(2011) 09 P&H CK 0189

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 704-DB of 2006

Balwinder Singh		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: Sept. 16, 2011

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 157, 159, 161, 207, 313
- Evidence Act, 1872 - Section 25
- Penal Code, 1860 (IPC) - Section 302

Citation: (2011) 09 P&H CK 0189

Hon'ble Judges: M.M. Kumar, Acting C.J.; Gurdev Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Gurdev Singh, J.

The Appellant-accused, Balwinder Singh alias Bindu son of Prem Singh, has preferred this appeal against the judgment dated 5.9.2006 passed by Sessions Judge, Kaithal, vide which he convicted him for the offences u/s 302 Indian Penal Code, 1860 and 25 of the Arms Act, 1959 (for brevity-"the Act") and sentenced him as under:

Offence u/s Section	Sentence	Fine	In default
302 IPC	Imprisonment for life	Rs. 20,000/-	Six months
25 of Arms Act	RI for one year	Rs. 5,000/-	Three months

2. The prosecution story, in brief, is that on 9.7.2004, Krishan Lal, ASI (PW-7), along with Ramesh Kumar, Constable (PW-10) and other police officials, was present near the Distributory bridge on Balbera Cheeka road in Govt. vehicle No. HR-08D-4373 in connection with night patrolling. He heard noise of firing from the farmhouse built on the right side of that road, upon which he proceeded towards that farmhouse on the katcha passage. In the headlight of the vehicle, he saw the present accused coming from the front side. On seeing that light, accused immediately turned back and started walking briskly. The accused was apprehended by him with the help of his companions. When his personal search was taken, one country made pistol Ex.P-35 was recovered from the right "dub" of his trousers and it was found that the barrel of that pistol was still hot. On his further search, two live cartridges of.315 were recovered from the right side pocket of his trousers. The ASI prepared the rough sketch Ex.PG/1 of the pistol and took that into possession, along with live cartridges, vide memo Ex.PG. On interrogation, it was disclosed by the accused that Mohinder Singh had illicit relations with his mother Omi Devi and had been residing with her and his brother Raghbir Singh from the last 10/12 years and that he had shot dead all three of them. In the meanwhile, Jai Singh and Raja came to that place and they were joined in the investigation by the ASI. Thereafter, the ASI took the accused and those witnesses to the farmhouse. When they reached that place, dead body of one young boy was found lying near a "charpai" with fire arm injury on the left side of the chest. The name of that boy was disclosed by the accused as Raghbir Singh and was identified by Jai Singh and Raja. Thereafter, the accused took them on the roof of the house and the dead body of his mother, Omi Devi was found lying at that place with fire arm injuries. That dead body was identified by the same witnesses. Thereafter, the accused took the ASI to the tubewell by the side of the farmhouse where the dead body of Mohinder Singh was found lying near the water tank with fire arm injuries. The ASI sent his ruqa Ex.PH to the police station and on the basis thereof, formal FIR Ex.PC was recorded u/s 302 Indian Penal Code, 1860 and Section 25 of the Act. On the receipt of the information, Ram Pal, SI/SHO (PW-11) reached the spot and took over the investigation from the ASI. He called Surinder Kumar, Photographer (PW-6), who took the photographs Exs.P3 to P8. He collected blood stained earth from the place where the dead body of Mohinder Singh was lying and put the same in a small plastic box, which was converted into a parcel and was sealed by him with his seal ''RP''. The sealed parcel was taken into possession, vide memo Ex.PJ/1. Blood stained earth was also collected from the place where the dead body of Omi Devi was lying, which was put into a small plastic box. The mattress on the charpai was also found blood stained and that portion of the mattress, which was stained with blood, was cut and was converted into a parcel. The plastic box was also converted into a parcel and both the parcels were sealed by the ASI with his seal ''RP'' and were taken into his possession, vide memo Ex.PJ/2. From near the dead body of Raghbir Singh, blood stained earth was collected and was put in a separate plastic box, which was converted into a parcel. The portion of the mattress on his charpai, which was found stained with the blood, was cut and was converted into a parcel. Both the parcels were sealed by the SI with his seal "RP" and were taken into possession, vide memo Ex.PJ/3. While inspecting the spot, the SI recovered one live

