Chandra Mohan Tiwari and another

Vs

State of M.P.

Criminal Appeal No. 36 of 1979

(S. R. Pandian, K. Jayachandra Reddy JJ)

22.01.1992

JUDGEMENT

S.RATNAVEL PANDIAN, J.: -

1. The two appellants, namely, Chandra Mohan Tiwari and Ram Pal Singh Sengar have filed this criminal appeal canvassing the correctness and legality of the judgment and order dated 17th of November 1978 of the High Court of Madhya Pradesh at Jabalpur rendered in Criminal Appeal No. 477 of 1973, whereby the High Court has allowed the appeal preferred by the State by setting aside the order of acquittal passed by the trial Court and convicted the first appellant under Section 302, I.P.C. and the second appellant under Section 302 read with 34, I.P.C. and sentenced each of them to imprisonment for life.

2. The matrix of the case which has led to the filing of this appeal briefly stated is as follows:

> P.W. 6 Ahiwaransingh was at the material time, a compounder in the Veterinary Hospital, Budhni. He was residing in one of the quarters situated in the compound of the Veterinary Hospital. On the opposite side of the compound there are Government quarters, one of which was occupied by appellant Ram Pal Singh (Appellant No. 2), who was serving as Gram Sevak in the Block Development Office. He is married and distantly related to P.W.-6. The first appellant Chandra Mohan Tiwari was wielding high influence in that locality and was well known to the members of the family of P.W.-6. It appears that he contested the election to the Legislative Assembly from Budhni constituency.

3. The members of the family of P.W.-6 included P.W.-5, the deceased Saroj aged about 16 years, who is P.W.-6's wife and eldest daughter respectively. P.W.-6 had settled the marriage of his daughter Saroj at Dahiyapur, Etawah District (U.P.). On 24-5-1970 he along with his deceased daughter, Saroj, left Budhni for Bhopal enroute to Dahiyapur. At Bhopal he stayed with his relative by name Arjun Singh. On 25-5-1970 at about 1 1.00 a.m. P.W.-6 had gone to the market leaving Saroj alone in the house. According to the prosecution, the second appellant came to the house of P.W.-6 and told Saroj that her father wanted her presence for selection of clothes. Saroj believing the words of second appellant and without entertaining any doubt on the representation of the second appellant accompanied him in a jeep which was driven by the first appellant. Then she was taken to a house where she was wrongfully confined for about two and a half months. During this period both the appellants are stated to have forcibly committed sexual intercourse with Saroj. P.W.-6 lost

his nerve on the sudden disappearance of his daughter, but he instead of lodging a report with the police, which evidently he thought would adversely affect the future life of his daughter and her impending marriage and so bring the family in disrepute, unsuccessfully made a frantic and intensive search for his daughter. Then he lodged a report Ex. P/ 10 on 3-8-1970 at the Police Station of M-angalwara, alleging that he had reason to believe that Saroj might have been kidnapped by both the appellants. The police did not take any prompt action on the report. By that time, the appellants, on coming to know of the lodging of the report, devised a plan to forestall any action being taken against them. The second appellant took Saroj in a taxi to Hoshangabad and left her near the police station with an instruction to lodge a false complaint at the police station that she was kidnapped from Bhopal on 25-5-1970 by one Ramnath and Indrasen and was wrongfully confined by them. She was also threatened that the appellants would be keeping a watch over her and that in case she divulged the truth, serious consequences would follow. As instructed by the second appellant, Saroj lodged a complaint Ex. D/ 15 on 9-8-1970 at Hoshangabad Police Station. However, when she was taken to the Police Station, Mangalwara in connection with the report, lodged by her father (P.W.-6) she told the entire truth to the police and her parents. Even then no progress was made in the investigation on the report of P.W.-6 at Mangalwara. So P.W.-6 made a fervent plea to the then Chief Minister of the State and requested him to take action in the matter. It was only thereafter, on the instructions of the higher authorities wheels of investigation started moving on. The police after completing the investigation filed the charge-sheet before the Additional District Magistrate (Judicial), Bhopal against both these two appellants for offences punishable under Sections 363, 366 and 376, I.P.C.

4. The victim Saroj, when examined before the Magistrate on 12-7-1991 stated in her statement Ex. P/25 that she was kidnapped by both the appellants and wrongfully confined and also subjected to sexual intercourse and that she lodged the false report Ex. D/ 15 at the Hoshangabad Police Station under duress and as instructed by the second appellant herein. The Magistrate discharged the first appellant, and committed the second appellant alone to take his trial. On a revision preferred against the order of discharge of the first appellant both the appellants were put up for trial before the Third Additional Sessions Judge, Bhopal in Sessions Cases Nos. 66 and 95 of 1972 for offences punishable under Sections 363, 366 and 376, I.P.C. During the said trial both the appellants were on bail. The case was fixed for recording evidence from 21-8-1972 on which date the victim Saroj was to be examined as a prosecution witness. While the matter stood thus, according to the prosecution, on 20-6-72 Saroj lodged a report Ex. P/7 at Budhni Police Station complaining that the second appellant had forcibly entered into the backyard of her house, but took to his heels when she raised a hue and cry.

