

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PENAL CODE

Date of Decision: 1st March, 2007

CRIMINAL APPEAL NO.307 of 1999

RESHAM SINGH

.... Appellant
Through: Ms. Manisha Bhandari with
Mr. Onkar Srivastaava, Advocates

versus

STATE

.... Respondent
Through: Mr. Ravinder Chadha, APP for
State with Mr. Jagdish
Prasad, Advocate

WITH

CRIMINAL APPEAL NO. 318 OF 1999

KEWAL SINGH

...Appellant
Through: Ms. Neelam Grover, Advocate

versus

STATE

...Respondent
Through : Mr. Ravinder Chadha, APP for
the State with Mr. Jagdish
Prasad, Advocate

AND

CRIMINAL APPEAL NO. 330 OF 1999

PIARA SINGH

...Appellant
Through: Mr. R.S.Suri and Mr. A. Mathew,
Advocates

versus

STATE

...Respondent

Through: Mr. Ravinder Chadha, APP for
State with Mr. Jagdish Prasad,

Advocate

CORAM:

HON'BLE MR. JUSTICE R.S.SODHI

HON'BLE MR. JUSTICE P.K.BHASIN

P.K.BHASIN, J:

1. The three appellants and four other persons, namely, Dr. Amrik Singh, Iqbal Singh, Gursewak Singh and Sarwan Singh were charge-sheeted for the commission of different offences under the Indian Penal Code in Sessions case No. 151/95 in respect of FIR No. 334/83 of Hauz Khas police station. Vide judgment dated 29-05-99 the learned Additional Sessions Judge, New Delhi held appellants Piara Singh and Kewal Singh, both of whom are real brothers, guilty under Sections 302/323 IPC and appellant Piara Singh was also convicted alongwith the third appellant Resham Singh under Section 120-B r/w Section 218 IPC while the other two accused Amrik Singh and Sarwan Singh, who were tried under Section 120-B r/w Section 218 IPC, were acquitted. Resham Singh was convicted under Section 218 r/w 120-B IPC also. Accused Gursewak Singh and Iqbal Singh died during the trial and so the case against them abated. Vide order dated 02-06-1999 learned Additional Sessions Judge awarded life imprisonment to appellants Piara Singh and Kewal Singh for the offence of murder and they were also directed to pay a fine of Rs. 2000/- each, in default of payment they were ordered to undergo further six months rigorous imprisonment. They were also awarded rigorous imprisonment for six months for their conviction under Section 323 IPC. Piara Singh and Resham Singh were further awarded two years rigorous imprisonment for their conviction under Section 120-B r/w 218 IPC. Resham Singh was also awarded two years rigorous imprisonment under Section 218 IPC. All the three convicted accused preferred separate appeals against their convictions and they were heard together and are now being disposed of by this common judgment.

2. The facts leading to the prosecution of the appellants and other accused persons have been noticed by the learned trial Court in para no. 1 of the impugned judgment and they are as under: A telephonic information was received at P.S. Hauz Khas from Const. Ramesh Chander, Duty Constable, Safdarjang Hospital on the night intervening 22/23rd April, 1983 regarding one Gurdhian Singh have been brought dead to the hospital by his son Tarlochan Singh. On the basis of this information, DD No. 26A was recorded which DD was handed over to SI Govind Ram who alongwith Const. Lila Singh went to the hospital where Gurnam Singh met him and gave his statement. A case u/s 302/34 IPC was registered on the basis of statement of Gurnam Singh. In his report, Gurnam Singh stated that he was a taxi driver at New Friends Taxi Stand, Ber Sarai, for one year. Disputes were going on between Gurdhian Singh and Piara Singh over the taxi stand and litigation was pending in the court regarding the same. On that day, there was a small quarrel, between Kashmiri Singh who was brother of Piara Singh and Kewal Singh, with Gurdhian Singh at about 9.30 P.M. in which Kashmiri Singh received simple injuries. After the quarrel, Kashmiri Singh went to the house of his relation while Tarlochan Singh went to his house for dinner. At about 11.30 P.M., he, Iqbal Singh and Gurdhian Singh were lying on their cots at the taxi stand when Piara Singh and Kewal Singh came in their taxi No. PJQ 9474. Kewal Singh was having a

lathi in his hand and he gave beatings to him and Iqbal Singh with the same upon which both of them ran from there and raised alarm. On hearing the noise, Gurdhian Singh tried to run away after leaving his cot. Meanwhile, Kewal Singh caught hold of Gurdhian Singh and Piara Singh took out the Kirpan with him and gave blows with the same on the chest and abdomen of Gurdhian Singh who fell down. It is further stated in the report that he and Iqbal Singh rushed to call Tarlochan Singh at the spot and thereafter they took Gurdhian Singh to Safdarjang Hospital in injured condition where doctors declared him dead. The complainant also stated that he had received injuries on his arm and leg on account of lathi blows given to him by Kewal Singh.....”

