned Counsel emphasised that it could not have been possible for the persons standing at a distance of about 58' from the roof, from where the shots are alleged to have been fired to identify the person with the gun there. The learned Counsel has challenged the fairness of the prosecution on the ground that no independent witness of the locality has been examined to corroborate the testimony of interested partisan witnesses inimical to the appellants.

20. Yet another argument advanced by the learned Counsel for the appellant is that when the pivot of the prosecution case i.e. the incitement by Mool Chand and Lal Chand has been disbelieved by the learned trial Judge, there was no reason to convict the appellant on the testimony of those very witnesses. The finding of the

trial Judge on the point of recovery of the gun at the instance of the accused and the report of the Director, Forensic Laboratory have also been challenged by the learned Counsel on the ground that the licence of the gun was in the name of Lal Chand and the expert has not given any specific opinion which could have connected the gun recovered during the course of investigation with the commission of the crime.

21. The learned Public Prosecutor controverting these contentions, submitted that there is sufficient number of witnesses supporting the prosecution case. That, the time of occurrence being 7.00 P.M. it was quite possible for the witnesses to identify the person standing on the spot. The learned Public Prosecutor contended that all the eye witnesses who were actually there at the site have been examined and no useful purpose would have been served by examining the persons who had not actually seen the actual firing.

22. The prosecution case is that there was long standing enmity between Mahender Singh and his family and Mool Chand and his family on account of the transaction of the land belonging to Mahender Singh. There is also evidence about the recent quarrel between the two families for Naval nephew of Mool Chand taking off the iron-chains from the necks of the she buffaloes belonging to the brother of Mahender Singh and refusal of Mool Chand to return the same on demand being made by Mahender Singh and other members of his family.

23. Mahender Singh was admitted his involvement in an excise case along with Veer Singh and others. This is an admitted position that in that case Ramchander appellant had given evidence. Mahender Singh and Diwan Singh have also stated about there being no altercations between Veer Singh deceased and appellant Ramchander in the afternoon of the day of the occurrence near the field of Shyam Singh and the former reprimanding the latter for making complaint against him for instilling illicit liquor.

24. The argument of the learned Counsel for the appellant is that when the enmity was with the whole family why Ramchander alone would have taken the revenge, specially when the co-accused (since acquitted) were there at the threshold adjacent to the court-yard of Mahender Singh and, as the prosecution witnesses

have stated, were having 'kripan' and 'lathi' with them. The learned Counsel urged that the licence of the gun recovered was in the name of Lal Chand and why should he have given the gun to his brother instead of using it himself. These arguments do not help the defence. The reason is that the prosecution case about the instigation and incitement by Mool Chand and Lal Chand and their having 'kripan' and 'lathi' at the relevant time has been discarded by the learned trial Judge for good reasons i.e. this story not being there in the initial version of the witnesses before the police and there being inconsistencies in the statements of the witnesses on this point at the trial. It is not in every case that testimony of a witness should be discarded in toto because of a particular part of his narration not being worth reliance. There, may however, be cases in which the part of the statement rejected is so connected with the order that the two parts cannot exist independently. In such cases the evidence of such witnesses should not of course be made the basis of conviction. In the present case the appellant is stated to be on the roof with a gun and was hurling abuses to Veer Singh & threatening to kill him. His act of firing the shots can therefore, safely be separated from the part of the prosecution story about Mool Chand and Lal Chand instigating him with a 'lalkar' to fire the shot.

25. The principle enunciated in the case of *Devilal and Anr. vs . The State of Rajasthan* : 1971 CriLJ1132 referred by Mr. Purohit, that if the pivot of the prosecution case is not accepted a new prosecution case cannot be made to imperil defence is not applicable, in the facts and circumstances of the present case. In that case, the two persons alleged to have instigated to fire the shots pointing the enemies were not found present both by the Sessions Court and the High Court and therefore, the question of their pointing out the enemies to the two assailants did not arise. The Sessions Court held that the three accused caused injuries while the High Court opined that only two accused had caused injuries. Their Lordships of the Supreme Court were pleased to observe that it was not noticed by the High Court that the improvement of the individual part ascribed to the assailants was not in the first information report and was a subsequent improvement. It also weighed with their Lordships that the accused did never know that this was the prosecution case. In the present case the alleged act of instigation by the co-accused alone was not responsible for firing the shots by

Ramchander and therefore, that instigation part of the prosecution case cannot be said to be the bedrock of the prosecution case.

26. So far as examining of interested witnesses inimically disposed against the appellant only is concerned, it is important to consider that the prosecution case is that Mal Singh (PW 10) had reached the site after the firing of the shots. Dayal Singh (PW 7) examined by the prosecution had also reached the site after hearing the report of the gun fire at his house. In this view of the matter, the prosecution was naturally left with the witnesses who were actually present there at the site.

27. It is relevant to observe that the evidence of interested and partisan witnesses need not be discarded in each and every case. All that is to be seen is whether they inspire confidence or not. The courts have always insisted upon careful sifting of the evidence of such witnesses and for being cautious about the improvement and embellishment attempted to be made by such witnesses in order to bring the guilt home against the persons they are inimically disposed of.

