

RAMJI SINGH & ORS.

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v.

THE STATE OF UTTAR PRADESH

(Criminal Appeal No. 1397 of 2014)

DECEMBER 11, 2019

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**[MOHAN M. SHANTANAGOUNDAR AND**

**DEEPAK GUPTA, JJ.]**

*Penal Code, 1860 – ss.147, 149, 452, 449 and 302 – Murder – Prosecution case that six persons (A-1, A-2, A-3, A-4, A-5 and A-6) who were heavily armed, two of them with guns, killed victim in broad daylight between 12 and 12:30 p.m. – Earlier, when PW-1 heard some noises he reached the house and saw victim and the accused – In the meantime PW-2 also reached the spot – They both (PW-1 and PW-2) were standing at the entrance of house when the occurrence took place – A written complaint was prepared by PW-1 and was scribed by PW-4 and same was given in the police station – On basis of which police registered FIR – Trial court acquitted all the accused – During the pendency of the appeal in the High Court, three accused A-1, A-3 and A-6 died and the appeal abated qua them – High Court set aside the judgment of the Trial court and A-2, A-4 and A-5 were found guilty of having committed offences punishable u/s.147, 148, 302/149 of the IPC – On appeal before the Supreme Court, the appellants contended that reliance cannot be placed on the statement of the eye-witnesses (PW-1 and PW-2) – Held: The statements of these witnesses (PW-1 and PW-2) were almost identical and there were no major contradictions between them – According to PW-1, he was present at the place of incidence and immediately after occurrence dictated the complaint to PW-4 and according to PW-4, he reached the spot at about 12:45 p.m. – Thereafter, PW-1 was sent to police station – The version of PW-1 and PW-2 was corroborated by the version of PW-4, who though not an eye-witness reached the spot at about 12:45 p.m. and then scribed the complaint – Further, medical evidence fully corroborated the prosecution story – According to both the eye-witnesses (PW-1 and PW-2) accused A-2 and A-3 had fired three times each – There*

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- A *were corresponding 6 fire arm entry wounds as per medical report – The Doctor opined that death occurred between 12 and 12:30 p.m. which also supports the prosecution version – The other injuries mentioned by doctor were also relatable – Therefore, the medical evidence fully supported the version of the two eye-witnesses with regard to the injuries caused by firearms and sharp-edged weapons – The evidence of witnesses were corroborated on all counts – No merit in the appeals.*
- B *– The evidence of witnesses were corroborated on all counts – No merit in the appeals.*

#### **Dismissing the appeal, the Court**

- HELD : 1. The main question which arises for consideration**
- C **is whether reliance should be placed on the statement of the eye-witnesses (PW-1 and PW-2).** As far as the statements of these witnesses recorded in the case are concerned, they are almost identical and there are no major contradictions between them. A lot of emphasis has been placed by the appellants on the fact that many things stated by PW-1 in his examination in court have not been mentioned in the FIR. As far as this aspect is concerned, according to PW-1, he was present at the place of incidence itself and immediately after the occurrence dictated the complaint to PW-4, who states that Exh.P.1 is in his handwriting and he had written whatever was dictated to him by PW-1. Thereafter, he and PW-1 had both signed the said complaint (Exh.P.1). From the signature of PW-1 appearing on Exh.P.1 it is apparent that he is barely literate and cannot write. PW-4 is a teacher and the suggestion put to him in cross examination was that there is some litigation between his uncle and some persons connected with the accused, but he said that he was not aware of the same. He clearly states that he is not a party to any party politics. With regard to the complaint the only suggestion put to him was that he had not prepared any complaint in the village and that the complaint was written at the police station. There was no examination with regard to the contents of the complaint. Even with regard to time this witness clearly states that he reached the spot at about 12.45 PM and wrote the complaint and, thereafter, PW-1 was sent to the police station. He further states that the investigating officer reached the place of occurrence at about 3 and 3.45 PM. According to him he remained at the place

of occurrence for about 4½ hours and the *panchayatnama* of the dead body was prepared in his presence and he has signed on the same. This means that the complaint was written immediately after the occurrence. The FIR is based only on this complaint and it does not contain anything more or less than the complaint. If this complaint was scribed by this witness at 12.45 PM and sent along with PW-1 to the police station then the contents of the FIR is nothing more than the contents of the complaint and hence cannot be said to be interpolated. [Para 8] [260-G-H; 261-A-F]

