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SARVESH NARAIN SHUKLA

v.

DAROGA SINGH & ORS.

OCTOBER 12, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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Penal Code, 1860—ss. 302 r/w 149, 147 and 148—Triple murder—Two eye witnesses accompanying the deceased at the time of incident—One of them killed during trial—Other turning hostile—Two more eye-witnesses supporting prosecution case—Testimony of eye-witnesses supported by medical evidence—Trial Court acquitting one and convicting rest of the accused—High Court further acquitting four accused and convicting rest of the accused—Appeal against conviction as well as acquittal—Held: Order of Courts below not liable to be interfered with in the facts of the case—Prosecution case is proved by testimony of eye-witnesses and medical evidence.

Evidence—Chance witness—Testimony of—Reliability on—Held: If testimony of chance witness found to be creditworthy, the same not to be discarded on mere ground that his presence was by chance.

Appellants-accused were charged u/ss. 147, 148, 302 r/w s. 149 IPC for having caused death of three persons. The prosecution case was that when the three deceased were coming in a car alongwith First Informant and PW-4, appellants-accused alongwith other accused, all armed with fire arms, started firing at the car from a close range as the car stopped after collusion with a bus. The firing resulted in instant death of three, who were sitting on the front seat of the car. First Informant and PW-4, sitting on the rear seat, rushed out of the car and in that process received some injuries. One of the accused picked up rifle of PW 4 which was kept in the car. They ran away from the spot. First Informant lodged FIR. Statements of PW4 and First Informant were recorded by the Police.

During trial, First Informant was killed. PWs 1, 4 and 5 were examined as eye-witnesses. PW4 was declared hostile. Trial Court acquitted one of the accused of all the charges. However, other accused were convicted u/s. 147, 148, 302 r/w s. 149 IPC. A

High Court further acquitted four of the accused holding that their names had been revealed by PW-1 for the first time in Court and their conviction could not be based on the testimony of PW 5 alone. Hence the present appeals against conviction as well as acquittal. B

Accused contended that FIR has come into existence after inquest proceedings; that the delay in sending the Special Report to the Magistrate has not been explained; that PWs 1 and 5 were chance witnesses and have not been able to explain their presence at the spot; that non-examination of third person (the owner of the motor cycle) with whom PWs 1 and 5 had reached the spot, is fatal: that PW 4 turning hostile caused doubt on the prosecution story; that there was conflict in evidence regarding the dead bodies lying outside or inside the car, that there was no evidence to show that the car collided with a bus coming from opposite side bringing it to a sudden, stop; and that the prosecution case that Pistols and Carbines had been used for the offence, are falsified by medical evidence indicating use of only shotgun. C
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Dismissing the appeals, the Court

HELD : 1. The matters have been considered by Trial Court and High Court in its correct perspective and no interference is called for.

[Para 20] [319-F] F

2. It is true the incident having been taken place on 4.4.1999 *prima facie* makes the receipt of the special report by the Magistrate on 8.4.99 rather inexplicable more so that a day after the incident, the police had itself moved an application under Sections 82 and 83 Cr. P.C. against the accused in the Court of the Special Magistrate. There are however certain circumstances on record which show that the FIR had in fact been lodged at the time suggested by the prosecution. Therefore, the suspicion that a line or two might have squeezed in here or there in some of the documents prepared during the initial investigation would not G
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A dislodge the huge volume of documentary and ocular evidence on the spontaneity of the FIR. [Para 9] [310-B, C, D; 311-C]

B 3. *Prima facie* it does appear that PWs 1 and 5 were chance witnesses but on a closer look, it is found that they have adequately explained their presence. If the court comes to the conclusion that the testimony of a chance witness is credible, the evidence cannot be thrown out merely on the ground that the witness happened to be present by chance. Both these witnesses have specifically revealed the identity of the assailants and the manner of attack and explained their presence. C Despite extensive cross-examination, no reasons are forthcoming on record as to why they would become false witnesses in a case of triple murder. [Para 11] [312-C, D, F, G]

D 4. It is also clear from the evidence that the Investigating Officer had collected a blood stained seat cover and shoes from inside the car alongwith several other items from the place of incident which go to show that the killings had happened in the car. The conflict in evidence as to the whether the dead bodies were found lying outside or inside the car would thus be of no telling effect more particularly as a huge and milling crowd running into thousands had collected after the murders completely E jeopardizing the security of the site and as such no evidence could be available to show as to how the dead bodies had, if at all, been put outside the car. [Para 11] [312-G, H; 313-A]

F 5. PW-4 who had been riding the car with the three deceased and had received injuries in attempting to escape had been medically examined. Though this witness had been declared hostile, an outright rejection of his evidence is not called for and both parties are entitled to rely on such part of his evidence which assists their case. The statements made by PWs 1 and 5 are to an extent supported by him as G well. [Para 11] [313-A, B, D]

