
Before Adarsh Kumar Goel And H.S. Bhalla, JJ.

STATE OF PUNJAB,—Appellant

versus

SHER SINGH,—Respondent

Murder Reference No. 3 of 2006,

CRIMINAL APPEAL NO. 588/DB OF 2006 AND
CRIMINAL APPEAL NO. 920/DB OF 2003

31st January, 2007

Indian Penal Code, 1860—Ss.302 and 307—Arms Act, 1959—Ss.25 And 27(3)—Conviction of appellant on charge of murder of his gunman—Motive—Neither obligatory nor incumbent on part of prosecution to prove motive—Motive in every cases is not deciding factor, particularly when direct evidence is available—Eye witness maternal uncle of deceased—Whether his evidence can be discarded on the ground of relation with deceased—Held, no—Simply because witness is relative of deceased his evidence not be discarded but it should be received with great care, caution and after due scrutiny—15 hours delay in dispatching FIR—Whether sufficient to throw out prosecution case in its entirety—Held, no—Delay on part of Investigation Officer to help accused a police officer is not a circumstance by which prosecution version can be thrown out—Minor discrepancies on trival matters not touching core of case would not ordinarily permit rejection of evidence as a whole—Prosecution fully establishing commission of murder by accused—Conviction and sentence under section 302 and 307 affirmed—Weapon recovered by accused a rifle AK—47—A semi—automatic rifle and not prohibited weapon under the definition of prohibited arms—Case not covered under section 27(3)—Death sentence awarded under section 27(3) modified to seven years under section 27(1)—Murder reference declined.

Held, that it is neither obligatory nor incumbent on the part of the prosecution to prove the motive, but if it can provide to the Court for appreciation of the evidence, this would be an additional circumstance to prove the chain of the version. Most heinous offence are committed for petty matters and some time for no motive, but the Court cannot sit idle and shift its responsibility to arrive at a particular

conclusion as to who is responsible for the commission of offence, it depends the sensitivity on an independent how to react to a particular situation.

(Para 15)

Further held, that there is no absolute rule that the evidence of a relative or partisan witness should not be believed at all. Simply because the witness is relative of the deceased, his evidence cannot be discarded on that ground alone, but it should be received with great care, caution and after due scrutiny.

(Para 16)

Further held, that the First Information Report was lodged promptly and there is nothing on the record to spell out that the investigation was tainted and on the basis of prompt FIR, the police machinery was set into motion at the earliest and in case the Investigating officer tried to help the accused being a police officer by delaying the despatch of First Information Reports, is not a circumstance by virtue of which the prosecution version can be thrown out.

(Para 19)

Further held, that non-joining of an independent witness at the time of recovery of the arms and ammunition does not cause any dent in the prosecution version since the Investigating Officer of the case has deposed categorically that although he made efforts to join the witness from the locally, but no one was ready to join with them, inasmuch as the appellant was a retired DSP of the police department.

(Para 21)

Further held, that since the rifle 'A K 47' the alleged weapon is not automatically rigged, but only one shot can be fired by the pull of trigger and for firing the second shot, the trigger has to be released first and pulled again. Under these circumstances, the weapon in question i.e. rifle AK 47 does not come within the purview of prohibited arms as defined under Section 2(1)(1) of the Arms Act, 1959. No notification has been placed on the record nor the same has been brought to our notice, which could spell out that the weapon in question and its ammunition have been declared as prohibited arms and ammunition. We would also like to observe that the provision

contained in Section 27(3) of the Act laying down the minimum sentence as death sentence is unfair, unjust and unreasonable. No rider can be created without involvement of the judicial mind. Such enactment smells of arbitrariness since no person can be deprived of his life or personal liberty except according to procedure established by law. The present case is not covered under Section 27(3) of the Act and death sentence awarded is liable to be set aside.

(para 27)

M.S. Sidhu, Senior Deputy Advocate General, Punjab.

