GURCHARAN SINGH

v.

STATE OF PUNJAB

1962

August 10.

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA and J. R. MUDHOLKAR, JJ.)

Criminal Trial—Murder—Shooting with gun— Acquittal of possession of unlicensed firearm—Effect on trial for murder—Ballistic expert—Failure to produce—If vitiates trial—Duty of High Court to consider Points raised in appeal.

The two appellants G and S together with three others B, D and A were tried for the muder of four persons by shooting them with guns. Two spent cartridges were recovered at the spot; G produced a gun on the very day of occurrence and D produced a gun one week after the occurrence. The cartridges and guns were sent for examination to the ballistic expert but neither he nor his report was produced before the Sessions Judge. The Sessions Judge convicted the appellants and B and D but acquitted A. The same Judge tried G under s.19(f) Arms Act for being in possession of the unlicensed gun which G had surrendered but acquitted him of the charge. On appeal against the conviction for murder the High Court confirmed the conviction and sentence of death passed against the appellants but acquitted B and D. The appellants contended (i) that in view of his acquittal in the s.19(f) Arms Act case, the allegation of the recovery of the gun from G in the murder case could not be accepted, (ii) that the failure to produce the ballistic expert and his report had introduced a serious infirmity in the prosecution case, and (iii) that the High Court had failed to deal with these and other points raised before it.

Held, that the conviction of the appellants was not vitiated by any infirmities.

The acquittal of G in s.19(f) Arms Act case did not affect his conviction in the murder case. If the order of acquittal under s.19(f) had been pronounced before the judgment in the murder case, then in the latter case the prosecution could not contend that G was in illegal possession of the firearm. Though the two judgment were pronounced on the same day there was nothing to show that the judgment in the s.19(f) Arms Act case was pronounced earlier. On the other hand there were indications that it was pronounced

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after the judgment in the murder case. The evidence clearly established that G had produced the gun.

Pritam Singh v. *State of Punjab*, A.I.R. 1956 S. C. 415, referred to.

There is no inflexible rule that in every case when a person is charged with murder caused by a firearm, the prosecution can succeed only by examining an expert to prove that the injuries could be caused by the weapon alleged to have been used. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, the apparent inconsistency can be cured or the oral evidence can be corroborated by the evidence of a ballistic expert. In the present case there was no necessity to examine an expert. Admittedly, G had fired twice and there was nothing to show that the injuuries could not have been caused by the gun which was in his hands. D had kept the gun with him for a week before surrendering it and it was unlikely that D had not removed traces of its use. The report of the ballistic examiner, which was sent for by the Supreme Court, did not help the defence and no inference could be drawn against the prosecution from its failure to produce it at the trial.

Mohinder Singh v. *The State*, [1950] S.C.R. 821, referred to.

In dealing with confirmation cases the High Court should consider the evidence carefully and record its conclusions clearly after dealing with all the points urged before it by the defence. In all criminal appeals before it the Supreme Court is reluctant to interfere with the findings of fact recorded by the High Court. In the present case some of the reasons given by the High Court were erroneous and some of the arguments urged before it were not duly considered and the Supreme Court had therefore to go into the evidence.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 87 of 1962.

Appeal by special leave from the judgment and order dated February 21, 1962, of the Punjab High Court in Cr. A. No. 1231 of 1961 and Murder Reference No. 98 of 1961.

Purushottam Trikamdas, C. L. Sareen and *R. L. Kohli,* for the appellants.