H 6. PW-13 the Investigating Officers, who in his cross-examination stated that he had carefully examined the car at the place of occurrence and had found in all about 40 bullet marks on the chassis, tank, backside bumper, diggy, backside glass and bonnet. It is significant that the

presence of the bullet marks shows that the firing had taken place primarily from the rear side as the driver had attempted to speed away and that the coup de grace had apparently been delivered to the deceased after the car had stalled after hitting the bus. It is also significant that the presence of the bus and its number had been shown in the site plan prepared by the said police officer at the place of incident. [Para 12] [313-F, G]

7. The eye-witness account is fully in consonance with the statements of the doctors and the other medical evidence. It has come in the statement of the eye witnesses including PW 4 and also of PW 8 on specific questions put to them that the shots had been fired from a distance of a foot or two. The opinion that shots had been fired from a distance of a feet or two is fortified, as the entry wounds without exception show signs of charring and tattooing. The dimensions of the entry wounds also show that several different types of weapons have been used. [Paras 13 and 15] [314-C, D; 316-C, D]

Awadhesh and Anr. v. State of Madhya Pradesh, [1988] 2 SCC 557, distinguished.

Forensic Science in Criminal Investigation and Trials by Dr. B.R. Sharma, Fourth Edition; *Modi's Medical Jurisprudence and Toxicology*, Twenty-third Edition at page 722, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 752-755 of 2005.

From the Judgment and final Order dated 28.1.2005 of the High Court of Judicature at Allahabad in Crl. A. Nos. 5587, 5589, 2503 and 3072/2004.

WITH

Crl. A. Nos. 834/2005, 835/2005 & 910-912/2005

Gopal Chaturvedi, Anoop G. Choudhary, Ranjit Kumar, Sushil Kumar, P.K. Jain, P.K. Goswami, K.K. Misra, Amit P. Singh Rawat, R.S. Chauhan, Prashant Chaudhary, Praveen Swarup, Ashok Kumar Singh, Rana Ranjit Singh, S.P. Singh Parmar, Naresh Kumar Gaur, Sapam

- A S. Meitei, Manish Vashishth, Ajay Singh, Sanjay Singh, Dilip Kumar for the appearing parties.

The Judgment of the Court was delivered by

- HARJIT SINGH BEDI, J.** 1. This judgment will dispose of
B Criminal Appeal Nos. 752-755 of 2005 pertaining to the acquittal of four of the accused whereas Criminal Appeal Nos. 834 of 2005, 835 of 2005 and 910-912 of 2005 have been filed by the accused who stand convicted both by the trial Court as well as by the High Court.

- C 2. The facts have been taken from the record of Criminal Appeal No. 835 of 2005. They are as under:

3. On 4.4.1999 Rakesh Kumar Pandey along with his brother-in-law Surya Narain @ Vakil Shukla along with three others, Devi Shankar Dubey, Prem Shanker Dubey and the car driver Shesh Mani were
D returning from Aurai to Gopiganj in the latter's car No. WB 26A 7554. As the car reached near the Trimuhani on the middle of the road in Gopiganj, accused Udai Bhan Singh, Akbal Bahadur @ Atkoti Singh, Prem Singh, Dhunni Singh, Munni Singh, Daroga Singh, Rajeshwar Upadhyay, Pintoo Singh and two other persons all armed with modern
E weapons starting firing at the car. The firing led to the death of Surya Narain @ Vakil Shukla, Devi Shanker Dubey and Shesh Mani at the spot. Rakesh Kumar Pandey and Prem Shanker who were sitting on the rear seat rushed out of the car to save themselves and they too received some superficial injuries in that process. The assailants also picked up the
F licensed rifle of Prem Shanker Dubey which was lying in the car and thereafter ran away from the spot. The occurrence was also witnessed by Shiv Prasad @ Dangar Tewari, Mukand Lal, Ram Dutt Mishra and several other persons. An FIR was thereafter lodged by Rakesh Kumar Pandey at 3.45 p.m. in Police Station Gopiganj a kilometer away from
G the place of incident, on which S.I. Vidya Prakash Misra reached the place of occurrence and recorded the statement of Rakesh Kumar Pandey whereas SI Rashid Ahmad prepared the inquest reports of the deceased on the dictation of SI Vidya Prakash Misra. On an inspection of the site, several pieces of glass, a blood stained piece of rexine, and shoes and
H some fired cartridges, a rifle and a 9 mm pistol licensed to deceased Surya

