

Harchand Singh v. State of Punjab (S. S. Dewan, J.)

Reliance was placed on the two Division Bench decisions of this Court reported in *Benarsi Dass and Company's case* (supra) and *Lal Chand Mohan Lal, Fazilka's case* (supra). It was pointed out that the decisions pertain to opium licenses and then it was observed in passing that the correctness thereof had been put in jeopardy by Supreme Court decision in *Jerr & Co.'s case* (supra).

(15) To the extent the Bench relied on *Jerr & Co.'s case*, it was right in that like the *Jerr & Co.'s case* the license contained no condition prohibiting the licensee from entering into partnership. There was no rule in the Punjab Fisheries Rules prohibiting the licensee from entering into partnership in regard to the fishing licenses. But having held so it was unnecessary to examine the correctness of this Court's aforesaid earlier decisions which were rendered in the light of the Opium Act and Rules, the conditions and prohibitions contained wherein are identical with those contained in the Excise Act and rules thereunder.

(16) For the reasons stated, we answer the reference in the negative i.e. against the assessee and in favour of the Revenue. Since the assessee is not represented before us, we make no order as to costs.

H. S. B.

Before Bhopinder Singh Dhillon and S. S. Dewan, JJ.

HARCHAND SINGH—Appellant.

versus

STATE OF PUNJAB—Respondent.

Criminal Appeal No. 1394 of 1975.

October, 26, 1978.

Indian Evidence Act (I of 1872)—Section 105—Indian Penal Code (XLV of 1860)—Section 302—Criminal trial—Distance from which gun shot fired—Doctor's opinion in conflict with ocular evidence—Doctor having meagre knowledge of nature of fire-arm injuries—Probative value of ocular evidence—Whether affected—

Plea of right of private defence—Burden of proof—Whether lies on the accused.

Held, that before a doctor can give satisfactory opinion on matters which are mainly in the domain of forensic ballistics, he must have an elementary knowledge of ballistics and fire-arms. The doctor should on an inspection of such wounds be able to form an opinion about their nature, their being entry or exit wounds, their direction and the distance from which they have been caused. If the nature of the injury is such that they could not have been caused from the distance opined by the doctor this can be attributed to his lack of adequate knowledge of fire-arms and gun shot injuries. In such a situation, the evidence of such a doctor, based as it is on insufficient data and knowledge cannot affect the probative value of ocular evidence.

(Para 18)

Held, that it is clear from a reading of section 105 of the Indian Evidence Act, 1872 that the onus of proving the circumstances entitling the accused to plead right of private defence of body is on him. The absence of such circumstances is to be presumed and the burden is on the accused to prove the circumstances entitling him to the right of private defence by producing evidence in defence or to elicit circumstances during the cross-examination of the prosecution witnesses.

(Para 19).

H. L. Sibal with S. C. Sibal, Advocates, for the Appellant.

K. T. S. Tulsi, Advocate for A. G. (Punjab), for the Respondent.

JUDGMENT

S. S. Dewan, J.

(1) By the impugned judgment learned Sessions Judge, Patiala, convicted Harchand Singh under section 302, Indian Penal Code and sentenced him to life imprisonment and fine of Rs. 3,000 and in default to further undergo rigorous imprisonment for 2 years. He was further convicted under section 307, Indian Penal Code and sentenced to rigorous imprisonment for 5 years and fine of Rs. 500 or in default thereof, rigorous imprisonment for 6 months on four counts. All the substantive sentences were ordered to run concurrently.

(2) Harchand Singh accused was the Sarpanch of the panchayat of village Lakhomajra, where he settled down as *Khanadamad* at the house of his mother-in-law Smt. Chinto, as he was married with

