RAM BHAROSEY

v.

STATE OF U.P.

(Criminal Appeal No. 1059 of 2005)

NOVEMBER 17, 2009

[B. SUDERSHAN REDDY AND J.M. PANCHAL, JJ.]

Penal Code, 1860 – s. 302 – Murder – Prosecution case that accused inflicted fatal injury to deceased by fire arm – Conviction u/s. 302 and sentence of life imprisonment by courts below – Justification of – Held: Justified – High Court upheld conviction of accused after careful analysis, assessment and discussion of relevant piece of evidence on record – Prosecution case established satisfactorily – Failure of prosecution to establish that accused had knowledge that deceased was to come at a particular place, is of no consequence – Witnesses merely being close relatives of deceased could not be branded as interested witnesses – Identity of accused not disputed, thus, not entitled to any benefit – Code of Criminal Procedure, 1973 – s. 374.

The question which arose for consideration in this appeal was whether the courts below were justified in convicting the appellant-accused u/s. 302 IPC and imposing sentence of life imprisonment.

Dismissing the appeal, the Court

HELD: 1.1. While deciding a criminal appeal filed u/s. 374 of the Code of Criminal Procedure, 1973, the High Court must go into all the details of oral and documentary evidence adduced in the case and conclusions should be drawn on the basis thereof. [Para 7] [955-B-C]

1.2. The impugned judgment in the appeal indicates the conviction of the appellant is confirmed after careful analysis, assessment and discussion of relevant piece of evidence on record. After noticing that prosecution side had presented eight witnesses whereas the defence had

A produced three witnesses, the High Court discussed the evidence of relevant witnesses. The judgment rendered by the High Court further makes it very clear that the advocate for the appellant and others had raised three points for consideration of High Court. The said points were B effectively discussed and dealt with by the High Court. The two arguments appealed to the High Court and the three accused who were convicted u/s. 302 with the aid of s. 34 IPC were acquitted. The acquittal of the three accused itself indicates application of mind by the High Court to the C evidence on record. [Para 7] [955-C-G]

1.3. In the memorandum of appeal or revision, several grounds are taken/pleaded but at the time of the arguments the advocate would confine himself to few points which he considers to be best and press only those D points to be considered by the Court. In the memorandum of SLP no grievance is made by the appellant that certain points were urged but were not considered by the High Court. As the advocate for the appellant and others had emphasized three points before the High Court, the High E Court was justified in considering those points and not adverting to all the points which were raised in the memorandum of appeal. This is not a case where the High Court has confirmed conviction of the appellant by an indifferent process of rejecting the defence evidence on a uniform assumption that the defence evidence is always F false. On appreciation of evidence adduced by the parties, the High Court has drawn its own conclusions. Except mentioning that each piece of evidence was not carefully analysed, assessed and discussed, the counsel for the appellant could not point out to this Court as to which G evidence was not analysed, assessed or discussed by the High Court. Further, this Court had permitted the counsel for the appellant to urge those points before this Court which according to him were relevant but not considered by the High Court. Thereupon, the counsel advanced three H contentions for consideration of this Court, which are

considered by the Court and dealt with. [Para 7] [955-G-H; 956-A-G] A

1.4. The prosecution never approached the Court with a case that the accused had pre-meditated the murder of the deceased after hatching a conspiracy. The simple case of the prosecution is that when B-first informant and father of the deceased and others reached near the octori barrier, they saw the four accused standing there and the accused challenged P and fired shots at him. While proving this case, it was not obligatory at all for the prosecution to adduce evidence to establish that the accused had knowledge that deceased P was to come to petrol pump with his father at a particular time. No direct evidence of knowledge on the part of an accused that he knew that the deceased was to come at a particular place can be led in a criminal trial. It is only from the proved circumstances of a particular case that the Court would attribute such a knowledge to an accused. It may be that the accused persons had come to the place 'S' in connection with their work and when they saw their target, they decided to do away with him. The case of the prosecution is that out of the four, two accused had fired arms and had used the same to murder the deceased. To prove the same, direct evidence was tendered by the prosecution. Therefore, so called failure of the prosecution to adduce evidence to establish that accused had knowledge that the deceased was to come to the petrol pump at the specified time, is of no consequence. [Para 8] [957-A-F] B C D E F

