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HARI SINGH

v.

STATE OF M. P.

(Criminal Appeal No. 898 of 2007)

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AUGUST 3, 2010

[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Penal Code, 1860:

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s.302 – Murder – Conviction of accused by trial court – Affirmed by High Court – HELD: Two courts below have accepted the presence of two eye-witnesses – There is no reason to differ with the findings recorded – It is also true that in case of evidence recorded after a long period of time, some discrepancies are bound to occur – It is significant that the evidence was recorded after 8-9 years of the incident – The eye witness account is fully corroborated by the medical evidence which fully corresponds with the injuries on dead body – The very promptitude with which the FIR was registered supports the veracity of prosecution story – Appeal of accused dismissed – Evidence – Recording of evidence after lapse of long time – Effect of – FIR – Promptitude in FIR – Effect of.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

No. 898 of 2007.

From the Judgment & Order dated 17.05.2004 of the High Court of Judicature of Madhya Pradesh bench at Gwalior in Criminal Appeal No. 269 of 1997.

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Dr. Sushil Balwada, Sattri Pillania, Arun K. Singh for the Appellant.

Siddharth Dave, Vibha Datta Makhija, Jemtiben Ao for the Respondent.

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The following order of the Court was delivered

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O R D E R

1. This appeal by way of special leave is directed against the concurrent findings of the Additional Sessions Judge and the High Court whereby the appellant stands convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and a fine of Rs.500 and in default thereof to undergo simple imprisonment for a period of two months.

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2. The prosecution story is as follows:

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2.1 The father of P.W. 1 Ramesh Chander, the first informant, and the deceased Ashok Kumar, was murdered several years earlier by the gang of Makhan Singh Daku and the suspicion was that it had been done at the instance of the family members of Hari Singh Thakur, the appellant herein. At about 11:00a.m. On 22/05/1989, P.W. 1 - Ramesh Chander and Ashok Kumar went to the village well to draw water and were carrying a rope and a bucket with them for that purpose. At that very moment, the appellant Hari Singh also reached the well carrying his licensed muzzle loading shot gun (Topidar shot gun) and after hurling abuses at Ashok and saying that as he had often insulted him he would have his revenge, fired a shot hitting him in the chest. Ramesh Chander ran to save his brother but the appellant threatened him with dire consequences on which he ran away. The incident was seen by several other persons including Kalawati, the mother of Ramesh Chander and the deceased from the house of Captain Patel and in addition several other persons as well. Ramesh Chander, however, made his way to police post Kanhar about 7 kms. distant and the formal FIR was registered at Police Station, Pahargarh at about 1:30p.m. The police thereafter reached the site of incident and the necessary investigations were made. The dead body was also sent for the post mortem examination. The accused was taken into custody on 16th June,

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A 1989 and his licensed muzzle loading shot gun, the alleged murder weapon, was also seized. During the course of the investigation, it also transpired that in addition to the above named witnesses Bharat , P.W. 2 son of Ramesh Chander had also witnessed the incident from the house of Captain Patel.

B On the completion of the investigation, the appellant was charged and brought to trial as already mentioned above. The trial court observed that there was absolutely no reason to doubt the presence of Ramesh Chander, P.W. as his presence was natural in the light of the fact that the incident had happened in

C broad day light when the two brothers had gone to the village well to draw water. The argument that Bharat P.W. 2 had not been named in the FIR creating a doubt as to his presence was also repelled by observing that Ramesh Chander had apparently not seen him, as the house of Captain Patel was

D some distance away. The Court also observed that though in the FIR it had been mentioned that the injury had been inflicted on the right side of the chest but the post mortem report showed the injury on the left side, was not a material circumstance as it was impossible for any witness to make out as to where a bullet had hit after it had been fired.

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3. The trial court, accordingly, convicted the appellant. The judgment aforesaid stands maintained by the High Court as well.

F 4. Dr. Sushil Balwada, the learned counsel for the appellant has raised several arguments before us today. He has pointed out that the uncertainty with regard to the site of the injury cast a doubt on the presence of Ramesh Chander, P.W. He has also submitted that P.W. 2 was the son of P.W. 1 and as his name did not figure in the FIR his presence had not been explained. In addition, it has been urged that as several other

G persons though cited as witnesses had not been examined, the very substratum of the prosecution story was in doubt.

H 5. Mr. Siddharth Dave, the learned counsel for the State of Madhya Pradesh has, however, supported the judgments of the courts below. He has pointed out that in case of a single

accused false implication was to be ruled out more particularly because of the admitted animosity between the parties going back several years. He has also submitted that even assuming that there was some uncertainty with regard to site of the injury in the ocular evidence, the same had been removed by the medical evidence as the post mortem examination indicated the dispersal of pellets right across the chest both to the right and left side, as both lungs had been damaged.

6. We have heard the learned counsel for the parties and perused the record.

7. Two courts have accepted the presence of the two eye witnesses. We see no reason to differ with the findings recorded. It is also true that in the case of evidence recorded after a long period of time some discrepancies are bound to occur. It is significant that the present incident happened in May, 1989 and the Additional Sessions Judge recorded the conviction in July, 1997 meaning thereby that the evidence had gone on for eight or nine years. We also find that the eye witness account is fully corroborated by the medical evidence. It is the case of the prosecution that the shot had been fired from about 2 metres. The post mortem report indicates that this is the correct position. We see that there are several wounds of entry spread across the chest and left upper arm with blackening and burning around some of them. The dispersal of pellets and the uneven blackening and burning over the bullet holes suggests that a primitive weapon, (a "topidar" shot gun, a muzzle loading weapon, which is often a primitive weapon, and when used with gun powder and shot of uncertain quality and quantity, is likely to give uneven and uncertain pellet patterns) could have been used. The doctor also opined that the shot had been fired from about 2 metres from a shot gun. This fully corresponds with the injuries on the dead body. We also observe that the very promptitude with which the FIR had been registered at the police station supports the veracity of the prosecution story. The place of incident was 7 kms. away

- A from police station, Kanhar. The FIR had been lodged within 2 ½ hours after the incident by the brother of the deceased, and as a close relative of the family had been murdered an hour or so would have been taken at the place of incident before Ramesh Chander had left for the police station. We, therefore,
- B find that the promptitude of the FIR supports the prosecution story.

8. We find no merit in this appeal. Dismissed.

R.P.

Appeal dismissed.