28. It is this principle which is enunciated in the case of Bakhatawar Singh and Ors. v. State 1975 WLN 1 and their Lordships were pleased to observe as under:

Undoubtedly, when a criminal court has to appreciate evidence given by the witnesses who are inimical to the accused and close relatives of the victim, it has to be very careful in weighing such evidence, but in our opinion, it would be unreasonable to contend that evidence given by such witnesses should be wholly discarded only because it is evidence of partisan or interested witnesses.

29. The question about the reliability of the witnesses related to the deceased came for consideration before Supreme Court in the case of Ravul-appalli Kandaish and Ors. vs. State of Andhra Pradesh : (1974)11LLJ514SC and their Lordships were pleased to propound the principle that the witnesses being relations of the deceased, by itself, does not make their evidence unreliable. It only puts the Court on guard to scrutinise their evidence with more than ordinary care.

30. The point for determination before this Court is whether the trial Court has scrutinised the evidence of the witnesses related to the deceased and interested in

him, with the required care and caution.

31. There is strength in the argument of the learned Public Prosecutor that the eye witnesses examined by the prosecution were the sons, daughters and the ladies of the house of Mahender Singh and their presence at the site at the relevant time was most natural. The most important attack on the part of the prosecution case by the learned Counsel for the appellant is that out of eleven witnesses examined by the prosecution about the actual occurrence five have been declared hostile and there is no reason to give more weight to the evidence to the remaining in comparison to their testimony.

32. Pahalwan Singh (PW.2), Dayal Singh (PW.7), Harnam Singh (PW 8), Khan Singh (PW.9) and Mal Singh (PW.10) have not supported the prosecution case regarding the time of occurrence and the identity of the person standing on the roof of the house of Ramchander and have therefore, been declared hostile by the prosecution. Out of these five witnesses Dayal Singh (PW.7) and Mal Singh (PW.10) residing at a distance, had stated about their reaching the site only on hearing the report of the gunfire. Pahalwan Singh (PW.2) and Harnam Singh (PW.8) brothers of the deceased and Khan Singh (P V.9) his cousin have also stated about there being dark and expressed their inability to identify the assailant. There are how ever six other witnesses who have claimed to have seen Ramchander standing on the roof and firing the shots.

33. Diwan Singh, the real brother of Veer Singh was the person who with the help of Mal Singh had taken Veer Singh from the place of occurrence to the house. The criticism levelled against this witness by the learned Counsel for the appellant is that, had he been there, there was no reason for his not going to the court-yard in which Veer Singh was at the 'time of the incident and feeling content by standing near the wall in the court-yard outside the residential house. There was only 3 1/2' 4'high wall in between the two court-yards If Diwan Singh did not dare to go in the other court-yard at the time of the firing, it cannot be said that he Was not at all present in the other court-yard even All the witnesses, sad to be present at the site, are unanimous on the point that it was Diwan Singh (PW. 1) who had taken the injured Veer Singh to the house from the place of the incident. The witness has

stated that after the firing was over, he had jumped the wall and reached near Veer Singh. There is nothing to disbelieve this version. He has stated the time of the incident to be approximately 7.00 P.M.

34. Another criticism levelled against the credibility of this witness is his lodging the first information report with delay. The argument does not require much discussion. The witness has given the details about his going to Chak 7F and making efforts for the 'Jeep' and failing to have one there returning to his house and taking the bicycle and going to Ganganagar for fetching the 'jeep' and taking the injured to the hospital and thereafter lodging the first information report with Police Station. Matili Rathan. Matili Rathan being at a distance from the hospital the delay in lodging the report at 3.00 a.m. in the same night for an incident having taken place at 7.00 p.m. cannot be said to be an inordinate delay so as to suspect some improvement in the case, by utilising that time. The witness has also been criticised on the ground that he had tried to tamper with the circumstantial evidence by removing Veer Small from the site to the house. Mr Purohit, argued that there was the necessity for removing the injured from the site before the arrival of the police. There was nothing strange in this act. The natural conduct of the family members in such circumstances would be to take the injured to the house if there was no certainty of his breathing his last prior to his removal.

35. Mr. Purohit next contended that the six prosecution witnesses on whom the learned trial judge has relied are all infirm in the sense that part of their statements i.e. relating to Mool Chand and Lal Chand has been discarded and therefore, there being no corroboration by the credible evidence to their statements, the conviction of the appellants based on their version is not justiciable. Reliance has been placed on the principle enunciated in the case of Babusingh and Ors. vs. The State of Rajasthan 1978 Raj. (sic)ri. Cases 267 that an infirm witness does not become reliable because it has been corroborated by a number of witnesses of the same brand, and that the evidence is to be weighed and not counted. These observations were made by their Lordships for the reason that in that case right from the beginning the prosecution witnesses had given an exaggerated version of the incident, the entire case depended upon the testimony of interested and inimical witnesses, a considerable portion of their statements was found to be

unreliable, both by the trial Court and the High Court. The effect of the prosecution story about Lal Chand and Mool Chand exciting Ramchander has been discussed by us above and we have not considered the two parts so intermingled or interconnected that one may not stand without the support of the other. The circumstances of non-availability of independent witnesses has already been discussed and need not be repeated here.

