PETITIONER:
DUDH NATH PANDEY

Vs.

RESPONDENT:
THE STATE OF U.P.

DATE OF JUDGMENT11/02/1981

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
SEN, A.P. (J)

CITATION:
1981 AIR 911 1981 SCR (2) 771
1981 SCC (2) 166 1981 SCALE (1)285
CITATOR INFO :
RF 1990 SC1359 (5)

ACT:
Indian Penal Code-Section 302-For the offence of murder the normal sentence is sentence of life imprisonment and not of death-Witnesses failed to reveal the whole truth-Considerations to be taken into account while dealing with the question of sentence for the offence of murder.
Concurrent findings of two courts below-Supreme Court, if could examine their correctness.
Plea of alibi-Its postulates.

HEADNOTE:
The prosecution alleged that when the appellant, a motor-car driver who was living as a tenant in the out-house of the bungalow belonging to the family of the deceased, developed a fancy for the sister of the deceased. His overtures created resentment in the family and the deceased took upon himself the task of preventing the appellant from pursuing his sister. The appellant's effort to take custody of the deceased's sister through legal proceedings had failed; sometime later on a complaint to the police that the appellant had been making indecent overtures towards her he was arrested. A day before the day of the occurrence the appellant was alleged to have threatened to kill the deceased if he opposed his (appellant's) marriage with his sister. It was further alleged that while the deceased was returning home on his scooter after leaving his sister in the school where she was working as a teacher, the appellant fired a shot at him with a pistol at which the deceased fell dead instantaneously.
He was convicted under section 302 I.P.C. and sentenced to death. The order of conviction and sentence was confirmed by the High Court.
On the question of sentence
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HELD: 1. The Sessions Court and the High Court were right in convicting the appellant under section 302 I.P.C. [779 G]
(a) The mere circumstance that two or more courts have taken the same view of facts does not shut out all further inquiry into the correctness of that view. Concurrence is

not an insurance against the charge of perversity though a strong case has to be made out in order to support the charge that findings of fact recorded by more than one court are perverse. The merit of the normal rule that concurrent findings ought not to be reviewed by this Court consists in the assumption that it is not likely that two or more tribunals would come to the same conclusion unless it is a just and fair conclusion to come to. [718 E-G]

2. While dealing with the question of sentence for the offence of murder, the normal sentence is the sentence of life imprisonment and not of death. If in a same conclusion unless it is a just and fair conclusion to come to. [778 E-G]

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balances do not choose to reveal the whole truth the Court while dealing with the question of sentence has to step in interstitially and take into account all reasonable possibilities having regard to the normal and natural course of human affairs. In the instant case it would be unsafe, on the evidence on record, to sentence the appellant to the extreme penalty of death. [780 H]

The appellant, a poor motor-car driver, must have been offended enormously when the deceased abused him that he was a man of two paise worth and that if he attempted to marry his sister he would break his hands and feet and that his poverty was being put up as the reason why his sister would not be allowed to marry him. The dispute thus assumed proportions of a fued over social status. The poor man was fretting that the rich man's daughter would not be allowed to marry him for the mere reason that he did not belong to an equal class of society. The appellant, rightly or wrongly, believed that the girl was not unwilling to marry him. The incident of the previous evening could not be considered as affording "sudden" provocation to the appellant for the crime committed by him on the following morning. It cannot reduce the offence of murder into a lesser offence, but the mental turmoil and the sense of being socially wronged through which the appellant was passing could not be overlooked while deciding the appropriate sentence. [780 B-D]

Secondly the fact that, apart from the gun-shot wound, the deceased had no other injury on his person except an abrasion on the left side of the chest evidently caused by the gun-shot itself coupled with the fact that the scooter was found "standing" on the road showed that the deceased stopped on seeing the appellant and that there was an exchange of hot words between them culminating in the murder. But since in the present case a part of the crucial evidence had been screened from the Court's scrutiny the possibility of an altercation between the appellant and the deceased cannot reasonably be excluded. [780 F-H]

(3) The evidence of the defence witnesses has failed to establish the alibi of the appellants. The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea therefore succeeds only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. But in the present case the evidence of the defence witnesses, accepting it at its face value, is consistent with the appellant's presence at the factory at the appointed hour and half an hour later at the scene of offence. So short is the distance between the two points.