Baldev Singh, Senior Advocate with Harpreet Kaur Dhillon
Advocate and Sudhir Sharma, Advocate for the respondent
in CrI. Appeal Nos. 588-DB of 2006 and 920-DB of 2003

Ashok Giri, Advocate for the complainant

JUDGEMENT

H.S. BHALLA, J.

(1) It is sad to note that the watchman of the society stepped into the shoes of a culprit and the service weapon (Stengun), which was allotted to Kuldip Singh (deceased), being a gun man of the accused, was used by him for committing the murder of Kudlip Singh.

(2) Murder Reference No. 3 of 2006 was sent to this Court under Section 366 of the Code of Criminal Procedure for confirming of death sentence awarded under Section 27(3) of the Arms Act, 1959 (hereinafter referred to as "the Act") to appellant Sher Singh by the learned Additional Sessions Judge, Fast Track Court, Ludhiana, vide his judgment dated 26th/29th July, 2006.

(3) By this common judgment, we shall be disposing of Criminal Appeal No. 920-DB of 2003, Murder Reference No. 3 of 2006 and Criminal Appeal No. 588-DB of 2006 together since they are being heard together.

(4) The learned Additional Sessions Judge, Fast Track Court, Ludhiana,—vide his judgment dated 26th July, 2006 convicted the appellant under Sections 25 and 27 (3) of the Act. The appellant was convicted under Section 25 of the Act and sentenced to undergo

rigorous imprisonment for three years,—*vide* order dated 29th July, 2006 and he was order to pay a fine of Rs. 2000/-; in default thereof, he was further directed to undergo rigorous imprisonment for six months. Further, the appellant was convicted under Section 27(3) of the Arms Act and sentenced to death,—*vide* order dated 29th July, 2006 passed by Additional Sessions Judge, Fast Track Court, Ludhiana subject to confirmation of the sentence by the Hon'ble High Court.

(5) Criminal Appeal No. 920-DB of 2003 has been filed by the appellant challenging the judgment of conviction dated 14th August, 2003 passed by Additional Sessions Judge, Fast Track Court, Ludhiana *vide* which he was convicted under Sections 302 and 307 of the Indian Penal Code respectively. The Appellant was convicted under section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and he was ordered to pay a fine of Rs. 5,000. In default thereof, he was further directed to undergo rigorous imprisonment for a period of two years. Further, the appellant was convicted under Section 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of five years and he was ordered to pay a find of Rs. 2,000. In default thereof, he was further directed to undergo for a period of one year. Both the sentences were ordered to run concurrently.

(6) A synoptical resume of the prosecution case is as under :

(7) 16th August, 1999 was declared as a black day for appellant Sher Singh, when a case was registered against him on the statement of Dharam Singh, son of Bawa Singh, resident of village Samaspur. As per the prosecution version, Dharam Singh son of Bawa Singh made a statement to the police that on 16th August, 1999 at about 7.00 P.M. he had come to village Lasara to meet his sister, brother-in-law and maternal nephew. He further stated that his maternal nephew Kuldip Singh was the gunman of reitred Deputy Superintendent of Police, Sher Singh who had also come there on the car of the said Deputy Superintendent of Police. When Kuldip Singh started Car, Dharam Singh asked him to carry him upto Khanna, to which Kuldip Singh agreed. They went to village Nizampur, to which Sher Singh was taking liquor with his relatives. After some time, Deputy Superintendent of Police Sher Singh along with his wife and child sat on the rear seat of the car and Kuldip Singh started driving the car and Dharam Singh (PW-2) was sitting along the driver on

