

STATE OF HARYANA AND ANR.

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v.

MANOJ KUMAR AND ANR.

NOVEMBER 2, 1993

[K.RAMASWAMY AND N.P. SINGH, JJ.]

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Indian Penal Code 1860 : Section 302 and 304. Murder—Repeated attacks to knock down the deceased by car—Death caused by knocking down—Nature of offence—Held punishable under section 302 and not under 304.

Indian Evidence Act, 1872 : Conviction based on testimony of the sole eye witness—Legality of.

C

Code of Criminal Procedure, 1973 : Section 154—FIR—Delay in lodging—When satisfactorily explained—Prosecution case cannot be rejected.

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Respondent 'M' was tried for an offence under section 302 of the Indian Penal Code. The prosecution case was that on June 22, 1988 two brothers, R and C left for Rohtak, from the residence of their father at New Delhi on a Motor-cycle. On their way they stopped at a shop at Bahadurgarh for refreshment where they parked their motors cycle in front of the car of the accused, M. When they came back to remove their motorcycle there was an altercation between the parties and the accused threatened to kill both the brothers. When they left for Rohtak, the accused followed them and repeated attempts to crush them on the road. Out of fear the two brothers stopped their motorcycle on the side of the road, in front of a tractor-trolley to save themselves. In the meanwhile C came down from the motor cycle and wanted to go behind the tractor-trolley to take shelter but the accused hit C by the right side of his car with force. Because of the impact, C was thrown from the road inside, the trolley which was carrying agricultural implements and consequently C got some incised wounds. Thereafter, the car proceeded in great speed grazing with the tractor-trolley. R got a Matador stopped on the way and asked the driver to take his brother to hospital and he followed the Matador on Motorcycle. But on reaching the hospital, C was declared dead. The informant, father of the victim, stated in his evidence that he got the information at about 2.00 AM and on reaching Rohtak at about 4.00 AM in the morning, he found that R was virtually unconscious because of the shock. Only at about

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A 9.00 A.M. he got the full details from him and then lodged the first information report at about 11.15 A.M. On June 23, 1988 mentioning all the facts relating to the occurrence on the basis of the information given to him by R.

B The glass pieces as well plastic strips of the car picked up from the scene of occurrence were sent for examination and the expert opinion confirmed that broken pieces of the glass and plastic strips were of the car of the accused. On June 25, the accused was arrested. The car was also seized from his premises and the right side of the car was found to have been badly damaged.

C Relying on the testimony of the sole eye-witness, R, the Trial Court convicted M and sentenced him to imprisonment for life. However, on appeal, the High Court acquitted the accused by rejecting the testimony of R inasmuch as it doubted his presence with the victim on the ground that he did not reach the hospital along with the victim. The High Court also drew adverse inference because of delay in lodging the FIR inasmuch as R did not lodge the FIR during the night itself.

E In appeal to this Court, it was contended on behalf of the State that the circumstantial evidence fully supported the prosecution case and the High Court erred in rejecting the evidence of R whose presence at the time of the occurrence was never questioned by the accused during trial.

On behalf of the respondent, it was contended that even on the prosecution case the accused could at the utmost be prosecuted for an offence under section 304 and not under section 302 IPC.

F Allowing the appeal and setting aside the order of the High Court, this Court,

G **HELD : 1.** A conviction can be based and the verdict of the court can rest even on the testimony of the sole witness, if the court is fully satisfied that such witness is a truthful witness and his presence at the time of occurrence has been proved beyond reasonable doubt. [529-C-D]

H 1.1 From a bare reading of the evidence of R, it appears that he has deposed in a very straight forward manner, giving every detail of the incident and as to how the accused-respondent made repeated attempts to crush them on the road, because of the altercation. There is no scope for

imaginary doubt about the correctness of his version. Nothing has been elicited in the cross-examination. No part of his evidence has been demolished. The other witnesses and circumstances only corroborate the statement of R. Therefore, the High court committed a grave error in rejecting his evidence. [528-B-C-F] A

