

Than Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-27-2004

Reported in : RLW2004(4)Raj2692

Judge : Rajesh Balia and; O.P. Bishnoi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 163 and 164

Appeal No. : D.B. Criminal Appeal No. 576 of 2000

Appellant : Than Singh

Respondent : State of Rajasthan

Advocate for Def. : Sandeep Mehta, Adv. and; I.S. Pareek, Public Prosecutor

Advocate for Pet/Ap. : Pradeep Shah and; Shambhoo Singh, Advs.

Disposition : Appeal allowed

Judgement :

O.P. Bishnoi, J.

1. These three appeals have been filed by the three appellants Than Singh, Gulab Singh and Ramesh against a judgment dated 23.9.2000 by the learned Additional Sessions Judge, Bali, whereby, all the three have been found guilty for the offences punishable under Section 302, 302/34 and 341/34 of the 1PC.

2. The F.I.R. Ex.P/19 was lodged by PW.5 Bachchan Singh on 26.6.98 at 6.15 PM at police station, 'Nana'. According to the F.I.R., the deceased Manga! Singh (brother of PW 5 Bachchan Singh) on 26.6.98 had left his village veerampur for going to village 'Nana' at 4.00 PM with PW 17 Mahendra Singh in connection with some domestic work on a motor-cycle. At 5.30 PM on that day, Mahendra Singh returned to village Veerampur and informed Bachchan Singh that after purchasing some material in village Nana, he along with Mangal Singh was returning to Veerampur on a motor cycle. Near cremation ground of village Nana, on the bank of river 'Jawai', the appellant than Singh was found standing with a 'dhariya' blocking their path. When the motor-cycle was stopped by Mangal Singh, the other two appellants Gulab Singh with a 'kulhari' and Ramesh with a 'lathi' came near the motor- cycle. Mangal Singh enquired from them as to what was the matter. Thereupon, the appellant Than Singh told him that inspite of many attempts, he could not be killed and today they were determined to murder him. Thereafter an injury by 'dhariya' was inflicted. PW 17 Mahendra Singh attempted to save Mangal Singh, whereupon, the appellants allegedly said that he should also be killed, whereupon Mahendra Singh took to his heels. The three appellants started to inflict injuries to Mangal Singh with the said weapons and Mahendra Singh returned to village Veerampur to tell the story to Bachchan Singh. Thereafter, Bachchan Singh along with Jaisa Ram proceeded on a motor cycle to the place of occurrence and saw the three assailants running away. The dead-body of Mangal Singh was found on the spot and the motor cycle was also lying nearby. Further it was stated that some 4-4.1/2 months prior to the incident, the appellant Than Singh was involved in a case of 'Maar Peet' with the deceased and the cases were registered and on account of that enmity, Mangal Singh was murdered. A case under Section 302/34 of the IPC was registered and ultimately, challan was filed for the offences punishable under Section 302 and 304/34 of the IPC. Charges were framed for the offences punishable under Section 302, 302/34 and 341 of the IPC. All the three appellants pleaded not guilty. Seventeen prosecution witnesses were examined by the prosecution and the appellant Than Singh examined himself as DW I. Thereafter arguments were heard and the judgment was delivered on 23.9.2000. The three appellants were found guilty for all the offences for which they were charged. For the offence under Section 341/34 of the IPC,

simple imprisonment for six months has been awarded. For the offence under Section 302 and 302/34 of the IPC, life imprisonment with a fine of Rs. 2000/- has been ordered. On account of nonpayment of fine, simple imprisonment for six months has been ordered. D.B. Criminal Appeal No. 576/2000 has been filed by Than Singh. D.B. Criminal Appeal No. 577/2000 has been filed by Gulab Singh and D.B. Criminal Appeal No. 588/2000 has been filed by the accused Ramesh.

3. We have heard the learned counsel for the appellants as well as the learned Public Prosecutor for the State and have perused the record of the learned Trial Court.

