

High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No.- 2024:AHC-LKO:22602-DB

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Reserved

Case :- GOVERNMENT APPEAL No. - 74 of 1993

Appellant :- State

Respondent :- Ram Gopal Misra And Others

Counsel for Appellant :- Govt. Advocate

Counsel for Respondent :- H.D. Srivastava, Janardan Singh, Sushil Kumar Singh, Vipin Kumar Mishra

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per: Rajan Roy, J.)

(1) This is an appeal by the State under Section 378 Cr.P.C. challenging acquittal of the respondents-accused by learned Sessions Judge, Sitapur vide judgment and order dated 28.11.1992 passed in Sessions Trial No.510/1991 under Sections-147, 148, 149, 307, 302 I.P.C. P.S.-Laharpur, District-Sitapur.

(2) Respondent nos.3, 4 and 6 have died. The appeal has already abated against them. Rest of them are alive.

(3) The prosecution case in nutshell is that on 21.01.1990, the accused persons ten in number, four of whom were armed, attacked the informant side while they were peeling sugarcane in the field of Ram Kishore. On hearing the exhortation to kill,

the informant side who were eight in number ran. They were chased by the accused. Firing ensued wherein Sangam Lal died of firearm injuries and three others namely, Sudhakar, Greesh Kumar and Mool Chand (P.W.1-Informant) sustained injuries. The incident occurred at 08:00 A.M. in the morning. F.I.R. was lodged at 09:40 A.M. at P.S.-Laharpur which is nine miles from the scene of crime. The body of the deceased and the injured-Greesh were taken to P.S.-Laharpur on a tractor. The injured were examined at P.H.C.-Laharpur at 10:26 A.M. They were taken to District Hospital, Sitapur where also, they were examined.

(4) Inquest took place on the date of incident itself between 09:40 A.M. to 12:00 P.M. Post-mortem was conducted on the next date i.e. 22.01.1990 at 01:00 P.M.

(5) The accused who were charged with the offence under Sections-147, 148, 149, 307, 302 I.P.C. on 10.12.1991 have been acquitted by the trial court.

(6) Heard Sri Janardan Singh and Sri Sushil Kumar Singh, learned counsel for the respondents and learned A.G.A. on behalf of the State-appellant.

(7) The contention of the learned A.G.A. for the State was it being a case of direct evidence with as many as four witnesses having been produced by the prosecution, out of which, two were injured witness who were wholly reliable especially as all the injuries on the body of the deceased and the injured were firearm injuries and the forensic/ ballistic report proved that E.C.-3, one of the disputed cartridges, was fired from single barrel gun attributed to Ram Gopal- main

accused and Pradhan of the village during the incident, medical evidence was proved by doctors and radiologist, yet, inspite of it, on the basis of conjectures and presumptions and by taking a hyper technical view, the trial court acquitted all the accused even going to the extent of discussing motive that too in a case of direct evidence. According to him, the acquittal was bad on facts and in law and liable to be set aside. The accused were liable to be convicted and sentenced.

(8) Learned counsel for the respondents, on the other hand, submitted that within the limited scope of appeal by the State against judgment of acquittal as the judgment of learned trial court expresses a possible view after a detailed examination of the evidence before it, therefore, this is not a case for interference by the High Court. Medical evidence makes the prosecution case and the ocular evidence led by it absolutely impossible, therefore, unreliable. The F.I.R. is ante-timed. It is a case of false implication. The appeal is liable to be dismissed.

(9) From the evidence on record, the death of Sangam Lal and the injuries sustained by the three injured are not in dispute and they have been proved. The only question is as to whether the accused committed the crime alleged or not.

(10) It is not a case where the police reached the scene of crime and found the body at the scene but one where, after commission of crime, as claimed, the body of the deceased was taken to the police station on a tractor along with one of the injured-Greesh. Investigating Officer claims to have collected blood soaked soil and plain soil from the alleged scene of

crime. Recovery memo in this regard i.e. Ex.Ka.24 does not mention the scene of crime as the field of Gunnilal but it mentions the field where wheat crop existed which according to the respondent counsel as per the siteplan is the field of Gunnilal.

