

JAI KARAN AND ORS.

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v.

STATE OF U.P.

OCTOBER 28, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Criminal Trial.

Appreciation of evidence—Eye witnesses—Held Evidence of interested or related witness requires evaluation with caution and does not warrant mechanical rejection—Minor variations do not affect testimony which is otherwise credible—Medical Evidence—Held, testimony of eye-witnesses should not be discarded on alleged inconsistency with medical evidence unless medical evidence completely rules out all possibilities of injuries taking place as alleged by eye witnesses—Indian Penal Code, 1860—Sections 148, 149, 302 & 323.

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Prosecution alleged that accused-appellants V, J and B armed with guns alongwith two unknown assailants armed with a kanta and banka attacked S in his house as accused and S were on inimical terms. Accused V fired at S as a result of which S fell down. Informant-PW-1 who is son of S, PW-2, PW-3 and R, servant of S, were present in the house and when they rushed to rescue S, J fired at S and assaulted PW-2 with barrel of gun while B fired at R and the unknown assailants assaulted S with kanta and banka. After murdering S and R and inuring PW-2, accused and the two unknown persons ran away. PW-1 lodged FIR and PW-2 and PW-3 were stated to be eye-witnesses while accused also lodged information alleging that S and his relatives had assaulted them. Trial court convicted accused-appellants under Sections 148, 302 and/or 302 read with 149, and 323 read with 149 of the Indian Penal Code, 1860 and awarded them life sentence but acquitted two other persons. Aggrieved by the judgment of the trial Court, accused, against their conviction, and State against acquittal preferred appeals which were dismissed by the High Court by a common judgment. Hence the present appeal by the accused persons.

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Appellants contended that there was doubt about PW-2 being

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A injured in the incident as claimed; that time of injury of PW-2 as stated by doctor did not fit in with alleged time of occurrence; that there was doubt about PW2's presence at place of occurrence; that statement of injured witness PW-2, was recorded after a day from date of occurrence which casts doubt on authenticity of his evidence as there was time to make improvements; and that witnesses made improvements in Court to bring medical evidence in line with ocular evidence which rendered prosecution case weak.

Dismissing the appeal, the Court

C HELD : 1. The High Court has found the evidence of PW-2 to be cogent, credible and trustworthy. His presence at the place of incident was explained and his evidence cannot be thrown out as unreliable or tainted, merely because in some cases he was a co-accused with the deceased. This circumstance would not warrant mechanical rejection of his testimony. Evaluation with caution was needed, which has been done. The manner of assaults as described by him is also corroborated by medical evidence. The plea that improvements were made to bring the ocular evidence in line with the medical evidence is clearly without substance. Whatever was stated was by way of a clarification and certainty cannot be termed to be an improvement.

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E Therefore, the evidence of PW-2 alone was sufficient to fasten guilt on the accused appellants. [1001-B, E-G]

2. The First Information Report was lodged with promptitude. Merely because PW2 was examined after some time, the reason thereof has been clearly explained by the investigating officer who stated that after the information was lodged by PW1 at the police station he interrogated him and thereafter left for the place of incident which he reached at 8.45 p.m. [1001-G-H, 1002-A]

G 3. So far as time of injury on PW2 is concerned the opinion of PW4 (doctor) is clearly hypothetical. He himself has stated that there can be a margin of 2-3 hours. That being so, credible evidence of eyewitnesses does not become tainted. [1002-A]

H 4. Though evidence of PW1 does not specifically indicate the injury on PW2 that is but natural. Before a young person two murders

were committed and it is quite natural to create a sense of shock and as such minor variations in his evidence do not affect his testimony which is otherwise credible. [1002-B-C] A

5. Unless the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and medical evidence. [1002-C] B

Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR (1983) SC 484 and *State of U.P. v. Krishna Gopal and Anr.*, AIR (1988) SC 2154, relied on. C

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1262 of 2002.

From the Judgment and Order dated 7.8.2002 of the Allahabad High Court in Crl. A. No. 498 of 1980. D

U.R. Lalit, Naresh Kaushik, Ms. Shilpa Chohan, Dr. Balram Singh and Ms. Lalitha Kaushik for the Appellants. E

Ravi P. Mehrotra, Garvesh Kabra and Ms. Deepti R. Mehrotra for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Appellants having unsuccessfully challenged their conviction before the Allahabad High Court have filed this appeal. F

They along with two others, namely, Mahesh and Bhan Chand faced trial for alleged commission of offence punishable under Sections 148, 302 read with 149 and 307 read with 149 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial Court acquitted Mahesh and Bhan Chand on all counts, but convicted the present appellants. So far as accused Jai Karan and Babu were concerned, they are convicted under Sections 148, 302 read with 149 and 323 read with 149 IPC and accused Veer Bhadra was convicted under Section 148, 302, 302 read with 149 and 323 read with H

