REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1141 OF 2007

MAHAVIR SINGH … APPELLANT

VERSUS

STATE OF MADHYA PRADESH … RESPONDENT

JUDGMENT

N.V. RAMANA, J.

1. This appeal arises out of the judgment and order dated 19th March, 2007 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 36 of 1996 whereby the High Court has partly allowed the appeal preferred by the State by confirming the judgment of the Trial Court for the offence under Section 148 of IPC and convicted the appellant herein for the offence under Section 302, IPC and sentenced him to undergo imprisonment for life.

2. The brief facts of the case as culled out from the case of the prosecution are that on 26th December, 1987 at about 1 p.m. while Gambhir Singh (PW 7) (brother of the deceased) was having lunch at his home, the appellant along with a group of co-accused persons, each armed with deadly weapons rushed to his house hurling abusive filthy words and picked up a quarrel with his brother Jagannath Singh (deceased) who was sitting outside on a platform (*Chabutara*) along with his nephew Bir Singh (PW 11). When Jagannath Singh (deceased) raised objection to their behavior, the appellant fired a gunshot in the abdomen of the deceased as a result of which he fell down on the ground and succumbed to the injuries.

3. Gambhir Singh (P.W. 7) carried the body of the deceased to the police station, Lahar on a bullock cart and lodged the FIR (Annexure P-1) at 4.15 PM on the same day. Dilip Singh Yadav (PW-13) prepared inquest memo and Dr. A. K. Upadhyay (P.W. 12) conducted autopsy on the dead body. On the next day, Dilip Singh Yadav (PW 13) seized blood stained soil and plain soil from the place of occurrence, as per seizure memo. He also seized a gun, 12 live cartridges and 9 empty cartridges from the possession of appellant Mahavir Singh, an axe from Sobaran (co-accused) and a lathi from Kanched Singh (another co-accused) as per seizure memo and sent them to the Forensic Science Laboratory at Sagar. Consequently, statements of witnesses were recorded under section 161 of Cr.P.C., spot map was prepared and Charge-sheet was filed against the appellant under sections 302, 147, 148 and 149 of the IPC in the Court of Judicial Magistrate First Class, Lahar who committed the case to Court of Sessions for Trial. The Trial Court framed charges u/s 302 and 148 of IPC against the appellant and under sections 148, 302/149 of IPC against co-accused. All the accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, the prosecution has examined 13 witnesses and marked several Exhibits

while the accused examined none in defence and no exhibits were marked on his behalf.

4. The Trial Court by its judgment and order dated 30th November, 1994 acquitted the appellant from the alleged offences mainly on the ground that there are contradictions in the evidence of eyewitnesses to that of medical evidence, prosecution has failed to prove beyond reasonable doubt formation of unlawful assembly with a motive of committing murder of the deceased and also failed to establish that the bullet had been fired with the firearm seized from the appellant.

5. Dissatisfied with the Judgment of the Trial Court, the State preferred an appeal before the High Court claiming that the judgment of the Trial Court is perverse and illegal inasmuch as it did not appreciate the prosecution evidence in right perspective and ignored the evidence of the eyewitnesses. The High Court, on a reanalysis of evidence of prosecution witnesses and other material available on record came to the conclusion that the Trial Court was right in acquitting the other co-accused persons but found fault with the acquittal of the appellant under Section 302 IPC. The High Court,

therefore, partly allowed the appeal by confirming the judgment of the Trial Court in respect of the charge under Section 148 and convicted the appellant herein for the offence under Section 302, IPC and sentenced him to undergo imprisonment for life. Aggrieved by the Judgment of the High Court, the appellant approached this Court in appeal.

6. Learned counsel for the appellant submitted that the Trial Court rightly acquitted the appellant, after elaborately considering the evidence on record, upon coming to the conclusion that there is lack of credibility in the testimony of the prosecution witnesses, and, in particular, the medical and ocular testimonies are conflicting; there was considerable delay on the part of Investigating Officer in recording the evidences of alleged eyewitnesses inasmuch as statements by none of the eyewitnesses were recorded on the day of occurrence of the incident.