Narain Shukla were recovered. The bodies were also sent for the post mortem examinations. The post mortem examination on the dead body of Devi Shanker Dubey was conducted by Dr. Radhey Raman on 4.4.1999 at about 11.55 p.m. whereas Dr. Sanjay Tewari conducted the post mortem examinations on the dead bodies of Shesh Mani at 11.30 p.m and that on Surya Narain Shukla 45 minutes later i.e. at 0030 hours. All three dead bodies showed extensive fire arms injuries. Dr. A.K. Pandey also medically examined Prem Shanker Dubey at 5.25 p.m on 4.4.1999 and found two lacerated simple injuries on his person whereas the examination of Rakesh Kumar Pandey at 8.15 p.m. on 4.4.1999 by Dr. L.S. Mishra showed five simple injuries; three abrasions and two contusions. The doctors opined that these injuries could have been caused as the two were making a hurried exit from the car. On the completion of the investigation the accused were charged for offences punishable under Sections 147, 148, 302 read with 149 I.P.C whereas appellants Suresh Singh @ Jajey Singh was in addition charged under Section 379 IPC for having taking away Prem Shankar Dubey's rifle from the car whereas Tehsildar Singh and Suresh Singh were further charged under Section 411 I.P.C. The accused pleaded not guilty and sought trial.

4. Rakesh Kumar Pandey, the first informant and the primary witness to the murders, was himself murdered during the course of the trial. The prosecution nevertheless relied on the evidence of PW1 Shiv Prasad @ Dangar Tewari who deposed to the circumstances leading to his presence at the spot and the manner of the attack and further stated that about 15/20 shots had been fired at the car by the accused from a close range as the car had stalled after having had a collision with a bus as the car driver had attempted to race away. He also stated that he knew most of the accused having dealt with them at one time or another. The prosecution also relied on the evidence of PW 4 Prem Shankar Dubey, another eye witness but he did not support the prosecution and was declared hostile having partly disowned the story given by him in his earlier statements. The other eye witness PW 5 Ram Dutt Misra, however, supported the prosecution story and justified his presence by deposing that he had gone to Vindhyachal temple for darshan in the morning and while returning there from he had taken a lift alongwith Dangar Tewari PW1 on Mukund Lal's

- A Bullet motor-cycle to reach his home in Gopiganj. The prosecution also relied on the medical evidence (and the various reports tendered) of PW 6 Dr. A.K. Pandey and PW 7 Dr. L.S. Misra with regard to the injuries on Prem Shankar Dubey and Rakesh Kumar Pandey respectively. The prosecution also examined the police officials involved in the investigation
- B viz., PW 10 S.I. Irshad Ali who had recorded the inquest reports on the dictation of PW 13 Vidya Prakash Misra SHO and also dispatched the dead bodies for their post mortem examinations, PW 11 Constable Prabhu Nath Yadav who deposed that the dead bodies had been handed over to Constable Manoj Rai and Devi Shanker Pandey for being taken for
- C the post mortems, PW 13 Vidya Prakash Misra who had made the various recoveries already mentioned above and had also inspected the place of incident and the car and had found about 40 bullet marks thereon, and also several other police officials who had been involved in the peripheral investigation or had arrested some of the accused. The prosecution story
- D was then put to the accused and they denied their involvement in the incident and pleaded false implication. The trial Court examined the matter in extenso and held that there had been no delay in the recording of the FIR and the argument that the first information report had come into existence after the inquest proceedings had been completed, was
- E unacceptable. The Court also found that Rakesh Kumar Pandey and Prem Shanker Dubey had both been injured in their attempt to get out from the car and this evidence too, was a significant circumstance pointing to their presence. It also held that PW 1 Shiv Prasad and PW 5 Ram Dutt Misra who had supported the prosecution had cogently explained their
- F presence at the crucial moment in as much that both had gone to Vindhyachal temple for darshan and while returning had sought a lift back to Gopiganj triple riding with Mukund Lal on his Bullet motor cycle and that the attempt on the part of the defence to get them to explain their movements minute by minute could not be accepted as this could not be
- G a realistic approach in such callous and gruesome multiple murders. The trial Court also found that the medical evidence supported the ocular version in as much that the injuries found on the dead bodies clearly revealed that several types of weapons had been used and that too from a very close range causing extensive internal and external injuries on the
- H persons of the deceased. It also observed that in a case of firing by several

persons at others confined in a vehicle with all three deceased sitting in A
the front seat, it was well nigh impossible to expect an eye witness sitting
on the rear seat to give the exact details as to the position of the deceased
and the assailants when the firing had taken place. The court nevertheless
held that the motive had not been proved. The court then went into the B
involvement of each of the accused and observed that nine of the accused
had been named in the FIR and two others who had not been named
also figured in the incident and that some of the accused had been
subsequently identified by name. The court held that as there was no
motive for false implication, a case against eleven of the accused under C
Sections 147, 148, 302 read with Section 149 IPC had been made out.
The Court also held that the charge under Sections 379/411 IPC against
accused Suresh Singh and the case against Tehsildar Singh who had not
been named in the FIR and had been attributed only a Lalkara by the
eye witnesses who were also discrepant as to the manner of his
participation, he was entitled to an acquittal in toto. D