[778 H; 779 D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 163 of 1979.

Appeal by Special Leave from the Judgment and Order dated 23-8-1978 of the Allahabad High Court in Criminal Appeal No. 1264/78 and Murder Reference No. 9/78.

R. C. Kohli for the Appellant.

O. P. Rana and K. K. Bhatta for the Respondent.

Yogeshwar Prasad and Mrs. Rani Chhabra for the Complainant.

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The Judgment of the Court was delivered by

CHANDRACHUD, C.J.-A college-going boy called Vijay Bhan Kishore was shot dead on the morning of November 2, 1976 near the Hathi Park, Dayanand Marg, Allahabad. The appellant was convicted for that offence under section 302 of the Penal Code by the learned Third Additional Sessions Judge, Allahabad and was sentenced to death. The order of conviction and sentence having been confirmed by the High Court of Allahabad by its judgment dated August 23, 1979, the appellant has filed this appeal by Special Leave.

Vijay Bhan Kishore alias Pappoo was the son of an Advocate called Brij Bhan Kishore who died in about 1967 leaving behind a widow, three daughters and Pappoo. The youngest of the three daughters was married while the two elder were working as school teachers. Out of those two, Ranjana Kishore was a teacher in the St. Anthony's Convent.

The appellant, Dudh Nath Pandey, who was a motor-car driver by occupation, used to live as a tenant in an out-house of a sprawling bungalow belonging to the family of the deceased, situated at 17, Stanley Road, Allahabad. The appellant developed a fancy for Ranjana who was about 20 years of age when he came to live in the out-house. The overtures made by the appellant to Ranjana created resentment in her family and its only surviving male member, her brother Pappoo, took upon himself the task of preventing the appellant from pursuing his sister. As a first step, the appellant was turned out of the out-house. Soon thereafter, he filed an application before the City Magistrate, Allahabad, asking for the custody of Ranjana, alleging that she was his lawfully wedded wife. That application was dismissed by the learned Magistrate after recording the statement of Ranjana, in which she denied that she was married to the appellant. The appellant thereafter filed a habeas corpus petition in the Allahabad High Court alleging that Ranjana was detained unlawfully by the members of her family, including her uncle K. P. Saxena, and asking that she be released from their custody. Ranjana denied in that proceedings too that she was married to the appellant or that she was unlawfully detained by the members of her family. The habeas corpus petition was dismissed by the High Court on November 8, 1973. On August 1, 1975, the Principal of St. Anthony's Convent made a complaint to the police that the appellant had made indecent overtures to Ranjana. The appellant was arrested as a result of that complaint.

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On November 1, 1976, Ranjana was having an evening stroll with her brother, the deceased Pappoo, in the compound of their house. The appellant came there in a rickshaw, abused Pappoo and is alleged to have threatened to kill him, if he dared oppose his, the appellant's marriage with Ranjana. As a result of these various incidents and the family's growing concern for Ranjana's safety, Pappoo used

to escort Ranjana every morning to the school where she was teaching.

On the following day, i.e. on November 2, 1976, Pappoo took Ranjana to her school on his scooter as usual. The classes used to begin at 9-30 A.M. but Ranjana used to go to the school 30 to 40 minutes before time for correcting the students' home-work. After dropping Ranjana at the school, Pappoo started back for home on his scooter. While he was passing by the Children's Park, known as the Hathi Park, the appellant is alleged to have fired at him with a country-made pistol. Pappoo fell down from his scooter and died almost instantaneously.

The occurrence is said to have been witnessed by Harish Chandra (P. W. 3), a domestic servant of the family of the deceased and by Harish Chandra's friend Ashok Kumar (P. W. 1). Harish Chandra used to live in the out-house of the deceased's bungalow at 17, Stanley Road, while Ashok Kumar, who generally lived at Kanpur, is said to have come to Allahabad the previous day in search of employment. Almost immediately after Pappoo and Ranjana left the house on the scooter, Ashok Kumar and Harish Chandra too left the house as the former wanted to see the Hathi Park. They were near about the gate of the park, which is a few steps away from the scene of occurrence, when the deceased Pappoo was passing along on his scooter, after dropping Ranjana at the St. Anthony's Convent. Ashok Kumar and Harish Chandra are alleged to have seen the appellant, who was standing near the northern boundary of the park, firing a shot at Pappoo. The appellant re-loaded his pistol and is said to have run away to wards the south-east.

