

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 07th OF JULY, 2022

CRIMINAL APPEAL NO.20 OF 2012

Between:-

MANOJ SEN, S/O SHRI OM
PRAKASH ALIAS OMI SEN, AGE- 27
YEARS, R/O- MEDIA KE MAHDEV
KE SAMNE DATIA, DISTRICT-
DATIA.

.....APPELLANT

(BY SHRI A.K. JAIN- ADVOCATE)

AND

STATE OF MADHYA PRADESH
THROUGH POLICE STATION
KOTWALI DISTRICT DATIA.

.....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

Reserved on : 23rd of June, 2022
Delivered on : 07th of July, 2022

This appeal coming on for final hearing this day, Hon'ble Shri Justice G.S. Ahluwalia, passed the following:

JUDGMENT

This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 17/11/2011 passed by Sessions Judge, Datia in Sessions Trial No.87/2011, thereby convicting the appellant for the following offences:-

Conviction U/s	Sentence	Fine	Default (in lieu of fine)
302 of IPC	Life Imprisonment	Rs.5,000/-	3 months SI
25(1)(1-B)(a) of Arms Act	1 year	Rs.1,000/-	1 month SI
27 of Arms Act	3 years RI	Rs.1,000/-	1 month SI

All the sentences shall run concurrently.

2. The necessary facts for disposal of the present appeal in short are that on 25/3/2011, at about 11:15 in the night, the complainant Shyam Kumar Tiwari, his younger brother Rammohan Tiwari (deceased), Laxman Purohit and Balveer Thakur were returning back from the house of their relative Anand Belpatri. As soon as they passed in front of Supermarket and came near the shop of Manoj Sen, it is alleged that Manoj Sen was standing there alongwith two unknown persons. After looking at the deceased Rammohan Tiwari, the appellant-Manoj Sen took out a .315 bore country made pistol and fired a gunshot hitting on the chest of deceased Rammohan Tiwari, as a result, he fell down. The unknown person also took out a country made pistol and threatened that in case if anybody dares to come forward, then he too will be killed and thereafter, all the three accused persons ran away towards Talaiya Mohalla. The incident was witnessed by Laxman Purohit, Balveer Thakur, Sangram Singh etc. The complainant Shyam Kumar Tiwari found

that Rammohan Tiwari had already died. It was alleged that some money dispute was going on between the deceased and the appellant-Manoj Sen. The appellant-Manoj Sen was to refund Rs.30,000/- to the deceased Ram Mohan Tiwari and only on this issue, the appellant killed Ram Mohan Tiwari by shooting him down. The complainant Shyam Kumar Tiwari after leaving his companions on the place of incident, immediately rushed to the police station Kotwali and lodged FIR at 11:25 in the night. The offence was registered and the Investigating Officer Satish Dubey reached on the spot at 11:55 and prepared the spot map. Safina form was issued and Lash Panchnama was prepared. A requisition for postmortem was sent to Civil Hospital Datia. The blood stained and plain earth was seized. The postmortem report was given and the bullet which was found stuck in the thoracolumbar vertebra was taken out as well as the blood stained t-shirt and banyan of the deceased were sealed and handed over to the police constable. The statements of the witnesses were recorded. On 28/3/2011, Manoj Sen was arrested. A country made pistol as well as a fired cartridge and one more live round were seized from the possession of the appellant. The country made pistol and cartridge were examined by the Armourer. Permission to prosecute the appellant under Arms Act was obtained. The ballistic as well as FSL report were obtained. A copy of the FIR was sent to the Court, Datia and after completing the investigation, police filed the charge-sheet for offence under Sections 302/34 of IPC and Section 25/27 of the Arms Act.

3. It is not out of place to mention here that remaining two unknown persons could not be traced and the charge-sheet was filed against the appellant only.

4. On 28/7/2011 the Trial Court framed charges under Section 302 of IPC and under Sections 25(1)(1-B)(a) and 27 of the Arms Act.
5. The appellant abjured his guilt and pleaded not guilty.
6. The prosecution examined Sonilal (PW-1), Dr. Pradeep Upadhyay (PW-2), Tirisuyas Lakda (PW-3), Vinod Bansal (PW-4), Hotam Singh (PW-5), Shyam Kumar (PW-6), Sangram Singh (PW-7) and Satish Dubey (PW-8).
7. The appellant did not examine any witness in his defence.
8. The Trial Court by the impugned judgment and sentence has convicted the appellant for the above-mentioned offence.
9. Challenging the judgment and sentence passed by the Court below, it is submitted by the counsel for the appellant that there is nothing on record to show that there was sufficient light on the spot. The appellant has been falsely implicated. The complainant is an interested as well as unreliable witness. There is nothing on record to show that the seized .315 bore country made pistol was kept in a proper custody, after its seizure.
10. *Per contra*, the appeal is vehemently opposed by the counsel for the State and also supported the prosecution story as well as the findings recorded by the Court below.
11. Heard learned counsel for the parties.
12. Before adverting to the facts of the case, this Court would like to find out as to whether the death of the deceased Rammohan Tiwari was homicidal in nature or not?
13. Dr. Pradeep Upadhyay (PW-2) had conducted the postmortem of the dead body of Rammohan Tiwari. The dead body was received at 7 in

