

CRA-D-426-DB-2004 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH  
(101)

Reserved on: 15.05.2025

Date of Pronouncement:23.05.2025

(1) CRA-D-426-DB-2004 (O & M)

Iqbal Singh .... appellant

V/s

State of Punjab ...Respondent

(2) CRR-781-2005 (O & M)

Harsant Singh .... petitioner

V/s

State of Punjab and another ...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL  
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Anmol Partap Singh Mann, Advocate,  
for the appellant (in CRA-D-426-DB-2004)  
for respondent No.2 (in CRR-781-2005).

Mr. Siddharth Attri, AAG, Punjab.

Mr. G.S. Nahel, Advocate, for the complainant  
(in CRA-D-426-DB-2004) and  
for the petitioner (in CRR-781-2005).

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**JASJIT SINGH BEDI, J.**

This order shall dispose of two cases i.e. an appeal bearing No.  
CRA-D-426-DB-2004 titled as 'Iqbal Singh versus State of Punjab' and a  
revision petition bearing No.CRR-781-2005 titled as 'Harsant Singh versus

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State of Punjab' preferred against the judgment of conviction and order of sentence dated 03/05.04.2004 passed by the Sessions Judge, Sangrur.

2. The instant FIR came to be registered on 18.03.2003. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 03/05.04.2004. The present appeal against the judgment of conviction and order of sentence was filed on 01.05.2004. The matter has come up for final hearing now after almost 22 years of the registration of the FIR.

3. The present case was registered on the statement Ex.PE of Harsant Singh PW-3. His sister Ranjit Kaur was married to Sukhjinder Singh now deceased, while accused Iqbal Singh was the real nephew of deceased. On 06.05.1996, they separated from each other and also separated their houses, cattle, land and other agricultural implements with the intervention of Piara Singh/PW-9 and other respectables and a writing (copy Ex.PO) to that effect was prepared. In that partition, six acres of land was given to Surjit Kaur, mother of Sukhjinder Singh for her maintenance. She was residing with him and, therefore, land of her share remained with Sukhjinder Singh. The accused was upset because of this and there used to remain a dispute between accused and deceased. Their houses were adjoining each other having one common gate besides each having a separate gate as well.

4. He (Harsant Singh), came to village Sheron on 18.03.2003 for getting the said dispute settled. At about 7.00 p.m., when he (Harsant Singh)

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and his brother-in-law Sukhjinder Singh were to go out for a stroll, Nirbhey Singh/PW-4 met them on the outer gate of house. Harsant Singh and Nirbhey Singh started chatting while Sukhjinder Singh turned to close the door of the gate. Meanwhile, they heard a *lalkara* of accused-Iqbal Singh who stated that Sukhjinder Singh would not be left capable of tilling the land. Hearing the *lalkara*, they saw accused-Iqbal Singh armed with .12 bore gun aiming at Sukhjinder Singh. Within their sight, Iqbal Singh accused fired a shot at Sukhjinder Singh, which hit him below his right eye. Sukhjinder Singh fell down. When the accused was about to fire the second shot, they (Nirbhey Singh and Harsant Singh) raised a *raula*. The accused fired the second shot at them but they escaped. The accused reloaded the gun and fled away from there with the gun raising *lalkaras*. Some other persons of the village came there hearing the sound of the gunshot. They removed Sukhjinder Singh in a car to Civil Hospital, Sunam but Dr Baldev Singh/PW-5 declared him brought dead.

5. Dr Baldev Singh Sahota/PW-5 sent ruqa Ex.PF to the SHO of Police Station Sunam about bringing of a dead person to the hospital, upon which SHO Sukhdev Singh/PW-12 reached Civil Hospital, Sunam and he recorded the statement Ex.PF of Harsant Singh correctly, made his own endorsement on it and sent it to the Police Station, Sunam, on which basis the instant case was registered. He took up the investigation and prepared the inquest report Ex.PC on the dead-body of Sukhjinder Singh and recorded

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statements of the witnesses under section 175 Cr.P.C. He deputed HC Pardeep Kumar for getting the post-mortem examination done. He along with other police officials and Harsant Singh reached the spot, inspected the same, prepared rough site plan Ex.PQ of the place of occurrence. He lifted two empty cartridges of .12 bore from the spot, made those into parcels, sealed with the seal of 'SS'. He lifted blood-stained earth, put it into a 'dibby', made into parcel, sealed with seal of 'SS'. These articles were taken into possession vide memos attested by the PWs. He recorded statements of the witnesses.