- A** 149 IPC. They were each awarded life sentence for the offences punishable under Sections 302 and 302 read with 149 IPC as the case may be, and two years and six months for the offence under Sections 148 and 323 read with 149 IPC respectively.
- B** The convicted accused persons preferred appeal against their conviction, while the State preferred appeal against the acquittal. Both the appeals were heard together in view of the common factual matrix and were disposed of by the impugned judgment.
- C** Prosecution case as unfolded during trial is as follows:
- The informant-Ashok Kumar Singh (PW-1) is the son of Surya Prakash Singh (hereinafter referred to as the 'deceased'). At the time of the incident the informant, deceased Surya Prakash Singh and another deceased Ram Lal, injured Ram Chandra Singh (PW-2) and appellants Jai
- D** Karan, Veer Bhadra and Babu were living in village Alaipur within the limit of police station Sidhauri district Sitapur. Appellants Veer Bhadra and Jai Karan are real brothers and appellant Babu is son of their maternal uncle. There was enmity between Veer Bhadra and Jai Karan on one side and deceased Surya Prakash Singh on the other. Few months before the
- E** incident, Veer Bhadra, Jai Karan, their brother Pyarey Lal and a relative had attacked Surya Prakash Singh with pistol and bhala. Surya Prakash Singh who had suffered injuries lodged FIR against Mahesh, Veer Bhadra and his others.
- F** On the date of the incident i.e. 17.12.1978 at about 4.00 p.m. deceased Surya Prakash Singh was sitting on a cot in his courtyard situated at a short distance from the door of his house. His servant deceased Ram Lal was weeding potato crop in the field situated to north of the said courtyard. Informant Ashok Kumar Singh (PW-1) Ram Chandra Singh (PW-2)
- G** Vishwanath Shukla and Narendra Singh (PW-3) were sitting near the door of his house. Suddenly, appellants Veer Bhadra, Jai Karan and Babu armed with guns along with two unknown persons, one of whom was armed with a kanta and the other with a banka came. Immediately, appellant Veer Bhadra fired at deceased Surya Prakash Singh, as a consequence of which he fell down. When informant Ashok Kumar Singh (PW1), deceased Ram
- H** Lal and others rushed to rescue deceased Surya Prakash Singh, appellants

Jai Karan and Babu fired; the former on Surya Prakash Singh and the latter on Ram Lal. Jai Karan also assaulted Ram Chandra Singh (PW2) with the barrel of gun. The two unknown persons assaulted Surya Prakash Singh with kanta and banka. After murdering Surya Prakash Singh and Ram Lal and injuring Ram Chandra the appellants and the unknown persons ran away.

The first information report was lodged by Ashok Kumar Singh (PW1). Two others namely Ramchandra Singh (PW2) and Narender Singh (PW3) were stated to be the eye-witnesses of the occurrence. Investigation was undertaken and on completion thereof charge sheet was placed. It has to be noted that the accused persons had also lodged an information in the police alleging that the deceased Surya Prakash Singh and his relatives assaulted some of the accused persons. During trial, they denied the allegations and claimed that they had been falsely implicated.

Sixteen witnesses were examined to further the prosecution version. Three of them i.e. PWs 1, 2 and 3 were claimed to be eyewitnesses. Accused Bhan Chand and Mahesh examined one witness. No other oral evidence was led by any of the accused. Placing reliance on the evidence of the prosecution witnesses, more particularly the injured witness and other eyewitnesses, the present appellant accused persons were found guilty, convicted and sentenced as afore noted. The plea of innocence raised by the accused was held to be full of holes and as indicated supra the conviction and sentence as awarded stood confirmed. The appeal filed by the State was held to be without merit and was dismissed.

Learned counsel for the appellants submitted that it is doubtful whether PW2 was injured in the incident as claimed. The trial Court and the High Court have lost sight of the fact that in view of the admitted animosity between the accused and the deceased Surya Prakash Singh, the evidence of so-called eyewitnesses should not have been acted upon. Improvements were made by witnesses in Court to bring the medical evidence in line with the ocular evidence. That itself rendered the authenticity of medical evidence inapplicable. As improvements were made on material points, the Courts below should not have held that the medical evidence was in consonance with the oral evidence. The statement of the so-called injured witness (PW2) was recorded after a day in the

A afternoon. He had suffered some minor injuries and a non-examination for a day casts grave doubt on the authenticity of his evidence. The Investigating Officer in order to explain the delayed examination stated that the witness was in a dazed state; but the injured does not say so, and this is nothing but a lame explanation. There is grave doubt about PW2's presence

B because of his sudden appearance at the place of occurrence. He stated that he came to the house of Madan Lal and then to the house of deceased Surya Prakash Singh. Though, he was sent for medical examination on the alleged date of occurrence, his statement was recorded on the next day and there was ample time to make improvements. Though in the statement during

