

STATE OF U.P.

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v.

RAGHUVIR AND ANR. ETC. ETC.

(Criminal Appeal Nos. 2175-2177 of 2017)

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DECEMBER 13, 2017

[R. BANUMATHI AND UDAY UMESH LALIT, JJ.]

Penal Code, 1860: s. 302 – Conviction and sentence under – Correctness of – Prosecution case that accused in ambush extended exhortation and fired at the victim resulting in his death – Motive for the crime was enmity between the parties – Accused persons convicted u/s. 302 and sentenced to life imprisonment on the basis of the credible and trustworthy evidence of eye witnesses, recovery of the gun from accused ‘P’, and opinion of the ballistic report – High Court acquitted the accused – On appeal, held: Trial court had accepted the explanation offered by the prosecution for the delay in lodging FIR – High Court ought not to have interfered with the same – High Court did not properly appreciate the evidence of eye witnesses and recovery of gun from accused ‘P’ and the opinion of ballistic expert that empty cartridges recovered from the scene of occurrence were fired from the gun recovered from the accused ‘P’ – Grounds on which the High Court reversed the judgment of the trial court not adequate – High Court misdirected itself in appreciating the evidence before it and the reasonings for acquittal of accused ‘P’ not sustainable – Insofar as the other three accused no other substantial evidence corroborating the evidence of eye witnesses – In absence thereof, the High Court rightly extended the benefit of doubt to them – Conviction of accused ‘P’ u/s.302 and sentence of life imprisonment by the trial court upheld – Evidence – FIR.

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FIR: Delay in lodging of – Effect – Held: Delay in lodging of complaint and the registration of FIR is normally viewed with suspicion because there is a possibility of concoction and the courts should subject evidence as well as contents of FIR to careful scrutiny

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- A – *Whether the case of the prosecution is to be registered on the ground of delay in FIR, depends upon facts and circumstances of each case.*

- Evidence: Opinion of the ballistic report, when not put to the accused u/s. 313 Cr.P.C. – Effect, on prosecution case – Held: Object of s.313 Cr.P.C. is to put a circumstance against the accused so that he may meet out the prosecution case and explain the circumstances brought out by the prosecution to implicate him in the commission of the offence – If any circumstance had not been put to the accused in his statement, the same shall be excluded from consideration, subject to the condition whether omission to put the question u/s. 313 has caused miscarriage of justice or prejudice to the accused – In the instant case, recovery of gun from accused P and the ballistic expert's opinion is only a corroborative piece of evidence strengthening the prosecution case as established by the oral testimony of eye witnesses – Even assuming that the question regarding the ballistic expert's evidence was not put to the accused u/s.313, on facts, it caused no prejudice to the accused – Thus, the High Court not right in brushing aside this formidable circumstance against accused P – Code of Criminal Procedure, 1973 – s. 313.*

- E ***Pancho v. State of Haryana (2011) 10 SCC 165 : [2011] 12 SCR 1173 – distinguished.***

Case Law Reference

- F **[2011] 12 SCR 1173 distinguished Para 11**
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 2175-2177 of 2017.

From the Judgment and Order dated 18.12.2012 of the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Appeal Nos. 745, 841 and 891 of 2009.

- G **Ratnakar Das, Sr. Adv, Manoj K. Mishra, Ashutosh Kumar Sharma, Kamendra Mishra, Advs for the Appellant.**

Ajay Veer Singh Jain, Atul Agarwal, Uday Ram Bokadia, Ms. Divya Garg, Rakesh Kumar Khare, Rahul Poonia, Alok Mohan, Sonal Jain, Advs for the Respondents.

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The Order of the Court was passed by

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R. BANUMATHI, J. 1. Leave granted.

2. These appeals preferred by the State of U.P. challenges the judgment of the High Court of Allahabad in Criminal Appeal Nos.745 of 2009, 841 of 2009 and 891 of 2009 acquitting the respondents under Section 302 IPC by setting aside their conviction and the sentence of life imprisonment imposed upon them.