N. S. Bindra and *P. D. Menon,* for the respondent.

1962. August 10. The Judgment of the court was delivered by

GAJENDRAGADKAR, J.—The two appellants Gurcharan Singh and Surjit Singh along with three others, Baland Singh, Daljit Singh and Ajit Singh, were tried before the 2nd Addl. Sessions Judge, Ferozepore for offences under Section 148 and s. 302/149 I.P.C. The prosecution case against these five persons was that on or about the 18th May, 1961, they formed an unlawful assembly at the village Jhote with the common object of killing Arjan Singh, Sukhjit Singh Gurdial Singh and Piara Singh alias Balo, and that in prosecution of the said common object, they committed the offence of rioting when they were armed with deadly weapons. That is the essence of the charge under s. 148. It was further alleged that on the same day and at the same time and place the said members of the unlawful assembly carried out its unlawful object and in so doing, the appellant Gurcharan Singh murdered Gurdial Singh and Sukhjit Singh, while the appellant Surjit Singh murdered ArjanSingh and Piara Singh. That is how all the five accused persons were charged under section 302/149 of the Indian Penal Code.

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The trial Judge held that the charges against Daljit Singh had not been proved beyond a reasonable doubt and so, according to him, the prosecution case under s. 148 had not been proved and that charge under s. 149 had not been sustained. In regard to the four other accued persons, he held that they were guilty under s. 302/34 I.P.C. Having thus convicted them of the said offence, the learned Judge sentenced Gurcharan Singh, Baland Singh

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and Surjit Singh to death and directed that Ajit Sigh should suffer imprisonment for life. The sentence of death imposed by the learned trial Judge was submitted to the Punjab High Court for confirmation, while all the four convicted persons preferred an appeal challenging their convictions and sentences imposed on them. The High Court considered both the matters together and has come to the conclusion that the charge under s. 302/34 had not been proved against Baland Singh and Ajit Singh. That is why the said two accused persons have been acquitted, whereas the conviction of the appellants Gurcharan Singh and Surjit Singh as well as the sentence of death imposed on them have been confirmed. It is against this order that the two appellants have come to this Court by special leave.

The incident which has given rise to the present criminal proceedings against the appellants took place on May 18, 1961, and as a result, four persons have been murdered—they are Arjan Singh, Sukhjit Singh, Gurdial Singh and Piara Singh. The prosecution case is that on May 18, 1961, at about 6.30 A.M., the appellant Gurcharan Singh was proceeding to the house of his friend, Ajit Singh. Gurcharan Singh, Surjit Singh and Daljit Singh are the sons of Baland Singh. Whilst Gurcharan Singh was thus proceeding to the house of Ajit Singh, he had to pass by the house of Saudagar Singh. Saudagar Singh objected to Gurcharan Singh passing by his house and that led to an altercation. In this altercation, Saudagar Singh and his two sons Kulwant Singh and Darshan Singh inflicted some injuries on Gurcharan Singh as well as on Ajit Singh who came on the scene. Gurcharan Singh and Ajit Singh thereupon ran away. This is the first incident which took place on that day.

About half an hour after this incident, another incident took place. It appears that the five

accused persons got together and wanted to avenge the beating given by Saudagar Singh and his sons to Gurcharan Singh and Ajit Singh. Gurcharan Singh and Daljit Singh armed themselves with gandasas, Surjit Singh carried a gun for which his brother Daljit Singh had a licence, Ajit Singh carried a 'dang', while Baland Singh, the appelants' father, headed the party, but was not armed. This party came across Arjan Singh near the house of Jarnail Singh. It appears that Arjan Singh was afraid of these men and so, he used to carry with him a licensed gun. As soon as Arjan Singh was sighted, Baland Singh told his sons and Ajit Singh to assault him, and the party began to assault Arjan Singh. A gandasa blow was given on his forearm as a result of which Arjan Singh lost his grip on the gun and it fell down. Immediately thereafter, Gurcharan Singh picked it up. Arjan Singh then implored his assailants not to beat him and offered to go to the Gurdwara to take an oath that the allegation against him was untrue. It is suggested that Baland Singh was satisfied with this offer and so persuaded his sons and their friend not to harass him any more. This is the second incident which took place as a result of the first incident.

