

CASE NO.:
Appeal (crl.) 769 of 2007

PETITIONER:
Budh Singh

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 18/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 769 OF 2007
(Arising out of SLP (Crl.) No. 6602 of 2006)

S.B. SINHA, J.

1 Leave granted.

2. Appellant was accused No. 1 before the trial Court. He alongwith three others namely Gulab Singh, Ashok Yadav and Kalyan Singh were tried for commission of offences under Section 302/34 and 307/34 of Indian Penal Code. The occurrence took place at Village Jõnhar at about 4'o clock in the evening of 31.7.1989 near a well belonging to one Dangal Singh Yadav. The first informant was the brother of the deceased Durgsingh.

3. In the First Information Report, it was alleged that the deceased went to take bath. First Informant was also going there to take his bath. When he was at a little distance from the said well, he found him taking bath. Appellant came with a 12 bore double barrelled gun. Kalyan Singh and Ashok Yadav were also armed with guns. Kalyan Singh, Ashok Yadav and Gulab Singh surrounded the well. At the exhortation of Kalyan Singh, appellant fired a shot from his 12 bore double barrel gun on the deceased. Munnalal Yadav had also come therewith his cattle. Complainant Gyansingh and Munnalal shouted whereupon Ashok and Gulab fired on them. They, however, lay down on the ground. Other villagers came to the spot immediately thereafter. The dead body of Durgsingh was brought to Baroni Police Station at about 5.45 in the evening. P.W. 8, Virendra Singh was the head constable attached to the said Police Station. The Station House Officer was absent. On the oral report made by the first informant Gyansingh, he recorded the First Information Report. P.W. 11, Pramal Singh was in charge of Sonagir Chouki. He had come to the police station for some administrative works. As the S.H.O. had gone out of the police station and the head constable was in-charge thereof, the First Information Report was given to him. At his instance, P.W. 8 made an inquest of the dead body. It was sent for post-mortem. The dead body was received at the hospital by Dr. A.K. Sharma at about 7.55 p.m. on the same day. Post mortem examination, however, was carried out at 10.30 on the next day. The said Dr. A.K. Sharma examined himself as P.W.16.

4. In his post-mortem report, it was opined that the death of Durg Singh occurred due to a gun shot, hemorrhage and rupture of both the lungs. Duration of death was said to be within 36 hours. A bullet which was marked as Art C was found in the body of the deceased. It was sealed and handed over to the constable concerned.

5. The bullet was found to have ruptured the lung and thereafter hit the ribs, as a result whereof, ribs had broken down. It had ruptured the other lung also.

6. The accused having been arrested, the guns, in question, at their instance, were recovered. The bullets as also the guns were sent to a ballistic expert. The bullet, in question, was found to have fired from the gun belonging to the appellant. Before the learned trial Judge, Gyansingh examined himself as P.W. 1. Munnalal also deposed as P.W. 2 before the learned Trial Judge. The accused were also seen running away from the spot by Sughar Singh, P.W. 5.

7. The learned Trial Judge convicted the appellant but acquitted the others. Against such judgment and order of acquittal, the State, however preferred an appeal before the High Court only against the judgment of acquittal acquitting Kalyan Singh. No appeal was filed against judgment of acquittal passed in favour of Babulal and Dashrath Singh.

8. The High Court by reason of the impugned judgment not only upheld the judgment of conviction passed against the appellant by the learned Trial Judge but also set aside the judgment of acquittal of the learned Sessions Judge in favour of the said Kalyan Singh. This Court, however, found the approach of the High Court in reversing the judgment of acquittal passed against Kalyan Singh not in accordance with law. His Special Leave Petition has been allowed by this Court by an Order dated 21.11.2006.

9. Mr. T.N. Singh, learned senior counsel appearing on behalf of the appellant would submit:

(i) The First Information Report is an ante timed one. From a perusal thereof, it would appear that occurrence had taken place on 30th July, 1989, but in the post mortem report, the time of death found to have been occurred within 36 hours therefrom and, thus, the occurrence must be held to have taken place on 30.7.1989 itself.

The empty cartridge which was recovered was not sealed at the spot. It was marked with the words "KF". The same was not of Indian origin but it bore the mark "RF" manufactured at Elekaia Company which was a British Company.

(ii) Although, Appellant was not declared as an absconder, he was arrested on 20.8.1989 and the gun was seized only on 30.8.1989.

(iii) P.W. 1 has made improvements in his deposition before the Court as the details of the occurrences had not been disclosed in the First Information Report.

(iv) In the post mortem report, no blackening or tattooing having been found, it was likely that the manner in which the occurrence is said to have taken place, would be incorrect.

(v) The learned Trial Judge had acquitted Kalyan Singh and two others, the impugned judgment cannot be sustained as the appellant is similarly situated.

10. Ms. Vibha Datta Makhija, learned counsel appearing on behalf of the State on the other hand would submit :

(i) the occurrence took place on 31st July and not on 30th July, as would appear from the First Information Report itself.

(ii) The duration of occurrence, having been found in the post mortem report, to have occurred 'within 36 hours', it cannot be said that the occurrence could not have taken place on 31st July.

