

(1976) 02 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Balraj Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: Feb. 10, 1976

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 313, 366
- Evidence Act, 1872 - Section 134
- Penal Code, 1860 (IPC) - Section 302

Citation: (1976) CriLJ 1471

Hon'ble Judges: Pritam Singh Pattar, J; D.S. Tewatia, J

Bench: Division Bench

Judgement

P.S. Pattar, J.

By his judgment dated October 6, 1975, the Sessions Judge, Faridkot, convicted Balraj Singh son of Dalmer Singh aged about 21 years, resident of village Jasseana, District Paridkot, u/s 302, Indian Penal Code, and! sentenced him to death and directed that he be hanged by neck till he is dead and that this sentence is subject to confirmation by the High Court. He also convicted him by the same judgment u/s 27 of the Arms Act and sentenced him to undergo rigorous imprisonment for three years. The records of this case have been submitted by the Sessions Judge to this Court for confirmation of the death sentence u/s 366, Criminal Procedure Code. Feeling aggrieved Balraj Singh accused has filed Criminal Appeal No. 1409 of 1975 against this judgment alleging that the decision of the Sessions Judge is wrong and incorrect and it may be set aside and he may be acquitted. By this judgment this Murder Reference No. 35 of 1975 and the Criminal Appeal No. 1409 of 1975 will be decided.

2. The facts of this case are that Balraj Singh appellant and his two brothers Gurbaj Singh and Shivraj Singh are the sons of Dalmer Singh, who died about 8 or 9 years ago. All the three brothers performed the marriage of their sister Baljit Kaur about 2 1/2 years ago and they spent a lot of money on the marriage. Shivraj Singh and Gurbaj Singh took a loan of Rs. 8,000/- from Paramjit Singh and Amarjit Singh, who are their cousins, on the basis of pronote Exhibit P-E dated 10th February, 1973. They could not repay the loan in time. Jaswinder Kaur wife of Gurbaj Singh was sent by Gurbaj Singh to the house of her brother Karam Singh P.W. 7 in village Malha about 8/9 months prior to the occurrence to bring money for payment to Paramjit Singh and Amarjit Singh. About 2 or 3 days thereafter Karam Singh came to village Jasseana and gave Rs. 1,800/- to Gurbaj Singh for payment towards the said loan. Jaswinder Kaur used to go to Karam Singh to bring money for the repayment of the said loan. Jaswinder Kaur sent a message some days prior to the present occurrence which took place on 27th May, 1975, asking Karam Singh to pay more money. Karam Singh P.W. 7 came from his village on 26th May, 1975, to village Jasseana. In fact Shivraj Singh and Balraj Singh were pressing Jaswinder Kaur to bring more money from the house of her brother but Jaswinder Kaur was saying that she had already brought sufficient money from her brother and could not bring more money. Shivraj Singh and Balraj Singh appellant quarrelled with Jaswinder Kaur about this loan amount on 26th May, 1975, but they were pacified.

3. On 27th May, 1975, early in the morning Gurbaj Singh and Shivraj Singh took a camel cart load of grams to Muktsar for selling the same in the market but Karam Singh P.W. remained in village Jasseana. At about 2 P. M. Jaswinder Kaur was feeding her daughter Kulwinder Kaur, aged about 1 1/2 years, from her breasts while lying in a room of her house and at that time Karam Singh P.W. was sitting on the Thara of the adjoining deori with Raja aged three years, who is the son of Jaswinder Kaur. Gurbaj Singh and Jaswinder Kaur were living on the northern portion of the house while the appellant and Shivraj Singh, whose wives are real sisters, were living on the southern portion of the house. It is alleged that Balraj Singh appellant at about 2 P. M. entered the kotha where Jaswinder Kaur was present with the child and he picked up the licensed gun of Gurbaj Singh from the wooden box lying there and loaded it and fired a shot hitting Jaswinder Kaur in the abdomen. She tried to get up but the accused fired second shot hitting her in the chest. She fell down on the ground and died. The accused fired a third shot hitting the small girl Kulwinder Kaur in the chest, who died on the cot. Karam Singh P.W. 7 raised an alarm and on hearing the same Ajaib Kaur, the mother of the accused, Surjit Kaur wife of Shivraj Singh and Chhinder Kaur newly married wife of Balraj Singh accused came there from the southern portion of the house in their possession and caught hold of the accused and made him sit in the deori. The prosecution story is that Karam Singh P.W. got terrified lest the accused might also kill him and so he took Raja the son of his sister outside the house and concealed himself in the dry water-course situated at a distance of 300 karams from the house