the morning and postmortem was started at 7:20 in the morning. As per the postmortem report, the body was lying supine on the postmortem table wearing pent and t-shirt, muddy in colour, blood tinged having openings and torn anteriorly, orange colour banyan with blood stains having opening anteriorly below opening of t-shirt, rigor-mortis was present in all four limbs. Blood had trickled down from right angle of mouth and following injuries were found:-

1. A single wound of entry, round in shape (1cm X 1 cm) in shape at mid of chest at lower part of sternum at the level of 5th rib, edges of wounds were inverted, dark ring around wound was present. Blood stained and round wound over chest was present. Eyes were closed. No other external injury was found. No wound of exit was found.

13.1 On internal examination, following injuries were found:-

Fracture of lower part of sternum below wound of entry was found. Right chamber of heart was found ruptured and laceration was present. Right lobe of liver was found ruptured into pieces. Fracture of thoraco lumbar vertebra at lower part area was found and bullet was lodged in intervertebra space. Bullet was recovered from body. Cloths, i.e. t-shirt and banyan were sealed and bullet recovered from the body was also sealed in bottle. The sealed articles

were handed over to police constable. The death was caused by firearm injury leading rupture of heart and liver and caused death. Duration since death was within 12 hours.

14. This witness was cross-examined. In cross-examination, he stated that the gunshot injury was fired from close range within 6 ft. Since the t-shirt and banyan of the deceased were having hole caused by gunshot injury, therefore, the clothes were sealed and handed over to the constable. However, clarified that he did not measure the holes found on the t-shirt and banyan. He cannot say that the bullet was fired from which firearm, as he is not a ballistic expert. Since the bullet had got stuck in the spinal cord of the deceased, therefore, it could not come out of the body. He did not found any symptom of consumption of alcohol. He denied that he did not conduct the postmortem. He denied that a false postmortem report was prepared at the instance of police. Thus, it is clear that the prosecution has succeeded in establishing the fact that the death of the deceased was homicidal in nature.

15. The next question for consideration is “as to whether the prosecution has established that whether the appellant had caused the injury to the deceased or not?”

16. Shyam Kumar Tiwari (PW-6) and Sangram Singh (PW-7) are the complainant and eyewitness.

17. Shyam Kumar Tiwari (PW-6) has stated that on 25/3/2011 at about 11:15 pm, he was coming back from the house of Anand Belpatri. He was accompanied by his younger brother Rammohan Tiwari, Balveer Thakur and Laxman Purohit. While they were passing through supermarket, the

appellant-Manoj Sen was standing in front of his shop and is also known to him. As soon as he noticed the complainant and other persons, the appellant-Manoj Sen fired a gunshot and caused injury on the chest of his brother Rammohan Tiwari. The gunshot was fired from a distance of 2.5-3 ft. Rammohan Tiwari fell down on the ground and Manoj Sen ran towards Talaiya Colony. The incident was witnessed by Balveer Thakur, Sangram Singh Thakur, Laxman Purohit and this witness. Rammohan Tiwari expired on the spot. He further stated that there was money dispute between the appellant and Rammohan Tiwari. The appellant was to refund Rs.30,000/- to the deceased Rammohan Tiwari. Since, Rammohan Tiwari had died on the spot, therefore, he rushed to the Police Station Kotwali, District Datia. The appellant has killed Rammohan Tiwari. The FIR, Ex.P/6, was lodged by him. The Merg intimation, Ex.P/7, was registered by the police. Safina form, Ex.P/8, was issued and Lash Panchnama, Ex.P/9 was prepared. Spot map, Ex.P/10, was prepared. Blood stained and plain earth were seized from the spot vide seizure memo Ex.P/11. The dead body was received after postmortem and Supurdaginama is Ex.P/12. In cross-examination, it was stated by this witness that Rammohan Tiwari is his younger brother. This witness is in the business of foodgrains. He has joint business with Ramesh Sen. Rammohan Tiwari was unmarried and was also working with him in his business. The complainant and Rammohan Tiwari were residing in the same house and had cordial relationship. He denied that any property dispute was going on between him and Rammohan Tiwari and he also denied that his relationship with Rammohan Tiwari was not cordial. He also denied that the complainant and Rammohan Tiwari were residing in

