

**(1982) 04 MP CK 0004**

**In the Madhya Pradesh High Court**

**Case No : Criminal Appeal No. 182 of 1976**

Shehjad Singh Hital Singh Bhadoria

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision : 30-04-1982**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)  
Penal Code, 1860 (IPC) — Section 302

**Citation : (1986) MPLJ 443**

**Hon'ble Judges : R.C. Shrivastava, J;A.R. Navkar, J**

**Bench : Division Bench**

**Advocate : J.P. Gupta, for the Appellant; M.A. Shah, Dy. Govt. Advocate, for the Respondent**

**Final Decision : Dismissed**

## Judgement

A.R. Navkar, J.

This is an appeal filed u/s 374(2), Code of Criminal Procedure, 1973, against the order of conviction, recorded by the First Additional Sessions Judge, Bhind, in Sessions Trial No. 45 of 1976, convicting the appellant u/s 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life, through the judgment dated 23rd day of August 1976.

The admitted facts of the case are that the appellant is resident of village Kachongra and that he was arrested on 16-4-1976 at 5 p.m. The prosecution story, in short, is that the deceased Chimansingh and his brother Kalyansingh (PW1) had a quarrel with the appellant Shahjad Singh on 27-3-1975 in a field, as the cattle of Shahjad Singh strayed in the field of the deceased. On that day, Shahjad Singh threatened that he will kill Chimansingh by firing at him. On the day of the incident i.e., on 27-3-1976, Kalyansingh (PW1), Baijnath Singh (PW2), who are brothers of the deceased Chimansingh, and one Lauyasingh (PW14), who is nephew of the deceased, were sitting on a cot near the door of the house of Chimansingh. By their side, Mahesh (PW6), Jagdish (PW13), Ramsingh (PW4)

and Vishwanath Singh (PW5) were also sitting. At that time, accused Shahjad Singh came with gun (Art. B), which was a licenced gun in the name of his brother Shriram. He was carrying it with him and when he passed by the side of the deceased, he turned round and after aiming at the deceased, fired at him. The deceased just to save himself, raised his left hand towards his face and the fire hit him in the hand and the bullet, after-entering the palm, hit the jaw and was embedded in the neck. When Chimansingh was hit by the bullet, he fell down from the cot on which he was sitting. The persons, who were sitting nearby, raised hue and cry. At that time, Shivdayal Singh (PW3), Hiralal (PW7) and other persons came over there. At that time, Maheshsingh (PW6) said that Chimansingh died because of a shot fired at him by Shahjad Singh and after hitting him, Shahjad Singh has left. The persons, who were there, saw the body of Chimansingh and thought that he was still alive and, therefore, they wanted to take him to the hospital, situated at Bhind. He was put in a cart, but while they were proceeding towards the hospital, they saw that Chimansingh is already dead. Seeing this, Kalyansingh (PW1) made first information report at police station Bhind and it is Ex. P. 1. In investigating the matter, the spot inspection was made and blood stained earth as well as simple earth was seized and the cot, on which Chimansingh was sitting, was also seized. A panchanama of the seizure of all these articles is also prepared by the investigating officer. The dead body was sent for post mortem examination and the post mortem examination was done by Dr. G.C. Jain (PW11). The post mortem report is Ex. P. 11. In the opinion of the doctor, the death was due to the gun shot injury.