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her only issue Smt. Gurnam Kaur, about 25 years ago. Mohar Singh Panch of the said panchayat and others moved an application, Exhibit PM, on 16th August, 1974 to the Deputy Commissioner, Patiala, alleging therein the embezzlement of panchayat funds by the accused along with others. The Block Development & Panchayat Officer, Ghanaur, fixed the date 2nd September, 1974 for enquiry and summoned both the parties to appear before him in the village on that date. Coming to the incident in question, the prosecution allegations are that on 29th August, 1974 at about sunset time, Jasbir Singh (now deceased) his brother Jaswant Singh, Krishan Chand, Som Nath, Bhajan Singh and Mohar Singh PWs, besides Garja Singh, assembled at the village common well which happened to fall at a short distance from the house of the accused to hold consultations in connection with the enquiry. It is alleged that the accused came out of his house in the street carrying a double barrel 12 bore gun and fired a shot which hit Jasbir Singh in the chest, who fell down. When his brother Jaswant Singh tried to look after him, the accused fired another shot which hit Jaswant Singh. Thereafter two more gun shots were fired which resulted in injuring Bhajan Singh (P.W. 10), Som Nath (P.W. 11) and Krishan Chand (P.W. 12). Garja Singh and Mohar Singh raised alarm and then the accused retreated to his house along with the weapon. Jasbir Singh succumbed to his injuries there and then. Immediately after the occurrence, Gurdev Singh father of the deceased, Puran Chand, Panch and a constable arrived at the spot. Gurdev Singh and Mohar Singh removed all the injured persons to Civil Hospital, Rajpura in a tractor trolley and got them admitted there at 1.30 A.M. on 30th August, 1974. Dr Gurjit Singh (P.W. 2) who examined the injured, sent intimation, Exhibit PJ, to Police Station, Rajpura. On receipt of the said intimation at about 1.45 A.M., Sub-Inspector Mohinder Singh rushed to the hospital and recorded the statement, Exhibit PL, of Jaswant Singh (P.W. 9) and on its basis formal First Information Report, Exhibit PL|1, was drawn by Moharir Head Constable Kartar Singh (P.W. 16), for the offence under sections 302/307, Indian Penal Code and under section 27 of the Arms Act. The special report was conveyed to the Illaqa Magistrate, Rajpura, at 5.45 A.M. After recording the statement of the other injured, the Sub-Inspector deputed Assistant Sub-Inspector Hazara Singh and two constables to guard the place of occurrence. On the following day at about 8 A.M., the Sub-Inspector went to the spot, held inquest, Exhibit PD and sent the dead body to the mortuary for autopsy. The Sub-Inspector recovered an empty cartridge from the drain near the

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house of Puran Chand at a distance of about 32 feet from the dead body. He lifted blood stained earth from near the dead body of Jasbir Singh, besides from a distance of 2-1|2 feet and 5 feet from the dead body. He also picked up 9 wads lying scattered in the lane in between the house of Puran Chand and the dead body. Besides, some pellets were embedded in the outer wall of the house of Bhajan Singh at a distance of 30 feet beyond the said well towards the north side. Some more pellets were recovered from near the foot of that wall. The Sub-Inspector prepared the visual plan, Exhibit PS, of the places of occurrence. Joginder Singh (C.W. 2) was found injured by the Sub-Inspector. After preparing the injury statement, a constable was deputed for his medical examination. The investigating Officer recorded the statements of Karamjit Singh (P.W. 14), Dalbir Singh and Daljit Kaur about the other incident in which Joginder Singh was injured. The accused was arrested on 2nd September, 1974 by the Assistant Sub-Inspector Hazara Singh (P.W. 21). The accused was carrying his double barrel 12 bore gun (Ex. P. 28), 5 live cartridges and the license (Ex. P. 27). These articles were taken into possession,—vide Memo., Exhibit PT. The gun and the cartridges were despatched to the Director, Forensic Science Laboratory, Chandigarh on 8th October, 1974. Shri L. A. Kumar, Scientific Officer (Ballistics),—vide his report, Exhibit PX, opined that the empty cartridge had been fired through the left barrel of the gun.

(3) Dr. Gurjit Singh (P.W. 2) examined Bhajan Singh (P.W. 10), Som Nath (P.W. 11), Jaswant Singh (P.W. 9) and Krishan Chand (P.W. 12) on 30th August, 1974 at about 9 a.m. and found injuries of the following description:—

Bhajan Singh

1. 0.25 cm diameter scabbed wound over forehead 1.5 cm to left of mid line, 1 cm below the hair line.
2. 0.25 cm diameter scabbed wound on the front of chin, 2.5 cm to the left to mid line.
3. 0.25 cm diameter scabbed wound on the postero-medical aspect of the left fore-arm at the junction of upper with middle one-third.
4. 0.25 cm diameter scabbed wound over the dorsum of middle phalynx ring finger on the left side.

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5. 0.25 cm diameter scabbed wound on the front of upper part of chest, 1.5 cm below medial one-third of clavical.
6. 0.25 cm diameter wound over left costal margin, 3 cm to the left of midline.
7. 0.25 cm diameter wound over lateral part of chest in the middle region.
8. 0.25 cm diameter wound on the front of upper part of left thigh.

Som Nath.