cartridge in the courtyard by the side of the dead body of Raghbir Singh, two empty cartridges from in front of the rooms, one empty cartridge at the bottom of the staircase, one empty cartridge on the last step of the staircase, two empty cartridges from near the dead body of Omi Devi and two empty cartridges from near the dead body of Mohinder Singh. All those empty cartridges were converted into a parcel and it was sealed by the SI with his seal ''RP'' and was taken into possession, vide memo Ex.PJ. He prepared rough site plan Ex.PU of the place of occurrence with correct marginal notes. He prepared the inquest reports Ex.PR, PS and PT in respect of the dead bodies of Raghbir Singh, Omi Devi and Mohinder Singh, respectively, and sent the same for post mortem examination to the Civil Hospital through Kuldep Singh and other Constables. When the SI interrogated the accused, he suffered a disclosure statement Ex.PX that at the time of occurrence he was wearing pyjama and grappled with Mohinder Singh, as a result of which, that pyjama became blood stained and he had kept concealed the same underground in the cage of hens, about which only he had the knowledge and could get the same recovered. In pursuance of that disclosure statement, he got recovered blood stained pyjama which was converted into a parcel and was sealed with the seal ''KL''. That sealed parcel was taken into possession, vide memo Ex.PO. The autopsies on the dead bodies of the deceased were performed by a Board of Doctors consisting of Dr. Hambir Mazumdar (PW-8). Dr. S.K Jain and Dr. Piyush Sharma. They found five fire arm injuries and one incised wound on the dead body of Omi Devi, one fire arm injury on the person of Raghbir Singh and three fire arm injuries on the person of Mohinder Singh. They gave their opinion that those fire arm injuries caused extensive damage to the vital organs and were sufficient to cause death in the ordinary course of nature. One bullet P-64 was recovered from the dead body of Mohinder Singh which was sealed in a bottle. After the post mortem examination, the wearing apparels found on the dead bodies were converted into separate parcels. Those parcels and the sealed bottle were produced by Balraj Singh, Head Constable before the SHO and were taken into possession, vide memo Ex.PQ. On 20.8.2004, the sealed parcel containing the live cartridges so recovered from the possession of the accused was produced before Karnail Singh, Head Constable/armourer. After opening the parcel, he tested those cartridges Ex.P1 and P-2 and found the same to be live. He gave report Ex.PT about that test. The scaled site plan of the place of occurrence Ex.PA was got prepared from Subhash Chand Patwari, PW-2. The sealed parcels containing the pistol, empty cartridges, bullet, wearing apparels, blood stained earth and blood stained mattresses were sent to FSL on 4.8.2004 and were delivered at that place with seals intact. After examination, it was reported by that Laboratory, vide report Ex. PV, that the firing mechanism of the pistol was in working order and six of the empty cartridges had been fired from the same. It was also reported, vide report Ex. PV/2, that the earth, pieces of mattresses and the wearing apparels were stained with human blood. The prosecution of the accused for the offences u/s 25 of the Act was sanctioned by the District Magistrate, vide his order Ex. PA. After the completion of investigation, the challan was put in before the SDJM, Guhla, who committed the same to the Court of Session, on the ground that the offence u/s 302 Indian Penal Code, 1860 was exclusively triable by the Court of Session.

3. On appearance of the accused, in the Court, copies of all the documents sent along with the police report and relied upon by the prosecution were supplied to him as per the mandatory requirements of Section 207 Code of Criminal Procedure From the perusal of those documents, and after hearing Public Prosecutor for the State and the accused in person the Additional Sessions Judge, Kaithal, found sufficient grounds for presuming that the accused committed offences punishable u/s 302 Indian Penal Code, 1860 and Section 25 of the Act. He was charged accordingly, to which he pleaded not guilty and claimed trial.

4. To bring home the guilt of the accused, the prosecution examined Subhash Chander (PW-1), Subhash Chand Patwari (PW-2), Jai Pal, Constable (PW-3), Karnail Singh, HC (PW-4), Baldev Singh HC (PW-5), Surinder Kumar (PW-6), Krishan Lal, ASI (PW-7), Baljeet Singh Constable (PW-9), Ramesh Chand, (PW-10) and Ram Pal, SI (PW-11) and tendered in evidence reports of the FSL Ex.PV, Ex.PV/1 Ex.PV/2.

5. After the close of the prosecution evidence, the accused was examined by the trial Court and his statement was recorded u/s 313 Code of Criminal Procedure All the incriminating circumstances appearing against him in the prosecuting evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his innocence. He stated that his father, Prem Singh owned 6 1/2 killas of land which was mutated in his name and in the name of his brother and mother. After his death in 1981, he himself and his brother Balbir Singh had been residing at Cheeka, whereas his mother Omi Devi and younger brother Raghbir Singh used to reside in the farmhouse of Prem Singh, about 2 kilometers away from Cheeka. Mohinder Singh was not having cordial relations with his family and often used to reside in the farmhouse of Prem Singh. On 9.7.2004, at about 10:00/11:00 a.m, he had gone to his fields for taking the grass. When he reached the farmhouse of Prem Singh, he found the dead bodies of Omi Devi, Raghbir Singh and Mohinder and gave intimation to his uncle Raja in the presence of Jai Singh. Thereafter all three of them went to the police station. Thereafter, Ram Pal, SI and Krishan Lal, ASI visited the spot and later on he was falsely involved in this case. The accused was called upon to enter on his defence and he examined Raja DW-1 in his defence evidence.