front seat. Kuldip Singh (deceased) handed over his A.K. 47 rifle to the Deputy Superintendent of Police, who was sitting on the back seat. When the car reached after crossing the village Rasulra near the liquor vend, Deputy Superintendent of Police Sher Singh started using abusive language to Kuldip Singh, whereupon Kuldip Singh also retaliated. Appellant remarked that his conduct and character is not good towards his family. It was about 9.30 P.M. when Kuldip Singh came out of the car. Appellant Sher Singh, who was having AK-47 rifle with him, also came out of the car and shouted towards Kuldip Singh that he would not allow him and his maternal uncle to run away. Thereafter, appellant fired a shot from the said rifle hitting Kuldip Singh on his head. At this, Dharam Singh started running away. The appellant fired a shot, but due to darkness, he managed to escape and went to the Police Station to lodge a report, whereupon the present case was registered. The Police machinery was sent into motion and they went to the place of occurrence. Blood stained earth was lifted from the spot and converted it into a parcel. Three empty cartridges of A.K. 47 rifle lying at the spot were also put in a parcel. The parcels of blood stained earth and empty cartridges were sealed with seal "AP" and taken into possession vide recovery memos. Appellant was arrested. He made a disclosure statement that he had kept concealed a rifle, make 'AK-47' along with one magazine and 10 live cartridges at his residential house in an iron box wrapped in a piece of cloth, regarding which he only knew and offered to get the same recovered. His disclosure statement, Ex. PW-6/C was recorded, which was signed by Sher Singh appellant and attested by ASI, Ajmer Singh and HC Avtar Singh. Thereafter, the appellant led the police party to his house and got recovered A.K. 47 rifle and magazine having 10 live cartridges. The said rifle and 10 live cartridges were put in a separate parcel, which were sealed with the seal 'AP' and were taken into possession,—*vide* recovery memo Ex. PW-6/D. HC Baljinder Singh, head-armour, was called to the house of the accused before whom A.K. 47 rifle was produced in a sealed parcel. He opened the parcel, checked the rifle, and submitted his report Ex. PW-4/A to the effect that it was in working condition. The rifle was again sealed. The witnesses were examined, inquest report was prepared, post mortem examination on the dead body of Kuldip Singh was conducted and after completion of the investigation, the appellant was sent up for trial.

(8) Charge was framed against the accused under sections 302/307 of the Indian Penal Code read with Sections 27(3) and 25 of the Indian Arms Act, to which he did not plead guilty and claimed trial.

(9) In order to prove its case, the prosecution examined PW-1 Dr. V.K. Aggarwal, PW-2 Dharam Singh, eye witness, PW-3 HC Devinder Singh, PW-4 Constable Baljinder Singh, PW-5 Assistant Sub-Inspector Sukhdev Singh, PW-6 Assistant Sub Inspector Ajmer Singh, PW-7 Usha Rani, Clerk, PW-8 Head Constable Malkiat Singh, PW-9 Varinder Singh, PW-10 Head Constable Gian Singh, PW-11 Constable Karam Singh and PW-12 Sub Inspector/Station House Officer Arvind Puri, the Investigating Officer of the case.

(10) Appellant was examined under section 313 of the Code of Criminal Procedure, wherein he denied all the prosecution allegations levelled against him. He pleaded innocence and stated that he has been falsely implicated in this case. He opted to be examined in his defence DW-1 Harinder Singh Ahlmad, DW-2 Constable Surjit Singh and DW-3 Palparinder Singh and thereafter closed his evidence.

(11) We have heard the learned counsel appearing for the appellant and the learned Senior Deputy Advocate General, Punjab assisted by the learned counsel appearing for the complainant and have also gone through the record of the case minutely.

(12) The learned counsel appearing for the appellant has vehemently argued that the story of the prosecution is not free from doubt and its benefit should be given to the appellant. Learned counsel has further contended that the First Information Report, Ex. PW-2/A, was registered under section 302 of the Indian Penal Code, but at that time, Dharam Singh was not aware of the fact whether Kuldip Singh had died on the spot or not? This fact has been admitted by Dharam Singh in his cross-examination. The learned counsel contended that if Dharam Singh was not aware of the death of Kuldip Singh, how and under what circumstances, First Information Report under section 302 of the Indian Penal Code was registered against the appellant. Learned counsel has further submitted that special report was sent to the learned Magistrate after a delay of about 16 hours for which no sufficient explanation has been put forth by the prosecution. Learned counsel has further contended that in order to

cover the delay, the Investigating Officer recorded three different statements of HC Malkiat Singh, which are Ex. DX/1, Ex. DX/2 and DZ. Finally, learned counsel has submitted that since the motive is missing and the investigation is tainted one, appellant cannot be held guilty for the offence he was charged with.