The trial Court finally observed that:

“On the basis of the entire above discussions and conclusion the
accused Udhaybhan Singh @ Doctor Singh, Pinto Singh @
Sandeep Singh, Iqbal Bahadur Singh @ Atkotic Singh, Prem Singh E
@ Prem Bahadur Singh, Chunni Singh @ Mata Prasad Singh,
Daroga Singh @ Shri Krishan Singh, Rajeshwar Upadhaya, Suresh
Kumar @ Jajje Singh, Sanjay Singh, Santosh Kumar Singh are
found guilty of the offence under Sections 147/148/302/149 IPC”, F

and ordered that:

“The accused are sentenced to life sentence under Section 302/
149 IPC and fine of Rs. 5000-5000/- each accused and if the fine
is not paid, one month sentence and under Section 147 Cr.P.C 3
months rigorous imprisonment and fine of Rs. 500-500 each and G
in the event of not paying the fine 10 days further rigorous
imprisonment and under Section 148 Cr.P.C 6 months rigorous
imprisonment and fine of Rs.1000-1000 each and in the event of
not paying the fine 15 days further rigorous imprisonment is
justifiable. H

- A 5. Several appeals were subsequently filed before the High Court. The High Court on a reconsideration of the matter allowed the appeals of Pinto Singh @ Sandeep Singh, Daroga Singh @ Krishan Singh, Chunni Singh @ Mata Prasad Singh and Prem Bahadur Singh holding that their names had been revealed by Dangar Tewari PW 1 for the first time in
- B Court and it was therefore unsafe to maintain their conviction on the basis of the statement of PW 5 Ram Dutt Misra alone. The High Court accordingly directed as under:

S. No.	Crl. Appeal No.	Name of Appellant	Sessions Court Order	High Court Order	
C	1.	5588/2004	Suresh Kumar @ Jajey Singh	Sessions Judge conviction and award.	Appeal Dismissed.
D	2.	5589/2004	(i) Rajeshwar Upadhyay (ii) Prem Singh@ Prem Bahadur Singh	(i) - DO - (ii) - DO -	(i) Appeal Dismissed. (ii) Appeal Allowed/ Acquitted of the charges
E	3.	2503/2004	(i) Pinto Singh @ Sandeep Singh (ii) Akbla Bahadur@ Atkoti Singh	(i) - DO - (ii) - DO -	(i) Appeal Allowed/ Acquitted of the charges. (ii) Appeal Dismissed
F	4.	2826/2004	Udai Bhan Singh @ Doctor Singh	- - DO	Appeal Dismissed
G	5.	2863/2004	Santosh Kumar Singh and Sanjai Singh	DO -	Appeal Dismissed
H	6.	3072/2004	Chunni Singh	- DO	Appeal Allowed/ Acquitted of the charges.

6. The present set of criminal appeals have been filed against the judgment of the High Court. A

7. Mr. Sushil Kumar, the learned senior counsel for the appellants has raised several arguments before us during the course of hearing. He has first emphasized that the incident had happened at 3 P.M. on 4.4.1999 and the FIR had statedly been lodged in the police station within 45 minutes by Rakesh Kumar Pandey an eye witness, but the special report had been delivered to the Magistrate on 8.4.1999 and that there was no explanation for the delay and it thus appeared that the FIR had been written much later and then ante timed. It has accordingly been suggested that the prosecution story had been cooked up involving all the accused who all belonged to one extended family in connivance with the police. It has also been pleaded that the delay in the recording of the FIR had been utilized by the police in creating three eye witnesses PW 1 Shiv Prasad @ Dangar Tewari, PW 4 Prem Shanker Dubey and PW 5 Ram Dutt Misra who had cordial relations with the complainant party but an in depth examination of the story projected by them revealed that they had not been present and that this argument was fortified as in the inquest report it had been noted that the dead bodies had been found outside the car whereas the eye witnesses had projected the story that the dead bodies had been taken out from the car by the police. It has also been submitted that had Prem Shanker Dubey PW 4 and Rakesh Kumar Pandey been sitting in the car when the firing had taken place, they would not have escaped unscathed more particularly as about 40 shots had been fired at the car with automatic and semi-automatic weapons at the deceased sitting in the front seat. It has also been suggested that the nature of injuries found on the dead bodies showed that the medical evidence was completely at variance with the ocular evidence. It has finally argued that the prosecution had not been able to prove any motive for the incident and it had been so found by the trial court itself and that it appeared from the defence version that the murders had been committed by unknown assailants and that the accused had been involved on account of the rancour and ill will of the police as about 20 policemen were facing trial arising on a complaint made by Tehsildar Singh for the killing of his son Hazaria, allegedly in a fake encounter. B C D E F G

A 8. Mr. Anup Chowdhury, the learned senior counsel has however supported the judgment of conviction. It has also been pointed out (in the appeal against acquittal) that the acquittal of the four accused was not justified as the evidence against them was identical with that of the accused who had failed before the High Court.