6. After going through the evidence produced on the record and after hearing PP for the State and learned defence counsel for the accused, learned trial Court convicted and sentenced the accused as aforesaid.

7. We have heard learned Counsel for the parties.

8. It was submitted by the learned defence counsel that the conviction of the accused could not have been recorded on the basis of the evidence produced by the prosecution, which consists of the statements of police witnesses and there is No. corroboration by any independent witness and the same is full of discrepancies and embellishments. The prosecution relied upon the circumstances and all the circumstances were not proved

conclusively and the chain of the proved circumstances cannot be said to be so complete so as to draw inference the guilt of the accused. There was delay in lodging the FIR as well as in sending the special report to the Magistrate. No. explanation has been offered for the delay and from the circumstances of the case it becomes very much clear that the said delay has been utilized in order to falsely implicate the accused. The FIR purported to have been recorded at 5 a.m., whereas the special report was received by the Magistrate at 6.30 p.m. i.e. after 13 hours and 30 minutes. It is very much clear from the post-mortem reports that dead bodies must have been received by the Board of Doctors on or after 5 p.m. Till then the investigating agency was groping in the dark and was never sure about the culprit. From the stand taken by the accused in his statement u/s 313 Code of Criminal Procedure and the evidence produced by him in his defence, it stands established that on the alleged date he had gone to the farmhouse of his mother and found her dead body and dead bodies of his brother Raghbir Sigh and Mohinder Singh at that place and he went to the police station to lodge a report and instead of making the investigation so as to find out the actual culprit he himself was framed in this crime. He further submitted that in such like cases based upon circumstantial evidence, the motive assumes great importance. According to the prosecution, the accused was nursing a grudge against his mother Omi Devi and Mohinder Singh as they were having illicit relation. No. such motive has been alleged against his brother Raghbir Singh. The prosecution has failed to produce any admissible evidence for proving that motive on the part of the accused. The evidence produced by it for proving the same is not admissible. That evidence consists of confessional statement made before the police, which is hit by Section 25 of the Evidence Act, 1872 (for brevity-"the 1872 Act"). The prosecution never examined independent witnesses; namely, Raja Ram and Jai Singh, in whose presence that alleged confessional statement is said to have been made by the accused. No. doubt, Krishan Lal, ASI (PW-7) and Ramesh Chand, Constable (PW-10) deposed about the recovery of the country made pistol and two live cartridges from the possession of the accused but in the absence of any independent corroboration, No. reliance is to be placed upon their statements. Admittedly, said two witnesses were present when that recovery was effected, but none of them was examined for proving the same. He further submitted that from the corroborative evidence produced by the prosecution, it becomes doubtful, if this crime was committed by only one person and only one weapon was used. The empty cartridges, alleged to have been recovered from the spot, alongwith the country made pistol, alleged to have been recovered from the possession of the accused, were sent to FSL and it was found that out of those 11 spent cartridges, only five had been fired from that pistol. Thus, another fire arm was used in the commission of this crime. One incised wound was also found on the dead body of Omi Devi which shows that one of the injuries on her person was caused with a sharp-edged weapon. That shows the involvement of a number of assailants in this occurrence. That makes the stand taken by the accused in his defence as probable and that creates a doubt in the version put forward by the prosecution. The prosecution has failed to bring home the guilt of the accused beyond any reasonable doubt and he is entitled to acquittal.

9. On the other hand, it was contended by the learned State counsel that marginal delay in recording the FIR and some delay in sending the special report to the Magistrate is not fatal to the prosecution. In such like cases some delay is bound to occur and in view of the cogent and convincing evidence produced by the prosecution that delay loses its significance. The trial court did not commit any illegality, while recording conviction of the accused on the basis of the statements of the police officials. Raja Ram and Jai Singh were not examined, as they had been won over by the accused. There is No. requirement of law that before placing reliance on the statement of a police official the same must be corroborated by some independent evidence. From the statements of Krishan Lal, ASI (PW-7) and Ramesh Chand, Constable (PW-10), it firmly stands proved that the accused was apprehended by the police party after it was proceeding towards the farmhouse, after hearing the noise of firing and that on his personal search one pistol and two live cartridges were recovered and at that time barrel of the pistol was still hot, which shows that the cartridges had been fired from the same just few seconds earlier. The accused himself confessed before the ASI that his mother Omi Devi was having illicit relation with Mohinder Singh and on that ground he shot them dead. It was the accused who himself pointed the place from where the dead bodies were recovered. The empty cartridges, which were recovered from the spot, alongwith the pistol recovered from the possession of the accused, were sent to the FSL. It was reported by that laboratory that some of the cartridges had been fired from that pistol. The chain of these circumstances points towards the guilt of the accused and excludes the possibility of his innocence. There is No. ground for setting aside well reasoned conviction and sentence recorded by the trial court.