(13) Learned counsel appearing for the appellant, in Criminal Appeal bearing No. 588-DB of 2006 concerning the case of Arms Act, has emphatically argued that the conviction of the appellant under sections 25 and 27(3) of the Act and sentenced him to death under Section 27(3) of the Act is against law and is liable to be set aside. Learned counsel has also submitted that recovery of the rifle is not provided at the instance of the appellant and nor it is covered within the definition of prohibited arms as defined under Section 2(1)(i) of the Arms Act. The weapon, allegedly, recovered in the present case, is a rifle A.K. 47, which according to the prosecution, was of 7.62 MM bore and is semi-automatic and this rifle cannot be said to be a prohibited weapon coming under the definition of prohibited arms under the Arms Act and as such, conviction recorded under Section 27(3) of the Arms Act sentencing the appellant to death for the said offence on the face of it, is illegal and without jurisdiction.

(14) Learned Senior Deputy Advocate General appearing for the State of Punjab has vehemently argued that the testimony of the witnesses produced by the prosecution in conjunction with the documents on record clearly established the fact that Kuldip Singh deceased was working as a gunman with DSP Sher Singh and also contended that Kuldip Singh developed some illicit relations with the wife of Sher Singh and on the date of occurrence, when they were returning from village Nizampur towards Khanna, the appellant started abusing him and on account of this, he fired shot from A.K.47 rifle at Kuldip Singh, which hit on his head, resulting in his death at the spot. The learned State counsel further contended that Dharam Singh was the maternal uncle of Kuldip Singh, who had taken a lift to reach Khanna and since he noticed the occurrence, he rushed to the Police Station to lodge an FIR promptly and finally, he submitted the charge against the appellant has been proved and he has been rightly convicted and sentenced.

(15) The contention of the learned defence counsel that since no motive has been provided by the prosecution for committing the crime, the case of the prosecution is liable to be noticed only for the sake of rejection. We find that the version contained in the First Information Report, Ex. PW-2/A has not been changed by Dharam Singh, the eye witness to the occurrence, who appeared in the witness box as PW-2, in any manner. Moreover, it is neither obligatory nor incumbent on the part of the prosecution to prove the motive, but if it can provide to the court for appreciation of the evidence, this would be an additional circumstance to prove the chain of the version. Most heinous offences are committed for petty matters and some time for no motive, but the court cannot sit idle and shift its responsibility to arrive at a particular conclusion as to who is responsible for the commission of offence, it depends upon the sensitivity of an independent how to react to a particular situation and in the instant case, the stengun, which was allotted to Kuldip Singh, the gunman of the appellant, was in the custody of the appellant, as he (gunman) was driving the car at the relevant time. The motive in every case is not the deciding factor, particularly when direct evidence against the appellant is available. We would like to observe that the absence of motive does not speak of the innocence of the appellant, where there is direct evidence of an acceptable nature regarding the commission of an offence. In such like circumstances, motive cannot loom large in the mind of the court.

(16) The contention raised by the learned counsel appearing for the appellant that no reliance can be placed on the statement of Dharam Singh (PW-2) since he is an interested witness being maternal uncle of deceased Kuldip Singh is also liable to be noticed only for the sake of rejection since it is well settled law that there is no absolute rule that the evidence of a relative or partisan witness should not be believed at all. Simply, because the witness is relative of the deceased, his evidence cannot be discarded on that ground alone, but it should be received with great care, caution and after due scrutiny. The evidence clearly spells out that the occurrence took place in the presence of Dharam Singh (PW-2) since he had accompanied the deceased along with appellant in the car and in such like circumstances, the presence of close relative was quite natural. In **Bhupendra Singh versus State of Punjab**, (1) their Lordships observed that the fact

