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STATE OF U.P.
v.
PREMI AND ORS.

FEBRUARY 20, 2003

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[Y.K. SABHARWAL AND H.K. SEMA, JJ.]

Penal Code, 1860; Sections 34, 302, 304 and 452:

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Murder and other offences—Conviction by Trial Court—Reversed by High Court doubting the testimony of prosecution witness on contradiction and improvements in the evidence, and in identification of accused as also difference between ocular and medical evidence—On appeal, Held, since statement of husband of the deceased regarding availability of light at the time and place of incident was corroborated by Investigating Officer, conclusion as to absence of light and doubting the identification/recognition of accused by the prosecution witness could not be drawn—When improvements and contradictions are minor and natural, truthfulness of the evidence/witness cannot be doubted—Testimony of evidence of medical officer must not be read in isolation but should be read as a whole—Evidence Act, 1872.

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Appeal against acquittal—Power of the Supreme Court to interfere—Limitation—Held: when miscarriage of justice results due to erroneous appreciation of evidence by the High Court, it is necessary to interfere.

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According to the prosecution, accused entered the house of the deceased at mid-night and hit on the head of her husband with a pistol. When the deceased tried to save her husband, accused hit her with the butt of the pistol as well. On hearing cries of the deceased and other family members, neighbours came to their rescue, whereupon accused fled away. The deceased succumbed to her injuries on the next day. In the meanwhile, FIR was lodged by the husband of the deceased. Trial Court convicted and sentenced the accused, his brothers and father, for the offences under Sections 302 r/w 34, 307 r/w 34 and under Section 452 IPC. On appeal, High Court set aside conviction and sentence. Hence the present appeal. During the pendency of the appeal, one of the accused died; appeal thus abated against him.

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Allowing the appeal, the Court

HELD: 1.1. The testimony of PW3 (husband of the deceased) clearly shows that the electric connection was made available less than a year ago and PW3 was referring the date of the incident and not the date when his statement was recorded. PW3 also stated that the electric light was on at the time of occurrence of crime. By no stretch of imagination anyone can come to the conclusion that there was no electric connection in the house of the deceased. The mention of the electric bulbs at various places was also made in the site plan prepared by the Police. Thus, the High Court committed grave illegality in coming to the conclusion that in the absence of light, the assailants could not be recognized. [270-D-F]

1.2. High Court has completely misread the FIR and come to the conclusion that the factum of the respondents having caught hold of PW3 has not been mentioned in the FIR. In fact, FIR specifically states that the respondents caught hold of PW3. The High Court seems to have made too much of the minor contradictions about the non-mention of the dandas in the FIR. The contradictions and improvements, according to the High Court, are the result of darkness, in view of the absence of the electric connection. This is a finding which is not at all sustainable. The finding of the High Court that testimony of PW3 is uncorroborated is again unsustainable. PW4, who is deposed to have seen the respondents coming out of the house of PW3, was living in the same compound. His name was mentioned in the FIR as well. He is a natural witness of the occurrence. Thus a well reasoned judgment of the Sessions Court on critical analysis of the evidence was reversed by the High Court on consideration of improvements and contradictions which are minor and natural and rather go to show the truthfulness of the evidence. [270-G, H; 271-A, B]

1.3. High Court took the view that the injuries were inflicted by a sharp edged weapon and has placed strong reliance on the testimony of PW8, a medical officer. According to another medical officer, PW1, who conducted the postmortem, injuries must have been caused with a blunt weapon. His categorical testimony is that none of these injuries was incised wound caused with a sharp weapon; and that it becomes difficult to say whether a wound on a bony part is lacerated or incised one. PW9, a senior surgeon, also opined that depressed fractures are generally caused with blunt weapons; and that such an injury is possible with a blunt object like the butt of the pistol. The testimony of PW8 that the injuries were caused with sharp-edged weapon and not with a blunt weapon, is in the nature of the opinion of one of the doctors. In any case, testimony of PW8 cannot

A be read in isolation. His evidence is to be read as a whole and when so read it becomes clear that the injuries of the kind inflicted on PW3 and the deceased could be caused with the butt of the revolver. It has also to be borne in mind that generally injury on head is caused by a blunt weapon. According to medical officers, injuries in question could be inflicted with the butt of the revolver and it would look like incised wound

B having been inflicted with a sharp-edged weapon. Besides the medical evidence, what is also to be kept in view is that in the FIR recorded on the oral statement of PW3 immediately after the occurrence, it was specifically stated that the injuries were caused by the butt of the country made pistol. The medical evidence and the ocular evidence is wholly

C consistent as was rightly held by the Sessions Court.