2. On careful analysis of the medical evidence this Court finds that it fully corroborates the prosecution story. According to both the eyewitnesses PW-1 and PW-2 accused A-2 and A-3, had fired three times each. There are corresponding 6 firearm entry wounds which are mentioned at serial no.(viii), (ix), (xv), (xvi), (xvii) and (xviii) in the medical report. As far as the exit wounds are concerned, there are more than 6 exit wounds which is possible since one of the firearms used was a 12-bore gun having pellets. The doctor has opined that long barrel guns were also used and according to him the death occurred between 12 and 12.30 PM on 17.06.1982 which also supports the prosecution version. It is important to mention that the other injuries described by the doctor are all relatable and could have been caused by axe or by pitchfork, which were the weapons carried by 3 of the accused. [Para 14] [265-G-H; 266-A]

3. In fact, the medical evidence fully supports the ocular evidence and there is virtually no contradiction. The version of the two eyewitnesses with regard to the injuries caused by the firearms and sharp-edged weapons, find corroboration from the medical report. Direction, as pointed out above cannot be specifically ascertained from a site plan. The occurrence took place in a small area. The deceased was sitting on a cot which could at best be 6' in length. He was surrounded by six accused out of whom two used firearms. It would not be possible for any witness to exactly state who was at which place. Even PWs 1 and 2 have not stated the exact place from where the firing took place, except that according to both of them the firing took place from the entrance of the house and if that is so then the points D and

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- A D1 in the site plan showing the points where the accused carrying the firearms were standing, may not be strictly correct. [Para 16] [266-H; 267-A-B]
4. It has been urged that the statements of the two witnesses PWs 1 and 2 should not be relied upon since they are closely related to the deceased and there was enmity between both the sides. It has been urged that PW-2 had a dispute with A-3 and his brother had litigation with A-1. These facts are assumed to be true. There is no manner of doubt as stated in the complaint itself that the relationship between the two sides was strained. They belonged to different groups and obviously there was enmity between them. As is often said enmity is a double-edged sword. It can be both the motive for a crime and it can also be a motive to falsely implicate some other people. However, each case has to be decided on its own evidence. In this case this Court has come to the conclusion that the written complaint was recorded immediately after the occurrence. There was no time to concoct a false case implicating those who were not involved. The fact that the victim was murdered is not disputed. The only question is whether it was the accused persons who murdered him or somebody else. Once it is believed that PWs 1 and 2 are eye-witnesses, then there is no reason to hold that the appellants were falsely implicated. They are all named in the written complaint as well as in the FIR which was recorded at the earliest. Their version is corroborated by the version of PW-4, who though not an eye-witness reached the spot at about 12.45 PM and then scribed the complaint. This complaint depicts what actually happened. [Para 17] [267-C-F]
5. True it is that there are some minor variations and contradictions in the statement of the two witnesses, especially PW-2. PW-2 may have improved his version slightly while appearing in court but the core of his evidence remains intact.
- G The essence of his evidence is that he had gone to pray in a temple which is close to the house where occurrence took place, and he heard a noise and saw all the accused armed as stated hereinabove at the door of the house. A-1 pointed towards the victim and said, "kill this *goonda* immediately." On this, accused

**A-3 and A-2 fired three shots each from their guns upon victim.** They were standing at the entrance of the house where occurrence took place. Though he has been cross examined at length, nothing material has come out of cross examination. His statement supports the statement of PW-1, who has virtually repeated what has happened, in the complaint. The main effort of the defence appears to have been to bring out the fact that there was enmity between the two parties. That by itself is not sufficient to discredit the witness. [Para 18] [267-G-H; 268-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1397 of 2014.

From the Judgment and Order dated 30.04.2014 of the High Court of Judicature at Allahabad in Government Appeal No. 816 of 1984.

Rajiv Dutta, Sidharth Luthra, Sr. Advs., Dr. Rajeev Sharma, Bhanwarpal Singh Jadon, Umesh Gupta, Raghuvir Sharma, Advs. for the Appellants.