7. In the background of this factual matrix, learned counsel for the appellant has advanced his arguments that since the appellant and victim parties have prior enmity over some pending criminal cases,

the family members of the deceased, i.e., Gambhir Singh (PW 7), Shanti Devi (PW 8), Bir Singh (PW 11) in connivance and with the help of a pocket witness Madho Singh (PW 9) concocted the story, by projecting himself as an eyewitness, and falsely implicated the appellant. According to him, this fact is clearly established with the contradictions in the medical evidence and the unreliable evidence of the alleged interested eyewitness. The presence of Gambhir Singh (PW 7), at the time of occurrence, as heavily relied upon by the prosecution, proves to be false in the light of evidence of Bir Singh (PW 11) who nowhere in his testimony mentioned that Gambhir Singh (PW 7) alone came out of the house and witnessed the incident and Madho Singh (PW 9) claimed that soon after the shooting, Gambhir Singh (PW 7), Bir Singh (PW 11) and Shanti Devi (PW 8) came out of the house and therefore the accused fled away from the spot. It is also contended that the alleged eyewitnesses Gambhir Singh (PW 7), Bir Singh (PW 11) and Shanti Devi (PW 8) made material improvements in their testimonies before the Court in order to connect the case of prosecution with the medical report. Thus, the presence of the eyewitnesses at the place of occurrence is doubtful.

8. Learned counsel further urged that as per the site plan prepared by the Investigation Officer and also as per the medical evidence, the deceased Jagannath Singh was standing when he was shot. According to the medical report, the injuries sustained by the deceased are possible only when the assaulter stands at a height above the victim. Contrary to this, the case advanced by the prosecution, coupled with the evidence of alleged eyewitness, is that the appellant was standing on a lower level and the deceased was standing on a higher level i.e. on the platform. In his statement Madho Singh (PW 9) categorically mentioned that the deceased was sitting on the platform (*Chabutara*) and the appellant was standing on the ground, when he was shot. While the medical report indicated that the margins of the wounds were inverted and the bullet must have been fired from a distance of within 6 feet, and as per the testimonies of the direct eyewitnesses, the said distance varied between 12 to 22.5 feet. The absence of human blood at the alleged place of incident i.e. on the platform and presence of blood on the ground in front of the platform further renders the prosecution's case even more doubtful. This blood also could not be matched with that of the deceased and therefore, recovery of weapons is of no relevance. Simply for the reason that the post-mortem report indicated that the deceased had died due to one single gunshot, and mere recovery of

nine empty cartridges from the appellant does not in any way connect him with the crime, when the empty cartridges were not recovered from the place of incident and also in the absence of authenticated proof that the bullet shot at the deceased was fired from the gun owned by the appellant. Learned counsel thus submits that the statements of eyewitness are not trustworthy. Considering the facts in their entirety, such as delayed recording of statements of the eyewitnesses and an unsuccessful attempt to reveal as to where the bullet had struck the victim and the unmatched statements by prosecution witnesses with that of the medical expert, the learned Trial Court was pleased to record the order of acquittal of the appellant.

9. The learned counsel finally submitted that the High Court, on the other hand, failed to appreciate the evidence in true legal perspective and wrongly interfered with the well reasoned judgment of acquittal passed by the Trial Court based on a cogent and detailed reasoning and that the High Court committed a grave error by acquitting the accused for the offence under Section 302 IPC. The impugned judgment is contrary to the settled legal principles as it did not give due weightage to the medical evidence and rejected the same

without ascribing any reason. Thus, interference by the High Court with the reasoned judgment of acquittal passed by the Trial Court is unwarranted. Learned counsel submits that in the light of settled legal principles, the conviction of the appellant by the High Court is vague and uncalled for and the same requires to be set aside by this Court.