of the appellant and others.

4. Lachhman Singh C. W. 1 who is the uncle of the accused, had gone to the office of the Block Development Officer, Muktsar, on that day to relinquish charge of the office of Sarpanch of the village panchayat and his grandson Gur-mit Singh went to Muktsar and informed him about this occurrence at about 3-30 or 4 P. M. Lachhman Singh then came to the spot and saw the dead bodies lying in the kotha and on his enquiry Balraj Singh accused made an extra-judicial confession before him that he had murdered Jaswinder Kaur and Kulwinder Kaur. Lachhman Singh then went to Police Station Saddar, Muktsar and lodged the first information report Exhibit P. M. at 6.30 P. M.

5. Mohinder Singh A. S. I. P.W. 16, who was then posted in Police Station Saddar, Muktsar, completed the first information report at 7.30 P. M. and then he proceeded to village Jasseana along with Lachhman Singh and some constables and they reached there at 8.30 P. M. He found the dead bodies of Jaswinder Kaur and Kulwinder Kaur in the kotha of Gurbaj Singh. The deadbody of Jaswinder Kaur was lying on the ground while the dead body of Kulwinder Kaur was lying on the cot. He prepared the inquest report Exhibit P. A./2 and Exhibit P. B./2 of Jaswinder Kaur and Kulwinder Kaur respectively. Karam Singh P.W. was alleged to have been seen by Shivraj Singh and Gurbaj Singh returning to the village at about 5 or 6 P. M. and on seeing them he also returned to the house of Gurbaj Singh along with them. The statements of Karam Singh, Ajaib Kaur and other witnesses were recorded in the inquest reports, which were prepared during the night. The dead bodies were despatched for post-mortem examination at about 9 A. M. on the next day. The A. S. I. found two empty cartridges Exhibits P-5 and P-6 from the spot and sealed them in a parcel. Bloodstained earth was also taken into possession from underneath the cot and also from near the dead body of Jaswinder Kaur and he sealed the same into two separate parcels and took the same into possession. Ajaib Kaur P.W. produced the gun Exhibit P-4 of Gurbaj Singh before Mohinder Singh A. S. I. and it contained the empty cartridge Exhibit P-7 in the chamber and the same was taken into possession. Balraj Singh accused was present in the deori where Ajaib Kaur, Chhinder Kaur and some other persons were sitting near the accused, who was then wearing shirt Exhibit P-8 and Pyjama Exhibit P-9, which were stained with blood and the same were also taken into possession by the police. Gurbaj Singh produced his licence Exhibit P-D for the gun Exhibit P-4 and it was taken into possession. Three pellets and a wad were found in the kotha and the same were taken into possession and sealed. He recorded the statements of the prosecution witnesses. Baldev Sharma P.W. 9 S. H. O. Police Station Saddar Muktsar reached the spot at 3 A. M. on 28-5-1975 and he verified the investigation.

6. The two sealed parcels of the blood-stained earth and the sealed parcel of the shirt and pyjama Exhibits P-8 and P-9 of the accused were sent to the Chemical Examiner, Punjab Government, who in his report Exhibit P.O. reported that the

earth, shirt and the pyjama were stained with blood. Pieces and scrap-pings therefrom were sent to the Serologist. Government of India, who in his report Exhibit P-R opined that the earth in the two parcels, the shirt and the pyjama were stained with human blood.

