A STATE OF U.P.

v.

HARBAN SAHAI AND ORS.

APRIL 20, 1998

B [M.M. PUNCHHI, C.J.I., K.T. THOMAS AND S. RAJENDRA BABU, JJ.]

Criminal Law :

C *Criminal Procedure Code, 1973 :*

Section 154—FIR—Contents of—Held : FIR need not contain minor particulars of events—Merely because informant mentioned in FIR that assailants were armed with lathis and guns does not mean that the possibility of Kanta (a stick with a knife-like portion on one end) being used by
D *assailants cannot be ruled out.*

Section 154—FIR—Promptness in filing—Held : Prompt and early reporting of the occurrence by the informant with all its vivid details give an assurance regarding truth of his version.

Section 162—Omission to send bloodstained earth collected from place
E *of occurrence to the Chemical Examiner—Effect of—Held : Does not vitiate investigation—Criminal Trial.*

Evidence Act, 1872: Section 45.

Evidence—Medical evidence or testimony of eyewitness—Preference—
F *Held: Testimony of eyewitness is preferable unless medical evidence is so conclusive as to rule out even the possibility of the version of eyewitness to be true.*

Criminal Trial :

Witnesses—Eyewitness—Reliability of—Occurrence took place near the
G *field of eyewitness—His name was mentioned in FIR—Investigating Officer examined him at the earliest point of time—Trial court found his evidence quite reliable—Held: There is a fair possibility of the eyewitness being present at the scene of occurrence—Hence, High Court not justified in rejecting his testimony.*

H *Motive—Accused believed his close relative was murdered by*

deceased—Despite conviction and sentence passed by trial court deceased released on bail by High Court—Held : In the circumstances of the case, motive put forward by prosecution proved.

The respondents-accused were convicted by the Sessions Court under Section 302 read with Section 34 of the Penal Code, 1860 and were sentenced to undergo imprisonment for life. However, the High Court reversed the conviction. Hence this appeal.

According to the prosecution, the trial court convicted PW-1 and the deceased of the murder of a close relative of the accused persons. However, during the pendency of their appeal the High Court suspended their sentence and released them on bail just a couple of days prior to the incident in this case. On the fateful day the deceased and his nephew (PW-1), while walking through a sugarcane field, were chased by the accused who fired upon them. The deceased fell dead on the ground while PW-1 escaped. The First Information Report (FIR) was lodged by PW-1 promptly in which he mentioned all the details of the occurrence including the name of PW-2 who was the owner of a field situated adjacent to the place where the occurrence happened. The Investigating Officer examined PW-2 at the earliest point of time and cited him as an eyewitness. The trial court found the evidence of PW-2 quite reliable.

The High Court reversed the finding of the trial court on the following grounds :-

(a) Both the eyewitnesses, PWs 1 and 2, said in court that one of the lathis was a *kanta* (a stick with a knife-like portion on one end) whereas in the FIR, the informant had said that the assailants employed only lathis and guns. Therefore, their testimony was not reliable.

(b) The doctor who conducted the post-mortem examination denied in cross-examination the possibility of gunshot injury being caused while the deceased was running away and the accused fired from behind.

(c) The bloodstained earth collected by the Investigating officer from the place of occurrence was not sent to the Chemical Examiner to test the origin of the blood.

Allowing the appeal, this Court

HELD : 1 First Information Report (FIR) is not a chronicle of the

A exhaustive details of the occurrence, nor is it a catalogue of everything including minor particulars of the events, which took place. Picking out an insignificant discrepancy regarding description of one of the weapons for jettisoning an otherwise sturdy account of the eyewitnesses is not a commendable approach in evaluation of evidence. It is understood that "*kanta*" without a sharp projection at the end would be a mere stick or lathi. If the B informant mentioned in the FIR that the assailants were armed with lathis and guns there is no reason to conclude that the informant when he gave first information had ruled out the possibility of *kanta* being used by the assailants. [1061-C-D]

2. The court should not knock out an eyewitness on the strength of C an uncanny opinion expressed by a medical witness. Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive D as to rule out even the possibility of the eyewitness' version to be true. A doctor who conducted post-mortem examination or examined an injured person is usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features, which he noticed in the medical report. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he E gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. [1062-B-D]

Piara Singh v. *State of Punjab,* AIR (1977) SC 2274, *Manga* v. *State* F *of Haryana,* AIR (1979) SC 1194 and *Ramdev* v. *State of U.P.,* [1995] Suppl. 1 SCC 547, relied on.

3. Omission to send the earth collected from the place of occurrence for chemical examination has not vitiated the investigation to any extent. [1062-H]

G 4. Promptness in filing the FIR and early reporting of the occurrence by PW-1 to the police with all its vivid details give an assurance regarding the truth of his version. [1063-C]

5. PW-2 is the owner of a field situated adjacent to the place where the occurrence happened. So there is a fair probability of his being present at H his field. The name of PW-2 was also mentioned in the FIR. The Investigating

Officer questioned him at the earliest point of time and cited him as an eyewitness. The trial court found his evidence quite reliable. Hence, the High Court was not justified in rejecting his testimony. [1063-D-E]

6. There was every ground for the assailants to believe that the deceased and his nephew (PW-1) murdered their close relative. But when the assailants knew that despite the conviction and sentence passed by the trial court they were at large as the High Court had suspended their sentence and released them on bail, naturally the instinct of revenge would have been galvanised and they would have been groping for an opportune time to avenge for the murder of their relative. Thus the motive put forward by the prosecution stands proved. [1063-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 692 of 1993.

