courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(2014) 07 P&H CK 0852

High Court Of Punjab And Haryana At Chandigarh

Case No: Crl. Appeal No. 772-DB of 2002

Dalip Singh — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision: July 14, 2014

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 173, 207, 313
- Evidence Act, 1872 - Section 134, 25
- Penal Code, 1860 (IPC) - Section 302

Citation: (2014) 4 RCR(Criminal) 151

Hon'ble Judges: Rajive Bhalla, J; Bharat Bhushan Parsoon, J

Bench: Division Bench

Advocate: M.S. Sidhu, Advocate for the Appellant; P.P.S. Thethi, Additional Advocate General, Advocate for the Respondent

Judgement

Bharat Bhushan Parsoon, J.
This criminal appeal is directed against judgment of 24.7.2002 passed by the then learned Sessions Judge, Sangrur vide which, he was convicted for commission of the offence under Section 302 IPC as also under Section 27 of the Arms Act, 1959 and vide order of the same date, he was sentenced to undergo imprisonment for life and was required to pay a fine of Rs. 4,000/-, in default of payment of which, he was required to undergo further RI for a period of one year and for the offence under Section 27 of the Arms Act, he was ordered to undergo RI for 3 years and was also ordered to pay a fine of Rs. 1,000/-, in default of which he was to further undergo RI for three months. Both the substantive sentences were ordered to run concurrently.

Prosecution version.

The prosecution case as it emerges from statement (Ex. PD) of complainant Smt. Jaspal Kaur made to the police on 26.4.1999, when put in a narrow compass, is as given on the next page:--

Baldev Singh (since deceased) and his wife Smt. Jaspal Kaur (complainant) used to live in village Dhadial. Dalip Singh (convict) along with his wife and daughter was living in the neighbourhood. The house of Pirthi Singh, elder brother of Baldev Singh (since deceased) was also adjacent to the house of Baldev Singh (since deceased). On 24.4.1999, some dispute arose between Smt. Jaspal Kaur (complainant) and wife of appellant-convict Dalip Singh and his daughter who were taking out mud from the drain in front of their house but had thrown the same in front of the house of Smt. Jaspal Kaur.

1.1 On 25.4.1999 at about 10 p.m., Smt. Jaspal Kaur and Baldev Singh (since deceased) were sitting in the courtyard of their house. Even though, it was a moonlit night, lights of their house were on. The appellant Dalip Singh whose house was located opposite the house of the complainant, came out of his gate and started abusing them. He exhorted that he would teach them a lesson for restraining his wife and daughter from throwing the mud out of the drain. Sequelly, Baldev Singh (since deceased) came out from his house and went towards the gate. The complainant and her son Didar Singh also followed. The appellant Dalip Singh hurled a brickbat towards her husband which hit him on the left leg.

1.2 To save themselves, they rushed to the house of Pirthi Singh, her brother-in-law, who was sleeping on the roof of his house. She and her husband raised an alarm and called him by his name. Finding no response, when they were climbing the stairs to reach Pirthi Singh on the roof, appellant Dalip Singh brought his licenced gun from the house, came to the courtyard of the house of Pirthi Singh and followed them. They had reached the roof top.

1.3 Sensing trouble, Pirthi Singh told appellant Dalip Singh not to fire a shot. But ignoring this request of Pirthi Singh, appellant Dalip Singh fired a shot at Baldev Singh(since deceased) which hit him; he fell down. The complainant and her son saved themselves by lying on the ground of the rooftop. Sequelly, two more shots were fired by the appellant. He also raised a lalkara that if anyone was to go to the police to report the matter, he was also to meet the same fate. The appellant Dalip Singh then ran away from the spot with his gun. Baldev Singh, husband of the complainant died there and then due to gun shot injury on his chest.

Lodging of FIR.

2. Smt. Jaspal Kaur, accompanied by Pirthi Singh made this report to AS Sikandar Singh (P.W.7) who, along with other police officials, was on patrol duty at bus stand Dirba. On the basis of this statement of the widow of Baldev Singh, FIR (Ex. PD/2) was registered against the accused.

Spot Investigations.

