A RAM SWAROOP

v.

STATE OF RAJASTHAN

Criminal Appeal No. 548 of 2008

MARCH 25, 2008

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(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Penal Code, 1860; S.302:

Criminal trial:

C *Murder – Oral evidence vis-à-vis medical evidence – Testimony of – Accused and his accomplice attacked the deceased with a knife causing bleeding injury – Deceased succumbed to injuries – F.I.R. – Charge-sheet – Trial Court found accused guilty of committing murder of deceased and* D *sentenced him accordingly – Affirmed by High Court – Correctness of – **Held:** Oral evidence has to get primacy but medical evidence is basically opinionative – It is only when medical evidence ruled out a injury as claimed to have been inflicted as per oral testimony, the Court could draw inferences* E *– Medical evidence could be met to repel testimony of eyewitnesses only if it is so conclusive to rule out even the version of eyewitnesses to be true – Thus, discarding the testimony of eyewitness on strength of medical opinion not conducive to the administration of criminal justice – In the* F *instant case, there were certain minor variations in the evidence of PWs. 3 & 4, which do not, in any way, corrode the credibility of prosecution version – Hence, trial Court was justified in placing reliance on their evidence holding the accused-appellant guilty – Eye-witnesses – Testimony of.*

G **According to the complainant, on the fateful day, when he was standing along with the deceased and another persons, on a trivial matter, accused-appellant and his accomplice attacked on the deceased. Appellant allegedly stabbed the deceased with a knife. The**

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deceased fell down and taken to Hospital, where he was declared dead. An FIR was lodged by the complainant. Matter was investigated and charge-sheet was filed against the accused for committing the offence punishable u/s.302 IPC and co-accused for committing the offence u/s.302 r/w s.34 IPC. Trial Court convicted the accused for committing offence punishable u/s.302 IPC and sentenced him accordingly but acquitted the co-accused as evidence against him was not sufficient to convict him. Aggrieved, the appellant filed an appeal thereagainst, which was dismissed by the High Court. Hence the present appeal.

Accused-appellant contended that the trial court and the High Court lost sight of the fact that PWs. 3 & 4 have not spoken the truth. The scenario described by them does not fit in with the prosecution version; and that the manner of attack and infliction of injuries as stated by PWs 3 & 4 do not fit into the medical evidence.

Dismissing the appeal, the Court

HELD: 1.1 So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw adverse inference. (Para – 8) [488-E]

1.2 It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report may express his views one way or the

A **other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an**
B **eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. (Para – 9) [488-G & H; 489-A & B]**

Mange vs. State of Haryana **(1979) 4 SCC 349**; *State of*
C *U.P. vs. Krishna Gopal and Anr.* **AIR (1988) SC 2154**; *Ram Dev and Anr. vs. State of U.P.* **(1995) Supp. 1 SCC 547**; *State of U.P. vs. Harban Sahai and Ors.* **(1998) 6 SCC 50 and** *Ramanand Yadav vs. Prabhu Nath Jha & Ors.* **(2003) 12SCC 606 – relied on.**

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2. The trial court and the High Court have analysed in great detail the evidence of PWs. 3 & 4, which clearly bring out the accusations against the accused appellant. There are certain minor variations which do not in any way corrode the credibility of the prosecution version. The
E **Courts below were, therefore, justified in placing reliance on their evidence and holding the accused appellant guilty. (Para – 11) [489-C & D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
F No. 548 of 2008.

From the Judgment and Order dated 26.7.2005 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Crl. A. No. 473/2001.

G Radha Shyam Jena for the Appellant.

Milind Kumar and Aruneshwar Gupta for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the judgment rendered by a Division Bench of the Rajasthan High Court upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for life as awarded by learned Additional Sessions Judge No.1, Jodhpur.

3. Background facts in a nutshell are as follows:

Report was lodged by one Tulsh Singh at the Tolesar Police station stating that on 19.11.1999 he was standing in the road along with Swai Singh, Sumer Singh (hereinafter referred to as 'deceased') and Vijay Singh. Around 4 P.M. Laxman Singh who was then studying in a nearby school came and inform that while the child were talking amongst each other, appellant Ram Swaroop slapped him. At that time Ram Swaroop and Shrawan were standing on the road. When Sumer Singh asked Ram Swaroop as to why he had beaten Laxman, on this Shrawan started beating Sumer Singh and the complainant tried to separate then. In the mean time the appellant with the intention to kill stabbed Sumer Singh with a knife. Sumer Singh received two stab injuries on his chest and one stab injury from knife on his back and he started bleeding and fell down. While the complainant and others were attending to Sumer Singh, Shrawan and accused appellant Ram Swaroop ran way. Sumer Singh's elder brother Kumbh Singh arrived there. Sumer Singh in an injured condition was taken to the Gandhi Hospital at Jodhpur, but he died on the way to the hospital. On the basis of this information, the FIR was lodged and investigation was undertaken. Charge sheet was filed alleging commission of offence punishable under Section 302 IPC by the accused appellant, while co-accused Shrawan Ram was charged for offence punishable under Section 302 read with Section 34 IPC. The matter was committed to the Court of Sessions and the two accused persons faced the trial as they pleaded innocence and denied the allegation. In order to further its version, prosecution examined 14 witneeses. Tulsh Singh-PW3 and Swai Singh-PW4 were stated to be eye witnesses. The trial

A court on considering the evidence on record found the accused appellant guilty and convicted and sentence accused appellant for offence punishable under Section 302 IPC.

4. The trial court found the evidence to be not sufficient to fasten the guilt on accused Shrawan Ram.

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5. The High Court did not find any merit in the appeal of the accused appellant and dismissed the same.

6. In support of the appeal, learned counsel for the appellant submitted that the trial court and the High Court lost sight of the C fact that PWs. 3 & 4 have not spoken the truth. The scenario described by them does not fit in with the prosecution version. It is pointed out that the manner of attack and infliction of injuries as stated by PWs 3 & 4 do not fit into the medical evidence.

D 7. Learned counsel for the respondent-State on the other hand supported the judgment of the trial court as affirmed by the High Court.

8. So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that E oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw adverse inference.

F 9. Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses G only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report may express his views one way or H the other depending upon the manner the question was asked.

But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice.

10. Similar view has also been expressed in *Mange v. State of Haryana* (1979(4) SCC 349), *State of U.P. v. Krishna Gopal and Anr.* (AIR 1988 SC 2154) and *Ram Dev and Anr. v. State of U.P.* (1995 Supp. (1) SCC 547), *State of U.P. v. Harban Sahai and Ors.* (1998 (6) SCC 50)and *Ramanand Yadav v. Prabhu Nath Jha & Ors.* (2003(12)SCC 606).

11. The trial court and the High Court have analysed in great detail the evidence of PWs. 3 & 4, which clearly bring out the accusations against the accused appellant. There are certain minor variations which do not in any way corrode the credibility of the prosecution version. The trial court and the High Court were, therefore, justified in placing reliance on their evidence and holding the accused appellant guilty. We do not find any merit in the appeal which is accordingly dismissed.

12. We record our appreciation for the able manner in which Mr. Radha Shyam Jena, Learned Amicus Curie highlighted various points.

S.K.S. Appeal dismissed.