

STATE OF HARYANA
v.
TEK SINGH AND ORS.

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MAY 3, 1999

[G.B. PATTANAIK AND M.B. SHAH, JJ.]

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Criminal Law:

Penal Code 1860—Sections 148, 149, 302, 449—8 accused forming an unlawful assembly—Assault and murder of two persons—Eye witnesses fully corroborated by medical evidence—Conviction by Sessions Court—Acquittal of 5 accused by High Court based on minor contradictions—Relying on statement of witnesses during investigation—Held, erroneous—Minor exaggerations will not be a ground for rejecting testimony of eye-witnesses—Evidence Act, 1872.

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Criminal trial :

Evidence recorded by a Police Officer under Section 173 Cr. P.C.—Held, cannot be considered while appreciating the deposition of witnesses before court.

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Respondents along with three others were charged for offences punishable under Sections 148, 449 and 302 read with Section 149 IPC. The accused before the Sessions Court contended that they were falsely implicated, that brother of accused A7 had suffered injuries and that A8 was not present at the scene of occurrence since he was attending a bhog ceremony. The Sessions court relying on the evidence of eye witnesses coupled with the medical evidence and circumstantial evidence convicted and sentenced all the 8 accused.

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On appeal by the accused, High Court reappraised the entire evidence and held that the prosecution has failed to prove motive of accused A1, A5 A6, A4 and A8 for joining the other accused in assaulting the deceased. The High Court held that considering the measurement of the room where the dead body lay it was not possible to believe that it could accommodate accused persons to enter with their weapons and kill the deceased inside the house. The High Court further held that in the light of statements recorded by the Investigating Officer under Section 173 Cr. P.C. the ocular evidence had to

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A be appreciated with due caution as regards accused A5, A6, A7 and A8 and that the medical evidence qua A1, A2, A3, A7 and A8 does not corroborate the evidence of eye witnesses. Thus the High Court acquitted them but convicted A2, A5 & A6.

B On appeal by State before this Court against the acquittal of five accused, it was contended that the reasons given by the High Court in reversing the finding of conviction of respondents are erroneous, that the entire approach of the High Court in appreciating the evidence of the eyewitnesses and giving benefit of doubt on insignificant omissions or contradictions or on the ground that it is not corroborated by the medical evidence is erroneous and has resulted in grave miscarriage of justice.

C Respondents contended that the High Court has rightly appreciated the evidence and arrived at the conclusion that the role assigned to the respondents and their participation in crime by the witnesses was not established in view of medical evidence, that there is material improvement in the version of the prosecution witnesses at the time of trial in order to make their testimony in line with the medical evidence and that it is not a fit case for interference.

Allowing the appeal, the Court

E HELD : 1. The entire approach of the High Court in appreciating the evidence of the eye-witnesses is erroneous. The Court ought not to have taken into consideration the report of the Investigating Officer under Section 173 Cr. P.C. while appreciating the evidence led before the Court. [974-A]

F 2. The High Court while appreciating the evidence ought to have kept in mind and visualised the situation at the time of occurrence of the incident. Evidence of the witnesses should be appreciated by keeping ground reality and fact-situation in mind. It is also established law that even with regard to the interested witness, it is the duty of the Court to separate truth from falsehood and the chaff from the grain. In view of the close relationship, witnesses naturally would have a tendency to exaggerate or add facts but while appreciating the evidence exaggerated facts are to be ignored unless it affects substratum of prosecution story. If there is some exaggeration in the evidence of the witnesses those exaggerations are to be separated by taking into consideration overall facts on record. With regard to the main part of the prosecution version that accused assault deceased G, the prosecution evidence is fully corroborated by medical evidence. The medical

evidence also corroborates the evidence of the witnesses that on both the deceased, apart from injury by firearm, accused assaulted by Gandasa. Therefore, it cannot be stated that the evidence of the prosecution witnesses in not corroborated by medical evidence. [974-C-D; 975-F-G-H]

State of U.P. v. M.K. Anthony, AIR (1985) SC 48, relied on.