3. During the course of spot investigations, blood stained earth was lifted from the spot by the police in a small tin box, which then was duly sealed. This parcel was taken in possession vide a separate recovery memo. Empty cartridges lying at the spot were also lifted in a small tin box which was separately sealed and then was taken in possession vide a separate memo. These articles were sent to the Forensic Science Laboratory for conducting investigations and for report. The dead body was sent for post-mortem examination. Site plan of the place of occurrence was prepared and statements of the witnesses were recorded.

Further Investigations.

4. When investigations were going on, having been produced by Maghar Singh ex-Sarpanch of village Rogla, the appellant was arrested on 6.5.1999 and was interrogated.

4.1 During the course of interrogation, the appellant suffered a thumb marked disclosure statement (Ex. PN) which was thumb marked by him in token of its correctness, wherein he spoke about concealment of a .12 bore gun used in killing of Baldev Singh, at a place of his exclusive knowledge. He undertook to get the same recovered on demarcation of the place of concealment. Pursuant to his disclosure statement, the appellant led the police party to the disclosed place of concealment and got .12 bore gun with 5 live cartridges recovered from the place, where it had been kept hidden by him. The recovered gun was wrapped in a piece of cloth which was converted into a parcel and thus was sealed with the seal bearing impression "SS". Similarly 5 live cartridges had also been taken into police possession vide a separate recovery memo.

4.2 After receipt of requisite report from the Forensic Science Laboratory and completion of other necessary investigations, report under Section 173 Cr.P.C. was finalized by the police.

5. On appearance of the accused in the court, copies of documents were supplied to the accused free of cost in terms of provisions of Section 207 Cr.P.C. and vide order dated 2.7.1999, the Judicial Magistrate in-charge of the area committed the case to the Court of Sessions. After hearing the prosecution as also the defence, the court of Sessions Judge framed charge under Sections 302 IPC and 27 of the Arms Act, 1959 against the accused on 24.7.1999 to which the accused pleaded not guilty and claimed trial.

6. Amendment in the charge vide order of 24.7.1999 was effected where date of occurrence was changed from 24.6.1999 to 25.4.1999.

Witnesses of the Prosecution.

7. To substantiate the charge against the accused, the prosecution had produced 11 witnesses, which may be grouped as under:--

"i) Medical evidence;

ii) Ocular account;

iii) Witnesses of investigation; and,

iv) Formal witnesses."

8. In the category of medical evidence, the prosecution had examined Dr. R.S. Singla, P.W. 1 whereas in the ocular account, the prosecution examined complainant Smt. Jaspal Kaur P.W. 2 and eye witness Didar Singh P.W. 3. Similarly, the witness of investigations included ASI Maghar Singh P.W. 5, HC Gulab Singh P.W. 6, SI Sikandar Singh (Investigating Officer) P.W. 7, HC Harnek Singh P.W. 9 and ASI Kirpal Singh P.W. 11. Draftsman Narinder Kumar P.W. 11, affidavit (Ex. PQ) of Constable Balwinder Sibgh, report (Ex. PR) of Forensic Science Laboratory as also Ex. PS of chemical examiner, were put in the category of formal witnesses.

Statement of the accused under Section 313 Cr.P.C.

9. After conclusion of evidence by the prosecution, statement of the accused under Section 313 Cr.P.C., while putting the incriminating material having come in the prosecution case against him, so as to elicit his point of view as a reaction to the said evidence of the prosecution, was recorded on 10.2.2002. He denied the entire case of the prosecution. Setting up a totally new case, the accused had claimed to have been falsely implicated. The accused was called upon to produce his defence wherein he examined Dharam Singh, LDC, PSEB Patran as D.W. 1.

Conclusion of Trial Court.

10. Considering the entire evidence of the prosecution as also that of the defence, while hearing the Public Prosecutor and the defence counsel, the trial court has come to a firm finding that charge against the accused stood proved beyond doubt and accordingly convicted him. Order of sentence followed thereafter.

Challenge in the Appeal.