4 According to the F.I.R. Ex.P/19, PW .17 Mahendra Singh alone was the eye-witness of the occurrence. However, during trial, PW 9 Mitha Ram and PW 11 Vaja Ram have also been introduced as eye- witnesses. PW 9 Mitha Ram has stated that he along with Vaja Ram was returning to Veerampur from Nana when the motor cycle carrying the deceased and Mangal Singh over took them. As soon as the motor cycle reached the river bank, Than Singh who was armed with a sword, blocked the way and the two other appellants, who were hiding in a nearby 'Khud' came out. Than Singh inflicted injury to the head of the deceased Mangal Singh by the sword. Thereafter Mangal Singh started to run towards the village Nana and was chased upto some distance by the appellants. While chasing, all the three appellants attacked the deceased with the weapons which they were wielding, as a result of which, Mangal Singh fell down and the three started to cause injuries to him. Mitha Ram and Vaja Ram raised hue and cry, upon which, the three assailants took to their heels along with their weapons. Mitha Ram and Vaja Ram approached the injured who made gesture from his hand for water and died instantaneously. Thereafter according to the witness PW 5 Bachchan Singh and PW 7 Jaisa Ram came on the spot on a motorcycle. PW 11 Vaja Ram, however, denied the entire story and denied that he along with Mitha Ram was a witness to any such incident. He was declared a hostile witness.

5. PW 17 Mahendra Singh has stated that after accomplishing the work at village Nana, he was returning to village Veerampur on the motor cycle with Mangal Singh. He further stated that Mitha Ram met them near the liquor shop and when

they reached the river bank, the appellant Than Singh appeared with a sword. Seeing this, Mahendra Singh left the motor cycle and took to his heels towards village Nana. However, Than Singh inflicted injury by the sword to the head of Mangal Singh and seeing this, he (Mahendra Singh) ran towards village Veerampur. The witness denied that he saw the other accused Gulab Singh and Ramesh on the place of occurrence and was declared hostile. He has stated that he reached the house of the deceased and informed PW 5 Bachchan Singh, the son (PW 6 Vikram) and the widow (PW 4 Ratan Kanwar) of the deceased regarding the incident. PW 3 Jabbar Singh, PW 7 Jaisa Ram and PW 8 Amar Singh have deposed about the recoveries of the weapons of offence at the instance of three accused- persons- PW 4 Ratan Kanwar and PW 6 Vikram, who were widow and son of the deceased have stated that Mahendra Singh informed them about the incident, whereupon, PW 6 Vikram proceeded towards the place of occurrence. PW 5 Bachchan Singh and PW 7 Jaisa Ram have both deposed that after learning about the incident from Mahendra Singh, they both reached the place of occurrence on a motor cycle and they saw the three appellants running away with weapons of offence in their hands. They both further stated that Mitha Ram and Vaja Ram were found present near the dead-body.

6. PW 13 Dr. Mahendra Kumar Dabi has stated that on 27.6.98, he was posted as Medical Officer at Primary Health Center, Bhimana and performed the Autopsy in respect of the dead-body of Mangal Singh. He has stated that the following ante-mortem injuries were found on the person of the deceased, which he recorded in the post-mortem report Ex.P/25 :-

1. Incised wound-size 9 x 2 cm x bone deep, associated with tear of right ear pinna at middle part of size 2 cm x 1 cm. Injury located on right half of skull. Postero-laterally at the level of right ear pinna (middle).
2. Incised wound-size 4 cm x 1 cm, skin deep, located on right half of skull postero-superiorly.
3. Incised wound-size 7 cm x 1 cm, skin deep located about 1 cm posterior to injury No. 2.

4. incised wound-size 15 cm x 3 cm, deeper upto brain, underlying injury fracture of left parietal bone present, associated with underlying brain tissue destruction which is coming out through fractured bone. Location-injury is located on left half of skull antero-laterally.
5. Incised wound-size 17 cm x 3 cm x 3 cm deep, located on left half of skull antero-laterally over left frontal and left parietal region, about 2 cm below injury No. 4 underlying injury fracture of skull bone (left half of frontal and left parietal bone) associated with destruction of underlying bone tissue.
6. Incised wound-size 9 cm x 1 cm x muscle deep located on left antero-lateral aspect of face at the level of lower part of nose.
7. Lacerated wound-size 2 cm x 1 cm x subcutaneous deep located on left side of face near to middle part of left ear pinna.
8. Lacerated wound-size 5, cm x 1/2 cm x skin deep, located on extensor aspect of upper 1/3rd of left fore-arm
9. Incised wound-9 cm x 2 cm x 3 cm size, located on posterior aspect of left shoulder.
10. Abrasion-size 4 cm x 1/4 cm located on anterior aspect of left shoulder.
11. Abrasion-size 3 cm x 1/4 cm located on anterior aspect of left shoulder joint about 7 cm above injury No. 10.
12. Abrasion-size 4 cm x 1/4 cm located on antero-lateral aspect of upper 1/3rd of left fore-arm.
13. Lacerated wound-size 7 cm x 5 cm x skin deep, located on extensor aspect of middle 1/3rd of left fore-arm.
14. Abrasion-size 8 cm x 1/10 cm about 3 cm lateral to injury No. 9.
15. Abrasion-size 2 cm x 1/2 cm located on anterior aspect of upper 1/3rd of left thigh.