B 9. We now examine the arguments raised by the learned counsel in extenso. It is true that the incident having been taken place at about 3 p.m. on 4.4.1999 *prima facie* makes the receipt of the special report by the Magistrate on 8.4.99 rather inexplicable, the more so (as emphasized by Mr. Sushil Kumar) that a day after the incident, the police had itself moved an application under Sections 82 and 83 Cr.P.C. against the accused in the Court of the Special Magistrate. We have, however, very carefully gone through the record on this aspect, as we are aware that the fate of the appeal would hinge substantially on this issue. For the purpose of clarity we reiterate the following facts; the incident had happened on 4.4.99 at 3 P.M., the FIR had been lodged in the police station a kilometer away at 3.45 p.m. by Rakesh Kumar Pandey and the special report delivered after four days on 8.4.99. There are however certain circumstances on record which show that the FIR had in fact been lodged at the time suggested by the prosecution. It has come in evidence that the inquest on the three dead bodies had started at 5.45 p.m. and that the dead bodies had been removed to the police head quarters at 6.30 p.m. and received therein at 7.45 p.m. It has also come on record that on account of the gravity of the crime, the District Magistrate had, at 10.50 p.m., authorized the medical staff to conduct the post mortem during night hours and the post mortems were in fact conducted within the next hour or two. Significantly also, we observe from the cross examination of PW 2 Head Constable Uma Shanker Pandey (who had registered the formal FIR) that while he admitted that the special report had indeed been received by the CJM on 8.4.99 but he clarified that a copy of the FIR had reached the Circle Police Officer on 5.4.99. Likewise PW 9 Constable Devi Prasad Pandey deposed that the dead bodies had been sealed and handed over to him between 6.30 p.m. and 7.00 p.m. on 4.4.99 and that he was in possession of the first information report and other related documents which had been handed over by him to the doctor.

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It bears highlighting that this witness was not even cross-examined on this aspect. This statement is further fortified by a perusal of Ex.Ka-19 the inquest proceedings relating to deceased Shesh Mani Rai and amongst the enclosures with the inquest report is the nakal chik (which is a copy of the FIR) and a report made by the Sub Inspector on this exhibit that the dead bodies had been handed over for post mortem along with the appended documents. It is also significant that Dr. Sanjay Tewari PW 8 who had conducted the post mortem examination on the dead body of Surya Narain deposed that he had received the first information report at the time of the post mortem and that he had read the same before conducting the proceeding. To our mind, therefore, the suspicion that a line or two might have squeezed in here or there in some of the documents prepared during the initial investigation would not dislodge the huge volume of documentary and ocular evidence on the spontaneity of the FIR.

10. Faced with this situation Mr. Sushil Kumar has then argued that the three witnesses produced by the police i.e. PW 1 Shiv Prasad @ Dangar Tewari, PW 4 Prem Shanker Dubey and PW 5 Ram Dutt Misra, only two that is PW 1 and PW 5 had supported the prosecution and being chance witnesses had not been able to explain their presence at the spot. It has also been submitted that Mukund Lal, the third person and the owner of the Bullet motor cycle on which PW1 & PW5 had come from Vidhyachal, had not been examined as a witness which clearly falsified the entire story. Conversely, it has been submitted that the only witness who could possibly have been an eye witness to the incident as he was travelling in the car at the time of the incident and whose rifle had been removed from the car after the incident and recovered from the accused i.e. Prem Shanker Dubey had not supported the prosecution, thus causing a clear doubt on the entire prosecution story.