3. It appears that during the investigation the investigating officer found that accused Piara Singh and Kewal Singh had after committing the murder gone to village Dasuya in Hoshiarpur District of Punjab and there they managed to get prepared false documents/record showing that Piara Singh had been arrested on 22/04/83 at about 8.30 p.m. in Dasuya village by co-accused Gursewak Singh, who during those days was the SHO of Dasuya police station, for an offence under Section 34 of the Punjab Police Act for creating nuisance in public after consuming liquor. They also managed to get prepared an MLC of Civil Hospital at Dasuya from co-accused Dr. Amrik Singh, who was working there, showing that he had medically examined Piara Singh at 9.30 p.m. and he was found under the influence of liquor and then a false kalandra was also got prepared from co-accused Resham Singh, who was posted as Head Constable at Dasuya police station, and it was filed in Court on 26/4/83 when Piara Singh, as per the pre-planned conspiracy between all the seven accused, appeared in Court and pleaded guilty and was convicted and sentenced to fine of Rs.10/- vide judgment dated 26-04-1983(Ex.PW-23/M).

4. After their arrest accused Piara Singh allegedly got recovered blood stained kirpan used by him in the incident of murder at Delhi from some place in Punjab and accused Kewal Singh also got recovered the lathi used by him in that incident. On completion of the investigation the police charge-sheeted seven accused persons under Sections 302/34/201/218/193/212/120-B IPC. The learned trial Court framed charges under Section 120-B IPC and Section 218 IPC read with Section 120-B IPC against all the seven accused. The two appellants Piara Singh and Kewal Singh were also separately charged under Section 302 read with Section 34 IPC and Section 323 read with 34 IPC also.

5. To prove its case prosecution examined as many as 32 witnesses. The accused persons in their statements recorded under Section 313 of the Code of Criminal Procedure denied the prosecution allegations in toto and pleaded false implication. Piara Singh claimed that he had been falsely involved in this case by the son of the deceased as there was a dispute over the taxi stand with his brother Kewal Singh. He took a plea of alibi and claimed that at the time of the alleged murder of Gurdhian Singh he was not in Delhi and was in Dasuya where he was arrested by the police for creating nuisance under the influence of liquor for which he had pleaded guilty before the Court. Appellant Kewal Singh claimed that since there was a dispute between him and the deceased about the taxi stand he and his brother Piara Singh had been falsely involved in this case by the son of the deceased. Appellant Resham Singh claimed that Piara Singh was actually arrested on 22-04-1983 by SHO Gursewak Singh(the deceased accused) who had also prepared the rukka for the medical examination of Piara Singh. Resham Singh further pleaded that he had prepared the kalandra on the instructions

of Gursewak Singh and that kalandra was filed in Court where Piara Singh had pleaded guilty and judgment was passed against him. The plea taken by accused Amrik Singh, who was finally acquitted, was that the deceased was having some police officers in Delhi Police and it appeared that they had implicated so many persons falsely in this case.

6. Four witnesses in defence were examined by accused Piara Singh, Resham Singh and Sarwan Singh.

7. The trial court after examining the evidence adduced during the trial rejected the plea of alibi taken by accused Piara Singh and convicted all the appellants for different offences noted already.

8. The star prosecution witness is PW-7 Iqbal Singh who not only was the eye witness of the assault on the deceased Gurdhian Singh by the appellants Piara Singh and Kewal Singh but he himself was also beaten in the incident. He has deposed that in the year 1983 he was working at New Friends Taxi Stand, Ber Sarai and knew accused Piara Singh and Kewal Singh. He further deposed that there was a quarrel between the deceased Gurdhian Singh and accused Piara Singh and Kewal Singh about the taxi stand. On 22-04-83 at about 9.30 p.m. when he along with Kewal Singh, Piara Singh, Kashmira Singh, Gurnam Singh, Gurdhian Singh and Tarlochan Singh was present at the taxi stand there was a quarrel between Kashmira Singh and Gurdhian Singh and in that quarrel Kashmira Singh received minor injuries. Thereafter Kashmira Singh left the spot and went to the house of accused Kewal Singh whom Kashmira Singh used to call as his Mause. At about 11.30 p.m. accused Kewal Singh and Piara Singh came to the taxi stand in a vehicle bearing No. PJQ-9474 and at that time accused Kewal Singh gave lathi blow to him(PW-7) and Gurnam Singh(PW-2) on which they raised noise and Gurdhian Singh started running from there but accused Kewal Singh apprehended Gurdhian Singh and accused Piara Singh inflicted five or six blows of kirpan on the chest of Gurdhian Singh as a result of which Gurdhian Singh fell on the ground. Thereafter he along with Gurnam Singh went to the house of Gurdhian Singh to call his son Tarlochan Singh(PW-9) and from there they along with Tarlochan Singh came to the spot in car No. DLT-5928. The deceased was lifted and taken to Safdarjang Hospital where after some time the doctor declared him dead. PW-7 further deposed that the police met him in the hospital and since he had also received injuries on his left arm he was got medically examined and also that the police had recorded his statement in Safdarjang Hospital.