(iii) The Ballistic Expert Dr. J.P. Nigam, Assistant Director of Forensic Science Laboratory in his report having categorically stated that the shot was fired from the gun in question, the participation of the appellant in committing the crime has clearly been established.

In its report, the ballistic expert opined:-

"Ex. EC-1. It is an empty Kartoosh of 12 Bore already fired. For firing pin impression it was compared with TC's RB(A-1) and TC's LB (A-1). Similarity was found between Ex. A-1 and TCLB(A-1) photomicrography of one condition of

its similarity was taken and equal points were marked. Ex. P-1 \026 This is a piece of iron whose weight is 4.550 gm. Its length is 0.5" and width is 0.3" on one edge and on other edge is 0.45"

It was opined:-

"Ex. A-1 is a gun of 12 bores of two barrel and Ex. A-2 is a gun of two barrels. Both these are in running condition. After chemical examination of the rest portions of barrel it has been confirmed that these were fired earlier, but it is not possible to say the last firing date of this on the basis of scientific certainty. Ex. EC1 is an empty Karatoosh of 12 bores already fired. For firing pin impression it was compared with TCS (A-1) by microscope similarity was found between EC1 and TCLB (A-1). Therefore Karatoosh of Ex. EC1 has been fired from left barrel of Ex. A-1."

(iv) In the receipt marked as Ext. A-1, the empty cartridge was marked as Articles Ext. EC-1 in a sealed and packed condition and thus there cannot be any doubt whatsoever that the cartridge, in question, was the one which was recovered from the place of occurrence. In his evidence also, the said Dr. J.P. Nigam stated:-

"Exhibit EC-1: This is an empty cartridge fired from 12 bore and for its firing pin impression, its comparison by microscope TC A-1, the similarity of EC-1 and TCLB (A-1) was found. Therefore, Ex EC-1 cartridge Ex A-1 has been fired from left barrel.",

which also show the involvement of the appellant.

(v) Although there appeared to be some confusion with the gun bearing mark KF or RF but the same was clarified by P.W. 11 in his evidence stating that he identified the cartridge in question. In regard to the wrong marking, he had stated;

"On spot there was no piece of Karatoosh but there was a Khokha of Karatoosh there. It is not written as R-F and K-F on Article B Karatoosh but I understood it as K-F and accordingly, I had written on Ex. P-5 panchnama as K.F. 1 has seen point 3 in sketch from the place A,B."

11. The prosecution case in our opinion stands proved from the evidence of first informant 'Gyansingh' and PW. 2 'Munnalal'. It appears that a confusion in regard to date of occurrence as contended by Mr. Singh arose and only a Xeroxed copy of the F.I.R. was produced before us. Ms. Makhija, however, has produced before us another Xeroxed copy of the first information report, from a perusal whereof it appears that the date of occurrence has therein also written in Hindi to be 31st July. Even otherwise, the original First Information Report categorically shows that the dead body was brought in a tractor directly to the police station on 30.07.1989. P.W. 8 and P.W. 11 also are witnesses to prove that the F.I.R. was recorded on 30.07.1982. Those witnesses were not cross-examined on the question as to whether the occurrence had taken place on 31st July or 30th July. We have noticed hereinbefore that the dead body was sent for post mortem immediately to the hospital. Dr. A.K. Sharma noted in his post mortem report, the time when the dead body had been received at mortuary. P.W. 11 recorded the statements of Ram Prasad, Jagdish Singh, Sughar Singh, P.W. 3, P.W. 4, P.W. 5 respectively on the same day. He visited the spot on that day itself, but could not carry out the further investigation due to darkness. He visited the place of occurrence on the

next day and drew the sketch map, found clots of blood and recovered pieces of plastic and a 12 bore 'kartoosh'. He seized blood stained water in a bottle.

12. As noticed hereinbefore, in the Court, he identified the cartridge in question. Identity of the blank cartridge recovered from the spot is not in question. The manner in which the occurrence had taken place is clearly corroborated by the medical evidence, the correctness whereof again is not in question.

13. Duration of time between the actual death and the post mortem examination has been stated to be within 36 hours. Had the occurrence taken place on 30th July, it would have been stated by Dr. Sharma to be more than 36 hours.

14. It is now well settled that the lapse of time of taking place of death cannot be accurately stated.

15. In *Amrit Singh v State of Punjab* [AIR 2007 SC 132], it was held:-
 "...Exact time as to when the occurrence took place is not known and it would be hazardous to make any guess in this behalf....."

16. In *Ramreddy Rajeshkhanna Reddy and Anr. v State of Andhra Pradesh* [AIR 2006 SC 1656], this Court opined:-

"20. In this case, the time of actual offence having regard to the different statements made by different witnesses may assume some importance as one of the grounds whereupon the High Court has based its judgment of conviction is the time of death of the deceased on the basis of the opinion rendered by Dr. P. Venkateshvarlu (P.W.13). In *Modi's Medical Jurisprudence*, 22nd edition, as regard duration of rigor mortis, it is stated:

	Average		Minimum			Maximum		
	Hours	Minutes	Hours	Minutes		Hours	Minutes	
Duration of rigor mortis	19	12	3	0			40	0

It was, therefore, extremely difficult to report the exact time of death of the deceased, more so when no sufficient reason was assigned in the post- mortem report."

