



their conviction on various grounds viz. that the FIR was ante timed and that the time of incident was also changed by the prosecution to suit their purpose; that all the witnesses examined by prosecution as eye witnesses were chance witnesses; and that the semi-digested and digested food found in stomach of the deceased indicated that he took food about 3-4 hours prior to time of the incident and therefore, the incident must have happened at about 11 p.m. in the night and not at 6.15 p.m. as alleged by the prosecution.

Disposing of the appeal, the Court

HELD : 1. The FIR is not ante timed. According to the prosecution, the incident happened at about 6.15 p.m. and the same was reported to the police at 7.35 p.m. which was registered and therefore there was no question of ante timing of the FIR. [Para 10] [710-F-G]

2. The eye-witnesses examined in the trial cannot be said to be chance witnesses as they were the residents of the same village and at about 6.15 p.m. these eye witnesses were moving around, some were going to their agricultural field while some were coming from their respective agricultural fields. The incident had happened near a sugarcane crop which is near to the agricultural field. The time 6.15 p.m., being broad day light, the presence of the eyewitnesses at the place of occurrence is quite natural. The witnesses being the residents of the locality, their presence at the place of occurrence could not be considered unnatural. They had no cause to give false evidence. Accordingly, their testimonies cannot be discarded. [Para 10] [710-G-H; 711-A-B]

3. So far as stomach of the deceased containing semi-digested and digested food is concerned, no suggestion was put by the defense to prove or elicit the

A information regarding the exact time of taking the food  
by deceased. Even if it is assumed that the food was  
taken 3-4 hours prior to the time of incident, it would be  
somewhere around 2-3 p.m., when also food could have  
been taken by the deceased. The defense put up by all  
B the three accused that they were not present and they  
were present elsewhere is found to be baseless. There  
is no reason to take a different view from what was taken  
by both the trial court as well as the High Court. [Para 10]  
[711-B-E]

C 4. The plea of the defense that the time of occurrence  
was solely to suit the purpose and interest of the  
prosecution could also have not been proved by leading  
any evidence to establish that the incident had happened  
during night. Therefore, there is no reason to disbelieve  
D the facts put up by the prosecution that the incident had  
happened at about 6.15 p.m. at the place of occurrence  
and deceased had died out of a knife blow allegedly  
being given by appellant No.1 and the said knife blow  
itself caused his instantaneous death and he died at the  
E spot before he could be taken to any hospital. The  
dimension and the nature of the injury also speaks for  
itself. [Para 11] [711-E-G]

F 5. The evidence adduced to establish the guilt of  
appellant Nos. 2 and 3 are that appellant No. 1 had come  
to the place of occurrence alongwith a knife in his hand  
and he came out of nearby bushes whereas the appellant  
nos. 2 and 3 came from another place. They allegedly  
came out of the field, caught hold of the deceased and  
embraced him. If the appellant Nos. 2 and 3 were  
G embracing the deceased, a knife blow could not have  
been given in that manner by appellant No.1 on the chest  
of the deceased. It is not stated by the prosecution that  
appellant nos.2 and 3 were embracing him from behind.  
H Nature of the evidence adduced and role ascribed to

them appear to be highly improbable. They are, therefore, entitled to benefit of doubt. The aforesaid attack with the help of the knife pierced through the lung and went through the chest. All the three appellants are brothers and apparently there was some rivalry between the two groups in the village. [Para 14] [712-B-E]

6. Considering the facts and circumstances of the case, it is found that the story put up by the prosecution regarding the role of the appellant Nos. 2 and 3 are exaggerated and improbable. There is no allegation that appellant No. 2 and 3 were carrying any weapon in their hands. It is also proved that they were coming to the place of occurrence from another direction. Therefore, the role ascribed to the appellant Nos. 2 and 3 are found to be unbelievable. Their presence at the place of occurrence is also doubtful and therefore the benefit of doubt is extended so far as appellant Nos. 2 and 3 are concerned. [Paras 15 and 16] [712-F-H; 713-A]

7. However, the fact that appellant No. 1 had given knife blow which pierced through the chest and also pierced the lung, the gravity of the blow and the dimension of the injury clearly proves that appellant No.1 had the intention and knowledge of killing the deceased, and therefore, the appellant No. 1 used knife at the most vital part of the body affecting chest and lung with the knowledge that such injury will definitely cause death to the deceased in the ordinary course of nature. In that view of the matter, it is a clear case of Section 302, IPC. The conviction and sentence with respect to appellant No. 1 is upheld. However, the conviction and sentence of appellant No. 2 and 3 are hereby set aside. [Paras 17 and 19] [713-A-E]

A Appeal No. 1108 of 2007.