From the Judgment and Order dated 16.2.93 of the Allahabad High Court in Crl. A. No. 679 of 1979.

Arvind Kumar and A.S. Pundir for the Appellant.

S.P. Singh Rathore for Anil Kumar Gupta-II and Debasis Misra for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. This appeal by special leave is by the State of Uttar Pradesh challenging the acquittal order passed by a Division Bench of the Allahabad High Court in a murder case. The Sessions Court had convicted four accused under Section 302 read with Section 34 of Indian penal Code and sentenced all of them to imprisonment for life and it was on their appeal that the conviction was reversed. The four accused were arrayed in this appeal as respondents, but first respondent Harban Sahai passed away during the pendency of this appeal. So the case was considered only as against the remaining three respondents. They are: 2nd accused - Sarwan Sahai, 3rd accused- Virendra and 4th accused - Vimlesh.

The genesis of the events which led to the occurrence in this case was the murder of Virendra's father (Shyam Manohar) in 1976. In that murder case PW 1 (Shashi Bhushan) and his uncle (Jagdish Prasad- the deceased in this case) were challaned by the police as accused which ended in their conviction by the trial court. They filed an appeal before the Allahabad High Court.

During the pendency of that appeal their sentence was suspended and they were released on bail just a couple of days prior to the incident in this case. First accused (Harban Sahai) and second accused (Sarvan Sahai) are the nephews of Shyam Manohar. The fourth accused (Vimlesh) is his grandson. As pointed out above, third accused (Virendra) is the son of Shyam Manohar.

The incident in this case happened on 16.1.1978. Prosecution version is thus: Jagdish Prasad (deceased) and his nephew Shashi Bhushan (PW1) were walking through the sugarcane field belonging to one Maiku. The time was then around 4.30 p.m. They saw the fourth accused emerging from the north of the field. First accused (Harban Sahai) and fourth accused (Vimlesh) had guns with them and others had lathis. Seeing the deceased and Shashi Bhushan the third accused (Virendra) yelled out that they would avenge for the murder of their father. Sensing the on-rushing danger PW1 and deceased scampered away, but they were chased by the assailants, A1(Harban Sahai) and A4 (Vimlesh) fired their guns and Shyam Manohar fell on the ground, while PW1 succeeded in escaping by running towards a different direction. Second accused (Sarwan Sahai) and third accused (Virendra) went near the fallen victim and lambasted him with sticks. When some local people rushed to the scene the assailants made their escape good. Jagdish Prasad was taken in a bullock-cart to the hospital but on the way he breathed his last.

The First Information Report was lodged by PW1 (Shashi Bhushan) at the local police station in which he mentioned all the details of the occurrence including the names of the accused as well as the names of those who reached the place on hearing the commotion.

PW 7 (Dr. R. S. Pandey) of the District Hospital Moradabad, conducted post-mortem examination on the dead body of Jagdish Prasad. He noted ten anti-mortem injuries on the body including five lacerated wounds and one incised would on the right chest which did not gape into the cavity. Among the lacerated wounds one was ostensibly a gun-shot wound on the left temporal region associated with a fracture. One pellet was found embedded in the brain. That wound is described as injury No. 7 in the post-mortem certificates issued by the doctor.

Sessions Judge found that evidence of PW1(Shashi Bhushan) and PW 2 (Shiv Sagar Lal) are quite reliable basing on their testimony. The trial court convicted all the accused.

But the High Court found the evidence of the two eye-witnesses not

worthy of credence. One of the reasons high-lighted by the High Court is that both eye-witnesses said in Court that one of the lathis was a *Kanta* (a stick with a knife like portion on one end) whereas in the FIR, the informant had said that only lathis and guns were employed by the assailants. According to the High Court the witnesses purposely made the said improvement upon the FIR in order to give an explanation for the incised injury noted by the doctor during autopsy.

The aforesaid criterion is the result of the strained reasoning. It is understood that "Kanta" without sharp projection at the end would be a mere stick or lathi. If the nephew of the deceased mentioned in the FIR that assailants were armed with lathis and guns there is no reason to conclude that the informant when he gave first information had ruled out the possibility of Kanta being used by the assailants. FIR is not a chronicle of the exhaustive details of the occurrence, nor is it a catalogue of everything including minor particulars of the events which took place. Picking out an insignificant discrepancy regarding description of one of the weapons for jettisoning an otherwise sturdy account of the eye-witness is not a commendable approach in evaluation of evidence.

