[2024] 2 S.C.R. 668 : 2024 INSC 128

Ram Singh
v.
The State of U.P.

(Criminal Appeal No. 206 of 2024)

21 February 2024

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

As per PW-1-informant (son of the deceased), on the fateful evening when he and his brother were sitting in the open space in front of the entrance door of his house, his mother was sitting close by on a cot and some neighbours were also sitting on another cot, the appellant came along with co-accused on whose instigation he fired on PW-1 but he slipped below the cot and the bullet hit his mother who died immediately. While the co-accused was acquitted on the same set of evidence, whether the conviction of the appellant u/s.301 r/w 302, u/s.307 IPC and his sentence were justified when there was no recovery of the weapon of crime, non-examination of ballistic expert.

Headnotes

Evidence – Non-recovery of the weapon of crime – Non-obtaining of ballistic opinion and non-examination of ballistic expert – When fatal:

Held: Non-recovery of the weapon of crime by itself would not be fatal to the prosecution case – When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime – Obtaining of ballistic report and examination of the ballistic expert is not an inflexible rule – When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eye witnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal – In the present case, the evidence of the eyewitnesses suffer from serious lacunae and cannot be said to be credible – That apart, material witnesses were not examined

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– Thus, the evidence tendered on behalf of the prosecution cannot be said to be full proof so much so that non-recovery of the main material evidence i.e., weapon of offence, non-obtaining of ballistic opinion and non-examination of ballistic expert would be immaterial – Prosecution did not prove the accusation against the appellant beyond all reasonable doubt – Also, on the same set of evidence, the trial court gave the benefit of doubt to the co-accused primarily on the ground that there was a grudge between the accused and PW-1 – Appellant given benefit of doubt – Conviction and sentence set aside – Order of the trial Court and the High Court quashed. [Paras 29, 30, 33 and 34]

Evidence – Same set of evidence – Conviction of one accused and acquital of the other – Impermissibility:

Held: When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other – Any lingering doubt about the involvement of an accused in the crime he is accused of committing, must weigh on the mind of the court and in such a situation, the benefit of doubt must be given to the accused – This is more so when the co-accused is acquitted by the trial court on the same set of evidence. [Paras 32, 33]

Case Law Cited

Javed Shaukat Ali Qureshi Vs. State of Gujarat, [2023] 12 SCR 220 **: (2023) 9 SCC 164;** *Munna Lal Vs. State of U.P.,* [2023] 3 SCR 224 **: (2023) SCC Online SC 80;** *Gurucharan Singh Vs. State of Punjab,* [1963] 3 SCR 585 **: AIR 1963 SC 340;** *Sukhwant Singh Vs. State of Punjab,* [1995] 2 SCR 1190 **: (1995) 3 SCC 367;** *State of Punjab Vs. Jugraj Singh,* [2002] 1 SCR 998 **: (2002) 3 SCC 234;** *Gulab Vs. State of U.P.,* [2021] 9 SCR 678 **: (2022) 12 SCC 677;** *Pritinder Singh Vs. State of Punjab,* [2023] 10 SCR 1033 **: (2023) 7 SCC 727 – relied on.**

List of Acts

Penal Code, 1860.

List of Keywords

Non-recovery of weapon of crime; Non-examination of ballistic expert; Ballistic opinion; Non-obtaining of ballistic opinion;

Gunshot injury; Not proved beyond reasonable doubt; Glaring inconsistencies; Evidence of eyewitnesses not credible; Material witnesses; Same set of evidence; Benefit of doubt.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 206 of 2024

From the Judgment and Order dated 05.02.2018 of the High Court of Judicature at Allahabad in CRLA No. 1611 of 1983

Appearances for Parties

Pradeep Kumar Mathur, Chiranjeev Johri, Chandra Nand Jha, M.K. Tiwari, Sitesh Kumar, Arvind Kumar, Advs. for the Appellant.

