STATE OF M.P. A

v.

DHARA SINGH & ANR.

(Criminal Appeal No. 1390 of 2003)

MARCH 3, 2009 B

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Penal Code, 1860 – s. 302 and s. 302 r/w s. 34 – Arms Act, 1959 – s. 25 and 27 – Conviction under – However, acquittal by High Court extending benefit of doubt – On appeal held: Conclusion of High Court that name of prosecution witness not mentioned in FIR not correct – There was no discussion of evidence of eye-witnesses – Also it cannot be said that non-placing of the report of ballistic expert on record was fatal to prosecution case – Thus, order of High Court set aside and that of trial court restored. C D

The question which arose for consideration in this appeal was whether the High Court was justified in setting aside the conviction of respondent no. 1 u/s. 302 IPC and ss. 25 and 27 of Arms Act, 1959 and respondent no. 2 u/s. 302 r/w s. 34 IPC, extending them benefit of doubt. E

Allowing the appeal, the Court F

HELD: The conclusion of the High Court that PW-3's name did not find place in the FIR is not correct. PW-2 clarified that in fact the name of PW-3 was indicated in the FIR as `Kaptan'. It is seen that there was no discussion of the evidence of eye-witnesses. In what cases the examination of a ballistic expert is essential to further the prosecution version would depend upon the circumstances of each case. High Court was in error in G

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A **directing acquittal of the respondents. The judgment of the High Court is set aside and that of the trial court is restored. [Paras 4 and 5] [938-E-F; 939-E-F]**

Chatar Singh and Anr. v. State of Haryana **AIR 1976 SC 2474;** *Lakhbir Singh and Anr. v. State of Punjab* **AIR 1994 SC 1029 and** *Surendra Paswan v. State of Jharkhand* **2003 (12) SCC 360, referred to.**

Case Law Reference:

AIR 1976 SC 2474	**Referred to.**	**Para 4**
AIR 1994 SC 1029	**Referred to.**	**Para 4**
2003 (12) SCC 360	**Referred to.**	**Para 4**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1390 of 2003.

From the Judgment and Order dated 21.11.2002 of the High Court of Madhya Pradesh, Jabalpur, Bench at Gwalior in Criminal Appeal No. 24 of 1993.

Siddhartha Dave, Jemtiben, Vibha Datta Makhija for the Appellants.

K. Sharda Devi for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court, Gwalior Bench, directing acquittal of the respondents. Learned 4th Additional Sessions Judge, Morena, had convicted respondent No.1 for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 25 and 27 of the Arms Act, 1959(in short the 'Arms Act'). Respondent No.2 was convicted for offence punishable under Section 302 read with Section 34 IPC.

2. Background facts in a nutshell are as follows: A

On 3.10.1998 Sohan Lal (hereinafter referred to as the 'deceased') his son Ram Het, Dhanvanti, Ramswaroop, Kaptan Singh and Bhagwan Singh came to Morena from Village Rajyekapura for the treatment of Dhanvanti and to purchase B fertilizer. They were returning back to their village in a bullock cart at about 3.00 p.m. Said bullock cart was being driven by Bhagwan Singh and the deceased Sohan Lal and Ram Swaroop were behind the bullock cart. Ramhet, Dhanvanti and Kaptan Singh were sitting in the bullock cart. C

When the said bullock cart reached near Shivlal-ke-pura Ki Mata, at that juncture accused Prem Das armed with a gun and accused Dhara Singh armed with a katta came in front of the bullock cart. Prem Das asked to stop the bullock cart and thereafter upon his exhortation Dhara Singh fired the Katta, as D a result of which Sohanlal died. The bullet hit the chest of the deceased. Thereafter the accused persons fled away.

Two brothers of the accused had died 5 to 6 years ago in the hospital with the result that the accused left the village after E disposing of their land to Gujiars. Subsequently, deceased had purchased a portion of land from Gujiars. The accused persons were under impression that the deceased got their brothers killed.

The First Information Report (In short the 'FIR') was lodged F by PW-2 Ramhet and in this manner the criminal law was set in motion. The police thereafter arrived on the spot, prepared the Panchnama, sent the dead body of the deceased to the Hospital for post mortem, seized the wearing apparel of the deceased and recorded the statements of the witnesses. G

After investigation, charge sheet was filed. Since accused persons pleaded innocence trial was held.

The trial Judge after considering the evidence on record found the accused persons guilty as noted above. In appeal H

A before the High Court it was primarily submitted that the prosecution version is not acceptable. The evidence of the witnesses did not inspire confidence. The bullet which was found on the body of the deceased was recovered and was sent for examination of the ballistic expert and his report was B not placed on record. The High Court found that the name of Bhagwan Singh (PW-3) did not find place in the FIR. The State's stand was that neither of these two aspects rendered the prosecution version suspect. The High Court however held that the benefit of doubt was to be extended and directed C acquittal.

3. Learned counsel for the appellant submitted that the conclusions are very sketchy. There is no discussion of the eye witnesses. Ram Het Singh (PW-2) the son of the deceased and Bhagwan Singh (PW-3) who was the cousin of PW-2. D Dhanwanti (PW-4) was the daughter-in-law of the deceased. The FIR was lodged promptly. It is not a fact that the name of PW-3 does not figure in the FIR. It has been clearly stated that the cousin of the informant was an eye witness.

E 4. The conclusion of the High Court that PW-3's name did not find place in the FIR is not correct. As a matter of fact PW-2 has clarified that in fact the name of Bhagwan Singh has been indicated in the FIR as 'Kaptan'. Additionally, it is seen that there is no discussion of the evidence of the eye witnesses. In what F cases the examination of a ballistic report is essential to further the prosecution version would depend upon the circumstances of each case. In *Chatar Singh and Anr. v. State of Haryana* (AIR 1976 SC 2474) it was held that in the circumstances of the case the non obtaining of the report of the ballistic expert, G could not shake the prosecution case in the least. The view was re-iterated in *Lakhbir Singh and Anr. v. State of Punjab* (AIR 1994 SC 1029). In this context a decision of this Court in *Surendra Paswan v. State of Jharkhand* (2003 (12) SCC 360) is relevant. In paras 9 and 10 it was held as follows:

H "9. So far as the non-seizure of blood from the cot is

concerned, the investigating officer has stated that he found bloodstained earth at the place of occurrence and had seized it. Merely because it was not sent for chemical examination, it may be a defect in the investigation but does not corrode the evidentiary value of the eyewitnesses. The investigating officer did not find presence of blood on the cot. The trial court and the High Court have analysed this aspect. It has been found that after receiving the bullet injury the deceased leaned forward and whatever blood was profusing spilled over onto the earth.

10. So far as the effect of the bullet being not sent for ballistic examination is concerned, it has to be noted that *Sukhwant Singh case* is not an authority for the proposition as submitted that whenever a bullet is not sent for ballistic examination the prosecution has to fail. In that case one of the factors which weighed with this Court for not finding the accused guilty was the prosecution's failure to send the weapon and the bullet for ballistic examination. In the instant case, the weapon was not seized. That makes a significant factual difference between *Sukhwant Singh case* and the present case."

5. In view of the aforesaid, the High Court was in error in directing acquittal of the respondents. The judgment of the High Court is set aside and that of the trial Court is restored.

6. The appeal is allowed.

N.J. Appeal allowed.