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Cr1.A.No. 314 OF 1995  
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ITEM NO.101 (Part-Heard) COURT NO.06 SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO.314 OF 1995@@  
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STATE OF U.P. ... APPELLANT(S)

VERSUS

PRAGI & ORS. ... RESPONDENT(S)

Date: 11/09/2002. This/These matter(s) were called on for hearing today.@@  
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CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s) Mr. Praveen Swarup, Adv.  
Ms. Pareena Swarup, Adv.  
Mr. Pramod Swarup, Adv.

For Respondent(s) Mr. K.B. Sinha, Sr. Adv.  
Mr. Rajeev Kumar Singh, Adv.  
Mr. Sunil Kumar Singh, Adv.  
Mr. Anil K. Jha, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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Mr. Praveen Swarup, learned counsel appearing in support of the appeal commenced his arguments at 10.30 A.M. and concluded at 11.00 A.M. Thereafter Mr. K.B. Sinha, learned senior counsel appearing for the respondents addressed the Court for ten minutes.

The appeal is dismissed in terms of the signed order.

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(K.K. Chawla) (Shelly Sengupta)@@  
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Court Master Court Master

[Signed order is placed on the file]

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CRIMINAL APPEAL NO.314 OF 1995@@  
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STATE OF U.P.

APPELLANT

VERSUS

PRAGI & ORS.

RESPONDENTS

O R D E R@@  
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The accused persons Pragi, Badri, and Jhalla (respondents herein) along with one Debia (since deceased) were committed to the Court of Sessions and stood the trial under Section 302 of the Indian Penal Code. The charge as framed was under Section 302 of the Indian Penal Code read with Section 34 of the Indian Penal Code for committing the murder of one Maiya Din by intentionally causing his death on 24.3.1976 at 1.00 P.M. The accused persons denied the charge and claimed to be tried.

The learned IIIrd Additional Sessions Judge, Hamirpur on perusal of the evidence on record did find them guilty and passed an order of conviction and sentence to imprisonment for life.  
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In appeal, however, the High Court, on perusal of the records, thought it prudent to set aside the order and acquitted the accused persons. Hence, the appeal by the State under Article 136 of the Constitution before this Court.

Needless to record that the Apex Court of the country under Article 136 ought not to scrutinise the evidence on record afresh, save what is required for the interest of justice. While it is true that in normal circumstances, the Apex Court would not intervene but in the contextual facts what we find is an order of reversal from that of the Sessions Court judgment as such thought it fit to grant leave for further scrutiny of the matter in issue.

The case of the prosecution is that on 24.3.1976 at about 1.00 P.M. in the noon Hari Singh (PW.3) and Har Prasad (PW.2) were present in the Khalihan of Har Prasad where Siya Ram (PW.1) was also thrashing the crop under hoop of bullocks. All of them saw the four accused  
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persons, namely, Pragi, Badri, Jhalla and Debia whereas the first three were armed with guns,

Debia (since deceased) the fourth accused was armed with Bhala (spear) who were coming from the side of the village and just then when Maiya Din (deceased) came from Brahma river side, the three accused persons Pragi, Badri and Jhalla fired gun shot on him and the assailants then ran away towards the river Brahma. Maiya Din as a result of the gun shot injuries fell down on the spot and it was Hari Singh who made the necessary arrangements to proceed to the police station. Maiya Din breathed his last and succumbed to his injuries on the way to the police station. Head Constable of the police station concerned Sheo Pujan Singh on the basis of the oral information prepared the report and registered the case at about 7.20 P.M. The dead body was, however, taken possession of upon completion of all the formalities and was sent for post mortem examination.

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In the normal course of events, we would not have delved into the nature of the injuries but by reason of the fact that some controversy arises as regards the use of spear, the nature of injuries ought also to be noticed:-

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"1. One gun shot wound of entry 2" x 2" x muscle deep in the right lateral gutal region reaching the deep lateral legement and hip bone. The muscle were badly lacerated in which 20 pellets were acherent one tikli was also found at the wound. The neck of the right femur is fractured into pieces around the wound the marks of gun pillets were present measuring 1/10 x 1/10 inches.

