
accordance with law and shall not be dismissed only on the ground of limitation. It is further clarified that it will be open to the council to proceed against the petitioners in accordance with law. There is no order as to costs.

R.N.R.

Before Jawahar Lal Gupta and M.S. Gill, JJ.

SANTOKH SINGH,—Appellant

versus

THE STATE OF PUNJAB,—Respondent

Murder Reference No. 1 of 1999 and

Criminal Appeal No. 43/DB of 1999

22nd February, 2000

Indian Penal Code, 1860—Ss. 302, 307 and 458—Arms Act, 1959—Ss. 2(1)(i), 7 and 27—Arms Rules, 1962—Rl.3, Schedule I—Trial Court awarding death penalty, imprisonment for life and fine to the accused for killing wife and injuring daughter of the complainant—No motive to harm the victims—Death penalty u/s 27 (3) of the 1959 Act—Recovery of 'bolt action rifle' which was used for the crime—'Prohibited arm'—Defined in S. 2(1)(i)—Bolt action rifle would not fall within the definition of a 'prohibited arm'—Provisions of S. 27(3) cannot be attracted—Appeal u/s 27 accepted—Sentence of death commuted to that of life imprisonment.

Held, that all human actions do not follow a definite pattern. The response of each individual can be different. It is governed by various imponderables. There is no fixed rule in this behalf. It is not unknown that the wife and child may be dearer to a person than his ownself. A harm caused to either or both of them would hurt the person more than any injury to his own body. The appellant may have thought it better to hurt Surinder Singh by killing or harming his wife and daughter. The evidence on record clearly establishes that he had used his service rifle to kill Swaran Kaur and to injure Kiranjit Kaur. Even if we assume that he had no motive to harm either of them, the fact remains that he has done so.

(Para 40)

Further held, that minor contradictions can occur when the statements of witnesses are recorded after a sufficiently long lapse of

time. Still further, these cannot form the basis for rejecting the prosecution story unless it is shown that the basic facts proving the charge are not established. In a case where the charge has been clearly brought home to the accused, small contradictions on peripheral facts which have no real bearing on the commitment of the crime can normally have no effect on the end result of the case.

(Para 46)

Further held, that a 'prohibited' arm has been defined in Section 2(1)(i) of the Arms Act, 1959. It is a weapon which on application of pressure to the trigger discharges missiles continuously till the pressure is removed or the magazine gets emptied. In the present case, the weapon was a 'bolt action rifle'. There is nothing on record to suggest that the missiles are discharged continuously on application of pressure to the trigger. If the weapon has to be bolted every time a shot is fired, it would not fall within the definition of a 'prohibited arm'.

(Para 56)

Further held, that a perusal of Rule 3 of the Arms Rules, 1962 shows that the Schedule classifies the arms into various categories like prohibited arms, semi automatic arms and the bolt action arms. However, an arm can be considered as 'prohibited' only when it answers the description as given in Section 2(1)(i) or is an arm which has been specifically notified by the Central Government in the official Gazette to be a 'prohibited arm'. In the present case, it has not been shown that a bolt action 7.62 mm rifle has been notified as a 'prohibited arm' by the Central Government through a notification in the official Gazette. Thus, the provisions of Section 27(3) cannot be attracted. The appeal of the appellant in so far as the conviction and sentence u/s 27 are concerned has to be accepted.

(Para 59 and 60)

Further held, that it is true that the appellant had killed a person who had caused him no harm and given injuries to a young girl. Yet, it is not a case which may be described as the "rarest of the rare" ones. Taking the facts commulatively, we are unable to sustain the award of death penalty.

(Para 62)

Code of Criminal Procedure, 1973—S. 357—Imposition of fine on accused by Courts—The amount of fine recovered from the accused can be applied in the payment of compensation to the victim for any

loss or injury caused by the offence—Amount of such fine has to be a realistic sum and should be adequate keeping in view the economic position of the accused—It should have a rational relationship to the loss.

Held, that Section 357 of the code of Criminal Procedure clearly permits the court to direct the payment of a reasonable compensation to the victim. For this purpose, the fine that the court may impose has to be a realistic sum. It should be adequate. The accused should have the means to pay it. The economic position of the criminal, his family and other relevant factors have to be kept in view. At the same time, the compensation should be calculated to really compensate and not be merely symbolic. It should have a reasonable relationship with the factual position.

(Para 69)

R.S. Ghai, Sr. Advocate with Vinod Ghai, Advocate, *for the appellant*.

S.S. Dhaliwal, DAG, Punjab, D.D. Sharma, Advocate, *for the complainant*.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Santokh Singh has been convicted for offences punishable under Sections 302, 307, 458 IPC and 27 of the Arms Act, 1959. The trial Court has proposed the penalties of death, imprisonment for life and fine for the different offences. We have Murder Reference No. 1 of 1999. The accused has filed Criminal Appeal No. 43-DB of 1999. Both the cases have been heard together.

(2) The prosecution story has been revealed by Surinder Singh (PW3). He is the brother of the appellant. His statement Ex. PM was recorded by Assistant Sub-Inspector Gurbans Singh (PW14) on 23rd September, 1996 at 6.30 AM. On the basis of this statement, the First Information Report (Ex. PM/2) was recorded at Police Station Kotwali, Barnala at 7.10 AM. The occurrence is alleged to have taken place at 3.30 AM on 23rd September, 1996, in village Jhaloor at the residence of Surinder Singh. The Police Station, Barnala is at a distance of 12 kms. from the village. The special report had reached the Sub-Divisional Judicial Magistrate, Barnala on the same day viz. 23rd September, 1996 at 3.40 PM through constable Barinder Singh (PW12).