5. In the above background, the present occurrence had occurred on the intervening night of 20/21st August, 1972. The prosecution case is that on that fateful night the first appellant armed with a pistol and the second appellant with a 'farsa' entered into the house of P.W.-6 through the main door which was kept ajar by P. W. -5 who went out of the house to answer call of nature inside the compound and that the first appellant fired a shot which hit on the chest of the victim Saroj, who was then in her bed and caused her instantaneous death. Both P.Ws. 5 and 6 identified the appellants as the assailants. P.W.-6 tried to chase the appellants, but he stumbled near the gate of the compound and could not apprehend them. The distress cries of P.Ws. 5 and 6 attracted the neighbours to the scene. P.W.-6 narrated the incident to P.Ws. 1 and 2 by mentioning the names of the appellants as the assailants and requested P.W.-1 to lodge a report at the police station. Accordingly, P.W.-1 lodged the First Information Report Ex. P/ 1 at 1.30 a.m. P.W.-18, the Investigating Officer took up the investigation during the course of which he inspected the scene of the occurrence, held inquest and then sent the dead body to the hospital for necropsy. On the next day i.e. on 21-8-72 both the

appellants were arrested when they had come to attend the hearing of the case of kidnapping and rape. After completing the investigation both the appellants were put up for trial. The Sessions Judge of Indore found both appellants not guilty of the offence of murder and consequently acquitted them. Feeling aggrieved by the judgment of the trial Court, the State preferred the appeal before the High Court, which for the detailed discussion made in its judgment held that the prosecution has satisfactorily established the guilt of both appellants beyond all reasonable doubts, allowed the appeal by setting aside the judgment of the trial Court acquitting the appellants and convicted the first appellant under Section 302 and the second appellant under Section 302 read with Section 34, I.P.C. and sentenced each of them to undergo imprisonment for life. Hence the present appeal is preferred by the appellants on being aggrieved by the impugned judgment of the High Court.

6. Mr. A. N. Mulla, the learned Sr. Counsel appearing on behalf of the appellants after taking us in detail through the judgments of the courts below, evidence of the prosecution as well as the defence witnesses and in particular Ex. D-15, the First Information Report dated 9-8-70 relating to the offence of kidnapping and rape registered on the basis of the complaint given by the deceased Saroj at Hoshangabad Police Station, vehemently submitted that the prosecution has miserably failed to prove the motive for the occurrence. The learned Counsel perfervidly advanced his argument inter alia contending that the High Court has erred in reversing the judgment of the trial Court based on well reasoned and considered findings of fact, ignoring the settled principles of law as laid down by this Court as regard to the scope of interference of the High Court in an appeal preferred against an order of acquittal, that the evidence of P.Ws. 5 and 6 who had developed rancur and were inimically disposed of towards the appellants ought not to have been accepted and implicitly relied upon as their testimony is highly tainted with interestedness, that the contents of Ex. D-15 whereby the deceased had implicated Ram Nath Singh and one Indra Sen as assailants of kidnapping belie the version of P.Ws. 5 and 6 and negative the prosecution story so far as the motive is concerned, that the evidence of P.Ws. 5 and 6 suffers from the vice of discrepancies and incongruities, that the non recovery of any 'lota' (a small vessel) from the place where P.W.-5 was easing as well as the non-marking of the place where the said vessel was kept in the site plan falsify the evidence of P.W.-5 that she opened the door and went near the compound wall to answer call of nature, that the recovery of two bullets from the scene is an indication of the fact that there should have been two shots, that there was delay in laying the complaint, that the unchallenged claim of the appellants that they were in Bhopal clearly shows that the appellants would not have come to Budhni from Bhopal that too at the odd hours with an anticipation that the door of the scene house would be kept open. The learned Counsel further submits that had the appellants come to the scene house to assassinate the victim Saroj, they would not have exposed themselves without covering their faces so that their identity could not be established and that the life of the girl might have been put to an end to by the inmates of the said house, particularly her father on account of some conspiracy since the victim girl wanted to have the case of kidnapping and rape not to be proceeded with.