The second reason put-forth by the High Court for disbelieving the version of the eye-witnesses is this: PW1 (Shashi Bhushan) and PW2 (Shiv Sagar Lal) said that two accused had fired the gun simultaneously, but the deceased sustained only one gun-shot injury which is described in the post-mortem certificate as injury No. 2. The Public Prosecutor in the trial court endeavoured to show that injury No. 7 would possibly have been the result of a gun-shot. Dr. R.S. Pandey (PW7) answered to the said query saying that there is a possibility of that injury being caused in a gun-shot if pellets have touched that part of the face and deflected therefrom. Injury No. 7 is described as "multiple abrasions in an area of 7 cms x 6cms on the right side of the face 2.5 cm below right eye." But the High Court ruled out the possibility of the said injury having been caused in gun-shot on the following reasoning:

> But in the cross-examination the doctor has denied the possibility of such injury being caused while the deceased was being chased from behind and that is exactly what the prosecution case is, that while the deceased was running away the two appellants armed with guns, fired from behind. Consequently injury No. 7, even if it is said to be a gun-shot injury, would not go to corroborate the prosecution case in any

A manner."

The High Court has thus knocked out an eye-witness on the strength of an uncanny opinion expressed by a medical witness : Over dependence on such opinion evidence, even if the witness is an expert in the field, to B checkmate the direct testimony given by an eye-witness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eye-witnesses only if it is so conclusive as to rule out even the possibility of the eye witness's version to be true. A doctor who conducted post-mortem examination or examined an injured person C is usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eye-witness simply on the strength of such opinion expressed by the D medical witness is not conducive to the administration of criminal justice. *Vide Piara Singh and others* v. *State of Punjab,* AIR (1977) SC 2274, *Manga* v. *State of Haryana,* AIR (1979) SC 1194 and *Ramdev and another* v. *State of Uttar Pradesh,* [1995] Supp. 1 SCC 547.

E In this case, High Court has over-looked the fact that even the admitted gun-shot injury was "on the left temporal region". If such an injury could be caused while both were running then it is equally possible that a gun-shot injury can as well be caused on the "right side of the face." It would be weird to assume that the running man's head would not have swivelled to either F side. That apart, it is not necessary that the bullet emanated from the gun should have hit the target, as it might have just by-passed him. At any rate, the said reasoning of the High Court is too fragile for throwing the evidence of an eye-witness over-board.

The third reasoning of the High Court is that the blood-stained earth G collected by the Investigating Officer from the place of occurrence was not forwarded to the Chemical Examiner to test the origin of blood. Such a reasoning is too tenuous and even if such contention was advanced by the defence the High Court need not have taken any serious head to it. Omission to send the earth collected from the place of occurrence for chemical H examination has not vitiated the investigation to any extent. We disapprove

the aforesaid reasoning of the High Court. A

When the reasons put-forth by the High Court against the evidence of the two principal witnesses PW1 (Shashi Bhushan) and PW 2 (Shiv Sagar Lal) are found too insufficient to discard their testimony we have to look at the evidence from other angles to see how far it is acceptable. B

PW1's version regarding the occurrence gets a very stable corroboration from the FIR which was lodged by him within two hours of the occurrence. The High Court did not entertain any doubt that FIR was ante-dated or that there was any delay in its lodgement. Even the defence did not contend like that. In such a situation the prompt and early reporting of the occurrence by C PW1 to the police with all its vivid details gives us an assurance regarding truth of his version.

Evidence of PW2 can be viewed from broad angles. He is the owner of a field situated adjacent to the place where the occurrence happened. So there is a fair probability of his being present at his field. Second is, when PW1 D stated in the FIR that a number of persons had reached the place during the occurrence, the name of PW2 was also mentioned in that list. The Investigating Officer questioned him at the earliest point of time and cited him as an eye-witness. The trial court found his evidence quite reliable. There is nothing to doubt that he was speaking falsehood. For these reasons we find no scope E to reject his testimony.

The motive alleged for the murder is apparently a very strong one. The assailants are the close kith and kin of Shyam Manohar who was murdered. There was every ground for the assailants to believe that Shyam Manohar F was murdered by the deceased Jagdish Prasad and his nephew Shashi Bhushan (PW1). This is clear from the fact that one court found them guilty of that murder. But when assailants knew that despite the conviction and sentence passed by the trial court they were at large as the High Court had suspended their sentence and released them on bail, naturally the instinct of G revenge would have been galvanised and they would have been groping for an opportune time to avenge for the murder of their father Shayam Manohar. Thus the motive put forward by the prosecution stands proved and it is a very strong circumstance to buttress the prosecution version.

In our view, the High Court has benefited the accused with an unjust H

A and unmerited acquittal based on certain reasons which are wholly insupportable.

We, therefore, reverse the order of acquittal and restore the conviction and sentence passed by the Session Court. We direct the Sessions Court to take necessary steps to put respondent No. 2, Sarwan Sahai, No. 3, Virendra and No. 4, Vimlesh back in jail for undergoing the sentence. The appeal is thus allowed.

B

V.S.S. Appeal allowed.