

Before Satish Kumar Mittal & M. Jeyapaul, JJ.

STATE OF PUNJAB,—Prosecutor

versus

JARNAIL SINGH,—Respondent

**Murder Reference No. 6 of 2010 and
Crl. A. No. 1167/DB of 2010**

7th April, 2011

*Indian Penal Code, 1860—Ss. 302, 120-B-Arms Act, 1959—
Ss. 27(3) & 30—Murder of 3 persons by an employee of police
department with his official AK-47 rifle—Motive harbored by accused
policeman for murder of two brothers—Registration of criminal
case against deceased persons by accused about two years prior to
occurrence—Exchange of altercation between father of deceased
and accused-policeman—Third person, a vegetable vendor only a
chance victim of gun shot—Accused admitting that there was an
incessant firing from his AK-47 gun—Plea of accused that it was
an accidental triggering off—Unbelievable that gun started
accidentally firing only as against persons with whom policeman
had a grouse—Conviction of police official and his parents—Charges
of conspiracy against parents of first accused—Prosecution failing
to establish that there was a conspiracy hatched by accused persons—
Findings of trial Court holding parents of first accused liable to
be convicted for murder held to be wrong, their conviction set
aside—Conviction and sentence passed by trial Court against first
accused confirmed—‘AK-47 rifle’—An automatic weapon—Whether
falls within meaning of ‘prohibited arms’—No evidence that AK-
47 rifle was prohibited weapon—Conviction and sentence of death
awarded to first accused u/s 27(3) modified to that of R.I. with six
months u/s 30 of Arms Act—Legal heirs of two deceased persons also
held entitled to compensation u/s 357 Cr. P.C. to be paid by first
accused and LRs of 3rd deceased to be paid by State Government.*

Held, that we are not inclined to accept the prosecution version that there was a threat wielded by the other accused at about 3.00 P.M. at the house of PW1. When such a threat alleged to have been wielded by other accused is found doubtful, the theory of conspiracy projected by the prosecution is completely weakened. We find that the prosecution miserably failed to establish that there was a conspiracy hatched by the accused to eliminate Beant Singh and Bhagwant Singh as contended by the prosecution. We have no hesitation to conclude that the trial Court has misdirected itself and come to a wrong conclusion that the second and third accused were liable to be convicted for the offence under Section 302 read with Section 120-B of the I.P.C.

(Para 11)

Further held, that there is lack of evidence to establish that A.K-47 rifle entrusted to the first accused was a prohibited automatic weapon. It is a clear case of misuse of AK-47 weapon entrusted officially to the first accused. In view of the above, the conviction of the accused under Section 27(3) of the Arms Act, 1959 with an extreme punishment of death does not arise for consideration. The trial Court has simply misinterpreted the ambit of the aforesaid provision of law and has come to a wrong decision that the offence under Section 27(3) of the Act was made out as against the first accused.

(Para 13)

Further held, that AK-47 rifle entrusted to the first accused was totally misused by him. The Arms Act does not approve of such a wrong use of a weapon entrusted to an armed guard. But unfortunately, the Arms Act does not provide any punishment. As per Section 30 of the Act a person who has contravened the provisions of the Arms Act is punishable with an imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or with both where no punishment is provided elsewhere in the Act. As the prosecution has established that there was clear misuse of AK-47 weapon entrusted to the accused, we hold that the first accused is liable to be punished with R.I. for six months under Section 30 of the Arms Act, 1959.

(Para 14)

Further held, that the first accused Jarnail Singh who was in the employment of the State of Punjab was entrusted with AK-47 rifle to discharge his official duty. He has in fact misused the weapon officially handed over to him which took away three previous lives. Had not the State of Punjab recruited the first accused Jarnail Singh in its service and entrusted him with the AK-47, the occurrence would not have taken place. At least the human suffering could have been limited. The life of innocent victim Kuljinder Nished would not have been taken away in the process of shooting Beant Singh and Bhagwant Singh. State cannot shirk its responsibility of shouldering vicarious liability on account of the act of its official who was entrusted with AK-47 weapon to discharge his official duties.

(Para 16)

Further held, that we invoke the provisions of Section 357 Cr.P.C. and direct that the first accused Jarnail Singh shall pay Rs. three lac to the widow of deceased Beant Singh and Rs. two lac to PW-1, the father of decease Beant Singh and Bhagwant Singh within three months from the date of this order. The State of Punjab shall pay Rs. 5 lac to the Legal heirs of deceased Kuljinder Nishad within three months from the date of this order.

(Para 17)

Ms. Manjari Nehru Kaul, Additional A.G. Punjab for the State in murder reference No. 6 of 2010 and *for respondent-State in criminal Appeal No. 1167-DB of 2010.*

Vinod Ghai, Advocate for Jarnail Singh convict-respondent in murder reference No. 6 of 2010 and *for the appellants in criminal appeal No. 1167-DB of 2010.*

M. JEYAPPAUL, J.

(1) Out of the four accused, fourth accused Kulwinderjit Singh was declared as a Proclaimed Offender. The other accused faced the trial. The first accused Jarnail Singh was convicted for the offence under Section 302 IPC and was sentenced to undergo life imprisonment. He was also convicted for the offence under Section 27 of the Arms Act and was sentenced to death. Second accused Sadhu Singh and third accused Paramjit

Kaur, who were the parents of first accused Jarnail Singh were convicted for the offence under Section 302/120-B IPC and were sentenced to undergo life imprisonment and to pay a fine of Rs. 5000 and in default to undergo further period of one year rigorous imprisonment each. These three accused have preferred Criminal Appeal No. 1167-DB of 2010. The learned Additional Sessions Judge, Ludhiana having passed death sentence to the first accused Jarnail Singh laid murder reference before this Court for confirmation of death sentence.