7. Before adverting to the contentions, urged by the learned Counsel, we would like to briefly state the legal position regarding the right of appeal of an accused person sentenced to imprisonment for life by the High Court after reversing the order of acquittal and the scope of interference in such appeal by this Court. The present appeal is under Section 379 of the Code of Criminal Procedure of 1973 (hereinafter referred to as the 'Code') and Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act of 1970 (hereinafter referred to as 'the Act of 1970'). Section 379 of the Code contemplates that where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, that person may appeal to the Supreme

Court. This section is newly introduced in the Code of 1973 (Act 2 of 1974) on the recommendation of the Law Commission of India in its 41st Report. Article 134(1)(a) of the Constitution envisages that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death. To say in other words under Article 134(1)(a) the absolute right of appeal to the Supreme Court is restricted only to cases where the High Court reverses an order of acquittal passed by the trial Court and awards the sentence of death. The right of appeal is also extended under Art. 134(1)(b) to cases where the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, which type of cases are rare and infrequent occurrence. Under clause (c) of the abovesaid Article an appeal lies to the Supreme Court on a certificate under Art. 134A by the High Court certifying that the case is a fit one for appeal to the Supreme Court but, of course, subject to the proviso to Article 134(1).

8. In this connection, it is pertinent to note that the Government of Madras (as then called) expressed its view that the limited right of appeal now conferred in case of the persons sentenced to death by clauses (a) and (b) of Article 134(1) should be enlarged and that in all cases in which the accused persons are sentenced to death, there should be a right of appeal to the Supreme Court without the need of a certificate from the High Court. This view was rejected by the Law Commission of India in its 14th Report stating that even in cases not covered by clauses (a) and (b) of Article 134(1), the High Court has the power to certify the case as a fit one for appeal to the Supreme Court under clause (c) and further there is also the safeguard provided by the wide powers of the Supreme Court under Article 136 which confers a discretionary power on the Court to interfere by granting special leave to appeal in suitable cases including cases where the High Court has refused to grant certificate for appeal under Article 134A. See the decision of the Constitution Bench in Tarachand v. State of Maharashtra, AIR 1962 SC 130 : (1962) 2 SCR 775 and the later decision in Kishan v. State of Maharashtra, (1970) 3 SCC 35. To avoid proliferation we are not citing all the decisions on this aspect.

9. The reason given by the Law Commission in its 14th Report (Volume I at page 52) for rejecting the view of the Government of Madras is as follows:

> "We are not inclined to accept this view. For over a century such cases have been dealt with by the High Courts subject to the superintendence of the Privy Council under its special leave jurisdiction and there is no reason why the High Courts should not continue to deal with such cases in the same manner. "

10. In 1968 a Private Member's Bill was introduced in Parliament which proposed that the limited jurisdiction of the Supreme Court contemplated under Article 134(1)(a) and (b) should be enlarged to cover cases where the High Court has, after reversing an order of acquittal, sentenced a person to imprisonment for life, or for 10 years or more. Be that as it may, in its 41st Report, the Law Commission expressed its view that the limitation of the right of appeal under Article 134(1)(a) and (b) applies only to cases of death but not to cases of imprisonment for life awarded by the High Court or appeal against acquittal and that limitation "is too stringent and not easily justifiable and that the convicted persons ought to have aright of appeal in such cases". The Law Commission, at the same time, was not in favour of extending this right of appeal in which the High Court has on appeal against acquittal sentenced a person to imprisonment for a term of 10 years or more, and proposed a new Sec. 417-B restricting such appeal to the Supreme Court only in cases of sentence of imprisonment for life. While so, the Joint Select Committee by its report dated 4th December,

1972 drafted clause 379 (original clause 389) of the Code of Criminal Procedure Bill 1970 (page xxvi) which reads thus:

> "The amendment has been made to bring the provision of the clause in line with the provisions of the Supreme Court (Enlargerilent of Criminal Appellate Jurisdiction Act,) 1970."

11. Vide the 14th Report of the Law Commission (at page 52) and the 41 st Report of the Law Commission (paragraphs 31.65 to 31.69 at pages 281-283).

12. Section 2 of the Act of 1970 reads thus:

> "2. Enlarged appellate jurisdiction of Supreme Court in regard to criminal matters.- Without prejudice to the powers conferred on the Supreme Court by clause (1) of Art. 134 of the Constitution, an appeal shall lie to the Supreme Court from any judgment, final order of sentence in a criminal proceeding of a High Court in the territory of India if the High Court -
>
> (a) has an appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years;
>
> (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years."

13. The right of appeal under the above Section to the Supreme Court is an addition to those provided under Article 134(1) of the Constitution. In cases which do not come under clauses (a) and (b) of Article 134(1) or under the Act of 1970 or Section 379 of the Code an appeal does not lie as of right to the Supreme Court against any order of conviction by the High Court. In such cases, appeal will lie only if a certificate is granted by the High Court under sub-clause (c) of Article 134(1) certifying that the case is a fit one for appeal to the Supreme Court or by way of special leave under Article 136 when the certificate is refused by the High Court. See (1) Mahebub Beg v. State of Maharashtra (SC) (Cr. A. 120/64 dated 19-3-1965) : (reported in 1966 Maharashtra Law Journal 12) and (2) Babu v. State of U.P., AIR 1965 SC 1467 : (1965) 2 SCR 771. The resultant position of law from the conjoined reading of the above provisions of the Constitution, the Act of 1970 and the Code of Criminal Procedure is as follows:

> (1) Under sub-clause (a) of Article 134(1) an appeal lies as of right to the Supreme Court in a case where the High Court has reversed an order of acquittal of an accused person and sentenced him to death.
>
> (2) Under sub-clause (b) of Article 134(1) an appeal lies as of right to the Supreme Court in a case where the High Court has withdrawn the case for trial before itself from any court subordinate to its authority and sentenced him to death.
>
> (3)Under Section 2(a) of the Act of 1970 an appeal lies as of right to the Supreme Court in a case where the High Court has reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or imprisonment for a period of not less than 10 years.