Ms. Sansriti Pathak, Krishnanand Pandeya, Advs. for the Respondent.

The Judgment of the Court was delivered by

**DEEPAK GUPTA, J.**

1. Babu Ram (PW-1) lodged a written complaint (Exh.P.1) with the Police Station Churkhi to the effect that he had been informed by his nephew Sarman Singh (deceased) that when he- Sarman Singh was ploughing his field in the morning of 17.06.1982, accused Lakhan Singh (A-1) reached there and hurled abuses at Sarman Singh. Lakhan Singh told Sarman Singh that he should not till the plot otherwise he would be killed. Sarman Singh retorted that the plot does not belong to Lakhan's father and that though Lakhan Singh had been cultivating the plot by force, now Sarman Singh would not permit him to do so. Heated altercation took place between the two and both of them abused each other. Thereafter, Lakhan Singh went to his house. Sarman Singh after completing the ploughing came home and mentioned about this incident to Babu Ram (PW-1.) In the FIR it is also reported that the relations between the two were strained and Lakhan Singh belonged to a different

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- A group in the elections for the post of Village Pradhan. Sarman Singh had fought the election against Lakhan Singh. Lakhan Singh had won the election.
2. Immediately, after informing Babu Ram of the incident, Sarman Singh went to get his agricultural implement (*datuwa*) repaired from the carpenter and the informant Babu Ram (PW-1) also accompanied him. It was about noon. As soon as they were crossing the house of Dasharath Singh, Sarman Singh told Babu Ram (PW-1) that Babu Ram should get the *datuwa* repaired from the carpenter while he (Sarman Singh) went to collect the price of the bullocks from Dasharath Singh. Sarman Singh entered the courtyard of the house of Dasharath Singh and sat on a cot.
- Informant Babu Ram (PW-1) went towards the house of the carpenter. He had just reached the house of the carpenter when he heard some noise. He immediately ran and reached the house of Dasharath Singh where he saw accused Lakhan Singh (A-1), armed with lathi, Ramji Singh (A-2) and Krishna Autar (A-3), armed with guns and Laxman Singh (A-4), son of Lakhan Singh, and Lala Ram (A-5), armed with axes and Virendra Singh (A-6) with *kanta* - pitchfork. They were outside the house of Dasharath Singh and Lakhan Singh pointed out that Sarman Singh is a big *gunda*, he should not be permitted to escape and he should be killed. Ramji Singh(A-2) and Krishna Autar (A-3) fired three times each from their weapons from the entrance of the house of Dasharath Singh. Laxman Singh (A-4) and Lala Ram(A-5) gave blows with their axes, and Virendra Singh(A-6), attacked him with the pitchfork on his face and hands. Sarman Singh died on the spot itself. In the meantime, Nand Kishore (PW-2), Gaya Prasad, Takhta Singh and Dasharath Singh's wife Bhagwanta, and other villagers reached the spot. The accused threatened all the persons present there that if anybody interfered, he would kill them and, thereafter the accused ran away from the spot.
3. A written complaint in this behalf was prepared by Babu Ram (PW-1) and was scribed by Ram Lakhan (PW-4). Thereafter Babu Ram (PW-1) went to the police station which is about 8 miles from the village and handed over the written complaint. Crime No.66/82 was recorded under Sections 147, 148, 149, 302 and 452 of the Indian Penal Code, 1860 (IPC for short), against the aforesaid 6 accused. Thereafter, investigation was done and the dead body of the deceased Sarman Singh was sent for post-mortem examination. After completion of the investigation charge sheet under Section 173(2) of the Code of Criminal H

Procedure, 1973 (Cr.PC for short) was filed against all the 6 accused. The Magistrate committed the case to the Court of Sessions. The Sessions Judge charged Lakhan Singh under Sections 147, 449, 302/149 of the IPC whereas Ramji Singh, Krishna Autar, Laxman Singh, Lala Ram, and Virendra Singh were charged for having committed offence punishable under Sections 148, 302/149, 449 of the IPC.