Prosecution version

(2) (a) PW1 Harbans Singh was the father of deceased Bhagwant Singh and Beant Singh. Both his sons had a hair cutting saloon on the main road, new Shastri Nagar, Ludhiana. In front of house of PW1, accused Sadhu Singh, a retired Subedar was living with his family. His son Jarnail Singh was employed in police department. About two years prior to the occurrence, accused Jarnail Singh had a minor altercation with deceased Bhagwant Singh and Beant Singh which led to the registration of FIR No. 117 dated 29th March, 2002 for offences under Section 341, 294 and 509 IPC at the instance of accused Jarnail Singh. The said criminal case was compromised with the intervention of respectable persons.

(b) On 4th July, 2009 at about 2 pm, PW1 Harbans Singh and his brother-in-law PW2 Jarnail Singh, who has given his daughter to the deceased Beant Singh, proceeded to the shop of the deceased to inform them about the arrival of the guests in connection with the marriage of Bhagwant Singh. When they were proceeding close by the shop, accused Jarnail Singh came from behind and hit his motor cycle against the bicycle driven by PW1 Harbans Singh. PW1 rebuked accused Jarnail Singh for hitting his bicycle with his motor cycle. PW1 received counter rebuke from accused Jarnail Singh. Having reached the hair dressing saloon, PW1 Harbans Singh and PW2 Jarnail Singh informed Bhagwant Singh about the arrival of the people in connection with his marriage and got back to their house. At about 3 pm on the said day, accused Sadhu Singh, accused Paramjit Kaur and accused Kulwinder Singh came to the house of PW1 and threatened him with dire consequences. PW1 took the threat very lightly.

(c) On the same day at about 9.20 pm, PW1 Harbans Singh and PW2 Jarnail Singh went to the hair dressing saloon. There was no electricity. It was the closing time of the saloon. Having entrusted the job of closing the shutter of the saloon to PW1 Harbans Singh and PW2 Jarnail Singh, Bhagwant Singh and Beant Singh, proceeded to the vegetable market for purchasing the vegetables PW1 Harbans Singh and PW2 Jarnail Singh closed the shop. They waited for about 15 minutes for the arrival of the sons of PW1. As they did not turn up PW1 Harbans Singh and PW2 Jarnail Singh proceeded towards the vegetable market to see Beant Singh and Bhagwant Singh. The accused Jarnail Singh came over there in a scooter and having placed his helmet on the scooter, started firing indiscriminately from his assault rifle towards Bhagwant Singh and Beant Singh, who were standing at the vegetable shop of Nishad Kalendar. PW3 Ashok Kumar and PW4 Jagtar Singh had also sustained injuries. The vegetable vendor, Kalendar had received fire-arm injury. Bhagwant Singh, Beant Singh, and Kalendar died on the spot. Accused Jarnail Singh left the scooter there and ran away along with his rifle. PW1 Harbans Singh passed on a message to the police by dialing telephone No. 100. Thereafter PW1 Harbans Singh and PW2 Jarnail Singh proceeded to the police station for lodging a complaint. On the way PW13 Inspector Gurbans Singh Bains met them and received statement Ex. PA from PW1 Harbans Singh. Based on the statement Ex. PA, a formal FIR Ex. PA /2 was recorded by SI Des Raj.

(d) PW13 Inspector Gurbans Singh Bains proceeded along with other police officials to the scene of occurrence at Shastri Nagar, and found three dead bodies lying over there. He prepared rough site plan Ex. PO. He conducted inquest on the dead bodies of Kalinder Nishad, Beant Singh and Bhagwant Singh separately and prepared respective inquest reports Ex. PP, Ex. PQ and Ex. PR. He also recovered blood stained earth from the scene of occurrence. The scooter bearing Registration No. PB-10-AM-9865 Ex. P4, empty shells Ex. P42 cartridges Ex. P45 and blood stained earth Ex. P56 to Ex P58 were recovered by him from the scene of occurrence PW13 sent the dead bodies for post mortem examination.

(e) PW 20 Dr. J. Parkash attached to CMC Hospital Ludhiana examined PW3 Ashok Kumar who was admitted to casualty ward for treatment on 4th July, 2004 at 10.30 p.m. He found fracture of right side femur. The said injury was found to be grievous in nature. He had also

sustained wounds on the right and left arms with no bone injury. These injuries were found to be simple in nature. All those injuries were certified by PW20 "as the injuries caused by fire arms-gun shots".

(f) PW 24 Bimal Kumar Senior Clerk attached to CMC Hospital, Ludhiana was examined before the trial Court in the absence of the doctor who examined the injured PW4 Jagtar Singh. He spoke about Ex. PAQ, the MLR of PW4 Jagtar Singh which revealed that the injured had received gun shot injuries over chest just lateral to sternum without any bone fracture on the chest.

(g) PW 8 Dr. U.S. Sooch conducted post-mortem examination on the dead body of Bhagwant Singh at about 9.30 a.m. on 5th July, 2004. He found the following injuries on the dead body :—

- “(1) Inlet wound 0.75×0.75 Cm on the middle of the left with scapula abraded and inverted and lacerated margins. On exploration the underneath muscles were lacerated and the left scapula was fractured. The wound was just cavity deep causing the laceration of pleurae and lung. It was communicated with injury No. 2.
- (2) Outlet wound 1.5×1 cm just cavity deep just below the medial end of the left clavicle.
- (3) Inlet wound lacerated margins 0.75 cm. \times 0.75 cm, with abraded and inverted margins on the inferior angle of the left scapula. The track of the wound went upwards and anteriorly causing the laceration of heart, pleurae and lung and chest was full of blood and it communicated with injury No. 4.
- (4) Outlet wound with laceration margins 2×1.5 cm with everted margins on the supra sternal notch with laceration of larynx and trachea.
- (5) Inlet wound with lacerated margins 0.75×0.75 cm and three inches below injury No. 3 with inverted, abraded and lacerated margins the track went upwards and anteriorly causing laceration of just viscera and came out through the injury No. 6.
- (6) The outlet lacerated wound $2 \times 1\frac{1}{4}$ cm with everted margins below of the right clavicle with clotted blood.

