A NISHAN SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 325 of 2007)

MARCH 7, 2008

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(S.B. SINHA AND HARJIT SINGH BEDI, JJ.)

Penal Code, 1860:

Triple murder, one after another – Accused persons in
C *first murder case attacked by member of victim party resulting in death of two persons – FIR – Trial Court convicting accused persons for commission of offence punishable u/s.302 and s.302 r/w s.34 IPC – Affirmed by High Court – Summoning accused on the basis of statement of Prosecution witness*
D *without complying with provisions u/s.319 (4) Cr.P.C. – Correctness of – Held: Correct – Accused was named in FIR but was not charge-sheeted – However, evidence of PW1 categorically attributed the role played by him in the commission of murder of one and injuring others – On the*
E *basis of deposition of PW1, fresh charges were framed against him and he was examined in chief again – Hence, requirements of sub-section 4 of S.319 Cr.P.C. complied with.*

Murder – Plea of false implication – Held: When three murders one after another took place, each had a link with the
F *other, it cannot be held that the informant whose son was also one of the deceased, would falsely implicate the accused-Appellants.*

Injured witness – Testimony of – Held: PW4-an injured
G *witness, had given a complete account of entire occurrence, there does not exist any reason to disbelieve his testimony.*

Murder – Common intention – Held: Both the accused came together – One of them exorted other to open fire – Other accused opened fire resulting in killing of one and injuring

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another – Evidently more than one person involved in committing the crime – Hence, s.34 attracted. A

Murder – Non-examination of independent witnesses – Effect of – Held: That by itself not sufficient to disregard the statement of prosecution witnesses totally. B

Acquittal of co-accused – Effect on prosecution case – Held: Acquittal of one accused would not lead to conclude that the entire case of prosecution was false.

Infliction of injuries causing death of the victim – Conviction u/s.302 or Part-II of s.304 – Held: Injuries inflicted were sufficient in the ordinary course of nature to cause death of the victim – Hence, Part-II of S.304 IPC not attracted. C

According to the prosecution, on the fateful day, there was an altercation between one 'RS' and his brothers on one side and the deceased 'R' on the other. Accused 'RS' picked up knife from one 'P' and inflicted an injury on the body of the deceased. Other accused also gave blows from 'dang' injuring the deceased. As a result of the injuries, deceased died on the spot. As an off-shoot to the murder of 'RS', brother of the deceased 'SS' armed with 'gandasa' came there and started abusing accused persons and gave gandasa blow on the head of one 'D' (PW4), an accomplice of the accused persons in first murder case and 'P', had fired a shot at 'B', brother of accused 'H' injuring him. While PW4 and 'H' were proceeding to a hospital in a tractor for treatment of the injured persons, on the way, one 'N' at the instance of brother of the deceased 'RS' fired a shot hitting 'H' as a result whereof the tractor went out of control and dashed against a house. 'H' died on the spot. Other injured were shifted in a mini bus and taken to the Hospital and an FIR was lodged in the Police Station. Accused-appellant 'N' was charged for commission of an offence punishable u/s. 302 IPC; brother of the deceased 'RS' was charged u/ss. 307 and 302/34 IPC and another accused 'M' was D E F G H

A charged for commission of offence punishable u/s.302 r/ w S.34 IPC. Trial Court convicted 'N' for commission of the offence under Section 302 of the Indian Penal Code; 'P' was convicted for commission of the offence under Section 302/34 and 'M' was acquitted of the charges B framed against him. Aggrieved, the accused persons filed three appeals, of which two were filed in relation to first incident and another was filed in relation to 3rd incident, which were dismissed by the High Court. Hence the present appeals.