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4. The prosecution examined a number of witnesses. The case of the accused persons was of denial and according to them Babu Ram was inimical to them and, therefore, they had been falsely implicated by him. The Trial Court acquitted all the accused mainly on the following grounds :-

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- (1) Medical evidence did not support the oral testimony of the witnesses and therefore the presence of eye witness was doubtful;
- (2) Material witnesses had been withheld by the prosecution;
- (3) Independent witnesses had not been produced;
- (4) Motive was not proved;
- (5) Witnesses examined were inimical against the accused and highly interested witnesses; and
- (6) That the prosecution had failed to prove the case beyond reasonable doubt.

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5. The State filed an appeal in the High Court. During the pendency of the appeal, three of the accused namely, Lakhan Singh (A-1), Krishna Autar (A-3) and Virendra Singh (A-6), died and the appeal abated qua them. The High Court set aside the judgment of the Trial Court and held that :-

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- (1) there was no material contradiction between the medical evidence and the statement of the eye witnesses;
- (2) that the presence of the eye witnesses on the spot stood proved;
- (3) that the prosecution had explained why it had not examined one of the witnesses and held that the prosecution had proved beyond reasonable doubt the case against the accused.

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Accordingly, Ramji Singh (A-2), Laxman Singh (A-4) and Lala Ram (A-5) were found guilty of having committed offences punishable under Sections 147, 148, 302/149 of the IPC, and for the offence under

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- A Section 302 read with 149, IPC they have been sentenced to rigorous imprisonment for life and a fine of Rs.10,000/- each. Hence this appeal by the convicted accused.

6. We have heard Mr. Rajiv Dutta and Mr. Siddharth Luthra, learned senior counsel appearing for the appellants and Ms. Sansriti

- B Pathak, learned counsel for the State of U.P. It is contended on behalf of the appellants that the Trial Court had rightly come to the conclusion that the medical evidence makes the presence of Babu Ram (PW-1) and Nand Kishore (PW-2) at the scene of occurrence extremely doubtful and, therefore, it is urged that no reliance should be placed on their statements. It is also urged that there are many contradictions in the statements of these two witnesses which render their version doubtful. Furthermore, these witnesses are related to the deceased and being interested witnesses, no reliance should be placed on their statements. It was also urged that the FIR is ante timed and ante dated and this is evident from the delay in delivery of the special report. It was also submitted that material witnesses have not been examined and the ballistic report was not proved by the prosecution. Lastly, it was submitted that the Trial Court had taken a view which was a probable view and this view should not have been disturbed by the High Court.

7. On the other hand, Ms. Sansriti Pathak, learned counsel for the

- E State of U.P. urged that the view of the Trial Court was perverse and she pointed out that there is no contradiction between the medical evidence and the ocular evidence. She further submitted that the time of recording of the FIR is correctly recorded and is supported by the evidence on record. Lastly, she submitted that all material witnesses have been examined. According to her, the judgment of the Trial Court was perverse F which was rightly set aside by the High Court.

8. Having heard learned counsel for the parties and having perused the original record in detail, we are of the view that the main question which arises for consideration is whether reliance should be placed on the statement of the eye witnesses. Obviously, if we believe the statement

- G of the eye witnesses and hold that they are truthful witnesses, then the appeal has to be dismissed. However, if a doubt is cast on the veracity of these two witnesses then the benefit of doubt has to go to the accused. As far as the statements of these witnesses recorded in the case are concerned, they are almost identical and there are no major contradictions

between them. A lot of emphasis has been placed by the appellants on the fact that many things stated by PW-1 in his examination in court have not been mentioned in the FIR. As far as this aspect is concerned, we may note that according to PW-1, he was present at the place of incidence itself and immediately after the occurrence dictated the complaint to Ram Lakan (PW-4), who states that Exh.P.1 is in his hand writing and he had written whatever was dictated to him by Babu Ram (PW-1). Thereafter, he and Babu Ram had both signed the said complaint (Exh.P.1). From the signature of Babu Ram appearing on Exh.P.1 it is apparent that Babu Ram is barely literate and cannot write. PW-4 is a teacher and the suggestion put to him in cross examination was that there is some litigation between his uncle and some persons connected with the accused, but he said that he was not aware of the same. He clearly states that he is not a party to any party politics. With regard to the complaint the only suggestion put to him was that he had not prepared any complaint in the village and that the complaint was written at the police station. There was no examination with regard to the contents of the complaint. Even with regard to time this witness clearly states that he reached the spot at about 12.45 PM and wrote the complaint and, thereafter, Babu Ram was sent to the police station. He further states that the investigating officer reached the place of occurrence at about 3 and 3.45 PM. According to him he remained at the place of occurrence for about 4½ hours and the *panchayat nama* of the dead body was prepared in his presence and he has signed on the same. This means that the complaint was written immediately after the occurrence. The FIR is based only on this complaint and it does not contain anything more or less than the complaint. If this complaint was scribed by this witness at 12.45 PM and sent along with PW-1 to the police station then the contents of the FIR is nothing more than the contents of the complaint and hence cannot be said to be interpolated.