(11) There is no mention of Gunnilal's field in the tehrir/ F.I.R. submitted by P.W.1-Informant. In the tehrir all that has been stated is that while informant side was peeling sugarcane in the field of Ram Kishore, the accused side attacked and fired upon them. Sangam Lal fell there itself. There is no mention of the field of Gunnilal as the place where Sangam Lal fell nor about the running from the field of Ram Kishore towards that of Gunnilal's field. There is no forensic report to demonstrate that plain soil collected allegedly from the field of Gunnilal matched with blood soaked soil collected from it. We have only the ocular evidence in this regard which will be considered hereinafter.

(12) Learned trial court has recorded a finding that the place of occurrence shown in the tehrir / F.I.R. is the field of Ram Kishore whereas before the trial court, it has been changed to the field of Gunnilal. This, according to it, strikes the first blow to the prosecution's case, a fatal one. We do find that tehrir does not mention the field of Gunnilal at all nor about the informant side having run from the field of Ram Kishore towards the field of Gunnilal and in that process, having been chased by the accused side and fired upon from behind though it does mention about the firing and the deceased and injured being hit. No doubt, an F.I.R. is not an

encyclopedia but at least the place of occurrence and important features of commission of crime should find mention therein in the sense that a new place of occurrence not mentioned in the tehrir if mentioned for the first time subsequently, would create a reasonable doubt in this regard.

(13) The incident is said to have occurred at 08:00 A.M. in the morning. Informant-P.W.1 claims to have reached the police station situated nine miles away at 09:30 A.M. on a tractor with deceased body and injured person. F.I.R. has been lodged at 09:40 A.M. Now, in this context, the testimony of the Head Muhurir who prepared the Chik report and made necessary entry in the G.D. as also prepared Chithi Majrubi for medical examination of the injured becomes relevant. He is P.W.5. He has stated that informant reached the police station at 09:40 A.M. It took him (P.W.5) half an hour to prepare the Chik report. It took about 20 to 25 minutes to make G.D. entries. During this period, all the three injured were at the police station. Thereafter, he has stated that when they came to the police station, he prepared the Majrubi Chithi, gave it to them and asked the Constable to take them to P.H.C., Laharpur and thereafter, he prepared the Chik F.I.R. and made G.D. entries. However, he has stated that he had referred their injuries in the G.D. and had made the said entries after seeing them and that G.D. entries have been made after preparing the Chik F.I.R. Thereafter, again, he has stated that, in fact, the truth is that he made the entries in the G.D. on seeing the injured and thereafter had prepared the Majrubi Chithi for their medical examination. He has also stated that the injured were at police station till 10:30 A.M. and thereafter, they were sent

to P.H.C., Laharpur. The statement on the face of it makes the medical examination of injured-Mool Chand (P.W.1) at P.H.C., Laharpur at 10.26 A.M. impossible. Sudhakar, the other injured was examined at P.H.C., Laharpur at 11:15 A.M. Sudhakar has not been produced as a witness.

(14) We may in this very context examine the testimony of Investigating Officer i.e. P.W.11. He has stated that he was present at the police station when he received information about the crime through P.W.1 and took over the investigation himself. He prepared the copy of Chik report and G.D., sent the police force toward the scene of crime and then recorded the testimony of P.W.1-Informant at the police station. He has stated that before preparing inquest report, he had sent the injured for medical examination at P.H.C., Laharpur but this would obviously be after he had recorded the statement of Mool Chand who reached the police station at 09:30 A.M. and F.I.R. was recorded at 09:40 A.M. Therefore, obviously, this would have taken some time. In cross-examination, he has stated that he had sent the injured to P.H.C., Laharpur by jeep. In the same vein, he has stated that he had deputed S.I.-Ram Swaroop to go to the scene of crime at 09:40 A.M. in the jeep and then has stated that he has instructed the driver to drop the injured at P.H.C., Laharpur and then take the jeep to the scene of crime. He has then stated that S.I.-Ram Swaroop and police party did not go the scene of crime on jeep but by some other mode. They left the police station before 10:00 A.M. He has further stated that he had not instructed the driver -Jaheer Khan to drop the injured at P.H.C. first and then by the same jeep to take S.I. -Ram Swaroop and police

party to the scene of crime. Intriguingly, he then goes on to say that it is true that he had instructed the driver to drop the injured at P.H.C., Laharpur and by the same jeep to take S.I.-Ram Swaroop to the scene of crime. The driver had taken the injured Sudhakar and Greesh to the P.H.C. by jeep and the jeep had left the police station before 10:00 A.M. Apart from the inherent contradiction and inconsistencies in his statement, the same is also inconsistent with the testimony of P.W.5-the Head Muharir. He i.e. P.W.11 has stated that it took him about ten minutes to write the Chik report. Now, in addition to it, he has stated that he had also recorded the statement of P.W.1-Mool Chand which would have also taken some time. He has admitted presence of the injured at the time of recording of the G.D. which in the context of the statement of P.W.5 apparently makes it clear that they must have been present much after 10:00 A.M.