10. In view of the submissions made by both the sides and the grounds of appeal, the following points arise for determination in this appeal.

1. Whether there is delay in lodging the FIR. If so, what is the effect thereof ?

2. Whether the delay of 13 hours and 30 minutes in sending

the special report to the Magistrate stands explained. If not, to what effect

3. Whether immediately after the occurrence, the accused was apprehended by the police party and one country made pistol, the barrel of which was still hot, and two live cartridges were recovered from his possession

4. Whether the accused made a confession before the ASI that his mother Omi Devi and Mohinder Singh had illicit

relation and that he shot them dead alongwith Raghbir Singh. If so, whether such a confession is admissible in evidence

5. Whether the accused had the motive to cause death of Omi Devi, Mohinder Singh and Raghbir Singh ?

6. Whether some of the spent cartridges recovered from the spot were found to have been fired from the pistol, alleged to have been recovered from the possession of the accused

7. Whether the chain of the circumstances proved by the prosecution is so complete so as to lead to irresistible

conclusion that it was the accused who caused death of Omi Devi, Mohinder Singh and Raghbir Singh

8. Whether the accused has been able to make probable the stand taken by him in his defence that he found the dead bodies of all the three deceased, when he went to the farmhouse and he himself reported the matter to the police and that later on he was falsely involved in this case

Point No. 1

11. It was stated by Krishan Lal, ASI (PW-7) that on 9.7.2004, he, alongwith Ramesh Kumar, Constable and other police officials, was going in the Government vehicle on Balbera Cheeka Road when he heard the firing of gun shots from the farmhouse and thereafter he proceeded towards that farmhouse on the katcha patch, where the accused was intercepted and recovery of a pistol and two live cartridges were effected from his possession. Thereafter, he went to the farmhouse and after dead bodies of the deceased were recovered, he sent his ruqa Ex. PH to the police station through Ramesh Kumar, Constable (PW-10).

12. It was stated by Ram Pal, SI (PW-11) that he was posted as SHO, Police Station, Cheeka, when he received the ruqa from the side of Krishan Lal, ASI and recorded the FIR Ex. PC.

13. The ruqa Ex. PH is purported to have been sent from the spot at 4.30 a.m. Though, according to Ramesh Kumar, Constable (PW-10), he had taken this ruqa to the Police Station at 3.00/4.00 a.m. As per the relevant columns of the FIR, Ex. PC, the same was received in the police station at 5 a.m. and the SI had made the report in the DDR at serial No. 33. The question to be determined is, as to what time Krishan Lal had come to know about the present occurrence. In the FIR, Ex. PC, the date and time of occurrence has been given as 9.7.2004 at 2 a.m. We are unable to understand as to from where this time came to be recorded when No. such time was mentioned in the ruqa Ex. PH. In that ruqa even it was not mentioned as to at what time the ASI heard the noise of firing. It was only when he was cross-examined that he came out with the version that the accused had met him at about 1.45 a.m. According to him, he had prepared the recovery memo at 2.30 or 2.45 a.m. Immediately he had gone to the farmhouse and after seeing the dead bodies had sent his ruqa. Thus, there was every possibility with him to send his ruqa latest by 3 a.m. Thus, it cannot cannot be said that there is No. delay in lodging the FIR, which purported to have been recorded at 5 a.m. Giving of the time of the occurrence as

2 a.m. in the absence of any such indication in the ruqa, on the basis of which the same was recorded, it can easily be inferred that the investigating agency never recorded the FIR at the time it purports to have been recorded and that it was the result of due consultations and deliberations. It will become clear from the subsequent part of this judgment that this FIR has been anti-timed, so as to fit in the story put forward by the ASI. This point is decided accordingly.