that the prosecution witnesses in a murder trial were sons and daughters of the victim, does not detract from the value to the attached to their evidence because naturally enough they are interested in seeing that the real murderer of their father is convicted of the offence and they could not be expected to adopt a course by which some innocent persons would be substituted for the person really guilty of the murder. In fact, their feelings would be strongest against the real culprit. As such their evidence cannot be discarded on the ground of their relation with the deceased. Similar view was taken in **Barati versus State of U.P. (2) Mst. Dalbir Kaur and others versus State of Punjab, (3)**.

(17) Dharam Singh (PW-2) has categorically stated that he had gone to village Lasara to meet his sister and her children. Kuldip Singh (deceased) was a constable and he was deputed with Sher Singh appellant, who was a retired DSP, as his gunman. At about 7.00 P.M. Kuldip Singh (deceased) reached his residence in village Lasara and told him that he had come along with the family of Sher Singh appellant in villlage Nizampur and he had come to village Lasara after getting permission from the Deputy Superintendent of Police and brought his car. This witness further disclosed that he asked Kuldip Singh to take him along with him as he had to go back and thereafter he accompanied the deceased and went to village Nizampur, where they found that the appellant was taken liquor with his relatives. After some time, appellant along with his family sat on the back seat of the car, whereas he sat on the front seat of the car and Kuldip Singh (deceased) was driving the car. Deputy Superintendent of Police Sher Singh then took the assault rifle from Kuldip Singh gunman before starting from village Nizampur and when car reached near village Rasulra near the country vend liquir, Sher Singh, who was under the influence of liquor, started abusing his gunman. Kuldip Singh retaliated. Thereafter, Kuldip Singh stopped the car at about 9.30 P.M. and went out of the car. I also came out of the car and followed him. Deputy Superintendent of Police Sher Singh, while coming out of the car along with A.K.47 rifle, abused Kuldip Singh and said that he will not allow Kuldip Singh to go. He fired from A.K.47 rifle hitting Kuldip Singh on his head. At this, when he was fleeing from the sopt, he fired two shots at him, but he escaped due to darkness and concealed

(2) AIR 1974 S.C. 1438

(3) AIR 1977 S.C. 472

himself in the fields and after some time, he went to the Police Station and lodged a First Information Report. He was also cross-examined at length, but nothing of importance could be elicited in favour of the defence. The presence of this witness at the place of occurrence could not be doubted and the very fact that he is undoubtedly relation of deceased that by itself does not make his evidence unreliable. It only puts the court to scrutinise his evidence with more than ordinary care. It is not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of approver so as to require corroboration as a matter of necessity. Once the Court is satisfied that the evidence of an interested witness has a ring of truth, such evidence could be relied upon even without any corroboration and in the instant case, the version put forward through the mouth of Dharam Singh (PW-2) is also supported by the medical evidence. In the instant case, the occurrence took place in such a manner, where only interested witness could be available and circumstances do spell out that Dharam Singh (PW-2) was the only witness, who has witnessed the occurrence and in such like circumstances, it would not be proper to hold that the evidence of a family member should be disbelieved because of his interestedness. Moreover, we would also like to observe that the relation witnesses shall be the least disposed to falsely implicate the appellant or substitute him in place of the real culprit. Baljinder Singh, who stepped into the witness box as PW-4, deposed that on the direction of the Station House Officer Arvind Puri, he reached the house of Sher Singh appellant. On reaching there, Station House Officer Arvind Puri produced before him one parcel of rifle which was sealed with the seal of A.P. The seals were found intact. He was asked to examine the said weapon after breaking of the seal of the said parcel. The parcel was opened after the seal was broken and it was found that the rifle was of A.K.-47 bearing No. UK-8165. On checking, it was found that it was fit for firing and was in working condition. After the checking was done, the aforesaid rifle was again sealed in a sealed parcel with the seal 'A.P.' at the spot. He submitted his report Ex. PW-4/A. This version contained in the First Information Report has not been changed by this prosecution witness in any manner and moreover, appellant is a retired Deputy Superintendent of Police and the question of his false implication by the police does not arise. The ocular evidence of Dharam Singh (PW-2) is supported with the medical evidence. Dr. V.K. Aggarwal, who conducted the post mortem on the