(4) Under Section 2(b) of the Act of 1970 an appeal lies as of right to the Supreme Court in a case where the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or imprisonment for a period of not less than 10 years.

(5) Under Section 379 of the Code, which is now newly introduced in line with the constitutional provisions of Article 134(1)(a) and (b) and with Section 2 of the Act of 1970, an appeal lies as of right to the Supreme Court in a case where the High Court has on appeal reversed an order of acquittal of an accused person and convicted and sentenced him either to death or to imprisonment for life or imprisonment for a term of 10 years or more.

(6) In cases not covered by Art. 134(1)(a) and (b) or Section 2(a) and (b) of the Act of 1970 or by Section 379 of the Code of Criminal Procedure an appeal will lie only either on a certificate granted by the High Court under Article 134(1)(c) or by grant of special leave to appeal by the Supreme Court under Article 136.

14. The right of appeal given under Section 379 of the Code is in line with Article 134(1)(a) and (b) and Sec. 2(a) and (b) of the Act of 1970.

15. This Court in Podda Narayana v. State of Andhra Pradesh, AIR 1975 SC 1252: 1975 (Supp) SCR 84, had an occasion to examine the scope of Section 2 of the, Act of 1970 and held thus (at p. 1254 of AIR):

> "As the High Court had awarded the sentence of life imprisonment after reversing the order of acquittal passed by the Additional Sessions Judge the appeal to the Supreme Court lies even on facts and as a matter of right under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970."

16. M.H.Beg, J. as he then was, speaking for the Bench in Ram Kumar Pande v. State of Madhya Pradesh, AIR 1975 SC 1026 : (1975) 3 S CC 815 observed as follows (para 4 of AIR):

> "Strictly speaking, no certificate of the High Court is required for such an appeal where an acquittal has been converted into a conviction under S. 302/ 34, I.P.C., and a sentence of life imprisonment imposed upon an accused person. The appeal, in such a case, lies as a matter of right to this Court under the Act of 1970."

17. This Court in Rajendra Prasad v. State of Bihar, AIR 1977 SC 1059 : (1977) 3 SCR 68, while disposing of an appeal preferred under Section 2(a) of the Act of 1970 laid down the following dictum (at p. 1061 of AIR):

> "Thus when two courts have come to a different conclusion on the same evidence, we had ourselves to go through the entire evidence carefully in order to see whether the appreciation of the evidence by the Sessions Judge was so unreasonable and unrealistic as to entitle the High Court to interfere with the same."

18. In Kishore Singh v. State of Madhya Pradesh, AIR 1977 SC 2267 : (1978) 1 SCR 635, the following view similar to the one taken in Ram Kumar Pande's case (AIR 1975 SC 1026) was reaffirmed and it reads thus (at p.2268 of AIR):

> "The High Court is not right in holding that a certificate is necessary under Art. 134(1)(c) of the Constitution if the appellants have a right of appeal under Section 2 of the Act."

19. In Ram Kumar Pande's case (AIR 1975 SC 1026), the jurisdiction of the Supreme Court to interfere in a judgment of the High Court reversing the acquittal of the trial Court and convicting the accused person and sentencing him to life imprisonment, in respect of which an appeal to the Supreme Court lies as of right was examined and the following maxim has been laid down (para 6 of AIR):

> "The well settled rule of practice in a case of an appeal against an acquittal is that the appellate Court should not interfere with the acquittal merely because it can take one of the two reasonably possible views which favours conviction. But, if the view of the trial Court is not reasonably sustainable, on the evidence on record, the Appellate Court will interfere with an acquittal. If the appellate Court sets aside an acquittal and convicts, we have to be satisfied, after examining the prosecution and defence cases and the crucial points emerging for decision from the facts of the case, that the view taken by the trial Court, on evidence on record, is at least as acceptable as the one taken by the High Court, before we could interfere with the High Court's judgment."