3. The evidence of PW6 is accepted by High Court. The presence of PW6 at the scene of offence was natural particularly considering the fact that deceased was released on parole a day prior to the date of incident. She has narrated the entire incident. PW5 and PW7 have fully corroborated her evidence and narrated the incident in detail. [974-G-H; 975-D]

4. It is true that the witnesses have failed to locate exact seat of the injuries but that is natural, when the incident takes place all of a sudden within two to three minutes and successive blows are inflicted by the accused, 8 in number. They came all of a sudden armed with deadly weapons and attacked the victims, who rushed to take shelter in the house. In such a fact-situation, some contradictions as to who assaulted whom, with what weapon and whether it was by sharp edge or blunt side of Gandasa are bound to be there and particularly when blows are given in quick succession, it would be against the ground reality to expect the witnesses to depose exactly on which part of body the blow landed. In these circumstances, even if there is some exaggeration with regard to the infliction of blows, it would hardly be a ground for rejecting their testimony. It may be futile to expect an exact description of the details of attack on the victim by each accused, from the widow of one of the deceased who witnessed the dastardly act or from eye-witnesses. [976-A-C]

5. When the presence of the accused who were armed with deadly weapons is established beyond doubt, Sections 148, 149 IPC would come into operation and they would be liable for the offences. In this view of the matter, there was no warrant at all for the High Court to reverse the judgment of the Sessions Court which is analytical and well reasoned. [976-D-E]

6. The High Court has not given due importance to the fact that the FIR was lodged immediately disclosing the entire incident and the names of the accused. The incident took place at about 8.30 p.m. on 14th September, 1988. FIR was recorded at 11.30 p.m. and its copy was received by the Ilaqua Magistrate, Hissar at 4.30 a.m. on the same night. The FIR was lodged by C. B also had accompanied C to the Police Station. So, the Additional

A Sessions Judge rightly came to the conclusion that within two and a half hours of the occurrence, information was lodged with the Police and that copy of the FIR was sent to Hissar which is 90 K.M. from Jakhhal which reached the Magistrate at Hissar at 4.30 a.m. during the same night and in these circumstances, the evidence of the prosecution witnesses get corroboration from the FIR. [976-E-F]

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7. The finding of the High Court that prosecution failed to prove motive is erroneous. In his statement under S. 313 accused T stated that he was falsely implicated due to enmity between him and the complainant side when he contested the election of Sarpanch against C and won the election. C put pressure upon him to co-opt his wife as the member of the Panchayat which he refused to oblige, therefore, he bore grudge in his mind. It is the say of G in Section 313 statement that deceased T had inflicted injuries to M for which he was prosecuted and convicted. He had also dispute with him for 22 *Quillas* of land in village Chandpur belonging to his maternal grandfather and deceased T was asking for share in that land, and due to that reason, the family members of T were having grudge against him. Therefore, he and his brother were falsely involved in the case. Similar statement is made by accused G. In view of the aforesaid evidence and statements of the accused it would be difficult to hold that there was no motive on the part of the accused. [976-G; 977-C-E]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 360 of 1993.

From the Judgment and Order dated 23.10.92 of the Punjab & Haryana High Court in Crl. A. No. 153-DB of 1991.

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Ms. Shikha Ray Pabbi, (Sanjeev K. Pabbi) for Prem Malhotra for the Appellant.

S. Ujagar Singh, (Devander Singh) for Ms. Naresh Bakshi, (E.C. Agrawala) (NP), R.S. Sodhi and Lokesh Kr. for the Respondents.

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The Judgment of the Court was delivered by

SHAH, J. In the Court of Addl. Sessions Judge-III, Hissar in Sessions Case No. 57 of 1988/33 of 1990, 8 persons namely, (1) Tek Singh, (2) Gurbachan Singh, (3) Gurmel Singh, (4) Mela Singh, (5) Baldev Singh, (6) Megha Singh, (7) Sajan Singh and (8) Jaspal Singh were charged for the offences punishable