7. After the completion of the investigation the accused was chalaned and he was committed to stand his trial in the Court of Session by the Judicial Magistrate 1st Class, Muktsar, u/s 302, Indian Penal Code, and Section 27 of the Arms Act. In his statement made u/s 313, Criminal Procedure Code, in the Court of Session, Balraj Singh admitted that Shivraj Singh and Gurbaj Singh are his real brothers, that he and his brothers performed the marriage of their sister about 2 1/2 years prior to the occurrence. He also admitted that Gurbaj Singh was living in one portion of the house while he and his brother Shivraj Singh were residing in another portion of their house and that on 27-5-1975 his brothers Gurbaj Singh and Shivraj Singh had gone to Muktsar to sell grams. He denied all other allegations made in the prosecution story. He stated that he had gone to village Doda from where he was brought on 28-5-1975 at about 8 or 9 A. M. by the police. He examined only one witness in defence. He stated that the police falsely implicated him in this case. The learned Sessions Judge held that the prosecution story against the appellant is proved and he convicted and sentenced him as mentioned above.

8. Dr. D. S. Gill P.W. 1, Medical Officer, Incharge Civil Hospital. Muktsar, conducted the post-mortem examination on the dead body of Jaswinder Kaur at 3 P. M. on 28-5-1975. He found the following injuries on the dead body:

(1) A fire-arm wound with lacerated and inverted margin 3 c. m. X 2 c. m. oval on the front of left chest 6 c. m. below the left clavicle and just to the left of sternum with blackening and tatooing of skin around the wound

On dissection, the wound was piercing the chest wall with fracture of 4th and 5th ribs and entering the chest cavity. The underlying left lung and heart were lacerated through and through, with three wounds of exit, each measuring 3/4 c. m. X 1 c. m. and spread in a distance 7 c. m. x 4 c. m. on the back of left chest. These wounds of exit had everted margins. The thoracic cavity was full of blood. The wound was directed front backwards and slightly downwards. Five pellets of shot and a piece of wad were recovered from the wound and sent to the police in a sealed packet. The shirt overlying the wound of entry was correspondingly punctured and blackened and that overlying wounds of exit was also correspondingly (punctured).

(2) A fire-arm wound 2 3/4 c.m. X 2 1/2 c. m. oval with lacerated and inverted margins and tatooing and blackening of skin around it on the front of abdomen in the middle line and 4 c.m. below the lower end of sternum entering the abdominal cavity with big laceration of stomach and intestines showing multiple punctures, and making three wounds of exit on the back of abdominal wall each measuring 3/4 c. m. in diameter with lacerated end everted margins and spread in area 8 c.m.X6 c.m. OB

the back of the abdomen. Five pellets of shot were recovered from the depth of the wound and pieces of wad lying in the abdominal cavity and sent to police in a sealed packet. The abdominal cavity was full of blood. The shirt overlying the wound of entry was correspondingly punctured and showed blackening. The wound was directed from front backward and downwards.

Death in his opinion was due to shock, haemorrhage and injury to lung, heart, stomach, intestines as a result of injury Nos. 1 and 2, which were sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem and had been caused with a fire-arm. The probable time that elapsed between the injuries and death was instantaneous and between the death and post-mortem examination was about 24 hours. Exhibit P-A is the carbon copy of his postmortem examination report. Ext. P-A/1 is the pictorial diagram showing the seats of the injuries.

9. On the same day he performed the post-mortem examination on the dead-body of Kulwinder Kaur aged about 1 1/2 years. He found the following injury on the person of the deceased:

A fire-arm wound 2 c. m. X 1 3/4 c. m. with lacerated and inverted margins with blackening and tattooing of skin around it on the front of left chest 4 c. m. below the middle of clavicle entering the chest cavity with laceration of left lung, heart, diaphragm, spleen, intestines and stomach and making five wounds of exit on the back of left lower chest and upper left abdomen. The wounds of exit had each diameter of 3/4 c.m. with everted margins and spread in an area 10 c. m. X 5 c. m. The thoracic and abdominal cavity were full of blood. A pellet of shot with pieces of wad were recovered from the depth of the wound and sent to police in a sealed packet. The overlying frock was lacerated over the wound of entry.