As stated above, the accused was arrested and on his information the gun was recovered from him. The gun is Art. B. After completing the investigation, the matter was committed to the Court of Sessions for trial. The statement of Shahjad Singh was recorded u/s 313 of the Code of Criminal Procedure and in his statement, he has stated that he never fired at Chimansingh. He also expressed ignorance whether any bullet struck Chimansingh or not. He has further stated that in the night intervening 27th and 28th March, 1976, at about 8 or 8.30 p.m., he was going towards Kachhar alongwith one Parshuram. He had a gun with him. When he crossed the door of Chimansingh, Chimansingh invited him for smoke. While both of them were enjoying smoke, Chimansingh caught hold of the barrel of the gun by his left hand. Seeing this, he informed him that the gun is loaded and it may go on. One Rana Singh and the deceased tried to snatch the gun and the gun went on. He has no idea as to how the bullet hit the deceased. After considering the evidence, produced by the prosecution, the trial Court has held that the death of Chimansingh was homicidal and that the appellant is responsible for committing the murder of the deceased and the defence taken by the accused that the gun went on because of the accident, was disbelieved by the trial Court. On this finding, the trial Court has convicted the accused and sentenced him as mentioned above.

The first point, which the learned trial Court has considered, is as to whether the death of Chimansingh occurred in the night intervening 27th and 28th of March,

1976 and whether it was homicidal. There was no serious challenge to this finding of the trial Court by the learned counsel for the appellant.

The cause of death, the learned trial Court has found, is to be the bullet injury. This fact also was not seriously contested before us by the learned counsel for the appellant.

The third point which the learned trial Court has held is that the appellant was the author of the bullet injury and he fired the gun, which he had with him, towards Chimansingh. This fact was seriously contested before us and it was submitted that if the evidence of the prosecution is taken into consideration alongwith the medical evidence, the story put forward by the prosecution is a complete lie. Further, it was submitted that it is a case of an accident and when the appellant informed the deceased that the gun is loaded and it may go on, in spite of the warning the deceased tried to snatch the gun and in this act of snatching, the gun went on unintentionally and, therefore, this is an act purely of an accident and not of intentional murder.

We may consider how far the submission made by the learned counsel for the appellant can be accepted. One more fact, which was vehemently urged before us by

the learned counsel for the appellant was that there was no motive for the appellant to commit the murder of Chimansingh. Neither there is any evidence to show that there was some wordy quarrel, as alleged by the prosecution, between the deceased and the appellant.

First, we will consider the medical evidence produced by the prosecution. Dr. G.C. Jain (PW11), who is an Assistant Surgeon in District Hospital, Bhind, has stated that he received the body of Chimansingh for post mortem examination on 28-3-1976. The report of the post mortem examination indicated the injuries on the body of the deceased, which are as under:-

- i) Fire arm wound, wound of entrance 1 cm. x 2 cm. oval margin inverted burnt with blackishness around at the palmar aspect of the left hand at the base of ring and little finger. Fracture of the head of ring and little finger meta carpal present which were comminuted.
- ii) Wound of exit present on the dorsal aspect of the same hand measuring 7 cm. x 5 cm. extending transversely from base of ring finger to thumb web, margins were torn, tendons lacerated and the blood vessels injured.
- iii) Lacerated wound of entrance 7 cm. x 6 cm. almost rectangular in shape on the right side of face involving upper lip right angle of mouth lower lip and mandible with compound comminuted fracture dislocation of maxilla alveoli teeth of upper jaw palate and teeth of lower jaw muscles vessels all injured and lacerated with blood clots. Pallets were recovered after exploration and dissection of the neck.

iv) There are four linear oblique scratches over the tip of the nose directed downwards laterally from left to right.

In para 4 of his statement, regarding cause of injuries, the doctor has stated that the deceased received the injuries from a bullet fired from a distance within 3 to 4 feet and, in his opinion, the distance of fire aimed was not less than one foot and not more than four feet from the firing point of the arm. Further, the doctor has stated, in his cross examination, that the hand of the deceased was sufficiently near the mouth because the size of the wound over the mouth and the back of the palm have little difference. In his opinion, the deceased was at lower level than the fire point. In para 8 of his statement, he has stated "if the body is in actual contact of the fire arm, the whole cartridge material will enter the wound and on the skin there could not be blackening and charring marks of scorch, because the actual contact does not allow the charged material to spread over the body surface." Much criticism was levelled by the learned counsel for the appellant on the statement given by the doctor, in which the doctor has stated that the fire arm wound at the entrance is 1 cm. x 2 cm. oval margin inverted burnt with blackishness around at the palmer aspect. The criticism levelled against this opinion is that if there was blackishness around the palmer aspect, then the distance of the mouth of the barrel and of the deceased cannot be 4 to 5 hands (6 to 7 feet), as deposed by the eye-witnesses. Therefore, if the medical evidence is considered to be correct, then the statements given by the eye-witnesses are false and they should not be believed.