9. The other eye witness of the incident is PW-2 Gurnam Singh. He has deposed that some litigation was pending regarding the said taxi stand between Gurdhian Singh, the deceased, and accused Kewal Singh and Piara Singh. On 22-4-83 at about 10.30 p.m. he along with Gurdhian Singh were present at the taxi stand when Kashmira Singh came there and enquired about Kewal Singh and Piara Singh from Gurdhian Singh. Kashmira Singh was told by Gurdhian Singh that he was not on good terms with Kewal Singh and Piara Singh and then they started exchanging abuses with each other and also had a scuffle by grappling with each other. Gurdhian Singh picked up a lathi lying there and hit Kashmira Singh with that lathi and when he(PW-2) intervened he was pushed back by Kashmira Singh due to which he received injury on his arm. PW-2 further deposed that Gurdhian Singh was having a kirpan which he took out from its case and then he(PW-2) went to call Gurdhian Singh's son from his house. At the house of Gurdhian Singh his son Tarlochan Singh(PW-9) and

Iqbal Singh(PW-7) were present and both of them accompanied him to the taxi stand where Gurdhian Singh was found smeared with blood. At that stage the public prosecutor had sought permission from the Court to cross-examine PW-2 since he had resiled from the version of the incident which he had given to the police. The public prosecutor was permitted to cross-examine this witness and then this witness admitted that his statement had been recorded by the police regarding this case. However, he denied having claimed before the police that accused Kewal Singh and Piara Singh had injured Gurdhian Singh in the incident. PW-2 also denied having informed the police that he himself was also given a lathi blow on his arm and leg by Kewal Singh and Piara Singh.

10. The learned trial Court found the evidence of the eye witness Iqbal Singh reliable despite the fact that he admittedly was closely related to the deceased and as such an interested witness. The learned trial Court also did not give any importance to the fact that admittedly there was enmity between the deceased and appellants Piara Singh and Kewal Singh and also the fact that one independent witness PW-16 Gurdhian Singh, who was examined to establish extra judicial confession made by Piara Singh to him on 23-04-83, had also not supported the prosecution. Learned Judge also found the evidence regarding recovery of Kirpan at the instance of Piara Singh and lathi at the instance of Kewal Singh to be reliable. At the same time he also observed that still no finding of guilt could be recorded until the plea of alibi of accused Piara Singh was considered and found to be false. These are the observations in this regard made in para no. 38 of the impugned judgment:-

“38. While coming to the conclusion that the statement of PW Iqbal Singh and other evidence could not be said to be unreliable, no finding of guilt can be recorded until the plea of alibi of accused Piara Singh is considered and found to be false. On the contrary, if it is held that the prosecution has not been able to displace the defence of alibi set forth by accused Piara Singh, the accused shall be entitled to acquittal and with that the prosecution case against accused Kewal Singh and other accused persons may also fail.....”

11. After observing so the learned trial Court went on to consider the plea of alibi taken by accused Piara Singh and came to the conclusion that this defence of Piara Singh was absolutely false and concocted. The learned prosecutor while arguing before us did not disagree with the view of the learned trial Judge that if the plea of alibi taken by the accused Piara Singh is accepted then the prosecution case not only against Piara Singh but against all the accused would fail. However, the learned prosecutor had submitted that the conclusion of the trial Court regarding the plea of alibi to be false and concocted was absolutely correct. It was contended that in view of the wholly reliable testimony of PW-7 Iqbal Singh, the eye witness of the incident, an evidence about recoveries of the weapons of offence at the instance of Piara Singh and Kewal Singh the plea of alibi taken by Piara Singh was rightly rejected by the trial Court. The submission of learned counsel for the appellants, on the other hand, was that evidence of the eye witness Iqbal Singh and that of other witnesses regarding the recovery of kirpan and lathi was totally unreliable and as far as the plea of alibi of Piara Singh is concerned, from the prosecution evidence itself it stands established that this plea of Piara Singh was correct and that the learned trial Court has rejected the plea of alibi on totally unsustainable grounds.

