

AKHTAR & ORS.

v.

STATE OF UTTARANCHAL  
(Criminal Appeal No. 1590 of 2007)

APRIL 9, 2009

[S.B. SINHA, B. SUDERSHAN REDDY AND  
DR. MUKUNDAKAM SHARMA, JJ.]

*Penal Code, 1860 – ss. 148, 302/149, 302/149, 307/149 and 324/149 – Assault resulting in death of two and injuries to two – Motive established – Testimony of two injured eye-witnesses – Corroborated by medical evidence Hostile witness also corroborating the injured eye-witnesses as regards date, time and place of occurrence – Genuineness of post-mortem report and injury report proved – Non-examination of doctor — Acquittal by trial court – Conviction by High Court – On appeal, held: The evidence of the case, establish the involvement of the accused – Minor contradictions would not render the trial fatal – Conviction confirmed.*

**Appellant-accused alongwith three other accused were prosecuted u/ss. 147, 148, 149, 307 and 302 IPC. Prosecution case was that there was a dispute between the complainant and accused party over a piece of land. When the complainant party was ploughing the disputed land, the accused party came armed with deadly weapons. The assault resulted in death of two persons and injuries to two persons. Trial Court acquitted all the accused. During pendency of the appeal before High Court three of the accused died and the appeal as regards them abated. High Court convicted the appellant-accused. Hence the present appeal.**

**Dismissing the appeal, the Court**

**A HELD:1. It was a day light incident, the motive of  
accused was also established on record. There is  
concurrent finding of the trial court as well as of the High  
Court that there did exist enmity between the complainant  
party and the accused regarding ownership and  
B possession on a particular piece of land. PW-2 and PW-  
3 in their deposition have stated that on account of  
dispute and litigation with regard to the piece of land, the  
accused bore enmity against them (complainant) and the  
accused were on the look out to kill them (complainant).  
C [Para 12] [779-D, E]**

**2. Merely because PWs 2 and 3 were related to the  
deceased cannot be a ground for non-acceptance of their  
evidence, which otherwise was found to be trustworthy.  
It is true that these two witnesses are related to the  
D deceased but at the same time they were also injured  
witnesses. It is extremely difficult to believe that the  
injured witnesses who themselves got injured and  
whose close relatives lost their lives would shield the real  
culprits and name somebody else only due to some  
E enmity. The defence had ample opportunity to cross-  
examine these two injured eye-witnesses but records  
show that no suggestions were put to them as to how  
they received the injuries, mentioned in the medical  
reports. In fact, various documents filed by the defence  
F with respect to litigation among themselves itself give the  
unmistakable impression that there was indeed motive to  
attack the deceased and the injured witnesses.[Para 14]  
[780-D, E, F]**

**G 3. Though PW-4, another eye-witness who was the  
driver of the tractor on that day at the place of occurrence  
was declared hostile, he substantially corroborated the  
prosecution version to the extent of the date, time and  
place of the incident as deposed by the two injured eye-  
H witnesses. Further, even if the recovery of the pistol has**

not been proved beyond reasonable doubt, the testimony of the two injured eye-witnesses, which is quite consistent and has further been corroborated by the medical evidence, cannot be disbelieved. [Para 15] [780-G; 781-A, B] A

*Krishan v. State of Haryana* 2006 (12) SCC 459; *Surender Singh v. State of Haryana* 2006 (9) SCC 247 and *M.P. v. Mansingh* 2003 (10) SCC 414, relied on. B

4. Non-examination of the concerned medical officers is not fatal for the prosecution. There is no denial of the fact that the defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence u/s. 294 Cr.P.C. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-Section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined. [Para 16] [781-C-E] C D E