Rana Mukherjee, Sr. Adv., Samarth Mohanty, Ankit Goel, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

This appeal is directed against the judgment and order dated 05.02.2018 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 1611 of 1983, confirming the conviction and sentence imposed on the appellant by the Additional Sessions Judge, Non-metropolitan Area, Kanpur in Sessions Trial No. 297 of 1982.

2. In the sessions trial, appellant Ram Singh was convicted under Section 301 read with Section 302 of the Indian Penal Code, 1860 (IPC). He was also convicted under Section 307 IPC. For the offence under Section 301/302 IPC, appellant was sentenced to undergo imprisonment for life and for the offence under Section 307 IPC, appellant was sentenced to undergo rigorous imprisonment for five years, both the sentences to run concurrently.

2.1. As noticed above, the appeal filed by the appellant before the High Court of Judicature at Allahabad ('High Court' for short) was dismissed. Consequently, the conviction and sentence of the appellant imposed by the Sessions Court was confirmed by the High Court.

Prosecution case

3. PW-1 Shri Radhey Lal lodged a first information before the Bhognipur Police Station in the District of Kanpur (U.P.) on 19.08.1982 at midnight stating that he and his brother Desh Raj were sitting in the open space in front of the entrance door of his house during the evening hours. His mother Dulli was sitting close by on a cot. On another cot, neighbours Lala Ram i.e. PW-3 and Man Singh i.e. PW-2 were sitting. They were chatting under a glowing lantern hanging on the roof-side of his residence. According to the informant, at about 08:00 PM, appellant Ram Singh accompanied by one Lala Ram came to his residence. He stated that both of them were residents of his village. Ram Singh was holding a country made pistol in his right hand. As per version in the first information, Lala Ram had instigated Ram Singh by loudly saying that these people were creating disturbances; so kill them. Ram Singh fired on the informant but he slipped below the cot. The bullet hit the left breast of his mother Dulli who cried aloud saying that she was dead. According to the informant, they also cried. Ram Singh and Lala Ram ran away towards the north. Mother died immediately due to the gunshot wound. Informant stated that the incident was seen by his brother Desh Raj and by his neighbours Lala Ram and Man Singh in the light of the lantern. On hearing the firing, many people living nearby came. They had seen the accused running. The mother was lying dead on bed. The informant further stated that about one and a half months back, there was a scuffle betfween his son Baan Singh and the appellant Ram Singh which matter was duly reported to the local police station. Lala Ram and Ram Singh belongs to the same party. Because of this, they came to the door of his residence when on the instigation of Lala Ram, Ram Singh fired a shot due to which his mother Dulli died.

   3.1. The first information as dictated by the informant, was reduced to writing by the scribe Sunder Lal, another brother of PW-1. The said first information was registered as FIR bearing No. 252/1982.

4. Police investigated the crime and on completion of the investigation submitted chargesheet charging appellant Ram Singh of having committed offence under Sections 301 and 302 of the IPC as well as under Section 307/34 IPC. On the other hand, the co-accused

Lala Ram was charged of having committed offence under Section 307/34 IPC.

4.1. To prove its case, prosecution examined six witnesses. After considering the evidence and materials on record, the Sessions Court convicted the appellant under Section 301 read with Section 302 IPC and also under Section 307 IPC. However, the other accused Lala Ram was given the benefit of doubt and accordingly was acquitted.

4.2. At this stage, we may mention that there are two Lala Ram in this case. One is Lala Ram, son of Prahalad Singh who is PW-3 and the other is Lala Ram, son of Dhanna Ram Yadav who was named as accused number 2 and acquitted by the trial court.

5. As noticed above, the trial court convicted the appellant under the aforesaid provisions of IPC and sentenced him accordingly. The co-accused Lala Ram, son of Dhanna Ram Yadav, was acquitted. The appeal filed by the appellant before the High Court was dismissed. Consequently, his conviction and sentence were confirmed.

Submissions

6. Learned counsel for the appellant submits that there are gross contradictions in the testimony of the prosecution witnesses. The so called eyewitnesses were no eyewitnesses at all. Rather, they were interested witnesses having previous political enmity with the appellant. It is because of such political rivalry that appellant was falsely implicated in the case.