separate house. He denied for want of knowledge about the criminal antecedents of Rammohan Tiwari, however, admitted that he had gone to jail twice or thrice in criminal cases. He also admitted that in the case of Suresh Yadav alias Rani, Rammohan Tiwari had remained in jail for five months. He also admitted that on the allegations of assaulting Bharat Bundela, Gyanu Bundela and others, his brother Rammohan Tiwari was detained. He denied that Rammohan Tiwari was convicted in the said case. He denied that an order of externment was passed against Rammohan Tiwari for a period of one year. He denied that Rammohan Tiwari was involved in criminal activities alongwith Sangram Singh and Sholay alias Ramswaroop. He denied that Rammohan Tiwari was a history-sheeter. He admitted that Mauji Tiwari belongs to his family and Mauji Tiwari has been killed, but claimed that his family members are not on talking terms to the complainant. He admitted that on the day when Mauji Tiwari was killed, one Bhaiya Raja was also killed in the same incident. He denied that in the case of murder of Suresh alias Rani, Bhaiya Raja was also an accused alongwith Rammohan Tiwari. He denied that Rammohan Tiwari, Sangram Singh, Sholay alias Ramswaroop had one criminal gang and, therefore, Rammohan Tiwari had enmity with various persons. He admitted that Laxman Purohit, who is also a witness, is his brother-in-law and another witness Balveer Thakur is also known to him. He also admitted that Anand Belpatri is resident of Taran Taaran Road. He admitted that he was coming from the road which passes in front of Dubey Medical Store. He denied that in case of any incident, his brother Rammohan Tiwari was always searched by the police and in absence of Rammohan Tiwari, the police used to take

the complainant with them. This witness claimed that police had never visited his house. He denied that Rammohan Tiwari was not doing the business with the complainant. The complainant also denied that he is not the food merchant, but admitted that the business was not in his name, but claimed that he was doing business alongwith others. He claimed that he had left his house at 8 in the night. Generally he was in the habit of going alongwith the deceased. The deceased was younger to him by 3 years. He further admitted that the complainant was never named as co-accused alongwith Rammohan Tiwari. They had gone to attend one holi festival which was taking place in *Bagghikhane*. They reached in front of *Bagghikhane* at about 8:30 in the night. They stayed for about 10 minutes as the program was getting late. He denied that there was no function in front of *Bagghikhane*. At *Bagghikhane*, they met Balveer and Laxman Purohit. At about 8:35, they went to the house of Anand Belpatri. Anand Belpatri is the maternal uncle of his wife. They reached to the house of Anand Belpatri at about 8:45 in the night and stayed there for 15-20 minutes. They exchanged Gulal and also had refreshment. They stayed there for about 1 hour and 25 minutes and at about 11 pm they were going from the house of Anand Belpatri. They had taken a shortcut. He denied that the route starting from *Talaiya Mohalla* to *Kila Chowk* through supermarket is lengthy one in comparison to the route starting from *Talaiya Mohalla* to *Kila Chowk-Town Hall-Taran Taaran*. He also denied that the said route is a rough one and has no source of light. This witness himself claimed that a market is there. He denied that the supermarket gets closed by 8-8:15 pm. He denied that all the market of Datia city get closed by 8 pm. This witness on his own claimed that the

market of Datia remains open till 11 pm. He further stated that all the shops were not open, but claimed that some shops were open. He further stated that Bulbul Gift Center, Ragini Beauty Parlour etc. shops were open. The spot map was prepared. He denied that the deceased Rammohan Tiwari was a gambler and he was assisted by Sholay and Sangram Singh. He denied that there was some dispute between Sangram Singh and Sholay on the question of accounts. He admitted that Rammohan Tiwari and appellant were friends. He admitted that Rammohan Tiwari had a Life Insurance Policy of Rs.3,00,000/-, but claimed that the insurance amount was payable to his mother, which has not been paid so far. He denied that the insurance amount was received by him. He admitted that after the death of Rammohan Tiwari, all the immovable property was to be inherited by him, but claimed that the house is still in the name of his grandfather. While coming back from the house of Anand Belpatri, he and Rammohan Tiwari were walking together, whereas Balveer and Laxman were behind them. They took about 10-15 minutes to reach to supermarket, as it is only about 1 km. away from the house of Anand Belpatri. The appellant-Manoj Sen was standing out of his shop Ragini Beauty Parlour. They did not have any talk with the appellant. He claimed that the appellant was standing all alone. He denied that he had alleged that two more unknown persons were standing alongwith the appellant. The police has recorded his statement on 26/3/2022 and the report was registered on 25/3/2022. There are about 70-80 shops in supermarket. It was also stated that from Dubey Medical store he took about 5 minutes to reach to the shop of appellant-Manoj Sen. He denied that the road is not clean, but admitted