1.5. Neither the first informant B who is examined as P.W.1 nor eye witness PS examined as P.W.3 could be branded as an interested witness. Merely because a witness is close relative of the deceased he does not become an interested witness. Interested witness is one who is interested in securing conviction of a person out of vengeance or enmity or due to disputes relating to the properties. The facts of the case do not show that the first G H

A informant had any dispute with any of the accused including the appellant. His simple case is that HS who is father of accused J and M was murdered for which son of the deceased was prosecuted but acquitted and therefore in order to take revenge, the deceased was done to death. B The cross- examination of the material witnesses makes it very clear that the son of the first informant was prosecuted for murder of HS but acquitted. This fact would not show in any manner that the first informant was interested in securing conviction of the appellant and C therefore he had wrongly deposed on oath before the Court that his son died due to the shot fired by the appellant. Even if it is assumed for the sake of argument that the witnesses examined in this case are close relatives of the deceased and, therefore, should be regarded as D interested witnesses, the version of an interested witness cannot be thrown over board but has to be scrutinized carefully and critically before accepting the same. Trial court and High Court had subjected the evidence of witnesses to careful scrutiny before accepting the same. Therefore, on the facts and in the circumstances of the E case, neither the trial court nor the High Court erred in placing reliance on the testimony of first informant who is father of the deceased and P.W.4. [Para 9] [957-G-H; 958-A-F]

F 1.6. Appellant is named by the first informant in the FIR itself. The first informant knew very well that his son was prosecuted for the murder of father of accused J and M. During cross-examination, it was never suggested to the first informant that the appellant or for that purpose any of the accused was not known to him. The evidence of the G first informant makes it clear beyond pale of doubt that he was knowing the appellant and three other accused prior to the occurrence and named the appellant and another in the FIR whereas description of two other accused was given in the FIR. His evidence further shows that his H relatives are living in place I and he was visiting his

relatives often. This assertion made by the first informant could not be demolished by defence during his cross examination. Once the assertion is believed to be true, it becomes at once clear that he would know the appellant and others. The evidence of Investigating Officer indicates that after reading FIR he did not feel that either witness B or witness PS was not knowing the accused persons by their faces and names and, therefore, it was necessary to hold test identification parade. Further, it could not be satisfactorily established by the defence that the appellant or any of the accused had demanded holding of identification parade and that the said prayer was either rejected by the Investigating Officer or the Magistrate. On facts, the identity of the appellant is not in dispute at all and he is not entitled to any benefit on the ground that he was not identified by the witnesses. [Para 10] [958-H; 959-A-E]

1.7. The prosecution case that the appellant fired a shot from tamancha at the deceased which caused his death is satisfactorily established. Therefore, conviction of the appellant u/s. 302 IPC cannot be regarded as erroneous or illegal so as to warrant interference by this Court. [Para 11] [959-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1059 of 2005.

From the Judgment & Order 17.08.2004 of the High Court of Judicature at Allahabad in a Criminal Appeal No. 828 of 1981.

Dr. J.N. Dubey, Anurag Dubey, Meenesh Dubey, R. Bhaskar, S.R. Setia, for the Appellant.

Ratnakar Dash, Vikas Bansal, A. Sharma, Jatinder Kumar Bhatia, for the Respondent.

The Judgment of the Court was delivered by

J.M. PANCHAL, J. 1. The instant appeal by Special Leave is directed against Judgment dated August 17, 2004 rendered by Division Bench High Court of Judicature at Allahabad in Criminal Appeal No. 828 of 1981 by which the conviction of the appellant under Section 302 IPC and sentence of life

A imprisonment imposed by the learned III Additional Sessions Judge, Agra in S.T. No. 120 of 1980 is confirmed.