10. On the other hand, learned counsel appearing for the State, argued that the judgment of the Trial Court acquitting the appellant was wholly erroneous as it was passed without taking into account the prosecution evidence in its right perspective. There was no inconsistency in the evidence of eyewitnesses who were very much present at the scene of offence and the Trial Court was not justified in ignoring their evidences. The High Court, after re-appreciating the entire evidence on record, took a justifiable stand in convicting the accused under Section 302 of the IPC by a well reasoned judgment and that there is no illegality or perversity in the conviction of the accused calling interference by this Court.

11. We have heard the learned counsel on either side at length and perused the material available on record. Now it is imperative to look into the scope of interference by the appellate Court in an appeal

against acquittal and whether the High Court was justified in convicting the accused under Section 302, IPC by reversing the order of acquittal passed by the Trial Court.

12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent Court after a full-fledged trial, and once the Trial Court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate Court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate Court to review, reappreciate and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate Court while passing an order has to give clear reasoning for such a conclusion.

13. It is no doubt true that there cannot be any strait jacket formula as to under what circumstances appellate Court can interfere with the order of acquittal, but the same depends on facts and circumstances

of each case. In the case on hand, we have to examine the rationale behind the conclusion of the High Court in convicting the accused and the compelling reasons to deviate from the order of acquittal passed by the Trial Court.

14. On a thorough analysis of the judgment impugned, it is evident that the High Court has not recorded any reasons for partly setting aside the judgment of the Trial Court which has acquitted all the accused persons from the same set of facts before it. The High Court which has set aside the acquittal order of the Trial Court has observed that the Trial Court has based its reasoning on guess work. We find it that even the High Court has committed the same mistake and basing on the same facts and guess work has arrived at the conclusion that the appellant is guilty.

15. It is specifically urged by the learned counsel for the appellant that as per the medical evidence, the injuries sustained by the deceased are possible only when the assaulter stands at a height above the victim. In this process, the court has guessed that Mahavir Singh (accused-appellant) and Jagannath (deceased) were of similar height

which is nobody's case and no evidence is available on record to come to a conclusion that the height of the two is same. The evidence available on record in this regard is a statement of Dr. A.K. Upadhyay (PW 12) that the deceased was of average Height. Now in order to establish that the bullet traveled in a downward direction, they have explained that the position of the gun usually kept in a downward position resting on the chest. Now the logical fallacy is to have assumed the height of the platform whose height has not been recorded due to sloppy investigation by the Investigating Officers. There exists a reasonable doubt because of the fact that the height of the platform was not recorded and the same cannot be guessed at this point of time. Further, the deposition of the Doctor is very clear that the shooter might have been at a lower level. While some of the witnesses have suggested that the deceased was on the ground while others have pointed out to the fact that he was standing on the platform. Therefore, from the same set of facts, the Trial Court as well as the High Court have arrived at different conclusions, such an exercise cannot be undertaken by the High Court in an Appeal unless the conclusion drawn by the Trial Court cannot be sustained based on the facts and circumstances and when two conclusions are possible based on the evidence available on record, the appellate

court should be all the more reluctant to interfere with the findings recorded by the Trial Court.

16. It appears to us that the difference of opinion between the Courts below in deciding whether or not the appellant has committed the offence with which he is charged, mainly revolves around the presence of alleged direct eyewitnesses at the spot, possibility of appellant's inflicting firearm injury to the deceased in view of the positioning of the injury sustained by the deceased, the material infirmity, if any, and contradiction in the ocular and medical evidence. It is, however, clear that though, at the outset, the accused/appellant absolutely rejected the allegation and pleaded not guilty by taking the defence of alibi that, on the date of incident, he was irrigating his field, but his claim has not been supported by any evidence.