16. Incised wound-size 5.1/2 cm x 1 cm x skin deep located on anterior aspect of middle 1/3rd of left leg,
 17. Abrasion-2 cm x 1/10 cm located on antero-medial aspect of left knee.
 18. Abrasion-2 cm x 1/4 cm located on antero-lateral aspect of left knee.
 19. Abrasion-2 cm x 1 cm size, just above injury No. 16.
 20. Lacerated wound-size 4 cm x 1 cm x subcutaneous deep located on anterior aspect of middle 1/3rd of right left.
 21. Lacerated wound-size 6 cm x 1 cm x subcutaneous deep located about 5 cm below injury No. 20.
 22. Lacerated wound-size 1 cm x 1 cm x skin deep, located about 4 cm below injury No. 21.
 23. Bruise-size 8.1/2 cm x 1 cm located on right half of chest on mid-clavicular line, about 12 cm below, from right nipple.
 24. Lacerated wound-size 1.1/4 cm x 1.1/4 cm x bone deep located on distal end of proximal phalanx of index finger of right hand, stained with clotted blood and bone of proximal phalanx is visible. Middle and distal phalanx of index finger is missing.
7. According to Dr. Dabi, the cause of death in his opinion was shock due to severe external haemorrhage following various multiple injuries over head and underlying brain tissue destruction.
8. The contention of the learned counsel for the appellants is to the effect that it was a blind murder without any one to witness the same and the three appellants have been implicated falsely by the S.H.O. Police-Station, Nana PW 12 Amolak Chand. It is submitted that the original F.I.R. Which was lodged first in point of time at the. police-station by PW 7 Jaisa Ram and PW 9 Mitha Ram was changed by the said Amolak Chand and the F.I.R. Ex.P/19, which was actually not lodged by PW 5 Bachchan Singh at the police station, Nana but was got written by Amolak Chand (PW 12) when he visited the place of occurrence pursuant to the earlier

report lodged by Jaisa Ram and Mitha Ram. Still PW 12 Amolak Chand was not satisfied and later introduced PW 9 Mitha Ram and PW 11 Vaja Ram as eye-witnesses as if they were present at the place of occurrence and saw the incident from beginning to the end. Upon receiving the information about the incident in village Veerampur by PW 17 Mahendra Singh PW 5 Bachchan Singh and PW 7 Jaisa Ram proceeded to the place of occurrence and strangely enough, were able to see all the three appellants with their weapons in the vicinity of the crime as if the assailants waited for these two witnesses to come and see them there. It is contended by the learned counsel for the appellants that the incident occurred not near village Veerampur but at the cremation ground of village Nana and PW 17 Mahendra Singh allegedly went on foot from the place of occurrence to village Veerampur and subsequent to that, Bachchan Singh and Jaisa Ram proceeded from Veerampur to village Nana. According to the learned counsel, 24 injuries found on the person of the deceased could be inflicted by the three appellants in a couple of minutes and simply it is unbelievable that after inflicting the injuries, the three would wait for the arrival of these witnesses for such a long time.

9. The learned Public Prosecutor, on the other hand, argued that though PW 17 Mahendra Singh has turned hostile and has implicated the appellant Than Singh only, there is no reason to disbelieve the deposition of PW 9 Milha Ram who has narrated the incident implicating all the three appellants.