[272-H; 273-C-F; 274-A, D-F]

2. Having found that miscarriage of justice has resulted by an entirely faulty and erroneous appreciation of evidence by the High Court, it becomes necessary to interfere in the matter. From the evidence, the

D only view possible is one taken by the Sessions Court. On the facts and circumstances of the case, it is also not possible to accept the contention that the respondents had no intention to kill and, therefore, conviction of accused should be altered to one under Section 304 IPC. The conviction and sentence imposed on respondents 1 and 2 by the Sessions Court is

E restored. [274-F-H; 275-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 486 of 1996.

F From the Judgment and Order dated 13.4.1992 of the Allahabad High Court in Crl. A. No. 1968 of 1979.

Vivek Singh and Pramod Swarup, for the Appellant.

K.B. Sinha and S.C Birla, for the Respondents.

G The Judgment of the Court was delivered by

H **Y.K. SABHARWAL, J.** Respondents 1 and 2 in this appeal who are brothers were convicted by the Sessions Court for the offence under Sections 452,307 read with Section 34 and Section 302 read with Section 34 IPC. Their father, respondent no. 3, was also convicted for offence under Sections 452, 307 and Section 302 read with Section 34 IPC. Their conviction and

consequently the sentence that had been imposed on them by the Sessions Court was set aside in appeal by the High Court in terms of the impugned judgment. The State is in appeal to this Court on grant of leave. During the pendency of the appeal, respondent no.3, Devi Das died. The appeal thus abates against him. A

The prosecution case in brief is that respondents 1 and 2, their father and another person entered the house of Raghubir (PW3) at about midnight of 15th-16th January, 1977 while he was sleeping with his wife and children. After removing the guilt, the respondents held fast PW3 and he was hit on the head with the butt of the country-made pistol. When Budh Wati @ Ved Wati, wife of PW3, came to save him, she was also assaulted with butt of the pistol. On hearing their cries, Mathuri (PW4) and Balwant, living in the same compound, came whereupon the accused ran away. PW3 and his wife were assaulted because PW3 was cited as a prosecution witness against the respondents and their father in the case of murder of one Rajinder son of Prem Sahai where they were accused. The place of occurrence is at a distance of about 9 Kilometer from the Police Station. The FIR was recorded on the statement of PW3 at 8.30 a.m. Budh Wati succumbed to her injuries at about 9.00 p.m. on 16th January. B C D

The Sessions Court, on appreciation of the evidence of PW3, PW4, Police officials and the medical evidence, convicted the three accused. The fourth person was not identified and, thus could not be apprehended. E

In reversing the judgment of the Sessions Court, the factors that have been taken into consideration and weighed with the High Court are:

1. Absence of proof of light;
2. Improvements and contradictions in the testimony of prosecution witnesses; and
3. Difference between the ocular and medical evidence regarding injuries. F

The incident took place around midnight. The reasons for the High Court's coming to the conclusion that there was no source of light available to the witness to recognize the assailants are: G

- (a) Non-mention of the presence of electric bulb in the FIR;
- (b) Admission of PW3 that electric connection was not available in H

- A** his house before incident; and
- (c) Fact of source of light being not mentioned in the statement of PW3 recorded during investigation under Section 161 of the Criminal Procedure Code.

- B** PW7, S.I. S.P. Singh, inspected the place of occurrence on 16th January and prepared a site plan which mentions one electric bulb in the Kothri of Raghbir, one in his courtyard and another in the Kothri of PW4. These electric points have been shown in site plan (Exhibit Ka-10). The witness was hardly challenged. The existence of the electric bulbs was also not seriously challenged in the cross-existence of other witnesses. The omission to mention
- C** about light in the FIR or in the statement of PW3 recorded by the police under Section 161 Cr.P.C. was wholly inconsequential. PW3 had made a categorical statement of having recognized the assailants. There is also no admission in the statement of PW3 about the non-availability of the electric connection. The finding as also the reasoning is wholly contrary to evidence and established facts . The High Court has held that the statement of PW3
- D** was recorded on 9th May, 1979 and he admitted that the electric connection was made available about one year ago and from this, the admission of PW3 was inferred about the non-availability of the electric connection. The testimony of PW3 clearly shows that when he stated that the electric connection was made available less than a year ago he was referring to the date of the
- E** incident and not the date when his statement was recorded. After deposing about the time when the electric connection was installed, PW3 further stated that he told the Police about the electric light being on. By no stretch of imagination anyone can come to the conclusion that PW3 admitted that when occurrence took place, there was no electric connection. The mention of the electric bulbs at various places, as earlier noticed, was also made in the site
- F** plan prepared by the Police. In this view, the High Court committed grave illegality in coming to the conclusion that in absence of light, the assailants could not be recognized.