that urinals are there. He denied that because of the fact that road in front of Dubey Medical store is rough, therefore, nobody likes to use the same. The incident took place near Ragini Beauty Parlour. The appellant was standing at about 4.5-5 ft. away from the shop. He was standing in front of his shop. The incident took place within less than a minute. As soon as they reached there, the appellant fired a gunshot and ran away. He and his friend did not run away here or there. Except the complainant, three witnesses and the accused, nobody else was there. He denied that Sangram Singh reached on the spot after the incident took place. He admitted that Sangram Singh had reached prior to the incident and had witnessed the incident. Sangram Singh was also coming by walking. He admitted that Sangram Singh is his neighbour and is residing in Tiwari Wali Gali. He admitted that the distance between supermarket and Tiwari Wali Gali is 1-1.25 km. Sangram Singh was coming behind him, but he was not aware of the said fact. He admitted that he had noticed Sangram Singh only after the incident took place. He denied that he keeps a country made pistol with him. He also expressed his ignorance about the types of country made pistols. The deceased Rammohan Tiwari had fallen on the ground immediately after sustaining injury. Bullet was fired from Katta used by the appellant and pellets were not fired. After the incident, he immediately rushed to the Police Station Kotwali after leaving his companions on the spot. The Town Inspector, Datia Satish Dubey had met him outside the police station itself. He informed him that his brother Rammohan Tiwari has been killed. The Town Inspector immediately called 7-8 police personnel and rushed to the spot and prior to that the FIR was lodged. He denied that he and the deceased were not on talking

terms on the question of property. He also denied that because of criminal activities of Rammohan Tiwari, he and his brother-in-law Laxman were being harassed by the police. He denied that because of criminal activities of Rammohan Tiwari, he had severed his relationship with Rammohan Tiwari. He denied that he, Laxman, Balveer and Sangram Singh were not present on the spot. He denied that the information was given by the police to this witness and after talking with his brother-in-law Laxman, Balveer and Sangram Singh, the story was cooked up. His signatures in the Kotwali were obtained only in the FIR, whereas he had signed the remaining documents on the spot. He denied that he is giving false statement.

18. Sangram Singh (PW-7) has also narrated the story and had claimed that on 25.03.2011 at about 11:15 PM, he was returning back from the house of his friend Raghvendra Pratap Singh and as soon as he reached near the shop of appellant Manoj Sen, he saw that the deceased Rammohan Tiwari, his brother Shyam Kumar Tiwari, Laxman Purohit and Balveer Thakur were going. At that time, Manoj Sen was standing in front of his shop. Manoj Sen took out his .315 bore country made pistol and fired gunshot. Rammohan Tiwari immediately fell down on the spot and died instantaneously. He had suffered a gunshot injury in his chest. The appellant after causing death of Rammohan Tiwari ran away. They found that Rammohan was already dead and, accordingly, Shyam Kumar Tiwari (PW-6) went to the police station Kotwali for lodging the FIR. The appellant Manoj Sen was arrested vide arrest memo Ex. P-13. His memorandum was recorded which is Ex. P-14 and at the instance of the appellant Manoj Sen, one .315 bore country made pistol, one fired