(3) According to the complainant, he has three brothers and three Sisters. One of his brothers—Mohinder Singh, aged 42 years, was

unmarried. He was residing with the appellant—Santokh Singh. About 4-5 months prior to the occurrence, Bant Singh, a resident of the village had got the 'kareva' marriage of Mohinder Singh performed with Manjit Kaur of village Longowal. He had done so at the instance of the complainant. Santokh Singh had opposed it. As the marriage had been performed, the appellant was nursing a grudge. On 23rd September, 1996, the complainant and his wife-Swaran Kaur were sleeping in a verandah in their house in village Jhaloor. His son—Baljit Singh, daughter—Kiranjit Kaur and brother-in-law (wife's brother)—Dhanna Singh were sleeping in a room. At about 3.30 AM, a man climbed over the wall and jumped into the house. The complainant and his wife had woken up and switched on the light. The complainant saw his brother—Santokh Singh (the present appellant) standing in the door of the verandah. He was working as a Special Police Officer in the Police Department and had the service rifle in his hand. He raised a lalkara and fired a shot which hit his wife "on her right arm" and she fell on the ground with her face downwards. He fired another shot at the left side on the back of his wife while she was lying on the ground. The bullet passed through her breast on the right side. The son, the daughter and brother-in-law had also got up. The daughter "ran towards the verandah". He tried to stop her. Santokh Singh fired a shot at her which hit her on her left arm and she fell down. Baljit Singh—the complainant's son had picked up a wooden rafter and given a blow "on the head of Santokh Singh from behind....." He fell down and he fired another shot towards his son. It was "misfire". The son gave another blow with the rafter on the head of Santokh Singh. The complainant and his brother-in-law tried to over-power Santokh Singh when he fired another shot which passed over their heads. They raised noise. Then Santokh Singh alongwith his rifle fled away from the spot. Swaran Kaur had died on the spot. The daughter had sustained injuries. People gathered. Bant Singh arranged a vehicle and took the complainant's daughter—Kiranjit Kaur to the Hospital at Barnala for treatment. The complainant alongwith Balwant Singh—Sarpanch was going to the Police Station when he met Assistant Sub-Inspector Gurbans Singh and made the statement. The inquest report was prepared. The body was sent for post-mortem examination.

(4) The prosecution has rested its case on the medical and oral evidence. The medical evidence consists primarily of the statements of Dr. Narsi Ram (PW1) and Dr. Bhalinder Singh (PW2). Dr. Narsi Ram was posted as the Emergency Medical Officer at the Civil Hospital Barnala. He stated that on 23rd September, 1996, Santokh Singh (the present appellant) was brought to the Hospital by the Police. He was examined at about 7.20 PM. He had found the following injuries on

his person :—

1. Lacerated wound 6 cm x 1 cm x muscle deep on the right side of the scalp. It was 7 cm from right pinna and 16 cm from right eye-brow, it was horizontal in position and clotted blood was present.
2. Lacerated wound 5.5 cm x 1 cm x muscle deep on the right side of the scalp. It was 2 cm from midline and 4.5 cm from right eye brow. Clotted blood was present. It was verticle in direction.
3. Lacerated wound 7 cm x 1 cm x muscle deep on the right side of the scalp. It was 8 cm from pinna and 12 cm from right eye brow. Clotted blood was present. It was verticle in direction. Injuries No. 2 and 3 were in the same line.
4. Reddish Contusion 16 cm x 1.5 cm on the back of right chest. It was just right to the posterior midline and 12 cm from the base of neck. It was oblique in direction.

(5) The injuries were simple. The probable duration was within 24 hours. These were caused with a blunt weapon. Injury Nos. 2 and 3 could be the result of a single blow. The injuries could have been caused with a small wooden plank. The possibility of injury No. 4 having been caused by a fall on hard surface could not be ruled out. The injured was admitted in the Hospital. He was, however, allowed to be produced in court. He was discharged on 26th September, 1996 at 5.20 PM. In cross-examination, he denied the suggestion that the injuries could not have been caused with the wooden raftor Ex. P1.

(6) Dr. Bhalinder Singh (PW2) was posted as Medical Officer, Civil Hospital, Barnala. On 23rd September, 1996, he had conducted the medico-legal examination of Kiranjit Kaur at about 4.15 AM. He had found the following two injuries on her person :—

1. Round lacerated wound $\frac{1}{2}$ cm on the anterior aspect of left upper arm $2\frac{1}{2}$ " above the elbow joint. Blackening was present round the wound. Margins of wound were inverted. On probing I detected continuous track going posteriorly and downwards. Fresh bleeding was present. X-ray was advised.
2. A lacerated would 0.3 cm X 5 cm on the posterial lateral part of left upper arm just lateral to lateral epicondyl. Margins of the wound were everted. Fresh bleeding was present. X-ray advised.

(7) The injuries were grievous and had been caused with a fire-arm. The duration was within six hours. He further deposed that the patient had arrived in the Hospital at about 4 AM. Injury No. 1 was the wound of entry while the second injury was the exit wound. He had sent a message Ex. PH to the Police Station at about 4 AM. After the arrival of the police, he had opined that Kiranjit Kaur was fit to make her statement at about 4 PM.