1. 0.25 cm diameter scabbed wound, 4 cm below the front of elbow joint on the right side. Slightly oval in nature.
2. 0.25 cm diameter wound 4.5 cm below and lateral to injury No. 1. It is slightly oval and scabbed.
3. 0.5 cm \times 0.25 cm wound over dorsum of right forearm junction, lower $1\frac{1}{4}$ th with upper $3\frac{1}{4}$ th pellet palpable 5 cm above and medial to it.
4. 0.25 cm diameter scabbed wound over right of chest 4.5 cm above the nipple.
5. 0.5 cm \times 0.25 cm wound over front and medial aspect on the right thigh in its lower one-fourth.

Jaswant Singh

1. 0.25 cm diameter scabbed wound on the outer and front of right knee.
2. Four scabbed wounds 0.3 cm diameter each which were present on the outer aspect of the right thigh upper half.
3. Two scabbed wounds 0.3 cm each lying 1 cm apart over front of right thigh upper part.
4. A scabbed wound 0.3 cm in diameter over medial aspect of left tibial tubercosity.

5. 0.3 cm diameter scabbed wound over the dorsum of 1st joint of right middle finger.
6. 0.3 cm in diameter scabbed wound, medial aspect of right base index finger.
7. 0.25 cm in diameter scabbed wound over the dorsum of right fore-arm on its outer end.
8. 0.5×0.3 cm in diameter scabbed wound over front of right arm lower end.
9. 0.3 cm diameter scabbed wound on the front of middle third of left forearm in its upper part. Pellet palpable underneath the skin on the back of forearm.
10. 0.3 cm in diameter scabbed wound palpable present over outer aspect of right arm in its middle one-third.
11. 11 scabbed wounds scattered in an area of $27 \text{ cm} \times 21 \text{ cm}$ over right back of chest on the right scapular region and right back of shoulder.
12. Three scabbed wounds present over right occipital and neck region.
13. 7 scabbed wounds were present over front of right side of chest and abdomen in an area of $23 \text{ cm} \times 7 \text{ cm}$.

Krishan Chand

1. 0.3 cm in diameter scabbed wound on the front of left shoulder region.
2. Two 0.3 cm in diameter, each scabbed wounds 1 cm apart present over antero medial aspect of left arm in its lower end.
3. Four 0.3 cm in diameter each scabbed wounds present on outer aspect of left forearm, in its lower two-third.

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4. One 0.3 cm in diameter scabbed wound present on the front of right arm, 4 cm above the elbow.
5. Four 0.3 cm in diameter each scabbed wound were present over the front and outer aspect of right forearm in its lower half.
6. Five 0.3 cm in diameter each scabbed wounds were present over front and outer aspect of left thigh in its upper half and left inguinal region.
7. A 0.3 cm diameter scabbed wound present over front of left tibial tuberosity.
8. Two 0.3 cm each in diameter scabbed wounds were present over front of right thigh in its upper one-third.
9. A lacerated wound 0.3 cm, 1.25 cm transverse present over outer aspect of right thigh in its upper one-third.
10. A 0.3 cm in diameter scabbed wound just above the right knee joint.
11. A 0.3 cm in diameter scabbed wound present over front of right shin junction of its middle one-third with upper one-third.
12. A 0.3 cm in diameter scabbed wound present over front of lower part of chest, 7 cm below the nipple.
13. Two 0.3 cm in diameter each scabbed wounds were present on the front of abdomen in its left lumbar region.
14. Two wounds one on outer aspect of left pinna and other on its medial aspect 0.3 cm and 0.5 cm in diameter respectively communicating to each other. The medial one was of exit.

(4) All the injuries on the persons of P.W. 9 to P.W. 12 were opined to be caused with a firearm within a duration of 24 hours. On X-ray examination of Bhajan Singh, the doctor observed fracture of 4th rib of left side without any callous formation.

(5) Dr. K. K. Sofat (P.W. 1) conducted autopsy on the dead body of Jasbir Singh, on 30th August, 1974 at 5.30 P.M. and found the following injury :—

There were multiple (about 70) oval shaped lacerated wounds on the chest, front of the neck, face and front of the right arm. All the wounds were tattooed.

(6) On dissection of the body, the doctor found haemorrhagic spots below the skin of the chest. On further dissection of chest cavity, four pellets were removed from the right lung at various places and six pellets were removed from the left lung. Blood was found in the chest cavities. Pleura was punctured. Right lung was healthy but punctured at four places and left lung was punctured at six places. Stomach was healthy and it contained semi solid food material. Small intestines were healthy and it contained digested food material and large intestines contained fecal matter. Death in the opinion of the doctor was due to shock and haemorrhage, resulting from the gun shot injuries to the heart and lungs. The probable time between injuries and death was opined to be immediate and between death and post-mortem examination about 22 hours.