11. Challenging the judgment of conviction and order of sentence, instant appeal has been preferred by the convict.

12. We have heard counsel for the parties and perused the record with their able assistance.

13. Assailing the judgment of conviction as also order of sentence, counsel for the appellant has urged that not only there is inordinate unexplained delay in lodging the FIR but even otherwise the entire prosecution story has been woven against the appellant by the widow and son of the deceased with a view to falsely implicate him as there was

pending civil and criminal litigation between the appellant and the deceased. It is urged that not only there are material discrepancies in the ocular account given by the witnesses but also when the said account is interfaced with the medical and scientific evidence, the discrepancies are writ large. It is claimed that the prosecution witnesses who are close relatives of the deceased, targeted the appellant to take revenge for an altercation which had taken place between his wife and daughter on the one side and widow of the deceased on the other side, regarding cleaning of the drain in front of the house of the appellant. Counsel for the appellant has further argued that non-examination of Pirthi Singh in whose presence allegedly commission of the offence had taken place, is fatal to the prosecution case. Praying for reversal of the impugned judgment and order of sentence, acquittal has been claimed for the appellant.

14. Counsel for the respondent-State refuting these pleas raised by the appellant, has claimed that neither there was any chance of mistaken identity nor there is any scope of confusion. It is urged that the appellant and the deceased are neighboured. The appellant was enraged on the issue of cleaning of the drain in front of his house, which had resulted in exchange of hot words between them and widow of the deceased. The appellant had hit the deceased with a brickbat and then had fired a gun shot killing him instantly. It is claimed that even two more shots were fired by the appellant but no one was injured as the wife and son of the deceased had saved themselves by lying down on the roof. It is urged that the prosecution case is so clear and transparent from the ocular account as also from medical evidence, that there is no scope for any doubt. It is claimed that there is neither any unexplained delay nor divergence between the ocular account and the medical evidence. Dismissal of the appeal has been sought.

Admitted facts.

15. Before rival contentions of the parties are evaluated interfacing the same with factual matrix as also the evidence brought by the prosecution and defence during the trial, it would be appropriate to take stock of the facts about which there is no dispute.

15.1 Houses of the parties are located in close proximity. House of deceased Baldev Singh and of appellant Dalip Singh face each other. House of Pirthi Singh is adjoining the house of the deceased. Pirthi Singh is elder brother of the deceased. His wife is the real sister of wife of the appellant. Deceased and the appellant had not been keeping a harmonious relationship. Even on 24.4.1999, wife and daughter of the appellant had indulged in an altercation with the widow of the deceased when they objected to her removing of garbage from the drain in front of the house of the complainant. Of course, neither the deceased nor the appellant were present in their respective houses at that time.

16. In addition to these admitted facts, it has been proved by Subhash Chand P.W. 8, Clerk in the office of DC, Sangrur that the appellant was having an arms licence and was also having a licenced gun.

17. Dr. R.S. Singla P.W. 1, SMO, Civil Hospital, Sunam had conducted post-mortem examination on the dead body of Baldev Singh on 26.4.1999 and had found following injuries on his person:--

"1. Multiple small lacerated punctured wound 1/3 x 1/3 cm on the whole of front of chest. Clotted blood was present. There was no tattooing or scorching around the margins.

2. Abrasion 2 cm x 2.5 cm on the right diltoil region.

3. Lacerated wound 2.5 cm x 1/3 cm on the right leg at front. Clotted blood was present.

On dissection, this expert witness had also found that:--

1. there was laceration of intercostal muscles;

2. fourth rib of right side was having fracture;

3. both the lungs were having laceration;

4. there was huge amount of blood in plural cavity;

5. heart was lacerated;

6. there was huge amount of blood in per-cardial cavity; and,

7. ten pellets were removed from inter-costal muscles, lungs and heart.

17.1 So far as opinion of this medical expert is concerned, cause of death was due to "shock and hemorrhage as a result of fire arm injury which was sufficient to cause death in this case in ordinary course of nature". Injuries were found to be ante-mortem in nature. From the medical evidence, it is abundantly clear that as per the postmortem report (Ex. PA and PA/1) death of deceased Baldev Singh was caused by a fire-arm injury, i.e., injury No. 1.

17.2 Now the next question is as to who had caused this injury.? Since it is not the case of the prosecution that this injury was suicidal, it is to be determined as to who had caused this injury resulting in death of Baldev Singh.

Ocular account.