C It was contended for the accused-appellant in the first murder case that as after summoning the appellant in terms of Section 319 of the Code of Criminal Procedure, PW1 was not examined afresh by the prosecution and was only tendered for cross examination, the entire trial D as against him became vitiated in law as the provision contained in sub-section 4 of Section 319 CPC was not complied with, which is mandatory in nature; that tho Courts below committed a serious error in regard to tho identity of the appellants, namely, 'P' who had nothing to E do with the first incident; that the Courts below failed to take into consideration the effect of the deposition of tho injured persons in the incident who had stated that neither of the appellants was present when the incident took place; that although appellant 'N' was named in the F examination in chief by PW1, as in his cross examination he has attributed the overt act of firing the shot to 'P', no case can be said to have been made out as against the appellant in Criminal Appeal No.325 of 2007; that reliance placed on the evidence of injured 'D' by the Courts below G is wholly misplaced inasmuch as keeping in view the nature of injuries suffered by him as was described by DW.2, the medical officer, evidently he was not in a position to witness the occurrence; and that the prosecution case being commission of overt acts of 'P' to extortion, the evidence of the prosecution that the H

accused 'N' had fired a shot cannot be accepted. A

The appellant in Criminal Appeal No. 326 of 2007 contended that having regard to the fact that the appellant was not armed with any weapon and as he is said to have snatched the knife from P-II, he cannot be said to have any intention to cause the murder of 'RS' and, thus, his B conviction under Section 302 IPC is not sustainable; that the statement of the witnesses have been recorded by the investigating officer six hours after the incident, no reliance could have been placed thereupon by the Courts below; that all the prosecution witnesses examined in the C matter being interested witnesses, the Courts below misdirected themselves by placing explicit reliance on them; and that the effect of acquittal of one 'S' having not been considered by the Courts below while appreciating the evidence brought on record by the prosecution, the D impugned judgment is liable to be set aside.

Respondent-State submitted that the judgment of acquittal in favour of 'S'- PW1, was passed by the Sessions Judge as no evidence could be brought on record against him and inasmuch as the prosecution had E established that it was appellant who caused all the injuries upon the deceased; that there is no infirmity in the impugned judgment; that it is correct to contend that 'S' was not examined again after summoning of accused 'N'. As charges were framed on 30th November, 2001 and F he was examined afresh on 5.9.2003 as PW3, the requirements of sub-section 4 of Section 319 were fully complied with; that in any event, keeping in view the provisions contained in Section 465 of the Code of Criminal Procedure, the judgment of conviction should G not be reversed unless a real prejudice is shown to have been suffered by the accused; that accused 'N' and 'P' having charged for commission of an offence under Section 302/34 IPC and the same having been established, it was not necessary to prove any specific overt act on H

A the part of each of them; and that there is nothing to show as to why the evidence of 'D' shall not be accepted inasmuch as he suffered a brain injury and was examined by DW2 after three years of the incident.

Dismissing the appeals, the Court

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HELD: 1.1 Accused-appellants 'N' and 'P1' were named in the F.I.R. The first informant attributed overt acts to them. They had the motive to commit the offence. Offences were committed one after the other with a view
C to take revenge. (Para – 17) [513-E]

1.2 Accused-appellant 'N' however was not charge sheeted for reasons best known to the investigating officer. Evidence by PW-I categorically attributed the role played by him in respect of the death of 'H' and causing
D injuries to PW4. (Para – 18) [513-F]

1.3 Deposition of PW 1 was recorded on 12.9.2000. After summoning 'N' in terms of Section 319 of the Code of Criminal Procedure, charges were framed afresh on 30th November, 2001. He was examined in chief again on
E 5.9.2003 as PW 3. It is, therefore, not correct to say that he was not examined in chief afresh. Requirements of sub-section (4) of Section 319 of Code of Criminal Procedure, therefore, have been complied with. Sub-section 4 of Section 319 Cr.P.C. must be read with the residuary
F provision contained in of Section 375 thereof. Complaint in regard to non compliance of statutory provisions must be made at the earliest opportunity. When a judgment is pronounced; a case must be made out that by reason of a procedural irregularity, failure of justice has occurred.
G Section 465 of the Code of Criminal Procedure seeks to achieve a salutary principle. (Paras – 19 & 20) [513-G, H; 514-A; 515-B, C]

Dr. M.C. Sulkante vs. State of Mysore AIR (1971) SC 508; *Central Bureau of Investigation vs. V.K. Sehgal & Anr.* (1999)
H 8 SCC 501 and *State of Haryana vs. Ram Singh* (2002) 1

SCR 208 – relied on. A

Shashikant Singh vs. Tarkeshwar Singh & Ors. (2002) 3 SCR 400 – distinguished.