6. On 19.03.2003 at 9.00 a.m., Dr R.S. Singla/PW-2 conducted the post-mortem examination on the dead-body of Sukhjinder Singh and prepared post-mortem report Ex.PB. He opined that death was due to shock and haemorrhage as a result of fire arm injury, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. The doctor removed the clothes from the dead-body and made those into parcels, sealed with his seal and handed over to HC Pardeep Kumar who in turn produced it before Sukhdev Singh SHO.

7. On 25.03.2003, SHO Sukhdev Singh was holding *naka* in the area of Sheron and on the basis of information about the accused, he went to the disclosed place and arrested Iqbal Singh accused. Rs.55/- were recovered from his personal search. Personal search memo and memo regarding grounds of arrest were prepared. On interrogation, the accused suffered a



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disclosure statement in pursuance of which he got recovered the gun Ex.P-8 which was made into a parcel and sealed with the seal of 'SS' and taken into police possession. Further investigation was completed by the Investigating Officer. After the completion of the investigation, the accused was sent up for Trial.

8. Charges were framed against the accused under section 302, 307 Indian Penal Code and Section 27 of the Arms Act. He pleaded not guilty to the charge and claimed trial.

9. In order to substantiate the charge against the accused, the prosecution examined HC Subhash Kumar/PW-1, Dr. R.S. Singla/PW-2, Harsant Singh/PW-3, Nirbhey Singh/PW-4, Dr. Baldev Singh/PW-5, Dharminder Singh/PW-6, Gurpal Singh/PW-7, Sukhwant Singh/PW-8, Piara Singh/PW-9, Gurdarshan Singh/PW-10, Constable Jaswinder Singh/PW-11, Inspector Sukhdev Singh/PW-12 and Sh. Sham Lal, PCS, Judicial Magistrate, Sunam as PW-13. The reports of the Forensic Science Laboratory Exs. PT and PU were tendered in evidence.

10. The gist of the prosecution evidence is as under:-

Subhash Kumar H.C. was examined as PW-1 and tendered into evidence his affidavit Ex.PA.

Dr. R.S. Singla, was examined as PW-2. He conducted the post-mortem examination of Sukhjinder Singh (deceased) and found the following injuries:-



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*1. Lacerated punctured wound 1.5 cm x 1.5 cm with inverted margins. Clotted blood was present. There was slight blackening and tattooing of margins (wound of entrance) site just below the right eye at medial aspect close to nose.*

*On dissection, underlying bone was fractured and there was laceration of brain tissues and meninges whole length, anterior posteriorly slightly obliquely. There was clotted blood present and blackening of tattooing of the tract, occipital bone was fractured at right aspect in the continuation of the tract associated with lacerated punctured wound 2 cm x 2 cm with everted margins. Clotted blood was present (site occipital region right aspect almost in the centre (wound of exit)).*

Both lungs were pale. Walls ribs, cartilages, pleurae, larynx and tracheae were NAD. Heart was empty. Wll of abdomen, peritoneum, mouth were NAD. Liver, spleen, kidney were pale. Stomach contained about 100 mls. of gastric juices. Small intestines contained chyme and gases and large intestines contained foecal matters and gases at places. Bladder contained about 125 mls. of urine. Organs of generation were NAD.

The death in this case in my opinion was due to shock and haemorrhage as a result of fire arm injury which was sufficient to cause death in this case in ordinary course of nature. Injury described was ante-mortem in nature. The probable time between injury and death was immediate and between death and post-mortem was within 24 hours. I

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handed over to the police the reconstituted dead body after post-mortem, carbon copy of post mortem report police papers 20 duly signed, belongings of deceased in a sealed parcel with seal of 'RSSINGLA' and sample seal.

