

SUPREME COURT OF INDIA

Shanker

Vs.

State of U.P.

Crl.A.No.618 of 2007

(Harjit Singh Bedi and J.M. Panchal JJ.)

16.07.2009

ORDER

1. We have heard learned counsel for the parties very carefully. We have also gone through the evidence and examined the site plan with the help of the learned counsel for the appellants. We find that the case against the accused has been proved by the evidence of Chakrapal Singh - P.W.1 and Smt. Vishuna - P.W.2 an injured witness whose presence at the spot has even been admitted by the defence. The primary argument made by the learned counsel for the appellants is that as Smt. Vishuna was not in a position to see the actual assault on the deceased as she was in the courtyard whereas the murder had taken place in the shop adjoining the road, her evidence vis-a-vis the murder has to be discarded. In addition it has been urged that Manoj Kumar who had conveyed the information to the informant Chakrapal Singh PW.1 the first informant that his brother was being assaulted by the accused had not been examined, the evidence of Chakrapal Singh PW.1 was also not admissible. We find no merit in either of the pleas. Chakrapal Singh PW.1's evidence is admissible by virtue of Sec.6 of the Evidence Act being res gestae evidence.

2. P.W.1 clearly stated that when he looked into the shop he found that the appellant Shankar and Lakhan were holding the deceased by his limbs whereafter the fatal blow in the neck had been given by Meeru the husband of PW.2 Smt. Vishuna. We have also examined the site plan and observe that the distance between the place of murder and the place of injury to Vishuna was only about 25 feet. To our mind there is a clear possibility that Vishuna was thus aware of the happenings in the shop. We thus find no merit in the appeal. It is accordingly dismissed.