18. If we go by the ocular account, there is coherent, consistent and unassailed statement of Smt. Jaspal Kaur (P.W.2) and Didar Singh (P.W.3). Their testimony is not only corroborative inter-se but is also supportive of the prosecution version contained in complaint (Ex. PD). Smt. Jaspal Kaur (P.W.2) is distinctively clear about the role of the accused in firstly hurling abuses at the deceased and at the prosecution witnesses when they were sitting together in the courtyard of their house. Since house of the deceased is

opposite to the house of the appellant, as per version of the prosecution, the appellant had come to her house and had hurled a brickbat which had hit the deceased on his right leg. When Smt. Jaspal Kaur and Didar Singh P.Ws. saw that the atmosphere was surcharged as the appellant was highly enraged because of the altercation which had taken place between his wife and his daughter on the one hand and the complainant on the other only a day before, and was not ready to listen to anything from prosecution witnesses, the deceased and then the prosecution witnesses tried to save themselves by rushing towards the house of Pirthi Singh, which was just adjacent to their house.

19. The appellant instead of cooling down on moving away from the deceased and prosecution witnesses, rather got more enraged and had brought his licenced gun from his house. He followed the deceased and the prosecution witnesses. When the deceased and prosecution witnesses were crying for help by making calls to Pirthi Singh in his house, they found that Pirthi Singh had already retired and was asleep on the rooftop of his house. After climbing the stairs when they had reached the rooftop, Pirthi Singh woke up and even pleaded with the appellant not to fire from his gun when he was aiming the same at the deceased. Ignoring the advice by Pirthi Singh, he fired a shot aiming it at Baldev Singh thus killing him instantly. Complainant Smt. Jaspal Kaur and eye witness Didar Singh P.W. had instantaneously ducked them down on the ground resulting in two other shots fired by the appellant missing them without any injury to them.

20. The statement by Didar Singh P.W. 3 is not only corroborative of the version of Smt. Jaspal Kaur P.W. 2 but is also clear and consistent about the role of the appellant in causing the gun shot injury to the deceased which proved fatal. Despite pointed cross examination of the eye witnesses Smt. Jaspal Kaur P.W. 2 and Didar Singh P.W. 3, nothing impeaching their credit surfaced.

Defence evidence.

21. Counsel for the appellant has urged that there was no light in the house of Pirthi Singh, where death of Baldev Singh took place and, thus, the eye witness account relied upon by the prosecution is nothing but a make belief story of the prosecution. Dharam Pal, an official of the Punjab State Electricity Board, Patran, had appeared as a witness of the defence as D.W. 1. Referring to his testimony, it is claimed by the appellant that on the date of occurrence, there was no electric connection in the house of Pirthi Singh.

21.1 Dharam Pal D.W. 1 had deposed that on an application of Shamsher Singh made on 20.11.1998, electric connection was given in his house on 17.3.2000. In pointed cross examination effected on this witness by the prosecution, it is abundantly clear that electric supply to the house of Shamsher Singh has nothing to do with the electric supply in the house of Pirthi Singh, his father. Rather, application (Ex. DB) moved by Shamsher Singh son of Pirthi Singh leaves no manner of doubt that he was residing separately from Pirthi Singh. Even date on the application (Ex. DB) is not mentioned. Even test report does not pertain to the house of Pirthi Singh.

21.2 in this context, the trial court had noted the contention of the prosecution that the record brought by Dharam Pal D.W. 1 had been created recently in a bid to help the appellant-accused. This witness had appeared even earlier on 22.7.2002, but had not been examined as he was not having the record but when he appeared thereafter, he brought fresh record in this respect. The trial court was thus right in coming to a conclusion that testimony of Dharam Pal D.W. 1 in no way would establish non-existence of electric supply at the place of occurrence. Rather, referring to statement of complainant Smt. Jaspal Kaur (P.W.2), it was noticed by the trial court that deceased Baldev Singh and Pirthi Singh are sons of Kaku and earlier they were living together in the house of elder brother Pirthi Singh and only for the last about two years, Baldev Singh, with his family, had shifted to his new house. There is categoric statement of complainant Smt. Jaspal Kaur that there was electric supply in the house of Kaku, her father-in-law, which house was continuing to be in possession of Pirthi Singh, Baldev Singh (since deceased) having shifted to his new house. In any case, electric bills (Ex. PV and P.W.), in the name of Kaku showing consumption of electricity, have been produced about which no repudiating evidence could be produced by the defence. In short, there is no acceptable evidence with the defence to dislodge the finding of fact recorded by the trial court that in addition to existence of moon light, there was electric supply at the spot.