2.1 The Courts below have clearly noticed the supportive role of 'P-I' and 'P-II'. They have proceeded on B that basis. Whereas P-II was connected with the first occurrence, the appellant P-I was connected with the third occurrence. The Courts below had not committed any mistake whatsoever in that behalf. (Para – 23) [517-B, C]

2.2 Both the appellants had been named in the FIR. C They were tried together. Evidently, they came at the spot with a common intention. Both of them had weapon in their hands. The prosecution witnesses had to take the injured PW-4 to the hospital by arranging a mini bus. Whereas one of the injured 'B' died in the hospital, PW 4 D survived. (Para – 25) [517-E]

3.1 One First Information Report was lodged in respect of all the three incidents. Three murders took place one after the other. Some other persons also received injuries. When three instances occurred one after E the other, keeping in view the fact that each had a link with the other, it is difficult for this Court to know that the appellants would be falsely implicated by the informant, whose son was one of the deceased. (Para – 26) [517-F, G]

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3.2 It is true that 'S', one of the prosecution witness, had stated that he could not identify the assailants, but no reliance can be placed on the said statement that the death of 'H' was caused by a gunshot injury is not denied by him. He was a prosecution witness. He was given up G by the prosecution presumably on the basis that he had been won over. Strangely, the Public Prosecutor did not confront him with his earlier statements. It demonstrates how poorly the prosecution case was conducted. (Para – 27) [518-A, B]

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A **3.3 'PW 4' is an injured witness. He has given a complete account of the entire occurrence. This Court does not see any reason to disbelieve his testimony. He had been put to stringent cross examination. Even no suggestion was made to him that he could not have**
B **witnessed the incidence. If it was within the knowledge of the defence that he was not in a position to speak about the occurrence, he should have been accosted therewith. He could have given an explanation. If his being carried to the hospital in an injured condition is accepted and if**
C **furthermore it stands established that all injured persons were brought to the hospital together, it is difficult to accept the contention of the counsel that PW 4 could not be present at the time when the occurrence took place. (Para – 28) [518-C, D, E]**

D **4.1 Both PW-1 and 'N' came together; at least one of them armed with a fire arm. One of them exhorted and another fired. It is accepted by the defence that at least one person was killed and two other were injured in the said firing. Evidently, more than one shot was fired.**
E **(Para – 31) [519-B]**

4.2 The question as to whether common intention was formed for commission of an offence or not depends upon the facts of each case. (Para – 32) [519-C]

F *Prem Sagar vs. Dharambir & Ors.* **(2004) 1 SCC 113;** *Suresh & Anr. vs. State of U.P.* **(2001) 3 SCC 673;** *Rotash vs. State of Rajasthan* **(2006) 13 SCALE 186 and** *State of Haryana vs. Ram Singh* **(2002) 1 SCR 208 – relied on.**

G **5.1 PW 3 and PW 4 were the eye-witnesses. Both the trial Judge as also the High Court considered their depositions in great details. No contention has been raised that the said findings are in any way perverse or not in conformity with the evidences or record. (Para – 34)**
H **[520-B, C]**

5.2 One of the accused may be acquitted as the prosecution witness might not have attributed any overt act to him. But it is well-settled that acquittal of one accused itself would not lead to the conclusion that the entire prosecution case was false. (Para – 35) [520-C, D] A

Sukhdev Yadav & Ors. vs. State of Bihar **(2001) 8 SCC 86 and** *Appabhai & Anr. vs. State of Gujarat* **(1988) Supp. 1 SCC 241 – referred to.**

5.3 The injuries were inflicted on the vital parts of the body and some of them were sufficient in the ordinary course to cause death or likely to cause death. Part II of Section 304 of the Indian Penal Code shall have, thus, no application in this case. 'R' might have been unarmed, but with a view to inflict injury on the deceased, he snatched the knife which was being carried by 'P-II'. 'P 4' saw the entire occurrence. He examined himself as PW 4. If a person snatches a weapon carried by someone else and brutally kills another, it cannot be said that he did not have any intention to cause death. Whether the accused had any intention to kill the deceased must be judged upon taking into consideration the fact situation obtaining in each case. (Para – 37) [521-C, D, E] C D E