dead body of Kuldip Singh, stepped into the witness box as PW-1 found as many as four injuries on his person. On examination of injuries Nos. 3 and 4, there was massive damage of brain matter and fracture of skull bones was present. Clotted blood was also present. This doctor opined that the cause of death was due to haemorrhage and shock resulting from multiple injuries to brain. These injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. The injuries were the result of gun shot or fire arm injuries.

(18) The learned defence counsel has vehemently argued that the entire case of the prosecution hinges upon the delayed special report and as such, the entire prosecution version becomes doubtful. Learned counsel has further argued that the delayed special report materially affects the story of the prosecution. In order to lend support of his contention, the learned counsel pointed out that the First Information Report, Ex. PW-2/A was registered and completed on 17th August, 1999 at 12.20 A.M., while it was received by the learned Magistrate at 3.30 P.M. on the said date and this delay of 15 hours is fatal to the case of the prosecution and in order to cover up this delay, Arvind Puri, the Investigating Officer of this case, has recorded the statements of Head Constable Malkiat Singh (PW-8) thrice and in all these three statements, different timing of handing over the special report has been given. We have considered this submission of the learned counsel appearing for the appellant. In view of the facts and circumstances available on the record and for the reasons to be recorded by us hereinafter in this part of the judgment, the contention of the learned counsel is not liable to be accepted. The evidence clearly spells out that Arvind Puri, Sub Inspector, who is the Investigating Officer of this case, was earlier working under DSP Sher Singh, appellant, when he was posted in the Police Post Gumhar Mandi, Ludhiana and the learned counsel for the appellant during the course of cross-examination suggested this fact to the Investigating Officer when he appeared as PW-12 and for this reason also, we find that Sub Inspector Arvind Puri, being in the Police Department and working under appellant Sher Singh at some relevant time, tried to help the accused by intentionally wirting the statement of Head Constable Malkiat Singh three times to cover up the delay in sending the special report to the learned Magistrate and moreover, it is well settled proposition of law that mere delay in dispatching the First

Information Report is not a circumstance, which can throw out the prosecution case in its entirety. This matter was considered by the Apex Court in **Pala Singh and another versus State of Punjab**, (4) wherein it was observed as under :—

“Section 157, Cr. P.C. requires report contemplated by that section to be sent forthwith by the police officer concerned to a magistrate empowered to take cognizance of such offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under S. 159. But where the F.I.R. was actually recorded without delay and the investigation started on the basis of that F.I.R. and there is no other infirmity brought to the notice of the Court, then, however, improper or objectionable the delayed receipt of the report by the magistrate concerned, in the absence of any prejudice to the accused, it cannot be itself justify the conclusion that the investigation was tainted and the prosecution insupportable.”

(19) The law quoted above is fully applicable to the facts of the case in hand. In the instant case, the First Information Report was lodged promptly and there is nothing on the record to spell out that the investigation was tainted and on the basis of prompt F.I.R., the police machinery was set into motion at the earliest and in case the Investigating Officer tried to help the accused being a police officer by delaying the despatch of First Information Report, is not a circumstance by virtue of which the prosecution version can be thrown out.