Point No. 2

14. According to Ram Pal, SI (PW-11), after recording the FIR, he sent the special report to the Illaqa Magistrate and made his endorsement Ex. PH1 on the ruqa. It was stated by Jai Pal, Constable (PW-3) that SHO handed over the copies of the special reports to him and he handed over one of the special report to the Illaqa Magistrate. As per the endorsement of the Magistrate, made on this special report, he received the copy of the FIR on 9.7.2004 at 6.30 p.m. Thus, the special report was received by the Magistrate after 13 hours and 30 minutes. The prosecution has not offered any explanation for the delay. What is the effect of the delay

15. It was held by Hon''ble the Supreme Court in Bijoy Singh and Another Vs. State of Bihar, , that there is mandate of law that the report mentioned in Section 157 Code of Criminal Procedure be immediately sent to the Magistrate. Wherever delay is found, the same is required to be explained by the prosecution and if the same is reasonably explained, No. adverse inference can be drawn. When the prosecution failed to explain the delay, that would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not.

16. In Bhajan Singh @ Harbhajan Singh v. State of Haryana 2011 (3) RCR (Crl.) 641, Hon''ble the Supreme Court discussed a number of authoritative judgments on the point of delay in sending the copy of the FIR to the court and thereafter it came to the following conclusion:

15. Thus, from the above it is evident that the Code of Criminal Procedure provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not anti-timed or anti-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act u/s 159 Code of Criminal Procedure, if so required. Section 159 Code of Criminal Procedure empowers the Magistrate to hold the investigation or preliminary inquiry of the offence either himself or through the Magistrate subordinate to him. This is designed to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been anti-timed or anti-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression `forthwith'' mentioned therein does not

mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. of course, the same is to be sent within reasonable time in the prevalent circumstances. However, un-explained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. Thus, a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution''s case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in despatch of the report or prosecution case itself is proved by leading unimpeachable evidence.

17. As in the present case, the prosecution has failed to offer any explanation for this delay, so this circumstance is to be kept in mind by this Court, while scrutinizing the evidence produced by it in order to determine, whether the FIR had been anti-timed and the intervening time had been utilized for falsely implicating the accused. This point is decided accordingly.

Point No. 3

18. It was stated by Krishan Lal (PW-7) that after hearing the noise of firing, he was proceeding towards the farmhouse on katcha path. The accused was seen by him in the light of the vehicle and on seeing the police party he turned back and started walking briskly. He apprehended him on the ground of suspicion and when he took his personal search one country made pistol of.315 was recovered from the right dub of his trousers and barrel of that pistol was still hot. From the right side pocket of the trousers of the accused, two live cartridges were also recovered. He prepared rough sketch Ex. PG/1 of the pistol and took the same and the cartridges into possession after converted those into sealed parcels, vide memo Ex. PG. Ramesh Chand (PW-10) tried to support the statement of the ASI by making a similar statement.

19. It is in the statement of Krishan Lal, ASI (PW-7) himself that Raja and Jai Singh had already come to the spot when the rough sketch and the memo were prepared. Thus, according to him, they were present when the recovery was effected. When, during the cross-examination, he was asked as to why he did not obtain their signatures on those documents, he replied that he apprehended that they might have been won over by the accused. That explanation for not obtaining the signatures of the independent witnesses is not sustainable. When the recovery was effected and the documents were prepared in their presence, in all fairness, the ASI was supposed to obtain their signatures and it cannot be said that No. independent witness was available when the alleged recovery was effected. They were not examined by the prosecution for corroborating the statements of these police officials and were given up as having been won over. That

may be so, still the onus was heavy upon the prosecution to prove that the pistol and the live cartridges were recovered from the possession of the accused. A finding to that effect can be recorded in favour of the prosecution only in case on close scrutiny of the statements of those police officials it can be held that such recovery was made from the possession of the accused. On account of non-examination of the independent witnesses, it becomes onerous duty on this Court to scrutinize the statements of the police officials with much care and caution and in that eventuality, even the minor discrepancies occurring therein assume much importance. In addition to that the Court is also to keep in view the above said circumstance of delay in lodging the FIR and sending the special report to the Magistrate.

20. As per the sequence given in the ruqa Ex. PH, though recovery had been effected from the possession of the accused, yet the document in respect thereof were not prepared till the ASI went to the farmhouse and found the dead bodies. It was only after the recovery of the dead bodies that the rough sketch of the pistol was prepared and the recovery memo was prepared. The ASI made his statement in the Court in the same sequence. On the same aspect, it was specifically stated by Ramesh Chand, Constable (PW-10) that before proceeding to the farmhouse the investigating officer had prepared the sketch of the pistol and after converting that pistol and cartridges into parcels had taken those into possession, vide memo Ex. PG. This discrepancy, in fact, is contradiction and assumes importance in the absence of the examination of the independent witnesses. The recovery of the pistol and the cartridges from the possession of the accused becomes doubtful. This point is decided accordingly.