Harendra Nath Mishra & Ors. vs. State of Bihar **JT (2002) 10 SC 157;** *Suresh & Anr. vs. State of U.P.* **(2001) 3 SCC 673;** *Ramashish Yadav vs. State of Bihar* **(1999) 8 SCC 555;** *Gajjan Singh vs. State of Punjab & Pandurang* **(1976) 3 SCC 391;** *Tukia and Bhillia vs. State of Hyderabad* **(1955) 1 SCR 1083 and** *Rotash vs. State of Rajasthan* **(2006) 13 SCALE 186 – relied on.** F

Virsa Singh vs. State of Punjab **AIR (1958) SC 465 and** *Hari Yadav vs. State of Bihar* **(2007) 14 SCALE 656 – referred to.** G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 325 of 2007 H

From the final Judgment and Order dated 15.2.2006 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 833-DB/2004

WITH

Criminal Appeal Nos. 326 and 467 of 2007.

Uma Datta and Manjeet Chawla for the Appellant.

Kuldip Singh, R.K. Pandey and Sanjay Katyal for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. These Appeals arising out of a common judgment.

2. We would, at the outset, place on record that three trials were held one after the other and the judgments therein were delivered also one after the other in relation to an incident which took place one after the other but wherefor only one First Information Report had been lodged.

3. On or about 30th June, 1999 at 2.30 p.m., Rachhpal Singh along with Sawinder Singh and Hardev Singh had an altercation with one Resham Singh S/o Subeg Singh. Rachhpal Singh inflicted a knife injury on the right wrist and chest of Resham Singh. He picked up the knife from which was with Pargat Singh II S/o Shangara Singh who was accompanying him. Resham Singh fell down. Hardev Singh and Sawinder Singh also allegedly inflicted 'dang' blows on Resham Singh. An alarm was raised by Resham Singh's father Subeg Singh. Resham Singh died on the spot.

The said incident is the subject matter of Criminal Appeal No. 326 of 2007.

4. As an off shoot to the murder of the said Resham Singh for which the said Rachhpal Singh was tried and convicted, another incident took place on the same day. Hardev Sihgh, Dilbagh Singh and Baljit Singh were in their house when

Savinder Singh came there armed with a gandasi and started hurling abuses on them. It was objected to by Dilbagh Singh. Sawinder Singh inflicted a gandasi blow on the head of Dilbagh Singh, who purportedly in exercise of his right of private defence inflicted a blow on Sawinder Singh. Pargat Singh –II s/o of Shangara Singh who was a witness to the murder of Resham Singh arrived there with his brother Mehal Singh. Whereas Pargat Singh –II was armed with a rifle, Mehal Singh came empty handed. Baljit Singh allegedly climbed on the roof of a nearby Gurudwara and started hurling brickbats. A exhortation was given by Mehal Singh asking Pargat Singh-II to shoot Baljit Singh whereupon a shot was fired by him hitting the left shoulder of Baljit Singh. He was brought to his house in an injured condition. Mehal Singh and Pargat Singh-II are said to have run away from the said place of occurrence.

6. The third incident took place when brother of Baljit Singh, Hardev Singh and Dilbagh Singh (PW 4) after arranging a tractor trolley were proceeding with the injured persons to Amritsar. The tractor was being driven by Hardev Singh. When they were passing through Jasraur and reached near the house of one Karaj Singh, Pargat Singh-I s/o of Subeg Singh, the appellant in Criminal Appeal No. 467 of 2007, and Nishan Singh, the appellant in Criminal Appeal No. 325 of 2007, arrived. They were accompanied by Major Singh. Nishan Singh is said to have been armed with a .12 bore gun.

Pargat Singh-I exhorted that as Hardev Singh had murdered his brother Resham Singh, he should not be allowed to go alive. Nishan Singh fired a shot from his gun which hit Hardev Singh on his left ear as a result whereof the tractor went out of control and dashed against the house of Jagtar Singh. Hardev Singh died on the spot. More shots were fired as a result whereof Sudagar Singh, Chowkidar, and another person of Sheikh Bhatti were injured. Baljit Singh, Dilbagh Singh and the chowkidar were taken by Swaran Singh to Guru Nanak Dev Hospital in a mini Bus. A First Information Report was recorded by the sub inspector Ajit Singh PW 11.