9. We may also take into consideration the fact that the complainant is an illiterate villager. He dictated the complaint to PW-4 who, no doubt, is literate but is not well versed with law. The complaint gives all the necessary facts but obviously it is not drafted by a person having legal acumen. An FIR is not supposed to be an encyclopaedia detailing all the facts in extenso. In our opinion, the complaint (Exh. P.1) is complete and the additions, if any, made during the evidence are not such which cast a doubt on the correctness of the complaint.

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- A        10. We shall now deal with the submission with regard to the delayed compliance of Section 157 of Cr.PC. The version of the prosecution is that the report in terms of Section 157 of Cr.PC and the U.P. Police Regulation was sent at 3.30 PM on 17.06.1982. Constable Atar Singh (PW-7) who was working as the Head Constable has stated that on 17.06.1982 special report of the case was sent to all concerned through Constable No.406 Param Sukh Pal (PW-8). He had produced the original general diary before the court and its true extract is exhibited as P-20. He clearly states that since Babu Ram had brought written complaint (Exh.P.1), he had not obtained signatures on the FIR. In cross examination he states that he does not remember whether the copy of the FIR was sent on 17.10.1982 to CJM, Orai or any other Magistrate in Orai. He admits that there is no entry in this respect in the general diary. He has denied that the entries dated 17.06.1982 relating to despatch of the copies of the FIR, and 18.06.1982 in respect of arrival of constable (PW-8) in the police station are forged and ante dated. PW-8 further states that he had left the police station at 3.10 PM on 17.06.1982 along with the special report which he handed over to the *Ahalmad* (court master) of the SDM, Kalpi. He states that since he became unwell, he spent the night at Kalpi and reached Orai the next morning when he handed over the report to all other officers and came back to the police station.
- E        11. The appellant relied upon a document which is in response to a Right to Information (RTI for short) query in which the *Ahalmad* to the Court of the SDM, Kalpi has stated that the special report was received on 27.06.1982. However, this RTI report has not been proved by the *Ahalmad*. We must also remember that this RTI report must have been obtained after the year 2005, more than 22 years after the incident took place. The contents of the report have not been proved in accordance with law and cannot be relied upon. We may also mention that in U.P. there are U.P. Police Regulations which provide that in cases of murder, rioting, burglary etc., copies of the report are to be sent immediately in red envelopes to the Superintendent of Police, the District Magistrate, the Sub Divisional Magistrate and the Circle Inspector, by post or whichever quicker mode of conveyance. Even if we assume that the prosecution has failed to prove that Section 157 Cr.PC was complied with then also the effect thereof has to be assessed. Mere delay in compliance of Section 157 by itself is not fatal to prosecution.
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All it does is to raise a doubt that the prosecution story may have been concocted at a later stage. In our view, the statement of Ram Lakan (PW-4) who scribed the report at about 12.45 PM at the instance of Babu Ram (PW-1), immediately after the occurrence shows that there was no consultation before writing the complaint. Babu Ram states that he went to the police station on tractor and reached there before 2.00 PM when the report was lodged. Even if the prosecution has failed to prove strict compliance of Section 157 of the Cr.PC there is sufficient material on record to show that copies of the FIR were sent to other officials as required under the U.P. Police Regulations and, therefore, in our opinion, there was no false FIR lodged after consultation, as alleged by the appellants. In our opinion the judgment cited by the appellants *Meharaj Singh (L/NK) vs. State of U.P.*<sup>1</sup> has no application to the facts of this case.

