

Ram Gopal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-20-1986

Reported in : 1986WLN(UC)10

Judge : Milap Chand Jain and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal Appeal No. 817 of 1975

Appellant : Ram Gopal

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Jas Raj Chopra, J.

1. This appeal is directed against the judgment of the learned Sessions Judge, Sri Ganganagar dated October 29, 1975 whereby the learned lower court held accused Ramgopal guilty of the offence Under Section 302 IPC and sentenced him to imprisonment for life. He has also been held guilty of the offence Under Sub-section 25(1)(a) and 27 of the Arms Act and has been sentenced to six months rigorous imprisonment and one year's rigorous imprisonment respectively for the above said two offences. The substantive sentences were ordered to run concurrently.

2. The facts of this case briefly stated are : that on May 8, 1974 at about 8.30 P.M. accused Ramgopal was working as labourer on the tube-well of one Beharilal situated in village Sadhuwali. It is alleged that Krishna Lal s/o Amichand and Hansraj s/o Krishanlal were sitting on the hotel of Surajbhan, which is situated at the Bus-Stand. Some other persons were also sitting there. It is alleged that Hanuman and Krishnalal had some enmity with accused Ramgopal. It is further alleged that before 5-6 days of the occurrence, one Roshankhan snatched one rupee from accused Ramgopal and he purchased a bottle of soft drink with that amount. This enraged accused Ram-Gopal. However, Krishnalal and Hansraj intervened and implored him not to get enraged. They suggested to him that he may snatch two rupees from Roshankhan on any other occasion. This led to exchange of some hot words between these three persons. When Krishanlal and Hansraj were sitting on the hotel of Surajbhan on the day of the incident and were enjoying their tea, one Hanuman son of Dhonkal came there. He was in search of some labourers but he could not find them. When he saw Hansraj and Krishanlal sitting on the hotel of Surajbhan, he requested them to help him in thrashing his wheat crop and assured them to help and them to render all help in their thrashing operation, whenever occasion arises. Krishanlal and Hansraj expressed readiness to help him and enquired of him as to when they have to come to his field Hanuman, therefore, informed them that they may accompany him then and there. However, he requested them to allow him to have tea, whereupon, Hansraj and Krishanlal told him that he may take his own time and enjoy his cup of tea. They i.e. Krishanlal and Hansraj proceeded from the bus-stand towards the field of Hanuman. After taking tea, Hanuman also followed them. It is alleged that when Hanuman reached near the tube-well of Ladhuram, heard the noise of a gun-fire which was coming from the side of Behari's tube-well. He immediately crossed the turn of the road and reached the bridge. There, he heard Hansraj shouting 'Ramgopal do not kill'. At that point of time, he heard the noise of the firing of second pistol shot. As soon as he reached on the small bridge, he found Krishan Lal lying on the Kachha road going from Sadhuwali to Bhagsar and Hansraj running towards the village whereas Ramgopal once again fired from a pistol towards Krishana Lal which hit him on his head. At that time, he was 20-25 paces away from the place of the incident. A bulb fixed to an electric pole situated on the

roof of the tube-well room was spreading light in the nearby area and, therefore, he could see the occurrence from his own eyes from that distance. He then came back running to the bus-stand. There, he found Hetram, the real brother of Krishna Lal sitting at the hotel of Surajbhan. He called him aside and told him that his brother Krishna Lal has been killed by Ramgopal. Soon thereafter, Hansraj also came running to the bus stand and he openly proclaimed that Ramgopal has killed Krishnalal with a pistol by firing three rounds from it. On this, Hetram, Hetram son of Ranjeet, Sukhdeo and Hanuman went to the tube-well of Behari where they found that Krishnalal was lying dead on the road. He had injuries on his chest, stomach etc. and his injuries were bleeding. Hetram then left for the village, leaving behind his companions to guard the dead body, to call his father and mother as also to bring a Tractor to shift the dead body of Krishnalal to the village. After he brought the tractor, he went to lodge a report at the police station-Sadar, Sriganaganagar. However, before he reached the police station, Sadar, accused Ramgopal had already reached there and he lodged an oral report to the Police to the effect that he has killed Krishnalal on account of enmity existing between them with the help of a pistol. He also surrendered to the Police, the pistol and three empty cartridges which were used during the occurrence and two live cartridges. The information given by him was recorded at Police Station, Sadar as Ex. P