cartridge and live cartridge were recovered from his possession vide seizure memo Ex. P-15. This witness was cross-examined by the appellant. He stated that the witness Ramswaroop is his friend and is known to him for the last 8-10 years. House of Ramswaroop is approximately $\frac{1}{2}$ km from the police station Kotwali. The appellant Manoj Sen is known to him for the last about one year. He had also visited the shop of Manoj once or twice, but he never went to the house of Manoj. The appellant Manoj was arrested at about 04:15 PM near Gadariya Ki Chowki. Since this witness is a builder, therefore, he has a construction site and, accordingly, he and Ramswaroop had gone to visit their site. The appellant was arrested by Town Inspector. Since Datia is a small town, therefore, Town Inspector was also known to him. The place of arrest of the appellant is about 3 km away from the house of appellant. The police and the accused were in the police jeep, whereas this witness and his friend Ramswaroop were on motorcycle. The appellant had given a memorandum that country made pistol and cartridge are kept in his house. Front part of the house of the appellant is a single storey. When police visited the house of the appellant, nobody had resisted and the police entered inside the house. The box was kept in the second room of the house and was not locked. At the time of opening of the box, family members of the appellant had also come there. They had reached the house of the appellant at about 04:30 PM. Almost all the residents of Datia are known to this witness. The deceased Rammohan was also known to him. He stated that he had never visited the house of the deceased Rammohan, but claimed that on certain family functions, Rammohan had visited his house. He was not aware of the activities of

Rammohan. Shyam Kumar Tiwari (PW-6) is a grain merchant. He had never gone to the house of Shyam Kumar Tiwari (PW-6). He also expressed his ignorance as to whether Shyam Kumar Tiwari (PW-6) and the deceased were residing jointly in the same house or not, but claimed that they were residing in the same house. Only one gunshot was fired and he had not seen the appellant loading the country made pistol. However, he had seen the appellant reloading the pistol after the gunshot was fired. However, the second gunshot was not fired by the appellant. The deceased, his brother and the witnesses were about 1-2 steps ahead of him and they had their back towards this witness. He denied that *Kila Gate road* gets closed in the night. He had seen the appellant firing the gunshot on the deceased from a distance of 1-2 hands and nobody else had suffered gunshot injury. He did not inform the police on mobile. He denied that the incident had not taken place in his presence. He claimed that he stayed back on the spot for about 5-6 minutes after the incident. When he found that Rammohan has already expired and his brother Shyam Kumar Tiwari (PW-6) has gone to lodge the FIR thereafter he came back. Laxman Purohit and Balveer were staying back with the dead body and had not requested him to stay back on the spot. On the next day, he went outside Datia city. He admitted that in the year 1999, he was tried for an offence of murder, but claimed that he was acquitted and he also claimed that no other offence was ever registered against him.

19. From the evidence of the witnesses, it is clear that an attempt was made to assassinate their character so as to make them unreliable, but evidence of the witnesses shall be considered in the light of surrounding circumstances.

20. The incident is alleged to have taken place at about 11:15 PM and the FIR was lodged at 11:25 PM, i.e., within 10 minutes. The police station is approximately one furlong away from the place of incident which is evident from the FIR Ex. P-6. Thus, it is clear that the FIR was lodged promptly within a period of 10 minutes, therefore, the possibility of thinking over the matter and concocting the story gets removed. The Supreme Court in the case of **Nanhey v. State of U.P.** reported in (1973) 3 SCC 317 has held as under:-

“5.It is difficult to believe that soon after the occurrence in question Munna so quickly cooked up a false story involving the appellant and by 1.40 p.m. lodged the concocted first information report at the police station. The report contains a very detailed version of the entire occurrence. These details constitute intrinsic evidence detracting from the plea of the first information report being a made up story. It is equally difficult to hold that the police officers at the police station purposely declined to entertain the appellant's version and recorded Munna's report. There is no cogent material indicative even of a suggestion that the police officer in charge of the police station was for some reason inclined to favour Munna and was inimical towards the appellant. There is neither any illegality nor irregularity of procedure vitiating the trial nor is there any violation of natural justice resulting in gross miscarriage of justice or unfair trial.”

The Supreme Court in the case of **Krishnan and another v. State represented by Inspector of Police** reported in (2003) 7 SCC 56 has held as under:-

“17. The fact that the first information report was given almost immediately, rules out any possibility of deliberation to falsely implicate any person.....”

The Supreme Court in the case of **Jarnail Singh and another Vs.**

State of Haryana reported in **1993 Supp (3) SCC 91** has held as under:-

“10.....In cases relating to murder the time taken in lodging the FIR assumes special significance. The FIR being the first version of the occurrence disclosed to the police acts as check on the part of the prosecution. The fact that Surjit Kaur (PW4) lodged the FIR within an hour of the occurrence, giving the details of the manner of occurrence lends corroboration to her testimony in court regarding the participation of the accused persons in the presence occurrence. The manner of occurrence disclosed by Surjit Kaur (PW4) in the FIR was fully corroborated by the post-mortem examination reports.....”

The Supreme Court in the case of **State of U.P. v. Harban Sahai and others** reported in **(1998) 6 SCC 50** has held as under:-

“13.In such a situation the prompt and early reporting of the occurrence by PW 1 to the police with all its vivid details gives us an assurance regarding truth of his version.”