2. The facts emerging from the record of the case are as under:-

The first informant i.e. Bhure Lal had gone to Shamsabad, B Agra (U.P.) on December 30, 1979 at the Filter Centre of one Ravi Pandit to take diesel. He was accompanied by his son Puran Singh and two residents of his own village namely Rajendra and Pohan Singh. Only the son of the first informant got two cans of diesel. The first informant with his son and others C was returning home at about 3.00 to 3.15 P.M. When he was at a distance of 40 to 50 steps from Ram Khera Toll Naka, he was accosted by (1) Ram Bharose (the appellant herein), (2) Jagge, (3) Munna and (4) Brijendra. On spotting Puran Singh, the accused told that Puran should not be permitted to return alive. D The appellant and Jagge had Tamanchas with them. Accused Jagge told Puran Singh that he would take revenge for the death of his father and was free to flee anywhere. Seeing danger to his life, Puran Singh started running for his life, leaving his bicycle and shoes. The appellant and Jagge fired shots at him by Katta E but no bullet hit him. Puran Singh was running towards village and when he attempted to take shelter in the house of Karua, he found that the said house was closed. Therefore, he started running by the side of Mango tree. Both the appellant and Jagge who were closely following him fired shots at him but the bullets F hit the Mango tree. When Puran Singh was running towards Filter Centre after crossing the road, the appellant and Jagge as well as Brijendra and Munna surrounded him near Shisham tree. Brijendra and Munna caught his hands after which the appellant fired a shot at him from his Tamancha which hit his chest. On receiving bullet injury Puran fell on the ground and died on the G spot within three to four minutes. The accused persons had thereafter fled towards Jarolli. The complainant and his colleagues could not chase the accused as accused were having Tamanchas. The first informant, i.e., Bhure Lal met Kaptan Singh who reduced the FIR into writing and obtained his thumb H impression thereon. The complaint so prepared was presented

before the Officer of Shamsabad Police Station. After registering the complaint, Sub-Inspector Mahendra Nath visited the place of occurrence with Poohan Singh. The Investigating Officer recorded statements of those persons who were found to be conversant with the facts of the case. He held inquest on the dead body of the deceased and made arrangements for sending dead body for post-mortem examination with all the documents through Constable Ranvir Singh and Shailendra Singh. On the basis of statements made by the first informant Bhure Lal, the Investigating Officer prepared map of scene of offence. From the clothes of the deceased, he seized currency notes worth Rs. 11/- which were smeared with blood as well as permit of diesel which was obtained by the deceased. The Investigating Officer also recovered four khokha karatoosh and 12 Bore Gun from the spot. On completion of investigation and receipt of report from Forensic Science Laboratory, the four accused were charge-sheeted in the Court of Learned Judicial Magistrate First Class having jurisdiction in the matter for commission of offence punishable under Section 302 read with Section 34 of Indian Penal Code. As the offence punishable under Section 302 IPC is exclusively triable by Court of Sessions, the case was committed by the Learned Magistrate to the Sessions Court for trial.

3. The Learned Judge framed charge against the appellant under Section 302 IPC and against other accused under Section 302 read with Section 34 IPC. The charge was read over and explained to the appellant and others. They pleaded not guilty to the same and claimed to be tried. Therefore, prosecution examined several witnesses and produced documents to prove its case against the appellant and others.

4. On completion of recording of evidence of prosecution witnesses, the Learned Judge explained to the appellant and other accused the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure 1973. In the further statements, the appellant and

A others denied the prosecution case. Three witnesses, i.e., (1) Sirajuddin, who was a Clerk, Municipal Board, Shamsabad as D.W. 1, (2) Rohatan Singh, as D.W. 2 and (3) Daya Shankar, as D.W. 3, were examined by the accused in support of their defence that they were innocent.

B 5. After considering the evidence adduced by the prosecution and defence as well as hearing the Learned Counsel for the parties the Trial Court held that it was proved beyond reasonable doubt that deceased Puran Singh died a homicidal death. The Learned Judge found that evidence of first informant C who was father of the deceased was trust worthy and reliable. The Learned Judge held that the FIR was not anti-timed and was promptly filed in which the appellant and Jagge were identified by their names while the two other accused were described by their relationship. According to the Learned Judge motive for D commission of the crime in question was proved by the prosecution which was that Hukam Singh who was father of accused Jagge and Munna was killed in 1976 for which deceased Puran Singh was prosecuted but acquitted and therefore in order to take revenge of death of father of Jagge and E Munna, the deceased was murdered. The Learned Judge further held that it was proved beyond reasonable doubt that death of the deceased was caused due to the shot fired by the appellant which act was done by him in furtherance of common intention of all the accused. Therefore, the Learned Judge convicted the appellant under Section 302 IPC and other accused under F Section 302 read with Section 34 IPC and imposed sentence of life imprisonment on them.