23. The accused was arrested vide Ex.P.

18. The pistol, three empty cartridges and two live cartridges were separately seized and sealed by the police vide Seizure Memos Ex.Ps 19 to 21 respectively. The report of arrest of accused Ramgopal was recorded in the Rojnamcha which has been marked Ex. P

22. The Police then examined Hetram son of Amichand who reached the Police Station to lodge the report. It then proceeded to the place of occurrence and found the dead body lying near the tube-well of Behari. Site Plan Ex.P 24 and site inspection memo Ex. P. 24-A were prepared. On the next day, the description of the dead body was recorded in Ex. P

25. Report Under Section 174 Cr. PC was drawn and it has been marked Ex. P.

26. From the place of the incident, one wad was found at a distance of 7-1/2, away from the dead body and two wads were found lying near the right side of the waist of the deceased. They were seized and sealed vide Ex. Ps. 27 and 28 respectively. One more wad was recovered from near the right knee of the deceased vide memo Ex. P.

29. Certain articles i.e. one match box, a bundle of bidis and some plastic articles were recovered from the person of the deceased vide memo Ex. Ps. 30 and

31. Blood stains and control soil were seized vide memos Ex. Ps. 32 and 33, Blood stained clothes, sandals of the deceased were recovered vide memos, Ex. Ps. 34 and

36. Photographs of the dead body were taken vide memo Ex. P. 11 and the photographs have been marked Ex.Ps. 3 to 6 and their negatives have been marked Ex. Ps. 7 to

10. They were taken into possession by the police from the Photographer vide memo Ex. P.

37. The sanction for prosecution of Ramgopal Under Section 25 of the Arms Act was obtained from the District Magistrate, Sriganaganagar which has been marked Ex.P.

38. All these sealed packets were sent for Chemical Serological examination vide memo Ex. Ps. 39 to

42. The report of the chemical examination has been marked Ex. P.

43. The Rapat Rojnamcha for sending these articles for chemical analysis has been marked Ex.P. 12 and the copy of the Register has been marked Ex. P.

13. The autopsy on the dead body of the deceased was got conducted at the spot and the post mortem report has been marked Ex. P. 7.

3. After usual investigation the case of the accused was challenged in the Court of learned Munsif and Judicial Magistrate, Sriganaganagar from where it was

committed for trial to the court of Sessions Judge, Sriganagar. The accused was challenged for the above said three offences. He did not plead guilty to the charges and claimed trial whereupon the prosecution examined as many as 12 witnesses in the case. The statement of the accused was recorded Under Section 313 Cr. PC. He examined Hetram son of Ranjeet, who accompanied Hetram son of Amichand (the brother of the deceased) to the place of occurrence, as DW 1.

4. After hearing the parties, the learned lower court held the accused-appellant Ramgopal guilty of the offences as aforesaid and sentenced him to various terms of imprisonment. Aggrieved against this judgment, the accused appellant Ramgopal has preferred this appeal.

5. We have heard Mr. Rajendra Singhvi, learned Counsel for the accused-appellant, Mr. L.S. Udawat, learned Public Prosecutor for the State and Mr. Balkrishna, learned Counsel for the complainant. We have carefully gone through the record of the case.