10. So far as the finding of guilt under Section 341/34 of the IPC is concerned, it may be stated at the very out-set that the conclusions of the learned Trial Court are simply unsustainable. There was nothing on the basis of which a charge for the said offence could be framed and there was much less justification to arrive at a finding of guilt in respect of the same. The prosecution case is very simple, according to which, the three appellants conspired to murder Mangal Singh, laid an ambush and when Mangal Singh came near them, they attacked and killed him. The prosecution has not come with the case that the appellants were motivated by any desire to prevent the deceased from going to any particular direction or place. In order to attract the provisions of Section 341 of the IPC, the prosecution has to suggest that in order to prevent a person from proceeding to any destination, there was a voluntary obstruction by the culprits with a clear

motive to prevent the person from proceeding towards the said destination. In the instant case, there is nothing to suggest that the appellants were interested in preventing the deceased from proceeding in any particular direction or acted with a motive to voluntarily obstruct him from going there. The sole motive, according to the prosecution story, was to murder the deceased. There is no circumstance to suggest that there was any other motive. Consequently, the finding of guilt in respect of the offence punishable under Section ,341/34 of. the IPC has no basis whatsoever.

11. We further find that the contentions raised by the learned counsel for the appellants are not without basis and the prosecution case suffers from infirmities high-lighted by the learned counsel. As pointed out earlier, there are improvements in the prosecution evidence over and above, the contents of the FIR Ex.P/19, According to the FIR Ex.P/19, PW 17 Mahendra Singh alone was the eye-witness of the incident and when PW 5 Bachchan Singh and PW 7 Jaisa Ram reached the spot on motor-cycle, the dead-body of Madan Singh was lying and there was no one near him. Subsequently, on 6.7.98, for the first time, the story was changed and the statements of PW 11 Vaja Ram and PW 9 Mitha Ram were recorded and both were introduced as eye-witnesses of the incident. However, PW 11 Vaja Ram could not support the prosecution story regarding he being an eye-witness and denied that he along with Mitha Ram was present when the incident occurred. The deposition of PW 9 Mitha Ram does not inspire any confidence. In his examination-in-chief, he has stated that the appellant Gulab Singh and Ramesh were hiding inside a 'khud' and came out when the motorcycle was stopped. Further, his deposition is to the effect that after receiving the injury from Than Singh on his head, the deceased Mangal Singh took to his heels and started to run towards village Nana. He has stated that the three appellants gave him a chase and after covering some distance, all the three inflicted injuries, as a result of which, the deceased fell down. This statement is contrary to the contents of FIR Ex.P/19, according to which, the entire incident took place where the motor cycle was slopped and there is no mention to the effect that the injured was able to run away and was given a chase. In his examination-in-chief, PW 9 Mitha Ram states that after Mangal Singh breathed his last, PW 7 Jaisa Ram and PW 5 Bachchan Singh came subsequently at the place of occurrence. However, during

his cross-examination on 29.3.2000, the witness stated that the deceased Mangal Singh was alive when Llachchan Singh and Jaisa Ram came at the place of occurrence. In his cross-examination dated 29.3.2000, the witness came with a new version and stated that prior to inflicting injuries to the deceased, the appellant Than Singh told the deceased that the deceased has immunity for 3 days, during which, he can meet his near and dear and after 3 days, he 'will assassinate him. This version does not find place in the FIR Ex.P/19 nor in the examination-in-chief of the witnesses. PW 17 Mahendra Singh also does not say about the delivery of such a dialogue from the appellant Than Singh prior to the incident at the place of occurrence. During cross-examination, PW 9 Mitha Ram was put the question as to in what connection he happened to be at the place of occurrence at the particular time. He came with the reply that he as well as Vaja Ram both had to visit village Nana in order to condole the death of a woman of their community. However, he could not disclose the name of the woman or the name of her husband. We are left with little doubt that PW 9 Mitha Ram is a totally created witness and has been introduced much subsequent to the belonging of the FIR Ex.P/19. PW 11 Vaja Ram, as pointed out earlier, has not corroborated the prosecution story in this respect.

12. So far as the deposition of PW 17 Mahendra Singh is concerned, the less said the better it is. As far as the appellants Gulab Singh and Ramesh are concerned, PW 17 Mahendra Singh has denied that the two were present or were noticed by him at the time of occurrence, inspite of the fact that in the FIR Ex.P/19, both have been shown to have participated in the crime, as much as Than Singh and even their weapons have described. However, during his deposition, the witness backed out in respect of them and has been declared hostile by the concerned Additional Public Prosecutor.