Today I have brought the original post-mortem report Ex.PB is the correct carbon copy of the same prepared in the same process as the original and signed by me. Pictorial diagrams showing seats of injuries are Ex.PB/1. I received the inquest report Ex.PC with police papers and is signed by me. I conducted the post-mortem examination on police request copy of which is Ex.PD. Original is with me.

At this stage a sealed parcel with intact seal has been produced. Seals broken and parcel opened and shirt, pant, nikkar and *karra* taken out of it.

Shirt-Ex P.1, Pant-Ex. P-2, Nikkar Ex.P-3 and steel *karra* Ex.P-4 are the same which I removed from dead body and handed over to police.

In cross-examination, he stated that he did not find any foreign body in the wound. The shot had been fired from a close range but he could not tell the exact distance from which the shot was fired as he was not a fire-arm expert.

Harsant Singh-complainant was examined as PW-3. He stated that they were five brothers and sisters. His sister-Ranjit Kaur was married with Sukhjinder Singh (deceased). Iqbal Singh-accused was the real nephew of Sukhjinder Singh. Iqbal Singh and Sukhjinder Singh had adjoining house

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with a common wall in between. Surjit Kaur was the mother of Sukhjinder Singh and was residing with him. She was the owner of 06 killas of land. There was a dispute between Iqbal Singh (accused) and Sukhjinder Singh (deceased) regarding that land. On 18.03.2003, he had come to village Sheron for effecting a compromise regarding the dispute. At about 7.00 p.m., he alongwith Sukhjinder Singh was going for a walk. They stopped to meet one Nirbhey Singh who was passing nearby. Sukhjinder Singh was trying to close the door of the main gate when they heard a *lalkara* raised by Iqbal Singh stating that he would not leave him capable of ploughing the land. He noticed Iqbal Singh-accused was aiming a gun towards Sukhjinder Singh. The shot was fired at Sukhjinder Singh below his right eye. Whey they raised a *lalkara*, the accused again fired which shot passed over their heads. The accused once again loaded the weapon and on being asked why he had done so, he ran away with the gun raising a *lalkara*. He alongwith Nirbhey Singh took Sukhjinder Singh in his car to the hospital at Sunam where the doctor declared him dead. The police came to the spot and recorded his statement Ex. PE. In cross-examination, he stated that he had been coming to the village for settling the dispute between the parties and even on that day, he had come to settle the dispute between them. He stated that his village was 45-50 kms. to village Sheron. On the asking of Sukhjinder Singh, 2-3 days earlier, he had come to village Sheron and a meeting was fixed for the next morning of the occurrence. He denied the

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suggestion that he had not come to village on 18.03.2003. He stated that the doctor had met them at about 8.00 p.m. when they reached the hospital and the police came to the spot at about 8.15 p.m..

Nirbhey Singh was examined as PW-4. He stated that on 18.03.2003 at about 7.00 p.m., when he reached near the main gate of the house of the deceased, he saw the deceased and his brother-in-law/Harsant Singh coming towards the main gate. In the meantime, Iqbal Singh fired a shot towards Sukhjinder Singh with his gun which struck him below his right eye. On raising a *raula*, he fired another shot towards them (complainant party). They saved themselves by bending downwards. The accused reloaded the gun and thereafter, went away with the gun raising a *raula*. He alongwith Harsant Singh took Sukhjinder Singh to the Civil Hospital, Sunam in the car of Harsant Singh where the doctor declared him dead. In cross-examination, he stated that the village Sheron was 10 kms. from Civil Hospital, Sunam and it took them about 20-25 minutes in reaching the hospital.

Dr. Baldev Singh, Medical Officer, Civil Hospital, Sunam was examined as PW-5. He stated that one Sukhjinder Singh son of Balwant Singh was brought dead to the hospital. He sent an information regarding this to the SHO, Police Station Sunam, which is Ex.PF in his hand and signed by him. The information was sent immediately after the arrival of the dead body at 7.50 p.m. In cross-examination, he stated that it was correct



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that in Ex.PF, there was no mention of the name of the person who had brought the dead body.