The Supreme Court in the case of **Dahari and others Vs. State of Uttar Pradesh** reported in **(2012) 10 SCC 256** has held as under:-

“10. In the instant case, the FIR was lodged within a period of one hour, at a police station which was at a distance of 12 km from the place of occurrence, and this goes to prove that Man Bahadur (PW 1) and Raj Bahadur (PW 2) were in fact, present at the place of occurrence and were in a position to see the accused from close quarters. They were also all known to the witnesses. The reason that they happened to be accompanying the deceased was because they were all going to the Azamgarh Court in relation to a criminal case, relating to the murder of one Gharbharan, in which Raghu Prakash, son of Raj Bahadur (PW 2), was the accused. There is nothing in the cross-examination of the eyewitnesses to cast a doubt upon the veracity of their testimony or to discredit it in anyway.

11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. [Vide *Himanshu v. State (NCT of Delhi)* [(2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] , *Ranjit Singh v. State of M.P.* [(2011) 4 SCC 336 : (2011) 2 SCC (Cri) 227 : AIR 2011 SC 255] and *Onkar v. State of U.P.* [(2012) 2 SCC 273 : (2012) 1 SCC (Cri) 646]”

The Supreme Court in the case of **Kirpal Singh v. State of Uttar Pradesh** reported in **(2010) 3 SCC 347** has held as under:-

“**17.** Though this witness, PW 1 was cross-examined searchingly, nothing could be elicited to establish that the appellant and others were falsely implicated in the case because of enmity. Her testimony gets complete corroboration from the contents of FIR lodged by her. The courts below, on appreciation of evidence, have held that the FIR was neither ante-timed nor delayed and that the same was filed promptly. It is well settled that when soon after the occurrence the FIR is lodged at the police station, false story being cooked up and/or false implication of the accused stands ruled out.”

The Supreme Court in the case of **Satpal Singh v. State of Haryana** reported in **(2010) 8 SCC 714** has held as under:

“**15.** This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result

of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. (Vide *State of A.P. v. M. Madhusudhan Rao* [(2008) 15 SCC 582 : (2009) 3 SCC (Cri) 1123].)”

21. Thus, it is clear that prompt FIR lends support to the evidence of the witnesses and also rules out the possibility of deliberation or manipulation in narrating the incident. As already pointed out, the incident took place at 11:15 PM and the FIR was lodged at 11:25 PM, i.e., within 10 minutes. Thus, it is clear that prompt FIR lodged by Shyam Kumar Tiwari (PW-6) gives support to his evidence thereby ruling out any possibility of cooking up a false story.

22. It is next contended by the counsel for the appellant that the prosecution has failed to prove that there was sufficient light on the spot to identify the appellant.

23. Considered the submissions made by the counsel for the appellant.

24. The incident has taken place in front of the shop of the appellant. Counsel for the appellant has also not disputed the place of incident. Shyam Kumar Tiwari (PW-6) has specifically stated that entire market was not closed and some of the shops were closed, whereas some of the shops were open. It is not the case of the appellant that there was load shedding at the time of incident. When some of the shops were opened, it would necessary mean that some light must be there inside the shop. Since the incident took place on narrow road having shops on both sides

of the road, then it is clear that it cannot be said that there was no light at all at the place of incident. Furthermore, it is not the case of the appellant that the appellant and the witnesses were not known to each other. Datia is a small town and if the eyes of residents have become tuned to see and identify the witnesses even in a poor light, then it cannot be said that the witnesses cannot identify the assailants. The Supreme Court in the case of **Ramesh v. State by Madhugiri Police** reported in **(2010) 15 SCC 49** has held as under:-

“14. Bearing in mind the principle aforesaid, we proceed to examine the correctness of the impugned judgment. PW 3 Sakamma and PW 4 Annapoornamma are neighbours not only of the deceased but of the appellant also as it has come in their evidence that their houses are intervened by one or two houses of the informant and the appellant. They have clearly stated in their evidence that they had seen the appellant holding the hand of the deceased in the evening of 17-7-1994. The trial court has rejected this part of the prosecution story on the ground that these witnesses could not have identified the appellant in the evening as it is not the case of the prosecution that there was any light.