(20) The learned counsel appearing for the appellant has pointed out some discrepancies in the prosecution story and submitted that the story of the prosecution is not free from any doubt and this benefit should be given to the appellant. Learned counsel submitted that First Information Report was registered under Section 302 of the Indian Penal Code when Dharam Singh (PW-2) was not aware of the fact whether Kuldip Singh had died on the spot or not ? In order to lend support to this contention, he referred to the statement

of Dharam Singh (PW-2) wherein he has admitted this fact during his cross-examination. Learned counsel further contended that if Dharam Singh was not aware as to how and under what circumstances, First Information Report under Section 302 of the Indian Penal Code was registered, but this contention of the learned counsel for the appellant is not liable to be accepted since no material contradiction or discrepancy could be pointed out by him in the statement of Dharam Singh (PW-2) and moreover, we are of the opinion that minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the Investigation Officer particularly when in the instant case, as observed above, the Investigating Officer Arvind Puri (PW-12) was working under the present appellant at Police Post Ghumar Mandi at Ludhiana not going to the root of the matter and would not ordinarily permit rejection of the evidence as a whole. Dharam Singh (PW-2) witnessed the firing of the shot on the head of the deceased and in such like circumstances, it could safely be presumed that when he went to the Police Station for lodging a report, it was in his mind that as a result of that shot on the delicate portion of the body, the deceased would have died at the spot. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. It has been rightly observed that cross-examination is an unequal duel between a rustic and refined lawyer.

(21) Recoveries of the rifle (stengun) A.K.-47 along with ten live cartridges in pursuance of the disclosure statement made by him under Section 27 of the Indian Evidence Act further advances the case of the prosecution towards the guilt of the appellant. Keeping in view the facts and circumstances of this case, non-joining of an independent witness at the time of recovery of the arms and ammunition does cause any dent in the prosecution version since Arvind Puri, the Investigating Officer of the case, has deposed categorically while appearing into the witness box as PW-12 that although he made efforts to join the witness from the locality, but no one was ready to join with them, inasmuch as the appellant was a retired DSP of the police department.

(22) DW-1 Harinder Singh is the Ahlmad in the Court, who brought the FIR receipt register and proved the signature of the learned Magistrate on the FIR of having received the same on 17th Agusut, 1999 at 3.30 P.M. DW-2 Constable Surjit Singh deposed that the statement of the witnesses under Section 161 of the Code of Criminal Procedure made by the respective witnesses were recorded by me as per the dictation of Shri Arvind Puri, the then Sub Inspector/ Station House Officer, Police Station Sadar Khanna. Palparinder Singh is the witness who appeared in the witness box as DW-3 to depose that village Samaspur of Police Station Amloh is at a distance of 2 or 2-1/2 Kms from his village. Village Samaspur is at a distance of about 23 Kms from village Lasara. There are direct buses in between Samaspur and Lasara. In the cross-examination, this witness has deposed that there are only three buses flying through out the day between village Samaspur and village Lasara. It is incorrect to suggest that he has given the distance wrongly. From the statements of the defence witnesses, one can easily draw a conclusion that weak type of defence evidence has been put forward by the learned defence counsel, which is certainly liable to be rejected. No benefit can be derived by the appellat from the statements of defence witnesses, referred to above, and they do not shatter the prosecution version in any manner.

(23) All tell tale circumstances established by the prosecution through the ocular version and recoveries in the form of arms and ammunitons from the house of the appellat clearly spells out that there is no escape from the conclusion that the appellat murdered his gun man with a stengun, which was allotted to the deceased. Thus from the evidence on the record and the discussions made above, the conclusion is irresistibile that the prosecution has established beyond resonable doubt that appellat Sher Singh, Deputy Superintendent of Police, committed the murder of deceased Kuldip Singh in the manner alleged by the prosecution. As such, conviction and sentence recorded by the learned Additional Sessions Judge, Fast Track Court, Ludhiana under Sections 302 and 307 of the Indian Penal Code respectively against the appellat is affirmed. Both the sentences shall run concurrently.

(24) The appellant has been convicted of the offence under Section 27(3) of the Act and sentenced to death on that count. In our considered view, the trial Court fell into a grave error in convicting the appellant of the charge under Section 27(3) of the Act. As per sub Section (3) of Section 27 of the Act, whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with death. Moreover, so far as Section 7 of the Arms Act is concerned that relates to prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition by any person without being specially authorised by the Central Government in this behalf.

