REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1624-1625 OF 2013

HARBEER SINGH ... APPELLANT(S)

:Versus:

SHEESHPAL & ORS. ... RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS.217-218 OF 2013

STATE OF RAJASTHAN ... APPELLANT(S)

:Versus:

SHEESHPAL & ORS. ... RESPONDENT(S)

J U D G M E N T

Pinaki Chandra Ghose, J.

1. These appeals, by special leave, are directed against the judgment and order dated 25th November, 2011, passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur, in D.B. Criminal Appeal No.290/1995 and D.B. Criminal Appeal No.375/1995, whereby the High Court has quashed

and set aside the conviction of the accused respondents. Criminal Appeal Nos.1624-1625 of 2013 are filed by the son of the deceased and Criminal Appeal Nos.217-218 of 2013 are filed by the State of Rajasthan challenging the acquittal order passed by the High Court.

2. The brief facts of the case as unfolded by the prosecution are as follows: On 21.12.1993, at 7.55 P.M., Bhagwara Ram (PW-8), the brother of the deceased Balbir Singh, gave a written report at P.S. Kotwali Sikar, stating that on 21.12.1993 in the evening at about 6.00 P.M., when his younger brother Balbir (deceased) was returning to his house, two men were standing near the Dhaba of Shankar and he started talking to them. In the meantime, Sheeshpal (son of Khuba Ram) came from the side of Sikar driving his Jeep and with an intention to kill, hit Balbir and dragged him upto the Dhaba of Suresh as a result of which Balbir died on the spot. The owner of the Dhaba – Suresh Kumar chased them on his motorcycle. It was further stated that the act was committed by Sheeshpal in furtherance of his old enmity with Balbir in

connivance with Bhanwarlal, Dhanvir, Mangal (sons of Khuba Ram) and Bhanwarlal's brother-in-law Nemichand and Shiv Bhagwan of Village Gothura Tagalan. It is also mentioned in the written report that at the time of the incident, Sheeshpal was driving the jeep and Nemichand, Shiv Bhagwan, Rajendra and Prakash were with him in the Jeep and it is not mentioned that Bhanwarwal was present in the jeep or at the place of occurrence. The names of Dhanvir and Mangal were dropped later on.

3. The Police registered a case under Section 302 of the Indian Penal Code and began investigation. Formal FIR was registered, place of occurrence was inspected, site plan was prepared, post-mortem of the dead body was done, Panchnama of the dead body was prepared and the vehicle used in the crime along with number plate of the vehicle and broken parts was seized. Statements of the witnesses were recorded and during investigation accused persons were taken into custody. After completion of the investigation, accused Bhanwar Lal was declared absconding. Charge sheet was filed

against the accused persons before the learned Magistrate and the case was committed to the Sessions Court for trial. On Bhanwar Lal's presence, his case was also committed as above and both the cases were amalgamated and trial commenced. Charges under Sections 149, 302, 120B of the IPC were framed against all the accused persons except Bhanwar Lal. Accused Bhanwar Lal was charged under Sections 302, 120B of IPC. All the accused persons pleaded 'not guilty' and hence they were tried by the Court of Sessions. The Trial Court convicted the accused persons and sentenced them to life imprisonment under Section 302 read with Section 149 of the IPC. They were also sentenced severally under various sections.

4. Aggrieved by the judgment and order dated 17.06.1995, passed by the Trial Court, the accused persons filed appeals before the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur. The High Court allowed the appeals, set aside the judgment and order passed by the Trial Court and

acquitted all the accused persons. Hence, these appeals, by special leave, are filed before this Court.

5. We have heard the learned counsel appearing for the Appellant as also the learned counsel appearing for the Respondents and perused the oral and documentary evidence on record.

6. The Trial Court convicted the accused relying upon the successful establishment of the following facts by the prosecution:

(a) Death of the deceased due to unnatural reasons vide the evidence of PW4 (medical jurist who conducted the post-mortem of the deceased), Ext. P-12 (post-mortem report), Ext. P-15 (Panchnama), and the evidence of PW8 (complainant);

(b) Hatching of criminal conspiracy to commit the murder of the deceased by accused Bhanwar Lal along with Sheespal, Nemi Chand, Shiv Bhagwan and Rajendra Kumar vide the evidence of PW3 and PW9;

(c) Existence of enmity between accused persons and the deceased;

(d) Formation of an unlawful assembly by the accused Sheeshpal, Nemichand, Shiv Bhagwan, Rajendra Kumar and Prakash having the common object of committing the murder of the deceased vide the evidence of PW8, PW1, PW5, PW6 and PW11;

(e) Use of force and violence in furtherance of the common object by using vehicle RJ–23-C-0203 of Sheeshpal and commission of the offence defined under Section 300, fourthly, of IPC.