Evidentiary value of the P.W. s.

22. Merely because the complainant Smt. Jaspal Kaur is widow of the deceased and Didar Singh P.W. 3 is the son of the deceased, it is no ground to reject their testimony. They are the most natural witnesses. They were present along with the deceased in the courtyard of their house when the appellant firstly hurled abuses on them and then attacked them.

In Vinay Kumar Rai and Another Vs. The State of Bihar, , the Supreme Court held that:--

"Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

22.2 Thus, merely because witnesses are related inter-se, ipso facto is no ground to reject their testimony. Relationship of witnesses is not to be taken as "interestedness" in the success of the prosecution case. They are genuine witnesses who have also been proved to be truthful when their credit could not be shattered even a little despite a very

lengthy and probing cross examination effected on them by the defence.

22.3 The first target of the appellant was the deceased. The appellant was not satisfied even after hurling a brickbat which had injured right leg of the deceased. He had followed the deceased and his family members when they had left their house to the adjacent house of Pirthi Singh to save themselves from the attack of the enraged appellant.

Motive.

23. As regards motive, there is clear testimony of Smt. Jaspal Kaur that the accused had always been on a collision course with them and had been involving them in one case or the other and even his wife and daughter had an altercation with her though it was their fault as after cleaning the drain in front of their house, they were putting the garbage in front of the house of the deceased, which action of theirs was objected to by the complainant. It is claimed that the appellant had always been unreasonable but the family of the deceased had been passing time without becoming outrageous of vociferous. Thus the appellant had sufficient motive as a propelling force against the deceased.

23.1 Though there is presence of motive in this case as has been noticed, even absence of motive ipso facto is not a ground to reject the prosecution witnesses particularly in cases where direct ocular evidence is available and the prosecution case finds its well laid foundation in the account of natural eye witnesses.

Recovery of gun at the instance of the accused.

24. There is yet another corroborative circumstance of importance. Recovery of gun and live cartridges at the instance of the accused pursuant to his disclosure statement (Ex. PN) is worth notice.

24.1 in addition, during spot investigations conducted by SI Sikandar Singh and ASI Maghar Singh, three empty cartridges had been taken in possession from the spot vide memo (Ex. PG) besides the blood stained earth (Ex. PF). These had been put into separate parcels.

24.2 Later on, during the course of investigation, these had been sent to the Forensic Science Laboratory and the report (Ex. PR) of the said laboratory has revealed that three empty cartridges (Ex. PG) had been fired from the gun which had been got recovered vide memo (Ex. PN/1) by the accused pursuant to his disclosure statement (Ex. PN).

24.3 Arms licence (Ex. P6) is in respect of the appellant and is proved by P.W. 6 Subhash Chander who was posted as Clerk in DC office at Sangrur.

24.4 Disclosure statement and the recovery of the gun as also of the cartridges at the instance of the accused vide memo (Ex. PN/1), have been questioned by counsel for the appellant. Reference has been made to Section 25 of the Indian Evidence Act, 1872

urging that since disclosure statement in the nature of a confession was suffered by the accused before a police officer when he was in custody, it is not admissible in evidence. This plea is not tenable in view of clear provisions of Section 27 of the aforesaid Act which, for ready reference, is appended as be-low:--

"27. How much of information received from accused may be proved.--Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

24.5 Section 27 is in the nature of an exception to Section 25. Since disclosure statement had resulted in recovery of gun and the cartridges, there is nothing illegal or wrong therein.

24.6 The gun was licenced one of the appellant for which he had arms licence (Ex. P6). It has also been proved that three shots (out of which first one had hit the deceased in the chest killing him instantly) had been fired from the gun of the appellant. This evidence in relation to report (Ex. PR) of Forensic Science Laboratory also directly connects the appellant with the charge of murder against him.

Delay in lodging the FIR.