It is the epilogue of the second incident which followed soon after that led to the murder of the four victims. It appears in evidence that while Arjan Singh was imploring his assailants not to attack him and soon after the attack stopped, Gurdev Singh, the son of Arjan Singh, happened to come out of the Gurdwara and saw his father facing a dangerous crowd. So, he ran to his house and asked his brothers to come and help him to rescue their father. While Arjan Singh was returning to his house, on the way, he met his sons Gurdev Singh, Gurdial Singh and Gurcharan Singh who had armed themselves and were proceeding towards

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the spot where he had been encircled by his opponents. At that time, Rekha Ram also come on the spot and he was being followed by his brother Piara. Sukhjit Singh and Jagjit Singh also came on the scene. Arjan Singh told them all to go back and assured them that his offer to take the oath in the Gurdwara had pacified his opponents and he was no longer in any difficult situation. As a result of this statement of Arjan Singh, the persons who were going to the spot to help him desisted from going any further. At that time, all the five accused persons spotted Arjan Singh's sons coming to the spot and that infuriated Baland Singh. He then renewed his exhortation to his companions and asked them to finish their enemies. Soon thereafter, Gurcharan Singh fired a shot from the gun which hit Gurdial Singh on his forehead and in consequence, he fell down dead on the spot. Surjit Singh fired two shots in quick succession which hit Arjan Singh and killed him. Gurcharan Singh fired another shot which hit Sukhjit Singh who fell down with serious injuries. Surjit Singh again fired another shot which hit Piara and he fell down dead on the spot. All the five accused persons then indulged in lalkaras and abused their enemies. This occurrence was witnessed by Gurdev Singh (P.W. 2), Sukhdev Singh (P.W. 3), Gurcharan Singh (P.W. 4), Rakha Ram (P.W. 5), and Jagjit Singh (P.W. 6). Sukhjit Singh who lay seriously injured was taken to the hospital at Ferozepore for medical treatment, but notwithstanding the treatment, he succumbed to his injuries. That, in brief, is the prosecution case against the appellants.

The prosecution attempted to prove its case by examining the eye-witnesses, Gurdev Singh, Sukhdev Singh, Gurcharan Singh and Rekha Ram, Jagjit Singh was tendered for cross-examination. The defence admitted that Gurcharan Singh and Ajit Singh were present on the scene and that

Gurcharan Singh fired twice from a gun, but that was in self-defence. The remaining three accused persons denied their presence on the scene of the offence and alleged that they had been falsely implicated. It does appear that there was bitter enmity between the two parties for several years past. Criminal proceedings had taken place between them and there is no doubt about the existence of hostility between them. Sometime before this occurrence, Kulwant Singh (P.W. 7) was arrested in an excise case for running a still, and in that case, the appellant Gurcharan Singh was a prosecution witness. Besides, the appellant Gurcharan Singh had opposed Arjan Singh for the office of Sarpanch but had failed. The defence, therefore, was that it is out of enmity and hostility that the three accused persons who were not present had been falsely involved in this case and that in respect of Gurcharan Singh and Ajit Singh who were present, the truth was that they had been attacked by the persons belonging to the party of Arjan Singh, and Gurcharan Singh had fired in exercise of his right of private defence.

The trial Judge examined the evidence adduced before him, considered the arguments raised by the defence and came to the conclusion that the charge of murder under s. 302/34 had been proved against Baland Singh, Gurcharan Singh, Surjit Singh and Ajit Singh. The High Court, in substance, has agreed with the conclusions of the trial Court in respect of the prosecution case against the two appellants Gurcharan Singh and Surjit Singh. It has, however, held that the evidence about the exhortation alleged to have been given by Baland Singh was not proved by satisfactory evidence and the main charge against Baland Singh and Ajit Singh had not been proved beyond a reasonable doubt. It is on this

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finding that the said two accused persons were acquitted, whereas the appellants' conviction and sentence have been confirmed.