7. However, the High Court gave the benefit of doubt to the Respondents and acquitted them on the ground that the prosecution was not able to prove its case beyond all reasonable doubt since the eye-witnesses were interested in the complainant and hence unreliable, while most other prosecution witnesses were chance witnesses. The evidence of the eye-witnesses both as to the fact of the alleged conspiracy and the murder of the deceased, did not inspire confidence;

there were inconsistencies and improvements in the deposition of the prosecution witnesses made over their statements recorded under Section 161 Cr.P.C. Further, there was unexplained delay in recording the evidence of certain prosecution witnesses as well as many important and basic lapses in investigation that made the prosecution case suspicious.

8. Before proceeding with an analysis of various contentions raised by the parties or expressing opinion on the appreciation and findings of fact and law recorded by the Courts below, we wish to reiterate the scope of interference by this Court in a criminal appeal against acquittal under Article 136 of the Constitution of India.

9. In **Himachal Pradesh Administration Vs. Shri Om Prakash,** (1972) 1 SCC 249, it was held by this Court:

> "In appeals against acquittal by special leave under Article 136, this Court has undoubted power to interfere with the findings of fact, no distinction being made between judgments of acquittal and conviction, though in the case of acquittals it will

> not ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court 'acts perversely or otherwise improperly'."

10. The above principle has been reiterated by this Court in a number of judicial decisions and the position of law that emerges from a comprehensive survey of these cases is that in an appeal under Article 136 of the Constitution of India, this Court will not interfere with the judgment of the High Court unless the same is clearly unreasonable or perverse or manifestly illegal or grossly unjust. The mere fact that another view could also have been taken on the evidence on record is not a ground for reversing an order of acquittal. [See **State of U.P. Vs. Harihar Bux Singh & Anr.**, (1975) 3 SCC 167; **State of Uttar Pradesh Vs. Ashok Kumar & Anr.**, (1979) 3 SCC 1; **State of U.P. Vs. Gopi & Ors.**, (1980) Supp. SCC 160; **State of Karnataka Vs. Amajappa & Ors.**, (2003) 9 SCC 468; **State of Uttar Pradesh Vs. Banne @ Baijnath & Ors.**, (2009) 4 SCC 271; **State of U.P. Vs. Gurucharan & Ors.**, (2010) 3 SCC 721; **State of Haryana Vs. Shakuntla & Ors.**, (2012) 5 SCC 171

and **Hamza Vs. Muhammadkutty @ Mani & Ors.**, (2013) 11 SCC 150].

11. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide **Kali Ram Vs. State of Himachal Pradesh,** (1973) 2 SCC 808; **State of Rajasthan Vs. Raja Ram**, (2003) 8 SCC 180; **Chandrappa & Ors. vs. State of Karnataka**, (2007) 4 SCC 415; **Upendra Pradhan Vs. State of Orissa**, (2015) 11 SCC 124 and **Golbar Hussain & Ors. Vs. State of Assam and Anr.**, (2015) 11 SCC 242].

12. Keeping in mind the aforesaid position of law, we shall examine the arguments advanced by the parties as also the evidence and the materials on record and see whether in view of the nature of offence alleged to have been committed by the Respondents, the findings of fact by the High Court call for interference in the facts and circumstances of the case.

13. It has been submitted by the learned counsel for the Appellant that the High Court had erred in ignoring the prosecution evidence which conclusively proved the guilt of the accused persons who had conspired to kill the deceased in a garb of accident. Further, the High Court had also erred in reversing the conviction of the accused persons despite presence of sufficient evidence which indicated involvement of all the accused persons and a complete chain of incriminating circumstances proved by the prosecution.

14. Per contra, the learned counsel for the Respondents has primarily reiterated the reasons that found favour with the High Court in recording an order of acquittal in favour of the

Respondents *viz.* failure of prosecution to prove beyond reasonable doubt that the accused persons Bhanwarlal, Sheeshpal, Nemichand and Shiv Bhagwan hatched criminal conspiracy at the Dhani of Sheeshpal at around 7-8 p.m. on 19.12.1993 and that the prosecution case suffered from contradictions, discrepancies and inconsistencies and, in particular, that the testimony of eye witnesses did not inspire confidence due to the reasons recorded by the High Court.