(15) In further cross-examination, he (i.e. P.W.11) has stated that before sending the injured to the P.H.C., he had written about four to five pages in the case diary which took him about one hour. Moreover, he says that he received the Chik report and G.D. within ten minutes. He has also stated the injured remained at the police station till about 10:45 A.M. which is also corroborated by the statement of P.W.5. If it is so then it makes the presence of P.W.1-Mool Chand (Informant) at P.H.C., Laharpur at 10:26 A.M. apparently impossible.

(16) In this context, the sequence of events i.e. P.W.1 reaching the police station at 09:30 A.M., F.I.R. being lodged at 09:40 A.M., thereafter, G.D. entry being made, Majrubi

Chithi being prepared, statement of the informant being recorded and one hour being consumed by the Investigating Officer in filling four to five pages of case diary makes the appearance of informant at P.H.C., Laharpur at 10:26 A.M. highly improbable. Therefore, the finding of the trial court that F.I.R. appears to be ante-timed.

(17) Most important, P.W.1-Mool Chand says that he went to the hospital in a Rickshaw which is a slow moving vehicle. Learned trial court has also noticed the inconsistencies in this regard in the statement of P.W.1. In fact, P.W.5 and the Investigating Officer have also subsequently in cross-examination admitted to their presence at least till 10:45 A.M. and P.W.5 has also stated that he noted the injuries in the G.D. after looking at them. The trial court has given reasons that even the examination of the other witness-Sudhakar at P.H.C., Laharpur at 11:30 A.M. is improbable.

(18) The trial court has also noted in this context the cuttings and over-writings in several police documents. It has recorded a finding that on each and every police paper, the crime number has been so written that it has either been written subsequently or has been overwritten. In Chik report (Ex.Ka.6), at the top, crime number has been overwritten. In Chithi Majrubi, crime number has been written in red ink. In the carbon copy of the G.D. (Ex.Ka.10), the crime number is written in thick carbon. In the inquest report, there is over-writing in the year of crime number. In the photo lash, crime number has been written with thick ink subsequently so is the case with chalan lash (Ex.Ka.18). There are other over-writings

thereon. In the sample seal, the crime number is over-written. Considered in the context of ante-timing of the F.I.R., the trial court has opined that all this makes the time of lodging of the F.I.R. suspect. We do not fault the trial court for the said findings.

(19) The Investigating Officer (P.W.11) says that he prepared the siteplan on the statement of Kalloo (P.W.3) and Ram Kishore Tiwari (P.W.9). P.W.3 denies having explained the scene of crime or told him about the site.

(20) Moreover, when we come to the siteplan of the scene of crime i.e. Ex.Ka.23 and read it conjointly with the testimony of the witnesses i.e. P.W.1, 2, 3 and 9 along with medical evidence in the form of injury reports, post-mortem report and opinion of the doctors i.e. P.W.6 and P.W.12 (who examined the injured at P.H.C. and District Hospital, Sitapur), P.W.7 (who conducted the autopsy on the body of the deceased-Sangam Lal), we find many inconsistencies to the extent of making the ocular evidence impossible/ unreliable and the prosecution case unreliable.

(21) In the siteplan, the accused are shown as having come from the southern side and then after a particular point having moved towards the north-western side by the left of the Sadhan Sahkari Samiti Store whereas the informant side are shown as being present towards the north at the field of Ram Kishore marked as 'A1' peeling sugarcane towards the south western side of the field and on seeing the accused, who were coming from the southern side, they are shown as having ran towards the western side initially till much after the Sadhan

Sahkari Samiti Store and then towards the northern side in a curve towards the kharanja sadak and abadi of the village. The accused are alleged to have fired upon Sangam Lal and the injured from near the tubewell Kothri which is towards the western side. Sangam Lal is said to have been hit and fallen at the spot marked as 'X-1' which as per the siteplan is about 55-60 steps from the place where he was fired upon. Three or four cartridges have been recovered from nearby it. The injured-Greesh fell in the field of Gunnilal as per the siteplan and its distance from tubewell kothri is about 40 paces.