6.1. He further submits that not only there are glaring inconsistencies in the version of the prosecution witnesses; crucial and material witnesses have not been examined. Even the country made pistol allegedly used by the appellant was not recovered. The pellets found at the site and also extricated from the body of the deceased were not sent for ballistic examination. In the absence of any ballistic report linking the pellets to the pistol allegedly used by the appellant, he could not have been convicted. Both the trial court and the High Court therefore fell in error in convicting the appellant.

6.2. Learned counsel submits that it is true that on 16.07.2018, this Court had issued notice only on the question of converting the

conviction from under Section 302 IPC to Section 304 IPC and also on the prayer for grant of bail, nonetheless, he had submitted before this Court on 31.10.2023 that he would argue for acquittal as well.

6.3. He further submits that the trial court had committed a fundamental error in convicting the appellant on the one hand and acquitting the co-accused Lala Ram on the other hand. Evidence against both were the same. When on the same set of evidence the co-accused was acquitted, the trial court ought to have acquitted the appellant as well. This aspect was overlooked by the High Court. In support of his submission, learned counsel has placed reliance on a decision of this Court in *Javed Shaukat Ali Qureshi Vs. State of Gujarat*, (2023) 9 SCC 164.

6.4. Contention of learned counsel for the appellant is that there are no materials on record to conclusively prove the guilt of the appellant. Rather, it is a case of no evidence. Therefore, appellant is entitled to be acquitted. Orders of the trial court as well as of the High Court should be set aside.

7. *Per contra*, learned counsel for the respondent-State argues that in view of the incriminating evidence against the appellant, both the Sessions Court as well as the High Court had rightly convicted the appellant. The ocular evidence clearly points to the positive act of the appellant firing the gunshot which killed the mother of PW-1, Dulli. Considering the gruesome nature of the murder and the testimony of the prosecution witnesses, conviction of the appellant is fully justified. High Court had rightly dismissed the criminal appeal of the appellant. No case for interference is made out.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

Evidence: appreciation and analysis

9. PW-1, who is the first informant and son of the deceased, stated in his evidence that they are the three brothers: Desh Raj, Sunder Lal and himself, he being the youngest. He lived with his mother at his village where his mother had property. In the same village, his maternal uncle used to reside. Both the accused were residents of his village and belonged to the same community. He deposed that he

had a rivalry with accused Ram Singh in connection with the election of village Pradhan. In that election, wife of the accused Ram Singh was one of the candidate. Ram Singh was also related to accused Lala Ram. PW-1 stated that he had voted for the candidate who stood against the wife of Ram Singh. In that election, Ram Singh's wife lost and in this connection, a fight had broken out between the son of PW-1 i.e. Baan Singh and accused Ram Singh in respect of which FIR and cross FIR were lodged. The cases were going on. Accused Lala Ram was deposing as a witness in Ram Singh's case. This incident had happened about a month and a half prior to the present incident. According to him, it was around 08:00PM in the evening when he was sitting at his door. His mother Dulli was sitting on the cot. The place was lit up by the hanging lantern which was hung on the roof. The two accused came from the north. Accused Lala Ram challenged PW-1 by saying that the latter was creating a lot of mischief and, therefore, he should be killed. Ram Singh fired from his country made pistol which he was carrying. Instead of hitting PW-1, the bullet hit his mother leading to her death. Thereafter, the two accused fled away. After this incident, PW-1 alongwith PW-2 Man Singh went to Bhognipur Police Station and on the way informed his brother Sunder Lal, the scribe, who wrote the first information which PW-1 carried to the police station.