- (7) Inlet lacerated wound 0.75×0.75 cm, with inverted and abraded margins on the right posterior axillary line on exploration track went upward, interiorly and to the right side and came out of the antero superior surface of the right shoulder causing fracture of the right scapula and upper end of the right humours and came out of injury No. 8.
- (8) Inlet lacerated would 2×1.5 cm on the anterior superior surface of the right shoulder with everted.
- (9) Inlet lacerated would 2.7×2.7 cm with inverted and abraded margins on the lower right scapular area and on exploration track went sub-cutaneously and came out of the injury No. 10.
- (10) Outlet lacerated wound 1×1 cm with everted margins on the right supra copular area.
- (11) Inlet lacerated wound 0.75×0.75 cm. with inverted and abraided margins on the left renal area and on exploration the track went sub-cutaneously and came out of the injury No. 12.
- (12) Outlet lacerated wound $1-1/4 \times 1$ cm on the middle and left lateral side of the abdomen with everted margins.
- (13) Lacerated wound $4-1/2 \times$ skin deep with coagulated base on the back of right shoulder placed vertical.
- (14) Lacerated wound vertical $2.5 \times 1/3 \times$ subcutaneous deep with coagulated base on the right parietal area.
- (15) Lacerated wound $4.5 \times 1/2 \times$ sub-cutaneous deep vertically slightly obliquely placed on the left alawasi, left upper end, lower lips on the left lateral side of the chin."

(h) On the same day at about 10.30 AM he conducted post-mortem examination on the dead body of Beant Singh and found the following injuries :—

- "1. Inlet lacerated would 0.75×0.75 cm. with inverted and abraded margins on the right cheek. The track went horizontal to the left with laceration of the base of the oral cavity and laceration of

the left jugular and carotid vessels of left side of neck and laceration of the the esophagus and came out of the injury No. 2.

2. Outlet lacerated wound $2.5 \times 1.1/4$ with everted margins just below the right angle of the mandible with clotted blood.
3. Inlet lacerated wound 0.75×0.75 cm with abraded and inverted margins on the right posterior line axillary and on dissection track upwards and subcutaneous and came out of the injury No. 4.
4. Lacerated wound $1.5 \times 1/1/4$ on the right supra scapular area.
5. Inlet lacerated wound 0.75×0.75 cm. with inverted and abraded margins on the lateral side of the right hip above the iliac crest in its middle and on exploration the track went upwards and to the left side subcutaneously and came out of injury No. 6.
6. Lacerated wound 1.5×1 cm with everted margins on the left scapular area below the inferior angle of left scapula."

(i) He also conducted post mortem examination on the same day on the dead body of Kulinder Nishad. He found the following injury on the dead body :—

1. Inlet lacerated wound 0.75×0.75 cm. with abraded and inverted margins on the left infra scapular area near the inferior angle of scapula.
2. Lacerated wound 2.5×2 with everted margins on the right lateral side and upper part of neck and 1.5 lobule of right ear.
3. Lacerated wound $1.5 \times 1/2$ muscle deep horizontal on the middle of right buttock. The corresponding portion of the pend and underwear was torn.

He opined that all the aforesaid persons have died due to hemorrhage and shock about 12 hours prior to autopsy on account of aforesaid fire arm injuries which were sufficient to cause death in the ordinary course of nature. All the injuries were found to be anti-mortem in nature.

The wearing apparels of the deceased were recovered from the dead bodies after the post mortem examination was over and they were entrusted to PW13 Inspector Gurbans Singh Bains for further investigation in the matter.

(j) The accused was produced before the Medical Board comprising PW22 Dr. Karanbir Goyal, PW 23 Dr. Sudha Vasudev and Dr. Sarvjit Kaur who clinically examined the accused Jarnail Singh and found that the accused exhibited aggressive behaviour.

(k) PW-5 HC Rajinder Singh spoke about the fact that the first accused Jarnail Singh was posted as gunman to Shri Mandeep Singh SP(D) Ludhiana. PW 6 ASI Gurmeet Singh issued a weapon AK 47 along with two magazines and fifty rounds to Jarnail Singh. PW7 Mukhtiar Singh has installed generator in the vegetable market, Shashtri Nagar, Ludhiana and the bulb were emitting light in the market through the generator between 8 to 10PM on 4th July, 2004. PW-9 Constable Sukhdershan Singh was also a gunman serving along with Jarnail Singh who borrowed his scooter bearing No. PB-10-AU-3017 from him on the pretext that he was going to the market to purchase vegetables. PW 13 having completed the investigation laid final report as against the accused Jarnail Singh. During the course of trial the other accused were summoned under section 319 Cr. P.C. to face trial along with the first accused Jarnail Singh. Of course the fourth accused Kulwinder Singh has absconded.

Statements under Section 313 Cr. P.C.