A 8. Nishan Singh was charged for commission of an offence under Section 302 and 307 of IPC; whereas Pargat Singh-I was charged under Section 307 and 302/34 IPC. Major Singh was charged for commission of alleged offence under section 302 read with Section 34 of the Indian Penal Code.

B 9. Whereas Nishan Singh was acquitted of the charges under Section 307 IPC, he was convicted for commission of the offence under Section 302 of the Indian Penal Code. Pargat Singh-II was convicted for commission of the offence under Section 302/34 and acquitted for commission of offence under C Section 307 IPC. Major Singh was acquitted of the charges framed against him.

10. Originally, however, no charge sheet was filed as against Pargat Singh-I PW1, Swaran Singh was examined D before the learned Sessions Judge in the Sessions Case on 12.9.2000. On the basis of the statements made by him, an application was filed on 25th September, 2000 for summoning Nishan Singh on which was allowed.

11. Upon appearance of Nishan Singh, fresh charges were E framed against all the three accused persons.

12. Statement of PW 1 was recorded again and he was cross examined as PW3. Although three eye-witnesses were examined on behalf of the prosecution, the learned Additional Sessions Judge did not place any reliance on the evidence of F PW 5 constable Inder Singh. Reliance has been placed both by the Sessions Judge as also High Court on the testimonies of PW3, Swaran Singh and PW4, Dilbagh Singh.

13. Three appeals have been filed, two in relation to the G 3rd incident and one preferred by Rachhpal Singh in relation to first incident.

14. Mr. Uma Datta, learned counsel appearing on behalf of the appellants in Criminal Appeal No. 325 of 2007 and 467 of 2007, would, inter alia, submit :

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1. As after summoning Nishan Singh in terms of Section 319 of the Code of Criminal Procedure, Swaran Singh was not examined-in-chief afresh by the prosecution and was only tendered for cross examination, the entire trial as against him became vitiated in law as the provision contained in sub-section 4 of Section 319 of Code of Criminal Procedure was not complied with, which is mandatory in nature.

2. The learned courts below committed a serious error in regard to the identity of the appellants, namely, Pargat Singh who had nothing to do with the first incident.

3. The learned courts below failed to take into consideration the effect of the deposition of Sudagar Singh, chowkidar, who admittedly was one of the persons injured in the incident as he categorically stated that neither of the appellants was present when the incident took place.

4. Although Nishan Singh was named in the examination in chief by PW1, as in his cross examination he has attributed the overt act of firing the shot to Pargat Singh-I, no case can be said to have been made out as against the appellant in Criminal Appeal No.325 of 2007.

5. Relianco placed on the evidence of Dilbagh Singh by the learned courts below is wholly misplaced inasmuch as keeping in view the nature of injuries suffered by him as was described by D.W.2 Dr. Gurmanjit Rai, evidently he was not in a position to witness the occurrence.

6. The prosecution case being commission of overt acts of Pargat Singh-I to extortion, the evidence of the prosecution that Nishan Singh had fired a shot cannot be accepted.

15. Mrs. Manjeet Chawla, Ld. Counsel appearing on behalf of Rachhpal Singh, the appellant in Criminal Appeal No. 326 of 2007, submitted :

1) Having regard to the fact that the appellant was not armed with any weapon and as he is said to have snatched the knife from Pargat Singh –II, he cannot be said to have any intention to cause the murder of Resham Singh and, thus, his conviction under Section 302 of the Indian Penal Code is not sustainable.

2) The statement of the witnesses having been recorded by the investigating officer six hours after the incident, no reliance could have been placed thereupon thereupon by the courts below.

3) All the prosecution witnesses examined in the matter being interested witnesses, the Courts below misdirected themselves by placing explicit reliance on them.

4) The effect of acquittal of Sawinder Singh having not been considered by the Courts below while appreciating the evidence brought on record by the prosecution, the impugned judgment is liable to be set aside.

16. Mr. Kuldip Singh, learned counsel appearing on behalf of the State, on the other hand, submitted

1. The judgment of acquittal in favour of Sawinder Singh was passed by the learned sessions judge as no evidence could be brought on record against him and inasmuch as the prosecution had established that it was appellant Rachhpal Singh who caused all the injuries upon Resham Singh, there is no infirmity in the impugned judgments.