C investigation it was not stated that Surya Prakash Singh had stood up on seeing the accused persons, it was so stated in Court. It was done tactfully as the injuries found on his body were possible only if he was standing. The object was to bring ocular evidence at par with the medical evidence. These improvements should have been noticed by the courts below to render prosecution version vulnerable. In the FIR, there was no mention

D about assault by barrel of gun. PW2 stayed in the house of deceased for about 35 years and he was friendly with him. The time of injury as stated by Doctor does not fit in with the alleged time of occurrence. The reaction of the witnesses was most unnatural when considered in the background of their claim that they were eyewitnesses and when a known person who

E is closely related and friendly with them was being assaulted; their reaction would have been certainly different. Prosecution has tried to introduce the presence of two other persons just for the purpose of bringing in application of Section 149 IPC and acquittal of the two persons clearly shows how unauthentic prosecution version is. Merely because the FIR was lodged

F immediately as claimed, that does not strengthen the prosecution case because of admitted hostility. In view of the fact that the evidence of PW-3 has not been held to be reliable, it is clear that the prosecution has not come to Court with clean hands.

G In response, learned counsel for the State submitted that there is no infirmity in the conclusions arrived at by the trial Court and the High Court to warrant any interference. The evidence has been analysed in great detail and with great care and circumspection in view of the fact that the accused and deceased were in inimical terms; and the witnesses were either relatives or known to the deceased-Surya Prakash Singh. There is no doubt about

H the presence of PW2 who was an injured witness and the hypothetical

scenario as projected by the accused appellants does not have any leg A
to stand. The doctor (PW4) has clearly stated as to the time of injury
and it rules out the possibility that he sustained injury at the time of
incident.

The High Court has found the evidence of PW-2 to be cogent, B
credible and trust-worthy. His evidence shows that on the date of occurrence
he along with A.K. Singh (PW-1) and Narendra Singh (PW-3) and one
Vishwanath (not examined) were sitting near the door of deceased. At that
time Ram Lal was weeding potato crops sown in the field near the house
of deceased-Surya Prakash Singh who was sitting on cot and reading the C
newspaper. At this juncture, the three accused appellants armed with guns
and two unknown persons also armed with various weapons came to the
place. Veer Bhadra fired a shot at Surya Prakash Singh and thereafter Jai
Karan and Babu fired; which hit the two deceased persons. Thereafter, the
accused Jai Karan assaulted Ramchandra Singh (PW2) with the barrel of D
a gun and those unknown persons also assaulted deceased Surya Prakash
Singh with kanta and banka. Thereafter the accused persons ran away.

After considering his evidence in toto, the High Court found the
evidence to be implicitly truthful and reliable. Though his presence was
attempted to be shown as doubtful, we do not find any reason to accept E
the plea. His presence at the place of incident was explained and his
evidence cannot be thrown out as unreliable or tainted, merely because in
some cases he was a co-accused with the deceased Surya Prakash Singh.
This circumstance would not warrant mechanical rejection of his testimony.
Evaluation with caution was needed, which has been done. The manner F
of assaults as described by him is also corroborated by medical evidence.
The plea that improvements were made to bring the ocular evidence in line
with the medical evidence is clearly without substance. We have read the
evidence and found that whatever was stated was by way of a clarification
and certainty cannot be termed to be an improvement. Therefore, the
evidence of PW2 alone was sufficient to fasten guilt on the accused G
appellants. But, added to that is the evidence of PW1, the informant, which
further strengthens the prosecution version. The First Information Report
was lodged with promptitude. Merely because PW2 was examined after
some time, the reason thereof has been clearly explained by the investigating
officer who stated that after the information was lodged by PW1 at the H

- A police station he interrogated him and thereafter left for the place of incident which he reached at 8.45 P.M. So far as time of injury on PW2 is concerned, the opinion of PW4 (doctor) is clearly hypothetical. He himself has stated that there can be a margin of 2-3 hours. That being so, credible evidence of eyewitnesses does not become tainted.
- B Great emphasis was led on the approximate time of injury. That in no way affects the credibility of PW2's evidence. Though evidence of PW1 does not specifically indicate the injury on PW2 that is but natural. Before a young person two murders were committed and it is quite natural to create a sense of shock and minor variations in his evidence do not affect his testimony which is otherwise credible. Unless the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. (See *Solanki Chimanbhai*
- C *Ukabhai v. State of Gujarat*, AIR (1983) SC 484. To similar effect is the decision in *State of U.P. v. Krishna Gopal and Anr.*, AIR (1988) SC 2154.
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That being the position, the High Court was justified in dismissing the appeals filed by the accused appellants before it. We find no reason to take a different view. The appeal is dismissed.

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A.K.T.

Appeal dismissed.