Point Nos. 4 and 5

21. Both these points are inter-connected and, as such, are being decided together.

22. It was stated by Krishan Lal (PW-7) that it was disclosed to him by the accused that with the pistol, recovered from him, he had murdered his mother Omi Devi, brother Raghbir Singh and Mohinder Singh, who had illicit relation with his mother, for the last 10-12 years. The statement of the ASI that the accused disclosed to him that his mother Omi Devi had illicit relation with Mohinder Singh for the last 10-12 years, was not supported by Ramesh Chand, Constable (PW-10), in whose presence that disclosure statement was made, though he stated that the accused disclosed that he had committed the murder of his mother Omi Devi, Mohinder Singh and Raghbir Singh with the pistol recovered from him. These statements of the witnesses were objected to by the learned defence counsel on the ground that the said disclosure of the accused amounts to confession before the police and, as such, was not admissible. That objection was never decided, either at the time their statements were recorded or before the pronouncement of the final judgment. It is very much clear from the statement of the ASI that when the alleged disclosure was made by the accused, he was in police custody. This disclosure amounts to confession. According to Section 25 of the 1872 Act, No. confession made to a police officer shall be proved as against a person accused of any offence. Therefore,

these parts of the statements of the witnesses regarding the alleged disclosure by the accused are not admissible in the evidence. If these are excluded from the consideration, there remains nothing on record to prove that the accused was nursing a grudge against his mother Omi Devi and Mohinder Singh on the ground that they were having illicit relation. No. motive to cause death of his brother has been put forward by the prosecution. These points, therefore, are decided against the prosecution and in favor of the accused.

Point No. 6

23. It was stated by Ram Pal, SI (PW-11) that he went to the place of occurrence and took over the investigation from Krishan Lal, ASI. He recovered 11 cartridges from the spot, which were lying at that place. He converted those into a parcel and sealed the same with his seal "RP" and took those into possession, vide memo Ex. PJ. This parcel, alongwith other case property, was deposited with MHC. Baldev Singh, HC was examined as PW-5 and he proved his affidavit as Ex. PE. He deposed in that affidavit that the case property of this case, including the parcels containing pistol and spent cartridges, were deposited with him on 9.7.2004 and he sent those sealed parcels to the FSL on 4.8.2004 through Ramesh Chand, Constable. It was stated by Ramesh Chand, C. (PW-10) that the case property was handed over to him on 4.8.2004 by MHC, which consists of 13 parcels and he deposited the same with the FSL on the same date. The report of the FSL was proved by the prosecution as Ex. PV. As per the report, these sealed parcels were received in that laboratory on 4.8.2004 through Ramesh Chand, Constable and at that time the seals of the parcels were found intact and tallied with the specimen seals thereof. As per the report, six of the spent cartridges had been fired from the pistol sent in the sealed parcel, whereas other five cartridges had been fired from other fire arMs. All this evidence was not assailed by the learned defence counsel. From this impeachable evidence, it stands proved that six of the spent cartridges recovered from the spot were found to have been fired from the pistol, alleged to have been recovered from the possession of the accused. This point is decided in favour of the prosecution and against the accused.

Point Nos. 7 and 8

24. Both these points are inter-connected and, as such, are being decided together.

25. As already discussed above, Krishan Lal, ASI (PW-7) found the dead bodies of Omi Devi, Mohinder Singh and Raghbir Singh lying in the farmhouse and after arrival of Ram Pal, SI (PW11), he took over the investigation. It was stated by Ram Pal, SI (PW-11) that he took the inquest proceedings in respect of those dead bodies and sent the same for post-mortem examination through Balraj Singh and Ramesh Chand, Constables.

26. It was stated by Dr. Hambir Mazumdar (PW-8) that on 9.7.2004 at about 6.45 p.m., he alongwith Dr. S.K. Jain and Dr. Pyus Sharma, had conducted the post-mortem

examination on the dead body of Omi Devi and found the following injuries:

The left eye was absent with depressed eye socket with extensive tattooing were observed over the left side of the face. There was abrasion collar present along with wound. There was a lacerated wound 1 cm x 1 cm with inverted margins over the left fore-head 5 cm above the portion corresponding to the left eye. The wound was nearly circular in shape. The track could be traced posteriorly through another wound 2 cm x 2 cm over the occipital region with everted margins.

There was incised wound bone deep 1 cm lateral to the portion corresponding to left eye 12 cm in length with fracture of left maxilla.