2. It is true that time factor has an important role in context of lodging of a first information report. But, if the prosecution explains the delay satisfactorily, the Court is not expected to reject the whole prosecution case merely on that ground. The present case is one such case where taking all facts and circumstances into consideration, the prosecution case cannot be rejected on the ground that the first information report was not lodged during the night. [529-G-H; 530-A] B C

3. The accused intentionally caused such bodily injuries, as he knew to be likely to cause the death of C. As such he committed the offence of murder within the meaning of Section 300, liable to be punished for an offence under section 302 of the Penal Code. [530-D] D

4. The motive, as well as the genesis of the occurrence have been virtually admitted by the defence. The prosecution has proved its case beyond all reasonable doubt and there is no scope for giving any benefit of doubt to the accused-respondent. [527-F; 530-B] E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 698 of 1993.

From the Judgment and order dated 27.8.1992 of the Punjab and Haryana High Court in CrI. A.209/DB/90. F

With

Special Leave Petition (Criminal) No. 322 of 1993.

Ms. Indu Malhotra, Ms. Shirin Jain and S. Saharan-in-Person for the appellant/petitioner. G

K. Madhava Reddy, Prem Malhotra and T.C. Sharma for the respondent.

The Judgment of the Court was delivered by H

A N.P. SINGH, J. Special leave granted in S.L.P. (Crl.) No. 293 of 1993.

This appeal is on behalf of the State of Haryana for setting aside the judgment of the High Court, acquitting the accused- respondent Manoj Kumar, who had been convicted under Section 302 of the Penal Code and sentenced to undergo rigorous imprisonment for life, by the Sessions Judge, Rohtak.

The case of the prosecution is that on June 22, 1988, at about 7.00 P.M. Rohan (PW-14) and Chetan (deceased), the two sons of the informant, Col. Ajit Singh Saharan (PW-13), started for Rohtak, from the residence of the informant at New Delhi on a motorcycle bearing No. HYO-5550, to meet their mother Shakuntala Saharan who was residing then at Ashiyana Green Road, Rohtak. They stopped at Bahadurgarh on the way at about 7.45 P.M. at a shop for refreshment. A Maruti Car bearing No. HYU-9808 was parked and the two sons of the informant parked their motorcycle in front of the said car. In the meantime, the accused Manoj Kumar came and sat in his car aforesaid. But due to cycles and motorcycle aforesaid parked there, he could not take out his Maruti car and he started blowing the horn of his car continuously. He also started abusing loudly as to why those cycles and motorcycle had been parked there. As soon as Chetan heard abuses, he came to remove the motorcycle and asked the accused not to hurl abuses. There was exchange of hot words. Rohan also reached near the car, after parking the motorcycle, but exchange of hot words continued. The accused threatened both of them saying, "Come out of Bahadurgarh. I will see you." Rohan retorted, "What you will see us outside? See us here." The accused repeated, "Come outside. I will kill both of you." Thereafter the accused went away, but Rohan and Chetan remained there in front of the said shop out of fear. On enquiry, Rohan and chetan learnt that the name of accused was Manoj Kumar and he was the son of Surat Singh, who was a property dealer in Bahadurgarh. Rohan also noted down the number of the said car. After some time, they started on their motorcycle for Rohtak. On the way they saw the accused going from Bahadurgarh side to Rohtak. The car of the accused was going at a slow speed. Rohan who was driving the motorcycle overtook the car. As soon as the accused saw that Rohan and Chetan had gone ahead of him overtaking his car, he raised the speed of his car and started following the motorcycle. Rohan also increased the speed of his motorcycle out of the fear. But they had to slow down the speed of their motorcycle when they reached near village Sankhol, because of the rush on the road. It is alleged