(8) At about 3.30 PM on the same day, Dr. Bhalinder Singh had conducted the post-mortem examination on the body of Swaran Kaur. The length of the body was 5'-5". Average built. Rigor mortis was present. The shirt was "ragged and torn". He had found the following injuries :—

1. ½ cm erratic and circuitous lacerated wound on the back with tattooed skin around it. It was 18 cm away from the midline of right couvital foss and 32 cm away from upper border of right shoulder. The margins were inverted.
2. 11 X 8 cm raged and torn lacerated wound on front of right chest 4 cm just below the right nipple of right breast.
3. Lacerated wound 12 cm X 8 cm on the anterio medial side at right upper arm just above the elbow joint fold.
4. A raged and torn lacerated wound 13 cm X 0.5 cm on the anterio lateral part of right upper arm just above the elbow joint fold. It was 4 cm away from injury No. 3. Skin between the last 2 wounds was normal and intact. It was 12 cm X 4 cm in area.

(9) On dissection, 8th rib on the posterior right side was found broken and missing. The 5th, 6th and 7th ribs on the anterior 'chest part' were also found broken and missing. The Inter-costal cartilage and wall were also missing. The pleurae of right lower lobe of the right lung was blasted and missing. Right lobe of the liver had burst. Right kidney was burst with the vessels. The other organs were normal and healthy. The death was due to shock and haemorrhage. In cross examination, he stated that all the four injuries "were the result of single shot". He also gave his opinion with regard to the distance etc. from which the assailant may have given injuries to the deceased and her daughter. He affirmed that Bant Singh was attending to Kiranjit Kaur in the Hospital.

(10) The ocular evidence consists of the statements of Surinder Singh (PW3) and Kiranjit Kaur (PW4). Surinder Singh reiterated the

statement made by him before Assistant Sub Inspector—Gurbans Singh. He further stated that after his statement had been recorded, he had accompanied the police to the place of occurrence. The Thanedar had inspected the spot and lifted the blood-stained earth from under the dead body of his wife. He had “also lifted four empties and one missed cartridge.....” Rough site plan Ex. PR was prepared. The wooden rafter used by his son was also taken into possession. Scooter No. PB-13/4140 belonging to the accused—Santokh Singh was “taken into possession from outside of my house from street.” In cross-examination, he asserted that all the four brothers had inherited the property of their mother. He clarified that the mother had suffered a decree in favour of his three brothers. Later on, his brothers had on the intervention of the Panchayat suffered a decree regarding the land in his favour. He also denied the suggestion that about 15 years back he had been picked up by the police as he was suspected in some dacoity case or that he was got released by the Panchayat. He denied the suggestion that ASI Chand Singh who had witnessed certain memos is the son of his wife’s father’s sister. He further stated that his brother—Dhanna Singh had come to his house at about 4.00 PM on 22nd September, 1996. No liquor was served to Dhanna Singh. He asserted that he does not “consume liquor at all”. He admitted having seen his brother in police custody when he was brought to his house “at about 8-9 AM on 23rd September, 1996.....” He further stated that there were many hole marks on the walls of his house caused by shots. He denied the suggestion that his wife was not hit in the verandah or some unidentified person who may be inimical towards him had caused the injuries. He also denied the suggestion that he had named the accused out of suspicion and that the accused had received injuries on account of the beating given to him by the police during interrogation. In response to another question, he stated that—“I cannot deny the suggestion that my statement Ex. PM was recorded at 2 PM”.

(11) PW4 Kiranjit Kaur states that she was sleeping. Her brother—Baljit Singh and maternal uncle—Dhanna Singh were also in the same room. At about 3.30 AM, she heard the fire shot. All got up. There was another shot. She immediately rushed towards the verandah. There she saw the accused with a rifle. He fired at her. She was hit on the left arm. She fell down. Her mother was already lying on the ground after having received a fire shot. Her brother—Baljit Singh had managed to catch hold of a wooden rafter which he hit on the head of the accused as a result of which he fell down. The accused had fired at her brother as also at his father and uncle. However, they were not hit. In cross-examination, she stated that her father used to go to Sangrur for duty. He used to travel upto Sherpur on a scooter and

then take a bus. Her maternal uncle had come to the house in the evening. Her father had also come at about 4-5 PM. She admitted that ASI Chand Singh was related to the family. She was unconscious when she was removed to the Hospital. When she regained consciousness, Bant Singh and his wife were present there. She denied the suggestion that the accused had not caused any injury to her or that she was deposing falsely.

(12) HC Manjit Singh (PW5) and Constable Sukhdev Singh (PW6) appeared to tender the affidavits Exhibits PU and PV.

(13) Karamjit Singh (PW7) had prepared the site plan Ex. PZ. He denied the suggestion that he had prepared the plan without visiting the site.

(14) PW8 Constable Sukhdev Singh tendered affidavit Ex. PAA in court.

(15) ASI Jagdip Singh (PW9) had arrested Santokh Singh from the tubewell room in his field. He had also taken into possession the 7.62 bore government rifle which was lying in the cot by the side of the accused. It was sealed at the spot. A bandolier containing 45 cartridges was also recovered from the same spot. These were taken into possession,—*vide* recovery memo Ex. PBB alongwith the rifle. In cross-examination, he stated that the accused was apprehended at about 5.20 PM. He stated that the tubewell room from where the accused was arrested is about 3-4 kms. from his house The place of occurrence is at a distance of half a furlong from the house of the accused. He denied the suggestion that the accused was not arrested in his presence or that he had deposed falsely.

(16) HC Paramjit Singh (PW10) produced the order dated 14th July, 1993 by which the appellant was appointed as a Special Police Officer. A photo copy of the order was retained on the file as Ex.PDD. He also produced the original order dated 31st January, 1996 by which the appellant had been transferred from Police Station Bhadaur to Police Station Mehal Kalan. In cross examination, he denied the suggestion that he had deposed falsely.