12. We have considered the evidence and also the rival submissions made at the Bar by the counsel for the parties. From the foregoing narration of the facts of the case, evidence of

the eye witness and the oral submissions made at the Bar from both the sides the position which emerges is that there is no dispute about the fact that the deceased Gurdhian Singh died a homicidal death on 22/4/83. That fact is established from the post-mortem report also about which no dispute was raised before us. According to PW-7 Iqbal Singh on 22/4/83 at about 9.30 p.m. accused Piara Singh and Kewal Singh were present at their taxi stand at Ber Sarai, New Delhi and same day at about 11.30 p.m. Kewal Singh had first hit him and Gurnam Singh(PW-2) with a lathi and then Kewal Singh had caught hold of Gurdhian Singh and Piara Singh had assaulted Gurdhian Singh with a kirpan. On the other hand, the stand taken by accused Piara Singh and Kewal Singh was that both of them were not present at the place of occurrence at the time of both the incidents as claimed by PW-7. We, however, do not find the evidence of PW-7 to be reliable at all. As far as the first informant is concerned he has not supported the prosecution. The contention of learned counsel for the appellant was that the statement of Gurnam Singh, the author of the FIR of this case, containing the names of Piara Singh and Kewal Singh as the assailants and which statement has been treated as FIR by the police can be said to have been recorded later on and was ante-timed and since it was a false version of the incident Gurnam Singh finally did not stick to that version in Court when he gave his statement on oath. We find force in this argument. PW-7 has claimed that after the incident he had gone to the house of the deceased to call his son Tarlochan Singh(PW-9). Although PW-9 Tarlochan Singh in his testimony claimed that Iqbal Singh and Gurnam Singh(PW-2) had come to his house at about 11.35 p.m. and had informed him that his father had been stabbed with kirpans but he did not claim that Iqbal Singh and Gurnam Singh had told him that his father had been stabbed by Piara Singh and Kewal Singh. If actually PW-7 had witnessed the incident, as claimed by him, he would have told to the son of the deceased about the assailants also and the names of the assailants would also have been disclosed to the doctor who examined the deceased after the incident. However, a perusal of the MLC Ex. PW-14/A shows that even though Tarlochan Singh, the son of the deceased, had brought Gurdhian Singh to the hospital and had informed the doctor that there was an assault on his father but names of the assailants were not disclosed at that time. A perusal of the inquest report Ex. PW 23/F prepared on 23-04-83 also shows that the names of the assailants were not mentioned there also by the investigating officer. Similarly, in the brief facts Ex. PW-23/G prepared by the investigating officer on 23-04-83 the names of the assailants were not mentioned. The absence of the names of the assailants in these papers prepared by the investigating officer on 23-04-83 casts a serious doubt about the truthfulness of the account of the incident given by PW-7 Iqbal Singh. For this view we find support from a judgment of Hon'ble Supreme Court reported as 2000(II) Apex Decisions (SC) 103, "Rang Bahadur Singh vs State of U.P." wherein it was held that in the inquest papers at least the names of the assailants who are known by that time are expected to be mentioned by the investigating officer and if that is not done it can be presumed that by that time the assailants were not known. The contention that inquest report need not contain the names of the assailants, as has been raised in the present case also on behalf of the State, was also taken before the Supreme Court in the said case but was rejected. The afore said infirmities in the evidence of PW-7 Iqbal Singh coupled with the fact that there was enmity between the two sides make his evidence highly doubtful and unreliable.

13. Learned prosecutor had also contended that the prosecution was not relying upon merely on the statement of PW-7 but there is evidence adduced to show that after his arrest

accused Piara Singh had got recovered blood stained kirpan which was used by him in the incident and when that weapon was examined by the autopsy surgeon Dr. Chandrakant he had given his opinion Ex. PW-32/C to the effect that the injuries noticed by him on the body of the deceased at the time of post-mortem examination were likely to be caused by the said kirpan. Learned prosecutor had also submitted that accused Kewal Singh had also got recovered one lathi Ex. PX-I which he had used in the incident for causing injury to the eye witnesses Gurnam Singh and Iqbal Singh. In our view, the prosecution in respect of these recoveries is also highly doubtful. As far as the recovery of lathi is concerned PW-7 Iqbal Singh had stated in cross-examination that accused Kewal Singh had thrown the lathi at the spot itself when they raised the alarm. However, PW-22 Ct. Leela Singh has claimed that accused Kewal Singh had got recovered the lathi from some place near the Deer Park on Africa Road. Another witness of this recovery is PW-27 Paramjit Singh, who in his cross-examination admitted that he was related to the deceased, has deposed that Kewal Singh had got recovered the lathi from a place near ITI Hostel near R.K.Puram. If the accused Kewal Singh had left the lathi at the spot itself after the incident the same could not have been recovered from any other place. In view of these contradictory statements of the three prosecution witnesses the recovery of the lathi at the instance of Kewal Singh becomes doubtful and in any case PW-7 Iqbal Singh was not even shown the recovered lathi during his evidence to find out from him if it was the same lathi which had been used by Kewal Singh as had been claimed by him in his examination-in-chief. So, the evidence of recovery of the lathi, even if it were to be accepted, is of no help to the prosecution. Similarly, the evidence of recovery of kirpan at the instance of appellant Piara Singh is also of doubtful nature. PW-22 Ct. Leela Singh is a witness to the disclosure statement of accused Piara Singh pursuant to which he had allegedly got recovered one kirpan. This witness stated in his cross-examination that firstly Piara Singh had told that he was not aware of the murder or any weapon of offence but after about 2-3 hours when the investigating officer told him that he would not harm him and that he should make a correct statement Piara Singh then had made the disclosure statement Ex. PW-2/C. That was on 4th May, 1983. Thus, according to this prosecution witness himself Piara Singh did not make any statement voluntarily. The investigating officer, who has not been examined as a witness because he died, appears to have threatened Piara Singh and then obtained a confessional statement from him. PW-22, however, does not claim that Piara Singh had after making the disclosure statement got recovered a kirpan.