(22) Now, in this context, first of all, we may examine the injuries sustained by the deceased and the injured. The injuries of the deceased are as under:-

"(1) One Fire arm wound of entry 3 cm X 2.5 cm X through & through on (Lt) upper arm aspect 18 cm above from (Lt) elbow joint. margin of wound is blackened & lacerated inverted. direction of fire arm from (Lt) to (Rt)

(2) One Fire arm wound of exit 7 cm X 6 cm X communicating with injury no (1) on medial aspect of (Lt) upper Arm 5 cm below (Lt) axilla margin of wound lacerated & everted.

(3) One fire arm wound of entry 4 cm X 3 cm X chest cavity deep on (Lt) side of chest at mid axillary line 5 cm below (Lt) axilla margins of wound inverted & lacerated.

(4) One fire arm wound of entry 1½ cm X 1 cm X cavity deep on (Lt) side of chest just below interior angle of scapula on back of chest. margin of wound blackened inverted & lacerated direction of firearm from back to front.

(5) One firearm wound of entry 1½ cm X 1 cm X muscle deep on medial aspect of (Lt) thigh 19 cm above from (Lt) knee joint, margins of wound inverted blackened & lacerated direction from medial to lateral.

(6) One fire arm wound of entry 0.8 cm X 0.8 cm X muscle deep on outer aspect of (Rt) thigh 27 cm above (Rt)

knee joint- margin of wound lacerated inverted & blackened."

(23) The injuries of P.W.1-Mool Chand are as under:-

"(1) Pilet wound size 0.2 in diameter, circular in shape, muscle deep on posterior surface of left index finger, 3.3 cm above to the tip of finger. No blackening is seen around the wound.

(2) Two pillet wounds on posterior surface of right hand at the distance of 3.0 cm from each other, one wound is 5.3 cm above to origin of middle finger, size of wound 0.2 x 0.3 cm X muscle deep.

(3) Pilet wound circular in shape, 0.2 cm in diameter, depth not found, no blackening around the wound 4.0 cm below to Rt elbow joint on posterior surface of Rt forearm.

(4) Multiple pillet wounds over an area of 74 cm X 6.0 cm on lateral surface of (Rt) thigh, (Rt) knee and Rt leg, 7.8 cm above to lateral malleolus, size of wound is 0.2 cm X 0.2 cm X muscle deep. No blackening & tattooing is seen around the wounds.

(5) Two pillet wounds on medial side of left leg, size 0.2 cm X 0.2 cm X muscle deep, one wound in 6.2 cm below to left knee joint and other is 11.0 cm below to this wound. No blackening is seen around the wound.

(6) Multiple pillet wounds over an area of 41 cm X 18 cm, on Rt side of neck, Rt side of chest & front side (Rt) on chest. size of wound Illegible from 0.2 cm X 0.2 cm to 0.2 cm X 0.5 cm depth varying from subcutaneous to muscle deep. No Blackening & tattooing is seen around the wounds

Remarks- (1) All injuries are fresh in duration.

(2) All injuries are caused by firearm.

(3) All injuries are under observation Illegible of injury."

(24) The injuries of P.W.2-Girish Chand are as under:-

"(1) Firearm wound (2 in no.) 0.3 cm X 0.3 cm X depth U.O. in size (each) 7 cm apart on inner & back aspect of (R) forearm 6 cm below elbow joint. No blackening, scorching or tattooing around the wound.

(2) One firearm wound of entry 0.3 cm X 0.3 cm X depth U.O. on back of head (L) side 10 cm behind (L) ear. No evidence of blackening.

(3) One firearm wound of entry 0.3 cm X 0.3 cm X depth U.O. on (R) side abdomen 8 cm above (R) iliac crest. No evidence of blackening.

(4) Two (2) firearm wounds of entry each 0.3 cm X 0.3 cm X depth U.O., 11 cm apart on outer aspect of (R) thigh 18 cm above (R) knee joint. No evidence of blackening.

(5) One firearm wound of entry 0.3 cm X 0.3 cm X depth U.O. on outer aspect of (R) leg 17 cm below (R) knee joint.

Remark Injuries (1) to (5) kept u.o. (Adv. X-ray) caused by Fire arm weapon & fresh in duration."

(25) The injuries of Sudhakar Lal are as under:-

"(1) Pilet wound size 0.2 cm X 0.2 cm X muscle deep on right cheek, 4.5 cm lateral to right angle of mouth. No Blackeing is seen around the wound.