6. The learned lower court held that the FIR which has been given by the accused himself recorded certain confessions and admissions and, therefore, its contents being barred under the provisions of Sections 24 to 26 of the Evidence Act cannot be taken into consideration. Only the fact of giving information by the accused-Ramgopal himself as such is admissible in evidence. It also held that the admission of the accused that he surrendered a pistol, three empty cartridges and two live cartridges to the Police is also admissible in evidence. Except these two facts, rest of his confessional statement containing not only confessions but certain admissions was wholly inadmissible in evidence. After scrutinising the evidence of the prosecution, it has relied on the testimony of PW 2 Hanuman which is supported by the testimony of PW 1 Hetram and PW 5 Sukhdev Singh. It has further held that simply because site plan was not prepared at the instance of PW 2 Hanuman, the testimony of PW 2 Hanuman cannot be discarded as a whole in its totality. On the strength of the evidence of PW 4 Beharilal, it was held as amply proved that the accused was present on the tube-well at the relevant time. The report of the ballistic expert has also been relied upon by it in support of the ocular evidence and, therefore, it has come to the conclusion that the accused

Ramgopal is the real murderer of Krishnalal. He used a pistol to kill him and, therefore, he has been held guilty for the possession of a country made unlicensed pistol as also for its unlawful use.

7. Now, we have to see how far this judgment of the learned lower court can be sustained on the basis of the record of the case.

8. In this case, the occurrence has been seen by only two witnesses viz., PW 2 Hanuman and PW 6 Hansraj. PW 6 Hansraj has been declared hostile. He has stated that accused Ramgopal is his cousin brother. As per him, no occurrence took place before him. He only heard that Krishnalal has been killed. He was cross-examined on the basis of his earlier police statement Ex. P.2 (portions A to B, C to D, E to F, G to H, I to J, K to L and M to N) in which he has admitted the entire occurrence but now at the trial he has stated that he did not give any such statement before the police and he does not know how the police has recorded such a statement ascribing it to him. Under these circumstances, his evidence has become worthless and cannot be utilised by the prosecution in support of its case. Of course whatever he has stated to the persons present at the Bus stand regarding the occurrence has been testified by the other witnesses but that part of the prosecution story will be dealt with later but at present, suffice it to say that his evidence as such cannot be utilised to support the case of the prosecution. We are, therefore, left with the testimony of PW 2 Hanuman.

9. PW 2 Hanuman has supported the prosecution story and has stated that on the date of the occurrence, he was in search of labourers and in that process in the evening at about 8 or 8.30 p.m., he reached Sadhuwali bus-stand, where he met Krishnalal and Hansraj. He requested them that if they have no work on that day, they may help him in thrashing the crop and in return, he will work for them as and when the occasion arises. They accepted his proposal and asked him as to when they should go to his field whereupon, he told them that they may immediately go along with him. However, he made a request to them that he wanted to take tea and they may accompany him after he has taken his tea. Krishnalal and Hansraj told him that he may enjoy his cup of tea and they were proceeding towards his field slowly and so, he may join them afterwards. After about 5-7 minutes, he too