14. The prosecution has examined one Mahender Singh(PW-11), a resident of Punjab in village Jaswa, to prove the recovery of kirpan at the instance of Piara Singh. Although this witness had deposed that on 07-05-83 when he was present at village Roopowar at about 5 p.m. and was coming on his truck from the side of Tanda and going towards Gar Di Wala the police stopped him. At that time accused Piara Singh was present with the police officials and he led the police party in a jungle from where he took out a kirpan which was then sealed by the police. That kirpan is Ex. P-1. The learned trial Court entertained doubt about the truthfulness of the evidence of this witness on the ground that he was not truthful about his actual relationship with the family of the deceased. In his chief-examination he had not disclosed that he knew the family of the deceased and it was only in cross-examination that he knew the deceased Gurdhian Singh. It cannot be a coincidence that a person known to the deceased only could be spotted by the police on road side to be associated as a witness for the

recovery of the kirpan. It appears that the investigating officer chose to associate only those persons as witnesses who were either related to the deceased or otherwise were known to him. So we also are not inclined to rely upon the evidence of PW-11 Mahender Singh. The learned trial Court also observed that the recovery of kirpan was established from the evidence of the police official PW-21 SI Ran Singh. There is no doubt that this witness has deposed about the recovery of kirpan at the instance of Piara Singh. However, we feel that since the investigating officer intentionally had been associating interested witnesses only at different stages we cannot place any reliance on the evidence of his subordinate police official. We are, therefore, of the view that the prosecution evidence, as discussed above was not reliable and sufficient enough to convict the accused persons.

15. Now we come to the plea of alibi taken by accused Piara Singh and the charge under Section 218 IPC framed against the accused persons. It is now well settled that plea of alibi is to be established by the accused who takes it. The accused can do so either by adducing necessary evidence or he can establish that plea even from the evidence of the prosecution, oral as well as documentary. In case the plea of alibi taken by an accused is accepted by the Court then evidence of even the eye witnesses of some incident will have to be discarded. Learned prosecutor did not dispute this proposition. In the present case the plea of alibi had been taken not only during the cross-examination of the eye witness Iqbal Singh but also at the time of recording of statements under Section 313 Cr.P.C. and the accused had sought to establish the same from the evidence of prosecution witnesses from Dasuya police station to show that Piara Singh was not arrested by them on 22/4/83 as well from the documents placed on record by the prosecution. We shall now consider if the accused had been able to succeed in their plea or not and whether the learned trial Judge was right in rejecting their plea of alibi. The investigating agency in order to verify the fact about the arrest of Piara Singh at Dasuya village his medical examination at Civil Hospital on the night on 22/04/83 and his conviction on 26/04/83 by a Magistrate's Court at Dasuya had during the investigation collected certain documents which actually showed that Piara Singh was arrested at Dasuya on 22/4/83 around 8.30 p.m. and at about 9.30 p.m. on the same day he was medically examined also by the acquitted accused Dr. Amrik Singh at the civil hospital in Dasuya and those documents had been submitted alongwith the challan filed in the present case. Let us now see what those documents are and whether the learned trial Court was justified in ignoring those documents. The prosecution has placed on record a copy of the judgment (Ex.PW-23/M) passed by the Court of Shri S.C.Marwah, JMIC, Dasuya in kalandara case no. 126/1 of 1983 whereby Piara Singh s/o Gulzara Singh, the appellant in criminal appeal no. 330/1999, was convicted under Section 34 of the Punjab Police Act on the allegations made in the kalandra (Ex.PW-23/H) that he was arrested for creating nuisance under the influence of liquor at a public place. It was contended by the learned Additional Public Prosecutor that the conviction of Piara Singh as recorded by the Magistrate at Dasuya should not be given any importance since it had been obtained by playing a fraud on the Court and the Court did not go into the correctness or otherwise of the allegations levelled against Piara Singh in the kalandra, which according to the prosecution case was a false document prepared by accused Head Constable Resham Singh of Punjab Police, and had convicted appellant Piara Singh simply on the basis of his pleading guilty which also he did as was the plan of all the accused persons. The prosecution claims that the averments made in the kalandra Ex.PW-23/H to the effect that Piara Singh was apprehended on 22-4-83 around 8.30 p.m. under Section 34 of the Punjab

