

HARI SINGH AND ANR.

v.

STATE OF UTTAR PRADESH  
(Criminal Appeal No. 1312 of 2004)

DECEMBER 16, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]

*Penal Code, 1860: s.302/34 – Murder – Two brothers equipped with a lathi and a country made pistol, entered the house of victim at night – One of the accused fired a shot at the victim from a close range resulting in his death – Conviction by courts below – Appeal against conviction – One of the accused died during pendency of appeal, therefore, his appeal abated – Held: Deposition of eye-witnesses indicating previous business rivalry between the deceased and the accused and threats by accused to the deceased – Both the parties were well known to each other – While running away, the two accused passed within an arm's length of the eye-witnesses – No reason to doubt the testimony of eye-witnesses who stated to have identified the accused in torch light – Merely because the torch was not taken into possession would not mean that the statements of the eye witnesses were not credible – Spontaneity of the FIR giving all relevant details fortified the prosecution story – The medical evidence clearly suggested the use of the pistol from point blank range – Conviction upheld – Code of Criminal Procedure, 1973 – s.394.*

**The prosecution case was that the deceased had purchased a brick kiln three months prior to the incident. The accused was also running a brick kiln nearby. Few days prior to the incident, the accused and his brother clandestinely removed a large number of bricks from the**

- A kiln of the deceased. When the deceased questioned the said act, they told him that they would not allow his kiln to run. On the night of the incident, the deceased was sleeping in the verandah of his house. The accused armed with a lathi and his brother with a country made pistol entered the house of the deceased and the latter fired a shot at the deceased. On hearing the sound, PW-1, the son of the deceased, and PW-5 flashed a torch and also raised a cry attracting PW-6 and another person to the spot. These witnesses also saw the accused running out of the verandah towards the lane carrying their weapons. PW-1 proceeded to the police station and lodged the FIR at 5.45 p.m.

- The trial court convicted both the accused under Sections 302/34 IPC on the basis of evidence of PW-1 and PW-5 and sentenced them to life imprisonment. The High Court endorsed the testimony of PWs 1 and 5 as well as of PW-6, the third eye witness, whose testimony had not been accepted by the trial court, and dismissed the appeal. The instant appeal was filed challenging the order of the High Court. During the pendency of the appeal, one of the accused died. His appeal was, accordingly, disposed of as having abated under Section 394, Cr.P.C.

- F Dismissing the appeal, the Court

- HELD: PW-1 had very categorically deposed about the business rivalry that existed between the accused and the deceased and their conflicting interests as both the kilns were in close proximity to each other. It also came in the prosecution evidence that the accused was holding out threats to the deceased and that the threat was carried out on the day in question. The perusal of the site plan revealed that while running away, the accused had passed within an arms length of PW-1 and

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**PW-5. As per the evidence on record, the night of the murder was a moonless one but there is no reason to doubt the testimony of the eye witnesses who stated that they had identified the accused in the torch light, more particularly, as both the parties belonged to the same village and were well known to each other. Merely because the torch was not taken into possession by the ASI would not mean that the statements of the eye witnesses were not credible. The spontaneity of the FIR giving all relevant details fortified the prosecution story. The prosecution story was that the accused had fired at the deceased with a country made pistol from a very close range. The doctor PW-2, who had conducted the post-mortem examination found one wound of entry about 3 cm x 2.5 cm with blackening and charring and also recovered 160 pellets and three wads from inside the dead body. The medical evidence clearly suggested the use of such a weapon from almost point blank range. [Para 6] [1085-B-H; 1086-A-B]**

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1312 of 2004.**

**From the Judgment & Order dated 27.2.2004 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1486 of 1981.**

**Jaspal Singh, Mukesh K. Giri, Vidya Bhardwaj for the Appellants.**

**Manoj Kumar Mishra, Praveen Swarup for the Respondent.**

**The Judgment of the Court was delivered by**

**HARJIT SINGH BEDI, J.**

**This appeal arises out of the following facts:**

A 1. The accused Hari Singh of village Suthari was running  
a brick kiln on the outskirts of the village. Subsequently, one  
Randhir Singh installed another brick kiln nearby. Hari Singh  
and his brothers, however, did not allow Randhir Singh to run  
his brick kiln effectively and ultimately Randhir Singh sold his  
B brick kiln to Gulab Singh deceased some three months prior  
to the incident. About 15 days prior thereto, Hari Singh and his  
brother Mohar Singh clandestinely removed a large number of  
bricks from Gulab Singh's brick kiln and on being questioned  
by him they told him that they would not allow his kiln to run. On  
C the night intervening 7th and 8th June, 1980 at about 1.00 a.m.  
Gulab Singh was asleep in the verandah of his house when Hari  
Singh armed with a lathi and Mohar Singh with a country made  
pistol entered the house and the latter fired a shot at Gulab  
Singh. On hearing the sound, Prem Pal PW-1, the son of the  
D deceased and Kalu @ Anand Swarup PW-5, flashed a torch  
and also raised a cry attracting Jagdish PW-6 and one Mukhara  
to the spot. These witnesses also saw the accused running out  
of the verandah towards the lane carrying their weapons. Prem  
Pal then made his way to Police Station, Muradnagar at 5.40  
a.m. and lodged the FIR at 5.45 a.m. A case under Section 302  
E was, accordingly, registered against the accused. Sub-  
Inspector Hari Raj Singh, the SHO of Police Station  
Muradnagar, along with a police force went to the scene of  
occurrence whereafter Sub-Inspector Pooran Singh recorded  
the inquest proceedings on the dead body. Sub-Inspector Hari  
F Raj Singh, however, recorded the statements of the witnesses  
and after inspecting the site, prepared the site plan Ex. Ka.14.  
He also picked up a blood stained 'khes' and a bed sheet from  
the bed where Gulab Singh had been shot. The dead body was  
also dispatched for its post-mortem which was carried out by  
G Dr. M.K.Goel at 4.30 p.m. on the 8th of June 1980 and the  
examination revealed an ante-mortem firearm wound of entry  
3 cm x 2.5 cm on the lower part of the left side of the chest  
with blackening and tattooing around the wound. The doctor  
also removed 160 small pellets and three wads from the body.