started for his own field after taking tea. When he reached near the tube-well of Ladhuram, he heard the noise of a gun fire coming from the side of Behari's tube-well. He then ran towards the place of occurrence and heard Hansraj's voice imploring Ramgopal not to kill. At that point of time, he heard another sound of gun-fire. He then immediately rushed towards the scene of occurrence and saw that Krishnalal was lying on the Kachha way leading to Bhagsar from Sadhuwali just by the side of the field of Beharilal, in which his tube-well is also situated. According to him, the small bridge on which he was standing was 20 to 25 paces away from the place of occurrence. Ramgopal fired one more round from his pistol on Krishnalal while he was lying on the ground. That fire hit him on his head. At that time, lights on the tube-well were on and every thing was visible. On seeing, this he ran towards the bus-stand which was about 90 paces away from the place of occurrence. It is said to be three bighas away. One bigha consists of 30 Pawandas and so, the entire distance between the place of occurrence and the bus-stand was 90 Pawandas. When he reached the bus stand he found Hetram who is real brother of Krishnalal sitting on the hotel of Surajbhan. He called him aside and told him in confidence that his brother has been killed by Ramgopal. After he finished talking with Hetram, PW 6 Hansraj also arrived at the bus-stand and he openly proclaimed that Ramgopal has killed Krishnalal by firing three shots from his pistol. This was heard by all who were present at the bus stand including PW 2 Hanuram, PW 1 Hetram, PW 3 Surajbhan and PW 5 Sukhdeosingh etc. PW 6 Hansraj then went towards the village Abadi and PW 1 Hetram accompanied by PW 2 Hanuman, PW 5 Sukhdeosingh and DW 1 Hetram son of Ranjeet went to the place of the occurrence. PW 2 Hanuman heard the first shot when he was 35 paces away from the place of the occurrence. The second shot was heard when he was 20-25 paces away from the place of the occurrence. After that, when he proceeded for another 7 pawandas, he saw the accused firing third round from his pistol. He did not cry. He immediately ran towards the bus stand and he also saw PW 6 Hansraj running towards the village Abadi. He only stayed there till the third round was fired and then he immediately ran towards the bus-stand. He did not see any-body else in the vicinity of the place of the occurrence. When PW 6 Hansraj was running towards the village, he was about 15 paces away from him. Hansraj gave him no call. Mr. Rajendra Singhvi, learned Counsel appearing for the

accused-appellant has raised a serious dispute about the existence of the small bridge on the way going from village Sadhuwali to Bhagsar. According to Mr. Singhvi, this small bridge has not been shown in the site-plan Ex. P 24. It is true that the existence of small bridge has not been shown in the map. PW 12 Bhanwarsingh who has prepared the site-plan has also admitted that the existence of small bridge has not been shown in the map. However, the existence of the small-bridge on the way going from Sadhuwali to Bhagsar cannot be disputed. Not only that, PW 2 Hanuman has stated that such a bridge existed just near the place of occurrence but PW 1 Hetram along with PW5 Sukhdeo Singh has also stated that this bridge existed there. According to PW 1 Hetram, it was at distance of 20 to 30 pawandas from the tube-well towards the western side of the dead body. PW 12 Bhanwarsingh SHO has stated that one small bridge does exist 20 to 30 paces away from the place of occurrence, although he has not shown that small bridge in the plan. The site plan Ex. P. 24 shows that there is a big chapped of water i.e. a tank of collected water near the way. From there a Khala (water-course) flows towards the field of Beharilal. When the road crosses that khala, it is clear that some bridge must be existing on that culvert. Even Hetram DW 1 had admitted in his statement that one small pulia (bridge) did exist at a distance of a 1-1-1/2 bigha from the place of the occurrence towards its western side. Thus, the existence of this pulia (small bridge) on the way leading from village Sadhuwali to Bhagsar cannot be disputed. It is further not disputed that an electric bulb existing on the roof of the tube-well at that time was throwing light in the entire area. As per PW 2 Hanuman light was on even inside the tube-well room also and that too was throwing light in the entire area. As per the site plan Ex. P. 24, no bushes existed between the place of the occurrence and the way leading from Sadhuwali to Bhagsar. It will be clear not only from the site plan Ex. P. 24 but also from the photographs Exs. P. 4 and 5. As per Ex. P. 4 bushes were existing towards the eastern side of the tube-well but not towards its western side. Thus, a man standing on that culvert or small bridge can certainly see the occurrence in the light of that bulb, existing on the roof of the tube well. PW 2 Hanuman is an independent witness. He is neither related to the complainant party nor he is alleged to be inimical or hostile to the accused. He was only interested in securing the services of these two persons because he had to thrash his crop. His