11. The argument noted above would have to be examined in the background of some special facts. It must be remembered that the incident had happened in broad day light on the main road going through a prosperous town amongst groups (both the assailants as well as the victims), who were prominent citizens deeply involved in commerce and politics and several prior incidents involving them in some other criminal matters not necessarily with each other had already taken place. It is

A therefore obvious that the murders would have created a furore and caused a huge amount of consternation and it has in fact come in evidence that thousands of persons had collected at the site, soon after the incident. With this introduction we now examine as to whether the eye witnesses had been present at the spot or not. It is to be noted that Rakesh Kumar

B Pandey, the first informant had signed the inquest report at the place of incident and his statement under Section 161 Cr.P.C had also been recorded by the Investigating Officer PW 13 prior to the preparation of the inquest report. Unfortunately, Rakesh Kumar Pandey could not be examined as he had in the meanwhile been murdered. The prosecution

C has accordingly fallen back primarily on the statements of PW 1 Shiv Prasad, and PW 5 Ram Dutt Sharma PW4 Prem Shankar Dubey having been declared hostile. *Prima facie* it does appear that these two witnesses were chance witnesses but on a closer look we find that they have adequately explained their presence. We are also of the opinion that if

D the court comes to the conclusion that the testimony of a chance witness is credible, the evidence cannot be thrown out merely on the ground that the witness happened to be present by chance. Dangar Tewari stated that when he alongwith Ram Dutt Misra had reached at the tri junction of the GT Road Gopiganj on Mukund Lal's Bullet motor-cycle they had heard

E sounds of firing by weapons and had seen the accused persons armed with shot guns, rifles, carbine and pistols firing at the Ambassador car after it had come to a stop after colliding with a bus coming from the Allahabad side and that the murders had been committed while the deceased were still in the car. The evidence of Ram Dutt Misra is much

F to the same effect. Both these witnesses have specifically revealed the identity of the assailants and the manner of attack and explained their presence by stating that they had gone for Darshan and were on their way back home. We also find that despite extensive cross-examination, no reasons are forthcoming on record as to why they would become false

G witnesses in a case of triple murder. It is also clear from the evidence that the Investigating Officer had collected a blood stained seat cover and shoes from inside the car alongwith several other items from the place of incident which go to show that the killings had happened in the car. The conflict in evidence as to the whether the dead bodies were found lying

H outside or inside the car would thus be of no telling effect more particularly

as a huge and milling crowd running into thousands had collected after the murders completely jeopardizing the security of the site and as such no evidence could be available to show as to how the dead bodies had, if at all, been put outside the car. It is also of some importance that Prem Shankar Dubey who had been riding the car with the three deceased and had received injuries in attempting to escape had been medically examined by PW 6 Dr. A.K. Pandey at about 5.25 p.m. on 4.4.1999. Though this witness had been declared hostile, we are of the opinion that an outright rejection of his evidence is not called for and both parties are entitled to rely on such part of his evidence which assists their case. We now examine his testimony in this background. He admitted that on the day of occurrence he had been sitting on the back seat of the Ambassador Car and had been carrying his licensed rifle. He also admitted that on rushing out of the car he had received some injuries but could not remember as to whether he had been medically examined though the evidence shows that he had been present at the time of the lodging of the first information report in the Police Station. The statements made by Dangar Tewari and Ram Dutt Misra are thus (to an extent) supported by Prem Shankar Dubey as well.

12. Mr. Sushil Kumar has also laid some emphasis on the fact that despite the fusillade fired at the car with an assortment of modern weapons, the car remained largely untouched and that there was thus no evidence to show that it had collided with a bus coming from the opposite side bringing it to a sudden stop, thus facilitating the murders. We have, however, in this connection the evidence of PW 13 Vidya Prakash Misra, the Investigating Officer, who in his cross-examination stated that he had carefully examined the car at the place of occurrence and had found in all about 40 bullet marks on the chassis, tank, backside bumper, diggy, backside glass and bonnet. It is significant that the presence of the bullet marks shows that the firing had taken place primarily from the rear side as the driver had attempted to speed away and that the coup de grace had apparently been delivered to the deceased after the car had stalled after hitting the bus. It is also significant that the presence of the bus and its number had been shown in the site plan prepared by the said police officer at the place of incident.

A 13. Mr. Sushil Kumar has also laid great stress on what he perceives
to be an apparent discordance between the ocular and the medical
evidence. He has emphasized that the Investigating Officer had picked
up three spent cases of a .12 bore shotgun from the spot and a wad had
also had been recovered from one of the dead bodies at the time of the
B post mortem examination thus indicating that only shotguns and no pistols
or carbines as alleged had been used, which clearly falsified the eye
witnesses. He has in this connection cited the judgment in *Awadhesh and*
Anr v. State of Madhya Pradesh , [1988] 2 SCC 557 to submit that
C where medical opinion was at variance with the ocular account the accused
were entitled to the resultant benefit. Undoubtedly, the medical evidence
is extremely relevant in testing the credibility of an eye witness but we
are of the opinion that the eye witness account is fully in consonance with
the statements of the doctors and the other medical evidence. It has come
D also of Dr. Sanjay Tewari PW 8 on specific questions put to them that
the shots had been fired from a distance of a foot or two. We now
reproduce the post mortem reports prepared by PW Dr. Sanjay Tewari
with respect to Vakil Shukla and Shesh Mani Rai :