Mr. Purushotam for the appellants contends that the judgment of the High Court suffers from some serious infirmities and so, he argues that in the interest of justice, we ought to examine the evidence ourselves. It is, therefore, necessary to examine the broad arguments on which the judgment under appeal has been attacked by Mr. Purushotam. The first point which has been urged before us is that the High court has not properly considered the plea of self-defence raised by Gurcharan Singh, and it is pointed out that in rejecting the said theory, the High Court has relied on a prior statement of Gurcharan Singh which had been excluded from evidence by the trial Judge. It appears that Gurcharan Singh had filed a complaint against the prosecution witnesses and that complaint was admitted at the trial as Exbt. DE. The said document first describes the injuries inflicted on Gurcharan Singh and then proceeds to give a detailed account of the incident which led to the said injuries. This document was proved by Sub-Inspector Udham Singh by the defence in cross-examination. When this document was tendered, the part of the document which referred to the injuries on Gurcharan Singh was marked and admitted in evidence. The remaining portion of the document was excluded. When the High Court considered the theory of self-defence urged on behalf of Gurcharan Singh, it took the view that the said theory could not be accepted because it was inconsistent with Gurcharan Singh's version about the incident contained in Exbt. DE. Mr. Purushotam objects to this part of the judgment and we think, rightly. It is unfortunate that the attention of the High Court was not drawn to the fact that the portion of document DE on which it was basing its criticism against the defence theory

of self-defence had not been admitted in evidence. That no doubt is a serious infirmity in the raasoning and so, Mr. Purushotam is entitled to say that the conclusion of the High Court on this part of the defence case cannot be accepted without examination of its merits by us.

The other contention which Mr. Purushotam has raised before us is that in dealing with the case of self-defence, the High Court has not referred to the injuries on the person of Gurcharan Singh. The evidence adduced in the case shows that Gurcharan Singh had 13 injuries on his person, 12 of which were contusions and one was a grievous hurt as disclosed by X-ray. It was an injury on the foot and it may be that there was a fracture or a crack. Whether these injuries decisively helped the defence version or not is a different matter. The argument is that these injuries should have been considered by the High Court when it was called upon to decide the validity of the defence claim of the exercise of the right of private defence. There is some force even in this contention.

Since we are satisfied that these two contentions are well-founded, we have examined the plea of self-defence ourselves and in that connection, we have considered the oral evidence adduced by the prosecution. It is true that Gurdev Singh and Gurcharan Singh can be said to be interested witnesses and in that sense, their evidence is the evidence of partisan witnesses and has to be carefully examined. On the other hand, Sukhdev Singh and Rekha Ram are not shown to be hostile to the appellants and their evidence cannot, therefore, be characterised as partisan. It is true that Rekha Ram's brother Piara has been murdered, but Piara has apparently died as a result of reckless shooting and it is not shown that either Piara was the enemy of the appellants or Rekha Ram is hostile to them. The attempt made

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in the cross examination of Sukhdev Singh to show that he was related to the complainants' party has failed, and so, Sukhdev Singh must be held to be a disinterested witness. Mr. Purushotam fairly conceded that the account given by all these witnesses about the occurrence is consistent and cogent and the only criticism he had to make against that evidence was that it is partisan evidence. We have considered the whole of this evidence, and we are satisfied that the courts below were right in substantially accepting it against the appellants. If this evidence is believed, then the sequence of events that took place is clearly disclosed and that shows that the plea of self-defence urged by the appellant Gurcharan Singh cannot be accepted. Injuries on his person are of a minor character and they may have been inflicted while some of the victims may have beaten him with a stick. However that may be, having regard to the sequence of events, it is impossible to accede to the argument that Gurcharan Singh fired twice from the fire-arm in order to save himself.