12. It was urged that Constable Siya Ram (PW-3) who took the dead body of the deceased from the place of occurrence to the hospital for post-mortem had admitted that the dead body was given to him at 5.30 PM and he reached the Police Station, Orai at 10.00 AM next morning. This witness states that he started from the police station for the village at 2.00 PM, which supports the prosecution version that the FIR was lodged at about 2.00 PM. He was accompanied by another constable, the SHO and the sub-inspector. According to him, they left Pithuipur where the occurrence took place at 5.30 PM carrying the dead body in the bullock cart and on the way the wheel of the bullock-cart stopped functioning and they spent that night in village Bamohra. He states that he could make arrangement of another wheel at about 6 to 7.00 AM in the next morning and, thereafter, covered the distance between Bamohra and Orai in 3 hours. The distance is 24 Kms, and according to the Trial Court and the appellants bullock cart cannot cover this distance in 3 hours. In our opinion, the Trial Court had no material to come to this conclusion that the bullock-cart cannot cover this distance in 3-4 hours.

13. The other main ground relied upon by the appellant is the medical evidence. Since this is very relevant, we are quoting the relevant portion of the evidence in detail. Dr.G.C.Misra (PW-5) was the medical officer who carried out the post-mortem at 2.00 PM on 18.06.1982. On external examination he found the following injuries :-

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<sup>1</sup> (1994) 5 SCC 188

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- A     “(i) Incised wound 12 x 2 cm x bone deep on left side of forehead extending to left on exilla tailing towards left.  
     (ii) Incised wound 3 cm x 1 cm x bone deep on left side of face 2 cm below injury no.1 tailing towards left.
- B     (iii) Incised wound 13 cm x 3 cm x bone deep starting from bone of nose going at the side of medial angle of left eye to mandible left tailing towards left.  
     (iv) Incised wound 5 cm x 1 cm x bone deep starting from nose and going left side of face tailing towards left.
- C     (v) Incised wound 14 cm x 3 cm x bone deep tailing towards left starting from lateral orbital margins of right eyes and going up to mandible.
- D     (vi) Incised wound 5 cm x 0.5 cm x muscle deep starting from left angle and mouth going towards downwards and lateral of cheek left tailing towards left.  
     (vii) Incised wound 2.5 cm x 2 cm x bone deep on lateral side of right eye brow.  
     (viii) F.A. Entry wound 1 cm x 1 cm on anterior axillary fold 2 cm away the right upper arm. No tattooing charing etc. present.
- E     (ix) Fire arm entry wound 1.2 cm x 1 cm on the upper part medial aspect of right upper arm 2 cm lateral to injury no.8. No tattooing charing etc. present.
- F     (x) Incised wound 2 cm x 0.5 cm x muscles deep on dorsal aspect middle joint of index finger of right hand.  
     (xi) Incised wound 6 x 2 cm x muscles deep on dorsal of left hand adjacent to wrist joint.  
     (xii) Incised wound 5 cm x 2 cm x muscle deep on durum of left hand, 2 cm below an injury no.11.
- G     (xiii) Fire arm exit wound 3x2 cm on left scapula region about middle.  
     (xiv) Fire arm exit wound 2 x 1.6 cm on right scapular region medial border 6 cm above the infangle.

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(xv) Fire arm entry wound 2 x 1.8 cm on left side of abdomen upper part 20 cm above and lateral to umbilicus intestine comes out. A

(xvi) Entry wound fire arm 1.2x1.2 cm on left thigh 10 cm from penis no tattooing charing etc present.

(xvii) Fire arm entry wound 20 cm x 1.6 cm, 2 cm above and lateral to injury no.16 tattooing charing etc. present. B

(xviii) Fire arm entry wound 4 x 2 cm, oblique 1.5 cm lat to injury no.16 and 1.2 below the injury no.17 tattooing charing etc present.

(xix) Exit wound (fire arm) 6 x 6 cm on left thigh margins adjacent to out sup-Iliac spin. C

(xx) Exist wound 8 x 4 cm on lateral side of left thigh 2 cm below the injury no.19.

