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ASHOK SINGH

v.

STATE OF U.P.

(Criminal Appeal No. 640 of 2005)

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SEPTEMBER 18, 2009

[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]

*Penal Code, 1860 – s.302 r/w s.34 – Murder – Death due to gun-shot injury – Common intention – PW3's father was shot at from short distance which proved fatal – Conviction of accused-appellants – Propriety of – Held: Proper – Evidence of PW3 was corroborated by PW4, an independent witness – Ocular evidence was fully borne out by medical evidence – Both appellants had been armed with shot guns – Two spent cartridge cases picked up from the place of incident indicated that both appellants had fired a shot each at the deceased – Conviction of appellants confirmed.*

*According to the prosecution, due to previous enmity, the accused persons fired at PW3's father from short distance which proved fatal. Placing reliance upon the statements of PW-3 and PW-4, the trial court convicted all the four accused under Section 302 r/w Section 34 IPC and sentenced them to life imprisonment. On appeal, the High Court granted benefit of doubt to two accused and acquitted them but upheld the conviction of the other two accused, i.e. the appellants in the present appeal.*

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**Dismissing the appeal, the Court**

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**HELD: 1.1. There is no reason to disbelieve PW3 supported fully as he is by the statement of PW4 who is a truly independent witness. An attempt by the defence to show that PW4 was indebted to deceased for some favour earlier in point of time has not been substantiated**

on record. It is also found that the ocular evidence is fully borne out by the medical evidence as a pellet was recovered from the dead body at the time of the post-mortem examination. [Para 3] [813-F-H; 814-A]

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1.2. It is true that two shots were alleged to have been fired at the deceased whereas only one wound entry on the head by a fire arm had been detected at the time of post-mortem. However, it would be impossible for any witness in a case of simultaneous firing of two or more shots to give a categorical statement as to which of the two shots had hit the victim. It is also seen from the evidence of ASI (PW5) that two spent cartridge cases had been picked up from the place of incident meaning thereby that both the appellants had fired a shot each at the deceased. Also if two different types of weapons had been used it would have been open to the defence to argue that in the light of the fact that a shot gun pellet had been recovered from the dead body, the other weapon had not been used, which factor undoubtedly could cause some speculation about the prosecution's case. This is not the situation in the present case, as both the appellants had been armed with shot guns. The judgment of the High Court is therefore confirmed. [Para 4] [814-B-E]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 640 of 2005.

From the Judgment & Order dated 12.1.2004 of the High Court of Judicature at Allahabad (Lucknow Bench,) Lucknow in Criminal Appeal No. 519 of 1980.

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Siddhartha Luthra, Jagjit Singh Chhabra, Amreeta Swarup and Arundhati Katju for the Appellant.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. This appeal by way of special

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A leave arises out of the following facts:

2. At about 7 a.m. on the 11th July 1977 deceased Chhota Singh was on his way from his residential house to the nearby Devi Ji Mandir for the purpose of supervising the repairs of the chabutra of the temple. The four accused, namely Ashok Singh, Shiv Raj, Shyam Saran Singh and Sheo Narayan were hiding near the flour mill, all armed with guns. Shiv Raj and Sheo Narayan gave a lalkara that Chhota Singh be killed and on this call Ashok Singh and Shyam Saran Singh fired at him on which he fell down at a short distance from his residential house and succumbed to his injury. The incident was witnessed amongst others by Rameshwar Singh (PW3) son of the deceased and Durjan (PW4). After the assailants left the scene, Chhota Singh was shifted from the place where he lay dead. Rameshwar Singh (PW3) rushed to the Police Station and lodged a report with Police Station Hasan Ganj at 9.30 a.m. whereafter Ram Prakash Shukla Sub-Inspector (PW5) reached the spot at 2.45 p.m. and started with the investigation. He found the dead body lying in front of his residential house and after recording the inquest report dispatched the dead body for the post-mortem. The post-mortem examination was conducted by Dr. A. Akram on 12th October 1977 which revealed two ante mortem external injuries, one being a gun shot wound from which a pellet was also recovered. On the completion of the investigation, the accused was charged for an offence punishable under Section 302/34 of the IPC. The trial court relying on the statements of Rameshwar Singh (PW3) and Durjan (PW4) convicted all the accused and sentenced them to undergo imprisonment for life. The matter was thereafter taken in appeal before the High Court. The High Court repelled the submissions of the appellant's counsel that the FIR had been inordinately delayed, that the incident had not taken place at the time and place suggested by the prosecution and that the deceased had, in fact, been murdered in the early hours of the morning when he had gone to ease himself. The High Court observed that it was true (as it had been admitted by Rameshwar Singh (PW3)

himself) that there were two rival groups in the village and one of the groups was headed by his father whereas some of the accused belonged to the opposite party and that Ashok Singh appellant and he were on inimical terms and, therefore, it appeared that Rameshwar Singh was an interested witness. The court, however, further opined that Durjan was a completely independent witness whose evidence inspired confidence. The court also observed that though two shots were alleged to have been fired at the deceased, one by Ashok Singh and the other by Shyam Saran Singh the argument of the learned counsel for the appellant, that there was apparent discordance between the ocular and the medical evidence was not sustainable more particularly as both shots had been fired simultaneously, and it would have been impossible for any witness to have given a categorical statement as to which of the two shots had hit the deceased. The court, further, opined that though Rameshwar Singh and Durjan had both stated that Shiv Raj and Sheo Narayan had been armed with a gun but it was conceded on all sides that they had not used their weapons and all that they have done was to have shouted to their companions to kill Chhota Singh, and that it appeared from the statement of Rameshwar Singh (PW3) that he had, in fact, not seen these two actually exhorting the other accused to commit the crime. The court accordingly granted the benefit of doubt to Shiv Raj and Sheo Narayan appellantstherein while dismissing the appeal of Ashok Singh and Shyam Saran Singh. These two are before us in appeal by way of Special Leave Petition.

3. We have heard the learned counsel for the parties and gone through the record. We find no reason to disbelieve Rameshwar Singh (PW3) supported fully as he is by the statement of Durjan (PW4) who is a truly independent witness. An attempt by the defence to show that he was indebted to Chhota Singh for some favour earlier in point of time has not been substantiated on record. We also find that the ocular evidence is fully borne out by the medical evidence as Dr. A. Akram had recovered a pellet from the dead body at the time

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A of the post-mortem examination.

4. Mr. Luthra, the learned counsel for the appellants has submitted that as only one entry wound had been detected on the dead body from two shots, the prosecution story suffered from a serious flaw. It is true that two shots were alleged to have been fired at the deceased whereas only one wound entry on the head by a fire arm had been detected at the time of post-mortem. We are of the opinion, however, that it would be impossible for any witness in a case of simultaneous firing of two or more shots to give a categorical statement as to which of the two shots had hit the victim. We also see from the evidence of ASI-Ram Prakash Shukla (PW5) that two spent cartridge cases had been picked up from the place of incident meaning thereby that both Ashok Singh and Shyam Saran Singh had fired a shot each at the deceased. We also believe that if two different types of weapons had been used it would have been open to the defence to argue that in the light of the fact that a shot gun pellet had been recovered from the dead body, the other weapon had not been used, which factor undoubtedly could cause some speculation about the prosecution's case. Admittedly, this is not the situation before us, as both the appellants had been armed with shot guns. We, therefore, confirm the judgment of the High court. The appeal is dismissed.

B.B.B.

Appeal dismissed.