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3. Case of the prosecution is that on 30.07.2003, informant Bharat Singh along with his son Lallu Singh, Shivpati wife of Lallu Singh, Dheerendra Singh (PW-1), Monu (PW-2) and Meenu were returning home after working in their fields at 09.00 P.M. At about 09.00 P.M., when they reached near huts constructed near the field of Hanuman alias Mana, then in ambush Prem Bhujva, Raghuvir, Mehngu and Prem Yadav, extended exhortation and fired at Lallu Singh with country-made pistol and guns. Lallu Singh died on the spot and all the accused persons ran away towards the village.

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4. The incident is stated to be the result of an enmity culminating into hatching of conspiracy by the accused due to a *Marpit* taken place three days prior to the incident between Sriram Gupta and Shiv Charan on one side and the deceased on the other wherein they had threatened the deceased to kill. On account of heavy rain during night and due to fear of the accused, the incident was not reported on the same night.

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5. Bharat Singh lodged complaint (Ex.A1) on the next day i.e. on 31.07.2003 at 10.00 a.m., based on which FIR No.103 of 2003 (Ex.A3) was registered under Section 302 IPC read with Section 120B IPC. Upon completion of investigation, chargesheet was filed under Section 302 read with Section 34 IPC and Section 120B IPC on 17.10.2003 against the accused Prem Bhujva, Raghuvir, Mehngu and Prem Yadav with two others Shiv Charan and Ram Gupta.

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6. The trial court examined seven prosecution witnesses including two eye witnesses Dheerendra Singh (PW-1) and Monu (PW-2), PW-3-SI Dharampal Singh, PW-4-Dr. Rajesh Kumar Srivastava who conducted post mortem (Ex. A4) and PWs 4 to 7 who were other witnesses and investigating officer. Upon consideration of evidence, the trial court held that evidence of eye witnesses PW-1 and PW-2 is credible

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A and trustworthy. Based upon the evidence of eye witnesses PW-1 and
PW-2, the trial court held that gun was recovered from the possession
of accused Prem Yadav and as per the ballistic report, the gun recovered
from the possession of accused Prem Yadav tallied with the empty
cartridges recovered from the place of occurrence and on those findings,
B the trial court convicted all the four accused persons under Section 302
IPC and sentenced each of them to undergo imprisonment for life and a
fine of Rs.5,000/- was imposed on each of them with default clause.

7. Aggrieved by the conviction, the respondents/accused filed
criminal appeal before the High Court. The High Court set aside the
conviction and held that the delay in lodging FIR has not been satisfactorily
C explained. The High Court held that the evidence and incriminating
circumstances are not sufficient to hold the accused guilty and reversed
the judgment of the trial court and acquitted all the accused. Being
aggrieved, the State has preferred these appeals.

D 8. We have heard learned counsel for the parties and perused the
impugned judgment and materials on record.

9. Dheerendra Singh (PW-1) and Monu (PW-2) have consistently
stated that on 30.07.2003, after working in the field, they were returning
to their houses at around 09.00 P.M. along with Lallu Singh and Shivpati
wife of Lallu Singh. They further stated that when they reached the
huts constructed near the field of Hanuman alias Mana, accused Prem
E Bhujva, Raghuvir, Mehngu and Prem Yadav in ambush came and hurled
abuses on Lallu Singh. The first shot fired by Prem Yadav and thereafter,
all the other three accused also fired. On seeing the people coming near
them, the accused persons fled away from the scene of occurrence.
F The motive for the crime is stated to be an occurrence about 2-3 days
prior to the incident i.e. a quarrel between the accused persons namely
Shiv Charan and Ram Gupta with deceased Lallu Singh. PW-1 and
PW-2 have stated that they were standing at about four-five steps behind
the deceased and the accused persons were about seven-eight steps in
front of Lallu Singh. PW-1 and PW-2 categorically stated that first
G round of fire was shot by accused Prem Yadav from his gun and then
the remaining accused fired from their pistols.

10. Dheerendra Singh (PW-1) and Monu (PW-2) are the nephew
of deceased Lallu Singh and grandson of complainant Bharat Singh. As
pointed out by the trial court, PW-1 and PW-2 being related to deceased
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[R. BANUMATHI, J.]