In this connection, it is relevant to recall that the party of the appellants was armed with deadly weapons. Gurcharan Singh had picked up the gun which fell down from the hands of Arjan Singh and Surjit Singh had a gun for which his brother Daljit Singh had a licence. The others were armed with gandasas and similar deadly weapons. Therefore, when the incident took place, the two appellants were armed with fire-arms and on the evidence which is believed, aggression proceeded from them and not from Arjan Singh or his friends. That also shows that the theory of self-defence cannot be accepted. Therefore, though the High Court has not considered this point as well as it should have, and though a part of the reasoning

adopted by the High Court in dealing with this point suffers from the infirmity to which we have referred, in the result, its conclusion on this point seems to be right. Incidentally, it may be pointed out that this plea of self-defence was not seriously pressed before the High Court.

That takes us to the next broad criticism made by Mr. Purushotam against the judgment of the High Court. It is urged that the High Court did not take into account the fact that Gurcharan Singh who had been charged under s. 19(f) of the Indian Arms Act has been acquitted by the same learned Sessions Judge who convicted him for the offence of murder under s. 302/149. It appears that the prosecution case is that Gurcharan Singh produced the fire-arm when he surrended and since he had no licence to keep a fire-arm and indeed, the fire-arm in question belonged to Arjan Singh, a charge under s. 19(f) had been framed against him. The learned trial Judge believed the evidence of the two witnesses Puran Singh and Sohan Singh as well as the evidence of the Sub-Inspector Udham Singh, and held that about 6.30 P.M. on May 18, 1961, Gurcharan Singh produced the fire-arm. The evidence shows that Arjan Singh Sarpanch of Valtoha took Gurcharan Singh and Ajit Singh to Udham Singh and the two of them then surrendered. The document containing the memo, about this surrender has been duly proved (Ext.P.21). The trial Judge delivered his judgment in the principal case on November 18, 1961. It appears that on the same day, he delivered his judgment in the companion case in which Gurcharn Singh was charged under s. 19(f) of the Indian Arms Act and held that the said charge had not been proved and so, he acquitted him of that charge. It may be conceded that in this judgment, the same evidence about the production

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of the weapon by Gurcharan Singh has been disbelieved.

On these facts, Mr. Purushotam contends that this matter was argued before the High Court and it was urged that the finding of the trial Court in the principal case about the recovery of the weapon fron Gurcharan Singh should not be accepted, and this argument has not been considered by the High Court. It would be noticed that this argument is based on the decision of this Court in *Pritam Singh* vs. *State of Punjab* (1). There is no doubt that if the order of acquittal under s.19(f) had been pronounced before the judgment in the principal case was delivered, then in the latter case the prosecution will not be entitled to contend that Gurcharan Singh was in illegal possession of the fire-arm. This position cannot be and is not disputed.

The question, however, still remains as to whether the judgment in the fire-arm case was pronounced first or the judgment in the murder case was pronounced first. Mr. Purushotam frankly stated before us that he was not in a position to contend that the judgment on which he relies was procounced in point of fact before the judgment in the murder case. The manner in which this judgment has been produced before this Court is very irregular. The judgment does not appear to have been filed in the High Court as it should have been if it was intended to rely upon it. But the petition for special leave states that it was utilised for the purpose of raising the point in appeal before the High Court. This judgment was not filed before this Court along with the petition for special leave. It has been tendered at a later stage when the index of papers was settled for inclusion in the paper-book in this Court. In our opinion, this

(1) A.I.R. (1956) S.C. 415.

method of producing this document is irregular. But apart from this, unless it is shown that the judgment on which the defence relies was pronounced first, no argument can be raised about the invalidity of the conclusion in the murder case that Gurcharan Singh surrendered the gun. Prima facie, the judgment in the murder case must have been delivered first. It is numbered as 88 and 93 of 1961, whereas the arms case is numbered as 89 and 94 of 1961. Therefore, we do not think it is open to the appellants to contend that the acquittal of Gurcharan Singh under s. 19(f) was prior to his conviction under s.302/149 and so, the finding that he surrendered the weapon should not be accepted. It is to be regretted that the same learned Judge should have rendered two inconsistent findings in two companion cases in judgments pronounced on the same day. This is a matter to which his attention ought to be drawn by the High Court.