First eye-witness is Kalyansingh (PW1). He has stated in his statement that there was some wordy quarrel between Chimansingh and the appellant and after 6 or 7 days after the quarrel, Chimansingh was sitting on the cot in front of his house and alongwith him there were Baijnathsingh, Jalansingh. Jagdishsingh and Maheshsingh and also Ranasingh. They were chitchatting with each other and the time was about 8.30 in the night. At that time, the appellant came out of his house with a rifle and taking aim at the deceased, fired at him. The bullet struck first the hand of the deceased and then the bullet entered the jaw and the neck of the deceased. Because of this shot, Chimansingh fell down from the cot. Then, he was put in a cart, as the villagers thought that still he was alive, but while they were carrying him to the hospital, they saw that he is dead and, therefore, instead of taking him to the hospital, first information report was lodged. In cross-examination, he has not mentioned to the police that there was a wordy quarrel between his brother and the deceased. Neither he has reported the matter to the police. The reason given for not doing so, is that he thought that it is a family affair and, therefore, it need not be stretched too far. He has further stated that the lane is about 3 to 4 hands in width and the width of the land from where the gun was fired is about 7 or 8 feet. He rejected the suggestion made to him that the deceased tried to catch hold of the gun.

The other eye-witness is Baijnathsingh (PW2). He has corroborated the story given by Kalyansingh (PW1). In cross-examination, he has admitted that

Shahjadsingh, the appellant, used to carry his gun with him always because he used to go in the night to the field to look after the crops.

The next eye-witness is Ranasingh (PW4). He also narrated the same story, which the other eye-witnesses have done. He was cross-examined and in his cross-examination, it was suggested to him that the deceased tried to snatch the gun from the hands of the appellant. He has denied this suggestion.

The other eye-witness is Maheshsingh (PW6). He also corroborated the story put forward by the other eye-witnesses.

Then, there is Ramsingh (PW8). He also gives in detail the story put forward by the prosecution and corroborated by other eye-witnesses.

These are the eye-witnesses produced by the prosecution and the medical evidence has already been mentioned by us above. The learned counsel for the appellant has submitted that the medical evidence indicates that the gun must have been fired from a close range, as there was blackening found around the wound of the deceased. But, if the evidence of the eye-witnesses is considered, the story given by them is belied by the medical evidence. He has referred to us to Purshottam and Another Vs. State of Madhya Pradesh, in which it is observed as under:-

Where the Medical Officer who had performed the post mortem examination gave clear, irrefutable reasons founded on physical facts noted by him at the autopsy in support of his firm opinion that the only external injury found on the body of the deceased could not be the result of two simultaneous blows, and, in the ordinary course of human events and experience also, it was extremely improbable, that three blows simultaneously given by three different persons from different directions with sharp edged weapon would land with such precision and exactitude so as to cause a single wound of such clean cut margins and such dimensions and other characteristics as those of the external wound found by the Medical Officer on the head of the deceased, the version of PW1 and PW2, the alleged eye-witnesses regarding the injury of the deceased being the result of three separate blows was inherently improbable and intrinsically incredible and it could not be accepted in preference to the evidence of the Medical Expert. High Court held erred in brushing aside the evidence of Medical Officer and convicting the accused-Judgment of Madhya Pradesh High Court, reversed.

The learned counsel for the appellant also referred to Bhagat Ram Vs. State of Punjab, relying on the following passage occurring therein:-

In a case depending on the conclusion drawn from circumstances, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt, Hanumant Vs. The State of Madhya Pradesh, , Reiterated.