13. It is argued by the learned Public Prosecutor that so far as Than Singh is concerned, he stands implicated by PW 17 Mahendra Singh and there is no reason to disbelieve Mahendra Singh in respect of the appellant Than Singh. We find that the appellant Than Singh cannot be found guilty on the basis of the so-called deposition of PW 17 Mahendra Singh. Even according to the prosecution, he is not a witness of sterling worth and has been declared a hostile witness. In his

examination-in-chief, he attributes a sword in the hands of Than Singh whereas the FIR Ex.P/19 which was lodged as per his instructions has a mention that Than Singh had a 'dhariya' in his hands. It is submitted by the learned Public Prosecutor that the dhariya and sword are not much different and hence this anomaly is not of much consequence. In this connection, the deposition of PW 7 Jaisa Ram is significant. PW 7 Jaisa Ram does not say that the 'dhariya' and the sword are identical. On the contrary, he states that he scribed the FIR Ex.P/19 at the dictation of PW 9 Bachchan Singh and when Bachchan Singh made a mention of 'dhariya' he objected and told Bachchan Singh that as per the information of PW 17 Mahendra Singh, the appellant Than Singh was wielding a sword. However, Bachchan Singh, according to the witness was keen that though according to PW 17 Mahendra Singh, the appellant had a sword with him but instead of the sword, they should mention 'dhariya' which shall be more helpful in the case. It is, thus, not acceptable that 'dhariya' and 'sword' are one and the same thing. If PW 7 Jaisa Ram is to be believed, the weapon of offence was changed on account of insistence of PW 5 Bachchan Singh. More-over, the deposition of Mahendra Singh is not in harmony with the contents of Ex.P/19. According to Ex.P/19, prior to the incident, the deceased and the appellant Than Singh had a dialogue. The deceased wanted to know as to why he has been stopped. Thereupon, the appellant Than Singh allegedly replied that though the deceased had survived many as earlier attempts, today they are sure to kill him and thereafter the three appellants started to rain blows to the deceased then and there. In his deposition, PW 17 Mahendra Singh does not say that there was any conversation prior to the incident. Further he states that when the appellant Than Singh became visible with sword, the deceased left the motor cycle and took to his heels towards village Nana. The FIR Ex.P/19 does not say that any attempt to run away was made by the deceased. More-over, from the deposition of Mahendra Singh, it is more than clear that he was coerced to implicate the three appellants by the S.H.O. Amolak Chand and was subjected to harassment and threats unless he complied with the wishes of the said S.H.O. The relevant portion of the deposition of PW 17 Mahendra Singh reads as under :-

^eq>s bl ds'k esa Fkkusnkj th us c;ku nsusds fy, cgqr rax fd;k Fkk o ;g Hkh /kedh nh Fkh fd tks eSa dgrk gwa ;s c;ku ughafn;s rks eSa rq>s Hkh tsy es Mky nwxk A

;g ckr lgh gS fd Fkkusnkj th us eq>s/kedh nh Fkh fd ;fn rgeus Fkkuflag] xqykcfag
jes'k }kjk ekjihV djus dh ckrc;kuksa es ugh fy[kk;h rks eSa rqEgs Hkh bl izdj.k es
eqyfte cuk nwaxk A**

14. Needless to say that when a witness admits to such type of pressure by the police, his statement can not be made the basis for arriving at a finding of guilt in such a serious case. The learned Public Prosecutor, in this respect, has submitted that earlier on 18.8.98 this Mahendra Singh voluntarily appeared before the learned Judicial Magistrate, Desuri and got recorded his statement, Ex.D/2, under Section 164 of the Cr.P.C. of his volition and in this statement, he has not only shown the presence of PW 9 Mitha Ram and PW 11 Vaja Ram as eye-witnesses but has implicated all the three appellants and since the said statement was on oath, there is no reason to disbelieve the prosecution story. We find that the above contention of the learned Public Prosecutor is also of no consequence to the prosecution. First of all, it may be mentioned that Ex.D/2 is not in harmony with the FIR Ex.P/19 and further Ex.D/2 does not implicate all the three appellants. Only Than Singh and Ramesh have been named in Ex.D/2 and there is no mention about the presence of the appellant Gulab Singh. More-over, there is no reason to believe that the witness got recorded his statement Ex.D/2 of his own accord and volition. There is a note under the statement by the concerned Magistrate to the effect that during the statement, the witness collapsed, started weeping and disclosed that he has been threatened by the S.H.O. to the effect that unless he corroborates the version suggested by the S.H.O. as an eye-witness, he will be implicated by the S.H.O, as an accused in the case. He further stated that the S.H.O. has made it clear that unless he deposes according to the wishes of the S.H.O. he will record the statement of the widow of the deceased to the effect which will implicate him as an accused in this case. During his deposition as PW 17 Mahendra Singh in court, the witness had this to say in respect of the statement Ex.D/2, which was recorded by the said Judicial Magistrate :-