17. In *Ramjee Rai and Ors. v State of Bihar* [2006 (8) SCALE 440], this Court held:-

"A contention was raised that autopsy surgeon opined that the death must have taken place 10 days prior to the post mortem examination and in that view of the matter the prosecution case should be disbelieved. The murder allegedly took place on a boat. The dead body was thrown in the water. It remained under water for more than five days. Rigor mortis was absent and the body was fully decomposed. The soft tissues of some of the parts of the body had been eaten away by fish. Medical science has not achieved such perfection so as to enable a medical practitioner to categorically state in regard to the exact time of death. In a case of this nature, it was difficult to pinpoint the exact time of death. The autopsy surgeon told about the approximate time lag between the date of post mortem examination and the likely date of death. He did not explain the basis for arriving at his opinion. This Court on a number of occasions noticed that it may not be possible for a doctor to pinpoint the exact time of death."

18. In *Baso Prasad and Ors. v State of Bihar* [2006 (12) SCALE 354], this Court observed:-

"We may deal with the question as regards presence of rigour mortis.

In 'Modi's Textbook of Medical Jurisprudence and Toxicology', 21st Edn., at page 171, it is stated:

Rigor mortis generally occurs, while the body is cooling. It is in no way connected with the nervous system, and it develops even in paralyzed limbs, provided the paralyzed muscle tissues have not suffered much in nutrition. It is retarded by perfusion with normal saline.

Owing to the setting in of rigor mortis all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple and flaccid, but will not return to its original position after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away.

The exact time of death, therefore, cannot be established scientifically and precisely, only because of presence of rigour mortis or in the absence of it."

19. Blackening of the wound can be found only when the shot is fired from a short distance namely at about 3 to 4 feet and not beyond the same.

Absence of any blackening of the wound has rightly been not found in the post mortem examination.

20. The purported improvement made by P.W. 1 is not of much significance. First Information Report, as noticed hereinbefore, was lodged at the quickest possible time. A First Information Report is not supposed to be an encyclopedia of the entire event. It cannot contain the minutest details of the events.

21. The essential material facts were disclosed in the First Information Report. Even presence of P.W. 2, Munnalal had also been stated. Statements of the other witnesses namely P.W. 3, P.W. 5 and P.W. 6 had also been recorded by the investigating officer on 31st July itself. It is, therefore, difficult to accept the contentions of the learned counsel.

22. The First Information Report was recorded by the Head Constable. Investigation was taken over from P.W. 11 by P.W. 12, R.S. Raghuvanshi and thereafter only the accused were arrested. Seizure of the gun belonging to the appellant is proved not only by P.W. 12 but also by Murat Singh P.W. 9. We may notice that even Kalyan Singh had surrendered in the Police Station on 20.8.1989. Indisputably the gun as also the empty cartridge found at the spot was sent to the Forensic Science Laboratory. Qualification of Shri J.P. Nigam as a ballistic expert has not been doubted. Although, there appears to be some confusion with regard to the marking of the parcel containing the empty cartridge, evidently the same had correctly been marked by Shri Nigam. He found it in a sealed condition. Only because P.W. 8 in his evidence did not state that the recovered empty cartridge was sealed at the spot, the same would not mean that it was planted later on, particularly when recovery of the gun and the report of the expert has not been disputed.

23. The question as to whether the First Information Report is an ante timed one or not must be considered having regard to the facts and circumstances of the case as has been opined by this Court in Meharaj Singh (L/Nk.) v State of U.P. [(1994) 5 SCC 188], whereupon Mr. Singh placed strong reliance. Having perused the first information report, we are of the opinion that although the same was transcribed by P.W. 8 from the oral statement made by P.W. 1, it contained all the material particulars. The very fact that it was recorded almost immediately after taking place of

the occurrence, the question of its being an ante timed one would not arise.

24. In Chandu v State of Maharashtra [(2002) 9 SCC 408], whereupon again reliance has been placed by Mr. Singh, the High Court therein found the story of recovery of weapon of the offences as not believable. Even there was a serious discrepancy in regard to the alleged weapon of offence used, as according to the eye witnesses, a spear-blow had been given on the chest after the deceased struck against a cycle, whereas the medical evidence showed that the weapon must have entered the body from 'upward to downward laterally to right side', only on that basis the prosecution story was not believed. Such is not the case here.

25. Reliance has also been placed on Gorle S. Naidu v State of A.P. and Others [A.I.R. 2004 SC 1169], wherein not only the eye witnesses who were said to have received injuries did not get themselves medically examined, the accused persons were also not specifically named during investigation. The said decisions, therefore, are not applicable to the facts of the present case.

26. A defective investigation by itself cannot be a ground for acquittal. Witnesses examined on behalf of the prosecution have been believed both by the learned Trial Judge as also by the High Court. So far as the appellant is concerned, we do not find any reason to differ therefrom.

27. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.