Lallu Singh, it is quite natural that after working in the fields, while returning to their houses, they accompanied the deceased Lallu Singh. PW-1 and PW-2 have stated that though it was night time, they were able to recognize the accused persons in torch light. Accused Prem Bhujva is from the same village as of deceased Lallu Singh i.e. Devmai and the remaining three accused persons are from village Diwan Kheda which is situated at a distance of one kilometer from their village. The trial court which had the opportunity of seeing and observing the demeanour of PW-1 and PW-2, found that evidence of PW-1 and PW-2 is trustworthy and their identification of the accused persons cannot be doubted. The High Court, in our view, was not right in doubting the evidence of PW-1 and PW-2 and upset the verdict of conviction.

11. From the scene of occurrence, three empty cartridges and one live cartridge were recovered (Ex.A13) by the Investigating Officer-Pravesh Chandra Chaturvedi (PW-7). The gun was recovered from the accused Prem Yadav on 08.08.2003. The gun recovered from the accused Prem Yadav and the empty cartridges were sent to the ballistic expert for comparison which reached the ballistic expert on 04.11.2003. The ballistic expert in his report (Ex.A14) opined that the empty cartridges recovered from the scene of occurrence were found to be shot from the same gun which was recovered from accused Prem Yadav and this is a militating circumstance against the accused Prem Yadav. This strong incriminating circumstance was brushed aside by the High Court on the ground that the opinion of the ballistic expert was not put to the accused under Section 313 Cr.P.C. Placing reliance upon *Pancho v. State of Haryana* (2011) 10 SCC 165, the High Court observed that the opinion of ballistic expert (Ex. A14) cannot be held against the accused Prem Yadav. In *Pancho case* relied upon by the High Court, there was no evidence to show that during the period of six months, in whose custody the pistol was kept. The facts of the said case are different and the said decision may not be applicable to the present case. In the case in hand, three empty cartridges and one live cartridge were recovered from the place of incident. The gun was recovered from accused Prem Yadav on 08.08.2003. Merely because there was a delay in receipt of gun and the empty cartridges by the ballistic expert, the incriminating circumstances emanating from the opinion of the ballistic expert cannot be brushed aside.

A 12. Moreover, for relying upon the opinion of the ballistic expert,
the High Court observed that no question was put to the accused under
Section 313 Cr.P.C about ballistic expert report (Ex. A14). The object
of Section 313 Cr.P.C. is to put a circumstance against the accused so
that he may meet out the prosecution case and explain the circumstances
B brought out by the prosecution to implicate him in the commission of the
offence. If any circumstance had not been put to the accused in his
statement, the same shall be excluded from consideration. Of course,
this is subject to a rider whether omission to put the question under
Section 313 Cr.P.C. has caused miscarriage of justice or prejudice to the
accused. As pointed out earlier, in the case in hand, recovery of gun
C from the accused Prem Yadav and the ballistic expert's opinion (Ex.
A14) is only a corroborative piece of evidence strengthening the
prosecution case as established by the oral testimony of eye witnesses
PW-1 and PW-2. Even assuming that the question regarding the ballistic
expert's evidence has not been put to the accused under Section 313
D Cr.P.C., in the facts and circumstances of the case in hand, it must be
held that it has caused no prejudice to the accused. In our considered
view, the High Court was not right in brushing aside this formidable
circumstance against accused Prem Yadav.

E 13. For doubting the prosecution case and for acquitting the
accused, the High Court *inter alia* reasoned:- (i) inconsistency between
evidence of PW-1 and PW-2; (ii) whether it was raining or not on the
night of 30.07.2003; (iii) PW-1 and PW-2 stated that there were four
shots but the deceased had only two fire-arm injuries; (iv) two lacerated
injuries found on the body of the deceased Lallu Singh were not explained;
and (v) that the members of the family who were along with the deceased
F Lallu Singh must have received injuries; absence of such injuries raise
doubt about the prosecution case. The above reasonings recorded by
the High Court, in our considered view, are not adequate to doubt the
credibility of the eye witnesses PW-1 and PW-2. As pointed out earlier,
PW-1 and PW-2 were about five-six steps behind the deceased and the
accused were about seven-eight steps in front of the deceased. Since
G the gun shots were fired at the deceased, others in the complainant
party may not have sustained gun-shot injuries or they might have tried
to protect themselves.