20. Kailasam, J. speaking for the Bench in Bhajan Singh v. State of Punjab, (1978) 4 SCC 77: (AIR 1978 SC 175), dealing with the scope of the appeal before the Supreme Court filed under Section 2(a) of the Act of 1970 observed thus (para 13 of AIR):

> "As a court of appeal this Court has got to go into all the questions of fact and law and decide the case on its merit. After a right of appeal has been provided under the said section, the question, whether the High Court interfered on sufficient grounds or not will not be material, as this Court has to decide the case on its own merits. The decisions, regarding the scope of appeal against an acquittal, the powers of the High Court to interfere in an appeal against acquittal, the powers of the High Court to interfere in an appeal against acquittal by the State, which may be relevant when the Supreme Court is acting under Article 136, are not material in deciding an appeal by a person, whose acquittal has been set aside by the High Court, and who is entitled to prefer an appeal to this Court."

21. In Dinanath Singh v. State of Bihar, AIR 1980 SC 1199 : (1980) 1 SCC 674, an appeal under Section 2(a) of the Act of 1970 was directed against the judgment of the Patna High Court convicting the appellants therein under Section 302 read with 34, I.P. C. and sentencing them to imprisonment for life by reversing the order of acquittal of the trial Court. While disposing the appeal Fazal Ali, J. speaking for the Bench pointed out thus (para 1 of AIR):

> "It is now well settled by the long course of decisions of this Court that where the view taken by the trial Court in acquitting the accused is reasonably possible, 'even if the High Court were to take a different view on the evidence, that is no ground for reversing the order of acquittal."

22. This Court while disposing an appeal filed under Section 379 of the Code in Pattipati Venkaiah v. State of Andhra Pradesh, (1985) 4 SCC 80 : (AIR 1985 SC 1715) affirmed the order of

conviction passed by the High Court on the ground that the judgment of the trial Court acquitting the accused was extremely perverse and no other reasonable view was possible than the guilt of the accused.

23. Reference also may be had to Sita Ram v.State of U. P., (1979) 2 SCC 656 : (AIR 1979 SC 745) and Rajput Ruda Meha v. State of Gujarat, (1980) 1 SCC 677 : (AIR 1980 SC 1707).

24. This Court in a catena of decisions have dealt with the power of the High Court to review evidence and reverse order of acquittal and laid down the guidelines in exercising that power. Though it is not necessary for us in the present case to deal with all those decisions, the following may be referred to :

> (1) Roop Singh v. State of Punjab, AIR 1973 SC 2617: (1974) 1 SCR 528; (2) Dargahi v. State of U. P., AIR 1973 SC 2695: (1974) 3 SCC 302; (3) Barati v. State of U. P., AIR 1974 SC 839 : (1974) 3 SCR 570; (4) G. B. Patel v. State of Maharashtra, AIR 1979 SC 135 : (1978) 4 SCC 371; and (5) Kanwali v. State of U. P., (1971) 3 SCC 58.

25. Having regard to the above principle of law, we shall now carefully scrutinize the entire evidence adduced by the prosecution and examine the contentions advanced by Mr. Mulla and decide the case on its merit, independent of the views expressed by the High Court in its impugned judgment:

Motive for the murder:

26. There is overwhelming evidence both oral and documentary in clearly establishing a strong motive for the appellants/accused to put an end to the life of the deceased Saroil who when examind before the Magistrate on 12-7-1991 had deposed under Ex. P/25 that she was kidnapped by both the appellants, wrongfully confined and subjected to sexual intercourse, though she initially lodged a report under Ex. D-15 on 9-8-70 at the Hoshangabad Police Station against some other persons exculpating these two appellants. Earlier to her examination before the Magistrate the deceased lodged a report Ex. P-7 on 20-6-1972 at Budhni Police Station complaining that the second appellant had forcibly entered into the backyard of her house and on her raising a cry he took to his heels. The trial of the case against both the appellants before the Additional Sessions Judge, Bhopal in Sessions Cases Nos. 66 and 95 of 1972 under Sections 363, 366 and 376, I.P.C. was fixed for recording the evidence of the victim in that case, namely, the deceased herein from 21-8-1972. Both the appellants were on bail in the case of kidnapping and rape during the period of the occurrence in question which occurred on the intervening night of 20/21st August, 1972. The learned Counsel for the appellants has submitted that P.Ws. 5 and 6 had sufficient motive to implicate both the appellants in this heinous crime of. murder as these two appellants according to both P.Ws. had spoiled the future career of their daughter, deceased Saroj by kidnapping and committing rape on her even if the identity of the real assailant/ assailants was or were not known and further there was every possibility of P.W.-6 falsely implicating these two appellants on strong suspicion. As stated by Fazal Ali, J. in State of Punjab v. Pritam Singh, (1977) 4 SCC 56: (AIR 1977 SC 2005), "when the motive was equally balanced, the Court had to look to surrounding circumstances in order to find out the truth".