^nslwjh eqafIQ dks VZ esa c;ku gsrq ys x;s rcesjs lkFk Fkkusnkj th Fks A b ,DI
Mh&2 esa of.kZr c;ku nsus ds fy, eq>sFkkusnkj veksydpUn us Mjk;k Fkk A eq>s b
,DI Mh&2 esa of.kZr c;ku le>kusds fy, yxHkx Ms< efgus rd Fkkus esa cqyk;k x;k
Fkk A

15. Needless to say that when a witness is tortured by the concerned police officer to depose on the lines dictated by the police officer, such deposition cannot be made a basis for conviction.

16. We are inclined to believe the defence contention to the effect that initially, the F.I.R. was lodged at the police station by PW 7 Jaisa Ram which has been made to disappear and no FIR was produced by PW 5 Bachchan Singh at the police station but the same (Ex.P/19) was subsequently recorded by the S.H.O. Amolak Chand when he visited the place of occurrence after getting the information from the FIR lodged by Jaisa Ram earlier. In this connection, the deposition of PW 9 Mitha Ram and PW 5 Bachchan Singh is significant. In his cross-examination, PW 9 Mitha Ram specifically states that the FIR was scribed by Jaisa Ram and it was Jaisa Ram who took the FIR to the police station. Further he states that he accompanied Jaisa Ram to the police station and actually he thumb-marked the said FIR when it was produced by Jaisa Ram in the police station. No FIR with thumb impression of Mitha Ram has been produced in court. PW 5 Bachchan Singh, in his examination-in-chief, dated 12.5.99 has deposed to the effect that the FIR Ex.P/19 was lodged by him with the police. He does not say that he travelled to the police station to lodge the FIR Ex.P/19. However, during his cross-examination on 28.3.2000, it becomes clear that the police came at the place of occurrence and after arrival of the police, the 'Panchnama' of the dead-body and others papers were prepared and at that point of time, he dictated the FIR to Jaisa Ram and from there, the police people took the same to the police station. That falsifies the prosecution story to the effect that PW 5 Bachchan Singh went with the written FIR to the police station and thereafter the police came into action. The relevant portion of the deposition of PW 5 is reproduced below :-

^rc gekjs lkFk eqa'khth o Fkkusnkjth ekSds ijvk;s Fks A ekSds ij uD'kk oxSjg cuk, Fks A iapukek vkSj vU; dkxth dk;Zokgh dhFkh A ml le; esjs dgus ls tSlkjk us fjiks VZ fy[kh Fkh A vkSj ml fjiks VZ ijeSaus vxaqBk fd;k Fkk A ;g fjiks VZ eSaus egsUnzflag }kjk crk;h x;h ?kVuk dsvuqlkj fy[kk;h Fkh fQj lc dkxt] iqfyl okys lkFk ys x;s Fks A

17. It is, thus, more than clear that when the police came to the place of occurrence pursuant to the earlier FIR which according to PW 9 Mitha Ram was Jodged -by him and Jaisa Ram at the police station, the second FIR Ex,P/19,was got scribed by the SHO Amolak Chand and consequently, the three appellants- were implicated as accused- persons.

18. At the end, the learned Public Prosecutor has argued that the wearing apparel of the three appellants and the deceased were recovered by the police and similarly, the weapons of offence were also recovered at the instance of the three appellants and as per the FSL report Ex.P/28, all these things were found smeared with ' human blood, 'which' according to the FSL report Ex.P/28" was of 'B' Group. It is submitted that this circumstance alone is sufficient, to bring home the charge against all the appellants. We find that the evidence in this respect falls' much short of proving the prosecution case against the accused-person.

