CASE NO.:
Appeal (crl.) 987 of 2003

PETITIONER:
Amrita alias Amritlal

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 09/02/2004

BENCH:
Y.K. Sabharwal & B.N. Agrawal

JUDGMENT:
J U D G M E N T

Y.K. Sabharwal, J.

The conviction of the appellant for offence under Section 302 IPC has been confirmed by the impugned judgment of the High Court. The main question to be determined in this appeal is whether the sole eye-witness on whose testimony the conviction is primarily based is partly reliable or wholly unreliable.

Facts in brief are that on the date of incident, the deceased went with his elder son Mahesh (PW4) to market and when at about 12.00 noon, he was coming out from a shop after purchasing a bundle of bidi, the appellant fired at him from 12 bore rifle. The shot hit the deceased above the waste on his backbone. The appellant was accompanied by his brother-in-law, Giriraj who had a katta, father, who had a gupti and brother who also had a katta. The incident was seen by PW6 and PW5. The deceased was taken to a hospital but seems to have died on the spot.

The appellant and Giriraj, his brother-in-law were put up for trial. In respect of father and brother of the appellant, informant (PW4) gave in writing that their names had been wrongly mentioned and, therefore, no action be taken against them.

The Sessions Court, on appreciation of evidence, in particular, the testimony of PW4, the medical evidence, the evidence of ballistic expert and that of seizure came to the conclusion that the prosecution has proved beyond reasonable doubt that the gun-shot injury which resulted in death of the deceased was inflicted by the appellant. Giriraj was given benefit of doubt since neither any injury was attributed to him nor was katta recovered and it was held by the Sessions Court that the intention of Giriraj to commit the murder of the deceased had not been proved. The State did not challenge the acquittal of Giriraj. The High Court, on re-appreciation of evidence, has confirmed the appellant's conviction and sentence of life imprisonment.

Learned counsel for the appellant submits that PW4 had falsely implicated father and brother of the appellant as also Giriraj who stands acquitted. It is further submitted that admittedly there was enmity between the family of the deceased and that of the accused. The deceased was accused in a case of murder of brother of the appellant, but was acquitted in the said case. In view of the enmity, the close relationship between the witness (PW4) and the deceased and false implication of appellant's other family members, it is submitted that PW4 is a wholly unreliable witness and conviction based on the testimony of such a witness is unsustainable.

PW4 is not wholly reliable has been noticed by the High Court and keeping in view the said factor the evidence was analysed. We, however, find it difficult to accept the submission that PW4 is wholly unreliable. He is neither wholly reliable nor wholly unreliable is evident from the evidence on record. PW4 is partly reliable and partly unreliable and the effect of it is that the court to rely on his testimony has to look for corroboration in material particulars (See Vadivelu Thevar v. The State of Madras [(1957) SCR 981). The testimony of PW4 does

not deserve to be entirely rejected. A cautious approach is necessary. Such a testimony has to be examined carefully and with caution. The testimony of PW4, therefore, cannot be rejected on the ground of it being wholly unreliable. Keeping in view the above principles, we have examined the record. The FIR was recorded minutes after the commission of the offence. It names the appellant, the nature of the weapon with which the fire was shot by him, the situs of injury and the names of the other eye-witnesses who were present. It is, however, different matter that those eye-witnesses (PW5 and PW6) did not support the prosecution and were declared hostile.

It has also to be borne in mind that in India the maxim 'falsus in uno, falsus in omnibus' has no application. It is not the law that if the witness has spoken some falsehood, his entire testimony has to be discarded. Testimony of such a witness requires care and caution at the time of its analysis. The tendency of the closely related witnesses to involve all family members in the commission of offence, when there is severe enmity between the deceased and the accused does not mean that the entire testimony shall be rejected and, thus, acquitting even those who committed the crime. The extent to which the evidence is worthy of acceptance depends upon facts of each case. In such cases, it is the duty of the courts to separate the grain from the chaff where it is so possible and to convict the accused if called for on the basis of evidence despite the fact that the same witness also falsely implicated others. Mere acquittal of some of the accused on the same evidence by itself does not lead to a conclusion that all deserve to be acquitted in case appropriate reasons have been given on appreciation of evidence both in regard to acquittal and conviction of the accused. In the present case, the courts below have given appropriate reasons.