The statement of Dharminder Singh-Draftsman was recorded as PW-6. He stated that he had prepared the scaled site plan (Ex.PG) at the instance of Harsant Singh.

Gurpal Singh was examined as PW-7. He stated that on 19.03.2003, the empties and blood-stained earth was lifted by the police in his presence. The empties were Ex.P-5 and P-6 and the parcel of blood-stained earth was Ex.P7.

Sukhwant Singh was examined as PW-8. He stated that on 25.03.2003, the accused came to be apprehended by the police in his presence. His personal search yielded Rs.55/- which amount was taken into police possession. On interrogation, he disclosed that he kept concealed his double barrel gun and could get the same recovered. Based on the disclosure statement, the weapon was recovered from under the *Sarson* plant in a tubewell *kotha*.

Piara Singh was examined as PW-9. He stated that both Sukhjinder Singh (deceased) and Iqbal Singh (accused) were his collaterals. On 06.05.1996, the deceased and the accused had separated their houses, animals, lands and other agricultural implements. The mother of Sukhjinder Singh was given 06 killas of land for maintenance. Since she was residing with the deceased, the said land was to remain with Sukhjinder Singh. Iqbal

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Singh-accused resented this fact and wanted half share of the land. A writing was made by him (this witness) regarding the partition. He had brought the original of the same with him to Court which he had obtained from the wife of Sukhjinder Singh (deceased). On 25.04.2003, a photocopy of this writing was produced by the police. He identified the dead body of Sukhjinder Singh at the hospital at about 10.30 p.m.

Gurdarshan Singh, Arms Clerk was examined as PW-10 and brought the recorded relating to the arms licence issued to Iqbal Singh.

Constable Jaswinder Singh was examined as PW-11 and tendered into evidence his affidavit Ex.PP.

Inspector-Sukhdev Singh was examined as PW-12. He stated that he was posted as SHO at Police Station, Sunam. On receipt of a ruqa from the hospital, he reached the Civil Hospital, Sunam where Harsant Singh met him and made a statement which led to the registration of the FIR. He prepared the inquest report and got conducted the post-mortem examination. They they proceeded to the place of occurrence accompanied by Harsant Singh. The spot was inspected on the morning of 19.03.2003. The rough site plant was prepared and two empty cartridges lying at the spot were lifted. Blood-stained earth was lifted. A parcel containing the clothes of the deceased were produced before him. All the recovered articles were deposited with MHC Subhash Kumar. On 25.03.2003, the accused was arrested and got recovered Rs.55/-. On his disclosure statement, he got

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recovered the .12 bore double barrel gun from his tubewell motor. On conclusion of the investigation, the challan was submitted against the accused. In cross-examination, he stated that when he reached the hospital, Harsant Singh, Nirbhey Singh, Krishandev Singh, Patia Singh and other persons were present. He denied the suggestion that the deceased who was a commission agent had a dispute with many persons.

Sh. Sham Lal, PCS, Judicial Magistrate Ist Class, Sunam was examined as PW-13. He stated that the special report Ex.PE/2 was received by him during the night at 12.15 a.m.. By mistake, he had mentioned the date as 18.03.2003 and therefore, the same was changed to 19.03.2003.

11. After the close of the prosecution evidence, the statement of the accused was recorded under section 313 Cr.P.C. He denied the prosecution evidence put to him and pleaded that he was innocent. He stated that they were lying asleep in their house and on hearing the *raula* outside, they woke up. The police came to the village and took him along. No evidence was produced in defence.