19. All the three appellants were arrested on 30.6.98. The SHO has made a mention in the three arrest-memos to the effect that, their shirts, were found stained with human Wood. However, it is very strange that the shirts in question were not. recovered on 30.6.98 itself when they were arrested. The recoveries of the shirts have been shown to have taken place on 1.7.98 vide three recovery rmemos Kx. P/11,Ex.P12 and Ex.P/13 in the morning between 8 to 8.30 AM. It may be noted that the recovery memos were not prepared at the instance of the accused-persons nor any information regarding recovery under Sec. 27 of the Evidence Act was supplied by the accused-persons. PW, 3 Jabbar Singh and PW 7 Jaisa Ram have been 'examined' as 'Motbir,' witnesses of the alleged recoveries. PW 3 Jabbar Singh does not say that any shirts were given to the police by any of the appellants. He has stated that the 'motbirs' were summoned in the police-station and some police-wala came with the shirts. The witness does not say that any of the accused was present even. PW 7 Jaisa Ram simply states that he was summoned in the police-station and the cloths were found lying with the police people. He makes it clear that none of the appellant was present at. that point of time. It, therefore, cannot be said that the shirts belonged to any of the appellants or they were recovered from the appellants.

20. The story of recovery of the alleged weapons of the offence is even more bizarre. According to the prosecution story the information memos under Section 27 of the Evidence Act (Ex.P/22, Ex.P/23 and Ex.P/24) were all prepared on 1.7.98. The weapons allegedly were recovered from the river-bed and from a well near the river-bed. In spite of the story that all the three information were furnished on 1.7.98. Only the 'lathi' was recovered on 1.7.98 at 5 P.M. concealed in the river-bed. Regarding the recovery of the sword and the 'koont' the prosecution story is to the effect that both the weapons were thrown in the well and the police on 2.7.98, retrieved both the weapons from the well with the help of a magnet. Now it is strange that the offence took place on 26.6.98 and the two weapons were thrown in the nearby well and the lathi was put underground in the river-bed, still, the prosecution wants to believe this Court that the blood stains received during the incident on these weapons remained present in an intact condition, so much so, that they were not at all disintegrated and remained in such a good condition that even the blood group of the same could be ascertained without any difficulty. Needless to say, that all this was nothing but some act of high sorcery on the part of the S.H.O. Amolak Chand. In this respect, the deposition of PW 8 Amar Singh is revealing who was made to attach the recovery in question as an independent 'motbir' though admittedly he happens to be the brother-in-law of the deceased. He is in a position that initially the three appellants got recorded the three information memos under Section 27 of the Evidence Act and within one hour of the same, all the three weapons were recovered by the police. We find no justification to place any reliance on such evidence.

21. The sole motive for the incident, according to the FIR Ex.P/19 was some 'Maar Peet' between Than-Singh and deceased Mangal Singh in respect of which, the cases were registered in the court. However, no such FIRs have been tendered in evidence. PW5. Bachchan Singh who happens to be the brother of the deceased and who allegedly lodged the FIR Ex.P./19 contradicts the same in this respect and came out with a new motive in his examination-in-chief dated 12.5.99 to the effect that there was a land dispute between the deceased and Than Singh, on account of which, the former was murdered. However, when he was cross-examined on 28.3.2000 he admitted that the land dispute stood resolved on account of a compromise and the same was not the motive for the incident. PW4 Ratan Kanwar

(widow of the deceased) gave another story to the effect that sometime prior to the incident, Than Singh created chaos during the marriage of the daughter of the deceased and the said accused was unhappy with the deceased and suspected that the deceased was instrumental in the arrest of the accused in theft case in Bombay. Not satisfied, she further stated that earlier the deceased was belaboured by one Tej Singh and the appellant Than Singh. No other witness says that the deceased was belaboured by Tej Singh in the company of Than Singh. Not only this, Ratan Kanwar proceeded to depose that during the incident, the deceased was robbed of his golden chain, golden ring and Rs. 10,000/- in cash, which is no body's case. Needless to say that the witness has deposed in most irresponsible fashion.

22. Be that as it may, we find that in the light of the discussion made above, it is not at all possible to sustain the findings arrived at by the learned Trial Court against the three appellants. Consequently, all the three appeals are allowed. The appellants are all acquitted of the charges. The appellant, Than Singh is in custody and he shall be released forthwith if not needed in connection with any other case. The bail-bonds of the appellants Gulab Singh and Ramesh shall stand cancelled.

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