A-1 Jarnail Singh :

3. (a) He was disciplined constable in the Punjab Police since 1989. He had undergone commando force training. He had put in unblemished service as gunman with senior Police officers. He was baptized Amritdhari and Kesdhari Sikh wearing turban. He did not wear helmet. He had purchased some article from market on 4th July, 2004. He having exchanged his motor cycle, took scooter from his colleague Sudarshan Singh. A party was hosted by his parents to celebrate birth day of their grand-son on the evening of 4th July, 2004 in his house. On his way back home at about 9.30 PM he turned the scooter on the road to Subhash Nagar from G.T. Road. The electricity power went off due to power cut imposed by PSEB. The road was unevenly brick-paved. His AK 47 rifle was cocked. He forgot

to lock it. In the darkness of night his scooter hit the elevated man-hole on the road near vegetable market where people were purchasing vegetables. He fell down from his scooter which kidded. The trigger cover of his gun entangled in the break lever of the scooter and the rifle started firing accidentally. He got up and released the trigger and thereafter the firing stopped. The fire shots hit some persons there. There was hue and cry. Apprehending wrath of the people, leaving the scooter behind, he went straight away to CIA Staff HQ with rifle, met Inspector Jaswinder Singh, narrated the occurrence and handed over rifle, magazine and cartridges to him. PW-1 and PW-2 were not present at the spot. There was no enmity between his family and Harbans Singh. He was falsely implicated in this case due to public outcry and political pressure: He has not committed any offence.

A-2 Accused Sandhu Singh A-3 Accused Paramjit Kaur

(b) A false case was foisted on them. A party was organized to celebrate the birth day of their grandson. They were found innocent during the course of investigation. No criminal conspiracy was hatched by them.

Defence Evidence :

(4) DW-1 Anil Chopra. Upper Division Clerk attached to PSEB, has spoken about the power cut between 21:31 hours to 22:05 on 4th July, 2004. DW-2 Harjinder Singh and DW-6 Prem Nath would depose that they participated in the party hosted by accused Sadhu Singh. DW-3 Maninderjit Singh, who was allegedly present at the scene of occurrence, deposed that it was pitch dark at that point of time. He heard a noise and immediately thereafter a scooter fell down and simultaneously there was continuous firing. DW4 HC-Jagit Singh and DW5 C-Iqbal Singh deposed that DW4 received a message from PW7 Mukhtiar Singh 10.20 PM on 4th July, 2004 that there was firing incident at the vegetable market on G.T. Road Jalandhar.

Verdict of the trial Court :

(5) (a) The trial court rendered a verdict of conviction on the basis of ocular testimony of PW1 Harbans Singh and PW2 Jarnail Singh in the background of the medical evidence and recovery of weapon of

offence immediately on arrest of the accused and sentenced all the three accused to death under Section 27(3) of the Arms Act after holding that the first accused had used a prohibited weapon to murder the deceased persons.

Homicidal death by gun injury :

(6) (a) PW-1 who is the father of deceased Bhagwant Singh and Beant Singh and PW-2 who is father-in-law of deceased Beant Singh have deposed that the deceased Bhagwant Singh and Beant Singh along with Kuljinder Nishad received gun shot injuries at the hands of first accused Jarnail Singh and met with instantaneous death. There is no reason to disbelieve their ocular testimony.

(b) PW 11 Jaswinder Singh Inspector in-charge CIA Staff, having received wireless message at about 9.45 PM proceeded towards the scene of occurrence and on the way having found the first accused Jarnail Singh in a suspicious circumstance with AK47 rifle Ex P4, arrested him and recovered the same under the relevant recovery memo Ex. PJ.

(c) Dr. U.S. Sooch who conducted post-mortem examination on the three dead bodies having found entry and exit wound on the person of the deceased, returned a finding that those injuries, which were sufficient to cause death of those persons, culminated in their instantaneous death. It may not be out of place to refer to the defence set up by the first accused Jarnail Singh in his statement under section 313 of Cr. P.C. He admits that some persons became victims of the injuries caused by the gun shot through his AK 47 rifle. But of course, he has set up a plea that it was an accidental triggering which ultimately caused the death of those victims. At any rate we have proposed to deal with such a defence later in the judgment.

(d) The above facts and circumstances establish that the accused Bhagwant Singh, Beant Singh and Kuljinder Nishad had died due to gun shot injuries received from AK 47 rifle.

Motive for murder

(7) (a) As far as the death of Kuljinder Nishad is concerned, there could possibly no motive on the part of the accused. Even as per prosecution case Kuljinder Nishad, who was a vegetable vendor, unfortunately became a victim of bullet shot triggered by A1 Jarnail Singh.

We will have to evaluate material on record to find whether there was any motive for the murder of Beant Singh and Bhagwant Singh who were the sons of PW1 Harbans Singh.

(b) The learned counsel for the accused-appellants would submit that the prosecution has chosen to project a state motive out of a case launched by the first accused Jarnail Singh as against deceased Bhagwant Singh and Beant Singh way back in the year 2002. It is his further submission that the immediate cause for death, namely, the altercation which emanated on account of hitting of the bicycle driven by PW1 with the motor cycle driven by first accused does not appear to be true. In other words there was no occasion for PW1 and PW2 to proceed to the hair dressing saloon of Beant Singh and Bhagwant Singh at about 2.00 PM on the day of occurrence, it was further submitted by him.

(c) PW1 has categorically deposed that about two years ago first accused Jarnail Singh had a minor altercation with his son Bhagwant Singh and Beant Singh but the matter was somehow compromised with the intervention of respectable persons in the locality. The aforesaid evidence of PW1 is backed by documentary evidence. PW17 C-Sarvjit Singh has spoken about the registration of FIR No. 117 dated 29th March, 2002 u/s 341, 294 and 509 IPC, as against deceased Beant Singh and Bhagwant Singh at the instance of first accused Jarnail Singh. The said FIR was marked as Ex. PW8/E. The above material produced by PW17 would go to establish that a criminal case was registered as against deceased Bhagwant Singh and Beant Singh at the instance of accused Jarnail Singh. Of course, it is the admitted position that the said criminal case ended in compromise but the subsequent event would disclose that the wound allegedly received by Jarnail Singh at the hands of deceased Beant Singh and Bhagwan Singh had not healed. The occurrence which took place about one and half year prior to the present occurrence had cast a deep impact in the mind of the first accused Jarnail Singh.