9.1. In his cross-examination, he stated that accused Lala Ram was a witness in the case against his son. He explained that there was a pile of bricks about 3-4 steps north of the courtyard where the deceased was sitting. The deceased was sitting on the northern side of the cot whereas PW-1 and his brother Desh Raj were sitting at the other end of the cot. He added that when Ram Singh fired at him, he bent below the cot, so also his brother. He could not see as to whether PW-2 and PW-3 had bent or not. As per the version of PW-1, the first gunshot did not hit him. Second shot was not fired at him or his brother because his mother had died in the first gunshot itself. Accused Ram Singh was at a distance of three steps from his mother's cot. On hearing their screaming, several villagers came to the place of occurrence. At this, the two accused ran away. However, he stated that he could not say as to whether any villager had seen the accused running away or not as no villager had told him.

9.2. In the cross-examination, it further revealed that deceased Dulli used to live with the brother of PW-1 i.e. Desh Raj whose house was behind the house of PW-1. The other brother's house was also nearby. On that fateful evening, though dinner had been taken, the deceased had not eaten food. As they were conversing in the courtyard, his mother was sitting quiet on the cot and did not participate. This time, he stated that he and his brother were sitting on the floor at the time of gunshot. Though he had bent down when the shot was fired, nobody got under the cot. On receiving the gunshot, the mother had collapsed on the cot. He had cried while sitting but had not hugged his mother. He had gone to his brother Sunder Lal's hotel where the first information was written but his brother Sunder Lal did not accompany him to the police station.

9.3. He denied the suggestion that it was a false case because of personal enmity; that Desh Raj and others who were sitting on the cot with the deceased in Desh Raj's house and that while examining a country made pistol, a bullet was fired accidentally.

10. PW-2 Man Singh stated that the deceased was sitting on a cot in the courtyard. Desh Raj and PW-1 were sitting on the floor near the cot. Accused Lala Ram had instigated accused Ram Singh by saying that PW-1 was being mischievous and that he should be killed. At this, accused Ram Singh walked 2-3 steps and fired from his country made pistol but instead of hitting PW-1, his mother was hit and she died.

10.1. In his cross-examination, PW-2 stated that the deceased was sitting on a cot while PW-1 and his brother Desh Raj were sitting on the floor on the west side of the cot. He saw the accused in the lantern light. Though Lala Ram had instigated Ram Singh, he did not get up from the cot and kept sitting. When shot was fired, Desh Raj and Radhey Lal (PW-1) stood up. He did not run to see the deceased after being shot. She was shot from a distance of 2-3 steps.

11. PW-3 Lala Ram, son of Prahalad Singh, stated that at the relevant time on the date of incident, he and Man Singh PW-2 were sitting on the same cot. Dulli was sitting on bed. Desh Raj and Radhey Lal were sitting on the floor at a distance of one and a half hems away. The two accused came from the northern side. Accused Lala

Ram instigated accused Ram Singh to kill PW-1 saying that he was doing a lot of mischief. Ram Singh instantly fired from his country made pistol. The bullet did not hit Radhey Lal PW-1 but hit the left breast of his mother who was killed.

11.1. In his cross-examination, he stated that he had seen accused Ram Singh before accused Lala Ram started challenging PW-1. He did not see what Ram Singh was carrying and did not see any country made pistol in his hand. It would be wrong to say that he had seen country made pistol in the hands of Ram Singh. Sub-Inspector of Police had not questioned him. While he was examined in court, he admitted that there were party politics between the Pradhan of the village who got elected and the accused. He also denied the suggestion that he had not seen any such incident and that no such incident had happened.

12. PW-4 is the Sub-Inspector of Police, B.D. Verma. He stated that while preparing the inquest report, one *tikli* and 12 pellets were seized from the wound of the deceased. He also seized cans of normal and blood-stained soil and also blood-stained clothes of the deceased. The blood-stained clothes and the cans of soil were sent to the chemical examiner for chemical examination but the report was not received back. He further stated that during preparation of inquest report, one *tikli* and 12 pellets were seized from the wound of Dulli on the cot. However, in re-examination, he stated that the pellets taken out by the doctor in the hospital were produced in the court. The *tikli* which was taken out from the body of the deceased in the hospital was with the pellets.