15. As stated earlier, the appellant and these two witnesses (PWs 3 and 4) are neighbours and, therefore, knew the appellant well and their claim of identification cannot be rejected only on the ground that they have identified him in the evening, when there was less light. It has to be borne in mind that the capacity of the witnesses living in rural areas cannot be compared with that of urban people who are acclimatised to fluorescent light. Visible (*sic* visual) capacity of the witnesses coming from the village is conditioned and their evidence cannot be discarded on the ground that there was meagre light in the evening. There is nothing on record to show that these two witnesses are in any way interested and inimical to the

appellant. Their evidence clearly shows that the deceased was last seen with the appellant and the High Court did not err in relying on their evidence. ”

The Coordinate Bench of this Court in **In Reference (Suo Moto) Vs. Manoj** passed in **CRRFC No.8 of 2019**, by judgment dated **28.07.2021** has held as under:-

“47. It is a matter of common knowledge, that the villagers have the ability of identifying the things even in the poor light. Villages have limited number of inhabitants and are closely watched by each and every resident of the village. The evidence of this witness is that he had identified the said person from his back, style of walking, and body buildup, then it cannot be said that such witness is unreliable or he cannot identify the resident of the village from his back, or style of walking or body buildup, as the eyes of the villagers are conditioned to identify the villagers in poor light or from their walking style, or body build up etc.”

FSL Report

25. According to the prosecution case, one country made pistol with fired cartridge stuck in it and live cartridge were seized from the possession of the appellant. Sangram Singh (PW-7) is the witness of seizure. Similarly, Satish Dubey (PW-8) who is the Investigating Officer has also stated that on 28.03.2011 he had arrested the appellant vide arrest memo Ex. P-13. His memorandum Ex. P-14 was recorded and vide seizure memo Ex. P-15, one .315 bore country made pistol, one live cartridge and one fired cartridge were seized from the house of the appellant. Thus, it is clear that one .315 bore country made pistol with fired cartridge stuck in it and live cartridge were seized from the possession of the appellant. Seized articles were sent to FSL, Sagar and

FSL report is Ex. P-17. According to the FSL report, fired cartridge was fired from .315 bore country made pistol seized from the possession of the appellant. Even the barrel marks found on the bullet recovered from the body of the deceased were found to be identical to the barrel marks of .315 bore country made pistol seized from the possession of the appellant. Accordingly, it was opined that the fired cartridge which was found stuck in the pistol as well as the bullet which was recovered from the body of the deceased, were fired from the country made pistol seized from the possession of the appellant.

26. This additional circumstance gives full corroboration to the evidence of Shyam Kumar Tiwari (PW-6) and Sangram Singh (PW-7). Merely because Shyam Kumar Tiwari (PW-6) is the brother of the deceased and Sangram Singh (PW-7) is known to the complainant party, is not sufficient to dislodge their evidence. It is true that the evidence of related witness is to be scrutinized minutely but only on this ground, heir evidence cannot be thrown over the Board. The incident had taken place at 11:15 PM in the market. Shyam Kumar Tiwari (PW-6) is the brother of the deceased, therefore, his presence on the spot along with the deceased was natural. He has explained as to why he and the deceased were on the spot at 11:15 in the night. Furthermore, seizure of .315 bore country made pistol with fired cartridge stuck in it and the FSL report which shows that the fired cartridge as well as the bullet recovered from the body of the deceased were fired from .315 bore country made pistol seized from the possession of the appellant clearly shows that the evidence of Shyam Kumar Tiwari (PW-6) and Sangram Singh (PW-7) are reliable and credible.

Non-Examination of All witnesses

27. It is next contended by the counsel for the appellant that although as per the FIR, Balveer Thakur and Laxman Purohit were also on the spot but the police has not examined them. Therefore, it should be held that the complainant Shyam Kumar Tiwari (PW-6) and Sangram Singh (PW-7) are not reliable witnesses.

28. It is well established principle of law that it is the quality of witness, not quantity of witness which matters, for proving guilt of the accused. The Court is not required to count the heads of the witnesses, but it is required to appreciate as to whether the evidence led by the prosecution is credible and trustworthy or not. The onus of proving the prosecution case rests entirely on the prosecution and the Court cannot compel the prosecution to examine each and every witnesses. The Supreme Court in the case of **Yanob Sheikh Vs. State of West Bengal** reported in (2013) 6 SCC 428 has held as under:-

“20. We must notice at this stage that it is not always the quantity but the quality of the prosecution evidence that weighs with the court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature. In *Namdeo v. State of Maharashtra* [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773] , the Court held as under : (SCC p. 161, para 28)

“28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular

number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on *value, weight* and *quality* of evidence rather than on *quantity, multiplicity* or *plurality* of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negated.”