36 The most emphatic argument of the learned Counsel for the appellant is that there being different version of the witnesses regarding the time of the incident it could not have been possible for them to identify the person with the gun on the roof where from the gun is alleged to have been fired.

37. The five witnesses, declared hostile by the prosecution, have of course denied to have identified the man who had fired the gun from the roof of the house of Ramchander. But the other witnesses, most of whom had sustained injuries are categoric on the point that there was sufficient light to identify the person standing on the roof. It is pertinent to observe, that the distance between the place where the deceased was and the roof was only 58'. The witnesses and the appellant are next door neighbours. According to Mr. Purohit on the relevant date the sun set time was 6.43 P.M. The time of occurrence according to the prosecution witnesses was 7.00 P.M. and it has been specifically stated that it was sun set time but the dark had not set in. Mahender Singh was even able to describe the clothes Ramchander was wearing at the time.

38. With such evidence of the prosecution witnesses, we find our-selves unable to agree with the learned Counsel for the appellant that even the next door neighbours could not have been able to identify Ramchander at that time. It is noteworthy that even after sun set there is light available for sometime to enable a person to identify some body standing at a distance of a few yards.

39. The important circumstantial evidence against the appellant on which the prosecution has placed reliaince and Mr. Purohit has tried to assail is the recovery of the gun and the empty cartridges in pursuance of the information furnished by the appellant at his instance. There is no dispute on the point that the licence of the gun was in the name of Lal Chand, brother of the appellant Ramchander The

'kotha' from, which it is said to have been recovered belongs to Lal Chand which is adjacent to the roof of the house of Ramchander from where the gun shots are said to have been fired. Mr. Purohit strenuously contended that the appellant might be knowing the place where his brother was keeping the gun and his getting the gun recovered from that place would not be an incriminating circumstance against him. The argument is, of course, not totally devoid of force but the information furnished by the appellant was that it was he who had placed the (gun there. About the empty cartridges that were found on the roof & with the gun and the experts opinion is that they could have been found to be fired from gun sent to him. The recovery has therefore, been rightly considered to be a strong circumstance against the appellant.

40. Mr. Purohit has also found fault with the opinion expressed by the Ballistic Expert as he has not given specific opinion that the cartridges sent to him were fired from the gun under reference. Mr. Purohit's contention is that opinion being vague the possibility of the cartridges being fired from some other gun cannot be ruled out.

41. The report of the Director Forensic Science Laboratory Ex. P. 28 shows that the gun in question was found serviceable and the 12 bore cartridges sent for examination could have been fired from the gun under reference. It has also been opined that the wad pieces and lead pellets sent for examination could have come out from the 12 bore cartridges under examination. The expert not being at the site could not have given the opinion that it was this gun and none else from which the cartridges were fired. Hence the opinion cannot be said to be vague.

42. Another argument advanced by Mr. Purohit is that, there were five shots according to the prosecution witnesses and if by one shot the deceased had sustained so many pellet wounds, then the injuries of other persons by four shots must have been more in number than what have been noted by the Doctor. The argument is not helpful to the defence. The sustaining of pellet injuries would always depend upon the place injured are standing and also the distance between them and the assailants. After the shot pellets spread and the flying pellet may get scattered at a distance without hitting such persons nearby and causing some

injuries even to those who might be at some distance.

43. It has been contended by Mr. Purohit that the prosecution case is about five shots and only one empty cartridge has been recovered from the roof of the house of Ramchander & three from near the gun recovered from inside the 'kotha' and therefore, the possibility of one shot being fired from some other gun cannot be ruled out. According to Mr. Purohit, in this situation it cannot be specifically said that any of the four empty cartridges recovered was responsible for the injuries sustained by Veer Singh deceased. That, even if the prosecution case is taken to be true, it may be possible that these four cartridges were of the shots fired subsequent to Veer Singh falling down because of gun shots injuries. Mr. Purohit stressed that the possibility of one shot having been fired from a direction different from the roof of Ram Chander or some-body being there with Ramchander there on his roof and firing the shot, cannot be ruled out. We are not impressed by this argument. The reason is that there is reliable evidence of the witnesses that it was Ramchander alone who was there on the roof of his house with a gun and it was the shot fired by him which hit Veer Singh. We are, therefore, not con-vinced by the argument of Mr. Purohit that Ramchander at the most can be held responsible for the injuries sustained by the persons standing there and not for the fatal injuries of Veer Singh deceased.

44. In view of the above discussion, we do not find any ground to form an opinin different from that of the learned trial Judge so as to interfere with the findings.

45. Consequently, the appeal having no merits is dismissed.