(17) PW11 Sukhjot Singh was working as the Registration Clerk in the office of the District Transport Officer, Sangrur. He had produced the register which indicated that Scooter No. PB13/4140 was registered in the name of Santokh Singh—the present appellant. It had been registered on 28th September, 1989. The photo copy of the registration certificate is Ex.PFF.

(18) Constable Barinder Singh (PW12) had handed over the special report to the Magistrate at Barnala. He stated that the distance from the police station was 2kms.

(19) Gajjan Singh (PW13) was a member of the Home Guards. He deposed that on the day of occurrence, the appellant and Chamkaur Singh were on guard duty at the Electricity Grid at Mehal Kalan. They had been provided with 3 x 3 bore rifles and 50 live Cartridges each. He further stated that the appellant was on duty "from 12.00 to 3.00 night. I was Guard Incharge. At about 1.30 in the night when I checked up, Santokh Singh was not found on duty. When he was not available, we phoned up Mehal Kalan Police Station about the absence of Santokh Singh from duty". In cross examination, he stated that he was on guard duty at the Grid since 28th April, 1996. Santokh Singh had come there about 2-3 months prior to the occurrence. He denied the suggestion that Santokh Singh was not absent from duty or that he had been picked up by the police in the morning at about 5 A.M. he also denied the suggestion that he was deposing falsely.

(20) ASI Gurbans Singh (PW14) was the Investigating Officer. He deposed that on 23rd September, 1996, he was posted as SHO, Sadar Barnala Police Station. When he was present at Sekha road in the area of Barnala, Surinder Singh- the complainant had met him alongwith the Sarpanch. He had recorded the statement Ex. PM and made the endorsement Ex. PM/1. The statement was sent through Constable Sharanjit Singh to Police Station Kotwali, Barnala for the registration of the case. FIR Ex. PM/2 was recorded by ASI Swaran Singh. He had gone to the spot with the complainant. He had found the dead body of Swaran Kaur with gun shot injuries. It was identified by Mohinder Singh. He had picked up the blood-stained earth. 4 used cartridges and 1 missing cartridge of 7.62 bore were lying at the spot. These were taken into possession. Dead body was sent for post-mortem examination through Constable Surinder Singh with request Ex.PL/1 to Civil Hospital, Barnala. He had prepared rough site plan of the place of occurrence Ex. PR. The wooden raftor was taken into possession,—*vide* memo Ex. PQ. Scooter No. PB13/4140 was taken into possession —*vide* memo Ex. PS. After that he had gone to the Civil Hospital, Barnala where Kiranjit Kaur was lying admitted. After obtaining the opinion of the doctor, her statement was recorded. He also stated that Balwant Singh had told him that the accused was sleeping "on his motor". On raid, he had found the accused and arrested him. The site plan of the place of arrest is Ex.PW.14/2. The rifle 7.62 bore with live cartridges was taken into possession *vide* memo Ex. PBB. The rifle Ex.P14 and cartridges Ex. P15 to P.59 were produced by him. The accused had injury on his head. It was bleeding. He was taken for

medical examination and treatment to the Civil Hospital, Barnala. The registration book of the Scooter Ex.PFF was taken into possession. In cross examination, he admitted that in the application which had been submitted by him to have a report regarding the fitness of Kiranjit Kaur to make a statement, the FIR number had not been recorded. Columns 22 to 24 in the inquest report were not filled in. There were certain marks of rifle shots on the walls. These were, however, not shown in the site plan. He denied the suggestion that the accused was taken into custody from the place of his posting "on suspicion". He also denied the suggestion that the statement of Surinder Singh was recorded at 2 pm or that the accused had been falsely implicated and that the recovery of the rifle and the cartridges had not been effected from him.

(21) Moharrir HC Balwinder Singh (PW15) was posted in Police Station, Mehal kalan. He stated that Santokh Singh - the accused had been transferred to Police Station Mehal Kalan on February 3, 1996. The Daily Diary Report No. 20 had been recorded in the register. True copy is Ex. PHH. A 7.62 bore rifle bearing No. V4517 alongwith 50 rounds was issued to him. A photo copy of the relevant entry in the Arms and Ammunition Register is Ex.PKK. On 23rd September, 1996, a telephone message was received from Punjab Home Guard Gajjan Singh about the absence of Santokh Singh alongwith his rifle and ammunition. Daily Diary report was recorded at No. 40 on the same day. True copy is Ex.PLL. In cross examination, he admitted that the Arms and Ammunition Register is not page-marked. He denied the suggestion that in fact a 303 bore rifle was given to Santokh Singh or that the entry regarding the issue of rifle 7.62 was made later on.

(22) The report from the Forensic Science Laboratory Ex.PNN, the report of the Serologist Ex. POO and the report of the Chemical Examiner Ex.PMM were also tendered in evidence.

(23) Baljit Singh, Dhanna Singh, Constable Sharanjit Singh, ASI Swaran Singh and SI Sarabjit Rai were given up as unnecessary. Mohinder Singh Son of Lal Singh, Mohinder Singh Son of Santa Singh and Bant Singh were given up as having been won over.

(24) The accused was examined under Section 313. He denied the allegations. He asserted that he had been given a 3 x 3 rifle and not the 7.62 bore rifle.

(25) This is the entire evidence

(26) Mr. R.S. Ghai, learned counsel for the appellant contended that the appellant had no motive to kill Swaran Kaur or to injure

Kiranjit Kaur. The story as propounded by the prosecution was improbable and unnatural. There were contradictions in the testimony of the witnesses. Thus, the conviction and the sentence awarded to the appellant could not be sustained. The claim made on behalf of the appellant was controverted by Mr. S.S. Dhaliwal, DAG, Punjab. Mr. D.D. Sharma, counsel for the complainant also made a prayer for the award of compensation.