5. The plea that there could not have been semi-digested food in the stomach of the deceased at 10.00 AM since the deceased were fasting as it was month of Ramjan, is not sustainable. It is common knowledge that during holy Ramjan heavy food is taken before sunrise. PW-2 stated that the deceased had taken 'sahri' i.e. morning food taken by Muslims before sunrise on a fasting day. Since the incident was of the month of May, there cannot be denial of the fact that after a period of five hours, there could be some semi-digested food in the stomach of the deceased which has in fact been F G H

- A confirmed by the Doctor conducting the post-mortem examination. There might be some minor contradiction in the prosecution version, but the same would not render the trial fatal. The evidences adduced in the present case, despite minor discrepancies, clearly establish the involvement of the accused-appellant on the date of occurrence. [Para 17] [781-G-H; 782-A-B]

*Sarbul Singh and Ors. v. State of Punjab* 1993 Supp (3) SCC 678 and *Virendra @Buddhu and Anr. v. State of U. P.* 2008(15) SCALE 283, relied on.

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#### Case Law Reference:

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|---|-----------------------|-----------|---------|
|   | 2006 (12) SCC 459     | relied on | Para 13 |
|   | 2006 (9) SCC 247      | relied on | Para 13 |
| D | 2003 (10) SCC 414     | relied on | Para 13 |
|   | 1993 Supp (3) SCC 678 | relied on | Para 18 |
|   | 2008(15) SCALE 283    | relied on | Para 18 |

- E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1590 of 2007.

- F From the Judgment and Order dated 18.7.2007 of the High Court of Uttaranchal at Nainital in Government Appeal No. 1169 of 2001.

Dr. Aman Hingorani, Annapoorna and Hingorani & Associates for the Appellants.

- G Abhay Prakash Sahay and Jatinder Kumar Bhatia for the Respondent.

The Judgment of the Court was delivered by

**DR. MUKUNDAKAM SHARMA, J. 1.** This statutory

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appeal arises out of the final judgment and order dated 18.07.2007 passed by the Division Bench of the High Court of Uttaranchal by which the High Court allowed the appeal filed by the State of Uttaranchal and convicted all the appellants herein under Sections 148, 302/149, 307/149 and Section 324/149 of the Indian Penal Code (in short "the IPC") and sentenced them to undergo rigorous imprisonment for life by setting aside the order of acquittal passed by the trial court.

2. The prosecution story, in brief, is that on 13.05.1987, at about 10.00 AM, complainant Jamil Ahmad (PW-2) along with his brothers Asgar and Shakil (both deceased), and nephew Mobin (PW-3), were ploughing their field, bearing Khasra No. 967, situated in Village Beljuri within the limits of Police Station, Kashipur. Their tractor was being driven by driver Radhey Shyam (PW-4). They were in litigation over possession of said field with accused-Alla Bux and others. Stay order had also been obtained by them regarding the same. It is alleged that on account of such running feud between them, Alla Bux and his associates were inimical to the complainant (Jamil Ahmad) and his brothers and that on aforesaid date and time when the plot was being ploughed, accused – Alla Bux, Akhtar, Mohd. Umar, Nuru, Rais alias Gabru, Yamin, Yasin and Amir Bux, armed with deadly weapons – pistol, tabals (a sharp edged weapon), knives and lathies, reached in the field. Accused Alla Bux exhorted his companions whereupon all the accused/appellants started giving blows with the weapons they were armed with, on the complainant, his brothers and nephew. The accused/appellant Akhtar, who wielded a country made pistol, fired upon them and wounded Shakil (one of the deceased) and Mobin (one of the injured). In the incident all of them, namely Asgar, Shakil, Jamil Ahmad and Mobin sustained severe injuries. On account of the injuries thus sustained Asgar and Shakil died on the spot itself. Asgar (another deceased) and Jamil Ahmad (another injured) also received injuries of sharp edged weapons. On raising alarm by Jamil Ahmad and

A others, many other persons from nearby place reached at the spot whereupon accused/appellant ran away towards river Dhela.