Police Act were false and this document was prepared by appellant Resham Singh only in order to help appellant Piara Singh in creating a plea of alibi to be used in the event of his getting implicated in the case of murder of Gurdhian Singh. The plea of appellant Resham Singh in respect of this document is that it is a genuine kalandara and that Piara Singh was actually arrested on 22-4-83 by the deceased accused Gursewak Singh who was the SHO of Dasuya police station during those days and further that he had prepared this kalandara correctly on the instructions of Gursewak Singh. It was also the plea taken by appellant Resham Singh that Piara Singh after his arrest on 22-04-83 at Dasuya was medically examined also at the Civil Hospital, Dasuya.

17. Now, as far as the contention of the learned prosecutor that the judgment of the learned Magistrate of Dasuya Court should be ignored on the ground that it was obtained by fraud is concerned it cannot be accepted since that judgment has not been got revoked by the Delhi Police by taking recourse to appropriate legal proceedings either before the same Court or before any superior Court. So long as that judgment is there it cannot be ignored and the trial Court was thus not justified in ignoring the same. That judgment does help the accused in his plea of alibi. Not only that, there are other reasons also for us to accept the plea of alibi taken by the accused that Piara Singh was first arrested around 8.30 p.m. on 22/4/83 at Dasuya and then he was medically examined also at about 9.30 p.m. at the Civil Hospital, Dasuya by Dr. Amrik Singh. As noticed already, that Dr. Amrik Singh who was charged for preparing a false MLC Ex. PW-28/A showing that he had medically examined Piara Singh on 22-04-83 at about 9.30 p.m. at Civil Hospital, Dasuya has been acquitted. The acquittal of that accused Dr. Amrik Singh shows that the prosecution has not been able to establish that Dr. Amrik Singh had prepared a false MLC(Ex. PW-28/A) and if that be so, it has to be held that the MLC Ex. PW-28/A was a genuine document. It was this very document which was sought to be shown as a forged document by the prosecution and it has failed to do that. PW-28 Dr. Ramgopal Singh, who was also working in the Civil Hospital, Dasuya has proved the aforesaid MLC, which is an attested copy of the original and this witness claims to have attested the copy of the MLC after comparing it with the original. He has also claimed that this MLC was signed by Dr. Basra. Since accused Resham Singh was claiming that Piara Singh had, in fact, been medically examined and this MLC was prepared at the time of his medical examination and the prosecution which was claiming the same to be a forged document, has failed to show that this was a forged MLC it has to be held that Piara Singh was actually medically examined by Dr. Amrik Singh at the Civil Hospital, Dasuya on 22-04-83 at 9.30 p.m. In these circumstances the statement of PW-7 Iqbal Singh to the effect that on 22-04-83 at 11.30 p.m. appellants Piara Singh and Kewal Singh were present at the taxi stand of Ber Sarai where according to him Gurdhian Singh was murdered becomes unacceptable.

18. There is another reason also for us to accept the plea of alibi taken by the accused Piara Singh and the supporting pleas taken by his co-accused persons and to doubt the prosecution case regarding the involvement of Piara Singh and Kewal Singh in the incident of murder as was sought to be established through the testimony of PW-7 Iqbal Singh. In order to substantiate the allegation that on 22-4-83 Piara Singh was not arrested by the Punjab Police as had been claimed in the aforesaid kalandara by the appellant Resham Singh and he had also not been medically examined around 9.30 p.m. on 22-04-83 by the acquitted accused Dr. Amrik Singh at the Civil Hospital, Dasuya the prosecution had examined PW-31 HC Gurdev Chand, who on 22-04-83 was posted as a constable at Dasuya police station. He was