(27) The eye witness account has been given by Surinder Singh (PW3) and his daughter-Kiranjit Kaur (PW4). Both have stated that the occurrence had taken place at 3.30 a.m. Kiranjit is an injured witness. She was examined by Dr. Bhalinder Singh (PW2). He has stated that she had reached the Hospital at 4 a.m. Thereupon, he had sent a message Ex.PH to the Police Station "at about 4 a.m. on the same day". Kiranjit was examined by the doctor at 4.15 a.m. The receipt of the message from the Hospital in the Police Station is proved on record. In fact, ASI Gurbans Singh (PW14) admits having "collected ruqa Ex.PH regarding admission of Kiranjit Kaur in the Hospital from the Police Station". Thus, it can be safely said that the alleged occurrence had taken place at 3.30 a.m. as alleged by the prosecution. Secondly, it deserves notice that the appellant-Santokh Singh was not a stranger to the witnesses. He is the brother of Surinder Singh (PW3) and the uncle of Kiranjit Kaur (PW4). There is not even a remote possibility of their making a mistake in the identification. Added to this is the fact that Scooter No. PB13/4140 was taken into possession from outside the house of Surinder Singh,—*vide* memo Ex.PS. A perusal of the memorandum shows that even the registration certificate had been taken into possession on 23rd September 1996. The extract from the registration book is Ex.PFF. The vehicle is clearly registered in the name of Santokh Singh the present appellant. How did the scooter of the appellant reach the house of Surinder Singh? The recovery of the scooter is a clear pointer to the presence of the appellant at the house of the complainant.

(28) It deserves notice that Arms and Ammunition Register was produced before the court. The extract is at Ex.PKK. A perusal of this document shows that Special Police Officer No. 1149 Santokh Singh had been given a rifle bearing No, V4517. 50 cartridges had also been given. The rifle was 7.62 bore. The entry appears to have been signed by the appellant in Punjabi. The empties and the missing cartridge which could be used in a 7.62 bore rifle were recovered from the place of occurrence. 45 cartridges and 7.62 bore rifle were taken into possession by the Investigating Officer-ASI Gurbans Singh at the time of arresting the appellant. The arm and the ammunition were taken into possession,—*vide* memo Ex.PBB.

(29) A perusal of the evidence shows that 50 cartridges had been issued to the appellant. 4 empties and a missing cartridge were recovered from the place of occurrence. 45 cartridges were found at the place where the appellant was arrested. The rifle was also recovered at that time. The oral testimony of the witnesses is duly corroborated by the documentary evidence.

(30) To cap it all, the medical and other evidence on record shows that the injured had suffered gun shot injuries. The empties had been fired from the gun recovered from the appellant. The injuries had been caused from a close range. There was burning and tattooing in case of Swaran Kaur. Blackening was noticed in respect of the injury to Kiranjit Kaur.

(31) All these factors form a chain to inculcate the appellant. The facts and circumstances as noticed above prove the presence of the appellant and the perpetration of the crime by him.

(32) Mr. Ghai contended that the appellant had no motive to kill Swaran Kaur or to injure Kiranjit Kaur. Is it so ?

(33) The earliest version of the incident is contained in the statement made by Surinder Singh (PW3) before ASI Gurbans Singh (PW14). This statement is Ex.PM on the record. It was on the basis of this statement that the FIR Ex.PM/2 was recorded. In this statement, Surinder Singh had clearly stated that his brother-Mohinder Singh was staying with the appellant-Santokh Singh. He was 42 years of age and was unmarried. About 4-5 months prior to the occurrence, Bant Singh had got a kareva marriage performed. This was done at his asking. The appellant had not approved of this marriage and had a grudge against him.

(34) Surinder Singh reiterated this position when he appeared as a witness in court. He had denied the suggestion that Mohinder Singh had not gone through a kareva marriage or that he was not residing with Santokh Singh. Thus, it appears safe to hold that the marriage of Mohinder Singh to Manjit Kaur is proved. Nothing else was brought out in the cross examination which may indicate that in fact there was no marriage of Mohinder Singh and, thus, there was no motive for the appellant to harm Surinder Singh.

(35) The question still remains—How was Santokh Singh affected by the marriage ?

(36) The case of prosecution appears to be that after marriage, Mohinder Singh would have got children and that his land would have gone to them instead of Santokh Singh with whom he was staying. The statement of Surinder Singh does give a clear indication in this behalf.

(37) Mr. Ghai submitted that Mohinder Singh was not produced. Even Bant Singh who is alleged to have arranged the marriage was given up as having been won over. Thus, it cannot be said that the marriage has been proved.

(38) It is true that Bant Singh and Mohinder Singh were given up as having been won over. It is the admitted position that Mohinder Singh and the appellant are brothers. For obvious reasons, the brother would be dearer to Mohinder Singh than his brother's wife-Swaran Kaur. It is not difficult to imagine that he may have developed sympathy for his brother though he was the assailant of his brother's wife. Similarly, even Bant Singh may have been persuaded. Yet, we find no reason to disbelieve Surinder Singh when he asserts that Mohinder Singh had entered into a kareva marriage with Manjit Kaur and that Santokh Singh had not approved of it.

(39) Mr. Ghai contended that even if the motive is assumed to have been proved, the appellant would have had a reason to harm Surinder Singh rather than his wife or child.

