

ITEM NO.104

COURT NO.7

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 898 OF 2007

HARI SINGH

Appellant (s)

VERSUS

STATE OF M.P

Respondent(s)

(With office report)

Date: 03/08/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI  
HON'BLE MR. JUSTICE C.K. PRASAD

For Appellant(s)

Dr. Sushil Balwada, Adv.  
Mr. Sattri Pillania, Adv.  
Mr. Arun K. Singh, Adv.

For Respondent(s)

Mr. Siddharth Dave, Adv.  
Ms. Vibha Datta Makhija, Adv.  
Ms. Jemtiben Ao, Adv.

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

The appeal is dismissed in terms of the signed  
reportable order.

(KALYANI GUPTA)  
SR. P.A.

(VINOD KULVI)  
COURT MASTER  
REPORTABLE

CRL.A. NO. 898 OF 2007

[SIGNED REPORTABLE ORDER IS PLACED ON THE FILE.]

CRL.A. NO. 898 OF 2007

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 898

OF 2007

HARI SINGH

.....

APPELLANT

VERSUS

STATE OF M.P.

.....

RESPONDENT

O R D E R

1. This appeal by way of special leave is directed against the concurrent findings of the Additional Sessions Judge and the High Court whereby the appellant stands convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and a fine of Rs.500 and in default thereof to undergo simple imprisonment for a period of two months.

2. The prosecution story is as follows:

2.1 The father of P.W. 1 Ramesh Chander, the first informant, and the deceased Ashok Kumar, was murdered

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several years earlier by the gang of Makhan Singh Daku

and the suspicion was that it had been done at the

instance of the family members of Hari Singh Thakur, the

appellant herein. At about 11:00a.m. On 22/05/198

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P.W. 1 - Ramesh Chander and Ashok Kumar went to the

village well to draw water and were carrying a rope and

a bucket with them for that purpose. At that

very

moment, the appellant Hari Singh also reached the well

carrying his licensed muzzle loading shot gun (Topidar

shot gun) and after hurling abuses at Ashok and saying

that as he had often insulted him he would have his

revenge, fired a shot hitting him in the chest.

Rame

Chander ran to save his brother but the appellant

threatened him with dire consequences on which he ran away. The incident was seen by several other persons

including Kalawati, the mother of Ramesh Chander and the deceased from the house of Captain Patel and in addition several other persons as well.

Ramesh Chander, however,

made his way to police post Kanhar about 7 kms. distant

and the formal FIR was registered at Police Station,

Pahargarh at about 1:30p.m.

The police thereafter

reached the site of incident and the necessary

investigations were made.

The dead body was also sent

for the post mortem examination.

The accused was taken

into custody on 16th June, 1989 and his licensed muzzle

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loading shot gun, the alleged murder weapon, was also seized.

During the course of the investigation, it also transpired that in addition to the above named witnesses

Bharat , P.W. 2 son of Ramesh Chander had also witnessed

the incident from the house of Captain Patel. On the

completion of the investigation, the appellant was

charged and brought to trial as already mentioned above.

The trial court observed that there was absolutely no

reason to doubt the presence of Ramesh Chander, P.W. as

his presence was natural in the light of the fact that

the incident had happened in broad day light when the

two brothers had gone to the village well to draw water.

The argument that Bharat P.W. 2 had not been named in

the FIR creating a doubt as to his presence was also

repelled by observing that Ramesh Chander had apparently

not seen him, as the house of Captain Patel was some

distance away. The Court also observed that though in the FIR it had been mentioned that the injury had been inflicted on the right side of the chest but the post mortem report showed the injury on the left side, was not a material circumstance as it was impossible for any witness to make out as to where a bullet had hit after it had been fired.

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appellant. The judgment aforesaid stands maintained by the High Court as well.

4. Dr. Sushil Balwada, the learned counsel for the appellant has raised several arguments before us today.

He has pointed out that the uncertainty with regard to

the site of the injury cast a doubt on the presence of

Ramesh Chander, P.W.

He has also submitted that P.W. 2

was the son of P.W. 1 and as his name did not figure in

the FIR his presence had not been explained. In

addition, it has been urged that as several other

persons though cited as witnesses had not been examined,

the very substratum of the prosecution story was in

doubt.

5. Mr. Siddharth Dave, the learned counsel for the

State of Madhya Pradesh has, however, supported the

judgments of the courts below. He has pointed out that

in case of a single accused false implication was to be

ruled out more particularly because of the admitted

animosity between the parties going back several years.

He has also submitted that even assuming that there was

some uncertainty with regard to site of the injury in

the ocular evidence, the same had been removed by the

medical evidence as the post mortem examination

chest both to the right and left side, as both lungs had been damaged.

6. We have heard the learned counsel for the parties and perused the record.

7. Two courts have accepted the presence of the two eye witnesses. We see no reason to differ with the findings recorded. It is also true that in the case of

evidence recorded after a long period of time some discrepancies are bound to occur. It is significant that the present incident happened in May, 1989 and the Additional Sessions Judge recorded the conviction in July, 1997 meaning thereby that the evidence had gone on for eight or nine years. We also find that the eye

witness account is fully corroborated by the medical evidence. It is the case of the prosecution that the shot had been fired from about 2 metres. The post mortem report indicates that this is the correct position. We see that there are several wounds of entry spread across the chest and left upper arm with blackening and burning around some of them. The dispersal of pellets and the uneven blackening and burning over the bullet holes suggests that a primitive weapon, (a "topidar" shot gun, a muzzle loading weapon,

gun powder and shot of uncertain quality and quantity, is likely to give uneven and uncertain pellet patterns) could have been used. The doctor also opined that the shot had been fired from about 2 metres from a shot gun.

This fully corresponds with the injuries on the dead body. We also observe that the very promptitude with which the FIR had been registered at the police station supports the veracity of the prosecution story. The

place of incident was 7 kms. away from police station,

Kanhar. The FIR had been lodged within 2 ½ hours after the incident by the brother of the deceased, and as a close relative of the family had been murdered an hour or so would have been taken at the place of incident before Ramesh Chander had left for the police station.

We, therefore, find that the promptitude of the FIR supports the prosecution story.

8. We find no merit in this appeal. Dismissed.

.....J  
[HARJIT SINGH BEDI]

.....J  
[CHANDRAMAULI KR. PRASAD]