27. This is not a case solely based on circumstantial evidence, but on the other hand there are two eye-witnesses to the occurrence, namely P.Ws. 5 and 6. The several impelling circumstances

attending the case namely, the prior incident of kidnapping and rape, the conduct of the deceased Saroj in giving her statement under Ex. P.25 supporting the case of the prosecution registered on the complaint given by P.W.-1 at the instance of P.W.-6, the lodging of the complaint under Ex. P.-7 by Saroj on 20-6-72 against the second appellant and lastly the posting of the case for recording the evidence of Saroj on 21-8-72 - when taken in conjunction with the evidence of P.Ws. 5 and 6, unevasively and unerringly show that these two appellants had strong motive to snap the life thread of the victim so that she could not give evidence on the next day in the case of kidnapping and rape.

28. The contents of Ex. D-15 cannot the said to have whittled down the veracity of the prosecution case as regards the motive for the occurrence. On the other hand, the subsequent statement made by the deceased under Ex. P/25 explaining under what circumstances she was forced to give Ex. D-15 would also serve as a corroborating piece of evidence in establishing the motive for the occurrence.

Ocular Testimony:

29. As per the prosecution, due to the above motive, the appellants have resorted in perpetrating this dastardly and heinous crime. P.Ws. 5 and 6 though the parents of the victim are the natural and probable eyewitnesses as the incident had occurred in the odd hours inside their house wherein these two witnesses and their 4 daughters including the deceased Saroj were the inmates. According to these two witnesses by about 12 or 12.30 mid-night P.W.-5 went out of the house by opening the main door to answer call of nature within the compound. Besides moonlight, there was electric light within the compound. Added to that there was also electric light burning in the residential quarter of Doctor Sahib shedding light inside the compound of the scene house. P.W.-5 sighting the two appellants yelled out. She found the appellant Chandra Mohan Tiwari having a small gun and the second appellant Rampal Singh being armed with a farsha. On hearing the cry of P.W.-5, Saroj woke up. P.W.-6 who had earlier been awakened by his wife (P.W.-5) saw both the appellants entering into his house with their respective weapons. The deceased Saroj on seeing the two appellants hardly uttered 'Babaji'. Suddenly the first appellant fired a shot which hit Saroj. On receipt of the injury Saroj fell down on her cot. Thereafter both the appellants fled away. P. W.-5 witnessed both the appellants entering into the room and heard the sound of a gun shot and the appellants thereafter running out of the house. While P.W.-5 yelled out, P.W.-6 ran after the appellants up to the compound shouting that the appellants had fired a gun shot at Saroj. On coming out of the compound, P.W.-6 fell down. P.Ws. 1, 2 and others who rushed to the scene on hearing the shrieks and shouts of P.Ws. 5 and 6 lifted P.W.-6 and brought him inside the house. P.Ws. 1, 2 and others asked P.W.-6 as to what had happened. P.W.-6 told them that the first appellant had fired a shot at his daughter Saroj and thereafter both the appellants had fled away from the scene. The victim Saroj by that time was struggling for breathing and gasping. P.W.-1 has testified to the fact that he arrived at the scene on hearing the shouting of P.W.-6 "killed, killed" and found P.W.-6 lying down outside the main gate of his compound, that P.W.-1 and others lifted P.W.-6 and brought him inside the house, that on being asked P.W.-6 informed P.W.-1 and others that Sengar and Tiwari (referring to both appellants) had shot at his daughter and that P.W.-6 requested him to lay a complaint at Budhni Police Station.

30. The Trial Court for the reasons given in its judgment observed that the evidence of PW-5 as regards to the identity of the appellants is "totally unreliable" and that of PW-6 appears to be "absurd and fantastic" and finally concluded this:

> ".....I find that the two accused persons had no motive to perpetrate the crime in question, that one Gangasingh and possibly the father of the girl Ahivaransingh

might have had stronger motive for perpetrating the murder, that it was impossible for the accused persons to have been present at Budhni at 12.30 that night and that it is most likely that they have been falsely implicated in this murder by the political rivals of the accused Chandra Mohan Tiwari and with the motive of preventing the accused Ram Pal Singh over getting married to Saroj."

31. The entire prosecution as indicated ibid mainly rests on the evidence of PWs 5 and 6 who are the unfortunate parents of the victim and who speak about the motive of the occurrence and give a full detailed account of the entire incident. In addition to the ocular testimony of PWs 5 and 6 the prosecution also relied upon the evidence of PWs 1 and 2, who came to the scene spot immediately after the occurrence and learnt from Pws 5 and 6 that the appellants were the perpetrators of the crime.