B 3. Leaving the dead bodies of Asgar and Shakil at the spot, Jamil Ahmad along with Mobin went to Kashipur. The written First Information Report (in short "the FIR") was got scribed by one Anwar Hussain on dictation of Jamil Ahmad (PW-2). Jamil Ahmad then went to Police Station, Kashipur and lodged the said FIR with the police. The police registered the FIR being Crime No. 160 of 1987 on 13.5.1987, at about 11.20 AM against all the eight accused persons relating to offences punishable under Sections 147, 148, 149, 307 and 302 IPC and thereafter started investigation. Shri R.S. Lal Sharma, Sub-Inspector (PW-9) was entrusted with the investigation in the matter. He accompanied by Kalyan Singh (PW-7), another D Sub-Inspector, reached the spot. The dead bodies were taken by the police into their custody. The dead bodies were sealed and sent for post mortem examination. The police prepared inquest reports, Police Form No. 13, sketch of the dead bodies, sketch map of the spot and the letters requesting the Medical E Superintendent, for post mortem examination of the dead bodies. Police also collected the unstained soil and blood stained soil from the place of incident along with empty shells of cartridges as well as live cartridges and duly sealed the same on the spot and prepared memorandums. Meanwhile, on F the same day, i.e. on 13.5.1987 injuries on the person of Jamil Ahmad (PW-2) and Mobin (PW-3), were got examined in L.D. Bhatta Civil Hospital, Kashipur, at about 12.00 noon and their injury reports were prepared by Medical Officer on duty. Post mortem examination on the dead bodies of Asgar and Shakil G was conducted on the next day i.e. 14.05.1987 at 10.00 AM and 10.30 AM respectively by Dr. D.K. Lumba, who prepared the post mortem examination reports.

H 4. During investigation, the witnesses were interrogated and all the accused were arrested. From the possession of

accused/appellant Akhtar, a pistol, used in the crime, was recovered. The said country made pistol along with empty shells of cartridges, recovered from the spot itself by the police, were sent to Ballistic Expert, who gave its report supporting the prosecution case. On completion of investigation the police submitted charge sheet on 30.05.1987 against all the eight accused/appellants, namely, Akhtar, Mohd. Umar, Nuru, Rais alias Gabru, Yamin, Yasin and Amir Bux and Alla Bux.

5. The Addl. Chief Judicial Magistrate, Kashipur took cognizance of the case and committed the case to the court of Sessions, Nainital. The learned Sessions Judge, Nainital after hearing the prosecution and the defence, framed charges on 3.5.1988. Whereas the accused-Akhtar was charged with offences under Sections 148, 302, 307 and 324 read with Section 149 IPC, the co-accused Mohd. Umar, Nuru, Rais alias Gabru, Yamin and Yasin were charged with offences under Sections 148, 302/149, 307/149 and 324/149 IPC. The co-accused Amir Bux and Alla Bux were, however, charged with offences under Sections 147, 302/149, 307/149 and 324/149 IPC.

6. The trial court by its order dated 20.06.1989 held that the charges framed against the accused were not proved beyond reasonable doubt and consequently acquitted them of all the charges framed against them. Aggrieved by this order the State filed an appeal before Allahabad High Court on 29.09.1989 in which leave was granted under Section 378 (3) of the Code of Criminal Procedure, 1973 (in short "the CrPC") on 21.05.1992. However, the said appeal came to be transferred for its disposal to the High Court of Uttaranchal at Nainital under Section 35 of U.P. Reorganization Act, 2000. It is also to be mentioned at this stage that accused Akhtar, Yasin and Alla Bux died during the pendency of the appeal in the High Court and, therefore, the said appeal stood abated so far those three accused were concerned. The High Court of Uttaranchal allowed the appeal preferred by the State and set aside the

