

A

STATE OF M.P.

V.

MUNSHI SINGH & ORS.

Criminal Appeal No. 962 of 2005

APRIL 23, 2009

B

**(DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.)**

Penal Code, 1860/Evidence Act, 1872:

C

*S.302 – Murder – Eye-witnesses found not reliable – Trial Court acquitting the accused – Appeal thereagainst was dismissed by High Court – On appeal, **Held:** High Court noticed that trial court referred to various infirmities in the evidence of eye-witnesses – Their presence at the spot doubtful – Ballistic expert's report contrary to the evidence of eye-witnesses – No infirmity in the judgment of High Court to warrant interference.*

D

**CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 962 of 2005**

E

From the Judgement and Order dated 25.04.2003 of the Hon'ble High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in Criminal Appeal No. 330 of 1989.

Siddhartha Dave, Jemtiben AO, Vibha Datta Makhija, for the Appellant.

S.K. Dubey, Lakhan Singh Chauhan, C.R. Mishra, Anil Shrivastava, for the Respondent.

The Judgement of the Court was delivered by

G

DR. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment of a Division Bench of Madhya Pradesh High Court, Gwalior Bench,

H

dismissing the appeal filed by the State. By the said Appeal the State had challenged the acquittal of the respondents. Since during the pendency of the appeal, accused Sarman Singh, Rameshwar and Shriam had died, the High Court had dismissed the appeal against them as having abated and their names were deleted from the array of the parties.

As per prosecution version the occurrence leading to the death of Sobran (hereinafter referred to as 'deceased') was as follows:

On 31/12/82 deceased Sobran and his nephew Hariom (PW.13) were going to fetch water. Suddenly Sarman Singh (since dead) armed with 12 bore gun and Munshi Singh (R1) armed with Mouzer Rifle fired gun shots on the deceased. Hariom (PW.13) ran for safety and saw Rameshwar (since dead) armed with 12 bore gun, Hari Singh @ Babu Singh (R2) armed with muzzle loading gun, Shriram (since dead) armed with single barrel gun, Chhote Singh (R3) and Veerendra Singh (R6) armed with country made pistols standing near the well of Chamars. They fired three or four gun shots on Hariom (PW.13) who was however not injured. Hariom (PW.13) ran towards field and saw Bhagwati (R5) and Rukum Singh (R4) standing near telephone pole. These respondents followed Hariom (PW.13) for some distance but Hariom (PW.13) succeeded in running for safety. Hariom (PW.13) told about the incident to Ramgopal, Bhogiram (PW.6), Bhagat Singh (PW.7) and Jaswant Singh (PW.8). Hariom (PW.13) reported the matter to Shiv Prasad (PW.2), Head Constable who was posted as a security guard in the village at the house of Munshi Singh (R1). Deceased had died on the spot due to gun shot injuries. Later on a mouser rifle was seized from Munshi Singh (R1) vide Ex.P/1. Two 12 bore empties and three brass empties were handed over to Police by Hariom (PW.13) vide Ex.P/6. Ballistic expert vide Ex.P/20 found that empties seized were not fired from the rifle seized from Munshi Singh (R1). Dr. P.C.Mittal (PW.9) found two entry

A wounds of gun sot in the back of deceased with three exit wounds on left side of neck and chest vide Ex.P/10.

B After investigation was completed, charge sheet was filed. The accused persons pleaded not guilty in the case and claimed that they have been falsely implicated on account of longstanding disputes. The trial court analysed the evidence, particularly of Hari Om (PW.13) Jaldevi (PW.12), mother of the deceased, and Bhagat (PW.7). The trial Court found the evidence of the so-called eye witnesses to be not reliable and, accordingly, directed their acquittal.

C Before the High Court, the stand of the State was that the evidence of PW 7, 12 and 13 could not have been discarded. The High Court analysed the evidence in detail and held that the trial Court was justified in discarding the prosecution version and, therefore, it also dismissed the appeal.

D In support of the appeal, learned counsel for the appellant reiterated the stand taken before the High Court that the evidence of three eye witnesses could not have been discarded. Learned counsel for the respondent supported the judgment of the High Court.

E The power of the High Court while hearing an appeal against acquittal is as wide and comprehensive as in an appeal against the conviction and it has full power to re-appreciate the entire evidence, but if two views on the evidence are possible, one supporting the acquittal and the other indicating conviction, then, the High Court would not be justified in interfering with the acquittal, merely because it is of the view that sitting as a trial Court, a different view could have been taken. But if the judgment of the trial Court is admittedly perverse, legally erroneous and based on a wrong appreciation of the evidence, then it cannot but be just and proper for the High court to reverse the judgment of acquittal recorded by the trial Court as otherwise there would be gross miscarriage of justice.

H In the instant case, the High Court noticed that the trial Court

referred to the various infirmities in the evidence of so-called A
eye witnesses PW.7, 12 and 13. Their presence at the spot as
claimed was doubtful. The ballistic expert's report was also
contrary to the evidence of PW.7, 12 and 13.

Above being the position, we find no infirmity in the B
impugned judgment of the High Court to warrant interference.

The appeal fails and is dismissed.

G.N.

Appeal dismissed.