2. It is incorrect to contend that Sawarn Singh was not

examined again after summoning of Nishan Singh. As charges were framed on 30th November 2001 and he was examined afresh on 5.9.2003 as PW3; the requirements of sub-section 4 of Section 319 were fully complied with.

3. In any event, keeping in view the provisions contained in Section 465 of the Code of Criminal Procedure, the judgment of conviction should not be reversed, unless a real prejudice is shown to have been suffered by the accused.

4. Nishan Singh and Pargat Singh having been charged for commission of an offence under Section 302/34 IPC and the same having been established, it was not necessary to prove any specific overt act on the part of each of them.

5. There is nothing to show as to why the evidence of Dilbagh Singh shall not be accepted inasmuch as he suffered a brain injury and was examined by DW2 after three years of the incident.

17. Indisputably, Nishan Singh and Pargat Singh-I were named in the F.I.R. The first informant attributed overt acts to them. They had the motive to commit the offence. Offences were committed one after the other with a view to take revenge.

18. Nishan Singh however was not charge sheeted for reasons best known to the investigating officer. PW -1 Sawinder Singh's evidence categorically attributed the role played by him in respect of the death of Hardev Singh and causing injuries to Dilbagh Singh PW 4.

19. Deposition of PW 1 was recorded on 12.9.2000. After summoning Nishan Singh in terms of Section 319 of the Code of Criminal Procedure, charges were framed afresh on 30th November, 2001. He was examined in chief again on 5.9.2003 as PW3. It is, therefore, not correct to say that he was not examined in chief afresh. Requirements of sub-section (4) of

A section 319 of Code of Criminal Procedure, therefore, have been complied with in this case.

Strong reliance has been placed by Mr. Datta on a decision of this Court in *Shashikant Singh v. Tarkeshwar Singh and Ors.* [(2002) 3 SCR 400]. It was held therein :

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"The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may C proceed against him for the offence which he appears to have committed. At the stage, the court would consider that such a person could be tried together with the accused who is already before the Court facing the trial. The safeguard provided in respect of such person is that, the D proceedings right from the beginning have mandatory to be commenced afresh and the witnesses re-heard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the Court. It would not be sufficient to only tender the witnesses for the cross- E examination of such a person. They have to be examined afresh. Fresh examination in chief and not only their presentation for the purpose of the cross-examination on the newly added accused is the mandate of Section 319(4). The words 'could be tried together with the accused' in F Section 319(1), appear to be only directory. 'Could be' cannot under these circumstances be held to be 'must be'. The provision cannot be interpreted to mean that since the trial in respect of a person who was before the Court has concluded with the result that the newly added person G cannot be tried together with the accused who was before the Court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the Court on the basis of evidence before it that the newly added person H appears to have committed the offence resulting in an

order for his being brought before the Court." A

20. In that case, two separate trials were held in the sense that the examination in chief and the cross examination of the prosecution witnesses were over, when the trial restarted. It was in that factual matrix, this court laid down the afore-mentioned proposition of law. B

Sub-section 4 of Section 319 Cr.P.C., however, must be read with the residuary provision contained in of Section 375 thereof. Complaint in regard to non compliance of statutory provisions must be made at the earliest opportunity. When a judgment is pronounced; a case must be made out that by reason of a procedural irregularity, failure of justice has occurred. Section 465 of the Code of Criminal Procedure seeks to achieve a salutary principle. C

21. What would constitute 'failure to justice' came up for consideration before this Court in *State of Madhya Pradesh v. Bhooraji & Ors.* [(2001) 7 SCC 679], wherein, inter alia, it was held that : D

> "We conclude that the trial held by the Sessions Court reaching the judgment impugned before the High Court in appeal was conducted by a court of competent jurisdiction and the same cannot be erased merely on account of a procedural lapse, particularly when the same happened at a time when the law which held the field in the State of Madhya Pradesh was governed by the decision of the Full Bench of the Madhya Pradesh High Court." E F

In *Dr. M.C. Sulkunte v. State of Mysore* [AIR 1971 SC 508], this Court held :

> "It has been emphasized in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation." G

22. In *Central Bureau of Investigation v. V.K. Sehgal &* H

A *Anr.* [(1999) 8 SCC 501], it was held :

"**10.** A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court."