(40) All human actions do not follow a definite pattern. The response of each individual can be different. It is governed by various imponderables. There is no fixed rule in this behalf. It is not unknown that the wife and child may be dearer to a person than his own self. A harm caused to either or both of them would hurt the person more than any injury to his own body. Santokh Singh may have thought it better to hurt Surinder Singh by killing or harming his wife and daughter. The evidence on record clearly establishes that he had used his service rifle to kill Swaran Kaur and to injure Kiranjit Kaur. Even if we assume that he had no motive to harm either of them, the fact remains that he has done so.

(41) Mr. Ghai contended that the oral testimony is clearly belied by the medical evidence. He pointed out that there was burning and tattooing in case of Swaran Kaur. There was blackening of the injury to Kiranjit Kaur. The shirt of the deceased was "rented". It had large tears. Thus, there was some struggle before the gun was fired. However,

the prosecution had said nothing in this behalf. It can, thus, be assumed that the prosecution is withholding the truth.

(42) We are unable to accept this contention. A perusal of the medical evidence shows that injury No. 1 has a half cm lacerated wound. Injury Nos. 2, 3 and 4 are large lacerated wounds of the size of 11x8 cms, 12x8 cms and 13 cms x 1/2 cms. It is clear that the wound of injury was small. However, the exit wound was very large. The tears in the shirt could be the direct result of the injuries suffered by the deceased. We cannot lose sight of the fact that 4 ribs were found to have been broken. These were missing. Where did these ribs go? Obviously, they had pierced through the flesh and passed through the shirt. The resultant tears in the shirt were a natural consequence. The tears in the shirt do not belie oral testimony. Still further, it is also clear that the shots were not fired from a far off place. The whole incident had occurred in the 'verandah'. Blanckening, burning and tattooing is clearly in consonance with the oral testimony.

(43) Mr. Ghai contended that the boundary wall was alleged to be 8 feet high. It would be impossible for a person with a rifle to climb up the wall and to enter the house.

(44) We cannot accept this contention. In the recovery memo Ex. PS, it has been noted that the accused had parked his scooter by the side of the wall. There is a clear suggestion that he had climbed up the wall by standing on the scooter. However, even if this is overlooked, it is not difficult to imagine that a young man would be in a position to scale a wall which is only 8 feet high. We cannot forget that the appellant was posted as a Special Police Officer. These persons are employed and trained to provide security to individuals and to guard the property. Climbing an 8 feet high wall would be no tall order for such a person.

(45) Mr. Ghai submitted that there were various contradictions in the statements of the witnesses. In particular, the counsel pointed out that according to ASI Jagdip Singh (PW 9), the appellant was arrested at about 5.20 P.M. However, the testimony of PW3 showed that he had seen his brother in police custody at about 8-9 A.M. on September 23, 1996. On this basis, it was contended that the testimony of both the witnesses should be rejected.

(46) We are unable to accept this contention. Minor contradictions can occur when the statements of witnesses are recorded after a sufficiently long lapse of time. Still further, these cannot form the basis for rejecting the prosecution story unless it is shown that the basic

facts proving the charge are not established. In a case where the charge has been clearly brought home to the accused, small contradictions on peripheral facts which have no real bearing on the commitment of the crime can normally have no effect on the end result of the case. In the present case, a minor contradiction on the point of time at which the accused was arrested is really of no consequence in so far as his presence at the place of occurrence and the perpetration of the crime are concerned.

(47) Mr. Ghai also contended that the FIR had not been recorded in the morning. He pointed out that in the various documents like Exhibits PG, PH, PJ and PK, the time had not been mentioned. Thus, the counsel contended that the prosecution appears to have taken time to make out a story and to implicate the appellant.

(48) Even this contention is totally devoid of substance. It is clearly established on the record by the oral as well as documentary evidence that Kiranjit Kaur had reached the Hospital at 4 AM. She had been medically examined by the Doctor at 4.50 AM. Information regarding the fact that Kiranjit Kaur was injured and that she had reached the Hospital had been communicated to the Police Station. Thus, the time of occurrence is clearly proved. Still further, Kiranjit Kaur is an injured witness. She is the niece of the appellant. She is a sufficiently grown up girl. She could make no mistake in identifying her uncle (father's brother). She had categorically stated that the occurrence had taken place at 3.30 AM. She has also stated that her father-Surinder Singh (PW3) was present. Still further, it is also borne out from the testimony of various witnesses that she had been taken to the Hospital by Bant Singh. Kiranjit Kaur (PW4) has categorically stated that when she regained consciousness in the Hospital, Bant Singh and his wife were present. It is, thus, clear that Kiranjit Kaur was being attended to by Bant Singh and his wife in the Hospital. Surely, the father would have not stayed away unless he was really held up in assisting the police at the place of occurrence. In any event, Surinder Singh (PW3) and ASI Gurbans Singh (PW 14) have categorically stated that the recording of statement Ex. PM had been concluded at 6.30 AM. It was sent to the Police Station through a constable and that he had "returned with the FIR at the spot at 8.30 AM. We find no reason to suspect the correctness of this statement.

(49) Another fact which militates against the appellant are the injuries as found on his person. In the FIR as well as at the trial, it has been asserted by the prosecution that Baljit Singh had inflicted two blows on the head of the appellant with a wooden raftor. Still further, it is the admitted position that the appellant was medically examined

by Dr. Narsi Ram (PW1). 3 lacerated wounds and a reddish contusion were found. Injury No. 1 was on the right side of the scalp. It was 6 cm X 1cm. Injury Nos. 2 and 3 were also lacerated wounds. These were in the same line. These could be the result of a single blow with a blunt weapon. The fourth injury was a reddish contusion which could be the result of fall on a hard surface. These injuries fully corroborate the sequence of events given by the two eye witnesses viz. PWs 3 and 4 Mr. Ghai pointed out that Baljit Singh who was alleged to have been inflicted by the injuries was not produced. It is undoubtedly so. However, he could have added nothing new. The failure to produce him does not mean that the ocular testimony of the other witnesses has to be ignored. In fact, these two injuries are a clear proof of the appellant's presence at the place of occurrence. Still further, these injuries were sought to be explained away by saying that police had beaten the appellant during interrogation. The suggestion was apparently an argument of desperation.