(emphasis in original)

21. Similarly, in *Bipin Kumar Mondal v. State of W.B.* [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150] , this Court took the view : (SCC p. 99, para 31)

“31.... In fact, it is not the number [and] quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy [and reliable].”

The Supreme Court in the case of **S.P.S. Rathore v. Central Bureau of Investigation and another** reported in **(2017) 5 SCC 817** has held as under:-

53. No particular number of witnesses is required for proving a certain fact. It is the quality and not the quantity of the witnesses that matters. Evidence is weighed and not counted. Evidence of even a single eyewitness, truthful, consistent and inspiring confidence is sufficient for maintaining conviction. It is not necessary that all those persons who were present at the spot must be examined by the prosecution in order to prove the guilt of the accused. Having examined all the witnesses, even if other persons

present nearby are not examined, the evidence of eyewitness cannot be discarded.”

The Supreme Court in the case of **Manga alias Man Singh Vs. State of Uttarakhand** reported in **(2013) 7 SCC 629** has held as under:-

“**31.** With this, we come to the last of the questions as to whether there were any lacunae in the case of the prosecution based on the submissions of the learned counsel. Before dealing with the submissions, we wish to note that though PWs 1 to 4 were closely related to the deceased, they also suffered firearm injuries at the hands of the appellants and the injuries sustained by them were duly supported by medical evidence, both documentary as well as oral, namely, through PWs 6, 7, 8 and 9. There was nothing pointed out in the evidence of the above witnesses, namely, PWs 1 to 4, except stating that since because they were closely related, their version about the occurrence was not true in order to discredit their version. Even before the courts below the only argument made was that the said witnesses were related to the deceased and that they falsely implicated the appellants. In our considered opinion, merely based on such a flimsy submission as regards the credibility of those witnesses, the evidence of those injured eyewitnesses cannot be discarded.

32. In fact with regard to the reliance to be placed upon the injured witnesses, this Court has held in very many decisions as to the due credence to be given. The following decisions can be referred to for that purpose:

(1) *State of Maharashtra v. Chandraprakash Kewalchand Jain* [(1990) 1 SCC 550 : 1990 SCC (Cri) 210]

(2) *State of U.P. v. Pappu* [(2005) 3 SCC 594 : 2005 SCC (Cri) 780]

(3) *State of Punjab v. Gurmit Singh* [(1996) 2 SCC 384 : 1996 SCC (Cri) 316]

(4) *State of Orissa v. Thakara Besra* [(2002) 9 SCC 86 : 2003 SCC (Cri) 1080]

(5) *State of H.P. v. Raghbir Singh* [(1993) 2 SCC 622 : 1993 SCC (Cri) 674]

(6) *Wahid Khan v. State of M.P.* [(2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208]

(7) *Rameshwar v. State of Rajasthan* [AIR 1952 SC 54 : 1952 Cri LJ 547]

Applying the principles laid down in those decisions, we hold that on this ground there is no scope to interfere with the orders impugned in these appeals.

29. Thus, it is clear that it is quality of the evidence and not quantity of evidence which is required to be judged by the Court to place credence on the statement, therefore, merely because two more witnesses who were named in the FIR were not examined by the prosecution cannot be a ground to discard the evidence of Shyam Kumar Tiwari (PW-6) and Sangram Singh (PW-7) whose evidence is not only supported by prompt lodging of FIR, but is also supported by FSL, according to which, country made pistol seized from the possession of the appellant was found to have been used in the offence and even bullet which was recovered from the dead body of the deceased was found to have been fired from the country made pistol seized from the possession of the appellant.

30. No other arguments are advanced by the counsel for the appellant.

31. Accordingly, this Court is of the considered opinion that the prosecution has proved the guilt of the appellant beyond reasonable doubt. Accordingly, the conviction of the appellant for offence under Section 302 of IPC and under Section 25(1)(1-B)(a) and 27 of Arms Act is hereby **affirmed**.

32. So far as the question of sentence is concerned, minimum sentence for offence under Section 302 of IPC is life imprisonment, therefore, the

sentenced awarded by the Trial Court does not call for any interference. *Ex consequenti*, the judgment dated 17.11.2011 passed by the Sessions Judge, Datia in Sessions Trial No.87/2011 is hereby **affirmed**.

33. The appellant is in jail. He shall undergo the remaining jail sentence.

34. Let a copy of this judgment be immediately provided to the appellant free of cost.

35. The record be sent back to the Trial Court immediately along with copy of the judgment for necessary information and compliance.

36. Accordingly, the appeal fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE

Arun*