statement is quite natural. He could have said that these persons accompanied him but he did not say so. As he stayed behind for taking tea, he has frankly conceded that he took 5-7 minutes in taking tea. When he has not actually seen the firing of the first two shots, he has admitted in his statement that he only heard the noise of two gun shots and he only saw the third shot being fired with his own eyes. A thorough cross-examination has been made with this witness but nothing tangible could be elicited which may shatter his testimony or affect his reliability. Simply because the services of these two persons were obtained by him for the first time to thrash his crop can not be employed to discredit the testimony of this witness. He has already stated that he was in search of labourers. As he did not find them, and he had to thrash his crop, he requested these two persons to help him and offered to help them in return as and when his help is needed by them. Thus, it is quite natural for them to have agreed to his request. They were not labourers and, therefore, they only accepted to work on a promise being made by Hanuman that he will also help them personally in their farm work in return to the services rendered by them.

10. It was also contended by the learned Counsel appearing for the accused-appellant that why Hanuman took aside Hetram, the brother of the deceased to convey the news of the murder of his brother Krishnalal. He could have proclaimed it openly. Of course, it is true that he could have said so openly, but we cannot expect a uniform pattern of behaviour from all human beings in given circumstances. Different persons react differently to a particular event. This witness saw the sudden murder of his co-villager and naturally he must have been dazed and frightened. In that state of mind, if he thought it wise to convey this ghastly news to the brother of the deceased in confidence, it cannot be termed as an unnatural conduct on his part. The testimony of PW 2 Hanuman is fully corroborated by PW 1 Hetram himself who has stated that when he was sitting on the hotel of Surajbhan near the bus-stand at about 8-8.30 p.m., PW 2 Hanuman came and took him aside and told him that his brother has been killed by Ramgopal. He even related to him that he heard the sound of first fire from the tube-well of Ladhuram and the noise of the second shot was heard by him after he proceeded further for about 5-10 paces. He has personally witnessed the third shot being fired by accused Ramgopal from his pistol. He even told him that PW 6

Hansraj implored Ramgopal not to kill. He has also admitted that as soon as they finished their talks, Hanuman came running to the Bus-stand and immediately told him in a loud voice that Rampal has killed Krishnalal by firing three rounds from his pistol and then he went towards the village. This statement of PW 6 Hansraj made at the bus stand is further corroborated by the testimony of PW 5 Sukhdeo Singh. He was also sitting at the bus-stand. He has stated that PW 2 Hanuman came there and took PW 1 Hetram aside. Their talks took about 5-7 minutes and then Hansraj (PW 6) came there and he too cried out that Krishnalal has been killed by accused Ramgopal. PW 5 Sukh Deo Singh has stated that he along with Hanuman (PW 2), Hetram (PW 1) and Hetram (DW 1) went to the place of occurrence and saw the dead body of Krishnalal PW 1 Hetram then went to call his parents and to bring the tractor. He came back from the village with a tractor as also with his parents. Thereafter, he went to the police station to lodge the report. Although, PW 3 Surajbhan has also heard all these things and has seen PW 2 Hanuman taking aside, PW 1 Hetram and than talking to him in confidence but he has now turned hostile. He has, however, admitted that at about 8.30 PM, when Hetram son of Amichind and 2-3 more persons were sitting with him, one person came at the bus-stand and told that Krishnalal has been killed but he did not tell as to who has killed Krishnalal. He even did not hear as to who has killed Krishna Lal. He even avoided to name the person who came there and told all these things. As per him, the man who came there and told all these things may be PW 2 Hanuman but he cannot say so, definitely. That man only told that somebody has killed Krishnalal. In the morning every body in the village came to know that Krishnalal has been killed by Ramgopal. He was declared hostile and was confronted with his earlier police statement Ex. P. I where in he has admitted all these facts but now he has stated that he does not know how the police has recorded this statement but it is certain that he has not given this statement to the Police. It appears that he being a business man, he did not like to side with any party. He has expressed his difficulty in these words : 'MERE LIYE MULJIM AUR MUSTIGIS PARTY EAK HAIN, KYOKI MAI DUKANDAR AADMAI HUN.' It appears that he has suppressed the truth but this much is certain that as soon as the occurrence took place, one man came to the bus-stand and informed that Krishnalal has been killed and at that time PW 1 Hetram along with others was sitting with him. PW 1