(xxi) Fire arm exit wound4 cm x 4 cm on left lat side of thigh 3 cm below the injury no.20. D

(xxii) Exit wound 4 x 4 cm on post aspect left thigh 4 cm below and medial to injury no.21.

(xxiii) Six fire arm exit wound in area of 10 cm x 5 cm x on medial side upper part of left thigh adjacent to the penis size varying from 0.3 cm to 0.8 cm. E

(xxiv) 3 fire arm exit wound in an area of 2 x 2 cm size diameter 0.4 cm to 0.8 cm on upper lat part of scrotum.

(xxv) 3 fire arms wounds in an area of 6 x 4 cm on right side of scrotum upper part adjacent to base of scrotum size diameter 0.3 cm to 0.6 cm.” F

14. On careful analysis of the medical evidence we find it fully corroborates the prosecution story. According to both the eye witnesses (PWs 1 and 2) accused Ramji Singh and Krishna Autar, had fired three times each. There are corresponding 6 fire arm entry wounds which are mentioned at serial no.(viii), (ix), (xv), (xvi), (xvii) and (xviii). As far as the exit wounds are concerned, there are more than 6 exit wounds which is possible since one of the fire arms used was a 12-bore gun having pellets. The doctor has opined that long barrel guns were also G

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- A used and according to him the death occurred between 12 and 12.30 PM on 17.06.1982 which also supports the prosecution version. It is important to mention that the other injuries described by the doctor are all relatable and could have been caused by axe or by pitchfork, which were the weapons carried by 3 of the accused.
- B 15. Heavy reliance was placed by the Trial Court as well as by the appellants before us on the fact that if the site map prepared by the appellants is correct then most of the injuries should have been caused on the left side of the body. We do not understand as to how the Trial court could have come to this conclusion. A site plan is prepared on the basis of information given by witnesses. A site plan only gives a general idea and is not a true to scale map. Even if the deceased was sitting on the cot it is not necessary that he should have been facing North only. He could have been facing North-East or North-West. He could have also been sitting at one side of the cot facing towards West. Even the two eye-witnesses were present at the entrance of the house, inside
- C which there was a *deoria*. This is like a thick entrance gate way without any doors. They were both standing on the outer side and according to the statement of these witnesses accused Ramji Singh (A-2) and Krishna Autar (A-3), fired their fire arms from the entrance. Therefore, direction becomes virtually meaningless. The High Court was absolutely justified in coming to the conclusion that the Trial Court had totally misdirected itself in holding that the medical evidence did not support the ocular evidence. This was done only on the ground that the injuries were not on the side on which they should have been if the site plan was 100% right. As has already been observed above, a site plan is not a true to scale map and it generally gives the positions of the various eye-witnesses,
- D accused etc., but obviously such site plan cannot give exact positions. Directions cannot be determined from exact position also. The direction of the injury can also vary even if the accused and the deceased are in the same place as mentioned in the map and one of them is sitting or standing at an angle. The view taken by the Trial Court was highly technical and, in our opinion, this was not a sufficient ground to disbelieve
- E both the eye witnesses.
- F 16. In fact, in our opinion, the medical evidence fully supports the ocular evidence and there is virtually no contradiction. The version of the two eye witnesses with regard to the injuries caused by the fire arms and sharp-edged weapons, find corroboration from the medical report.
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Direction, as pointed out above cannot be specifically ascertained from a site plan. The occurrence took place in a small area. The deceased was sitting on a cot which could at best be 6' in length. He was surrounded by six accused out of whom two used fire arms. It would not be possible for any witness to exactly state who was at which place. Even PWs 1 and 2 have not stated the exact place from where the firing took place, except that according to both of them the firing took place from the entrance of the house and if that is so then the points D and D1 in the site plan showing the points where the accused carrying the fire arms were standing, may not be strictly correct.