(25) Rule 3 of the Arms Rules, 1962 provides that for the purposes of the Arms Act, 1959 and the Rules, "arms" and "ammunition" shall be of the categories specified in Columns 2 and 3 respectively of Schedule 1.

(26) A perusal of this Schedule clearly spells out that prohibited arms and ammunition are required to be specified by way of notification in the official gazette.

(27) There is no evidence on record, which could spell out that the weapon or ammunition alleged to have been recovered from the possession of the appellant is prohibited arm or ammunition. Since the rifle 'A K 47', the alleged weapon, in the instant case, is not automatically triggered, but only one shot can be fired by the pull of trigger and for firing the second shot, the trigger has to be released first and pulled again. Under these circumstances, the weapon in question, i.e., rifle 'A K 47', does not come within the purview of prohibited arms, as defined under Section 2(1)(i) of the Act of 1959. No notification has been placed on record, which could spell out that the stengun and the ammunition used in the instant case is a prohibited arm and ammunition. The learned Senior Deputy Advocate General appearing for the State of Punjab has not been able to produce on record any notification in this regard and without issuance of notification declaring the present arms and ammunition as prohibited, the question of conviction under Section 27(3) of the Act would not arise. Moreover, Section 27(3) of the Act provides for a definite punishment for a definite offence. There are two specific

requirements of the statute in order to bring home guilt of the accused within the meaning of Section 27(3) of the Act, the requirements being (a) user of a prohibited arm; and (b) resultant death of a person by reason of such user and prohibited arms are defined under section 2(1)(i) of the Arms Act and this Section clearly spells out that prohibited arms would be such other arms as the Central Government may, by notification in the official Gazette specify to be prohibited arms, but in the instant case, at the cost of repetition, as discussed above, no such notification has been placed on the record, nor the same has been brought to our notice, which could spell out that the weapon in question and its ammunition have been declared as prohibited arms and ammunition. We would also like to observe that the provision contained in Section 27(3) of the Act laying down the minimum sentence as death sentence is unfair, unjust and unreasonable. No rider can be created without involvement of the judicial mind. Such enactment smells of arbitrariness since no person can be deprived of his life or personal liberty except according to procedure established by law. Without elaborating further in this regard since this is not the scope at this stage, we find that the present case is not covered under Section 27 (3) of the Act and death sentence awarded by the learned Additional Sessions Judge is liable to be set aside and we order accordingly.

(28) Now at this stage, we would like to find out as to what offence has been committed by the appellant under the Arms Act? It is, *ipso facto* clear from the facts and discussions made above that the accused-appellant Sher Singh used the stengun of his Gun man Kuldip Singh, deceased, for causing his murder. As per the provisions of the Arms Act, words used were added to sub section (1) of Section 5 thereby prohibiting arms and ammunition and other prescribed arms, without a valid licence guaranteed under this Act or rules made thereunder.

(29) Sub-Section (1) of Section 27 of the Act has provided punishment for the use of arms or ammunition in contravention of Section 5 of the Act prescribing both 'imprisonment' and 'fine', therefore, under sub-section (1) of Section 27 of the Act, the term of imprisonment will remain between three and seven years. Apart from the period of imprisonment, the appellant shall also be liable to fine.

(30) Keeping in view the facts and circumstances of this case, in our considered view, conviction awarded to the appellant under Sections 25 and 27 of the Act respectively is maintained and the sentence awarded under Section 25 of the Act is also maintained but sentence awarded to the appellant to death under sub-Section (3) of Section 27 of the Act is modified to seven years under sub-section (1) of Section 27 of the Act, as has been observed above, which would meet the ends of justice and to pay a fine of Rs. 5,000. In default thereof, the appellant shall further undergo for a period of three months. Accordingly, Murder Reference No. 3 of 2006 is declined. Criminal Appeal No. 588-DB of 2006 stands disposed of in the manner indicated above.

R.N.R.