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under Section 148, 449 and 302 read with Section 149 of I.P.C. for committing the murder of Tek Singh and Gurdev Singh inside the house of Tek Singh (deceased). By judgment and Order dated 26th March 1991, Additional Sessions Judge, Hissar convicted all the aforesaid 8 accused under Sections 148, 449 & 302 read with Section 149 of I.P.C. Against the said judgement and order, accused preferred Criminal Appeal No. 153- DB of 1991 before the High Court of Punjab and Haryana at Chandigarh. By the judgment and order dated 23rd October, 1992, the High Court acquitted 5 accused, namely, Tek Singh(A-1), Mela Singh(A-4), Gurmel Singh(A-3), Sajjan Singh(A-7), Jaspal Singh(A-8) and confirmed the conviction of remaining 3 accused, namely, Gurbachan Singh(A-2), Baldev Singh(A-5) and Megha Singh(A-6) for the offence punishable under Section 302 read with Section 34, I.P.C. and their conviction and sentence under Section 449 I.P.C. was also maintained. Against the said judgment and order, the State of Haryana has preferred this appeal. At the time of admission of the appeal, this Court dismissed the Special Leave Petition against the convicted accused, namely, Gurbachan Singh (A-2), Baldev Singh (A-5) and Megha Singh (A-6).

The prosecution version is because of the Gram Panchayat elections of Village Talwara and as some understanding between the accused Tek Singh (A-1) and Gurdev Singh was not honoured by Tek Singh, there was altercation between Tek Singh and Chet Singh, brother of the deceased Gurdev Singh. It is also stated that about 8 to 9 months prior to the occurrence, Tek Singh (deceased) was convicted for causing injuries to Mrs. Mukhtiar Kaur, his sister-in-law. He was released on parole one day prior to the occurrence. On 14th September, 1988 at about 8.30 p.m., Tek Singh and Gurdev Singh (both deceased) were sitting on a cot outside the house of Tek Singh, the accused armed with weapons including gun, rifle and gandasa, firing shots and shouting that Tek Singh and Gurdev Singh should be finished, arrived there from the side of Tek Singh's house. On seeing the accused, both deceased rushed inside the house of Tek Singh, the accused chased them and entered the house where Mrs. Bant Kaur, wife of Tek Singh (deceased) was present. It is also say of witnesses Chet Singh, P.W.5, Bhola Singh P.W. 7 and one Mohinder Singh that they reached at the scene of offence after returning from their fields and answering the call of the nature. It is the version of the witnesses that accused caused injuries to deceased Tek Singh by giving Gandasa blows. It is stated that Baldev Singh gave Gandasa blow on the neck, Mela Singh gave gandasa blow on the right shoulder, Jaspal Singh gave gandasa blow on right arm, Megha Singh gave gandasa blow on right knee, Gurmel Singh gave gandasa blow on left hip joint, Sajjan Singh gave four to

- A five gandasa blows in quick succession on waist. It is further stated that Gurbachan Singh (A-2) fired from his rifle hitting deceased Gurdev Singh on his right thigh and other accused persons gave gandasa blows. Thereafter, all the accused along with the respective weapons went towards their houses and at that time Tek Singh (A-1) and Gurbachan Singh fired from their gun and rifle in the air while leaving the spot. The witnesses Chet Singh and Bhola Singh rushed to the police station and lodged report at 11.30 p.m. with SI Ramesh Pal. The special report of the FIR was conveyed to Illaqa Magistrate, Hissar at 4.50 a.m. during the same night. The accused continued absconding till 22nd September, 1988 on which date at the bus station, Tek Singh, Gurbachan Singh, Mela Singh and Gurmel Singh were arrested. At that time, Tek Singh
- B Singh was carrying his licence .12 bore gun Ex. P34 which was taken in possession after putting it in a sealed parcel. Thereafter, other fire arm was also recovered. Gandasas from Gurmel Singh (A-3) and Mela Singh (A-4) also were recovered and were sent to the Forensic Science Laboratory, Madhuban and its report stated that human blood was found on one of Gandasas. With regard to the fire arms, rifle and gun, they were found intact and in working order and also
- C after examining the hole in the Tehmad (lion cloth) put on by deceased Gurdev Singh, it was reported that it was the result of bullet projectile.
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- Before the Sessions Court in their respective statements under Section 313 of Cr. P.C., the accused contended that they were falsely implicated, it has
- E also been pointed out that Ram Nath, brother of Sajjan Singh, accused had suffered injuries and for that purpose, report was lodged by Ram Nath. Jaspal Singh, (A-8) had taken the plea of alibi and for that purpose, witnesses have examined to prove that bhog ceremony in connection with the last rites of Bhura Singh took place on 14.9.88 and Jaspal Singh being the son-in-law of Amarjeet Singh, brother of the Bhura Singh attended that ceremony and he
- F along with his wife stayed for the night with them. The learned Additional Sessions Judge relying on the eyewitnesses' evidence of Chet Singh, Mrs. Bant Kaur, and Bhola Singh, coupled with the medical evidence and circumstantial evidence convicted and sentenced all the accused.