(2) Pilet wound size 0.2 cm X 0.2 cm X muscle deep on lateral surface of (Rt) forearm, 2.5 cm below to Rt. elbow, No blackening is seen around the wound.

(3) Pilet wound size 0.2 cm X 0.3 cm X subcutaneous in depth, on left thigh lateral surface, 4.0 cm above to left knee joint. No blackening is seen around the wound.

(4) Pilet wound size 0.2 cm X 0.2 cm X subcutaneous in depth, on anterior surface of left leg, 9.0 cm below to tibial illegible. No blackening is seen around the wound.

Remark- (1) All injuries are under observation regarding nature of injuries.

(2) All injuries are caused by firearm.

(3) All injuries are fresh in duration."

(26) We may now consider the testimony of P.W.7-Dr.S.K. Sinha, the Autopsy Surgeon who conducted post-mortem on the deceased body. The deceased's 7th, 8th and 9th rib on the left side were fractured. He had injury on the left lung. As regards

the sixth ante-mortem injury sustained by him, P.W.7 has opined in his cross-examination by the defence that injury no.1, 2 and 3 could be caused by the same bullet and this injury would be possible only when the assailants would be standing and firing from the left side of the injured. Now, from the siteplan as discussed hereinabove, at the time of being hit, the deceased-Sangam Lal was in the north direction and he as also other persons were being chased by the accused who were at the back, that is, from the southern side and the siteplan does not in any manner make it possible for the assailant to have hit the deceased while standing on his left. As regards injury no.5, he has opined that whoever caused this injury must necessarily have been standing on the right side of the deceased. The direction of the injury was from inside to outside horizontal. Likewise, with regard to injury no.6, he has opined that while causing it, the assailant had to be necessarily standing on the right of Sangam Lal. As already stated, the siteplan makes this impossible. Most important, he has stated that it is impossible to cause firearm injury nos.1, 3, 5 and 6 by firing from the behind whereas the siteplan suggests of only one possibility i.e. firing from the back of Sangam Lal. There is another aspect. P.W.7 has stated that injury no.1 had been caused from a close distance of 3-5 feet as it contained blackening. Any fire from a distance of more than 5-6 feet would have not caused this injury. Likewise, injury no.4 could only have been caused from a distance of 3-5 feet as it also had blackening. The distance shown in the siteplan is not corroborated by medical evidence and the injuries discussed hereinabove. He has opined that the injuries on the deceased

could have been caused by four fires whereas the case of prosecution is of indiscriminate firing and even at the scene of crime only three cartridges were recovered.

(27) Now, we may examine the opinion of P.W.6 and P.W.12-the doctors who examined the injured. P.W.6 examined the injured at P.H.C., Laharpur. In his cross-examination, he has stated that injury no.6 on P.W.1-Mool Chand could be caused by firing from a little distance from the front but in no circumstances could it be caused by firing from behind. Injury nos.1, 2 and 3 could also have been caused from the front while running. Injury no.4 could also be caused by firing from the front towards the right and not from back. Regarding injury nos.1 2 and 4 of Sudhakar also he has opined that these could be caused by a single fire from the front a little bit towards the right but not on firing from the back. As regards injury no.3 on Sudhakar, he stated that this could be caused from a long distance fire from his left side and not from the front or the back. He has further opined that the injuries on Mool Chand could be caused by long distance single fire whereas the injuries on Sudhakar could be caused by two fires.

(28) We may also refer to testimony of P.W.12 who examined the injured, namely, Greesh (P.W.2) at District Hospital, Sitapur on 21.01.1990 at 12:00 P.M. He has opined that injuries on the body of P.W.2 had been caused by firing from a long distance which would not cause blackening/tattooing. Except injury no.2, all other injuries could have been caused by firing from the front but slightly towards the right.

Injury no.3 could not have been caused by firing from the back/ behind.

(29) We are conscious of the fact that in the event of contradiction/ conflict between the medical and ocular evidence, it is the ocular evidence which is to be given primacy and preference, however, there is one exception which is, if the medical evidence makes the ocular evidence absolutely impossible then it is the medical evidence which will prevail. The trial court has also discussed this aspect at length and has opined that medical evidence renders the ocular testimony incorrect, impossible and highly improbable. The injuries of all the victims are from the front side whereas the testimony is to the contrary.