17. Undoubtedly, Gambhir Singh (PW 7—brother of the deceased) has accepted that certain criminal proceedings were pending between the accused and his family members. He also admits that one case had already been filed by the accused prior to the incident. Admittedly, Shanti Devi (PW 8—wife of the deceased) also has deposed that there was an altercation between her son Vijender and

Dhullu, on which they killed her husband. Thus, the parties are admittedly in hostile terms and the incident in question occurred in a broad day light at the residence of the deceased by doing away his precious life. The prosecution, in support of its version, has heavily relied upon the statements of eyewitnesses Gambhir Singh (PW 7-complainant and also brother of the deceased), Shanti Devi (PW 8-wife of the deceased), Madho Singh (PW 9) and Bir Singh (PW 11-nephew of the deceased). The learned Trial Judge disbelieved the presence of eyewitnesses on the spot in view of delayed recording of their statements by the Investigating Officer (PW 13) and also they remained unsuccessful in revealing exactly as to where the bullet had struck the deceased. We also find that nowhere in the First Information Report, the name or presence of eyewitness Shanti Devi (PW 8) was mentioned as a witness to the incident.

18. The High Court has attached a lot of weight to the evidence of the said Madho Singh (PW 9) as he is an independent witness. On perusal of the record, it appears that the said person already had deposed for the victim family on a number of previous occasions, that too against the same accused. This being the fact, it is important to analyze the jurisprudence on interested witness. It is a settled

principle that the evidence of interested witness needs to be scrutinized with utmost care. It can only be relied upon if the evidence has a ring of truth to it, is cogent, credible and trustworthy. Here we may refer to chance witness also. It is to be seen that although the evidence of a chance witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point more so when his deposition is being assailed as being tainted.

19. A contradicted testimony of an interested witness cannot be usually treated as conclusive. The said Madho Singh (PW 9) has admitted that he has been a witness in another case against the accused for the deceased. **Here it is to be seen that the said Madho Singh (PW 9) has been acting as a pocket witness for the family. Further, the credibility of this independent witness can be challenged on the fact that the commotion was only heard by the said Madho Singh (PW 9) whereas the rest of the members of the locality did not come for help**. As Madho Singh (PW 9) is a chance witness as well as an interested witness herein, causes suspicion and does not inspire confidence. This admission by Madho Singh (PW 9) not only forces us to doubt the veracity of his own deposition but also has created doubts on the version of Gambhir Singh (PW 7).

20. We have thoroughly examined the evidence of expert witnesses as well as other ocular witnesses. The evidence of Dr. A.K. Upadhyay (PW 12) reveals that when the deceased sustained bullet injury, he might have been in a standing position and the bullet would have entered from left side and exited from right side of the body. This fact, however, corroborated with the evidences of PW 7 (Gambhir Singh) and PW 8 (Shanti Devi), but the statements of PW 9 (Madho Singh) and PW 11 (Bir Singh) do not support it. Similarly, there were contradictions between the statements of Dr. Upadhyay (PW 12) and that of the eyewitnesses as to the distance and height of the assaulter while inflicting the grievous injury to the deceased and whether the deceased was standing on the platform (*Chabutara*) or came down from it while receiving the bullet injury. We find from the statement of Dr. Upadhyay (PW 12) that he was not clear and definite to say exactly from what position and distance the assaulter could have fired the gun.

21. Going by the seizure memo (Ex.P/3) apparently one gun, 12 live and 9 empty cartridges were recovered from the appellant. The

evidences of eyewitnesses support this fact and no question was put to the I.O. after the recovery of the gun and cartridges, that whether he himself shot from the seized gun to create evidence. The prosecution's story is somewhat strengthened by the ballistic expert's report (Ex. P/12) which affirms that the gun seized from the appellant was in perfect order, the empty cartridges bore the same impression on pin as seized from the accused and the live cartridges were actually fired by the gun seized from the appellant. But nowhere it was mentioned that the death of the victim occurred by the bullet released from the seized gun. Merely the seizure of gun and cartridges from the appellant, the ongoing enmity between the parties on account of various criminal litigations and the altercation and exchange of heated words between the rival groups on the morning of the same day, cannot establish the guilt of accused beyond reasonable doubt.