Death in his opinion was due to shock and haemorrhage and injury to left lung, heart, diaphragm, intestines and spleen as a result of the said injury, which was sufficient in the ordinary course of nature to cause death. This injury was ante-mortem and caused by a fire-arm. The probable time that elapsed between the injury and death was instantaneous and between the death and the post-mortem examination was about 24 hours. Exhibit P-B is the carbon copy of his medico-legal report and Exhibit P-B/1 is the pictorial diagram showing the seat of the injury.

The dead bodies were identified at the time of postmortem examination by Lachhman Singh and Karam Singh. The doctor opined that injuries Nos. 1 and 2 could be caused to Jaswinder Kaur while lying on one side and these injuries were the result of two separate gun-shots. The injury of Kulwinder Kaur was the result of a third shot. He took out five pellets from each of the two injuries of Jaswinder Kaur. In all ten pellets were taken out of these injuries and he sealed them into two separate parcels of five pellets each. One pellet and pieces of wads were taken out of the injury of Kulwinder Kaur. In his opinion the shots were fired in both the cases from a distance within six feet.

10. In the instant case the prosecution had examined two eye-witnesses of the occurrence and they are Karam Singh P.W. 7. who is the brother of the deceased Jaswinder Kaur and Ajaib Kaur P.W. 8, who is the mother of Balraj Singh appellant. Ajaib Kaur P.W. 8 did not support the prosecution story at all She stated that she did not see the occurrence. She deposed that at the time of the occurrence she was in their thrashing flour and her grand-son Raja son of Gurbaj Singh was with her at that time, She did not know how Jaswinder Kaur and Kulwinder Kaur died. She did not know whether Jaswinder Kaur and Kulwinder Kaur died natural death or died as a result of violence. She was declared hostile and with the permission of the Court was cross-examined by the Public Prosecutor. She was confronted with her statement recorded on the inquest report Exhibit P-B/2, wherein she had supported the prosecution story but she denied to have made that statement.

11. Karam Singh P.W. 7 the other eye-witness reiterated on oath the abovementioned prosecution story. He supported the prosecution case in its entirety. He is the real brother of Jaswinder Kaur deceased and is thus a highly interested witness. The first information report in this case was lodged by Lachhman Singh C. W. 1, who is the real uncle of Balraj Singh appellant. On the day of occurrence he had gone to the office of the Block Development and Panchayat Officer, Muktsar, to hand over the charge of the office of Sarpanch of the village Panchayat and his grandson Gurmit Singh informed him about the occurrence at Muktsar at about 3-30/4 P. M. and thereafter he went to the village and after ascertaining the facts about this occurrence lodged the first information report Exhibit P-M at 6-30 P. M. in Police Station Saddar, Muktsar. The name of Karam Singh P.W. 7 is not mentioned in the first information report as the eye-witness. According to the prosecution case be is the only eye-witness of the occurrence. He was present in the deori adjoining the room in which the murder took place and he saw the occurrence through the window marked "E" in the plan Exhibit P-C of the house of the accused and his brothers. On the alarm raised by him Ajaib Kaur P.W. 8, the mother of the accused, Surjit Kaur C. W. 3 and also the wife of the accused were attracted to the place of occurrence from the southern portion of the residential house as shown in the plan Exhibit P-C. If Karam Singh was the eye-witness then his name must have been mentioned in the first information report by Lachhman Singh C. W. The omission of his name in the first information report would go to show that it is highly doubtful that he was present in village Jasseeana and saw the occurrence.