(30) Now, in this very context, though we have discussed the opinion of the doctors and the siteplan, we may now discuss the ocular evidence as to how the incident happened especially as regards the direction from which firing took place and positioning of the accused vis-a-vis the informant side at the time of firing. P.W.1-informant who is an injured witness has spoken about their presence in the field of Ram Kishore which is marked as 'A-1' in the siteplan. He has stated that when they saw the accused coming they ran towards the west. The accused had fired upon them while they were running and the accused were towards the west of Sadhan Sahkari Samiti Store which is shown in the siteplan as 'A'. He has stated that when they were injured, they were running and were also turning and looking back. When they were injured, they were running towards the north and those firing at them were

towards their south. He stated that they had been fired upon from a distance of 35-40 steps. When they were fired they were in the field of Gunnilal. He has then stated that they were hit in the field of Gunnilal while they were running towards the north. He has further stated that when they used to turn and see they did not turn their entire body but only turned their neck. At the time of being hit, he was in front of Sangam Lal (deceased) and Greesh (P.W.2) and was towards the north. He was in the field of Gunnilal at the time of being hit. Sudhakar was by his side towards the east and he was also running. The accused were near the kothi tubewell in the agricultural field of the school and were firing from there. Now, this positioning of the injured witnesses including the deceased and the accused belies the injuries received by them as already discussed hereinabove. In this situation, none of the injuries could have been caused from the front nor from the left side. Moreover, if the firing was taking place from a distance of 35-40 steps as is also mentioned in the siteplan then the burden was heavy upon the prosecution to explain the blackening on the ante-mortem injuries received by the deceased-Sangam Lal which has not been done.

(31) We may now examine the testimony of P.W.2-another injured witness in this very context. In his examination-in-chief, he has spoken about running towards the north and west on hearing the exhortation by the accused. In his cross-examination, he has stated that when he first saw the accused, they were standing towards the south on the Kharanja. The Kharanja is mentioned in the siteplan towards the south. He has stated that all of them ran in the same direction, meaning

thereby, all the eight persons including the deceased and injured, though at a distance of about 10-15 paces from each other, when they started running obviously from the field of Ram Kishore the accused were west of the Sadhan Sahkari Samiti Store building. The other accused were coming out from the fertilizer store building and moving towards the agricultural field of the school. He has stated that they ran in the same direction in which the accused had gone. He has then stated that when they had reached the southern west part of Gunnilal's field, the accused started firing upon them and they were being hit. Mool Chand (P.W.1) was ahead of him and the deceased-Sangam Lal was behind him. Sudhakar-the injured was even ahead of Mool Chand. Sangam Lal was behind towards south of him when he was hit. Narration of direction in which the parties were moving makes the injuries sustained by them impossible especially considering the point from which the firing started and the point on which they were hit i.e. the informant and injured were towards the northern side and accused in the southern and not in the front or towards their left. He has further stated in his cross-examination that when they ran, the accused chased them. They, that is, injured etc, were running ahead and the accused were chasing them from behind. All the injured received injuries while they were running ahead and were being chased by the accused from behind. This itself makes the injuries impossible and unexplained. He has then stated that they were fired upon from a distance of 5-6 steps. It has come in the testimony of the doctors that the injuries sustained by the injured were fired from long distance. This is also not in keeping with the

testimony of P.W.1 who says that firing took place from a distance of 35-40 steps nor is it in tune with the distance shown in the sitemap Ex.Ka.23.

(32) The testimony of P.W.3-Kaloo (not injured) and P.W.9-Ram Kishore (not injured) is also on the same lines. P.W.3 says that on hearing the exhortation to kill, all of them i.e. informant's side ran towards the west towards the north of the store that is marked as 'A'. The accused were firing from the room near the school. He says that the accused went away towards the south after firing but the siteplan does not mention this. In cross-examination, he has stated that while running, he was 10-12 steps ahead of Sangam Lal in the field of Gunnilal towards the north. He was ahead of everybody else. When he turned, he saw Greesh and Sangam falling. The medical evidence makes his testimony impossible so far as firing and inflicting firearm injuries is concerned.