Taking us through evidence, Mr. Singh contends that assuming PW4 is partly reliable, there is no corroboration of the material particulars. In support, learned counsel submits that the FIR was ante-timed. The incident took place at 12 Noon. Exhibit P/3, Statement of PW4 was scribed in the hand of PW8 at 12.20 p.m. Exhibit P/3 was written in the hospital. The formal FIR (Exhibit P/4) was recorded at Police Station at 12.50 p.m. Besides pointing out the discrepancy of the time of arrival of PW8 at the hospital, the discrepancy being of about 1 hour, it was submitted that in Exhibit P/1 (requisition sent for the postmortem) neither the FIR number has been mentioned nor the factum of recovery of bundle of bidi and there is cutting at one of the places where the time '3.15' has been cut and 1.30 p.m. has been written. The document read as a whole shows that the cutting of time is of no consequence when examined in the light of other particulars therein. The non-mention of recovery of the bundle of bidi is again not a material discrepancy. We have also examined the inquest report (Exhibit P/16), seizure memo of empty cartridge (Exhibit P/7), Seizure memo of gun (Exhibit P/12) and have also perused the opinion of forensic laboratory (Exhibit P/18) and the testimony of Dr. Dubey (PW3), investigating officer (PW10) besides that of the eye-witness (PW4). There is no material discrepancy in the evidence. It has to be kept in view that in every case, some or other discrepancy is likely to occur. In case discrepancy does not materially affect the case of the prosecution, it has to be ignored. We may also note that no suggestion of ante-timing of FIR was given to the witnesses.

The statement recorded in the hospital (Exhibit P-3) within few minutes of the commission of the crime and which was the basis of recording of the FIR (Exhibit P/4), on the one hand does not attribute any role to the acquitted accused Giriraj or the other two who were not put to trial and on the other hand, gives a vivid account of the weapon used by the appellant, the part of the body where the shot hit the deceased and the name of other two persons who were present at the place of occurrence. The appellant was absconding. He was arrested after about 6 weeks of the incident. The gun with which the shot was fired was recovered from him. The empty cartridge has been matched with the said gun. The firing from 12 bore gun has been deposed to by PW4 and the FIR also records the firing from 12 bore gun. The medical evidence fully corroborates the situs of the injury as also the nature of the injury which also stands corroborated from the ballistic expert opinion. The evidence of examination of clothes worn by the deceased at the time of occurrence further support the prosecution case. The 14 pallets that were recovered from the body of the deceased further lend corroboration to the case of the prosecution in the material particulars. The shot was fired from close range. The FIR also notices the inflicting of one gun shot.

It is pointed out by learned counsel for the appellant that according to

prosecution four live cartridges were also recovered from the appellant and only three were deposited along with the challan papers and on basis thereof it is contended that the fourth live cartridge may have been used by the prosecution to falsely implicate his client. The judgment of the trial court, however, notices that one live cartridge was left at the Police Station by mistake and when that fact came to the notice of the investigating officer, the said cartridge was deposited in court. The empty cartridge which is recovered from the place of occurrence has been matched and as per the ballistic expert opinion, it was fired from the gun recovered from the appellant. It may be noticed that the gun that had been recovered was claimed to be a licensed gun of the appellant. The testimony of PW4 insofar the appellant is concerned, has not been shaken. The said testimony has been corroborated on all material particulars by medical evidence, ballistic expert evidence and the evidence of seizure of the gun and the empty cartridge. The evidence has been properly analysed by the courts below, having regard to the well settled principles above noticed.

For the aforesaid reasons, the impugned judgment does not warrant any interference. The appeal accordingly fails and is dismissed.