32. No doubt, it is true that the evidence of PWs 5 and 6 is that of the interested party in that both of them are the parents of the victim and that they had animus towards the appellants. As dexterously emphasised by the Supreme Court on many occasions that interested witnesses are not necessarily false witnesses though the fact that those witnesses have personal interest or stake in the matter must put the Court on its guard, that the evidence of such witnesses must be subjected to close scrutiny and the Court must assess the testimony of each important witness and indicate the reasons for accepting or rejecting it and that no evidence should be at once disregarded simply because it came from interested parties. (Vide (1) Siya Ram Rai v. State of Bihar, (1973) 3 SCC 241 : (AIR 1973 SC 51); (2) Sarwan Singh v. State of Punjab, (1976) 4 SCC 369: (AIR 1976 SC 2304); (3) Birbal v Kedar, AIR 1977 SC 1: (1977) 2 SCR 1; (4) Gopal Singh v. State of U.P., AIR 1979 SC 1822: (1978) 3 SCC 327; (5) Hari Obdulla Reddy v. State of Andhra Pradesh, (1981) 3 SCC 675 : (AIR 1981 SC 82) and (6) Anvaruddin v. Shakoor, (1990) 2 JT (SC) 83: (AIR 1990 SC 1242).

33. After carefully scanning the evidence of PWs 5 and 6, we unreservedly come to the conclusion that their evidence cannot be thrown overboard simply on the ground that their evidence is of the interested party because when the occurrence had taken place inside the house, that too at dead of night, it would be futile to expect of the prosecution to produce independent outsiders as witnesses.

34. It was contended by Mr. Mulla that PWs 5 and 6 could not have identified the assailants since according to PW-6 both assailants had covered their faces so that faces behind the mask could never be known to others and remain mystery for ever. But a careful reading of the evidence of PW-6 in our opinion does not support the conclusion sought to be arrived at by the learned defence counsel. What PW-6 has admitted in the cross-examination is that both the appellants had tied a towel on their heads, but their identity was visible.

35. It transpires from the evidence of PWs 1, 2 and 6 that PWs 1 and 2 who immediately came to the scene of the occurrence were informed by PW-6 that the assailants were the two appellants. The spontaneous declaration to PWs 1 and 2 by PW-6 without premeditation or any deliberation or artifice by naming the appellants as assailants can be admitted as res gestae and acted upon. It is significant to note in this connection that PW-1 who laid the First Information Report Ex.P-1 within an hour from the time of the occurrence has mentioned the names of these two appellants as having been given by PW-6 at the scene immediately after the occurrence. The FIR has been lodged without any loss of time though it has been hesitatingly stated that there.was a delay. The chronology of events narrated and the factual conspectus recounted by PWs 5 and 6 are unshakable and the intrinsic quality of the evidence of these two witnesses compel this Court to implicitly rely on their testimony and to accept the same. In spite of the fact that these two PWs have been

subjected to intensive and incessive cross-examination, nothing tangible has been brought for discarding their testimony. No doubt, the earlier conduct of the appellants in kidnapping and forcibly raping their daughter, the victim should have inflicted deeper wounds in the minds of those two witnesses, but that cannot in any way destroy the value of their evidence which is cogent and trustworthy.

36. Though PWs 3 and 4 who were examined by the prosecution to speak about the movement of the appellants near the scene at or about the time of the occurrence have resiled from their earlier statements and have not supported the prosecution case. The evidence of PWs 5 and 6 which is corroborated by various other circumstances would in our opinion suffice to record a conviction against the appellants. The Trial Court appears to have gone wrong in jettisoning the entire evidence in a very scanty and unsatisfactory manner with unsound reasoning. The nonrecovery of 'lota' (a small vessel for taking water) and the non-marking of the place where the said vessel was kept in the site plan are too tenuous and they do not in any way belittle the veracity of the prosecution case. The recovery of the pellets below the dead body and the cork, usually fixed on cartridges from the chest of the girl under the Memo Ex.P-4 as spoken by PWs 1 and 18 amply corroborate the evidence of PW-6 and support the prosecution case that the girl was shot dead in close range while she was on her bed.

37. Being the parents of the victim, they would be the least disposed to falsely implicate the appellants or substitute them in place of the real culprits. In our considered opinion, whilst the conclusion arrived at by the Trial Court abjuring the unimpeachable and reliable evidence of PWs 5 and 6 on speculative reasons and unreasonable grounds, the contrary conclusion of the High Court based on the evolution of the evidence does not suffer from any illegality or manifest error or perversity nor is it erroneous. Further, on our independent analysis of the evidence we see absolutely no substantial and compelling reasons to brush aside the testimony of these two eye-witnesses and to take a contrary finding to that of the High Court.

38. Based on the evidence of DW-1, an advocate at Bhopal, who defended the appellants herein in the kidnapping case and who had deposed that on the night of 20-8-72 the first appellant was with him from 9/ 9.30 p.m. to 12 mid-night and who had filed Ex.P-30, an application before the court stating that the first appellant was with him, an argument was advanced that the appellants could not have gone to the scene village Budhni from Bhopal, when the distance between the two places is about 40 miles and committed the offence of murder. In support of the evidence of Dw-1 reliance has been placed on the testimony of DWs 2 to 4 of whom DW 3 was the Proprietor of Chetna Lodge, who had testified to the effect that the first appellant was in his lodge from 18th to 21st August as borne out from the entry in Ex.D-11. A similar contention of alibi was also raised before the High Court on the basis of the evidence of the defence witnesses and the High Court after discussing deeply examining the testimony of the defence witnesses made the following observations:

> 1. "It is with regret that we have to say that the testimony of this witness (PW 1) does not inspire any confidence."
>
> 2. "It is surprising that the learned trial Judge should have placed reliance on the testimony of DW-2 Ramakant and D.W. 7 Durgaprasad and come to the conclusion that accused Rampalsingh could not have been at he scene of occurrence as he was at Bhopal,forty miles away from the scene of occurrence,at the relevant time."