(7) Dr. K. K. Sofat (C.W. 1) examined Joginder Singh (C.W. 2) on 30th August, 1974 at 4.30 P.M. and found the following injuries on his person:—

1. Bruise 10 cm X 1½ cm on the lower right side of abdomen extending from right iliac fossa towards the umbilicus.
2. Contusion mark 6 cm X 1½ cm on the upper border of left buttock.

(8) Both the injuries were opined to be simple in nature caused with a blunt weapon within a duration of 24 hours. After necessary investigation, the accused was challaned and committed.

(9) At the trial, Jaswant Singh (P.W. 9), Bhajan Singh (P.W. 10), Som Nath (P.W. 11), Krishan Chand (P.W. 12) and Mohar Singh (P.W. 13) gave the eye-witness account of the occurrence. Sardari Lal (P.W. 3) prepared the site plan, Exhibit PK. Harmohinder Singh,

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Clerk, Panchayat Samiti, Ghanaur (P.W. 5) deposed from the record regarding the summoning of the parties by the Block Development and Panchayat Officer, for 2nd September, 1974. Ajmer Singh (P.W. 15) witnessed the recovery of double barrel 12 bore gun and live cartridges from the possession of the accused. Sub-Inspector Mohinder Singh (P.W. 20) and Assistant Sub-Inspector Hazara Singh (P.W. 21) deposed to the investigation part of the prosecution case. Karamjit Singh (P.W. 14) and Joginder Singh (C.W. 2) deposed regarding the incident which had occurred prior to the present occurrence, in which Smt. Chinto, Smt. Gurnam Kaur and Pala Singh were alleged to have been injured. The rest of the evidence is not very material.

(10) When examined under section 313, Criminal Procedure Code, the appellatant denied the prosecution allegations and pleaded false complicity in this case. He, however, gave his own version, which deserves quotation in extenso:—

“Mohar Singh Panch, Bachan Singh Panch and others had encroached upon the panchayat land of my village and Rs. 2,050 were due from Des Raj, husband of Smt. Shanti Devi Panch. I was taking steps to recover the possession of the land and the arrears of the rent by giving applications to the higher authorities, but those persons stopped attending panchayat meetings. There are two party factions in my village. Jaswant Singh, Jasbir Singh, Som Nath son of Puran Chand, Kishen son of Babu Ram, Bachan Singh Panch, Gurmukh Singh son of Tarlok Singh and others formed an unlawful assembly and attacked us in our house. Bachan Singh was armed with a gun, Gurmukh Singh had a *gandasi* while others had *lathis*. They inflicted injuries on the person of Pala Singh. My wife Gurnam Kaur and my mother-in-law Chinto, Harnek Singh, Niranjan Singh and another Niranjan Singh of Bothoi were in my house at that time and had their licensed guns with them. They had opened fire to scare away the assailants and to save our lives. The assailants had cut the wire gauze of the windows of my house and had broken the glass panes. A complaint instituted by Smt. Chinto is pending in the Court of Judicial Magistrate, Rajpura.”

(12) The accused examined Constable Rachpal Singh (D.W. 1) and Constable Rajinder Prashad (D.W. 2) to prove a telegram alleged to have been sent by his brother Jawala Singh, to the office of Superintendent of Police, Patiala. Dr. Satish Kumar Verma (D.W. 3) medically examined Pala Singh son of Uttam Singh on 4th September, 1974 at 5 P.M. and found three simple injuries on his person. Dr. Bhagwan Ram (D.W. 4) medically examined Smt. Chinto wife of Bachan Singh on 2nd September, 1974 at 4 P.M. and found three contusions and two abrasions on her person, caused by a blunt weapon within a duration of 5 days. She was examined as a private case. Exhibit DH is the carbon copy of her medico-legal report. The doctor examined Gurnam Kaur wife of Hardam Singh on the same day at 4.30 P.M. and found 11 simple injuries on her person caused by a blunt weapon within a duration of 5 days. Dr. K. K. Goel (D.W. 5) conducted X-ray examination of Pala Singh and detected fracture of the lower end of right radius. Shri Bhagwant Singh, Advocate, (D.W. 6) produced the accused before the Deputy Superintendent of Police, Rajpura. Sarwan Singh (D.W. 7), proved the complaint Exhibit DK against Joginder Singh son of Tarlok Singh and others alleged to have been made by Gurmit Kaur, on 24th October, 1972. Sukhdev Singh Sarpanch (D.W. 8) proved the proceedings from the register of the village panchayat. Shamsheer Singh (D.W. 9) produced the summoned file of case — Smt. Chinto v. Jaswant Singh etc. Ashok Kumar (D.W. 10) deposed regarding the despatch of telegram, dated 1st September, 1974 sent by Jawala Singh to the office of the Inspector-General of Police. Smt. Chinto (D.W. 11), Pala Singh (D.W. 12), Pritam Singh (D.W. 13) and Jawala Singh (D.W. 14) were examined by the defence in support of its case.