- G In appeal, the High Court reappreciated the entire evidence in the light of the contentions raised by the learned Counsel for the parties. The High Court, in appeal arrived at the conclusion that prosecution has failed to prove motive of Tek Singh or his brothers Baldev Singh, Megha Singh or his nephew Mela Singh, Jaspal Singh joining the remaining other accused in assaulting the deceased Tek Singh and Gurdev Singh. The Court observed
- H that it cannot be stated that the presence of witness Chet Singh who happens

to be the real brother of Gurdev Singh (deceased) and Bhola Singh P.W. 7 who is the son of the deceased Gurdev Singh can be said to be unnatural or that they cannot be termed as 'chance witnesses'. However, their evidence is to be appreciated with care and due caution. The High Court, however, stated that considering the measurement of the room where the dead body of Gurdev Singh lay, it was not possible to believe that it could accommodate accused persons to enter with their weapons and kill Gurdev Singh inside the house. The Court further took note of the fact that ocular evidence of the witness required to be appreciated with due caution qua the participation of each of them in the occurrence especially when Investigating Officer reported, under Section 173 of the Criminal Procedure Code, that Baldev Singh, Megha Singh, Sajan Singh and Jaspal Singh were found innocent. Thereafter, High Court considered the medical evidence and appreciated the evidence of each witness to find out whether the medical evidence corroborates the version of the prosecution witnesses. The Court held that qua the respondents, that is, A-1, A-2, A-3, A-7 & A-8, medical evidence does not corroborate the evidence of the eye witnesses. Qua the remaining accused A-2 Gurbachan Singh, A-5 Baldev Singh and A-6 Megha Singh, medical evidence corroborated prosecution evidence. Hence, they were convicted and rest of them were acquitted.

In this appeal, Ms. Shikha Ray Pabbi, learned Counsel for the appellant-State vehemently contended that the reasons given by the High Court in reversing the finding of conviction of the respondents-accused are, on the face of it, erroneous. She submitted that the entire approach of the High Court in appreciating the evidence of the eye-witnesses and giving benefit of doubt on insignificant omissions or contradictions or on the ground that it is not corroborated by the medical evidence is, on the face of it, erroneous and has resulted in grave miscarriage of justice. As against this, learned Counsel for the respondents submitted that the High Court has rightly appreciated the evidence and arrived at the conclusion that role assigned to the respondents and their participation in crime by the witnesses was not established in view of medical evidence. It is submitted that there is material improvement in the version of the prosecution witnesses at the time of trial in order to make their testimony in line with the medical evidence. It is, therefore, submitted that this is not a fit case for interference by this Court in this Appeal under Article 136.

In our view, considering the evidence of prosecution witnesses and the reasons recorded by the Trial Court, it is apparent that the entire approach

A of the High Court in appreciating the evidence of the eye-witnesses is erroneous. Further, the Court ought not to have taken into consideration the report of the Investigating Officer under Section 173 of the Cr. P. C. wherein it was stated that Baldev Singh, Megha Singh, Sajjan Singh and Jaspal Singh were innocent while appreciating the evidence led before the Court. However,

B it has to be stated that after appreciating the evidence of eye-witnesses, the High Court itself has confirmed the conviction of Baldev Singh (A-5) and Megha Singh (A-6) who were found innocent by the Investigating Officer. Their conviction is also confirmed at the time of granting leave to appeal. This reveals non-application of mind by the High Court to the facts of the case.