that in the meantime accused Manoj Kumar overtook their motorcycle and again slowed down the speed of his car and gave them a signal to proceed ahead. It is further the case of the prosecution that as soon as Rohan tried to overtake the said car, accused swerved his car towards the right side, whereupon Rohan applied the brakes. Rohan stopped the motorcycle, thereupon accused Manoj Kumar who had gone ahead of them brought back the car in reverse gear towards Rohan and Chetan at a fast speed. Accused tried to bring Chetan under his car, but Chetan retreated. However, his left foot came under the wheel of the said car. Seeing this, some persons came near them. Chetan told them that the accused had run over his foot with his car and he was having great pain. After some time the accused again came back to the spot with his car. Persons who were present there, shouted that the said car was coming again. On this, Chetan climbed on the road divider and threw a stone on the said car. As Chetan had climbed on the road divider, the car went towards the Bahadurgarh at a fast speed. Both the brothers again started towards Rohtak on their motorcycle. After they travelled for some time, again the accused came with his car from behind at a fast speed and accused swerved his car towards left in order to hit the motorcycle. Rohan took the motorcycle on the 'kachha' portion of the road on the left side and stopped it. When the car of the accused proceeded towards Rohtak, they again started from there on their motorcycle. When they had covered some distance, it is alleged that Rohan again saw the car of the accused coming from the opposite direction i.e. from Rohtak side. Out of fear they stopped the motorcycle on the side of the road, in front of a tractor-trolley to save themselves. In the meanwhile, Chetan came down from the motorcycle and wanted to go behind the tractor trolley to take shelter. The accused hit Chetan who was on the road by the right side of his car with force. Thereafter the car proceeded in great speed grazing with the tractor-trolley. Because of the impact, Chetan was thrown from the road inside the trolley. Seeing the serious condition of Chetan, Rohan stopped a matador, driven by one Vinod Kumar of Rohtak and asked him to take to the hospital because his brother's condition was serious. Chetan was put in the matador and Rohan followed the matador on his motorcycle. Chetan reached hospital at 9.30 P.M. and after half an hour he was declared dead. Col. Ajit Singh Saharan the father of the victim was informed, who proceeded from Delhi to Rohtak. The first information report was lodged at about 11.15 A.M. on June 23, 1988, by the father of the victim. It is said that Rohan, because of the shock, virtually remained unconscious throughout the night and at 9.00 A.M. he started narrating the details of

A the occurrence, to his father, the informant. In the first information report all the aforesaid facts relating to the occurrence were mentioned by the informant, on the basis of the information given to him by Rohan. On the date of occurrence the two brothers, Rohan and Chetan, were aged about 19 and 17 years respectively.

B The report was given to the Head Constable Chand Singh (PW-12), who sent the said report to the Police Station, City Bahadurgarh, on the basis of which a case was registered. The copy of the first information report reached to the Additional Chief Judicial Magistrate on June 23, 1988 at 4.00 P.M. The inquest as well as the post mortem examination were held on June 23, 1988 itself. The motorcycle bearing No. HYU-5550 was produced before the Investigation Officer (PW-16) on June 23, 1988 itself.

C The Investigating Officer (PW-16) reached the place of occurrence. He picked up glass piece from the spot as also blood stained earth including the plastic strip "Maruti-800", which was lying on the road. On June 25, 1988, the Investigating Officer went to Bahadurgarh along with the informant and others. He received a secret information at about 4.15 P.M. that the accused Manoj Kumar was present in his house with the car and could be apprehended there. Whereupon all went to his house in Daya Nand Colony, Bahadurgarh, and at the pointing out by Rohan (PW-14), the Investigating Officer (PW-16) arrested the accused and took into possession the Maruti car No. HYU-9808. The car was badly damaged on the right side. From inside the car, broken pieces of glass and stains of blood were recovered which were seized and put into sealed parcels. The clothes of the accused were also seized. The Investigating Officer got the Maruti car photographed and sent the accused for medical examination as he was having injuries on his person. The Investigating Officer also got the car and the motorcycle mechanically examined by a motor mechanic. On comparison and the examination, the expert gave the opinion that the broken pieces of glass found on the road, were of Maruti Car No. HYU-9808. It was also found that the plastic strip with "Maruti-800" found on the road was of the same car, because the said strip in the car was missing at the time of seizure.