(13) The Sessions Judge believed the story of the prosecution in relation to the fatal injuries to the deceased and also the injuries to PWs 9 to 12. The evidence of the eye-witnesses according to him was in conformity with the medical evidence and probabilities of the case. He believed the eye-witnesses and convicted and sentenced the accused. The convict has, therefore, come up in appeal.

(14) The learned counsel Mr. H. L. Sibal raised several contentions to show that the conviction of the appellant was wholly unjustified. He argues that the witnesses are highly interested and factionists. Their testimony is not consistent, does not conform to the probabilities and is wholly opposed to the medical evidence. On

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the other hand, it is contended by the learned counsel for the State that the witnesses are most natural, their presence at the time cannot be open to doubt and there is no apparent reason why they would not name the real culprit, but foist a false case on the appellant and that the medical evidence reads consistent with ocular evidence.

(15) As is inevitable in a case of the present kind, the ocular account is the core of the prosecution case. Jaswant Singh, P.W. 9, Bhajan Singh, P.W. 10, Som Nath, P.W. 11 and Krishan Chand, P.W. 12 are stamped witnesses getting the impress of injuries on their persons besides Mohar Singh, P.W. 13 having given an account thereof which is remarkable in its consistency. A gruelling cross-examination was levelled against these witnesses. This however, appears to us to be lacking both in thrust and direction, nothing significant had emerged therefrom which may possibly cloud the forthright testimony of these witnesses. It is no doubt true that Jaswant Singh, P.W. was the brother of the deceased and the other injured witnesses belonged to the faction led by Mohar Singh, P.W. but their evidence can neither be disregarded nor brushed aside merely because of relationship or interestedness. They are competent witness in the eye of law. Rule of caution however, warrants that their evidence must be more carefully weighed and scrutinised. An interested witness is not necessarily a liar. If the testimony bears scrutiny, appeals to reason and common-sense and accords with the probabilities, there is no reason why it should not be acted upon. As observed by the Supreme Court in *Darya Singh Vs. State of Punjab* (1) wherein a murder case when evidence is given by mere relatives of the victim and the murder is alleged to have been committed by the enemy of the family, Courts must examine the evidence of the interested witnesses like the relatives of the victims more carefully. If such witness is shown to share the victim's hostility to the assailant it naturally makes it necessary for the criminal Courts to examine the evidence given by such witnesses more carefully and scrutinise all infirmities in that evidence before deciding to act upon it. It is borne out from the record that Bachan Singh Panch, Puran Chand Panch, Mohar Singh Panch and others had moved an application (Ex. P.M.) against the appellant for embezzlement of the Panchayat funds. It is apparent from the deposition of Harmohinder Singh, P.W. 5, who is the Clerk of the

(1) A.I.R. 1965 S.C. 328.

Panchayat Samiti, Banur that the said complaint was marked by the Deputy Commissioner to the Block Development Officer of Block Samiti, Ghanaur and in that enquiry both the parties were summoned for 2nd September, 1974 by the officer in village Lakhomajra. Som Nath, P.W. 11 is the son of Puran Chand Panch, while Krishan Chand is the nephew of said Puran Chand. Mohar Singh being a Panch and signatory of the said complaint appears to have taken active part in apprising the gathering about the enquiry to be held against the appellant on September 2, 1974. The injured witnesses and Mohar Singh had collected at the village common well on the evening of the fateful day i.e. August 29, 1974, to hold consultations in connection with that enquiry. The villagers do assemble at the common place like *Sath* or near the joint well in the evening after being free from the ordinary pursuits of agricultural work. In the circumstances, the presence of the stamped witnesses and Mohar Singh at the alleged time and place of occurrence cannot be doubted. On an overall perusal of the testimony of these witnesses, we are inclined to place implicit reliance on their word. Their testimony receives further corroboration from the medical evidence and the recovery of blood-stained earth from the place of occurrence.