Held that the defence put forward by the accused cannot be said to have been

disproved or to be improbable that his guilt must be taken to have been established beyond reasonable doubt.

That the Courts below in taking the contrary view failed to keep in mind the fundamental rule relating to the proof of guilt based on circumstantial evidence and proceeded on conjectures in a case where statedly the circumstances were more or less equally balanced.

and submitted that the accused has given his defence at the earliest possible opportunity and, therefore, the defence of the accused should be believed. But, while appreciating the evidence led by the prosecution, we will have to take into consideration the fact that the evidence is given by rustic villagers and some allowance in the matter of accuracy of distance from which the gun was fired has got to be allowed to then for this reason. There is no reason why all the eye-witnesses should falsely implicate the appellant instead of the real culprit.

The learned counsel for the appellant has submitted before us, firstly, that there was no motive and, secondly that as the ocular evidence is inconsistent with the medical evidence, it should not be believed.

The learned counsel for the State has relied on para 19 of Karnail Singh and Others Vs. State of Punjab, which is as under:-

Before this Court it was argued that judging from the area of spread, the gunshots were probably fired from a distance of 38 yards which would make the prosecution story inconsistent with the above theory. But this is a case where eye-witnesses gave direct evidence of the crime. In view of what has been said about light identification was not in doubt. That being so the question of distance loses much of its strength. We see no substance in this argument.

and submitted that there is ocular evidence, the question of distance loses much of its importance and, therefore, the submission of the learned counsel for the appellant should not be accepted. He has further relied on State of Uttar Pradesh Vs. Sughar Singh and Others, in which it is observed that:-

Evidence Act (1 of 1872) S. 45 Medical Expert Death by gun shot injury direct evidence of eye witness available. Inconsistency relating to distance from which gun shots were fired between evidence of medical expert and eye witness is of no significance - Held, that the prosecution evidence pertaining to assault by guns and pistol substantially tallied with medical evidence. Karnail Singh and Others Vs. State of Punjab, .

Therefore, relying on these two rulings, we are of the opinion that there is no substance in the submission made by the learned counsel for the appellant and we reject the same and we hold that there is sufficient ocular evidence to hold that the appellant fired the gun which resulted in the death of the deceased.

The other point which the learned counsel for the appellant has urged before us is that the prosecution has not proved any motive for the crime. But the question

of motive loses its importance when by direct evidence, it is proved that the accused is the author of the crime. Therefore, that submission also, we are not willing to accept and we reject it.

The defence of the accused/appellant is that the gun went on because of accident and the act of the appellant is covered u/s 80 of the Indian Penal Code and, therefore, he is entitled for an acquittal. If the appellant wants to take benefit u/s 80 of the Indian Penal Code, then it was for him to prove that the act, he was doing, was a lawful act and he was doing it in a law ful manner with lawful means with proper care and caution. The gun was a licenced gun, but the licence was not in the name of the appellant. Further, when the gun was loaded, he should have taken proper care and caution for seeing that the gun will not go on, even at a slightest pull. Therefore, the submission of the learned counsel that the appellant is entitled for acquittal, because of section 80, Indian Penal Code, cannot be accepted and to bring the case under general exceptions, the evidence should have come from the accused. It is not for the prosecution, to prove that the case is not covered by general exceptions. As submitted by the learned counsel for the appellant, the trigger and the butt of the gun were towards the appellant and the barrel was caught hold of by the deceased. If this is the position of the respective parties, it is difficult to understand as to how the trigger could be pulled by the person who is catching the barrel. Therefore, the submission of the learned counsel that the gun went on accidentally cannot be accepted and we reject the same. Therefore, taking into consideration the evidence, we are of the opinion that the conviction and sentence passed by the learned trial Court requires no interference and they are well merited and we confirm the same.

The result, therefore, is that the appeal fails and is dismissed. Conviction and sentence imposed against the appellant by the trial Court are maintained.