22. The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant

factor in the process of the evaluation of evidence. However, where the medical evidence goes far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved [**See : *Abdul Sayeed v . State of M.P.,* (2010) 10 SCC 259]**

23. In view of contradictory statements by the prosecution witnesses coupled with the unmatched medical evidence, delay in recording of statements of witnesses by the I.O., non-availability of proper site plan and in the absence of authenticated ballistic expert report that the bullet had been fired with the seized gun of the appellant, the Trial Court had to decide the case against the prosecution and discharge the appellant from the charges. The High Court, upon carrying the exercise of reappreciation of evidence, formed the view that the reasons for delay in recording the statements of witnesses have been properly explained; that as soon as the bullet struck on the abdomen of the deceased, he immediately fell down from the platform. It further observed that though the name of Shanti Devi (PW 8) was not mentioned in the FIR, there is positive evidence on record to establish her presence at the time of incident along with other eyewitnesses and this fact has been established by their

corroborative statements and there is no reason to disbelieve their statements. Here it is worthwhile to mention that both the Courts below formed a common opinion that the prosecution has failed to prove the charges under Sections 148 and 302/149 of IPC against the co-accused and discharged them from those charges. The disagreement between the Trial Court and the High Court is only in respect of the charge under Section 302, IPC against the appellant.

24. It is the duty of the Apex Court to separate chaff from the husk and to dredge the truth from the pandemonium of Statements. It is but natural for human beings to state variant statements due to time gap but if such statements go to defeat the core of the prosecution then such contradictions are material and the Court has to be mindful of such statements [**See** : ***Tahsildhar Singh v. State of UP,*** **AIR 1959 SC 1012;** ***Pudhu Raja v. State,*** **(2012) 11 SCC 196***; State of UP v. Naresh,* **(2011) 9 SCC 698**]. The case in hand is a fit case, wherein there are material exaggerations and contradictions, which inevitably raises doubt which is reasonable in normal circumstances and keeping in view the substratum of the prosecution case, we cannot infer beyond reasonable doubt that the appellant caused the death of the deceased.

25. Normally, when a culprit perpetrates a heinous crime of murder and takes away the life of a human being, if appropriate punishment is not awarded to that offender, the Court will be failing in its duty. Such crime, when indulged by a criminal blatantly, is not committed against an individual alone, but is committed against the society as well to which the criminal and victim are a part. It needs no emphasis from this Court that the punishment to be awarded for such a crime must be relevant and it should conform to and be consistent with the atrocity and brutality with which the crime has been carried out.

26. Here in the instant case, no doubt, an innocent man has lost his life at the hands of another man, and looking at the way in which the investigation was handled, we are sure to observe that it was carried out in a lackluster manner. The approach of the Investigating Officer in recording the statements of witnesses, collecting the evidence and preparation of site map has remained unmindful. The Investigating Officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may

prove fatal to the prosecution's case. We may hasten to add that in the present case the investigation was carried out with unconcerned and uninspiring performance. There was no firm and sincere effort with the needed zeal and spirit to bring home the guilt of the accused. We feel that there are no compelling and substantial reasons for the High Court to interfere with the order of acquittal when the prosecution has miserably failed to establish the guilt of the accused. Added to this, the accused has already undergone nine years' of imprisonment and we feel that it is a fit case inviting interference by this Court.

27. Resultantly, the appeal is allowed and the judgment of conviction and order of sentence passed by the High Court is set aside. Consequently, the appellant shall be set at liberty forthwith if not required in any other case.

……..J.
(A.K. SIKRI)

…….J.
(N.V. RAMANA)

NEW DELHI,

NOVEMBER 09, 2016