CASE NO.:
Appeal (crl.) 78 of 1996
Appeal (crl.) 79 of 1996

PETITIONER:
Bhim Singh

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 11/12/2002

BENCH:
N.Santosh Hegde, Shivaraj V.Patil & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE,J.

The appellant along with 3 others was charged for offences punishable under Section 302 read with Section 34 IPC and Sections 25 and 27 of the Arms Act (the Act). In the said trial, the appellant was arrayed as accused No.4 (A-4) before the Sessions Judge, Rohtak. After trial, the learned Sessions Judge came to the conclusion that the prosecution has failed to prove the case against all the accused persons and acquitted all of them of the charges. It is relevant to mention herein that during the trial A-1 Kanwar Singh died and the proceedings had abated as against him. Being aggrieved by the order of acquittal, the State preferred an appeal before the High Court of Punjab & Haryana at Chandigarh in Crl. Appeal No.238/DBA/89. The High Court by its judgment dated 9.11.1995 allowed the appeal so far as the present appellant is concerned, and convicted him of an offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life with a fine of Rs.5,000/- in default to further undergo RI for one year. The High Court also found the appellant guilty of an offence punishable under Sections 25 and 27 of the Arms Act and imposed a sentence of RI for one year with a fine of Rs.1,000/-; in default RI for 6 months on that count. It directed both the sentences to run concurrently. The State appeal against the acquittal of A-2 and A-3 was dismissed by the High Court, therefore, the appellant is now before us in this appeal. Briefly stated, the prosecution case is that the accused, the deceased and the complainant were all closely related. There was a dispute between Kanwar Singh A-1 and deceased Hari Om (allegedly murdered by the accused). It is the further case of the prosecution, which, of course, is not disputed, that the appellant in this appeal was serving the Central Reserve Police Force at Jammu was on orders of transfer to Tripura. En route to his place of posting, he had taken some leave to visit his ailing sister at the village, hence, he had come to the village. Pursuant to the said dispute, it is stated that on the night before 16.3.1986 A-1 Kanwar Singh had misbehaved by abusing deceased Hari Om, therefore, deceased Hari Om had decided to lodge a police complaint on the next day i.e. 16.3.1986. With the said intention, it is stated that the deceased Hari Om with PW-3 Raj Bala and PW-7 Gayatri on that day proceeded towards the Police Station at about 9 a.m. and on the way the four accused persons who were hiding in a Nullah waylaid the deceased Hari Om and A-1 shot at him first with a countrymade pistol but the same did not fire. Thereafter, it is stated that the

appellant shot with a single barrel gun at the deceased in the chest and Hari Om died because of the said shot. The incident as stated above, was witnessed by PWs.3 and 7. It is the further case of the prosecution that the accused persons after killing Hari Om threatened PWs.3 and 7 that if they named them they would eliminate their entire family, and fled from the place of the incident. The further case of the prosecution is that on hearing about the incident, PW-6, the brother of PW-3 came to the spot. On his coming, PWs.3 and 7 left him at the spot and proceeded to the Police Station to lodge a complaint which was done around 10.15 a.m. at the Police Station which is stated to be only 3 kms. away from the scene of the occurrence. The complaint in question was lodged by PW-3. The investigating officer after making the necessary diary entries and sending the special report proceeded to the place of the incident along with PWs.3 and 7 and held the inquest. He recorded the statement of witnesses and sent the body for post mortem examination. The post mortem examination conducted by PW-1 has established that the deceased Hari Om died of gun shot injuries. It is the further case of the prosecution that A-2 surrendered before the Police on 20.3.1986 while A-1 and A-3 were arrested on 24.3.1986 and A-4 who had by then joined duty in Tripura was allegedly arrested on 10.4.1986 and brought to the village on 17.4.1986. It is further stated that on a statement made by the appellant, a single barrel .12 bore gun was recovered from the house of A-3 who is the brother of the appellant herein which was kept concealed in the South Western corner of the Chabutra. On the basis of the above material gathered during the investigation the accused persons were charged as stated above, and the learned Sessions Judge having come to the conclusion that the prosecution has failed to establish the case against the accused persons acquitted them while the High Court in appeal has convicted the appellant herein and acquitted the other two accused persons, A-1 in the meanwhile had died.

We have heard learned counsel for the parties and perused the records. The prosecution case as against this appellant rests on the oral evidence of PWs.3 and 7. Apart from the general evidence given as to the motive of A-1 to eliminate deceased Hari Om. So far as the present appellant is concerned, the prosecution also relies upon the alleged recovery of the weapon made from the house of A-3 at the instance of the appellant.