12. Based on the evidence led, the accused-appellant-Iqbal Singh came to be convicted and sentenced by the Court of the Sessions Judge, Sangrur, vide judgment of conviction and order of sentence dated 03/05.04.2004 as under:-

Offence under Section	Sentence	Fine	In default of payment of fine
302 IPC	RI for Life	Rs.5,000/-	RI 01 year



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307 IPC	RI 07 years	Rs.1,000/-	RI 01 year
27 of the Arms Act	RI 03 year	Rs.1,000/-	RI 06 months

All the sentences were ordered to run concurrently.

13. The aforementioned judgment of conviction and order of sentence dated 03/05.04.2004 passed by the Sessions Judge, Sangrur is under challenge before this Court.

14. During the pendency of this appeal, the sentence of the accused-appellant/Iqbal Singh was suspended by this Court vide order dated 30.09.2008.

15. The learned counsel for the accused contends that the presence of Harsant Singh (PW-3) and Nirbhey Singh (PW-4) at the spot is doubtful. Harsant Singh resides in Village Bhutal Kalan which is 45-50 kms. From the village Sheron. Nirbhey Singh resides some distance away from the house of the deceased. In fact, they were not eye-witnesses. Neither of them chose to interfere when the occurrence took place nor were they injured. Their presence at the spot is also belied from the fact that it is not clear as to who had brought the deceased to the hospital. The medical evidence is contrary to the ocular account. As per the prosecution case, the accused fired two shots with 12 bore double barrel gun at the deceased. There was an entry and exit wound without any pellets/wads in the body which could not be possible. He contends that it does not stand to reason that the accused would



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fire two shots, then, reload his weapon after ejecting the fired cartridges and then, run away from the spot. In fact, the empty cartridges have been planted at the spot. Therefore, the accused-appellant is liable to be acquitted for the offences in question.

16. The learned counsels for the State alongwith the learned counsel for the complainant, on the other hand, contend that the occurrence took place at about 7.00 p.m. The statement of Harsant Singh (PW-3) was recorded at 10.00 p.m. and the special report was received by the Illaqa Magistrate at 12.15 a.m. There is absolutely no delay in the registration of the FIR which leaves little chance for fabrication of the eye version account as urged by the defence. The distance between village Sheron to Civil Hospital, Sunam is approximately 10 kms. The statements of Harsant Singh (PW-3) and Nirbhey Singh (PW-4) are consistent in material particulars regarding the manner in which the occurrence took place. In fact, the occurrence took place on the night of 18.03.2003 and the FIR was recorded on the night of occurrence itself. On the very next morning, two empty cartridges were recovered from the spot. Accused-Iqbal Singh was arrested on 25.03.2003 and on his disclosure statement, the recovery of the weapon came to be effected. Once the cartridges stood recovered earlier on 19.03.2003 and the weapon came to be recovered only on 25.03.2003, the question of firing the cartridges and then planting them at the spot prior to the recovery of the weapon does not arise. They further contend that the



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medical evidence is totally in consonance with the ocular account. Even otherwise, the ocular account is to be given precedence over the medical evidence unless the medical evidence completely improbablizes the ocular account. In this case, it is not so. Reliance is placed on '*Abdul Sayeed versus State of Madhya Pradesh 2010(10) SCC 259*'. They, thus, contend that as the offence stands established beyond reasonable doubt, the appeal is liable to be dismissed.

17. We have heard the learned counsel for the parties.

18. The argument that the presence of Harsant Singh (PW-3) and Nirbhey Singh (PW-4) is doubtful at the spot cannot be accepted. According to Harsant Singh (PW-3), his sister Ranjit Kaur was married with the deceased. Surjit Kaur was the mother of the deceased and was residing with him. She was given 06 killas of land for her maintenance and there had been a dispute between the accused and deceased regarding that land. In his cross-examination, the witness deposed that the said land was being cultivated by Sukhjinder Singh because Surjit Kaur was residing with him. According to him, there used to be quarrel in the village regarding that land after every 2-3 months but the matter used to be settled by compromise. Harsant Singh (PW-3) had been coming to the village time and again for settling their dispute and even on the day of occurrence, he had come for the said purpose. According to him, Sukhjinder Singh called him 2-3 days before the present occurrence telling him that the accused had again started troubling him due