- G** For reaching the conclusion that there are improvements and contradictions in the statement of the prosecution witnesses, the High Court has completely misread the FIR and has come to the conclusion that the factum of the respondents having caught hold of PW3 has not been mentioned in the FIR. In fact, FIR specifically states that the respondents caught hold of PW3. The High Court seems to have made too much of the minor contradictions about the non-mention of the dandas in the FIR. The so called
- H** contradictions and improvements, according to the High Court, are the result

of darkness in view of the absence of the electric connection, a finding which is not at all sustainable as noticed above. The further finding of the High Court that testimony of PW3 is uncorroborated is again unsustainable. PW4 was living in the same compound. His name is mentioned in the FIR. He is deposed to have seen the respondents coming out of the house of PW3. PW4 is next door neighbour of PW3. He is a natural witness of the occurrence. A well reasoned judgment of the Sessions Court on critical analysis of the evidence was reversed by the High Court on consideration of improvements and contradictions which are minor and natural and rather go to show the truthfulness of the evidence.

Reverting to the third factor, namely, difference between medical and ocular evidence, the High Court has held that the injuries were caused by the sharp edged weapons and, therefrom, concluded that the ocular testimony of PW3 was contradicted by medical evidence and, thus, labelled PW3 as an unreliable witness.

PW8, Dr. Arjun Kumar, on medical examination on 16th January at about 10.05 a.m. found the following injuries on PW3:

“Incised wound over right frontal region of scalp, 9 cms above root of nose, size 6 cms x 1 cm x bone deep, fracture of the underlying bone is visible, patient complained of bleeding from both nostrils, clotted blood was present in both sides of the nose, edges of the wound were clean cut, wound is gaping, oblique in direction as shown in the figure.”

On medical examination of Budh Wati at about 10.25 a.m. on the same date PW8 found the following injuries :

“(1) Incised wound over left occipital region of scalp, 8 cm above and behind left ear, size 5 cms x bone deep, edges were clean cut, wounds were gaping, suspected fracture of underlying bone, x-ray was advised, injury was kept under observation, the injury appeared to have been inflicted with a sharp-edged weapon, direction was forward backward.

(2) Abrasion over right temple, 1 cm outer from the outer angle of the right eye, size 3 cms x 2 cms blackish colour, it was a simple injury, must have been caused with a blunt weapon.

(3) Abrasion over right side of the forehead, 2 cms above the right

A eyebrow, size 2 cms x 1 cm, blackish colour, simple, caused by a blunt object.

Patient was in her sense, but was not able to speak. Pulse rate was 72 per minute, respiration-24 per minute, eye lids were normal, and were reacting against light, all the injuries were inflicted within 24 hours."

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PW3 and his wife were sent to the District Hospital, Budaun. Later she died at 9 p.m. on the same date. Dr. B.K. Srivastava (PW1) conducted the autopsy and as per postmortem report prepared by him found following injuries on the deceased :

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"(i) Lacerated wound 6 cms x 1cm x ½ cm on the left side of the head, 9 cms above the left eye.

(ii) Contusion 3 cms x ½ cms on the right side of forehead, 3 cms above the right eyebrow.

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(iii) Contusion 3 cms x 1½ cms on the right side, 3 cms at the tragus from the right ear.

(iv) Clotted blood present in the right ear.

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(v) Abrasion with contusion, 10 cms x 3 cms on the upper arm, 19 cms above the right elbow joint.

(vi) Abrasion 2 cms x ½ cm on the inner aspect of little finger of left hand.

On the internal examination, he found

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(1) Fracture present 10 cms long on the left parietal bone, extending upto occipital bone.

(2) Fracture 5 cms long, on the left side of the parietal bone upto Lamsdard suture.

(3) Fracture 2.½ cms long, obliquely, between injuries 1 and 2 on parietal bone.

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(4) base of skull on the right side was broken. Clotted blood was found below the skin of the scalp."

The medical evidence produced by the prosecution comprises of the aforesaid two doctors PW1 and PW8 besides Dr. S.C. Sharma (PW9) who

H had examined injured PW3 and had also deposed on the basis of x-ray reports

and other documents. The High Court for the view that the injury was inflicted by a sharp edged weapon has placed strong reliance on the testimony of PW8. Learned counsel for the respondents has also placed strong reliance on the testimony of the said doctor. Before considering this contention and examining the testimony of PW8, it would be useful to notice as to what has been deposed by PW1 and PW9. It is also to be kept in mind that the real question is whether the testimony of PW8 is such which if accepted would either belie the ocular testimony of PW3 or create reasonable doubt on creditability of PW3 the said testimony can be trusted and relied upon despite the deposition of PW8.