A circular wound with inverted margins of 2 cm diameter was seen over the right side of upper chest 2.5 cm below right sterno clavicualar joint. The track could be traced to another circular wound with everted margins, left back of the chest, 2 cm behind left posterior axillary line 6th intercostal space. The wound size was 2.5 x 2.5 cm. There was laceration of right lung, right pleura, left lung, left pleura.

Another circular wound 1 cm x 1 cm with inverted margins was over the anterior abdomen 2.5 cm lateral to umbilicus at 9''0 clock position. Another circular wound 1 cm x 1 cm was over the right breast with inverted margins 4 cm above right nipple. That lead to another wound with inverted margins 1.4 cm x 1.4 cm 5 cm lateral to the right nipple.

Scalp, skull and vertebrae have been already described. Right and left lung were lacerated, with extensive hemothorax. All other organs were pale and lacerated. Stomach contained partially digested food and bladder contained around 140 cc of urine.

There was a circular shaped lacerated wound over the left leg 20 cm above the left ankle. There was fracture of left tibia and femur.

There was two wounds over right lower abdomen, out of which one was circular with inverted margins 2 cm above the right mid inguinal point with exit circular 1.2 cm x 1.2 cm 4 cm below the above wound.

27. He further stated that in their opinion, the injuries were compatible with observed by bullet, except one injury over the face which appeared to have been caused by a sharp edged weapon. The injuries were sustained over head and chest and were in compatible with life.

28. He further stated that on the same day at about 5 p.m., they conducted the post-mortem examination on the body of Raghbir Singh and found the following injuries:

Rigor mortis was well developed over the body. There was a lacerated wound with inverted margins 1 cm in diameter present at right fifth intercostal space along the anterior axillary line 6 cm away from right nipple. There was present of abrasion collar

around the wound. The anterior and lateral right portion of the chest was marked with blackened spots. Scolds were present over the right upper portion of the right shoulder 1 cm x 1.5 cm, right arm antero medial portion, 1.2 cm x 1.3 cm 5 cm above the right elbow. There was presence of clotted blood, right alanasa.

The right lung was lacerated. There was haemothorax in the left lung. A metalic piece which appeared to be remnant of a bullet was removed from T-8 vertebrae, sealed and handed over to the police. All other organs were pale and healthy. Stomach contained semi digested food. Bladder contained 120 ml. of urine.

29. He stated stated that in their opinion, the deceased appeared to have suffered injuries, which was consistent with those observed following a gun shot. The injuries had caused extensive damage to the right lung and haemotama formation left lung with haemothorax and were sufficient to cause death.

30. He also stated that on the same day, they conducted post-mortem examination on the dead body of Mohinder Singh and found the following injuries:

1. There was a lacerated wound with inverted margins of size 1.5 x 1.5 cm over the fore-head left side 2.5 cm above left eye brow, lateral end. There was also another lacerated wound 2.5 cm by 2.2 cm over the occipital region 0.5 cm below the occipital protuberence. The two injuries were interconnected suggestive of bullet pathway with entrance wound injury No. 1 and exit wound of injury No. 2.

2. There was another lacerated wound with abrasion collar with inverted margins 1.5 cm by 1.5 cm over the right arm lateral surface 1.5 cm below right shoulder joint.

There was another lacerated wound circular shaped medial aspect of right arm 7 cm below right mid axilla. The two wounds were interconnected. The right humerus was broken in many places, suggestive of a bullet entering from the first wound and exiting from the second wound breaking the humerus in the process.

3. There was another circular wound with inverted margins 1.4 cm x 1.4 cm over the right axilla posterior axillary line 5 cm below right axilla apex. The track could be traced, lacerating the right lung, left ventricle with haematoma formation left lung to a point left mid axillery line at the level of 9th rib. It appeared to be caused by bullet with entry from the first wound and exit from the second wound.

31. He further stated that in their opinion the injuries were consistent with those observed with bullet. The extensive damage to the vital organs, brain, heart and lungs were sufficient to cause death in a human being.

32. From this medical evidence produced by the prosecution, it can be said that all the deceased died as a result of the fire arm injuries. It may also be said that some of those injuries were the result of the pistol alleged to have been recovered from the possession

of the accused, as some of the spent cartridges (six in number), recovered from near those dead bodies, were found to have been fired from that pistol. These circumstances alone do not point towards the guilt of the accused. These circumstances are to be judged in the light of the stand taken by the accused in his defence i.e. delay in lodging the FIR, delay in sending the special report to the Magistrate and delay in the post-mortem examination and other circumstances.