From the Judgment & Order dated 2.5.2007 of the High Court of Judicature of Allahabad in Criminal Appeal No. 133 of 1979.

B M.C. Dhingra, Gaurav Dhingra and Rajeshwar Singh for the Appellants.

T.N. Singh, Rajeev Dubey and Kamendra Mishra for the Respondent.

C The Judgment of the Court was delivered by

**DR. MUKUNDAKAM SHARMA, J.** 1. The appellants herein are the real brothers who have been convicted and sentenced under Section 302 of the Indian Penal Code (in short "the IPC") and sentenced to undergo life imprisonment. The Trial Court found the appellant No. 1 herein, Ramvir guilty of the offence punishable under Section 302 of the IPC whereas the appellant Nos. 2 and 3, namely, Ranpal Singh and Chatar Singh respectively were found guilty of the offence punishable under Section 302 IPC read with Section 34 IPC and each of them was sentenced to undergo life imprisonment.

2. The First Information Report (in short "the FIR") reveals that on 17.04.1978 at about 6.15 p.m. when the deceased Yashpal while going to his Gher was surrounded by the appellants namely Ramvir, Ranpal Singh and Chatar Singh near the field of Nek Ram. After surrounding the deceased, Chatar Singh and Ranpal Singh embraced the deceased while Ramvir gave a knife blow on the chest of the deceased. The deceased cried out upon which the complainant and the witnesses reached the place of occurrence. On seeing the complainant and the witnesses, the appellants fled away from the place of occurrence. Deceased Yashpal instantaneously died on account of the injury received.

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3. The prosecution proved the motive of the accused – appellant against the deceased Yashpal stating it to be a case of election rivalry inasmuch as election of the Society had taken place in the village in which three candidates contested the election against the complainant. The deceased Yashpal took active part in the election and during the campaign an altercation had taken place between the deceased - Yashpal and the appellant No. 1 Ramvir upon which Ramvir threatened to kill the deceased and since then the appellants were having enmity with the deceased – Yashpal.

4. The aforesaid FIR was lodged immediately at the Police Station after the occurrence. As already noted the incident took place at about 6.15 p.m. whereas the FIR was lodged at 7.35 p.m.

5. On receipt of the aforesaid FIR the Police started the investigation during the course of which the statement of the witnesses were recorded and on completion of the investigation a charge sheet was submitted against all the accused appellants. At the time of framing of the charge, the accused pleaded not guilty and claimed to be tried.

6. The Sessions Judge framed the charge against appellant - Ramvir under Section 302 IPC while the other two accused, namely, Ranpal Singh and Chatar Singh were charged under Section 302 read with Section 34 IPC. During the trial eight witnesses were examined including PW-1 (Giriraj Singh), PW-2 (Rajpal), PW-3 (Nek Ram) and PW-4 (Deopal Singh), who are stated to be the eye witnesses of the occurrence. All four of them in their examination-in-chief have supported the prosecution version of the case. The said witnesses were also cross-examined at length by the defence. The other witnesses examined are of formal nature. PW-5 (Dr. Aqil Ahmed) who conducted the post mortem examination of the deceased Yashpal found the following antemortem injuries:-

“Star wound 1 ½” X 1” (chest cavity) on right side chest 2’

A above right nipple at 12 O' clock position."

B 7. PW-6 (S.I. Mahendra Singh) and PW-7 (S.I. Ranvir Singh) are the investigating officers whereas PW-8 (Jag Mohan) is the constable who had taken the dead body for post mortem examination. The accused was examined under Section 313 of the Code of Criminal Procedure, 1973.

C 8. The defense also examined one witness on his behalf namely Sri Krishna Kumar Bhardwaj as DW-1. The aforesaid witness was examined by the defense with a plea that the FIR was ante timed and for that reason the special report was sent late to the District Magistrate, Bulandshahr.

D 9. The learned counsel appearing for the appellant has raised many submissions before us. His first submission was that the FIR is ante timed and that the time of incident has also been changed by the prosecution to suit their purpose. It was also submitted that all the witnesses examined by the prosecution as eye witnesses are chance witnesses. It was further submitted that the semi-digested and digested food was found in the stomach of the deceased which indicates that the food was taken about 3-4 hours prior to time of incident and therefore, the incident must have happened at about 11 p.m. in the night and not at 6.15 p.m. as alleged by the prosecution. We have considered the aforesaid submissions.