2. One gun shot wound of entry left hypotherer ininence 2" x 1 1/2" with the tikli and entry of wound.

3. One gun shot wound of exit left wrist back 2 1/2" x 2 1/2" communicating with injury No.2. The left wrist bones and cover both fore-arms bones were fractured (Pachetiro).

4. One gun shot wound 1 1/2" x 1 1/2" on the left fore arm anterior and middle 1/3".

5. One gun shot wound 2" x 2" posterior or left arm lower third communicating injury No.4. The intering bones of fore arm were fractured.

6. One gun shot wound in entry 1/2" x 3/4" on the right abdomen anterior side above the level and cebicous entering the

peritoneum lever and right lower lop of lung. One bullet is lodged in the lower lob of lung. (Panchetros).

7. One gun shot wound of entry 1/2" x 1/2" on the left hypochonderum traversing the anterior a abdominal wall and comentum, and anterior all of stomach was laceraturred badly and gaping of 6" to 4" was present. One bullet was lodged in the distal part of stomach.

8. Gun shot wound of entry No.8, 9, 11, 12, 13, 14, 15 17, 21, 22, measuring 1/3" x 1/3" on the right side of abdomen into the abdomen wall. Large and small bowel. Two bullets were lodged in the right illac bone inner side after travelling the urinary bladder.

9. 5 incised wound 1/2" x 1/4" to 3/4" x 1/4" on the left side of abdominal wall penetrating the cavity and wound No.2 is entering in spleen penetrating is 3/4" x 1/4" at interior side."

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The doctor who prepared the post mortem report was examined and in the opinion of the doctor, the death was due to shock and haemorrhage as a result of gun shot injuries and injury No.9 which might have occurred on 24.3.1976 at 1.00 P.M. He further opined that whereas injury nos. 1 to 8 were supposed to be gun shot injuries, injury No.9 has been ascribed to be caused by some sharp pointed weapon like bhala (spear).

PW.1 Siya Ram, PW.2 Har Prasad and PW.3 Hari Singh being the complainant in the present proceeding were examined and who in fact did lend support by their oral testimony to the incident as made out in the first information report. In the cross-examination, however, there is some amount of embellishment when noticed by the High Court inasmuch as the use of the spear and the injury caused by the spear was not mentioned at all. Thus, injury No.9 had no foundation in the first information report. It is the existence of these injuries on the body of the person concerned that created some doubt in the mind of the Court and the High Court in no uncertain terms records the same. The High Court in its judgment noted that:

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"Again it follows that incised wounds

would not have been caused prior to the firing the reason being that if the deceased was attacked. By the spear prior to starting of the firing he would have raised hue and cry and the witnesses attraction towards the scene of occurrence should have been due to the shouting of the deceased and not firing of the gun. Similarly, if the incised wounds have been caused after the gun shots were heard then the witnesses should have been in a position to see and testify about which none of them have deposed. Under the

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circumstances, the existence of five incised wounds on the person of the deceased remains wholly unexplained."

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This particular episode of spear injuries has also made the High Court to observe about the evidentiary value of the eye witnesses account since in the cross-examination the supposed eye witnesses stated that they had heard the fire shots first and thereafter turn towards the place of incident and then made a run towards the place of occurrence wherein they saw the appellants were running away from behind and it is on this score - High Court recorded that the eye witnesses thus cannot admittedly witness when the firing did take place. We also do record our concurrence with the observations of the High Court. Eye witnesses account cannot be equated with that of any inferential evidence or any circumstantial evidence being tagged with one another. The case with which the prosecution came to the Court was definitely proceeded on the basis of the presence of the eye witnesses and not a case on circumstantial evidence and in the event the case proceed on such a basis none exception could be taken, but records depict otherwise in the contextual facts.

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On the wake of the aforesaid, we do feel it expedient to record that the matter does not warrant any intervention by this Court under Article 136 of the Constitution. The weight of evidence as has been attributed to the eye witnesses account by the High Court cannot be termed erroneous in any way. As such, this appeal fails and thus stands dismissed. The bail bonds shall stand discharged.

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.....J.  
(U.C. Banerjee)

.....J.

(D.M. Dharmadhikari)

New Delhi,  
September 11, 2002.