(50) It may also be noticed that while cross examining Gajjan Singh (PW 13), it was suggested to the witness that the appellant was "picked up by the police in the morning at about 5.00 AM". This is clearly indicative of the fact that the police had been informed prior to that about the occurrence.

(51) Mr. Ghai also pointed out that according to Gajjan Singh (PW 13), a .303 rifle had been issued to the appellant. Thus, he could not be the assailant.

(52) Even this contention is wholly misconceived. The correct position has been disclosed by Moharrir Head Constable Balwinder Singh (PW 15). He has produced the Arms and Ammunition Register. The extract from the Register is Ex. PKK. It clearly shows that a 7.62 bore rifle bearing No. V 4517 had been issued to the appellant. This was the weapon which was actually recovered. The report of the Forensic Science Laboratory shows that this gun had been used.

(53) Lastly, it was contended by Mr. Ghai that the trial court has erred in holding that the appellant's case is covered by Section 27(3) of the Arms Act, 1959. He submitted that the punishment of death awarded under Section 27 (3) cannot be sustained. Mr. Dhaliwal on the other hand contended that the appellant was found in possession of a prohibited arm and as such, he has been rightly convicted.

(54) According to the information recorded in the Arms and Ammunition Register Ex. PKK, a 7.62 rifle No. V 4517 had been issued

to the appellant. The weapon was examined at the Forensic Science Laboratory. According to the report given by the Forensic Science Laboratory which is on record as Ex. PNN, it was a "bolt action rifle". This was the rifle which was used for the crime in the instant case. Is the case covered under Section 27(3) so as to attract the extreme penalty of death ?

The provision provides as under :—

"27 (3) whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with death."

(55) This provision can be attracted only when a person (i) uses a prohibited arm or prohibited ammunition or ; (ii) does any act prohibited by Section 7 and ; (iii) such use or act results in the death of a person.

(56) In the present case, it was contended by Mr. Dhaliwal that the appellant had used a prohibited arm. The use of arm had resulted in the death of Swaran Kaur. Thus, the provisions of Section 27(3) had been rightly applied. We cannot accept this contention. A 'prohibited' arm has been defined in Section 2(1) (i) of the Act. It is a weapon which on application of pressure to the trigger discharges missiles continuously till the pressure is removed or the magazine gets emptied. In the present case, the weapon was a bolt action rifle. There is nothing on record to suggest that the missiles are discharged continuously on application of pressure to the trigger. If the weapon has to be bolted every time a shot is fired, it would not fall within the definition of a 'prohibited arm'.

(57) Mr. Dhaliwal referred to the provisions in Schedule I to the Arms Rules 1962 and contended that under Item 1(c) even a bolt action or semi automatic rifle would fall within the definition of a 'prohibited arm'.

(58) We cannot accept this contention. Schedule I has been framed under Rule 3. This rule contemplates the categorisation of arms and ammunition. It reads as under :—

"3 Classification of arms and ammunition —For the purpose of the Act and these rules, 'arms' or 'ammunition' shall be of the categories specified in columns 2 and 3 respectively of Schedule 1 and references to any category of arms or ammunition in these rules shall be construed accordingly."

The Schedule provides as under :—

Category	Arms	Ammunition
1. (a)	Prohibited arms as defined in section 2(1)(i) and such other arms as the Central Government may, by notification in the Official Gazette specify to be prohibited arms.	Prohibited ammunition as defined in Section 2(1)(h) and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition.
(b)	Semi-automatic fire-arms other than those included in categories 1(c) and III(a), smoothbore guns having barrel of less than 29" in length.	Ammunition for arms of category 1(c).
3.	Bolt action or semi-automatic rifles of "303" or 7.62 mm. bore or any other bore which can chamber and fire service ammunition or "303" or 7.62 mm, calibre; muskets, of 410 "bore or any other bore which can fire. 410" musket ammunition; pistols, revolvers or carbines of any bore which can chamber and fire "380" or "455" rimmed cartridges or service 9 mm, or ".45" rimless cartridges.	Ammunition for fire-arms of Category 1(c).

(59) A perusal of the above shows that the Schedule classifies the arms into various categories like prohibited arms, semi automatic arms and the bolt action arms, However, an arm can be considered as 'prohibited' only when it answers the description as given in Section 2(1) (i) or is an arm which has been specifically notified by the Central Government in the Official Gazette to be a prohibited arm'. Otherwise, the possession or use of the weapon shall not fall within the mischief of section 7 and section 27 (3).

(60) In the present case, it has not been shown that a bolt action 7.62 mm rifle has been notified as a 'prohibited arm' by the Central

Government through a notification in the Official Gazette. Thus, the provisions of Section 27(3) cannot be attracted in this case. To this extent, the contention raised on behalf of the appellant has to be sustained and the appeal in so far as the conviction and sentence under Section 27 are concerned has to be accepted.

(61) No other point was raised on the merits of the case. However, on the question of sentence, it was prayed that the extreme penalty of death should not be awarded.

(62) The appellant is a young man. He has no past history of having committed any crime. It is true that he had killed a person who had caused him no harm and given injuries to a young girl. Yet, it is not a case which may be described as the "rarest of the rare" ones. Taking the facts cumulatively, we are unable to sustain the award of death penalty. The Murder Reference is answered accordingly.