13. PW-5 is Raghu Raj Singh who was the Pradhan of the village. The inquest report was prepared in his presence and had his signature. He stated that blood-stained cot strips, empty cartridge, *tikli* and pellets were collected from the spot.

13.1. In his cross-examination, he stated that he used to reside at a distance of 150 steps from the house of Dulli. He came to know about Dulli's death on hearing the sound of firing but he did not come out of his house due to fear. However, he contradicted himself when he stated that he could not tell by the sound of firing that Dulli was killed; rather he came to know about this 10-15 minutes later when one of the villagers

Raja Ram, son of Prahalad Yadav told him while running by. He further compounded the inconsistency by saying that he did not tell the Sub-Inspector about hearing the sound of firing because this did not happen.

14. The doctor who had conducted post-mortem examination, Dr. P.S. Mishra, was examined as PW-6. He stated that the entry wound of the bullet pellet 4cm × 3cm was on the left side of the left breast. The edges were inside with blackening. The wound was bone-deep. Third and fourth ribs on the left side chest were broken. There was laceration on the left lung. Both the lungs had blood. The heart was also lacerated. Semi-digested rice and pulse were found in the stomach of the deceased. He opined that cause of death of the deceased was due to shock and haemorrhage because of the above injuries. 55 small pellets were taken out of the body of the deceased during post-mortem.

15. During his examination under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.), accused Ram Singh denied the accusation that he had killed the deceased by shooting her from a country made pistol. He stated that there was indeed a scuffle between the son of PW-1 and himself relating to the Pradhan election for which criminal cases were pending. The witnesses were testifying against him due to enmity.

16. Before we proceed further, we may mention that in the seizure memo dated 20.08.1982, which has been placed on record, it was stated that during preparation of inquest report of the deceased, the police had seized the *tikli* of the cartridge stuck on the wound of the deceased and 12 bore cartridge lying on the cot of strips.

17. From a careful scrutiny of the prosecution evidence, what is seen is that PW-1 alongwith his brother Desh Raj were chatting with PW-2 and PW-3 in the courtyard in front of the house of PW-1. PW-2 and PW-3 were sitting on one cot. The deceased was sitting on another cot. Thereafter the discrepancies in the version of the witnesses arise. At one point of time, PW-1 said that he was at his door; at another point he stated that he and his brother Desh Raj were sitting on the same cot in which his mother was sitting but on the other end of the cot. Then again he said that the two brothers were sitting on the floor. It has also come on record that according to the version of some of the prosecution witnesses, PW-1 and his brother Desh

Raj were sitting on the floor. Pausing here for a moment, we can visually analyse that the mother was sitting on the cot at a distance from her two sons. She was sitting laterally and not behind her two sons. According to the witnesses, the two accused came from the northern side and when they reached the pile of bricks, accused Lala Ram instigated accused Ram Singh that PW-1 was creating lot of mischief and, therefore, he should be killed. Ram Singh then moved 2-3 steps ahead and fired at PW-1. Now PW-1 says that he had hid himself below the cot; while the other version is that he had simply bent as he was sitting on the floor. On the other hand, PW-2 had stated in his cross-examination that when the shot was fired, PW-1 and his brother Desh Raj stood up. It is the prosecution case that Ram Singh had shot PW-1 but because of the evasive reaction of PW-1, the bullet fired by Ram Singh from his country made pistol hit the left breast of the deceased who thereafter died.

18. If this version is to be believed, then Ram Singh had fired at PW-1 from a close range and from a standing position. Therefore, trajectory of the shot would be from a height downwards. PW-1 was either sitting on the cot or on the floor and had taken evasive action (though PW-2 says that PW-1 stood up when the shot was fired); the mother was sitting diagonally on the other end of the cot. It is highly improbable that the shot fired at from such a close range and from a height downwards could have hit the left breast of the deceased who was sitting at a lateral distance and not behind PW-1.