The trial court while discussing the evidence of the prosecution came to the conclusion that the oral evidence of PWs.3 and 4 cannot be relied upon because of the inherent improbabilities found therein. It came to the conclusion that factually if the appellants were hiding in a Nullah and did not want to be identified, there was no need for these accused persons to have come in front of the witnesses so as to make themselves available for identification, because they could have very well shot the deceased from the place where they were hiding. It also came to the conclusion that the evidence of PWs.3 and 7 that accused 2 and 3 held the deceased by his hands while the appellant shot him dead, was also highly improbable because there was no need to have held the deceased when he was available to be shot at point blank range by the appellant. The court noticed that knowing very well that the appellant was using .12 bore gun which sprays pellets, neither A-2 nor A-3 would have dared to hold the deceased from such close range because of the possibility of they also being injured in the process. It also noticed the fact that according to the evidence of the said eye-witnesses, deceased was shot at when he was lying down and he was being held by A-2 and A-3. If that be so, even according to the prosecution evidence itself, there should have been lot of blood at the place

of the incident. On the contrary, the blood was found all over the left thigh and the leg of the victim indicating that the victim must have been shot at when he was standing. It also took note of the fact that both these witnesses were not permanent residents of Gochi village, having been married to persons away from the village and they were admittedly visiting the village. The court also came to the conclusion that the appellant had absolutely no motive to assist A-1 in committing the crime in question because there was no enmity between him and the deceased. As a matter of fact, there was an earlier murder case in which the deceased had given evidence in favour of the family of the appellant against A-1 and so far as A-1 and deceased are concerned, the appellant was equally related. In such a situation the trial court doubted whether the accused would have been a party to such a ghastly murder. The said court also took note of the fact of the defence pleaded by the appellant that on the date of the incident he had left the village by 6 a.m. to proceed to Tripura to join duty and had in fact joined duty there and it was from Tripura that the appellant was arrested. The court also took note of the fact that the apparent conflict in the evidence of PW-5, the photographer and the evidence of PWs.3 and 7 in regard to the time of the incident and correlating the evidence with that of the post mortem report, the court doubted the prosecution case as to the time of the incident. The learned Sessions Judge also doubted the veracity of the recovery of the single barrel gun at the instance of the appellant. On this basis, rejecting the prosecution case, it acquitted all the surviving accused persons.

The High Court on re-appreciation of the evidence came to the conclusion that the evidence of PWs. 3 and 7 is acceptable evidence. The High Court also held that the evidence of PW-5 in regard to the time of occurrence could be an error because of the lapse of time between the date of incident and his evidence. The High Court also accepted the prosecution case that all the accused persons had assembled together the previous night smoking Hukka, it disbelieved the plea of alibi put forth by the appellant and accepted the recovery evidence produced by the prosecution as against this appellant. But significantly, it disbelieved all these evidences including that of the eye-witnesses PWs. 3 and 7, so far as other accused are concerned and dismissed the State appeal as against them, while it allowed the same in regard to the present appellant.

We will now consider the case on the merits of the prosecution case as presented before the courts below. We notice that the appellant was gainfully employed with the CRPF and was visiting the village to see his ailing sister en route to his place of transfer in Tripura. There is no dispute in regard to this fact. There is also no dispute in regard to the fact that this appellant had no special reason to take sides with A-1 in a fight between A-1 and deceased; that too to go to the extent of committing a murder. It does not stand to reason why this appellant who is otherwise gainfully employed would take part in a crime of this nature without there being any special advantage to him nor there being any motive for him to be involved in the crime. The only case put forth by the prosecution in this regard is that the appellant and his brother were supporting A-1 in the dispute between A-1 and the deceased. Assuming that it is true, it cannot be a ground for the appellant to be involved in a murder case that too taking active part. This is as far as the motive goes. In regard to the incident as such, we notice that there is a dispute as to the actual time of occurrence. PWs.3 and 7 have stated that the incident in question had occurred at about 9 or 9.30 a.m. while PW-5 who is a Government photographer, has clearly stated in his examination-in-chief itself that when he went to the village to

take photographs of the dead body, it was an hour after sunrise which was in the month of March, therefore, there was a considerable difference between the two timings which is relevant for the purpose of appreciating the evidence of PWs.3 and 7. The High Court in this regard has found corroboration for PWs. 3 and 7 evidence from the stomach contents of the deceased as found in the P.M. report. We think this piece of evidence cannot always be relied on as conclusive evidence in the absence of there being some other evidence to show when the deceased had his last meal or when the deceased went to answer the call of nature. What intrigues us in this regard is the failure of the prosecution to clarify the time from PW-5 himself who has not been treated as a hostile witness, therefore, if there are two pieces of evidence in regard to the same fact both uncontroverted and uncorroborated then the benefit of doubt must be given to the accused. In the instant case, PW-5's evidence as to the timing has not been challenged by the prosecution. The trial court accepted that version. The High Court refused to believe that solely on the ground that PW-5 had not recorded the time or he might have made mistake because he was giving evidence after considerable time - either of these reasons according to us, is not good enough to reverse the finding of the Sessions Court in this regard.