It was observed :

"**11.** In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure."

It does not appear that even any contention was raised in that behalf.

{See also *State of Haryana v. Ram Singh* [2002 (1) SCR 208]}. A

However, in view of the factual matrix obtaining herein, it is not necessary to delve deep into the said question as in this case the statutory requirements have been complied with.

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23. The Courts below have clearly noticed the supportive role Pargat Singh-I and Pargat Singh-II. They have proceeded on that basis. Whereas Pargat Singh-II was connected with the first occurrence, the appellant Pargat Singh-I was connected with the third occurrence with which we are concerned herein. C The courts below had not committed any mistake whatsoever in that behalf.

24. The fact that the injured persons were being removed to a hospital in a tractor trolley is not in dispute. It is also not in dispute that as a result of being hit by a shot fired by Nishan D Singh, the tractor dashed into the wall of Jagtar Singh's house and the got damaged. Sudagar Singh who was a Chowkidar was also injured in the incident.

25. Both the appellants herein had been named in the FIR. E They were tried together. Evidently, they came at the spot with a common intention. Both of them had weapon in their hands. The prosecution witnesses had to take the injured Dilbagh Singh to the hospital by arranging a mini bus. Whereas Baljit Singh died in the hospital, PW 4 Dilbagh Singh survived.

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26. The First Information Report was lodged at 8.30 p.m. by Subeg Singh. One First Information Report was lodged in respect of all the three incidents. Three murders, as noticed hereinbefore, took place one of after the other. Some other persons also received injuries. When three instances occurred G one after the other, keeping in view the fact that each had a link with the other, it is difficult for us to know that the appellants would be falsely implicated by Subeg Singh whose son was one of the deceaseds.

27. It has not been denied or disputed that Pargat Singh- H

A I and Nishan Singh had a motive to commit the offence.

It is true that Sudagar Singh had stated that he could not identify the assailants, but no reliance can be placed on the said statement that the death of Hardev Singh was caused by a gunshot injury is not denied by Sudagar Singh. He was a B prosecution witness. He was given up by the prosecution presumably on the basis that he had been won over.

Strangely, the Public Prosecutor did not confront him with his earlier statements. It demonstrates how poorly the C prosecution case was conducted.

28. Dilbagh Singh is an injured witness. He has given a complete account of the entire occurrence. We do not see any reason to disbelieve his testimony. He had been put to stringent cross examination. Even no suggestion was made to him that D he could not have witnessed the incidence. If it was within the knowledge of the defence that Dilbagh Singh was not in a position to speak about the occurrence, he should have been accosted therewith. He could have given an explanation. If his being carried to the hospital in an injured condition is accepted E and if furthermore it stands established that all injured persons were brought to the hospital together, it is difficult to accept the contention of the learned counsel that PW 4 Dilbagh Singh could not be present at the time when the occurrence took place. In his cross examination, Dilbagh Singh categorically stated that F he was fully conscious at the time of the death of Baljit Singh.

29. DW 2, Dr. Gurmanjit Rai who was examined on behalf of the defence in his deposition stated that he had examined Dilbagh Singh at 5.30 p.m on 2.7.1999 and to the said extent, he corroborated the statements PW1, Rishi Ram and PW2 Dr. G Ashok Chanana.

30. Furthermore, according to DW2, he examined Dilbagh Singh on 2.7.1999. How he could depose in regard to the condition of the patient as on 13th June, 1999 is not known. He declared the injury as grievous only after he received the report H

of the radiologist and that of the surgeon. His right upper limb function was found to have been impaired. A

31. Reliance has been placed on *Prem Sagar v. Dharambir & Ors.* [(2004) 1 SCC 113] by Mr. Datta to contend that Section 34 of the Indian Penal Code is not attracted. We are not in a position to agree with the said submission. Both Pargat Singh-I and Nishan Singh came together; at least one of them armed with a fire arm. One of them exhorted and another fired. It is accepted by the defence that at least one person was killed and two other were injured in the said firing. Evidently, more than one shot was fired. B C

32. The question is as to whether common intention was formed for commission of an offence or not and it depends upon the fact of each case.