C Further, the Court while appreciating the evidence ought to have kept in mind and visualised the situation at the time of occurrence of the incident. Evidence of the witness should be appreciated by keeping ground reality and fact-situation in mind. It is also established law that even with regard to the interested witness, it is the duty of the Court to separate truth from falsehood and the chaff from the grain. In view of the close relationship, witnesses

D naturally would have a tendency to exaggerate or add facts but while appreciating the evidence exaggerated facts are to be ignored unless it affects substratum of prosecution story. In the case of *State of U.P. v. M.K. Anthony*, AIR (1985) S.C. 48, this Court pointed out that while appreciating the evidence of a witness, the approach must be whether evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is

E undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on

F trivial matters not touching the core of the case, hyper-technical approach in persuasion of the evidence should be avoided. The Court pertinently observed:

“Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer”.

G In the present case, the evidence of PW-6, Bant Kaur, wife of the deceased Tek Singh is accepted by the High Court. Her presence at the scene of offence was natural particularly considering the fact that deceased was released on parole a day prior to the date of incident. She has narrated the

H entire incident. She has stated that her husband Tek Singh was convicted in

a criminal case for causing injuries to Mrs. Mukhtiar Kaur. At 8.30 p.m., she was present in the courtyard and that all the accused came from the side of Tek Singh's house while firing and raising lalkaras. Tek Singh (A-1) was armed with the gun, Gurbachan Singh (A-2) was armed with rifle while remaining accused were armed with gandasas. On seeing them, Tek Singh and Gurdev Singh who were sitting out on the cot came inside the room; all the accused also entered the house; Baldev Singh gave gandasa blow on the back of the neck of Tek Singh as a result of which he fell down on the ground; while he was lying, Mela Singh inflicted injuries with gandasa on his right side face. Jaspal Singh gave gandasa blow on his right shoulder. Megha Singh gave gandasa blow on his right knee, Mela Singh gave a gandasa blow on his left buttock, Sajan Singh gave four to five injuries with gandasa on his abdomen. Bachan Singh fired a shot from his rifle at Gurdev Singh which hit on his right thigh as a result of which he fell down on the ground. She has further stated that other accused assaulted Gurdev Singh with gandasa. With regard to Mrs. Mukhtiar Kaur, she has stated that either she was her Jethani or Devrani and she was the wife of Gurbachan Singh (A-2). She has also stated that when she tried to intervene, she was pushed by the accused. Mohinder Singh is a son of maternal uncle but they were not on visiting terms with him. The witnesses Chet Singh P.W. 5 and Bhola Singh, P.W. 7 have fully corroborated her evidence and narrated the incident in detail.

As stated by the witness Chet Singh, PW 5 in his cross-examination that assault was over within two to three minutes, it would be difficult for any witness to state exactly which accused inflicted how many blows on the deceased. In these set of circumstances, if there is some exaggeration in the evidence of the witnesses those exaggerations are to be separated by taking into consideration overall facts on record. Further, it is to be stated that with regard to the main part of the prosecution version that accused assaulted deceased Gurdev Singh, the prosecution evidence is fully corroborated by medical evidence. The medical evidence also corroborates the say of the witnesses that on both the deceased, apart from injury by firearm, accused assaulted by gandasa. Dr. R.K. Chaudhary, P.W. 1 and Dr. H.L. Gupta, P.W. 2, who carried on post-mortem examination of Gurdev Singh (deceased), found that he was having as many as 13 injuries out of which 6 injuries were incise wounds. There were multiple contusions and lacerated wounds on the body. Similarly, with regard to Tek Singh (deceased), there were in all 9 injuries, 3 were incise wounds and rest were multiple contusions and lacerated wounds. Therefore, it cannot be stated that the evidence of the prosecution witnesses is not corroborated by medical evidence. It is true that they have