12. Karam Singh P.W. testified that his sister Jaswinder Kaur used to visit him at his village Malha situated at a distance of 50 or 60 miles from village Jasseeana and to request him to pay money which they had to pay to Paramjit Singh and Amarjit Singh creditors and that he had given Gurbaj Singh about Rs. 1.800/- about 8 or 9 months prior to the occurrence. He further deposed that a message had been sent to him by his sister some days ago that her husband Gurbaj Singh was pressing for more money and, therefore, he came to village Jasseeana on 26th May, 1975. He

found that Shivraj Singh and Balraj Singh brothers of Gurbaj Singh were pressing him to contribute more money, that Gurbaj Singh is a simpleton and his sister Jaswinder Kaur was saying that she had already brought money from her parents and she could not pay more money and thereupon Shivraj Singh and Balraj Singh appellant quarrelled with Jaswinder Kaur, but they were pacified. On the next day i.e. 27-5-1975 Shivraj Singh and Gurbaj Singh took a camel cart load of grams to Muktsar for sale and it is not explained for what purpose this witness continued to stay at village Jasseana when there was no occasion for him to stay in the village after he had discussed the matter for payment of money to his sister. It is highly doubtful that he came to village Jasseana on 26-5-1975 and he saw the occurrence on the next day.

13. A perusal of the plan Exhibit P-C of the house of the appellant and his brothers shows that Gurbaj Singh and his wife Jaswinder Kaur were living on the northern portion of the house and that the appellant and Shivraj Singh, whose wives are real sisters, were living on the southern portion of this house and in between these two portions there is the court-yard. There is a lane situated on all the sides of this house excepting the eastern side. There is entrance to this house from the northern side and also on the southern side. This witness Karam Singh was present at the time of the occurrence on the there on the eastern side of the kotha in which the murder took place and at that time Raja aged three years, son of his sister Jaswinder Kaur, was with him. He saw the occurrence through the window marked "E" in the wall of that kotha. He deposed that on the alarm raised by him Ajaib Kaur P.W. 8 the mother of the accused Surjit Kaur C. W. 3, the wife of Shivraj Singh, and the wife of the accused came there and they caught hold of the accused and made him sit there. He admitted that he saw from the door of the baithak where the occurrence had taken place that both Jaswinder Kaur and Kulwinder Kaur had died and, therefore, out of fear lest he may also be murdered he left the house with Raja, the minor son of Jaswinder Kaur, and concealed himself in the dry water-course situated towards north-east of the house of the accused and his brothers. He further deposed that till 5 or 6 P. M. he remained there in the said watercourse till he saw Shivraj Singh and Gurbaj Singh coming from Muktsar and passing on the passage at a distance of 250 yards from him and then he went towards them and went to the house along with them. This story regarding concealment of this witness during day time is highly improbable and unnatural. If he was apprehending any danger to him and to Raja, the minor son of his sister, then he should have gone to the house of some other person in the village to conceal himself. He admitted that after the occurrence the accused was apprehended by Ajaib Kaur, his mother, Surjit Kaur CW, the wife of Shivraj Singh, besides the wife of the accused and the gun was snatched from him by his mother and he was disarmed and was taken to the portion of the house where Shivraj Singh and the appellant were living. After the accused had been secured and the gun had been snatched from him there was no question of fear of any kind to this witness from the appellant. After the apprehension of the accused

the natural conduct of Karam Singh was to go and sit near the side of the dead body of his sister Jaswinder Kaur. Undoubtedly after hearing the gun reports several persons of the village must have collected there and this witness could not have any kind of fear at the hands of Balraj Singh thereafter. The story put up by this witness regarding his concealment from 2 P. M. upto 5 or 6 P. M. in the dry watercourse at a distance of about more than two furlongs from the village is just a cock and bull story. The conduct of this witness after the occurrence is mighty unnatural and improbable and his story regarding concealment is unbelievable and it is rejected without any hesitation. All these facts would go to show that he was not present in the village at the time of the occurrence and that he was informed about the occurrence in his village and thereafter he came to village Jasseana as alleged by the defence.