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After investigation, report under Section 173 of the Code of Criminal Procedure was filed. The accused was put on trial. He was convicted for an offence under Section 302 of the Penal Code by the Sessions Judge, Rohtak, and sentenced to undergo rigorous imprisonment for life. However, as already stated above, the High Court set aside the conviction and

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sentence of the accused-respondent and acquitted him of the charges levelled against him. A

On behalf of the State, it was pointed out that there was no reason for the High Court to reject the evidence of Rohan (PW- 14), the brother of the deceased whose presence at the time of the occurrence and his going from Delhi to Rohtak along with the deceased, was never questioned by the accused during the trial. It was urged that the circumstantial evidence collected during investigation, fully supported the case of the prosecution. B

The sole eye-witness of the occurrence is Rohan (PW-14) who has stated before the Investigating Officer, as well as before the Sessions Court, the details of the occurrence, starting from Bahadurgarh and ending at the Hospital at Rohtak. The other witnesses and circumstances only corroborate the statement of Rohan (PW-14). According to us, the High Court should have first examined as to whether in the facts and circumstances of the case, the evidence of the case, the evidence of Rohan (PW-14) should be accepted. It appears that the High Court mainly considered the questions as to whether there was any reasonable explanation for not informing the police during night, and as to whether Rohan (PW-14) was with Chetan (deceased) on the motorcycle when Chetan left Delhi for Rohtak. The special feature of the case is, that accused in his statement under Section 313 of Code of Criminal Procedure admitted that his Maruti car was standing at the shop of one Juice seller at Bahadurgarh. When he returned to the car, he found a motorcycle was parked in front of his car. Then he blew the horn twice or thrice. Thereafter a boy there who abused him saying as to why he was in a hurry. Thereafter there was exchange of hot words between them. He also admitted that at Village Sankhol somebody threw a stone at his car. No suggestion was given to Rohan (PW-14) that he did not accompany Chetan (deceased) on motorcycle from Delhi. The motive, as well as the genesis of the occurrence have been virtually admitted by the defence. C D E F

Rohan (PW-14) has stated in detail about the altercation at Bahadurgarh and about the first attack on the way in which the car of the accused is alleged to have hit the left leg of the Chetan and caused injuries, and as to how ultimately the accused knocked down Chetan on road by his car with great force. He also stated that after hitting Chetan by the right side bonnet of the car, accused proceeded ahead grazing with the tractor and trolley. The fact that the right side of bonnet of the car hit Chetan with great force, and thereafter accused proceeded ahead "grazing with the G H

- A tractor-trolley", was mentioned in the first information report lodged in the forenoon of June 23, 1988. The car of the accused was seized on June 25, 1988. The right side of the car was found to have been badly damaged. This was mainly due to the car grazing with the trolley. If Rohan (PW-14) was not with Chetan (deceased), how this fact that the car grazed the trolley after hitting Chetan, could have been mentioned in the first information report lodged on June 23, 1988, before the car was seized. From a bare reading of the evidence of Rohan (PW-14), it shall appear that he has deposed in a very straight forward manner, giving every detail of the incident and as to how the accused-respondent made repeated attempts to crush them on the road, because of the altercation at Bahadurgarh. Nothing has been elicited in the cross-examination. No part of the evidence of Rohan (PW-14) has been demolished. The High Court has simply quoted the evidence of Rohan (PW-14), but has given no reason why it should be rejected. The High Court has observed only "that the evidence of the eye-witness in the court was a belated attempt to improve their testimony and bring the same in line with the Doctor's evidence with a view to support an incorrect case."

- On the person of deceased, 11 injuries were found during post-mortem. Most of the injuries were on the left side of his body which is consistent only with the case of the prosecution that while Chetan was standing on the road, the accused knocked him down by the right side of the car, causing injury on the left side of Chetan. He was thrown on the trolley. The trolley was carrying agricultural implements which caused some of incised wounds which were found on the person of Chetan during post mortem examination. During the cross-examination of Rohan (PW-14), the suggestions which had been given, on behalf of the accused, do not dispute the case of prosecution that both brothers left Delhi on the motorcycle. The High Court committed a grave error in rejecting the evidence of Rohan (PW-14). The High Court doubted the presence of Rohan (PW-14) with the victim, merely on the ground that Rohan did not reach the hospital along with the victim. Since very beginning, the case of the prosecution is that Rohan (PW-14) got a matador stopped on the way asked the driver of the matador to take his brother to hospital. Rohan followed the said matador, on motorcycle. The distance between the place of occurrence and the hospital is about 35 Kms. In normal course the matador must have reached before Rohan reached the hospital on motorcycle. Similarly, the adverse inference drawn by the High Court, as to why Rohan (PW-14) did not inform the police regarding the occurrence

throughout the night, according to us, is without justification. A young boy of 19 years, who escaped death even after several attempts on the road and ultimately found his brother becoming victim of the said attack, must have been completely broken. It was too much to expect from him that before his father arrived, he would have taken legal steps for prosecuting the respondent.