(d) The immediate provocation for the occurrence was spoken to by PW 1 and PW 2. They have categorically stated that at about 2 PM on the day of occurrence when they proceeded to the shop of Beant Singh and Bhagwant Singh by bicycle, the first accused Jarnail Singh, came from behind by motor-cycle and hit on the bicycle of PW 1 and as a result of

which an altercation emanated between the first accused Jarnail Singh and PW 1 Harbans Singh. The murder has taken place on 4th July, 2004 at about 9.20 PM.

(e) Of course, it is argued by the learned counsel for the appellants that there could have been no occasion for PW 1 and PW 2 to proceed to the shop of Beant Singh and Bhagwant Singh. After all PW 1 is the father of Beant Singh and Bhagwant Singh who had a hair dressing saloon. There is every reason for him to proceed to the saloon of his sons as and when he found convenient. PW-2 was none other than the father-in-law of Beant Singh. After all he has come down to the house of his son-in-law. Therefore it is not unnatural for him to accompany PW-1 to the shop of his son-in-law. We find that there is no reason to disbelieve the evidence of PW1 and PW-2 as to the immediate cause for the occurrence spoken to by them. Though the aforesaid evidence adduced on the side of the prosecution did not establish that the accused Sadhu Singh and Paramjit Kaur harbored any motive to murder Beant Singh and Bhagwant Singh, it is established by the prosecution that the aforesaid occurrence which took place about one and half years ago also contributed for the motive harbored by the accused Jarnail Singh to do away with the life of Beant Singh and Bhagwant Singh.

(f) In view of the above, we conclude that there was motive harbored by the first accused to murder deceased Beant Singh and Bhagwant Singh.

Occular Testimony

(8) (a) PW1 and PW2 have categorically deposed that they descended on the hair cutting saloon run by Beant Singh and Bhagwant Singh just before the occurrence, when the shop was about to be closed. But the deceased Beant Singh and Bhagwant Singh, having asked PW-1 and PW2 to close the shop, proceeded to the nearby market for the purpose of purchasing vegetables. After closing the shop, PW1 and PW2 having found that there was no sign of return of Bhagwant Singh and Beant Singh, proceeded to the market but unfortunately the first accused Jarnail Singh who arrived there by scooter, triggered his AK-47 rifle as against Bhagwant Singh and Beant Singh and as a result of which Beant Singh,

Bhagwant Singh, Kuljinder Nishad, PW3 Ashok Kumar and PW4 Jagtar Singh sustained injuries but Beant Singh, Bhagwant Singh and Kuljinder Nishad breathed their last at the place of occurrence itself. It was their further version that the first accused having left behind the scooter sped away from the scene of occurrence with AK-47 rifle.

(b) It is very relevant to refer to the stand taken by first accused Jarnail Singh in his statement under section 313 Cr. P.C. It is his version that it was pitch dark when he was riding his scooter towards the market. The scooter hit the elevated man-hole as a result of which he fell down and AK-47 rifle started firing and thereafter he released the trigger which got entangled in the break-lever of the scooter. Of course it has been categorically admitted by the accused that there was an incessant firing from his AK-47 gun but at the same time he has come out with a very artificial version that there was an accidental fire from his AK-47 weapon. The story reeled out by the first accused that the trigger cover of AK-47 weapon which was not locked at the time of occurrence, entangled in the break-lever of the scooter and the rifle firing abruptly started accidentally till the trigger was released by the first accused does not stand to reason. There had been an earlier occurrence about one and a half year prior to the present occurrence and the same had culminated in lodging an FIR. At about 2.00 PM on the fateful day, there was exchange of altercation between the father of the deceased and the first accused. The motive stood established by the prosecution as against the first accused. It is quite unbelievable that the gun started accidentally firing only as against the persons with whom the first accused had a grouse. The story of accidental firing also appears to be a figment of fertile imagination.

(c) It is contended by the learned counsel appearing for the appellant that PW1 and PW2 would not have seen the occurrence inasmuch as they were not the real eye witnesses to the occurrence. He would also submit that the injured witness PW3 Ashok Kumar failed to support the case of the prosecution. As already pointed out by us, there is every reason for PW1 and PW2 to be present in the shop of the deceased at the time of the closure of the shop. It is quite natural for the father to go in search of his sons, as his sons had gone to the market after requesting for closure of the shop. Further, the FIR was lodged by PW1 Harbans Singh at 10.50 PM itself. Therefore, we do not find any force in the submission

made by the learned counsel for the appellant that PW1 and PW2 who were not the real eye witnesses to the occurrence were cited by the prosecution as eye-witnesses.

(d) It is contended that the scene of occurrence got engulfed in darkness at the relevant point of time. But PW7 Mukhtiar Singh who installed generator at the vegetable market, Shashtri Nagar, has spoken to the fact that the market was found illuminated with generator-light between 8 and 10 P.M. on 4th July, 2004. The occurrence had taken place at 9.20 P.M. on 4th July, 2004. It is also found that PW7 had passed on information to the Police Station dialing telephone number 100 at about 10 P.M. informing about the fire incident at the vegetable market. The evidence of PW-1 would go to establish that there was light through the source of generator installed by PW7 as spoken to by PW 1 and PW2.