33. According to Krishan Lal, ASI (PW-7), the dead bodies had been recovered at 2/2.15 a.m. According to Ram Pal, SI (PW-11), he had reached the spot at 6 a.m. and the dead bodies were sent by him from the spot at 12 noon. If it was so, why the post-mortem was conducted after 5 a.m. It is pertinent to note that the time for sending the dead bodies to the hospital was not mentioned in the inquest report and even the doctors did not mention in the post-mortem reports as to at what time the dead bodies were received. It is in the statement of the above said doctor witness that these dead bodies were subjected to x-ray examination. He proved on record the ski grams of all the three deceased as Exs. P.53 to P.58. What was the necessity of subjecting the dead bodies to x-ray examination It was stated by this doctor witness that x-ray examination was done for doing post-mortem examination and the report of the radiologist was also obtained. That shows that the investigating agency and the doctors were not sure about the exact cause of death of the deceased and they were groping in dark and for making the position clear they subjected the dead bodies to x-ray examination. The special report was received by the Magistrate after the post-mortem examination had already been conducted. Thus, the investigating agency was waiting for the opinion of the doctor about the nature of the injuries and the cause of death. In these circumstances, the possibility of the FIR having been anti-timed cannot be ruled out.

34. The accused took up a specific stand in his statement u/s 313 Code of Criminal Procedure that on 9.7.2004 at 10 or 11 a.m., he had gone to his field for taking grass and when he reached near the Dera of Prem Singh, he found the dead bodies of Omi Devi, Raghbir Singh and Mohinder Singh and gave information to that effect to his uncle Raja, in the presence of Jai Singh and that he, alongwith them, had gone to Police Station Cheeka and that thereafter Ram Pal, SI Krishan Lal, ASI visited the spot and later on they falsely implicated him in this case. In support of his defence, he examined Raja as DW1, who fully supported that version. During the cross-examination, nothing could be elicited, on the basis of which it may be said that he has not made correct statement in the Court or that he is a witness unworthy of belief. No. doubt, he was cited as a prosecution witness and was given up as having been won over by the accused. But that will not make him a condemned witness. The position would have been different, if the prosecution had put him in the witness box and had discredited him by confronting him to the statement recorded u/s 161 Code of Criminal Procedure Why the prosecution failed to examine this witness against the accused The making of the statement by Krishan Lal, ASI that he did not obtain his signatures on the document, as he had the apprehension that he might have been won over by the accused itself goes to show that the

investigating agency unnecessarily cited him as a prosecution witness. If that was the impression gathered by the investigating officer, during the investigation itself, why the prosecution still relied upon his statement It appears that the prosecution agency had in its mind that this witness might be examined by the accused in support of his defence and, as such, cited him as a prosecution witness.

35. From the prosecution evidence, it appears that all the three deceased had been shot dead much before the time when Krishan Lal, ASI is said to have heard the sound of firing. According to him, the firing of the gun shots was heard by him at 1.45 p.m. It was stated by Dr. Hambir Mazumdar (PW-8) that in all the three bodies, rigor mortis was developed. In the post-mortem reports, first it was mentioned that probable time that lapsed between death and post-mortem was 6 to 36 hours and then it was changed to 6 to 24 hours. During the cross-examination, it was stated by this witness that in all the three cases, the death could have occurred around the mid night of 8/9.7.2004. According to him, semi digested food was found in the stomach of the three dead bodies.

36. As per the Modi''s Medical Jurisprudence and Toxicology, which is considered to be an authority on medical jurisprudence, in northern India the duration of rigor mortis is 24-48 hours in winter and 18-36 hours in summer. Therefore, in this case the death of all the three deceased must have taken place at about 12.00 mid night. It was in view of the fact that doctor had found rigor mortis, in all the three bodies, fully developed and had not still disappeared that he opined that death might have taken place on the mid night of 8/9.7.2004. Usually the food is fully digested in 4-5 hours. In the rural parts of Haryana, the people usually take their meals before 8 p.m. In the present case, semi digested food was found in the stomach of all the three deceased. Thus, they must have taken their food about three hours before their death. This also shows their death must have taken place on or before 12 in the midnight, which totally falsify the version put forward by the prosecution that the firing was heard by the ASI at 1.45 p.m. That makes probable the stand taken by the accused in his defence. The prosecution has miserably failed to bring home the guilt of the accused and it is the case where the accused is entitled to the benefit of doubt.

Accordingly, these points are decided in favour of the accused and against the prosecution.

37. In view of our decision on the above points, this appeal is hereby accepted. The conviction and sentence of the accused is set aside. If he is in custody, he be set at liberty forthwith. The fine, if already deposited, be refunded.