15. We have given careful consideration to the submissions made by the parties and we are inclined to agree with the observations of the High Court that PW3 and PW9 were not witnesses to the alleged conspiracy between the accused persons since not only the details of the conversation given by these two prosecution witnesses were different but also their presence at the alleged spot at the relevant time seems unnatural in view of the physical condition of PW9 and the distance of Sheeshpal's Dhani from Sikar road. Besides, it appears that there have been improvements in the statements of PW3. The Explanation to Section 162 Cr.P.C. provides that

an omission to state a fact or circumstance in the statement recorded by a police officer under Section 161 Cr.P.C., may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every improvement is not fatal to the prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. [See **Ashok Vishnu Davare Vs. State Of Maharashtra**, (2004) 9 SCC 431; **Radha Kumar Vs. State of Bihar (now Jharkhand)**, (2005) 10 SCC 216; **Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. Vs. State of Maharashtra**, (2010) 13 SCC 657 and **Baldev Singh Vs. State of Punjab**, (2014) 12 SCC 473]. In our view, the High Court had rightly considered these omissions as material omissions amounting to contradictions covered by the Explanation to Section 162 Cr.P.C. Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of

PW3 and PW9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for shock meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard.

16. As regards the incident of murder of the deceased, the prosecution has produced six eye-witnesses to the same. The argument raised against the reliance upon the testimony of these witnesses pertains to the delay in the recording of their statements by the police under Section 161 of Cr.P.C. In the present case, the date of occurrence was 21.12.1993 but the statements of PW1 and PW5 were recorded after two days of incident, i.e., on 23.12.1993. The evidence of PW6 was recorded on 26.12.1993 while the evidence of PW11 was recorded after 10 days of incident, i.e., on 31.12.1993. Further, it is well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony. The Court may rely on such testimony if they are cogent and credible and the delay is explained to the

satisfaction of the Court. [See **Ganeshlal Vs. State of Mahrashtra**, (1992) 3 SCC 106; **Mohd. Khalid Vs. State of W.B.**, (2002) 7 SCC 334; **Prithvi (Minor) Vs. Mam Raj & Ors.**, (2004) 13 SCC 279 and **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**, (2010) 6 SCC 1].

17. However, **Ganesh Bhavan Patel Vs. State Of Maharashtra**, (1978) 4 SCC 371, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. [See also **Balakrushna Swain Vs. State Of Orissa**, (1971) 3 SCC 192; **Maruti Rama Naik Vs. State of Mahrashtra**, (2003) 10 SCC 670 and **Jagjit Singh Vs. State of Punjab**, (2005) 3 SCC 68]. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case.

18. Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony were not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.

19. In **Darya Singh** Vs. **State of Punjab**, AIR 1965 SC 328 = 1964 (7) SCR 397, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said:

> "There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully.....But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the

> said witnesses were chance witnesses or whether they were really present on the scene of the offence. .....If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."

20. However, we do not wish to emphasise that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement.

21. Further, in **Raghubir Singh** Vs. **State of U.P.**, (1972) 3 SCC 79, it has been held that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this connection general reluctance of an average

villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind.

22. The High Court has further noted that there were chance witnesses whose statements should not have been relied upon. Learned counsel for the Respondents has specifically submitted that PW5 and PW6 are chance witnesses whose presence at the place of occurrence was not natural.

23. The defining attributes of a 'chance witness' were explained by Mahajan, J., in the case of **Puran** Vs. **The State of Punjab**, AIR 1953 SC 459. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In **Mousam Singha Roy and Ors.** Vs. **State of W.B.**, (2003) 12 SCC 377, this Court discarded the evidence of chance witnesses while observing that certain glaring

contradictions/omissions in the evidence of PW2 and PW3 and the absence of their names in the FIR has been very lightly discarded by the Courts below. Similarly, **Shankarlal Vs. State of Rajastahan**, (2004) 10 SCC 632, and **Jarnail Singh & Ors. Vs. State of Punjab**, (2009) 9 SCC 719, are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW5 and PW6 were chance witnesses and their statements have been rightly discarded.

25. In the light of the above and other reasons recorded by the High Court, we hold that the evidence of the eye witnesses is not truthful, reliable and trustworthy and hence cannot form the basis of conviction. Their presence at the scene of occurrence at the time of the incident is highly unnatural as also their ability to individually and correctly identify each of the accused from a considerable distance, especially when it was dark at the alleged place of occurrence, is itself suspect.

26. Besides these, the prosecution has also been unable to convincingly connect the jeep of the accused Sheeshpal with the incident beyond reasonable doubt. Further, owing to other lapses in investigation, as recorded by the High Court, we are convinced that the prosecution has been unable to prove its case beyond all reasonable doubt. The view taken by the High Court in the facts and circumstances of the case appears to be a reasonably plausible one.

27. Thus, in the light of the above discussion, we are of the view that the present appeals are devoid of merits, and we find no ground to interfere with the judgment passed by the High Court. The appeals are, accordingly, dismissed.

.....J
(Pinaki Chandra Ghose)

.....J
(Amitava Roy)

New Delhi;
October 20, 2016.