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Cr1.A.No. 70 OF 1997
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ITEM No.101 P.H. COURT NO. 7 SECTION II

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

Cr1.A.No. 70/97

Sohan Lal Appellant

VERSUS

State of U.P. Respondent

Date: 30.7.2002. This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE Y.K. SABHARWAL

For Appellant (s)

Mr. Anis Ahmed Khan,adv.
Mr. Gulab Chandra,adv.

For Respondent (s)

Mr. Prashant Chaudhary,adv.for
Mr. Pramod Swarup,adv.

UPON hearing counsel Court made the following
ORDER

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Mr. Anis Ahmed Khan, learned counsel appearing for the appellant started his arguments at 11.10 a.m. and concluded at 11.50 a.m. Thereafter Mr. Prashant Chaudhary, learned counsel appearing for the respondent started his submissions and concluded at 12.30 a.n.
Appeal is allowed.

.SP1

(Suman Wadhwa) (S.Malkani)
Court Master Court Master

Signed order is placed on the file.

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Item No.101 P.H. Court No.7 Draft

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 70 OF 1997 @@
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Sohan Lal ... Appellant

vs.

State of U.P. ... Respondent

ORDER@@
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In this appeal which is filed by Sohan Lal, the judgment of the High Court of Allahabad which is filed by State of U.P. allowing the criminal appeal and setting aside the judgment of the trial court and convicted the appellant under Sec.302 I.P.C. and sentencing him to life imprisonment, is under challenge. The trial court on appreciation of the evidence and on consideration of the probabilities of the case, had acquitted the appellant and the two co-accused Sabu and Munna of all the charges.

The incident took place on 14.7.1978. At about 3.45 p.m. the FIR was lodged with Shahganj police station in the city of Agra by Omvir Singh PW.1 who was a constable attached to a police chowki in Shahganj area. He had gone to the spot for effecting service of summons on some persons. He met his colleague Arvind Kumar, the deceased, who was also a constable attached to the Shahganj police station. The deceased was in plain clothes. The movement of the three accused persons at the spot arouse suspicion in the two

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constables when they tried to catch them. The three accused took to their heels. Somehow the deceased was able to catch hold of accused Sabu. Then the other two accused, appellant and Munna, tried to get Sabu released from the clutches of the deceased. Their attempts did not succeed. Thereafter on the exhortation given by Munna and Sabu, the appellant is alleged to have fired from his revolver. The first shot hit Arvind Kumar. When the appellant fired again aiming at PW-1, the shot hit him. Arvind Kumar was seriously injured and later in the day, succumbed to the injuries. P.W.-5, Rajinder Singh Solanki, Sub Inspector of Police attached to Shahganj Police Station, conducted the initial investigation in the case, examined the eye witnesses - Omvir Singh, PW-1, Puran, PW-2 and Tara Chand, PW-3 and received the post mortem report of Doctor J.K.Aggawal - PW 6. On completion of the investigation the Investigating Officer filed charge-sheet against the three accused persons, under Section 302/307/34/25 IPC and also charged accused Sabu under Section 4/25 of the Arms Act. In course of trial, the eye witnesses - Puran, PW-2 and Tara Chand, PW-3, did not support the prosecution case that left the prosecution with the sole testimony of Omvir Singh, PW-1 to rely upon. The trial court could not serve the reason, which in our view is quiet cogent did not place reliance on the sole testimony of Constable Omvir Singh, PW-1 and accordingly, acquitted the accused persons of all the charges.

The High Court in the appeal filed by the State maintained the order of acquittal so far as the accused Munna and Sabu are concerned. The High Court also confirmed the order of acquittal of the charge under Section 225 IPC in respect of all the accused persons, including appellant Sohan Lal. So far as the charge under Section 302 IPC, the High Court was of the view that the sole testimony of Om Vir Singh, PW-1 could be relied upon and could form the basis of an order of conviction.

Since the entire prosecution case depends on the sole testimony of Omvir Singh, which was not accepted by the learned trial Judge, but accepted and relied upon by the High Court, we have perused the entire evidence. Learned counsel appearing for the appellant drew our attention to certain inherent improbabilities in the testimony of the witness. However, the main thrust of the arguments was regarding the time of despatch of the FIR from the police station to the Magistrate. The date as shown in the FIR is 15th July, 1978 whereas the Investigating Officer in his deposition stated that the FIR was despatched on 14th July, 1978, on the date of the incident and the time was around 8 p.m. He further stated that it was reported on the next date, i.e. 15th July, 1978 at about 8.45 a.m. The contention of the learned counsel for the appellant was that the FIR was

anti time with a view to rope in the appellant as a co-accused in the case and in the absence of an acceptable explanation for the delay in despatch of the FIR, which was very promptly lodged at the Police Station within 15 minutes of the incident. The prosecution case has suffered a fatal blow.

Learned counsel appearing for the respondent - State of U.P. tried to support the judgment of the High Court and contended that the sole testimony of Constable Omvir Singh, P.W.-1, which was found by the High Court to be credible and trustworthy, could form the basis in law of the order of conviction. The judgment of the High Court, submitted the learned counsel, does not suffer from any serious illegality in appreciation of evidence or approach in the case and, therefore, does not call for interference.

On a careful consideration of the matter we are unable to persuade ourselves to maintain the judgment/order passed by the High Court convicting the appellant of the charge under Sec.302 I.P.C. on reversing the judgment of acquittal passed by the learned trial judge. A bare perusal of the judgment of the High Court shows that the Court has not closely applied its mind to the reasons given by the learned trial judge in his judgment for not accepting the sole testimony of PW.1. Another clear position that emanates

from the record of the High Court is that the order of acquittal so far as the other two accused persons Munna and Sabu are concerned which was based on the evidence of PW.1 has been maintained by the High Court. On a perusal of the evidence of PW.1 it is patent that the witness ropes in all the three accused persons in the incident and according to him all of them participated in the crime in the manner stated above. In view of such evidence it is difficult to accept the position that PW.1's testimony so far as two co-accused are concerned was rightly rejected by the learned trial judge but so far as the appellant is concerned the self-saying witness could be relied upon as credible and trustworthy. We do not find any special reason given in the judgment of the High Court for drawing a distinction between the implication of the accused persons in this case. Be it noted here that the entire genesis of the prosecution case was that when constable Arvind Kumar (deceased) had caught hold of Sabu the other two accused tried to get him released from his clutches and since the attempt initially failed firing by Sohan Lal was resorted to. It is relevant to note here that the High Court has confirmed the order of acquittal of all the three accused of the charge under Sec.225 I.P.C. on the ground that there is no material on record to show the case or the offence allegedly committed by accused Sabu for which the two constables who were trying to take him. If this part of the

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prosecution case in our view is very relevant and material has not been accepted by the High Court then the sole testimony of PW.1 cannot be safely relied upon for convicting one of the accused i.e. the appellant of the offence punishable under Sec.302 I.P.C. could be relied upon as the evidence of self-saying.

On the foregoing discussions we allow the appeal set aside the judgment of the High Court and restore the judgment of the trial court. The appellant shall be set at liberty forthwith if his detentiion is not required in any other case.

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.....J.
(D.P. MOHAPATRA)

.....J.
(Y.K. SABHARWAL)

New Delhi;
July 30,2002.