6. Feeling aggrieved, the appellant and others preferred Criminal Appeal No. 828 of 1981 before the High Court of Judicature at Allahabad. The Division Bench of the Allahabad G High Court, by Judgment dated August 17, 2004, has confirmed conviction and sentence imposed on the appellant but set aside the conviction and sentence imposed on three other accused. Therefore, the appellant has approached this Court.

7. This Court has heard the Learned Counsel for the parties H

at length and in great detail. This Court has taken into consideration the record of the case. The contention advanced by the Learned Counsel for the appellant that High Court has failed to analyse, assess and discuss each piece of evidence carefully on its merits before reaching its conclusion and therefore the appellant should be acquitted, has no substance. It is true that while deciding a Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, the High Court must go into all the details of oral and documentary evidence adduced in the case and conclusions should be drawn on the basis thereof. There is no manner of doubt that the High Court should discuss oral and documentary evidence on record to indicate that points argued were considered. However, the Judgment impugned in the appeal indicates the conviction of the appellant is confirmed after careful analysis, assessment and discussion of relevant piece of evidence on record. After noticing that prosecution side had presented 8 witnesses whereas the defence had produced three witnesses, the High Court has discussed evidence of relevant witnesses. The Judgment rendered by the High Court further makes it very clear that Mr. P.N.Mishra, Learned Advocate for the appellant and others had raised three points for consideration of High Court which were (1) accused persons have been involved falsely due to enmity, (2) only one injury was found on the dead body of the deceased and (3) no body could have caught/held the deceased when he was being fired from close range. All the three points urged have been effectively discussed and dealt with by the High Court. In fact, the arguments Nos. 2 and 3 appealed to the High Court and therefore the three accused who were convicted under Section 302 with the aid of Section 34 IPC have been acquitted. The acquittal of the three accused itself indicates application of mind by the High Court to the evidence on record. It is experience of one and all that in the memorandum of appeal or revision, several grounds are taken/pleaded but at the time of the arguments the learned advocate would confine himself to few points which he considers to be best and press only those points to be considered by the Court. It is not the case of the appellant that a

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A particular point was argued but is not dealt with by the High Court. In the memorandum of Special Leave Petition no grievance is made by the appellant that certain points were urged but were not considered by the High Court. As the Learned Advocate for the appellant and others had emphasized three points before the B High Court, the High Court was justified in considering those points and not adverting to all the points which were raised in the memorandum of appeal. This is not a case where the High Court has confirmed conviction of the appellant by an indifferent process of rejecting the defence evidence on a uniform C assumption that the defence evidence is always false. This is not one of those cases where the High Court has simply affirmed the findings of the Trial Court without recording reasons. On appreciation of evidence adduced by the parties, the High Court has drawn its own conclusions. This is not one of those cases D wherein High Court has proceeded to dispose of the appeal of the appellant without appraisal of evidence. Therefore, it is wrong to contend that High Court having failed to analyse, assess and discuss each piece of evidence on its merits carefully before reaching its conclusion, the Judgment impugned should be set aside. Except mentioning that each piece of evidence was not E carefully analysed, assessed and discussed, the Learned Counsel for the appellant could not point out to this Court as to which evidence was not analyseed, assessed or discussed by the High Court. Further, this Court had permitted the Learned Counsel for the appellant to urge those points before this Court F which according to him were relevant but not considered by the High Court. Thereupon, the learned counsel has advanced three contentions for consideration of this Court, which are considered by the Court and dealt with. Thus, there is no merit in the contention that the High Court has failed to analyse, assess and G discuss each piece of evidence and, therefore, the same is rejected.

8. The plea that prosecution having failed to adduce evidence to establish that the accused had knowledge that deceased Puran Singh was to come to the petrol pump at the H appointed time and therefore the conviction of the appellant