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to which this witness had come to the village of the accused. They had decided to convene a gathering on the next morning. It is further deposed by him that on 18.03.2003 at about 7.00 p.m. he along with Sukhjinder Singh were going out for a walk and they had reached main gate of their house. In the meantime, Nirbhey Singh was passing by that road. Harsant Singh (PW-3) started shaking hand with Nirbhey Singh (PW-4) and Sukhjinder Singh was trying to close the door of the main gate. Meanwhile, Iqbal Singh accused raised a *lalkara* saying that he would not leave him (Sukhjinder Singh) capable of ploughing the land. When Harsant Singh (PW-3) turned his face back, he noticed Iqbal Singh accused aiming his gun towards Sukhjinder Singh who fired at him hitting on his face, due to which he fell down. Similarly, Nirbhey Singh (PW-4) deposed that on 18.3.2003 at 7.00 p.m., when he reached near the main gate of the house of Sukhjinder Singh, he noticed Sukhjinder Singh and his brother-in-law/Harsant Singh coming together towards the main gate. On seeing Harsant Singh (PW-3), he (Nirbhey Singh PW-4) shook hands with him. In the meantime, Sukhjinder Singh started closing the door, when Iqbal Singh accused came from the gate of his house, raised a *lalkara* that he would not leave him (Sukhjinder Singh) capable of cultivating the land, fired towards Sukhjinder Singh with his gun, hitting his face below his right eye. The testimony of both these witnesses is consistent and natural. Their presence is established at the spot. It, therefore, cannot be said that these witnesses were not present or that they were

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subsequently introduced. Even otherwise there was no need to call Harsant Singh (PW-3) from his village just for standing as witness. If a false witness was to be introduced, the mother, wife and children of the deceased were there in the house to allege that the present occurrence took place in their presence. They could have been easily introduced as eye-witnesses. It was not done by the police, which also points to the fact that there was no effort made to introduce false witnesses.

19. The presence of these witnesses is established from another fact as well. The occurrence took place at about 7.00 p.m. They took a few minutes at the spot and thereafter, the injured was shifted to hospital. According to Harsant Singh (PW-3), they started from the village at 7.15 p.m. and reached the Civil Hospital, Sunam at 8.00 p.m. Dr. Baldev Singh Sahota (PW-5) has deposed that they reached the hospital at 7.50 p.m., upon which he sent intimation Ex.PF to the Police Station. According to Inspector Sukhdev Singh (PW-12), the said intimation was received by him in the Police Station at 8.30 p.m., upon which he along with police officials went to hospital. As per his corss-examination, when he reached the hospital, Harsant Singh, Nirbhey Singh, Krishandev Singh, Patia Singh and another persons were present. Harsant Singh (PW-3) deposed in his cross-examination that the police came to hospital at about 8.45 p.m. The Police recorded statement Ex.PE of Harsant Singh, made Endst Ex.PE/1 and concluded the same at 10.00 p.m. It was then forwarded to the Police Station



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and FIR Ex.PE/2 was recorded at 10.15 p.m. Ex.PE/3 is the endorsement made by Sh. Sham Lal PCS, Judicial Magistrate 1st Class, Sunam, who appeared as PW-13, showing that he received the special report at 12.15 a.m. on the night of 18/19.03.2003. The prompt shifting of the injured to the hospital, immediate information to the police, immediate arrival of the police at the hospital and prompt recording of the statement of Harsant Singh and the FIR sufficiently establish firstly that Harsant Singh (PW-3) and Nirbhey Singh (PW-4) were present at the spot and secondly, that no time was spent by them for deliberation and consultations.

20. The argument that an injury caused by a shot fired from a .12 bore gun would have left wad/pellets in the body and as there was a clear entry and exit wound, the eye-version account stands demolished, cannot be accepted. The opinions expressed in books on Medical Jurisprudence or Forensic Science and Ballistics are not binding in nature as they are opinions expressed by the authors. The opinions cannot override the specific relevant evidence of the prosecution witnesses unless the medical evidence/forensic evidence completely improbablizes the ocular account. In the instant case, the ocular evidence of two shots being fired and one of them hitting the deceased is totally in consonance with the medical evidence as per which the deceased has suffered one gun shot injury. As per the ocular evidence, two shots were fired after which the accused reloaded his gun. The two empty cartridges were recovered from the spot which have been shown to have



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been fired from the licenced weapon recovered from the accused vide FSL Report Ex.PT.