(e) It is true that two messages were sent prior to the statement suffered by PW 1 at 10.50 P.M. to PW13 Inspector Gurbans Singh Bains. In those two messages, the name of the real culprit was not referred. The short messages were sent about the firing incident in order to alert the Police. Had there been any specific reference to the assailants, such information itself would have culminated in registration of the case. Further, within about one hour and thirty minutes, the statement given by PW1 was recorded by PW13. There was no delay in registering the FIR based on the statement of PW1. Therefore we find that the bald message passed on to the police prior to the statement suffered by PW1 does not cast any doubt on the veracity of prosecution story.

(f) It is submitted by the learned counsel for the appellants that there was a delay in dispatching the special report to the Ilaqa magistrate. We do not find any substance in the submissions made by the counsel for the appellants. The first FIR was registered at 00.05 A.M. on 5th July, 2004 within about one hour and fifteen minutes from the time of recording the statement of PW1. The special report was received by the Ilaqa Magistrate at 8.15 A.M. on 5th July, 2004. The delay has occasioned on account of the intervening night between registration of the case and sending of report to the Magistrate. It is the admitted case of the first accused that the gun fire emanated only from his AK-47. Therefore, there was no necessity to

weave a fake story to implicate the first accused by delaying the dispatch of special report to the Magistrate. Further, in the face of the ocular testimony available on record and the stand of the accused in the statement under section 313 Cr. P.C. we do not find any reason for the investigating agency to concoct a story.

(g) It is further contended by the learned counsel for the appellant that many of the gun-shot injuries had entered into the body of the deceased slantingly from downwards to upwards. In other words the learned counsel for the appellants would submit that such injuries could be caused only if the weapon was fired from the ground level. Firstly, the ocular testimony found on record does not coincide with such a strange submission made by the learned counsel appearing for the appellants. Secondly, a doll which is tightly tied to a poll may stay stand-still receiving any number of bullet shots but a human-being cannot withstand more than one or two bullet injuries. Almost one of the magazines was emptied by the first accused in the instant case. Even after the deceased had fallen down, the first accused did not stop firing from his weapon. No wonder the deceased had received some of the gun shot injuries in upward direction when the deceased became flat.

(h) It is true that PW1 and PW2 are closely related to deceased Beant Singh and Bhagwant Singh. Just because they are related to the deceased, we cannot ignore their ocular testimony. They have every reason to be present at the scene of occurrence. Their testimony is found to be quite natural and trustworthy. Therefore, they cannot be dubbed easily as chance witnesses as projected by the defence.

(i) PW3 Ashok Kumar and PW4 Jagtar Singh who received bullet injuries had not supported the case of prosecution. We have no hesitation to record the fact that they were won over by the defence.

(j) Even after receiving the bullet injuries, PW3 and PW4 did not choose to pin-point the assailant. The hostility exhibited by these witnesses does not in any way weaken the case of the prosecution, inasmuch as there is credible testimony available on record to clamp the first accused with the case of murder of Beant Singh, Bhagwant Singh and Kuljinder Nishad.

(k) In view of the above facts and circumstance we arrive at a definite conclusion that it was only the first accused Jarnail Singh who fired at Bhagwant Singh and Beant Singh on account of the motive he harbored and caused their instantaneous death. The gun shots aimed at those two deceased had accidentally caused the death of Kuljinder Nishad who was selling vegetable to the other two deceased at the time of incident.

Arrest and recovery of weapon

(9) (a) PW11 Jaswinder Singh, Inspector, In-charge of CIA staff, having received information about the firing incident at about 9.45 P.M. had proceeded to the scene of occurrence and on the way he arrested Jarnail Singh on suspicion along with his weapon Ex. P-4 A.K. 47 rifle under recovery memo Ex. P/J. Of course, it was contended by the accused that he voluntarily surrendered alongwith his weapon and magazines. We do not find any reason to reject the testimony of PW11 that he arrested the accused and recovered the weapon of offence. If at all the accused had voluntarily surrendered the weapon, there was absolutely no reason for the police to concoct a story as though he was arrested and the weapon was recovered immediately thereafter. The firing caused by Ex. P-4 AK-47 rifle was not at all disputed by the accused. Therefore, the arrest of the accused and the recovery of weapon also lend credence to the prosecution case.

Aggressive behaviour of the accused

(10) (a) PW22 Dr. Karanbir Goyal, who clinically examined the first accused Jarnail Singh deposed that the accused exhibited aggressive behaviour. PW 23 Dr. Sudha Vasudev also endorsed the opinion of PW22. The aggressive behaviour *ipso facto* does not culminate in psychiatric problem. It is to be noted that the accused had not set up any defence that he was affected with psychiatric problem at the time of occurrence. In fact he chose to deny that he had any aggressive behaviour. No evidence was led by the accused to show that he had any psychiatric problem.

(b) On the basis of above discussion we uphold the finding recorded by the trial court that the first accused Jarnail Singh committed murder of Beant Singh, Bhagwant Singh and Kuljinder Nishad punishable under section 302 of IPC.

Conspiracy theory

(11) (a) The prosecution has come out with a charge that all the accused conspired together to commit the murder of Beant Singh and Bhagwant Singh. To attract the offence under section 120-B IPC there should have been a meeting of mind of two or more persons for doing an illegal act. It is well settled that a conspiracy is hatched secretly and it is quite impossible to adduce direct evidence to establish the charge of conspiracy. In other words, it may not be possible to prove the agreement between the conspirator by direct proof but the meeting of minds of the conspirator can very well be inferred from the circumstances proved by the prosecution, if such inference is possible refer **Yogesh @ Sachin Jagdish Joshi versus State of Maharashtra (1)**.

