CASE NO.:
Appeal (crl.) 1241 of 2002

PETITIONER:
Brijpal Singh

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 29/04/2003

BENCH:
N.Santosh Hegde, Ashok Bhan & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE,J.

The appellant Brijpal Singh has preferred this appeal against his conviction and sentence as confirmed by the High Court of Judicature of M.P., Jabalpur Bench in Crl.A.No.217 of 1986.

Originally, the appellant and three others were charged for offences punishable under Section 302, 307 and 302 read with Section 109 IPC before the learned Sessions Judge, Bhind (M.P.) who by his judgment dated 27.9.1986 made in Sessions Case No.12/85 convicted all the four accused persons. In regard to the appellant herein he found him guilty of offence punishable under Section 302 and in regard to others of offence punishable under Section 302 read with Section 109 IPC and imposed a sentence of life imprisonment. In an appeal filed against the said judgment of the learned Sessions Judge, the High Court by the impugned order allowed the appeal as far as it concerned the other three accused persons and confirmed the conviction and sentence so far as the appellant is concerned. The State has not preferred any appeal against the acquittal of the other accused. The appellant alone has preferred this appeal against his conviction and sentence.

Brief facts necessary for the disposal of this case are that there was some dispute between the deceased and the appellant in regard to the disposal of garbage. The appellant’s house and the deceased’s house were opposite to each other. Two days before the incident in question, there was a quarrel in which the deceased’s son Putu Singh (PW-1) and the appellant were involved. It is in view of this quarrel as to the disposal of garbage, according to the prosecution, there existed enmity between the two families. In view of the said enmity, it is stated that on 2.9.1984 at about 8 p.m. while deceased Gopal Singh and PW-1 were sleeping on cots in their Chabutra, the appellant and the other three accused persons came there. At that time, A-1 the appellant herein was armed with a mouser gun and Anurudh Singh (A-2) was armed with a .12 bore gun. At that stage, A-3 Shivji Singh exhorted the appellant to fire at the deceased and the appellant fired one shot from his mouser gun on the rear of the head of the deceased because of which the right side of his head got completely smashed and Gopal Singh had an instaneous death. The further case of the prosecution is that on seeing this, PW-1 started running away but A-2 fired from his .12 bore gun which missed him. On PW-1 shouting for help Gopal Singh (PW-8), Yadunath Singh (PW-10) and one Ramswaroop rushed

to the spot and challenged the assailants because of which the assailants ran away from the place of incident. It is then PW-1 proceeded to Police Station, Umari and lodged the FIR which is marked as Ex.P/1 at about 3 a.m. on 3.9.1984. PW-11 who was then the Officer-in-Charge of the Police Station after registering a case proceeded to the spot and prepared an inquest Panchnama. He collected the blood stained earth as also empty cartridge also the misfired cartridges from the place of incident. During the course of investigation, PW-11 arrested the appellant herein on the same day and his mouser gun with 10 live cartridges which was licensed in the name of the father of the appellant were seized. Subsequently, on 30.9.1984 PW-11 arrested rather accused persons and recovered a .12 bore gun from Anurudh Singh (A-2).

It is based on this material, as stated above, the learned Sessions Judge convicted all the accused persons and in appeal the High Court while acquitting three of the accused persons confirmed the conviction and sentence of the appellant.

In this Court on behalf of the appellant, it is contended that the oral evidence adduced by the prosecution on one hand and the medical evidence as well as the ballistic report on the other contradict each other on material facts, therefore, the High Court erred in choosing to rely upon such contradictory evidence only in regard to the appellant while discarding the same in regard to the other accused persons. It is also contended that the prosecution witnesses examined by the Court are all interested witnesses, therefore, the High Court ought not to have relied upon such evidence to base a conviction even on the appellant, more so because of the non-examination of the independent witnesses who were admittedly present.