E *Vakil Shukla*

1. Lacerated wound 2x1 Cm. on the mid forehead with charring
and tattooing around it. Frontal bone not injured.
2. Abrasion 1x 0.5 Cm. on the mid forehead with charring and
tattooing around it.
3. Wound of firearm entry 6 in number each measuring 0.8x0.8
F Cm. on the top and back of the left shoulder. Margins of wound
inverted with blackening and tattooing all around it with their
wound of exit as follows-
 - G (1) 1.5 x 1.5 Cm. on the left side chest below the left axilla 5
Cm. below the apex;
 - (2) 3 x 3 Cm. on the left side chest 8 Cm. below and lateral
to the left nipple;

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- (3) 1x1 Cm. on the right side chest 6 Cm. below the right nipple. A
 - (4) 1x1 Cm. on the right side chest 4.5 Cm. above and medial to the right nipple;
 - (5) 1x1 Cm. on the right side chest 8 Cm. below the right nipple; and B
 - (6) 1x1 Cm. on the right side chest 6.5 Cm. lateral to the right nipple.
4. Firearm wound of entry 0.8x0.8 Cm.. on the lateral surface of right mid thigh with inverted margins and tattooing all around it with its wound of exit on the medial surface of thigh at the same level with averted margins 1x1 Cm. C

Shesh Mani Rai D

1. 5x4 Cm. on the right side neck 1 cm. below and posterior to the right ear. Margins of the wound were inverted with charring and tattooing of skin all around with its wound of exit of size 6x5 Cm. on the left side face/over and lateral to the left eye with averted margins; E
 2. Wound of entrance 5.5x4 Cm. on the right side eye margin of the wound inverted with charring and tattooing of skin all around, with its wound of exit 6x6 Cm. below the left ear. Margin of the wound averted. F
 3. Wound of entrance 1x1 Cm. on the lateral aspect of left arm. Margins of wound inverted with charring and tattooing of skin all around with its wound of exit 1.5x1.5 Cm. on the posterior lateral aspect of the left arm. Margins of wound averted". G
14. Dr. Radhey Raman PW 3 recorded the following injuries on the dead body of Devi Shankar Dubey: G
1. Firearm wound of entry with charring and tattooing of size 2x1 Cm. It. Side of the chest just below the middle part of Lt. Clavicle. Lt. Side clavicle fractured with same wound of exit. H

A 2. Firearm wound of entry with charring and tattooing of six 1x1
Cm. on rt. Supra clavicle region 4 Cm. medial to top of rt.
Shoulder, margins of wound inverted, with its wound of exit
2.5x2.00 Cm. on the lt. Side of chest on its lateral side 5.00 Cm.
lateral and just below it. Nipple margin of wound of exist is averted;
B and

3. Abraded contusion 2x2 Cm. on rt. Side of the forehead”.

A cork (1.5 x 1.2 cm) was also recovered from the dead body.

C 15. Relying on the above quoted evidence it has been emphasized
that there appeared to be no injuries from a rifle or pistol. We however
beg to differ. It bears reiteration that shots had been fired from a distance
of a feet or two and this opinion is fortified as the entry wounds without
exception show signs of charring and tattooing. The dimensions of the
D entry wounds also show that several different types of weapons have
been used. It is clear from the post mortem examination of Devi Shankar
Dubey’s body (during which a cork had been recovered) that a shotgun
had undoubtedly been used in his murder and that the shot had entered
en masse as is apparent from the size of wound of entry (Injury No. 1).

E 16. We now come to the reports of the other two deceased. Injury
No. 3 on the person of Vakil Shukla is clearly not an injury caused by a
shotgun and has been caused by a medium calibre automatic or semi-
automatic rifle or pistol. Mr. Sushil Kumar has however submitted that
this injury had possibly been caused by a shotgun using buckshot SG/LG
F cartridges as had a high velocity rifle been used from a close range as
suggested, the bullet would have had a blasting effect on the body. We,
however, find that this argument is not substantiated on the evidence, that
is, available to us. Undoubtedly, this shot too had been fired from a little
beyond point blank range and if it had been fired from a shotgun, the
G shoulder would have been shattered and in any event the entire charge
would have entered the body en masse making a rat hole wound of entry.
We are fortified in our view by the observations on page 465 of the Fourth
Edition of Dr. B.R. Sharma’s Forensic Science in Criminal Investigation
and Trials:

H

“9.10.7.3 Shotgun injuries: A

The nature of the injuries caused by the shotgun is greatly altered by the range. Contact or near contact wounds look like explosions. Close range shots upto about three meters give rat holes varying in diameter from about 2 to 6 centimetres. From about 2 metres to 10 metres the projectiles may form a rat hole surrounded by individual pellet holes. Beyond 10 metres most of the shots form separate holes. The buckshots may separate earlier. For example, an L.G. cartridge may give individual injuries for each shot from a range of about 2 metres. The area covered by the pellets vary with the range and the choke characteristics of a gun. B C

Ordinarily, the shotguns projectiles do not form exit holes except when buckshots are used from close ranges”.