25. Counsel for the appellant has castigated the prosecution case claiming that inordinate delay in lodging the FIR is fatal and that this aspect was not considered in the correct perspective. This contention of the defence, however, is ill-founded.

25.1 Any proposition to carry acceptability needs to have foundation in facts as also in law and has to stand on a realistic pedestal. Working of any concept or proposition in the field of legal jurisprudence necessarily depends upon the staple diet of realism. Bereft of functional realities, social milieu and contemporaneous circumstances, would make survival of such a concept or proposition difficult. To add increasing acceptability, it needs to be embedded in the realistic societal fabric.

25.2 When viewed on the realistic platform, there is impeccable positive evidence of complicity of the appellant in the commission of the crime, and thus the delay in lodging the FIR has been rendered inconsequential.

25.3 Even otherwise, such delay has been properly explained. Occurrence is of 10.00 p.m. on 25.4.1999; statement of the complainant was recorded in the wee hours of 26.4.1999. The complainant started for reporting the matter to the police. The complaint was made at 7.15 a.m.

25.4 The appellant, after killing Baldev Singh and firing two more shots, had run away with the gun. As is clear from statement of the complainant, the appellant had given a

clear warning that if any one was to report the matter to the police, he was also to meet the fate of the deceased. That exhortation from the appellant is clearly depicted in the coherent and convincing statement by Smt. Jaspal Kaur, which is supported and sustained by Didar Singh P.W. 3. This warning coming from the appellant/accused was sufficient to frighten not only the complainant and her son but even others in the village and thus no body had gone to the police for reporting the matter when the appellant accused was at large with his gun and had given threats to the complainant and others against reporting the matter to the police. In short, when husband of the complainant was lying dead, having turned a widow just few moments earlier she was dumb-founded. Her son Didar Singh having lost his father where neither he, nor his mother nor his uncle Pirthi Singh could do anything, was crest fallen. The appellant had run amok; having gone berserk, he had practically threatened everyone. To expect that the matter should have been reported to the police immediately, is expecting too much in the given circumstances.

25.5 in addition to the above facts, even in the face of other such like circumstances, lodging of FIR instantaneously about the commission of the offence takes a back seat, specifically when life, liberty and "welfare" of the relatives of the victim and other connected with them, are involved.

25.6 The Hon"ble Supreme Court in Shanmugam and Another Vs. State Rep. by Inspector of Police, T. Nadu, has held that where the version given by the complainant has remained consistent with the version given in the FIR, there was no reason for the court to disbelieve the prosecution case only because the FIR was delayed by a few hours and specially when the delay has been satisfactorily explained.

Non-examination of Pirthi Singh.

26. As regards non-examination of Pirthi Singh, brother of the deceased, in whose presence allegedly the commission of offence has taken place, in our opinion, would not prove fatal to the prosecution case because Smt. Jaspal Kaur P.W. 2 and Didar Singh P.W. 3 have emphatically supported the prosecution version.

26.1 The emphasis of courts has always been to look to the quality of the evidence and not the quantity which propounds the cause of the prosecution. In Manjit Singh and Another Vs. State of Punjab and Another, , the Hon"ble Supreme Court has held as under:--

"24. From the aforesaid exposition of law, it is quite clear that it is not the number and quantity, but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non examination of a witness would carry the matter further so as to affect

the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness (see: State of U.P. Vs. Iftikhar Khan and Others,).".

It is clear that examination of Pirthi Singh eye witness would not have strengthened the case of the prosecution any further.

27. Even otherwise, there is no requirement of law to examine any particular number of witnesses to prove any particular charge. Reference may be made to the provision of Section 134 of the Indian Evidence Act, 1872, which for ready reference is appended as below:--

"134. Number of witnesses.--No particular number of witnesses shall in any case be required for the proof of any fact."

28. In any case, if the defence wanted to examine him as its witness, there was no bar for them to bring Pirthi Singh in the witness box as their witness. But the defence did not take this risk.

Conclusion:

In view of the above discussion, there being no merit in the appeal, the same is dismissed. Impugned judgment and order of sentence are affirmed. Bail bonds and surety bonds of the appellant are forfeited and cancelled. The appellant shall surrender to the custody of the jail authorities forthwith to serve the remainder of the sentence. The trial court shall make compliance of the order.