(16) The learned counsel for the appellant criticised the prosecution case with the contention that the first information report was not recorded promptly. The delay in reporting the incident to the police is all by itself never fatal to the prosecution case. It is at the most a circumstance which puts the Court on guard to scrutinise the prosecution evidence before acting upon it. Once the chances of fabricating a false story and introduction of false case are eliminated the mere delay in reporting the incident cannot be a ground much less just or sufficient to throw away the prosecution case. The incident had taken place at about sun-set time. Mohar Singh must have taken one or two hours to arrange for a tractor trolley for removing the injured to the hospital at Rajpura, besides another two hours on the way as it is usual to drive the tractor at a low speed while carrying the injured in order to avoid serious jolts on the way. Dr. Gurjit Singh, P.W. has deposed that he sent intimation Ex. PJ to the police station, Rajpura, regarding the admission of the injured in the civil hospital at about 1.30 A.M. That shows that the injured must have reached the hospital at about 12.30 A.M. Sub-Inspector Mohinder Singh went to the hospital at about 1.45 A.M. Jaswant Singh injured was in a fit condition to make statement. The Sub-Inspector started recording his statement at 3.05 A.M. and concluded

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at 3.15 A.M. The formal first information report Ex. PL/1 was registered at the police station at 3.30 A.M. The copy of the special report was received by the Ilaqa Magistrate at 4.45 A.M. as is apparent from his endorsement on Ex. PL/1. So in these circumstances, it cannot be said that there had been any delay much less culpable in reporting the incident to the police.

(17) The argument which has been laboured with some persistence by the learned counsel for the appellant is that the medical evidence in the case runs counter to the ocular account. The basic contention in this context is that Dr. K. K. Sofat, P.W. 1 while conducting autopsy on the dead body of Jasbir Singh found tattooing all along the 70 entry wounds and as such the assailant must have fired at the victim from a close range and not from a distance as alleged by the prosecution. It was stressed that according to the prosecution evidence the appellant is alleged to have fired the gun from a distance of 32 feet and as such the pellets therefrom could not have perforated the skin much less having injured the internal organs of the deceased after penetrating the body and that since the pellets had penetrated the body so it would appear that the shot was not fired from the distance. From the above the learned counsel sought to infer that the eye-witnesses never saw their assailant. We do not think the contention advanced by the learned counsel can bear close scrutiny. The circumstantial evidence makes it abundantly clear that the fatal shot came from the lane near the house of Puran Chand and the distance can be ascertained from the scale plan Ex. PK prepared by Sardari Lal, Draftsman at the instance of the witnesses. It is no doubt true that the position indicated in the site plan by the Draftsman which he had prepared thus gives out a distance of about 32 feet from point 'X', the gun was fired by the appellant and the shots found their targets in Jasbir Singh and the stamped witnesses. But such distance as has been indicated by the Draftsman cannot be considered to represent the exact measured distance from which the gun had been fired at the deceased and the witnesses. At best that would be a rough and approximate estimate of the distance formed by the eye-witnesses. The principal fact, however, that should stare the appellant in the face is the sustaining of the gun shot injuries by the deceased and the witnesses which fixes beyond question their presence at the time of firing.

(18) Dr. Sofat conducted autopsy on the dead body of Jasbir Singh and found firearm injuries on the chest, front of neck, face and

front of the right arm. When examined at the trial, the doctor gave a rough estimate of the spread of pellets on the body as $1' \times 1-1/2'$. The spread of a shot charge of a 12 bore gun beyond a distance of 6 feet can roughly be equated with its diameter inches to the distance in yards. This view finds support from Taylor's Principles and Practice of Medical Jurisprudence, 12th edition at page 295. According to B. K. Sharma's Firearms in Criminal Investigation and Trials, First Edition at page 154, a firearm has an extreme range upto which its projectile can travel. It has a fixed range upto which if the projectile hits a vital part it proves fatal. It has an effective range upto which a shooter can take aim and make a kill. They vary with different firearms and ammunition even of the same type due to certain factors. The approximate range of a shot fired from a shot-gun is effective upto 75 meters but it can be dangerous upto 200 meters. Dr. Sofat has no doubt stated that there was tattooing along 70 oval shaped lacerated wounds but that is not possible keeping in view the spread of the shot charge as this shot was fired at the victim from a distance of not less than 32 feet. Similarly, a doctor may not be able to give satisfactory opinion on these matters which are mainly in the domain of forensic ballistics. We may state again unless a doctor has elementary knowledge of ballistics and firearms, it cannot be expected that he can properly understand and interpret the fire-arm injuries. No doubt the wounds caused by fire-arms have their own appearances different from those caused by blunt object or sharp edged or pointed weapons. However, it is not always easy to be sure that injuries are of firearm, for the projectile having regard to the side, surface pressure and direction etc. may produce different types of wounds. The doctor must on inspection of such wounds be able to form an opinion about their nature their being entry or exit wounds and their direction. In order that he may speak about any weapon and whether it could cause the like wounds, he must necessarily know something of the common types of fire-arms and be roughly familiar with their maximum fire power. Dr. Sofat in answer to a Court question frankly admitted that he cannot give the exact distance from which these injuries were caused and that he does not know the difference between abraded or grease collar or tattooing. Thus he has not understood and formed the opinion. This indecision and uncertainty must be due to his lack of adequate knowledge of firearm and gun power. The evidence of this doctor further reveals that he removed shirt Ex. P. 23 from the dead body. This shirt according to him was made of a thick coarse cloth and there