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On the completion of the investigation, the accused were charged for an offence punishable under Section 302/34 of the IPC and as they pleaded not guilty, they were brought to trial. A

2. The prosecution in support of its case relied primarily on the evidence of PW1 Prem Pal, PW-5 Kalu and PW-6 Jagdish, PW-2 Dr. M.K.Goel, who had conducted the autopsy on the dead body, and of PW-7 Sub-Inspector Hari Raj Singh, the main investigating officer. The accused when questioned under Section 313 of the Cr.P.C, denied the allegations levelled against them and pleaded that they had been implicated due to party faction in the village. They also examined Constable Satya Pal Singh as DW-1 who proved the report lodged by Randhir Singh on the 25th May 1980 at 1.30 p.m. at Police Station Muradnagar, against Gulab Singh and one Ramesh under Sections 504 and 506 of the IPC. B C

3. The trial court relying on the evidence of PW-1 and PW-5 convicted the accused for the offence punishable under Section 302/34 and sentenced them to imprisonment for life. An appeal was thereafter taken to the High Court. The High Court endorsed the testimony of PW's 1 and 5 as well as of Jagdish PW-6, the third eye witness, whose testimony had not been accepted by the trial court, and dismissed the appeal. The Court observed that though all the three eye witnesses had been subjected to a gruelling cross-examination they had withstood the same and not crumbled thereunder. The Court also found that the suggestion that the accused had been falsely roped in, was not acceptable for the simple reason that the FIR had been lodged within a short time in the facts and circumstances of the case. It was pointed out that the incident had happened at about 1.00 a.m. of the night intervening 7th and 8th of June 1980 and as per the statement of PW-1, the family members had been completely shattered by what had happened and that PW-1 had left for Police Station, Muradnagar 11 km. away on foot and lodged the report at 5.45 p.m. The Court, accordingly, observed that the very manner in which the FIR had been lodged spoke D E F G H

A volumes about its authenticity. The Court also rejected the argument that as the special report had allegedly been delivered late, it appeared that the FIR had been ante-time, as being without substance. The appeal was, accordingly, dismissed. The present appeal was filed by the two accused. During the pendency of the appeal, however, Mohar Singh has passed away. The appeal of Mohar Singh is, accordingly, disposed off as having abated under Section 394 of the Cr.P.C. We are, accordingly, called upon to examine only the appeal pertaining to Hari Singh.

C 4. Mr. Jaspal Singh, the learned senior counsel, has raised primarily one argument during the hearing of this matter. He has pointed out that as per the evidence of Prem Pal and Kalu, PWs., they had been fast asleep at some distance from the deceased when the fatal shot had been fired at him and as the accused had immediately run away into the street, it appeared that their identification could not have been made. It has been emphasized that the prosecution story that the accused had been identified by these two witnesses in the light of a torch, could not be believed as the site plan prepared by the ASI did not indicate so and as there was no evidence to show that any torch had been taken into possession by the investigating officer. It has also been pleaded that Jagdish was sleeping in his house some distance away at point "E" in the site plan and as such it would have been difficult for him to have got up and to have seen the accused running away within such a short time.

G 5. These arguments have been strongly refuted by the learned counsel for the State. He has been pointed out that the factum of the torch had been mentioned by Prem Pal not only in the FIR but even by the other witnesses in their statements under Section 161 of the Cr.P.C. and merely because the torch had not been taken into possession by the ASI would not lead to the inference that no torch had, in fact, been available. It has

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been pleaded that the FIR having been registered promptly spoke volumes of the prosecution story. A

6. We have heard the arguments advanced by the learned counsel for the parties very carefully. PW-1 has very categorically stated to the business rivalry that existed between the accused and the deceased and their conflicting interests as both the kilns were in close proximity to each other. It has also come in the prosecution evidence that the accused had been holding out threats to the deceased and it appears that the threat had been carried out on the day in question. We have also perused the site plan Ex.Ka. 14 and the same is, indeed, revealing. Point "A" in the site plan is the place where the deceased Gulab Singh had been shot and killed. Point "BB" is the place where Prem Pal and Kalu PWs. had been lying asleep. This shows that while running away, the accused had passed within an arms length of these two witnesses. The site plan also marks the route that the accused took while escaping from the murder site and it shows that after firing the shot at point "A" the two accused had skirted and run past point "BB", across the door of the residence of Jagdish at point "E" and then to the rasta adjoining the chabutra of the house of Ram Singh. It is true, that as per the evidence on record, the night of the murder was a moonless one but we have no reason to doubt the testimony of the eye witnesses when they say that they had identified the accused in the torch light, more particularly as both the parties belonged to the same village and were well known to each other. We are of the opinion that merely because the torch had not been taken into possession by the ASI would not mean that the statements of the eye witnesses were not credible. We find, also, that the spontaneity of the FIR giving all relevant details fortifies the prosecution story. The prosecution story is that the accused had fired at the deceased with a country made pistol from a very close range. The doctor PW-2, who had conducted the post-mortem examination found one wound of entry about 3 cm x 2.5 cm with

A blackening and charring and also recovered 160 pellets and three wads from inside the dead body. The medical evidence clearly suggests the use of such a weapon from almost point blank range. There is, thus, no merit in the appeal. It is, accordingly, dismissed.

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Appeal dismissed.