Though the point sought to be raised on the strength of this judgment cannot technically arise, we thought it necessary to examine the evidence about the production of the weapon ourselves. We have accordingly gone through the evidence of Puran Singh, Sohan Singh and Udham Singh and we have taken into account the fact that Gurcharan Singh was produced by Arjan Singh who is a Sarpanch of Valtoha. We feel no hesitation in holding that this evidence clearly establishes the fact that Gurcharan Singh produced the weapon, as disclosed by the production memo. (Ext. P21). In this connection, we may recall the fact that Gurcharan Singh in fact admitted that he had used a fire-arm and had fired twice in self-defence. He did not admit that was the gun which was snatched from the hand af Arjan Singh ; but that is another matter. Therefore, the argument that the aquittal of Gurcharan Singh in arms case affects

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the finding as to the surrender of the gun by him, cannot be sustained.

The last argument on which the judgment on the High Court was attacked by Mr. Purushotam arises from the fact that a ballistic expert has not been examined in this case. It is urged that this ground was taken before this High Court and has not been considered by it. Petition for special leave makes a definite averment to that effect. As the argument was presented before us by Mr. Purushotam, it assumed that a report had been received from the ballistic expert, but that report had not been proved, because it was appehended by the prosecution that it would destroy its case. There is no doubt that the two fire-arms along with two empty cartridges were sent to the Scientific Laboratory, Chandigarh (Ext. P. Z.) on June 28, 1961. Of the two guns which were sent for examination, one was used by Gurcharan Singh which he picked up as soon as it fell down from the hand of Arjan Singh and the other was used by Surjit Singh which was taken by him from Daljit Singh. It appears that Daljit Singh produced that gun and surrendered it on May 27, 1961, i.e., nearly a week after the incident took place. Mr. Purushotam contended that since these weapons had been sent for examination by a ballistic expert and a report had been received, it was the duty of of the prosecution to examine the ballistic expert. We were impressed by this argument, and so, we adjourned the hearing of the case and called upon Mr. Bindra to produce that report before us. Accordingly, the report has been produced and it shows that according to the expert opinion, out of the two fired cartridges sent for expert examination one had been fired from the right barrel of the gun contained in parcel No. 1 and the other had been fired from the left barrel of the same gun. In other words, this reports shows that two empties found near the scene of the offence had been fired

from the same gun. After this report was received and a copy of it was served on Mr. Purushotam, he fairly conceded that the said report was not inconsistent with the prosecution case, though he argued that it did not corroborate it either. This report has not been proved and no ballistic expert has been examined in this case. But having regard to the fact that the report prima facie is not inconsistent with the prosecution case, we do not see how it would be urged that the failure of the prosecution to examine a ballistic expert is due to the fact that it was apprehended that the expert opinion would be against the prosecution case. That is the only argument which it was alleged had been urged before the High Court but had not been considered by it. We are inclined to think that this argument may not have been pressed before the High Court and in any event, now it is conceded that there is no substance in that argument. That is why we do not think any useful purpose would be served by examining the ballistic expert at this stage.

Whilst we are on this point, we may briefly indicate the nature of the prosecution case so far as the use of the guns is concerned. The appellant Gurcharan Singh has fired two shots, one of which killed Sukhjit Singh and the other Gurdial Singh. The appellant Surjit Singh had fired three shots, two at Arjan Singh and one at Piara. The evidence seems to show that Surjit Singh loaded the gun once in the presence of the witnesses and whilst so doing, he put two cartridges in the gun and the spent cartridges in his pocket. The two empties which had been sent for expert examination were found and picked up on a thoroughfare in front of the house of Jarnail Singh. Apparently, the prosecution case is that these two cartridges had been fired by the appellant Gurcharan Singh from Arjan Singh's gun picked up by him. In any event, the report shows that the two cartridges had been

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fired from the same gun. That is why the failure to prove the report cannot be said to have prejudiced the appellants' case at all.