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were corresponding perforation in that shirt. In this state of affairs, there is no likelihood or any tattooing around the pellets which struck the chest of the deceased and the same would have been absorbed by the thick cloth. Tattooing can be caused upto a distance of 6 feet from the muzzle of the gun. At a distance of about 12 feet the charge of the shot spreads widely and enters the body as individual pellets present separate opening in an area of 5" to 8" in diameter, but without causing blackening, scratching or tattooing of the surrounding skin. So the trial Judge was right in his assessment that there was no question of any tattooing around 70 entry wounds and the doctor was misled. The unsatisfactory evidence of Dr. Sofat as it is on insufficient data cannot affect the probative force of ocular evidence. Far from there being any conflict of medical evidence, the same appears to us indeed to be fully corroborated by the ocular evidence.

(19) The plea taken by the appellant in his statement under section 313, Criminal Procedure Code, is that in fact the occurrence took place at his house, when Bachan Singh Panch arrived with a gun, Gurmukh Singh carrying a **gandasa**, besides Jaswant Singh, Som Nath and Krishan Chand PWs and Jasbir Singh deceased carrying **dangs** came to his house and they attacked and inflicted injuries to his wife Gurnam Kaur, his mother-in-law Chinto and Pala Singh, who were then present there. The appellant maintained that Harnel Singh, Niranjn Singh and another Niranjn Singh of village Bathoi Kalan, who were then present at his house had their licensed guns with them. They opened fire to scare away the assailants to save him (appellant) and his relations. The assailants cut the wire guaze of the windows of his house and broke the glass panes. The aforesaid version was addressed by the defence to the eye-witnesses but they emphatically repudiated the same. It is well known that a suggestion if denied has no evidentiary value. It is, however, clear from section 105, Evidence Act, that onus of proving the circumstances entitling the accused to the plea of right of defence of body is on him and the Court is obliged to presume the absence of the said circumstances. There can be no quarrel with the principle of law that the accused would prove circumstances entitling him to plead right of defence of body by producing evidence in defence or he would elicit circumstances entitling him to the right of defence of body during the cross-examination of the prosecution witnesses. The appellant no doubt examined Smt. Chinto (D.W. 11), Pala Singh (D.W. 12) and Pritam Singh (D.W. 13) in support of his plea but they do not advance his

case at all. Even otherwise the version put forward by the appellant does not appeal to reason. The circumstances rather stand against the said plea of private defence. The version of the appellant is belied by the fact that if Bachan Singh was armed with a 12 bore gun, then the appellant or Pala Singh would not have escaped unhurt from the shot charge from a close range. No pellets, pellet marks or wads were found in the courtyard of his house. The defence theory is further falsified from the testimony of Pritam Singh D.W., as according to him, none from the complainant party was injured in this occurrence. Smt. Chinto had filed a complaint, Ex. DL, in the Court of Judicial Magistrate, Rajpura, on 5th September, 1974. This complaint is silent about the presence of Niranjan Singh and Harnek Singh and their having fired at the complainant party or the deceased. Sub-Inspector Mohinder Singh had shown wire guaze of two windows cut in his visual plan, Exhibit PS, at points 13 and 14 but it is of no significance because there is not an iota of evidence on the record to show that these wire guazes of the windows were damaged during the occurrence. Even the complaint, Exhibit DL, filed by Smt. Chinto is silent about such a damage. Pala Singh and Pritam Singh DWs do not mention about such a damage in their statements. On the other hand, the circumstantial evidence of the presence of pellet marks on the wall of the house of Bhajan Singh P.W. and his father Nachhattar Singh which falls at a distance of about 32 feet beyond the well and towards its north and the recovery of pellets therefrom, besides the recovery of 9 wads from the lane in between the well and the house of Puran Chand, as well as the presence of the dead body of Jasbir Singh near the well, recovery of blood-stained earth at three places near about the well, exposes the hollowness of the defence version and confirms the prosecution case that the occurrence had in fact taken place at the common well and not at the appellant's house or in the lane of his house. Injuries on the persons of Smt. Chinto, Gurnam Kaur and Pala Singh DWs have been explained by Karamjit Singh (P.W. 14) and Joginder Singh (C.W. 2). Their house is quite close to the house of the appellant. Karamjit Singh deposed that prior to the present occurrence, on hearing the alarm from the side of the house of the appellant, he went to the roof of his **chobara** and saw the appellant beating his wife and his mother-in-law with **danda** while demanding his gun. The version of Karamjit Singh gets confirmed from the testimony of Joginder Singh who has stated that he was informed by Karamjit Singh about the said incidence.