The prosecution has unfolded and disclosed the prosecution case in a most natural manner and there is no scope for imaginary doubt about correctness of the version. Rohan (PW-14) is the sole eye-witness of the fatal knock down, by the accused, But, that cannot be held to be an infirmity of the prosecution case. A conviction can be based and the verdict of the court can rest even on the testimony of a sole witness, if the court is fully satisfied that such witness is a truthful witness and his presence at the time of occurrence has been proved beyond reasonable doubt. The evidence of Rohan (PW-14) is fully corroborated, by the damaged Maruti car found in the premises of the accused with the missing plastic strip "Maruti-800", which was found on the spot and collected by the Investigating Officer, The comparison of the broken glasses found on the road with the broken glasses found in the Maruti car of the accused; the damage found only towards the right side of the Maruti car; most of the injuries on the person of deceased being on the left side, according to us, go a long way to prove that Rohan (PW-14) has disclosed the correct version of the occurrence. No adverse inference can be drawn in the facts and circumstances of the present case, because Rohan (PW-14) or anyone did not lodge the first information report during the night itself. PW-13, father of the victim, who is a military officer, has stated on oath, that he got the information from Rohtak at about 2.00 or 2.15 in the night and he immediately proceeded for Rohtak and reached there at about 4.00 or 4.15 in the morning. He found Rohan (PW- 14) in his house at Rohtak, but he was "besudh" (not in his senses) and was lying on a "Charpai". At about 9.00 A.M. in the morning he tried to know the full details from his son Rohan and then he lodged the first information report on the basis of the facts narrated by his son Rohan. We find hardly any reason to doubt the evidence of the informant (PW-13). It is true that time factor has an important role in context with lodging of a first information report. But, if the prosecution explains the delay satisfactorily, the Court is not expected to reject the whole prosecution case merely on that ground. The present case is one such case where taking all facts and circumstances into con-

- A sideration, the prosecution case cannot be rejected on the ground that the first information report was not lodged during the night. The agony of the mother of the deceased and other members of the family at Rohtak in absence of the father of the victim, who was then at Delhi, can be well appreciated. We are of the view that the prosecution has proved its case beyond all reasonable doubt and there is no scope for giving any benefit of doubt to the accused-respondent.
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- On behalf of the accused-respondent, it was urged that even if the prosecution case is accepted at its face value, still the accused-respondent cannot be convicted for an offence under Section 302 of the Penal Code; utmost he can be convicted for an offence under Section 304 of the Penal Code. It is not possible to accept this contention. The accused after leaving Bahadurgarh, made repeated attempts to knock down the two brothers by his car and ultimately he succeeded in doing so, when Chetan was standing on the road. The impact was so serious that Chetan was thrown from road to the trolley. It is fully established that accused intentionally caused such bodily injuries, as the accused knew to be likely to cause the death of Chetan. As such he committed the offence of murder within the meaning of Section 300, liable to be punished for an offence under Section 302 of the Penal Code.
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- E Accordingly, the appeal is allowed. The judgment of the High Court is set aside. The accused-respondent Manoj Kumar is convicted under Section 302 of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for life. He should surrender within one week from today, failing which all steps be taken by the concerned authorities to take him into custody, to serve out the sentence.
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- In view of the order passed in the above appeal, filed on behalf of the State of Haryana, there is no necessity to pass the same order in the Special Leave Petition filed on behalf of the informant. The petition filed by the informant is held to have become infructuous and accordingly the same is hereby dismissed.
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T.N.A.

Appeal allowed.