Hetram and PW 2 Hanuman have however testified that PW 2 Hanuman reached the bus stand ahead of PW 6 Hansraj conveyed the news of the death of Krishnalal to PW 1 Hetram in confidence whereas this fact was openly proclaimed by PW 6 Hansraj on the bus-stand and, therefore, it is certain that PW 2 Hanuman has seen the occurrence. When he has no enmity with the accused, it is impossible for him to entangle Ramgopal in such ghastly crime as murderer and, therefore, the learned lower court was justified in placing implicit reliance on the testimony of this witness, whose evidence is quite natural and trustworthy. He has given a correct account of the events as he has heard and seen them. Simply because he took Hetram aside and informed him about the incident, it does not minimise the value of his testimony. Different persons react differently to the given events. Some are bold enough to proclaim the truth of the event openly and may, thereafter, retract from it if it suits them as has been done of PW 6 Hansraj but some others are cautious in their approach to inform the person concerned so that they may not antagonise the accused also but they speak out the truth as and when called upon to do so as has been done by PW 2 Hanuman in this case. We are, therefore in agreement with the assessment made by the learned lower court so far as the reliability of the testimony of PW 2 Hanuman is concerned.

11. We need not discuss the testimony of medical evidence because Mr. Rajendra Singhvi appearing on behalf of the accused did not dispute the medical testimony. He has rather conceded that the medical testimony clearly discloses that Krishanalal was injured by the gun fire and he succumbed to the injuries. PW 10 Dr. Ramlal Goyal has stated that injuries No. 2 and 5 were individually sufficient to cause the death of the injured in the ordinary course of nature. In his opinion, all the injuries collectively were also sufficient to cause his death in the ordinary course of nature. Dr. Ramlal Goyal has proved the autopsy report Ex. P. 16 which bears his signatures A to B. According to him, the deceased died due to the injuries on the vital organs : i.e. lung and intestines causing acute shock. Thus, the testimony of PW 10 Dr. Ramlal Goyal amply establishes that Krishnalal died because of the gun-shot injuries received by him.

12. We are also in agreement with the learned lower court that the contents of the FIR Ex. P. 23 cannot be read in evidence. Their Lordships of the Supreme Court

were pleased to lay down in *A. Nagesia v. Bihar State* : 1966 CriLJ100 as under:

The First Information Report recorded Under Section 154 Criminal PC as such is not substantive evidence, but may be used to corroborate the informant Under Section 157 of the Evidence Act or to contradict him Under Section 145 of the Act if the informant is called as a witness. Where the accused himself gives the First Information, the fact of his giving the information is admissible against him as evidence of his conduct Under Section 8 of the Evidence Act. If the information is non confessional it is admissible against the accused Under Section 21 of the Evidence Act and is relevant. But a confessional First Information Report by the accused to a police officer cannot be used against him in view of Section. 25 of the Evidence Act..Where the First Information Report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27

Relying on *A. Nagesia's* case (supra), their Lordships of the Supreme Court in *K.H. Amulakh v. State of Gujarat*, : 1972 CriLJ626 held as under:

A confessional statement made by the accused to the police which forms the basis of the First Information Report is inadmissible.

Their Lordships of the Supreme Court in *A. Nagesia's* case (supra) have been pleased to observe in Para 19 of the judgment as under:

The test of severability namely, that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence, is misleading, and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

Likewise in K.H. Amulakhs case (supra), the Supreme Court has held as under:

The statement could however be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence Under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied.