- A judgment and order of the trial court dated 23.06.1989 and ordered for conviction of all the surviving five accused. Mohd. Umar, Nuru, Rais alias Gabru, Amir Bux and Yamin was convicted under Sections 148, 302 r/w 149, 324 r/w 149 IPC. Considering relevant factors on the question of sentence, Mohd.
- B Umar, Nuru, Rais alias Gabru, Amir Bux and Yamin was given rigorous imprisonment for a period of one year u/s 148 IPC; imprisonment for life u/s 302 r/w 149 IPC; rigorous imprisonment for a period of five years u/s 307 r/w 149 IPC; and rigorous imprisonment for a period of one year u/s 324 r/w 149 IPC. The appeal against accused Akhtar, Yasin, Allah
- C Bux abated due to their death during the pendency of the appeal in the High Court.

7. Aggrieved by the said decision of the High Court, the five appellants have preferred the present appeal under Section
- D 379 CrPC.

8. Before dwelling further into the matter, it would be pertinent to mention here that the ante mortem injuries were found on the body of two deceased and injuries were also found
- E on the body of informant Jamil (PW2) and Mobin (PW3). The first post mortem examination report, genuineness of which has been admitted by the defence, discloses that autopsy was conducted on 14.05.1987 at 10.30 AM on the dead body of Shakil by Dr. A.K. Lumba.

- F 9. Another post mortem examination report, genuineness of which has also been admitted by the defence, discloses that autopsy was conducted on the dead body of Asgar on 14.05.1987 at about 10.00 AM by Dr. A.K. Lumba. In the opinion of the Medical Officer, both Shakil and Asgar died on
- G account of shock and haemorrhage resulting due to ante mortem injuries.

10. The medical report with respect to the injuries caused to two eye-witnesses, namely Jamil Ahmad and Mobin,
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genuineness of which has also been admitted by the defence counsel, discloses that on 13.05.1987 at about 12.15 p.m., injuries were found on the body of Jamil Ahmad (PW-2) by the Medical Officer who examined the injured at L.D. Bhatt Civil Hospital, Kashipur. In the opinion of the Medical Officer the injuries were fresh and simple in nature, caused by sharp edged weapon. The same Medical Officer also examined PW-3, Mobin and opined that four injuries were caused by some hard blunt object and two injuries were caused by a fire arm and all the injuries were fresh in duration.

11. Admittedly, there is no dispute as far as the genuineness of the injury reports, post mortem reports and also the genuineness of the Ballistic Expert's report is concerned. As defence has already admitted the same no useful purpose would be served to discuss those reports again.

12. Undisputedly, it was a day light incident, the motive of accused was also established on record. There is concurrent finding of the trial court as well as of the High Court that there did exist enmity between the complainant party and the accused regarding ownership and possession on Khasra No. 967. Jamil Ahmed (PW-2) and Mobin (PW-3) in their deposition have stated that on account of dispute and litigation with regard to Khasra No. 967 the accused bore enmity against them (complainant) and the accused were on the look out to kill them (complainant).

13. In the case of *Krishan v. State of Haryana*, [2006 (12) SCC 459], this Court has taken the view that if the prosecution case supported by two injured eye-witnesses and if their (injured eye-witnesses) testimony is consistent before the police and the court and corroborated by the medical evidence, their testimony cannot be discarded. Similarly, in the case of *Surender Singh v. State of Haryana*, [2006 (9) SCC 247], at page 250, this Court has opined that the testimony of an injured witness has its own relevancy and efficacy. The fact that the

A witness was injured at the time and in the same occurrence lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes.

14. This court has taken the view in *State of M.P. v. Mansingh*, [2003 (10) SCC 414], at page 419 that the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. It was contended by the appellant that the testimony of Jamil Ahmed (PW-2) and Mobin (PW-3) cannot be relied on as these two eye witnesses were allegedly highly interested witnesses and were related to the deceased. In our considered view, merely because the witnesses in question were related to the deceased cannot be a ground for non-acceptance of their evidence, which otherwise was found to be trustworthy. It is true that these two witnesses are related to the deceased but at the same time one cannot lose sight of the fact that these two witnesses were also injured witnesses. It is extremely difficult to believe that the injured witnesses who themselves got injured and whose close relatives lost their lives would shield the real culprits and name somebody else only due to some enmity. The defence had ample opportunity to cross-examine these two injured eye witnesses but records show that no suggestions were put to them as to how they received the injuries, mentioned in the medical reports. In fact, various documents filed by the defence with respect to litigation among themselves itself give the unmistakable impression that there was indeed motive to attack the deceased and the injured witnesses.