39. Further the High Court has correctly rejected the finding of the Trial Court as an unreasonable on holding:

> "..... it is most likely that they have been falsely implicated in this murder by the political rivals of the accused Chandramohan Tiwari and with the motive of preventing the accused Rampalsingh ever getting married to Saroj."

40. We also after going through the evidence of the defence witnesses are unable to accept the plea of alibi and are in total agreement with the reasons given by the High Court for rejecting not only the plea of alibi but also the defence that these appellants were implicated on account of political rivalry.

Medical Evidence:

41. PW-17 who conducted autopsy on the dead body of the deceased found a lacerated wound on the chest just left to the mid-line at the level of nipple over the third, fourth and fifth inter-costal space. The wound was slightly oval shaped measuring 1-1 / 2"x 2"deep and opening into thoraic cavity. The surrounding skin was ecchymosis, but no tattooing of gun powder was noticed. The wound as described by the Doctor is a slit like small lacerated wound on the medial end of clavicle. On internal examination PW-17 he found comminuted fracture of sternum and second, third ribs of left side chest. There was a punctured wound on the medial border of left lung near its appex. He found one rounded pellet (which has been recorded as bullet, but has been clarified in the further chief examination as pellet which receives support from the evidence of PW- 19, the ballistic expert) in the left cavity of the chest, embedded in the posterior wall of chest at scapular region at the level of second and third ribs. The Medical Officer is of the opinion that the death was due to severe fatal injuries to vital organs like left lung and heart resulting in profuse bleeding and shock. PW-19 after examining the two pellets and two wads marked as Exs. PI and P2 and W1 and W2 respectively gave his opinion that the holes, found on the Saree, Chader (bed-sheet) and the blouse were gun shot holes and there was presence of blackening surrounding the holes on the Chader and that the distance of firing should have been within one yard.

42. The evidence of the Medical Officer (PW-17) and of the Ballistic Expert (PW-19) amply corroborates the testimony of PWs 5 and 6 that the assailants whomsoever they had been should have entered into the room and shot at the victim standing within a close range.

43. Mr. Mulla advanced an argument that the recovery of the two pellets and two wads from the scene place is an indication of the fact that there would have been two shots,and that the presence of only one injury on the body of the deceased as per the evidence of PW-17 falsifies the present prosecution case that the victim was shot at only once.

44. The presence of the pellets and two wads, of course, indicate that there ought to have been two shots, but it does not necessarily follow that both the shots should have hit the victim, probably one of the shots must have missed the target. From the mere absence of two injuries on the body of deceased, no conclusion would be arrived at that the entire prosecution case is liable to be rejected. The further submission of the learned counsel that the appellants should not have come at the odd hours anticipating that the main door of the house would have been kept open does not appeal to us. Probably, the appellants who came there with the intention of putting an end to the life of the victim by any other design should have taken this opportunity to enter into the house and shot at the deceased.

45. Lastly a feeble argument was put forth by the defence stating that the father of the deceased and other inmates of the house on being aggrieved at the conduct of the victim should have put an end to the life of the girl by conspiring together. This submission has to be mentioned for simply rejecting the same because had the father and other inmates of the house had already conspired to murder the girl, they would not have waited for such a long time and ultimately killed her by shooting at her chest. No father, however, grave be the provocation at the hands of his daughter would resort, in the normal course to kill his daughter or participate in any conspiracy to murder her. Moreover, there is no circumstance in the present case even feebly or remotely indicating that the inmates of the house were responsible for the cause of the death of the deceased.

46. In spite of our best efforts and great deal of pondering over the matter, we find absolutely no reason, much less compelling reason to disagree with the conclusion of the High Court since the organic synthesis of the events, circumstances and facts of the case lead only to one conclusion, namely, that the prosecution has established that this preplanned and cold blooded murder, executed in very cowardly and dastardly manner at a helpless and defenceless young girl was perpetrated by the appellants.

47. We, quite apart from the reasons of the High Court, even on our independent assessment and evaluation of the evidence hold that the finding of the Trial Court is not reasonably sustainable and that the prosecution has satisfactorily proved the guilt of the accused beyond any shadow of doubt and consequently the judgment of the High Court does not call for any interference.

48. In the result, the impugned judgment of the High Court is affirmed and the appeal is dismissed. Appeal dismissed.

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