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It is well known that the fair sex is averse to violence. The conduct of these two ladies as observed by Karamjit Singh in not allowing the appellant to take away his licenced gun, appears to be probable. Injuries being simple in nature suffered by Smt. Chinto and Gurnam Kaur also show that they were not suffered at the hands of an aggressor. If they had suffered injuries at the hands of the complainant party, they would not have suppressed their injuries till 2nd September, 1974, when they were examined by Dr. K. K. Sofat. Pala Singh got himself examined on 4th September, 1974. Therefore, we find that the plea of the appellant that the occurrence took place at his house, is born out of necessity and is a clear invention and artificial otherwise there is no truth in it. So we dismiss it as false.

(20) It was then argued by and on behalf of the appellant that the evidence about the motive shows that the initiative could have come only from the deceased's side. All types of stultifying positions have been taken up. It is not disputed that the Panchayat of village Lakhomajra was faction-ridden. One faction was led by Mohar Singh and the injured witnesses and the other by the appellant. The relations between the parties were steadily climaxing to further acuteness as evidenced from the complaint, Exhibit PM, filed by the members of the village panchayat, against the appellant for the embezzlement of Panchayat funds. Mohar Singh and the injured witnesses were also the signatories of that complaint. The Block Development Officer of Block Samiti Ghanaur was to enquire into this matter in village Lakhomajra on 2nd September, 1974. Mohar Singh and the injured witnesses besides others had collected at the village common well on 29th August, 1974 to hold consultation regarding that enquiry. In such a situation, the appellant would feel sore against the opposite faction when they have discussion and comment upon his honesty *qua* the Panchayat funds. As has been observed by the Hon'ble Judges of the Privy Council in *Bhaboni Sahu v. The King*, (2), motive is very often a matter of conjectures or surmises. Madmen have no fixed rules for the games that they play. Persons with such poisonous minds do not wait, in the game of chess for the next move to come from the other side and after having made a move or for the ball to come over the net before they will hit back as

in tennis. Persons with such poisonous minds would be on the look out of the time for opportunities to cause harm to the opponents and it would more often be a matter of accident or chance as to who may have the next opportunity to spit poison or harm at the other. We, therefore, find it hard to agree with the learned defence counsel that on the facts proved, the initiative for the murder could not have come from the side of the appellant.

(21) For all the foregoing reasons, we dismiss this appeal and maintain the conviction of the appellant and the sentences awarded to him. We, however, order that the fine if realised whole of it shall be paid to the heirs of the deceased.

Bhopinder Singh Dhillon, J.—I agree.

N.K.S.

Before S. S. Sidhu, J.

DARSAN SINGH, AND OTHERS.—*Petitioners.*

versus

STATE OF PUNJAB—*Respondent.*

Criminal Misc. No. 3080 of 1978.

October 27, 1978.

Dowry Prohibition Act (XXVIII of 1961)—Sections 4 and 7—Code of Criminal Procedure (II of 1974)—Sections 2(d), 173 and 482—Accused charge sheeted under section 4 on the basis of a police report submitted under section 173 of the Code—No complaint filed by any competent person under section 7(2)—Magistrate—Whether could take cognizance of the offence in the absence of any such complaint—Proceedings—Whether stand vitiated.

Held, that a perusal of section 7(2) of the Dowry Prohibition Act, 1961 including its both provisos, shows that only the aggrieved person and some other person on his or her behalf as mentioned therein can file a complaint under section 4 of the Act but no such complaint can be filed by a police officer on behalf of any of them. Although the report under section 173 of the Code of Criminal Procedure, 1973 submitted by the police to the trial Magistrate can also be treated as a complaint in accordance with the Explanation to the definition of 'complaint' as given in section 2(d) of the