15. Though declared hostile by the prosecution, Radhey Shyam (PW-4), an another eye witness who was the driver of the tractor on that day at the place of occurrence substantially corroborated the prosecution version to the extent that on the date of occurrence at 10.00 AM he was ploughing field of the deceased when some 7-8 persons reached there, he got

frightened and ran away from the place of occurrence. This independent witness has supported the date, time and place of the incident as deposed by the two injured eye witnesses namely Jamil Ahmed (PW-2) and Mobin (PW-3). Further, even if the recovery of the pistol has not been proved beyond reasonable doubt, the testimony of the two injured eye witnesses, which is quite consistent and has further been corroborated by the medical evidence, cannot be disbelieved.

16. It has been argued that non-examination of the concerned medical officers is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 of the CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-Section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined.

17. With regard to the contention of semi-digested food being found in the stomach of the deceased, it has been contended that both the deceased were fasting as it was the month of holy Ramjan. So, it was argued that there could not have been semi digested food in their stomach at 10.00 AM. We are unable to accept this contention as it is common knowledge that during holy ramjan heavy food is taken before sunrise. Jamil Ahmad (PW-2) stated that Shakil (deceased) had taken 'sahri' i.e. morning food taken by Muslims before sunrise on a fasting day. Since the incident was of the month of May, there cannot be denial of the fact that after a period of five hours, there could be some semi digested food in the

A stomach of the deceased which has in fact been confirmed by the Doctor conducting the post mortem examination. There might be some minor contradiction in the prosecution version but the same would not render the trial fatal. The evidences adduced in the present case, despite minor discrepancies, clearly establish the involvement of the accused appellant on the date of occurrence.

18. In *Sarbul Singh and Others v. State of Punjab*, [1993 Supp (3) SCC 678], where some semi-digested food was found in the stomach of the deceased therein although there was evidence that they had taken food immediately before the occurrence, this Court held as under:

“6. We see absolutely no reason to discredit the evidence of the three eyewitnesses whose presence cannot be doubted. Now coming to the semi-digested food, it cannot be ruled out that the old lady might not have eaten anything earlier. Merely because the illiterate witnesses stated that they took their meals immediately before the occurrence cannot by itself be a circumstance to discredit their evidence on the basis of medical evidence regarding the presence of semi-digested food. It is also clear from the textbooks on medical jurisprudence that the stomach contents cannot be determined with precision at the time of death. As rightly held by the High Court, the trial court grossly erred in basing its verdict mainly on the nebulous medical observation.”

This position of law has been recently reiterated by this Court in *Virendra @Buddhu & Anr. v. State of U. P.* [2008(15) SCALE 283].

19. In view of the aforesaid discussion, we do not find any infirmity in the judgment and order passed by the High Court. Accordingly, the appeal filed by the appellants herein is dismissed. The High Court decision against each accused i.e.

Mohd. Umar, Nuru, Rais alias Gabru, Amir Bux and Yamin A  
convicted under Sections 148, 302/149, 307/149 and Section  
324/149 IPC and sentenced to rigorous imprisonment for a  
period of one year under Section 148 IPC, imprisonment for  
life under Section 302/149 IPC, rigorous imprisonment for a  
period of five years under Section 307/149 IPC and rigorous B  
imprisonment for a period of one year under Section 324/149  
IPC, are hereby upheld. The sentences awarded to them shall  
run concurrently.

K.K.T.

Appeal dismissed.