(b) As rightly pointed out by the learned counsel for the appellants, the second and third accused, were not shown in the earlier FIR lodged by their son, the first accused herein as against Beant Singh and Bhagwant Singh. They were also not involved in the proximate incident in which first accused hit the cycle of PW1 and invited an altercation. It is the admitted case of the prosecution that the first accused Jarnail Singh was in fact proceeding to his office from his house at about 2 PM and was involved in the occurrence which culminated in the hitting of the cycle of PW1. There was no evidence to show that Jarnail Singh thereafter went back to his house and entered into any conspiracy to eliminate Beant Singh and Bhagwant Singh. There was no reason for the old couple- 2nd and 3rd accused to proceed to the house of PW1 at 3.00 PM to administer threat to them. The second accused is a retired Subedar. He has a licenced gun with him. In such circumstances there was no reason for him to ask his son Jarnail Singh who was in the service of Police department to eliminate Beant Singh and Bhagwant Singh. If at all there was any conspiracy as projected by the prosecution, the second accused who being a retired Subedar would have taken up the responsibility of eliminating his enemy.

(c) In view of the above, we are not inclined to accept the prosecution version that there was a threat wielded by the other accused at about 3.00 PM at the house of PW1. When such a threat alleged to have been wielded by other accused is found doubtful, the theory of

conspiracy projected by the prosecution is completely weakened. We find that the prosecution miserably failed to establish that there was a conspiracy hatched by the accused to eliminate Beant Singh and Bhagwant Singh as contended by the prosecution. We have no hesitation to conclude that the trial Court has mis-directed itself and come to a wrong conclusion that the second and third accused were liable to be convicted for the offence under section 302 read with Section 120-B of the I.P.C.

Offence under section 27 (3) of the Arms Act 1959 :

(12) (a) Before ever referring straight to the penal provision under section 27 (3) of the Arms Act, 1959, let us refer to Section 2 (i) of the Arms Act which defines "Prohibited Arms". Prohibited Arms means fire-arms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged unless pressure is removed from the trigger or the magazine containing the missiles is emptied. As per Section 7 of the Arms Act, no person shall use any prohibited ammunition unless he has been specially authorized by the Central Government in that behalf. Now, let us take up the penal provisions under section 27 (3) of the Act. The said provision would read that whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 of the Act which resulted in the death of any other person shall be punishable with death. It is to be noted that there is no evidence on record in the instant case except the statement of the accused under section 313 CrI. P.C. that the AK-47 rifle used in this occurrence was an automatic weapon which would continue the discharge of missiles unless the pressure was removed from the trigger. The plea taken by the accused under section 313 Cr. P.C. cannot be the sole basis to reach any definite conclusion. There should be independent evidence and corroborative material to clinch the point that a prohibited weapon was used by the accused. None of the witnesses examined by the prosecution would speak to the fact that the AK-47 weapon used in this case was a fully automatic weapon which could discharge missiles continuously until the pressure was removed from the trigger.

(b) The FSL report is quite silent about the automatic nature of the weapon used in this case. Secondly, the licenced weapon was used by the first accused but of course there was misuse of the weapon entrusted to him in his official capacity to protect the officer concerned.

(c) The Hon'ble Supreme Court in **Gyasuddin Khan alias Md. Gyassuddin Khan versus State of Bihar (2)** has held as follows :

“(21)The conviction under Section 27 of the Arms Act cannot however be sustained. The gravamen of the second charge framed against the appellant is that he used the sten-gun and SLR for the unlawful purpose of killing the three persons. There is no evidence to the effect that the weapon used, namely, sten-gun answers the description of “prohibited Arms” within the meaning of S2 (1)(i) of the Arms Act. The report of the Sergeant Major to whom the weapons were sent was only to the effect that they were in working condition. There was no discussion whatsoever either by the trial Court or by the High Court in regard to the offence under Section 27. We are not inclined at this stage to probe further and address the question whether the sten gun of Ram Pandey which was used in the commission of the crime is a prohibited arm within the meaning of Section 2(1)(i) though, in all likelihood, it may be, it is not appropriate to convict the appellant under Section 27(3) in which the extreme punishment of death is provided for. Hence the conviction of the appellant under Section 27 of the Arms Act, 1959 is hereby set aside.”

That was a case where a sten-gun was used. There was no evidence to establish that the sten-gun used in that case fell squarely within the definition of prohibited arms. Therefore, the conviction under section 27(3) of the Act with the extreme punishment of death was set aside. A Division Bench of this Court in **Sher Singh versus State of Punjab, (3)** has held as follows :

“26. There is no evidence on record which could spell out that the weapon or ammunition alleged to have been recovered from the possession of the appellant is prohibited arm or ammunition. Since the rifle “AK 47”, the alleged weapon, in the instant case is not automatically triggered, but only one shot can be fired by the pull of trigger and for firing the second shot, the trigger has to be released first and pull again. Under these circumstances, the weapon in question, i.e. rifle “A.K. 47” does not come within the purview of prohibited arms, as defined under Section

(2) AIR 2004 S.C. 210

(3) MANU/PH/0011/2007

2(1)(i) of the Act of 1959. No notification has been placed on record, which could spell out that the stengun and the ammunition used in the instant case is a prohibited arm and ammunition.....”

That was similar case where AK-47 rifle was used to commit the offence. On fact a Division Bench of this Court held that the weapon AK-47 rifle used was not an automatic weapon. Therefore, one cannot jump to a conclusion that all AK-47 rifles are automatic weapons.

(13) In the light of the aforesaid decision we find that there is lack of evidence to establish that AK-47 rifle entrusted to the first accused was prohibited automatic weapon. As already pointed out by us it is a clear case of misuse of AK-47 weapon entrusted officially to the first accused. In view of the above, the conviction of the accused under Section 27(3) of the Arms Act, 1959 with an extreme punishment of death does not arise for consideration. The trial Court has simply misinterpreted the ambit of the aforesaid provision of law and has come to a wrong decision that the offence under section 27(3) of the Act was made out as against the first accused.