examined to show that he had not got Piara Singh medically examined on 22-04-83 and that somebody had forged his signature on the MLC Ex.PW-28/A which showed that he had taken Piara Singh for medical examination. This witness, however, claimed that on 22-04-83 he was posted as a driver constable at Dasuya police station and on that day he had taken one person for medical examination and that MLC Ex.PW-23/Q bore his signature at point 'B'. This MLC, as noticed already, was according to the prosecution case a forged document but the learned trial Court has not accepted the same and has acquitted the accused who had allegedly prepared this false MLC. Since this witness did not support the prosecution he was cross-examined by the public prosecutor. In that cross-examination he denied the suggestion that the signature at point 'B' on Ex. PW-23/Q was not his. When he was cross-examined on behalf of the accused Resham Singh he categorically accepted the suggestion that the SHO had directed him to take Piara Singh to hospital for medical examination. This witness also admitted that on 22-04-83 at about 8/8.15 p.m. one person had come to the police station and had informed the SHO that some incident had taken place at the bus stand and then he(PW-31) along with the SHO went to the bus stand where they found accused Piara Singh creating nuisance. He further claimed that the SHO had tried to pacify Piara Singh but Piara Singh started abusing on which the SHO wrote an application and directed him to take Piara Singh to the hospital for medical examination which he did. This witness was not further cross-examined by the public prosecutor after he had made this statement in his cross-examination on behalf of the accused regarding Piara Singh having been found creating nuisance and his having taken Piara Singh to the hospital for medical examination. Therefore, the statement of this prosecution witness went unchallenged and stood admitted by the prosecution. Thus, the evidence of this prosecution witness himself who was examined to establish that he had not got Piara Singh medically examined on 22-04-83 on the contrary has substantiated the plea of alibi taken by appellants Piara Singh. We are, therefore, of the view that the acquittal of accused Dr. Amrik Singh lend full support to the plea of alibi raised by appellants Piara Singh.

19. We would now proceed to give our reasons for not accepting the finding of the learned trial Court that the plea of alibi was false and concocted. The learned trial Court although referred to the statement of PW-31 HC Gurdev Chand while narrating the evidence of various prosecution witnesses but did not accept the same on the ground that he had not recorded any entry in the DD register while leaving the police station for getting medical examination of Piara Singh done nor even arrival entry was made by him on his return to the police station from the hospital. In our view this reasoning of the learned trial Judge is not sound enough to be sustained. As observed already, PW-31 was not cross-examined by the public prosecutor after he had stated in his cross-examination on behalf of the accused that he had taken Piara Singh to hospital for medical examination after he had been arrested by the SHO at a bus stand for creating nuisance. Even when earlier this witness was cross-examined by the public prosecutor it was not suggested to him that his statement that he had taken one person for medical examination on 22-04-83 was false statement. This witness had denied the suggestion that on the MLC Ex. PW-23/Q(another copy of this MLC was marked as Ex. PW-28/A also) the signature at point 'B' purporting to be his signature were not his. The prosecution has not made any attempt to show that on the MLC of Piara Singh prepared at Dasuya hospital PW-31 had not put his signature in token of his having received the same after medical examination of Piara Singh. When the concerned person claims that the MLC

was having his signature at point 'B' there is no reason to reject his statement and to hold that somebody had forged his signature. Another reason given by the learned trial Judge for disbelieving the statement of PW-31 is that PW-30 constable Surender Nath has not claimed that he had accompanied Gurdev Chand for the medical examination of anybody on 22-04-83 as claimed by Gurdev Chand. There is no doubt that PW-31 had claimed that constable Surender Nath had also accompanied him when he had taken Piara Singh for medical examination and PW-30 constable Surender Nath does not claim so but in our view that also cannot be a ground to reject the testimony of PW-31 which has remained unchallenged on behalf of the prosecution.

20. Another reason given by the learned trial Court for disbelieving the plea of arrest of Piara Singh at Dasuya on 22-04-83 is PW-30 Ct. Surender Nath, who was posted as a constable at Dasuya police station on 22-04-83, has deposed that on 22-04-83 he along with HC Resham Singh and another constable had left the police station for patrol and their duty was from 4 p.m. to 12 midnight. He further deposed that in his presence HC Resham Singh has not arrested any person that day between 4 p.m. to 12 midnight. In our view, this statement of PW-30 does not at all falsify the arrest of Piara Singh at Dasuya on 22-04-83. Accused Resham Singh has not claimed that he had arrested Piara Singh. As noticed already, his stand was that SHO Gursewak Singh (the deceased accused) had arrested Piara Singh and he himself had simply prepared the kalandara as instructed by Gursewak Singh. Therefore, PW-30 claiming that Resham Singh had not arrested anyone on 22-04-83 does not in any way demolish the plea of alibi taken by Piara Singh. The afore said finding of the learned trial Court based on this statement of PW-30 appears to have been arrived at by the learned trial Judge without taking into consideration the plea taken by accused Resham Singh. The learned trial Court has also observed that it was not the job of PW-31 to get medical examination done since he was a driver of the police jeep. In our view, this reasoning is also not sustainable. If an SHO of a police station asks any of his subordinates to do some job that subordinate is duty bound to obey the directions and in any case there was nothing wrong done by PW-31 in taking Piara Singh to the hospital even though he was a driver. The learned trial Court has also observed that there is no evidence to show that PW-31 had actually taken Piara Singh to the hospital. In our view this finding has been given without considering the MLC, copy of which was produced by the prosecution itself which shows that Piara Singh had been medically examined and the learned trial Judge has not accepted the prosecution case that a false MLC had been prepared showing that Piara Singh had been medically examined at Civil Hospital at 9.30 p.m. on 22-04-83. After having held so the learned trial Court could not have held that there is no evidence to show that Piara Singh had been actually taken to Civil Hospital for medical examination. ~~Not accepting the arrest of Piara Singh at Dasuya is that the DD register containing entry no. 13 showing the arrest of Piara Singh at Dasuya had been tampered with by tearing of some of the pages of that register including the one which contained the genuine entry no.13 and replacing those pages with other pages after making an entry no. 13 showing the arrest of Piara Singh. In this regard trial court has also placed reliance on the CFSL report which says that some pages in the DD register of the month of April,1983 including the one containing the entry of arrest of Piara Singh were different from other pages and appeared to have been inserted after tearing original pages. The learned trial Court, however, has not returned any finding as to who had changed the pages of the DD register and the prosecution has also not led any evidence to~~