Thus, the inculpatory or exculpatory confessional statement made by the accused as a whole is inadmissible in evidence because it is hit by Sections 24, 25 and 26 of the Evidence Act. However, if any part of that statement can be severed and it is covered by the exceptions contained in Section 27 of the Evidence Act, then that part of the testimony can be tendered in evidence. The fact that the accused himself lodged the FIR of course is admissible in evidence as the conduct of the accused Under Section 8 of the Evidence Act. It was the accused himself who gave information regarding the murder to the police and so to that extent, his information to the police that he has lodged the report is admissible in evidence. In this case, the accused himself delivered to the police one country made pistol, three empty cartridges and two live cartridges. That part of his statement also is admissible in evidence because it is a statement of fact and not an admission of any guilt. Thus, the recovery of one country made pistol, three empty cartridges and two live cartridges at the instance of the accused is admissible in evidence Under Section 8 of the Evidence Act showing the conduct of the accused. Thus, these two things are admissible in evidence on the strength of the aforesaid two authorities of the Supreme Court.

13. The report of the ballistic expert Ex. P. 43 further establishes that the crime cartridge cases marked C1 to C3 have been fired from the pistol under reference and the wads and pellets could be fired from 12 bore pistol.

14. From the discussion made here in above, it is clear that it was actually this very accused who has killed Krishnalal with this very pistol and the three empty cartridges which were recovered from his possession.

15. Mr. Rajendra Singhvi, learned Counsel appearing for the accused appellant Ramgopal has submitted that the site was not inspected at the instance of the eye witness PW 2 Hanuman and this would be sufficient to discard his testimony as an eye witness of the occurrence. In this respect he placed reliance on Savia v. State of Rajasthan (1985 Cr. LR 18) where in it was observed as follows :

In site plan Ex. P. 13 and inspection memo Ex. P. 12 it has not been mentioned as to where this witness was standing when the incident took place and from which place he had seen the incident taking place. This is a serious infirmity and again persuade us to hold that the witness was not present near about the place of occurrence.

In Moti v. State (1962 RLW 448), a Division Bench of this court consisting of Modi and Chhangani, JJ. (as they then were) observed that proper plans of the scene of offence at least in cases of grave offences should be prepared by those in charge of the investigation and that such plans should be drawn up with reasonable approximation to the realities of the case and should show the various important places with reference to their exact distances from the scene of crime, so as to serve a valuable check for the truth or otherwise of the respective stories put forward by the prosecution or the defence as the case may be. It has been consistent view of this Court that the place from where the witnesses have seen the occurrence should be pointed out and marked in the site plan.

16. Mr. Balkrishna, learned Counsel appearing for the complainant, however, submitted that a rough sketch map prepared by the Sub-Inspector on the basis of the statements made to him by witness during the course of investigation and showing the place where the deceased was hit and also the places where the witnesses were at the time of the incident would not be admissible in evidence in view of the provisions of Section 162 Cr.PC, for, it is in effect nothing more than the statement of the Sub-Inspector that the eyewitnesses told him that the deceased was at such place at the time when he was hit. The sketch map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear

provisions of Section 162 Cr. PC as it will be no more than a statement made to the police during the investigation. In support of his submissions, he placed reliance on *Tori Singh v. State of UP*. (AIR 1962 SC 299).