(14) AK-47 rifle entrusted to the first accused was totally misused by him. The Arms Act does not approve of such a wrong use of a weapon entrusted to an armed guard. But unfortunately, the Arms Act does not provide any punishment. As per section 30 of the Act, a person who has contravened the provisions of the Arms Act is punishable with an imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or with both where no punishment is provided elsewhere in the Act. As the prosecution has established that there was a clear misuse of AK-47 weapon entrusted to the accused, we hold that the first accused is liable to be punished with R.I. for six months under Section 30 of the Arms Act, 1959.

Compensation under Section 357 of Cr. P.C.

(15) (a) PW1 has lost both of his sons in the occurrence. The suffering and agony of the age old father who has lost both his male descendents is quite understandable. Any amount of compensation awarded by this Court would not definitely erase the painful memory of the permanent loss of his two sons. At any rate we find that a little amount of financial succor may go to take care of a part of his loss of dependency on account of the sudden calamity befallen on him.

(b) Beant Singh was shot dead in the very presence of his father and his father-in-law. He has left behind his young widow. The permanent

loss of consortium of the widow is more agonizing than the loss of love and affection suffered by the father. The widow has to bear the permanent scar of widowhood throughout her life. Her expectation in life has been completely taken away by the death of her husband. We are aware that the compensation that would be awarded by us would not completely extinguish her agony but still the compensation would partly take care of her financial problems.

(c) Of course the first accused having been motivated by the grouse he had with the deceased Beant Singh and Bhagwant Singh, had eliminated them. But quite unfortunately, the vegetable vendor Kulinder Nishad has also been shot dead in the shooting spree undertaken by the first accused. We are more concerned with the legal heirs of the unfortunate victim Kulinder Nishad who are not even aware of their legal rights. There is no one to represent their lawful claim for compensation on the death of Kulinder Nishad. We could imagine the tragedy that had fallen on the unfortunate family on the death of the bread winner of the family. We believe that they had been silently encountering the crisis on the death of their bread winner Kulinder Nishad hopelessly cursing their destiny. Are they not entitled to compensation from the State? Of course, the Additional Advocate General for the State would submit that the State may not be saddled with the compensation.

(d) In this respect it is relevant to usefully refer to the observations of the Hon'ble Supreme Court in case where the unfortunate mother of the victim of Police violence in Police custody knocked at the door of the Supreme Court praying for monetary compensation from the State who unjustifiably defended itself with the doctrine of sovereign immunity. While declaring that the sovereign immunity was not available to the State and such a concept is alien to the guaranteed fundamental rights under the Constitution of India, it observed as follows :

“It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental rights is ‘distinct from, and in addition to, the remedy in private law for damages for the tort’ resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence

being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

In yet another recent case where the foreign lady who was gang raped, by a practicing lawyer of the Calcutta High Court prayed for award of suitable compensation to the victim. The employees of the Railways also were found to be the culprits in the gang rape committed on a foreigner hailing from Bangladesh. The Supreme Court very authoritatively held as follows :

"Having regard to what has been stated above, the contention that Smt. Hanuffa Khatton should have approached the Civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution cannot be accepted. Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under Private Law."

(e) In view of the clear dictum of the Supreme Court the doctrine "King can do no wrong" is the doctrine of the past. The act of the State which culminated in deprivation of life and liberty of the person, with consequential loss occasioned to the family, cannot go without being visited with liability.

(16) In the instant case admittedly the first accused Jarnail Singh who was in the employment of the State of Punjab was entrusted with AK-47 rifle to discharge his official duty. He has in fact misused the weapon officially handed over to him which took away three precious lives. Had

not the State of Punjab recruited the first accused Jarnail Singh in its service and entrusted him with the AK-47, the occurrence would not have taken place. At least the human suffering could have been limited. The life of innocent victim Kulinder Nishad would not have been taken away in the process of shooting Beant Singh and Bhagwant Singh. State cannot shirk its responsibility of shouldering vicarious liability on account of the act of its official who was entrusted with AK-47 weapon to discharge his official duties.

Conclusion :—

(17) In view of the above, we invoke the provisions of Section 357 Cr. P. C. and direct that the first accused Jarnail Singh shall pay Rs. three lac to the widow of deceased Beant Singh and Rs. two lac to PW-1, the father of deceased Beant Singh and Bhagwant Singh within three months from the date of this order. The State of Punjab shall pay Rs. 5 lac to the Legal heirs of deceased Kulinder Nishad within three months from the date of this order. The District Magistrate, Ludhiana is directed to trace the legal heirs of the deceased Kulinder Nishad and duly inform them of this Order. The trial Court is directed to recover the compensation within the time framed and disburse the amount as directed in this judgement. The amount of compensation payable to the legal heirs of Kulinder Nishad, shall be apportioned equally amongst them.

(18) In view of the above discussion, we confirm the judgement of conviction and order of sentence passed against accused Jarnail Singh under Section 302 IPC. But the judgement of conviction and order of sentence passed against second accused Sadhu Singh and third accused Paramjit Kaur under Section 302/120-B of the Indian Penal Code are set aside and the above two accused are directed to be set at liberty forthwith, if not required in any other case.

(19) Similarly, the judgement of conviction and order of sentence against first accused Jarnail Singh under Section 27 of the Arms Act are set aside but, instead he is convicted under Section 30 of the Arms Act and sentenced to undergo RI for six months. The murder reference is answered accordingly.

(20) The appeal stands disposed of in the above terms.