17. It has been urged that the statements of the two witnesses PWs 1 and 2 should not be relied upon since they are closely related to the deceased and there was enmity between both the sides. It has been urged that PW-2 had a dispute with Krishna Autar (A-3) and his brother had litigation with Lekhan Singh(A-1). We assume these facts to be true. There is no manner of doubt as stated in the complaint itself that the relationship between the two sides was strained. They belonged to different groups and obviously there was enmity between them. As is often said enmity is a double-edged sword. It can be both the motive for a crime and it can also be a motive to falsely implicate some other people. However, each case has to be decided on its own evidence. In this case we have come to the conclusion that the written complaint was recorded immediately after the occurrence. There was no time to concoct a false case implicating those who were not involved. The fact that Sarman Singh was murdered is not disputed. The only question is whether it was the accused persons who murdered him or somebody else. Once we believe that PWs 1 and 2 are eye-witnesses, then there is no reason to hold that the appellants were falsely implicated. They are all named in the written complaint as well as in the FIR which was recorded at the earliest. Their version is corroborated by the version of PW-4, who though not an eye-witness reached the spot at about 12.45 PM and then scribed the complaint. In our view this complaint depicts what actually happened.

18. True it is that there are some minor variations and contradictions in the statement of the two witnesses, especially PW-2. PW-2 may have improved his version slightly while appearing in court but the core of his evidence remains intact. The essence of his evidence is that he had gone to pray in a temple which is close to the house of Dasharath

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- A Singh, and he heard a noise and saw all the accused armed as stated hereinabove at the door of the house of Dasharath Singh. Lakan Singh(A-1) pointed towards Sarman Singh and said, “kill this *goonda* immediately.” On this, accused Krishna Autar, and Ramji Singh fired three shots each from their guns upon Sarman Singh. They were standing at the entrance of the house of Dasharath Singh. Though he has been cross examined at length, nothing material has come out of cross examination. His statement supports the statement of Babu Ram (PW-1), who has virtually repeated what has happened, in the complaint. The main effort of the defence appears to have been to bring out the fact that there was enmity between the two parties. That by itself is not sufficient to discredit the witness.

- 19. We must remember that the prosecution story is that six persons who were heavily armed, two of them with guns, killed the deceased in broad day light. This itself shows that these accused persons were not scared of the villagers. While leaving the place of occurrence they threatened all gathered there by saying that anybody who tried to interfere would meet the same fate. In such a situation no other villager who may have been present would turn up to give evidence. This Court cannot lose sight of the harsh reality that witnesses are scared to depose in Court. In this case two of the witnesses have spoken up and their evidence has been corroborated on all counts. It may be true that their relations with the accused may not have been cordial but the evidence does not show that the enmity or dispute between these two witnesses and the accused was of such a nature that these two witnesses would make false statements only to settle scores with the appellants thereby leaving the real culprits to go scot-free. In our opinion merely because these witnesses are interested witnesses their testimony cannot be discarded.

- 20. Great emphasis was placed by the appellants on the fact that neither Dasharath Singh, in whose house the occurrence took place, nor his wife Bhagwanta who came immediately after the occurrence, were examined. The Trial Court held that Dasharath Singh must have been inside his house when the occurrence took place. The Trial Court comes to this conclusion on the ground that in the FIR it is mentioned that Sarman Singh called Dasharath Singh. This finding of the Trial Court is totally incorrect. There is nothing to show that Dasharath Singh was called. In fact, both in the complaint as well as in the FIR it is mentioned

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that deceased Sarman Singh told Babu Ram (PW-1) to get the agricultural implement repaired while he would collect the money from Dasharath Singh. Presence of Dasharath Singh is not established. Bhagwanta, definitely reached immediately after the occurrence. However, she filed an affidavit in the Trial Court in which it was stated that she had seen nothing and nothing happened in her presence. Therefore, the prosecution was justified in not examining her. Non-examination of the carpenter is meaningless because he is not a witness to the occurrence. At best he could establish the presence of PW-1 before the occurrence.

21. The appellants are right when they urge that when the report of the ballistic experts have not been proved and all the bullets recovered from the spot have not been sent to the ballistic expert, the guns seized cannot be connected with the offence. Even if that be true, we cannot discredit the testimony of the eye-witnesses that two of the accused used guns. The guns seized may or may not be the guns used. However, when the ocular evidence is direct and clear in this regard, and this ocular evidence is fully supported by the medical evidence, the negligence of the investigation team cannot be used by the defence in support of their case.

22. In view of the above discussion, we find no merit in the appeal and the same is dismissed. Pending application(s), if any, shall also stand disposed of.

Ankit Gyan

Appeal dismissed.