(33) P.W.9-Ram Kishore Tiwari in whose fields the informant side was present when the accused were seen for the first time, has stated as having seen the accused coming from the southern side and that they (informant's side) ran towards the west. The accused exhorted and chased them. When the informant side reached the field of Gunnilal, the accused started firing from tubewell kothi. When we see the siteplan once again, the positioning of the informant side is towards the north and accused side is towards the south which makes the injuries sustained by the injured and the deceased impossible. He has stated in cross-examination that he was ahead of everybody else while running. They were in the field of

Gunnalal when firing took place. The firing was taking place from the Tubewell room towards the east of the school. The store is situated towards the east of this Tubewell Kothri. He has categorically stated that those who were firing were on eastern southern side of the Tubewell Kothri which again makes the injuries impossible as they were situated behind the injured and the deceased.

(34) If the testimony of ocular witnesses is to be believed then it was impossible for the injured and the deceased to have sustained injuries as discussed above. The injuries on their bodies make the ocular testimony absolutely unreliable and improbable.

(35) In view of the above discussion, we have no hesitation in saying that for this reason as also based on the medical evidence discussed hereinabove, the ocular testimony as to the narration of events which took place and the manner in which the crime was committed is absolutely unreliable. Such injuries could not have been caused if the ocular evidence is to be believed.

(36) Trial court has also discussed the motive for the crime which is not very relevant in a case of direct evidence but where the ocular evidence is not reliable, a discussion in this regard is not completely ruled out and the trial court has opined that there are two sets of accused. One comprising of Ram Gopal and his family members and the other is Shatruhan and his family members. Of course, Shatruhan Lal is cousin brother-in-law of the accused Ram Gopal but it has rightly recorded a finding that at least Shatruhan Lal and his family

members who were almost six in number did not have any motive whatsoever to commit the crime. Enmity with Ram Gopal, of course, as claimed by P.W.1 had spread over a number of decades but the immediate motive was an election held in 1988 whereas the incident had taken place in 1990. Therefore, it has opined that motive was also lacking.

(37) Moreover, it has taken into consideration the fact that there were six accused who were armed with lathis but there is not a single lathi blow on the injured or the deceased. The firing was taking place from a close range of 3-4 feet as appears to be from the injuries sustained by the deceased then it is very unnatural that none of the six persons carrying lathis accompanying the accused carrying firearms struck any blow on the deceased.

(38) As regards the place of occurrence also, it has dealt this aspect in detail and held that place of occurrence has been changed from the field of Ram Kishore as is mentioned in the tehrir/ F.I.R. to the field of Gunnilal which makes a serious dent in the prosecution case.

(39) Trial court has discussed the ballistic report and has taken into consideration the fact that out of the empty cartridges recovered from the scene of crime as alleged only one EC-3 matched with the single barrel gun attributed the main accused-Ram Gopal. However, in this context, it has taken into consideration the fact that these items were lying with the Investigating Officer and were not sent to Sadar Mall Khana and therefore, the possibility of manipulation/ creation of evidence could not be ruled out as the other cartridges

recovered did not match. Most important, the bullet did not match with the rifle carried by Shatruhan Lal although the deceased is said to have sustained injury by firing from the said rifle thereby creating a reasonable doubt about the prosecution case. No attempt was made to recover the other guns i.e. the double barrel gun and countrymade pistol which were said to have been carried by Tribhuwan Dutt and Babu Ram respectively.

(40) The trial court has given extensive reasoning for disbelieving the ocular testimony. P.W.3-Kaloo who had a prior enmity with the accused side. Sudesh was his real uncle who had enmity with Prem Narayan due to election to Ganna Samiti. His presence has been found to be doubtful at the scene.

(41) The witnesses were found to have personal grudge against the accused of some sort or the other.

(42) In view of the above discussion, we are of the opinion that view taken by the trial court is a possible view based on consideration of facts and evidence before it, therefore, in view of the judgment of Hon'ble the Supreme Court in the case of '**State of Karnataka vs. Gopalkrishna**' (2005) 9 SCC 291; '**Sudershan Kumar vs. State of Himachal**' (2014) 15 SCC 666, '**Dilawar Singh vs. State of Haryana**' (2015) 1 SCC 737 & '**H.D. Sundara & Ors vs. State of Karnataka**' (2023) 9 SCC 581 and for the reasons already given by us hereinabove, we see no reason to interfere with the judgment of acquittal by the trial court.

(43) Accordingly, the appeal is **dismissed**. All the surviving respondents are directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure within six weeks.

(44) Let trial court record along with a copy of this judgment be sent to learned trial court for its information and necessary compliance.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy,J.)

Order Date :- 14.03.2024

Shanu/-