On behalf of the State, it is contended that the evidence of the eye-witnesses being consistent, assuming that there is some discrepancy in regard to the use of fire arms, the same would not, in any manner, vitiate the genuineness of the evidence of eye-witnesses and the prosecution has established beyond reasonable doubt that it is the appellant who fired the fatal shot at the deceased which was witnessed by PWs-1, 8 and 10. The learned counsel also contends that, as a matter of fact, the High Court has erred in giving benefit of doubt to other three accused persons but he submits so far as the appellant is concerned, the High Court is justified in confirming the conviction and sentence.

Having heard the learned counsel and perused the records, we are inclined to accept the argument of the learned counsel for the appellant. It is the prosecution case that the accused came to the spot where the incident took place and out of them A-1 was armed with mouser gun and A-2 was armed with .12 bore gun. It is at the exhortation of the A-3, A-1 shot the deceased from point blank range on the back of his head from his mouser gun which shattered right side of his head causing death on the spot. The further case is that when PW-1 started running away, A-2 shot with .12 bore gun which missed him and the pellets got embedded in the wall of the house. If this evidence is examined in the light of the report of the ballistic expert, it is seen from the said report after comparing the bullet with the weapons microscopically, the ballistic expert had reported though both the guns were found to have been discharged recently the empty cartridges that were seized from the spot did not compare with the mouser rifle. He also opined that the pieces of bullet taken out of the wall could have been fired by a similar rifle seized from the appellant (the mouser rifle). This report of the ballistic expert shows, in our opinion, that the weapon alleged to have been used in causing fatal injury could not have been the mouser rifle carried by A-1 because it is the definite report of the ballistic expert that discharged empties of cartridge found near the dead body was not that fired from the mouser gun. On the contrary, the

evidence of the eye-witnesses is that it is A-1 who fired from a mouser rifle from a close range at the deceased. Further it is the prosecution case that it is A-2 who fired at PW-1 from a .12 bore gun which missed him but got embedded in the wall of the house. But according to the ballistic expert, those bullets which were embedded in the wall could have been fired from the mouser gun which opinion leads us to draw an inference that it was not from a .12 bore gun which according to the eye witnesses was used for firing at PW-1. The High Court did take notice of this serious contradiction between the oral evidence and report of the ballistic expert and as a matter of fact used this contradiction to give the benefit of doubt to the other accused persons including A-2 who allegedly fired from .12 bore gun at PW-1. But by somewhat a convoluted reasoning it accepted the very same contradictory evidence to uphold the conviction of the appellant. We find no good reason why this part of the prosecution evidence should be believed in regard to the appellant, while the same is disbelieved in regard to the other accused persons. Before us, of course, the learned counsel for the State has submitted that if the oral evidence is found acceptable by the court then even if there is some contradiction in the medical or ballistic reports, the acceptable oral evidence should always be preferred. Normally, if the eye-witness's evidence is absolutely acceptable, the argument of the learned counsel for the State could have been accepted but that is not the factual position in this case. The eye-witnesses admittedly are interested witnesses being relatives of the deceased and other persons who witnessed the incident who were independent witnesses have not been examined by the prosecution and there is inter se contradictions in the evidence of PW-1 and PW-10 there is also contradiction as to who fired at PW-1. In these circumstances, we think it is not safe to rely upon the said oral evidence to base a conviction on the appellant. We are in agreement with the High Court in its approach towards the case of the acquitted accused persons, but we find it difficult to accept its reasoning to base a conviction on the appellant. We think in the facts and circumstances of this case the very same reasoning which persuaded the High Court to acquit the other three accused persons should have also persuaded the High Court to acquit the appellant also, when we find no difference in the oral evidence led by the prosecution, be it against the appellant or the other accused persons. Then we notice the prosecution has not bothered to clarify the report of the ballistic expert even though the same was contradictory to the oral evidence which creates a very serious doubt in our mind as to the presence of eye-witnesses at the place of incident. Keeping in mind the partisan nature of eye-witnesses and contradictions in their evidence, we think this appellant is also entitled to benefit of doubt.

For the reasons stated above, this appeal succeeds, the judgments of the courts below are set aside, the conviction and sentence are also set aside. If the appellant is in custody, he shall be released forthwith, if not wanted in any other case.