14. Mohinder Singh A. S. I. P.W. 16 completed the first information report Exhibit P-M at 7-30 P.M. and thereafter he proceeded to village Jasseana along with Lachhman Singh C. W. 1 and some constables and reached there at 8.30 P. M. He found the dead bodies of Jaswinder Kaur and Kulwinder Kaur lying in the kotha in possession of Gurbaj Singh. He prepared the inquest report Exhibit P-A/2 regarding the dead body of Jaswinder Kaur and the inquest report Ext. P-B/2 about the dead body of the minor girl Kulwinder Kaur. The statements of Karam Singh P.W. 7, Ajaib Kaur P.W. 8 and others were recorded by him on the inquest reports. He admitted that he completed the inquest reports at about 12 midnight. The dead bodies according to the Sub-Inspector were despatched from the village for the mortuary in the Civil Hospital, Muktsar, at about 9 A. M. on 28-5-1975, According to Gurdip Singh D. W. 1, Pharmacist, Civil Hospital, Muktsar, the dead bodies of Jaswinder Kaur and Kulwinder Kaur reached the mortuary at 1 P. M. on 28-5-1975. He made this statement from the entries made in the register kept for this purpose at the mortuary.

15. As against this the defence version is that Lachhman Singh C. W. 1, who made the first information report in this case, and is the uncle of the appellant, was informed by his grandson Gur-mit Singh at about 3.30/4 P. M. at Muktsar about this occurrence. He went to the house of Jaswant Singh and Balwant Singh at Muktsar, who are the maternal uncles of the appellant and his brothers, and asked Dalip Kaur wife of Jaswant Singh to go to village Malha and inform the brothers and relatives of the deceased Jaswinder Kaur about this occurrence. Dalip Kaur then took a taxi and went to village Malah and informed Karam Singh P.W. that Jaswinder Kaur was lying seriously ill and he should accompany her and that Karam Singh accompanied (her in the taxi to the Civil Hospital, Muktsar, where Jaswinder Kaur was admitted as- an indoor patient there but she was not found there and thereafter Karam Singh and others arranged the tractor of one Jarnail Singh and put some diesel oil in it from the Burmah Shell Petrol Pump and they reached village Jasseana at about 10 or 11 P. M. on 27-5-1975. This version was put to Karam Singh P.W. in his cross-examination but he denied the same. Lachhman Singh was given up by the Public Prosecutor as

having been won over by the accused. In order to arrive at the truth Lachhman Singh was examined as C. W. 1 by the Sessions Judge. He testified that after he was informed by his grandson Gurmit Singh about the occurrence at Muktsar he went to the house of Jaswant Singh and Balwant Singh and asked Dalip Kaur wife of Jaswant Singh to inform the parents and other relatives of Jaswinder Kaur about the occurrence at village Malah. This defence version is also supported by Ajaib Kaur P.W. 8, who is the mother of the appellant. It was admitted by Karam Singh P.W. in his cross-examination that his village Malah is situated at a distance of about 50 or 60 miles from village Jasseana. According to him his village Malah is situated at a distance of about five miles from village Baja Khana and the distance between Baja Khana and Jaitu is 7 miles. From Jaitu, Kot Kapura is situated at a distance of 11 or 12 miles and the distance between Kot Kapura and Muktsar is 20 miles and that village Jasseana is 5 miles from Muktsar. All these stations i. e. from village Malah right upto Jasseana there is pucca road and buses ply thereon. Therefore, under these circumstances the defence version seems to be more plausible and probable. The information to Karam Singh could reach in his village in the evening and he could very easily have reached village Jasseana at about 10 or 11 P. M. Consequently, his statement could have been recorded by the Assistant Sub-Inspector on the inquest reports during the night. Therefore, the fact that the statement of this witness was recorded on the inquest report does not show that he was present in village Jasseana at the time of the occurrence on 27-5-1975.