21. In the context of medical evidence and ocular evidence, the Hon'ble Supreme Court in '***Abdul Sayeed versus State of Madhya Pradesh 2010(10) SCC 259***', held as under:-

*30. In Ram Narain Singh v. State of Punjab, AIR 1975 Supreme Court 1727, this Court held that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecutions case and unless reasonably explained it is sufficient to discredit the entire case.*

*31. In State of Haryana v. Bhagirath & Ors., 1999(2) RCR (Criminal) 825 : (1999)5 SCC 96, it was held as follows :-*

"The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

[Emphasis added]

*32. Drawing on Bhagiraths case (supra), this Court has held that where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". Where the eyewitnesses account is found credible and*



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*trustworthy, a medical opinion pointing to alternative possibilities can not be accepted as conclusive. The eyewitnesses account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. (Vide Thaman Kumar v. State of Union Territory of Chandigarh, 2003(3) RCR (Criminal) 416 : 2004(1) Apex Criminal 309 : (2003)6 SCC 380; and Krishnan v. State, 2003(3) RCR (Criminal) 885 : 2004(1) Apex Criminal 405 : (2003)7 SCC 56.*

*33. In Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 Supreme Court 484, this Court observed,*

*"Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."*

[Emphasis added]

*34. A similar view has been taken in Mani Ram & Ors. v. State of U.P., 1994(3) RCR (Criminal) 127 : 1994 Supp (2) SCC 289; Khambam Raja Reddy & Anr. v. Public Prosecutor, High Court of A.P., 2006(4) RCR (Criminal) 459 : 2006(3) Apex Criminal 384 : (2006)11 SCC 239; and State of U.P. v. Dinesh, (2009)11 SCC 566.*



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35. *In State of U.P. v. Hari Chand, 2010(5) RCR (Criminal) 572 : (2009)13 SCC 542, this Court reiterated the aforementioned position of law and stated that,*

"In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."

36. *Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.*

22. The argument that the recovery of the empty cartridges from the spot is a padding by the police to falsely implicate the accused cannot be accepted. The occurrence took place on 18.03.2003 and the FIR came to be registered on the same day. The very next day i.e. on 19.03.2003, the empty cartridges were recovered from the spot. The accused was arrested on 25.03.2003 on which date the weapon was recovered at his instance. Therefore, it cannot be stated that the investigating agency recovered the weapon, fired two shots and thereafter planted the empty cartridges at the spot.

23. The upshot of the aforementioned discussion is that the prosecution has been able to establish its case beyond a reasonable doubt. Therefore, we find no merit in the present appeal and the same stands

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dismissed. The accused-appellant/Iqbal Singh is directed to surrender before the Jail Authorities concerned to serve out his remaining sentence.

24. Information be given to the concerned quarters.

25. The pending applications, if any, shall stand disposed of accordingly.

**CRR-781-2005 (O & M)**

In the revision petition seeking enhancement of sentence and of compensation, it has been brought to the notice of this Court by the learned counsel for respondent No.2-accused that a civil suit for damages was filed and in the execution application thereof, the entire amount has been received by the decree holders-Surjit Kaur wife of Balwant Singh, Ranjit Kaur widow of Sukhjinder Singh, Harpreet Singh and Parswinder Singh (sons of Sukhjinder Singh-deceased). Further, the instant case is not one which falls with the category of 'rarest of rare' inviting enhancement of sentence/capital punishment.

2. Therefore, the instant revision petition stands dismissed.

**( GURVINDER SINGH GILL )  
JUDGE**

**23.05.2025**  
sukhpreet

**( JASJIT SINGH BEDI )  
JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No