should be set aside, has no substance. The prosecution in this case never approached the Court with a case that the accused had pre-meditated the murder of the deceased after hatching a conspiracy. Bhure Lal who is first informant and father of the deceased has stated in paragraph 3 of his testimony that when he along with his son and others came near the octroi barrier, they were accosted by the accused who were standing there. The simple case of the prosecution is that when Bhure Lal and others reached near the octori barrier, they saw the four accused standing there and the accused challenged Puran and fired shots at him. While proving this case, it was not obligatory at all for the prosecution to adduce evidence to establish that the accused had knowledge that deceased Puran was to come to petrol pump with his father at a particular time. It is well settled that no direct evidence of knowledge on the part of an accused that he knew that the deceased was to come at a particular place can be led in a criminal trial. It is only from the proved circumstances of a particular case that the Court would attribute such a knowledge to an accused. It may be that the accused persons had come to Shamsabad in connection with their work and when they saw their target, they decided to do away with him. In this case the case of the prosecution is that out of the four, two accused had fired arms and had used the same to murder the deceased. To prove this case, direct evidence has been tendered by the prosecution. Therefore, so called failure of the prosecution to adduce evidence to establish that accused had knowledge that the deceased was to come to the petrol pump at the specified time, is of no consequence.

9. The argument that only interested witnesses were examined and no independent witness was examined to prove the prosecution case and therefore the case of the prosecution should be disbelieved is devoid of merits. Neither the first informant Bhure Lal who is examined as P.W.1 nor eye witness Poohan Singh examined as P.W.3 could be branded as an interested witness. Merely because a witness is close relative of the deceased he does not become an interested witness. Interested witness is one who is interested in securing conviction

A of a person out of vengeance or enmity or due to disputes relating to the properties. The facts of the case do not show that the first informant who is father of the deceased had any dispute with any of the accused including the appellant. His simple case is that Hukam Singh who is father of accused Jagge and Munna was B murdered for which his deceased son was prosecuted but acquitted and therefore in order to take revenge, the deceased was done to death. The cross examination of the material witnesses makes it very clear that the son of the first informant was prosecuted for murder of Hukam Singh but acquitted. This C fact would not show in any manner that the first informant was interested in securing conviction of the appellant and therefore he had wrongly deposed on oath before the Court that his son died due to the shot fired by the appellant. Even if it is assumed for the sake of argument that the witness examined in this case D are close relatives of the deceased and, therefore, should be regarded as interested witnesses, the law relating to appreciation of evidence of an interested witness is well settled, according to which the version of an interested witness cannot be thrown over board but has to be scrutinized carefully and critically before accepting the same. This Court finds that the Trial E Court and the High Court had subjected the evidence of witness Bhure Lal and witness Pooran Singh to careful scrutiny before accepting the same. Therefore, on the facts and in the circumstances of the case this Court is of the opinion that neither the Trial Court nor the High Court committed error in placing F reliance on the testimony of first informant who is father of the deceased and P.W.4.

10. The argument that the accused in the instant case were not known to the witnesses examined in the case and in the absence of holding of Test Identification Parade benefit of doubt G should be given to the appellant as his identification as one of the accused is not established by the prosecution satisfactorily, is merely stated to be rejected. As far as the appellant is concerned, he is named by the first informant in the FIR itself. The first informant knew very well that his son was prosecuted H for the murder of father of accused Jagge and Munna. During

cross-examination, it was never suggested to the first informant that the appellant or for that purpose any of the accused was not known to him. The evidence of the first informant makes it clear beyond pale of doubt that he was knowing the appellant and three other accused prior to the occurrence in question and named the appellant and another in the FIR whereas description of two other accused was given in the FIR. His evidence further shows that his relatives are living in Inayatpur and he was visiting his relatives often. This assertion made by the first informant could not be demolished by defence during his cross examination. Once this assertion is believed to be true, it becomes at once clear that he would know the appellant and others. The evidence of Investigating Officer indicates that after reading FIR he did not feel that either witness Bhure Lal or witness Poohan Singh was not knowing the accused persons by their faces and names and, therefore, it was necessary to hold test identification parade. Further, it could not be satisfactorily established by the defence that the appellant or any of the accused had demanded holding of identification parade and that the said prayer was either rejected by the Investigating Officer or the Learned Magistrate. On the facts of the case, this Court is of the firm opinion that the identity of the appellant is not in dispute at all and he is not entitled to any benefit on the ground that he was not identified by the witnesses.

11. Thus the prosecution case that the appellant fired a shot from tamancha at the deceased which caused his death is satisfactorily established. Therefore, conviction of the appellant under Section 302 cannot be regarded as erroneous or illegal so as to warrant interference by this Court in the instant appeal. The appeal has no merits and therefore deserves to be dismissed. Accordingly, the appeal is dismissed.

N.J. Appeal dismissed.