- A failed to locate exact seat of the injuries but that is natural, when the incident takes place all of a sudden within two to three minutes and successive blows are inflicted by the accused, 8 in numbers. They came all of a sudden armed with the deadly weapons and attacked the victims, who rushed to take the shelter in the house. In such a fact situation, some contradictions as to who assaulted whom, with what weapon and whether it was by sharp edge or blunt side of Gandasa are bound to be there and particularly when blows are given in quick succession, it would be against the ground reality to expect the witnesses to depose exactly on which part of the body blow landed. In these circumstances, even if there is some exaggeration with regard to the inflictions of blows, it would hardly be a ground for rejecting their testimony.
- C It may be futile to expect an exact description of the details of attack on the victims by each accused from the widow of one of the deceased who witnessed the dastardly act or from eye-witnesses. Accused were known to the widow and the witnesses. Their names are disclosed immediately. Hence, presence of the accused at the scene of offence was established. They all were armed with deadly weapons and came together. In such a situation, when the presence of the accused who were armed with deadly weapons is established beyond doubt, Sections 148 and 149 I.P.C. would come into operation and they would be liable for the offences. In this view of the matter, there was no warrant at all for the High Court to reverse the judgment of the Sessions Court which is analytical and well reasoned. High Court has also not given due importance to the fact that FIR was lodged immediately disclosing the entire incident and the names of the accused. The incident took place at about 8.30 p.m. on 14th September, 1988. FIR was recorded at 11.30 p.m. and its copy was received by the Illaqa Magistrate, Hissar at 4.30 a.m. on the same night. The FIR was lodged by Chet Singh and Bhola Singh also had accompanied Chet Singh at the Police Station. So Additional Sessions Judge rightly came to the conclusion that within two and a half hours of the occurrence, information was lodged with the Police and that copy of the FIR was sent at Hissar which is 90 Km. from Jakhal by a special report which reached to the Magistrate at Hissar at 4.50 a.m. during the same night and in these circumstances, the evidence of the prosecution witnesses get corroboration from the FIR.
- G The High Court also held that prosecution has failed to prove motive. In our view, this finding is also erroneous. Admittedly, deceased Tek Singh was convicted for causing injury to Mrs. Mukhtiar Kaur, wife of Gurbachan Singh (A-2). He was released on parole and on next day, he was assaulted and murdered. Further, it is a say of Chet Singh and P.W.6 Bant Kaur that Chet Singh wanted to contest election for the post of Sarpanch of the village. He
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withdrew his candidature and Tek Singh (A-1) was elected. It is the say of the witnesses that he withdrew his candidature as there was compromise and it was understood between him and accused that his wife would be co-opted as a female member of the Panchayat. This understanding was not honoured by Tek Singh and on that account, there was a dispute. In the cross-examination, he has stated that even though Gurbachan Singh and Gurmel Singh, on the one hand, and the other accused persons, namely, Tek Singh and others are totally from different families, they formed one group and were close to each other. There was no reason to disbelieve this part of the evidence. Further, in his Section 313 statement, the accused Tek Singh stated that he was falsely involved due to enmity between him and the complainant side; he contested the election of Sarpanch against Chet Singh and he was elected; Chet Singh put pressure upon him to co-opt his wife as the member of the Panchayat which he refused to oblige therefore he bore grudge in his mind. It is the say of Gurbachan Singh in Section 313 statement that deceased Tek Singh had inflicted injuries to Mrs. Mukhtiar for which he was prosecuted and convicted. He had also dispute with him for 22 Quilla of land in Village Chandpur belonging to his maternal grandfather and the deceased Tek Singh was asking for share in that land, due to that reason, Tek Singh's family members were having grudge against him. Therefore, he and his brother were falsely involved in the case by Bant Kaur in consultation with Chet Singh. Similar statement is made by accused Gurmail Singh. In view of the aforesaid evidence and statements of the accused it would be difficult to hold that there was no motive on the part of the accused.

Hence, the appeal is allowed, judgment and order passed by the High Court acquitting the respondents for the offences for which they were charged is quashed and set aside. The Judgment and Order dated 26.3.1991 passed by the Sessions Court in Sessions Case No. 57 of 1988/33 of 1990 convicting the respondents and sentencing them is restored. Bail bonds of respondents are cancelled. They are directed to surrender to serve out the remaining part of the sentence awarded to them.

V.M.

Appeal allowed.