show as to who was the custodian of that register. It has also not led any evidence to show as to who had made false entry no. 13 in the DD register showing arrest of Piara Singh. There is also no evidence adduced by the prosecution to rule out the possibility of tearing of the pages from the DD register and replacing those pages with new ones after the same had been seized by the investigating officer of this case. The learned trial Court has in any case not returned any finding that any of the accused was responsible for the tampering of the DD register. In these circumstances, it could not be presumed that the DD register had been tampered to show a false entry of arrest of Piara Singh. In support of his finding that the entry about arrest of Piara Singh in the DD register was false the learned trial Judge once again relied upon the statement of PW-30 constable Surender Nath to the effect that on 22-04-83 no arrest had been made in his presence. We have already discussed the statement of PW-30 and have come to the conclusion that his statement does not at all belie the stand taken by accused Piara Singh that he was, in fact, arrested on 22-04-83 at Dasuya. Therefore, the finding of the learned trial Court that the entry of arrest of Piara Singh on 22-04-83 at Dasuya in the DD register of Dasuya police station was false cannot be sustained.

22. We are, therefore, of the firm view that the plea of alibi taken by Piara Singh stood established from the prosecution evidence itself and the finding of the learned trial Court rejecting the same cannot be sustained. We have already held that as far as the evidence of prosecution witnesses and particularly that of the eye witness and those of recoveries of weapons of offence is concerned the same was, in any case, highly doubtful and unreliable. So, even if there had been no plea of alibi the prosecution case would have still failed. However, we have a plea of alibi taken by one of the accused and which we have found to be acceptable and that finding also renders the entire prosecution evidence doubtful. As noticed already, the learned trial Court itself had observed that if the plea of alibi taken by Piara Singh is accepted then all the accused would become entitled to be acquitted. We are also of the same view. So, the plea of alibi taken by Piara Singh having been found to be correct all the three appellants have become entitled to be acquitted. Since the effect of acceptance of the plea of alibi taken by Piara Singh is that the testimony of the eye witness PW-7 Iqbal Singh becomes doubtful for that reason also the same will have to be discarded even in respect of his claim that appellant Kewal Singh was also involved in the incident of murder of Gurdhian Singh. As far as appellant Resham Singh is concerned he would also get the benefit of the acceptance of plea of alibi of Piara Singh since with that acceptance it has to be held that the kalandra prepared by Resham Singh and presented in Court at Dasuya was not a false kalandra. Although the learned trial Court has also held that no reliance can be placed on the judgment of conviction of Piara Singh by the Court at Dasuya since it had been obtained by fraud but in our view this reasoning is also not sustainable. Any judgment given by a Court of law cannot be ignored unless it is got set aside from a competent Court which in the present case was not even attempted by the investigating agency after it had come to the conclusion that that judgment had been procured by playing a fraud upon the Court.

23. For the fore-going conclusions arrived at by us, all these three appeals deserve to be allowed and the three appellants have become entitled to be acquitted.

24. In the result, we allow criminal appeal nos. 307/1999, 318/1999 and 330/1999 and consequently the conviction of appellants Resham Singh, Kewal Singh and Piara Singh as recorded by the learned Additional Sessions Judge, New Delhi in Sessions case No. 151/95

vide judgment dated 29-05-99 stands set aside and all of them are acquitted. Their bail bonds stand discharged.

Sd./-
P.K.BHASIN,J
Sd./-
R.S.SODHI,J

March 1, 2007