Mr. Purushotam, however, argued that a ballistic expert should have been examined in order to ascertain whether the gun surrendered by Daljit Singh had been used at all. But this argument is obviously untenable for the simple reason that this gun was surrendered more than a week after the incident and it takes no imagination to realise that when Daljit Singh surrendered the gun, he must have cleaned it so as to remove any evidence about its user on the date of the incident.

It has, however, been argued that in every case where an accused person is charged with having committed the offence of murder by a lethal weapon, it is the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which, and in the manner in which, they have been alleged to have been caused; and in support of this proposition, reliance has been placed on the decision of this court in *Mohinder Singh* v. *The State* (1). In that case, this court has held that where the prosecution case was that the accused shot the deceased with a gun, but it appeared likely that the injuries on the deceased were inflicted by a rifle and there was no evidence of a duly qualified expert to prove that the injuries were caused by a gun, and the nature of the injuries was also such that the shots must have been fired by more than one person and not by one person only, and there was no evidence to show that another person also shot, and the oral evidence was such which was not disinterested, the failure to examine an expert would be a serious infirmity in the prosecution case. It would be noticed that these observation were made in a case where the prosecution

(1) (1950) S.C.R. 821.

evidence suffered from serious infirmities and in determining the effect of these observations, it would not be fair or reasonable to forget the facts in respect of which they came to be made. These observations do not purport to lay down an inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examind. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case. Therefore, we do not think that Mr. Purushotam is right in contending as a general proposition that in every case where a fire-arm is alleged to have been used by an accused person, in addition to the direct evidence, prosecution must lead the evidence of a ballistic expert, however good the direct evidence may be and though on the record there may be no reason to doubt the said direct evidence.

In the present case, no useful purpose could have been served by examining an expert for the purpose of showing that the gun had been used by Surjit Singh, because, as we have already pointed out, Daljit Singh took care to keep the gun with himself for over a week and then surrendered it. It would be idle in such a case to suggest that it was

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necessary for the prosecution to examine an expert even though it is extremely unlikely that traces of its use had not been removed by Daljit Singh before he surrendered it. Then, as to Gurcharan Singh, it is admitted that he fired twice and there is nothing on the record to show that the injuries disclosed by the post mortem notes and deposed to by the doctor could not have been caused by a gun which, it was alleged, belonged to Arjan Singh and which was picked up by Gurcharan Singh after it fell down from his hands.

Therefore, in the circumstances of this case, we do not think it would be possible to accept the plea that the failure of the prosecution to examine a ballistic expert has introduced a serious infirmity in the prosecution case.

Even so, since we were satisfied that the judgment of the High Court suffered from some infirmities and was not as satisfactory as it should have been, we have read the evidence with Mr. Purushotam and heard his comments on it. Having carefully considered the said evidence, we see no reason to differ from the conclusion reached by the Courts below that broadly stated, the incident took place as it has been deposed to by the prosecution witnesses and that eliminates the exercise of the right of private defence by the appellants and establishes that they used their fire-arms aggressively and thus committed the offence of murder under section 302/34.

Before we part with this case, however, we would like to observe that in dealing with confirmation cases, the High Court should consider the evidence carefully and record its conclusions clearly after dealing with all the points urged before it by the counsel for the defence. In all criminal appeals, the findings recorded by the High Court bind the

parties and this Court is generally reluctant to interfere with them. This principle is usually followed even in confirmation cases, but it is hardly necessary to emphasise that in dealing with conconfirmation cases, judicial approach both at the trial and in appeal has to be careful and thorough and so, it is of utmost importance that no room should be left for any legitimate complaint by the defence that important points were argued before the High Court and were not considered by it. In the present appeal, we have come to the conclusion that some of the reasons given by the High Court are erroneous and apparently, some of the arguments urged before it have not been duly considered. That is why we had to go through the evidence for ourselves.

In the result, the appeal fails and the order of confiction and sentences passed against the appellants is confirmed.

Appeal dismissed.