It was in the factual scenario obtained therein, this court in *Prem Sagar* (Supra) opined that the accused was not proved to be linked in the manner so as to bring the applicability of Section 34 of the Indian Penal Code. The common intention of the accused persons was not found to be present therein, when the incident took place, in the backdrop of the facts of the said case. It was submitted that the court should be slow to interfere with a judgment of acquittal. {See *Suresh & Anr. v. State of U.P.* [(2001) 3 SCC 673] followed in *Rotash v. State of Rajasthan* [2006 (13) SCALE 186]}. D E

Reliance has also been placed on *State of Haryana v. Ram Singh* [(2002) 1 SCR 208] wherein this Court held : F

> "While it is true that the law is well settled in regard to the issue that in an appeal against conviction for the offence of murder Supreme Court would be rather slow to intervene in the event of there being a concurrent finding of fact but it is equally settled that in the event the finding, which suffers from the vice of perversity of any fundamental rules or even a definite procedural injustice going to the root of the prosecution case question of the Apex Court being G H

A slow in intervention would not arise."

We have herein proceeded on applying the principles laid down therein.

34. So far as the case of Rachhpal Singh is concerned, it B may be true that no independent witness was examined. But that by itself is not sufficient to disregard the statements of the prosecution witnesses totally.

PW3 Swaran Singh and PW 4 Dilbagh Singh were the eye-witnesses. Both the Ld. Trial Judge as also the High Court C considered their depositions in great details. No contention has been raised that the said findings are in any way perverse or not in conformity with the evidences or record.

35. One of the accused may be acquitted as the D prosecution witness might not have attributed any overt act to him. But it is well settled that acquittal of one accused itself would not lead to the conclusion that the entire prosecution case was false.

In *Sukhdev Yadav & Ors. v. State of Bihar* [(2001) 8 SCC E 86], this Court held :

> "It is now well-settled that the Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands F satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence."

It was further held by this Court while relying upon *appabhai & Anr. v. State of Gujarat* [1988 Supp.1 SCC 241], that G discrepancies which do not shake the basic version of the prosecution case may be discarded.

36. The deceased Resham Singh suffered as many as four injuries. The folllwing injuries have been shown in the autopsy report :

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1) "An oblique incised wound 4 x 1.2 cm with clotted blood was present on the front and right side of chest, 7.00 cm below and medical to right nipple at 4 O' clock position.

2) An oblique incised wound 4.3 x 1.00 cm with clotted blood was present on the left infra scapular region.

3) An oblique incised wound 3 x 1.2 cm with clotted blood was present on the back and left side of the chest, 7.00 cm below and medical to injury no.2.

4) A slashed incised wound 3.5 x 2.8 cm with clotted blood was present on the posterior lateral aspect of right wrist."

37. The injuries were inflicted on the vital parts of the body and some of them were sufficient in the ordinary course to cause death or likely to cause death, Part II of Section 304 of the Indian Penal Code shall have, thus, no application in this case. Rachhpal Singh might have been unarmed, but with a view to inflict injury on the deceased, he snatched the knife which was being carried by Pargat Singh-II. Dilbagh Singh saw the entire occurrence. He examined himself as PW 4. If a person snatches a weapon carried by someone else and brutally kills another, it cannot be said that he did not have any intention to cause death. Whether the accused had any intention to kill the deceased must be judged upon taking into consideration the fact situation obtaining in each case. {See *Harendra Nath Mishra & Ors.* v. *State of Bihar* [JT 2002 (10) SC 157] relying upon *Suresh (supra); Ramashish Yadav v. State of Bihar* [(1999) 8 SCC 555]; *Gajjan Singh v. State of Punjab and Pandurang* [(1976) 3 SCC 391]; *Tukia and Bhillia v. The State of Hyderabad* [(1955) 1 SCR 1083]}. [See also *Rotash* (Supra)]

The matter has been considered in some details by Vivian Bose J, in *Virsa Singh v. State of Punjab* [AIR 1958 SC 465] wherein it was opined :

"In considering whether the intention was to inflict the injury

found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convict, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense; the kind of enquiry that 'twelve good men and true' could readily appreciate and understand."

{See also *Hari Yadav v. State of Bihar* [2007 (14) SCALE 656]}

38. For the reasons above mentioned, there is no merit in these appeals, which are hereby dismissed.

S.K.S. Appeals dismissed.