(63) The trial court has also imposed a fine of Rs. 2000 on the appellant. In fact, we have repeatedly noticed that the courts are imposing fines of petty amounts. In our views, the purpose of Section 357 is not being correctly appreciated. The provision indicates that the amount recovered can be applied in the payment of compensation for loss or injury caused by the offence. Such compensation must have some rational relationship with the loss. It can't be wholly unrealistic. In our view, it is necessary that the provision contained in Section 357 is given its full effect. The amount of fine should have a rational relationship to the loss. The compensation should be just and reasonable. When the amount of fine is a few hundred rupees, the compensation for loss would be a mere joke. In fact, a cruel joke.

(64) Thus, despite having commuted the sentence of death to that of life imprisonment, we feel that it is not the end of the case. The victims of the crime continue to suffer. The society needs to worry for the victims too.

(65) The Criminal Justice Delivery System gives justice to the Criminal. It gives every reasonable concession to the sinners against God and man. They are "fed and housed". They are given "legal, medical, psychological and psychiatric aid". Even education and vocational training are provided to them. It may be correct for the State to utilise its meagre resources to rehabilitate and even pamper the unrepentant violators of law. However, we cannot ignore the victims. We have to imagine the torture, the trauma that the victims—the children that are abused, the women who are assaulted, the men who have been blinded, the parents whose children have been molested

and murdered go through even after they have borne the initial shock of the crime. About two years back, it was reported in the Press that two brothers who were sentenced to 10 years in prison on a charge of rape had walked out of the court, escorted by an unarmed policeman. They had escaped and returned to their victim's house. They had allegedly chopped off her left leg. The victim had fought a two year long legal battle to get the two accused convicted. After her leg was chopped off, she must have wondered "whether it was worth it". Over the centuries, the society has been concerned about the criminals and their rehabilitation. The victims of crime, the "victims of a slanderer's tongue, the victims of an assassin's dagger have been the forgotten children of the Criminal Justice Delivery System".

(66) The State has the responsibility to protect the people and their property. When it fails to perform its duty, the crime occurs. The victim suffers. In spite of the suffering that the victim faces, the Society expects the victims to support the Justice Delivery System. The agony begins when the person goes to lodge the report. It continues till the end of the trial. The victim is made to go through the sole crushing job of repeating the gory details of the crime. He is subjected to the anguishing agony of a ruthless cross examination. At the end, he has to often bear the ignominy and indignation of being disbelieved in spite of having told the whole truth.

(67) The plight of the victim under our system is pitiable. In the present day world, it is not the criminal but the victim who shirks and dodges the public eye. He is 'angry and insecure'. Even 'vulnerable'. He suffers alone "the physical, the psychological and financial hardships" that follow the crime. The "psychological wounds" last longer than the physical injuries. The "post crime distress" does not end with the conviction of the criminal. Mere punishment to the criminal does not give full justice to the victim. The system must become responsive to the needs of the victim.

(68) Section 357 arms the court with the power to compensate the victim. It authorises the court to impose a fine and to direct that the amount shall be applied "in the payment...of compensation for any loss or injury caused by the offence....." The obvious purpose is to compensate the victim. Is it not time that the victim's agony was reduced and the necessity of compelling him to go through the ordeal of a second trial before the civil court was obviated ?

(69) In our considered view, Section 357 of the Code of Criminal Procedure clearly permits the court to direct the payment of a reasonable compensation to the victim. For this purpose, the fine that the court

may impose has to be a realistic sum. It should be adequate. The accused should have the means to pay it. The economic position of the criminal, his family and other relevant factors have to be kept in view. At the same time, the compensation should be calculated to really compensate and not be merely symbolic. It should have a reasonable relationship with the factual position.

(70) Keeping these factors in mind, we had questioned the counsel with regard to the award of compensation. After obtaining instructions, Mr. Ghai had stated that the appellant had a piece of land measuring 2-3/4 acres approximately. After taking into consideration the fact that the deceased was 40 years of age and that Kiranjit Kaur was about 18 years old on the day of occurrence, we had made an *ad hoc* assessment to award a compensation of Rs. 1 lac. It was directed that the appellant shall pay a fine of Rs. 1 lac and that this amount shall be given to Kiranjit Kaur and her father-Surinder Singh equally. This order was announced by us at the conclusion of the arguments. Now, we have recorded our reasons.

(71) In view of the above, the Murder Reference is answered in the negative. We reject the proposal for the award of death sentence. The appeal is partly accepted. The conviction of the appellant under Sections 302, 307 and 450 is upheld. He is sentenced to undergo life imprisonment. He shall also pay a fine of Rs. 1 lac which shall be disbursed equally to Surinder Singh and Kiranjit Kaur. In case of default in payment, the appellant shall undergo rigorous imprisonment for a period of three years. The sentence on account of default in payment of fine shall run consecutively and not concurrently. We are, however, unable to sustain the sentence awarded to the appellant under Section 27 (2) and 27(3) of the Arms Act, 1959.

J.S.T.

Before G.S. Singhvi & Iqbal Singh, JJ

O.P. SACHDEVA & OTHERS,—*Petitioners*

versus

THE FOOD CORPORATION OF INDIA & OTHERS,—*Respondents*

C.W.P. NO. 344 OF 2000

The 13th Jan., 2000

Constitution of India, 1950—Art.226—Food Corporation of India (Staff) Regulations, 1971—Reg.60—Financial loss to the Corporation allegedly caused by the petitioners—No action taken on the explanations