17. In view of this Supreme Court authority if certain places or points are shown or indicated in the site plan on the strength of the statements made by the eye witnesses at the time of the inspection or on the basis of the places pointed out by them during the site inspection, they may be treated as statements made to the police and, therefore, they are hit by the provisions of Section 162 Cr.PC. However, if the statements of the witnesses have been recorded earlier where certain facts about certain points are disclosed or where certain places or points are even indicated at the time of the site inspection by the witnesses and those facts, places or points can be observed, pin-pointed or ascertained with reasonable certainty by the Investigating Officer on the basis of his own observation or if he calculates or measures certain distances or observes whether a particular place can be seen or observed from a particular point and so on and so forth that actually forms part of his investigation. He has to satisfy himself, before he challans anybody before a court of law, whether what the witnesses have stated to him is true or not or can be prima facie believed or not? That satisfaction of the Investigation Officer whether arrived at, at the time of site-inspection or otherwise when he takes other steps in the investigation to unfold the crime forms part of his investigation and any step taken in the course of investigation by the Investigating Officer for his own satisfaction or to lend credibility to the facts which he is going to put before a court of law or to provide a reasonable basis for the satisfaction or otherwise of a court of law cannot be hit by the provisions of Section 162 of the Code of Criminal Procedure. There is yet another aspect of the legal controversy. Even if certain places are indicated in the site-plan by the Investigating Officer on the basis of the statements made to him by the witnesses at the time of the site inspection or earlier to it, they may not be used by the Investigating Officer and that the witnesses who made them to corroborate their testimony at the trial, if they are hit by the provisions of Section 162 of the Code of Criminal Procedure but these facts can certainly be used to contradict them by the defence using them as forming part of their previous statements made to the police Under Section 161 Cr.PC.

18. In this view of the matter, if PW 2 Hanuman has not indicated the place from where he saw the occurrence at the time of the site-inspection to the Investigating Officer, it cannot call for any adverse inference. Actually he has disclosed that place in his statement Under Section 161 Cr.PC recorded by the police and it was the duty of the Investigating Officer to have pinpointed the place in the site-plan on the basis of his own observation. Of course, in this case, the site was not inspected at the instance of PW 2 Hanuman but his statement Under Section 161 Cr.PC was recorded by the Investigating Officer after he inspected the site and, therefore, the bridge was not shown in the plan. However, it has been conclusively established that a small bridge existed near the scene of occurrence and this fact of existence of small bridge stands proved on the strength of the evidence given at the trial and not on the basis of its existence, indicated in the map and, therefore, the provisions of Section 162 Cr.PC cannot be passed into service to discredit the testimony of either PW 2 Hanuman or PW 12 Bhanwarsingh, Investigating Officer. Simply because the site was not inspected at the instance of PW 2 Hanuman, it is no ground to discredit or reject his testimony altogether. There is no dispute about the fact that this pistol was a country made pistol by which 12 bore cartridges can be fired. This very pistol was used for killing Krishnalal. The accused possessed no licence in his name, of this country made pistol and, therefore, the accused has rightly been held guilty of the offences Under Sections 25 and 27 of the Arms Act.

19. PW 5 Sukhdeosingh has stated that before 5-7 days of the occurrence when they were on the hotel of Surajbhan, Roshankhan snatched one rupee from Ramgopal. Ramgopal became enraged and, thereupon, Krishnalal intervened and stated that if he has snatched one rupee, he can snatch two rupees from him on the next occasion. On this score, hot word's were exchanged between them. This evidence has been led to prove the motive for the crime. This, of course, does not appear to be a very strong motive for the commission of such a serious crime as murder but it is a fact of common knowledge that village rustics do react very violently to certain events much out of the proportion to the context, at the spur of the moment and so, even this motive may lead the accused to commit this crime. Even if we ignore the evidence regarding motive then too, the ocular testimony of the witnesses discussed here in above supported by the recovery of the crime pistol and empty and live cartridges from the possession of the accused when

considered along with the report of the ballistic expert, they form sufficient material for account of law to hold that this very accused has killed Krishnalal.

20. We are, therefore, firmly of the opinion that the learned lower court was justified in holding the accused Ramgopal guilty of the offences Under Section 302 and Sections 25(1)(b) and 27 of the Arms Act and to punish him to various terms of sentences mentioned here in above.

21. In the result, we find no force in this appeal and it is hereby dismissed. The accused-appellant Ramgopal is on bail. His bail-bonds are cancelled. The learned Sessions Judge, Sriganaganagar is directed to effect arrest of the accused Ramgopal to serve out the sentences imposed against him.

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