16. According to the prosecution the inquest reports and all other recovery memos were prepared by the police during the night. Consequently, the dead bodies could have been despatched early in the morning to the mortuary at Muktsar but this was not done for reasons best known to the police. The Sunrise time on 28-5-1975 according to the High Court Calendar was 5.22 A. M. The distance between this village, which is connected with a pucca road, and Muktsar is only 5 miles and this distance could have been covered even by a bullock cart in two hours. The dead bodies were sent in a truck which could cover this distance in 25 or 30 minutes. However, as discussed above, the dead bodies reached the mortuary at 1 P. M. on 28-5-1975. All these facts and circumstances lend support to the defence version that the inquest reports and all other recovery memos. were prepared by the Investigating Officer during day time on 28-5-1975 and thereafter the dead bodies were sent at about noon time to Muktsar. The defence version is more plausible and probable and is also supported by the evidence of Ajaib Kaur P.W. 8 and Lachhman Singh C. W. 1.

17. For all these reasons it is held that Karam Singh P.W. is a made up witness and he was not present at the time of the occurrence. His presence at that time is highly doubtful and improbable.

18. Lachhman Singh C. W. 1 has stated that when he informed the police about this occurrence in the Police Station Saddar Muktsar, then the police went with him to

the spot in a taxi and the police took the daily diary register and the first information report register to the spot and his signatures were obtained on the first information report at the spot. He stated that he lodged false report against Balraj Singh knowing it be false because he had enmity with him and that he used to oppose him and used to insult him after drinking liquor. He stated that inquest reports Exhibits P-A./2 and P.-B/2 and the other memos. were prepared on the next morning on 28-5-1975 and that the statements of Karam Singh and other witnesses were also recorded in the morning on 28-5-1975. Both Lachhman Singh C. W. 1 and Ajaib Kaur P.W. 8 contradict the statement of Karam Singh P.W.

19. It is well settled law that the conviction of an accused in a murder case can be based on the testimony of a single witness without corroboration provided the Court comes to the conclusion that his evidence is honest, trustworthy and completely above board. Evidence has to be weighed and not counted. According to Section 134 of the Evidence Act no particular number of witnesses shall in any case be required for the proof of any fact. However, if the witness is not wholly reliable then the Court has to look for corroboration in material particulars by reliable testimony, direct or circumstantial vide Jose alias Kolli Jose Vs. The State of Kerala, Ramratan and Others Vs. The State of Rajasthan, ; Vadivelu Thevar Vs. The State of Madras, and Ram Parvesh Ram and Others Vs. State.

20. In the instant case Karam Singh P.W. 7 is a highly interested witness being the real brother of Jaswinder Kaur deceased and his presence in village Jasseana at the time of occurrence where the murder took place was highly improbable and unlikely. His name did not appear in the first information report as an eye-witness. His conduct after the occurrence is highly unnatural as held above. He is not a reliable and trustworthy witness and his evidence is not above board. There is no evidence on the file to corroborate his statement and on the other hand his statement is contradicted by the evidence of Ajaib Kaur P.W. 8 and Lachhman Singh C. W. 1 on all material particulars. For all these reasons the evidence of Karam Singh P.W. is rejected as unreliable and untrustworthy.

21. There is no evidence on the file to connect the appellant Balraj Singh with the commission of the crime. It is no doubt a matter of regret that a cruel and cold-blooded murder should go unpunished. There may be an element of truth in the prosecution story against the accused and considered as a whole the prosecution may be true but between "may be true" and "must be true", there is invariably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted. The guilt of the accused is to be established by the prosecution beyond the possibility of any reasonable doubt on the basis of legal evidence and material on the record. In the instant case there is no evidence on the record to connect Balraj Singh accused-appellant with the commission of the crime. The prosecution has failed to prove its story and to bring home the guilt to the appellant

and) he is entitled to be acquitted.

22. As a result, Murder Reference No. 35 of 1975 is declined and the appeal filed by the accused is accepted and the conviction and sentence of Balraj Singh appellant u/s 302, Indian Penal Code, and Section 27 of the Arms Act are set aside and he is acquitted. He is ordered to be released from custody forthwith unless required in any other case.

D.S. Tewatia, J.

23. I agree.