F 10. We may state here that similar submissions were also made before the learned Sessions Judge as also before the High Court which were considered and were found to be baseless by both the courts below. So far the contention that the FIR is ante timed, we find no reason to accept the said G contention. According to the prosecution, the incident happened at about 6.15 p.m. and the same was reported to the police at 7.35 p.m. which was registered and therefore there was no question of ante timing of the FIR. The eye-witnesses examined in the trial cannot be said to be the chance witnesses as they H were the residents of the same village and at about 6.15 p.m.

these eye witnesses were moving around, some were going to their agricultural field while some were coming from their respective agricultural fields. The incident had happened near a sugarcane crop which is near to the agricultural field. The time 6.15 p.m., being broad day light, the presence of the eyewitnesses at the place of occurrence is quite natural. The witnesses being the residents of the locality, their presence at the place of occurrence could not be considered unnatural. They had no cause to give false evidence. Accordingly, their testimonies cannot be discarded. So far as stomach of the deceased containing semi-digested and digested food is concerned, no suggestion was put by the defense to prove or elicit the information regarding the exact time of taking the food by deceased Yashpal. Even if it is assumed that the food was taken 3-4 hours prior to the time of incident, it would be somewhere around 2-3 p.m., when also food could have been taken by the deceased. The defense put up by all the three accused that they were not present and they were present elsewhere is found to be baseless. We find no reason to take a different view from what was taken by both the trial court as well as the High Court.

11. The plea of the defense that the time of occurrence was solely to suit the purpose and interest of the prosecution could also have not been proved by leading any evidence to establish that the incident had happened during night. Therefore, we find no reason to disbelieve the facts put up by the prosecution that the incident had happened at about 6.15 p.m. at the place of occurrence and deceased Yashpal had died out of a knife blow allegedly being given by accused No. 1 Ramvir and the said knife blow itself caused his instantaneous death and he died at the spot before he could be taken to any hospital. The dimension and the nature of the injury also speaks for itself.

12. It was next submitted by the counsel appearing for the appellants that presence of appellant Nos. 2 and 3 should have

A been held to be doubtful.

B 13. It was submitted by the prosecution that appellant nos. 2 and 3 caught hold of the deceased Yashpal whereupon appellant No. 1 gave a knife blow to the deceased Yashpal which proved to be fatal. We have analysed the said evidence very carefully and very minutely and also appreciated the contention raised on behalf of the counsel for appellant Nos. 2 and 3.

C 14. The evidence adduced to establish the guilt of appellant Nos. 2 and 3 are that appellant No. 1 had come to the place of occurrence alongwith a knife in his hand and he came out of nearby bushes whereas the other two accused came from another place. They allegedly came out of the field, caught hold of the deceased and embraced him. If the appellant D Nos. 2 and 3 were embracing the deceased, a knife blow could not have been given in that manner by appellant No. 1 on the chest of the deceased. It is not stated by the prosecution that the said two accused Nos. 2 and 3 were embracing him from behind. Nature of the evidence adduced and role ascribed to E them appear to us to be highly improbable. They are, therefore, entitled to benefit of doubt. The aforesaid attack with the help of the knife pierced through the lung and went through the chest. All the three appellants are the brothers and apparently there was some rivalry between the two groups in the village.

F 15. Considering the facts and circumstances of the case, we find that the story put up by the prosecution regarding the role of the appellant Nos. 2 and 3 are exaggerated and improbable. There is no allegation that these two persons i.e. G appellant No. 2 and 3 were carrying any weapon in their hands. It is also proved that they were coming to the place of occurrence from another direction.

H 16. Therefore, the role ascribed to the appellant Nos. 2 and 3 are found to be unbelievable. Their presence at the place of occurrence is also doubtful and therefore we extend benefit of

doubt so far as appellants Nos. 2 and 3 are concerned.

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17. However, the fact that appellant No. 1 had given knife blow which has pierced through the chest and has also pierced the lung, the gravity of the blow and the dimension of the injury clearly proves that appellant No.1 had the intention and knowledge of killing the deceased Yashpal, and therefore, the appellant No. 1 used knife at the most vital part of the body affecting chest and lung with the knowledge that such injury will definitely cause death to the deceased Yashpal in the ordinary course of nature. In that view of the matter we are of the considered opinion that it is a clear case of Section 302, IPC. The conviction and sentence awarded to the appellant No. 1 by both the trial Court as well as the High Court is affirmed. The conviction and sentence with respect to appellant No. 1 is upheld.

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18. Accordingly, the appeal so far as appellant No. 1 is concerned, is dismissed.

19. However, the appeal in respect of appellants Nos. 2 and 3 is hereby allowed. The conviction and sentence of appellant No. 2 and 3 are hereby set aside. They are set at liberty. They shall be released forthwith if they are not wanted in any other case.

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20. The appeal is disposed of in terms of aforesaid order.

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B.B.B.

Appeal disposed of.