H 14. So far as the injuries sustained by the deceased Lallu Singh
are concerned, PW-4-Dr. Rajesh Kumar Srivastava has noted the
following gun-shot injuries on the body of the deceased:-

“1. One Entry wound made by bullet towards left side of chest measuring 3 cm × 2 cm × deep up to Guha, 2.5 cm below the left nipple, towards inner and back side. Its edges were towards inside having reddish. A

2. Entry wound of bullet located on left side at upper portion on the mid auxiliary line measuring 3 cm × 2 cm × deep up to bone, 3 cm below the edge of left rib cage, whose direction was towards inside and slightly below. Its edges were turned inside and were blackish in colour.” B

Even though PW-1 and PW-2 have stated that there were four shots, two gun shots might have hit the deceased as there were only two gun-shot injuries and other shots might have missed the target. There is no justification for blowing such trivial discrepancies to doubt the evidence of PW-1 and PW-2 and the prosecution case and the High Court could not have referred to the same, much less relied upon the same to reverse the verdict of conviction. So far as contradiction in the evidence of PW-1 and PW-2 is concerned, in our considered view, the discrepancies pointed out by the High Court neither affect the credibility of PW-1 and PW-2 nor is fatal to the prosecution case. C D

15. For reversing the judgment of the trial court, the High Court mainly relied upon the delay in lodging the FIR. The occurrence was at about 09.00 P.M. on 30.07.2003 and the FIR was registered on 31.07.2003 at about 10.00 A.M. The prosecution has explained the delay stating that on account of heavy rain during the night and fearing of the accused persons, the complainant party could not lodge the complaint on the night of 30.07.2003. After detailed analysis, the trial court had accepted the explanation offered by the prosecution for the delay. We find no good ground as to why the High Court had taken the different view. Of course, delay in lodging of complaint and the registration of FIR is normally viewed with suspicion because there is a possibility of concoction and the courts should subject evidence as well as contents of FIR to careful scrutiny. Whether the case of the prosecution is to be registered on the ground of delay in FIR, depends upon facts and circumstances of each case. In the present case, as discussed earlier, the prosecution has explained the delay in lodging the complaint that is due to heavy rain and fear of the accused. The High Court, in our view, ought not to have interfered with the same merely on the ground of delay in setting the law in motion. E F G

A 16. The High Court has not properly appreciated the evidence of eye witnesses PW-1 and PW-2 and recovery of gun from the accused Prem Yadav and the opinion of ballistic expert that empty cartridges recovered from the scene of occurrence were fired from the gun recovered from the accused Prem Yadav. The grounds on which the High Court reversed the judgment of the Sessions Court were not adequate. The High Court has misdirected itself in appreciating the evidence before it and the reasonings for acquittal of accused Prem Yadav are not sustainable.

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C 17. Insofar as the other accused Prem Bhujva, Raghuvir and Mehngu, we do not find any other substantial evidence corroborating the evidence of eye witnesses PW-1 and PW-2. Two empty cartridges recovered from the scene of occurrence, were fired from the gun recovered from the accused Prem Yadav. In the absence of any other corroborative evidence, the High Court rightly extended the benefit of doubt to the other three accused viz., Prem Bhujva, Raghuvir and Mehngu.

D 18. In the result, the appeal preferred by the State pertaining to accused Prem Yadav is allowed. The conviction of accused Prem Yadav under Section 302 IPC and the sentence of life imprisonment awarded by the trial court are confirmed. The accused Prem Yadav shall surrender/taken to custody to serve the remaining sentence.

E 19. Insofar as the appeals preferred by the State, pertaining to Prem Bhujva, Raghuvir and Mehngu, are dismissed.