19. Interestingly, neither Desh Raj, brother of PW-1 and son of the deceased, who was very much present at the place and time of occurrence was examined by the police nor the other brother Sunder Lal, the scribe, who had written the first information, was examined by the police. Omission to examine Desh Raj by the prosecution is most crucial as according to the prosecution version he was very much present when the incident occurred. We may also mention that the behaviour of Sunder Lal is also very unusual. He did not accompany PW-1 to the police station. There is also no evidence that he had rushed to the place of occurrence where his mother was killed. An adverse inference will have to be drawn against the prosecution for not examining material witnesses. Be that as it may, it was only PW-1 and PW-2 who had stated that Ram Singh had fired from a country made pistol at PW-1 but the bullet had hit mother of PW-1, who died of the bullet wound. On the other hand,

PW-3 categorically stated that he did not see accused Ram Singh carrying any country made pistol. Further, it has come on record that there was previous enmity between PW-1 and the accused relating to election of village Pradhan because of which there were cross cases between them.

20. The village Pradhan who testified as PW-5 stated that he was inside his house when he heard gunshot. He came to know that Dulli was killed about 10 to 15 minutes later when one Raja Ram, son of Prahalad Yadav, told him so while he was running by. Incidentally, the said Raja Ram was not examined by the police.

21. At this stage, what is noticeable is that the weapon of offence i.e. the country made pistol used by the accused in the offence, could not be recovered by the police and therefore not exhibited. Thus, the main material evidence i.e., the weapon of offence was not exhibited. In the seizure memo, it was mentioned that a 12 bore cartridge was lying on the cot and alongwith the *tikli* of the cartridge which was stuck on the wound of the deceased, were seized by the police. On the other hand, in the evidence of the doctor, PW-6 as well as from the post-mortem report, it has come on record that 55 small pellets were taken out from the body of the deceased during post-mortem. The bullet wound was bone-deep which clearly reveals that the deceased was shot at from close range. In his evidence, PW-4 Sub-Inspector B.D. Verma deposed that during preparation of the inquest report, one *tikli* and 12 pellets were seized from the wound of the deceased. The pellets as well as the *tikli* of the cartridge were not sent to any ballistic expert, as a result of which there is no ballistic report on the basis of which it could be said for sure that the pellets found outside the body and from within the body could be traceable to the *tikli* of the 12 bore cartridge which in turn could be traced to the country made pistol from which the shot was allegedly fired by the appellant. There is no explanation of the prosecution regarding the 55 pellets retrieved from the body of the deceased during post-mortem; whether those could be linked to the 12 bore cartridge and the *tikli.* Importantly, the country made pistol was never recovered. Prosecution has not said anything in this regard. That apart, as per the version of PW-4, the blood stained clothes of the deceased which were seized were sent to the chemical examiner but the report from the chemical examiner was not received till the date and time of his deposition.

22. From the above, it is evident that there are glaring inconsistencies in the prosecution version which have been magnified by the absence of the testimony of the material witnesses and the ballistic report coupled with the non-recovery of the weapon of crime.

Case law

23. In *Munna Lal Vs. State of U.P.,* (2023) SCC Online SC 80, this Court opined that since no weapon of offence was seized in that case, no ballistic report was called for and obtained. This Court took the view that failure to seize the weapon of offence on the facts and in the circumstances of the case, had the effect of denting the prosecution story so much so that the same together with non-examination of material witnesses constituted a vital circumstance amongst others for granting the appellants the benefit of doubt.

24. On the aspect of non-examination of ballistic expert and its impact on the prosecution case, one of the earliest decisions of this Court was rendered in *Gurucharan Singh Vs. State of Punjab,* AIR 1963 SC 340. This Court observed that there is no inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused by a gun and those *prima facie* appeared to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. However, in what cases the examination of a ballistic expert is essential for the proof of the prosecution case must naturally depend upon the circumstances of each case. This Court held as under:

> 41.... These observations do not purport to lay down an inflexible Rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable

> character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case….