According to Dr. Srivastava (PW1) who conducted the postmortem, wife of PW3 died due to fracture in the bone of skull, perital bone and occipital bone and bleeding and shock. Internal fractures 1 to 4 were the resultant effects of injuries 1, 2 and 3 and these injuries, according to the doctor, must have been caused with a blunt weapon. His categorical testimony is that none of these injuries was incised wound caused with a sharp weapon. He has further deposed that it becomes difficult to say whether a wound on a bony part is lacerated or incised one.

PW9 (Dr. S.C. Sharma) who, at the relevant time, was senior surgeon at Budaun Hospital had examined PW3 who was treated and discharged a month later on 16th February, 1977. He also examined the x-ray of the head of PW3 which showed the fracture of the frontal bone. According to Dr. Sharma, depressed fractures are generally caused with blunt weapons. He further deposed that such an injury is possible with a blunt object like the butt of the pistol. In cross-examination, he stated that the weapon may be blunt or sharp edged, its heavy blow can cause the fracture and depressed fracture will be caused when there is a full-blooded blow on the bone. Now turning to the evidence of Dr. Arjun Kumar (PW 8) on which strong reliance has been place, in his cross-examination, he stated that injury No. 1 is clean-cut wound which he wrote after examining with a magnifying lens. He, therefore, deposed that the injuries were caused with a sharp edged weapon and not with a blunt object. It is on this part of the evidence of PW8 that strong reliance has been placed by Mr. Sinha, learned counsel for the respondents. However, PW8 has further deposed that if the butt had a projecting tin-peace, it could cause such an injury and that the tin piece must have been fixed over so much part of the width of butt as could cut upto the bone and that weapon may be sharp-edged or blunt, its thrust can cause fracture. He has further deposed that injury with a blunt object sometimes

- A appears to be incised wound. The testimony of PW8 that the injuries were caused with sharp-edged weapon and not with a blunt weapon, is in the nature of the opinion of one of the doctors. In any case, testimony of PW8 cannot be read in isolation. His evidence is to be read as a whole and when so read it becomes clear that the injuries of the kind inflicted on PW3 and the deceased could be caused with the butt of the revolver. It has also to be borne in mind that generally injury on head is caused by a blunt weapon.

- Learned counsel for the respondents has placed reliance on Modi's Medical Jurisprudence and Toxicology (22nd Edition) in support of the contention that the clean cut edges of the wound and the wound being gaping, as deposed by PW8, shows that it was an incised wound. According to Modi, the edges, of a wound made by a heavy cutting weapon, such as an axe hatchet or shovel, may not be as smooth as those of a wound caused by a light cutting weapon, such as a knife, razor etc. and may show signs of contusion. However, while dealing with incised looking wound, according to Modi, occasionally, on wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow etc. Mr. Sinha, however, submits that if that had been so, the edges of the wound would have been irregular and hair bulbs would have been found crushed when the injuries were examined by magnifying glass by PW8. The learned counsel, however, overlooks the fact that the main evidence of all the doctors is that the injuries in question could be inflicted with the butt of the revolver and it would look like incised wound having been inflicted with a sharp-edged weapon. Besides the medical evidence, what is also to be kept in view is that in the FIR recorded on the oral statement of PW3 immediately after the occurrence, it was specifically stated that the injuries were caused by the butt of the country made pistol. The medical evidence and the ocular evidence is wholly consistent as was rightly held by the Court of Sessions. We are conscious of limitations while dealing with an appeal against a judgment of acquittal. Having, however, found that miscarriage of justice has resulted by an entirely faulty and erroneous appreciation of evidence by the High Court, it becomes our duty to interfere in the matter. From the evidence, the only view possible is one taken by the Sessions Court.

- On the facts and circumstances of the case, it is also not possible to accept the contention that the respondents had no intention to kill and, therefore their conviction deserves to be altered to be one falling under Section 304 IPC. As already noticed, at the dead of the night the respondents and their

father went to the house of PW3 with a country made pistol and with force inflicted such injuries on head which resulted in death of wife of PW3. The mere fact that only a single blow was inflicted on the head by itself is not enough to alter the conviction from Section 302 to Section 304 IPC. **A**

For the aforesaid reasons, we are unable to sustain the judgment of the High Court. The appeal is accordingly allowed and setting aside the impugned judgment of the High Court, the conviction and sentence imposed on respondents 1 and 2 by the Additional District & Sessions Judge, Budaun is restored. The bail bonds of respondents 1 and 2 are cancelled. They shall be taken into custody forthwith to serve the remaining part of the sentence. **B**

S.K.S.

Appeal allowed. **C**