17. Modi's Medical Jurisprudence and Toxicology, Twenty-third Edition at page 722 is to the same effect. We reproduce the relevant passage hereunder : D

“The effects produced by small shot fired from a shotgun vary according to the distance of the weapon from the body, and choking device. A charge of small shot, fired very close to, or within a few inches, of the body enters in one mass like a single bullet making a large irregular wound with scorched and contused edges, and is followed by the gases of the discharge which greatly lacerate and rupture the deeper tissues. Particles of unburnt powder expelled from the weapon behind the missile are driven to some distance through the wound, and some of them are found embedded in the wound and the surrounding skin, which is also singed and blackened by the flame and smoke of combustion. The exit wound of a close range shot may show greater damage of tissues than the entrance wound, the margins are everted, but there is no evidence of blackening of singeing. At a distance of one to three feet, small shots make a single aperture with irregular and lacerated edges corresponding in size to the bore of the muzzle of the gun, as the shot enter as one mass, but are scattered after E F G H

A entering the wound and cause great damage to the internal tissues. The skin surrounding the wounds is blackened, scorched and tattooed, with unburnt grains of powder. On the other hand, at a distance of six feet, the central aperture is surrounded by separate openings in an area of about two inches in diameter made by a few pellets of the shot, which spread out before reaching the mark.

B The skin surrounding the aperture may not be blackened or scorched, but is tattooed to some extent. At a distance of 12 feet, the charge of the shot spreads widely and enters the body as individual pellets producing separate openings in an area of five to

C eight inches in diameter depending on the choke, but without causing blackening, scorching or tattooing of the surrounding skin”.

18. Mr. Sushil Kumar’s argument with regard to the use of a high velocity rifle and its effect on the body when fired from a close range would undoubtedly merit serious consideration but in the light of the facts on the record, we are unable to concur. It is the case of the prosecution that carbines and 9mm pistols in addition to shotguns had been used during the attack. A carbine, a high velocity weapon firing automatically or semi automatically, and 9mm bore pistols are prohibited firearms permitted for use only by the police and armed forces which invariably use hard nosed bullets in contradistinction to soft nosed ones used in sporting rifles against soft skinned game and which cause immense internal damage on the victim and huge wounds of exit, if any. We find that all six wounds of entry are of 0.8x0.8 cm. and with the exception of one, all exit wounds are also of almost similar dimensions. We are, therefore, of the opinion that injury no. 3 appears to be a wound of entry from a weapon firing hard nosed bullets which had penetrated the body and exited on the other side. We find support for this view from *Modi* (Supra) (at pgs.717-718):

G “Because of obvious difference in design and construction, the wounds produced by hunting ammunition are much more devastating than that of the military ammunition. In military ammunition, the bullets are full metal jacketed having a core of steel or lead inside and are thus prevented from deformation (or expansion) when they hit the target. In contrast, a hunting bullet is

H

designed to deform (or expand) in its passage through the body, producing an increase in its presenting area. Thus a hunting bullet, which is partially metal jacketed, but with the lead core exposed at its tip, is referred to as soft-point bullet. Hollow point hunting-bullets are also partially jacketed but have a cavity at the tip of lead core to facilitate expansion on striking the target. The silvertip hunting-bullet in reality is a soft point bullet whose lead core at its tip is protected by a thin jacket of aluminium alloy sheath.

Modern steel-jacketed bullets used in army weapons have the shape of an elongated cone and owing to their great velocity usually pass straight and direct through the body without any deflection or deviation, and without causing much damage. The wounds of entry and exit are almost circular and similar in appearance without any bruising or laceration of the surrounding parts”.

19. The nature of injuries found on the dead body of Shesh Mani Rai are equally significant. It appears from injury nos. 1 and 2 which are on the neck and head respectively that the shot had furrowed through the body with a huge exit wound. The very dimension of these injuries show the presence of a rat hole type of entry with a larger wound of exit on the other side. Injury No. 3 substantially corresponds with the injuries found on the dead body of Vakil Shukla and reveals that this injury had not been caused with the weapon which caused the other two injuries. The judgment cited by the learned counsel is therefore on its peculiar facts and based on the premise that the evidence in the case was doubtful.

20. We have also considered the arguments of learned senior counsel on the appeals against acquittal. We are of the opinion that the matter has been considered by the trial court and the High Court in its correct perspective and no interference is called for.

21. We accordingly dismiss all the appeals.

K.K.T.

Appeals dismissed.