25. This issue was again examined by this Court in *Sukhwant Singh Vs. State of Punjab,* (1995) 3 SCC 367. In that case, this Court observed that though the police had recovered an empty cartridge from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution did not send the recovered empty cartridges and the seized pistol to the ballistic expert for examination and expert opinion. This Court was of the view that if such opinion would have been called for, comparison could have been made which in turn could have provided link evidence between the crime and the accused. It was noted that this again was an omission on the part of the prosecution for which no explanation was furnished. It was thereafter that this Court declared as follows:

> 21.... It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.

25.1. Thus, in the aforesaid case, this Court emphasized that in cases where injuries are caused by firearms, the opinion of the ballistic expert becomes very important to connect the crime cartridge recovered during the investigation to the firearm used by the accused with the crime. Failure to produce expert opinion

in such cases affects the creditworthiness of the prosecution case to a great extent.

26. However, in *State of Punjab Vs. Jugraj Singh,* (2002) 3 SCC 234, this Court opined that when there are convincing evidence of eyewitnesses, non-examination of the expert would not affect the creditworthiness of the version put forth by the eyewitnesses.

27. This Court considered the issue as to failure of the prosecution to recover the crime weapon and also non-examination of ballistic expert in *Gulab Vs. State of U.P.,* (2022) 12 SCC 677. In that case, the deceased had sustained a gunshot injury with a point of entry and exit. In that case, prosecution had relied on the eyewitnesses' accounts of three eyewitnesses which were found to be credible. Therefore, non-recovery of the weapon of the offence would not dis-credit the case of the prosecution. After referring to the previous decisions, this Court opined that in the facts and evidence of the case, the failure to produce the report by a ballistic expert who could testify to the fatal injuries being caused by a particular weapon would not be sufficient to impeach the credible evidence of the direct witnesses.

28. In *Pritinder Singh Vs. State of Punjab,* (2023) 7 SCC 727, this Court in the facts and evidence of that case held that conviction could not be sustained. That apart, from not collecting any evidence as to whether the gun used in the crime belonged to the appellant or not, even the ballistic expert had not been examined to show that the wad and pellets were fired from the empty cartridges of the appellant. In that case which was based on circumstantial evidence, it was held that when there was serious doubt as to credibility of the witnesses, the failure to examine ballistic expert would be a glaring defect in the prosecution case.

29. Thus, what can be deduced from the above is that by itself non-recovery of the weapon of crime would not be fatal to the prosecution case. When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime. Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. When there is direct eye witness account which is found to be credible, omission to obtain

ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.

30. Applying the above proposition to the facts of the present case, we find that the evidence tendered by the eyewitnesses suffer from serious lacunae. Thus, their evidence cannot be said to be credible. That apart, material witnesses have not been examined. On the whole, the evidence tendered on behalf of the prosecution cannot be said to be full proof so much so that non-recovery of the weapon of offence, non-obtaining of ballistic opinion and non-examination of ballistic expert would be immaterial.

31. In such circumstances, it cannot be said that the prosecution could prove the accusation against the appellant beyond all reasonable doubt. As a matter of fact, on the same set of evidence, the trial court gave the benefit of doubt to the other accused Lala Ram primarily on the ground that there was a grudge between the accused and PW-1.

32. This Court in the case of *Javed Shaukat Ali Qureshi,* has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under:

> 15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.

Conclusion

33. Thus, on a careful analysis of the evidence on record, we are of the view that the appellant should be given the benefit of doubt as according to us, the prosecution could not prove his guilt beyond all

reasonable doubt. Any lingering doubt about the involvement of an accused in the crime he is accused of committing, must weigh on the mind of the court and in such a situation, the benefit of doubt must be given to the accused. This is more so when the co-accused is acquitted by the trial court on the same set of evidence.

34. That being the position, we set aside the conviction and sentence of the accused. The judgment and order of the Additional Sessions Court dated 28.05.1983 as well as the judgment and order of the High Court dated 05.02.2018 are hereby set aside and quashed. Consequently, the appellant is directed to be released from jail forthwith, if not required in any other case.

35. Appeal is allowed in the above terms.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.