Coming to the evidence of PWs.3 and 7, we notice they are not the permanent residents of the village Gochi though they have every reason to visit the said village. Therefore, in a manner of speaking, they could be said to be chance witnesses. We also do not find any special reason for these 2 witnesses to have accompanied the deceased when he was going to the Police Station to lodge a complaint. It is rather unusual for a person to take with him two young girls to a Police Station when he had the assistance of other grown up male members available at that time. No special reason whatsoever has been given by the prosecution to establish this unusual conduct. Then we notice from the evidence of these 2 witnesses who have stated that at first all the accused persons were hiding in a Nullah, obviously meaning thereby the accused did not want to disclose their identities. If that be so, as observed by the learned Sessions Judge, they could have very well shot the deceased from where they were hiding; more so because of the fact the appellant being a policeman, used to firearms, could have very well shot at and killed the deceased from where he was hiding. In that background, we are unable to understand the version of the eye-witnesses when they also said that all these 4 accused persons suddenly appeared from their hiding and came in front of the deceased, waylaid him and shot him dead. As observed by learned Sessions Judge, this sounds rather unusual. The next part of the evidence of these eye-witnesses shows that A-1 first pulled the trigger of his revolver which did not fire then this appellant shot at the deceased with his .12 bore gun on his chest. At one stage these witnesses say that deceased was shot at when he was standing; at another stage they say that he was pulled down by A-2 and A-3 who held his hands and was then shot at. These contradictions also throw a doubt in regard to the actual manner in which the accused attacked the deceased. Then as observed by learned Sessions Judge, it is highly unnatural for A-2 and A-3 to have held the deceased at such a close range while the appellant shot at him with the .12 bore gun which sprays pellets. As observed by the learned Sessions Judge, no sensible person would incur the risk of standing close to the victim when he is being shot at by a .12 bore gun from a close range. In our opinion, these statements made by PWs. 3 and 7 are referred to us hereinabove, create sufficient suspicion in our minds to accept their evidence. Then we notice even the High Court has rejected the evidence of these witnesses in regard to

A-2 and A-3. We do not find from the judgment of the High Court any special reason why their evidence which was not acceptable in regard to A-2 and A-3 can be accepted in regard to the appellant. Therefore, we think it not safe to rely on the evidence of these eye-witnesses.

The High Court has relied on the recovery of a .12 bore gun at the instance of the appellant while the Sessions Judge has not placed any reliance on this recovery. It is seen from the records that before the appellant was brought to the village, the house of A-3 was searched by the Police and they did not find any weapon. It is a few days thereafter when the appellant was arrested. The prosecution alleges that on the basis of his statement the recovery of the gun was made from the Chabutra near the house of A-3. The panch witness for this recovery has not supported the prosecution case. In such a situation and in the background of the fact that on an earlier search of the house, the police were unable to recover this gun it becomes doubtful whether a recovery as stated by the investigating agency can be believed, more so the panch witness has not supported the recovery. Therefore, in our opinion even the recovery allegedly made at the instance of the appellant cannot be relied upon. If this be the conclusion in regard to the prosecution case we think it is not necessary to go into the defence put forth by the appellant because the prosecution should either succeed or fail on its own case. In the instant case we agree with the learned Sessions Judge that the prosecution has not established its case even against the appellant and the High Court was in error in selectively accepting the evidence tendered by the prosecution in regard to the appellant to come to the conclusion that he is guilty of the offence charged.

Before concluding, we would like to point out that this Court in number of cases has held that an Appellate Court entertaining an appeal from the judgment of acquittal by the trial court though entitled to re-appreciate the evidence and come to an independent conclusion it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the Appellate Court comes to the conclusion that the view taken by the trial court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court. [See : M/s. Mohanlal Hargovind Dass vs. Ram Narain & Ors. (1979 (3) SCC 279), State of Punjab vs. Balraj Singh alias Chhajju (1978 (3) SCC 129), State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar (1981 (3) SCC 199) and Ram Kumar Pandey vs. State of Madhya Pradesh (1975 (3) SCC 815)]. In the instant case also we find that the trial court had taken a view which the High Court has not held to be either perverse, unreasonable or a finding which is not based on evidence, still on re-appreciation of the evidence, the High Court came to a different conclusion which on facts of this case and on the basis of the ratio of the law laid down by this Court in the above cited cases cannot be sustained.

For the reasons stated above, these appeals succeed. The judgment and conviction recorded by the High Court as against this appellant is set aside. The appeals are allowed. We are informed that the appellant is on Bail. His Bail Bonds shall stand discharged.