Ashok Kumar and Harish Chandra rushed to St. Anthony's Convent in a rickshaw and informed Ranjana Kishore about the murder of her brother. Ranjana went to the scene of incident along with them and on finding that her brother was dead, she went straight to the Cannington police station which is about 2 kms. away. She wrote out the report (Ex. Ka-1) in her own hand and submitted it to the officer-in-charge of the police station at 9-45 A.M. In the meantime, information of the murder had reached the police station of Colonelganj, within the 'jurisdiction' of which the murder had taken place.

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The police deserve a word of appreciation because they did not, as usual, enter into a squabble as to in whose 'jurisdiction' the offence had taken place. H. R. L. Srivastava, the sub inspector attached to Colonelganj police station, went within minutes to the scene of offence and, believing that Pappoo was alive, sent him in a jeep to the Tej Bahadur Sapru hospital. A little later, P. S. I. Chandrapal Singh of the Cannington police station arrived on the scene and started the investigation. He took charge of an empty cartridge-shell and the bloodstained earth and later, he sent the dead body of Pappoo for postmortem examination.

P. S. I. Srivastava arrested the appellant at about 2-30 P.M. while he was standing near a pan-shop in front of the Indian Telephone Industries, Naini, where he used to work. The appellant was taken to the scene of offence where he made a certain statement and took out a loaded pistol from a heap of rubbish lying on the Kamla Nehru Road, being the direction in which he had run away after killing Pappoo. The Ballistic expert, Budul Rai, opined that the empty cartridge-shell, which was lying at the scene of offence, was fired from that particular pistol.

Dr. G. S. Saxena, who conducted the postmortem

examination found a single gun-shot injury on the left side of the chest of the deceased, below the armpit. The injury had caused seven pellet wounds, each measuring 1/3 inch in diameter. Seven pellets were recovered from the body. The injury, according to Dr. Saxena, was sufficient in the ordinary course of nature to cause death.

The appellant stated in his defence that he used to live in the house of the deceased as the guest of the family and not as a tenant and that Ranjana got intimate with him during that period. He left the house because she told him that there was danger to his life. The murder of Pappoo, according to the appellant, was engineered by Dr. K. P. Saxena, the maternal uncle of the deceased. The appellant denied his hand in the murder, saying that he had no reason to do so since the deceased's mother and the other members of the family desired that he should marry Ranjana.

The appellant examined five witnesses to prove his alibi, his contention being that he was on duty at the Indian Telephone Industries, right from 8-30 A.M. on the date of the incident and that he was arrested from inside the factory at about 2-30 P.M. while on duty.

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The learned Additional Sessions Judge, Allahabad, examined the Deputy Superintendent of Police, R. P. Bhanu, and the General Manager of the Indian Telephone Industries as Court witnesses.

The prosecution examined 13 witnesses in support of its case that the appellant had committed the murder of Pappoo. Ashok Kumar (P.W. 1) and Harish Chandra (P.W. 3) were examined as eyewitnesses to the incident. Ranjana Kishore (P.W. 2) was examined to prove the motive for the murder as also for showing that the deceased Pappoo had taken her to the school on his scooter and that, soon thereafter, she was informed by the two eye-witnesses of the murder. Ram Kishore (P.W. 4) was examined to prove the arrest of the appellant and the recovery of the loaded pistol. P. S. I. Srivastava (P.W. 9) and P.S.I. Chandrapal Singh (P.W. 10) deposed about the various steps taken during the course of investigation. Dr. G. S. Saxena (P.W. 11) was examined in order to show the nature of the injuries suffered by the deceased while Budul Rai (P.W. 12) stated that the empty cartridge-shell which was lying at the scene of offence was fired from the particular pistol which is stated to have been recovered at the instance of the appellant. The other prosecution witnesses are mostly of a formal nature.

Were this a case of circumstantial evidence, different considerations would have prevailed because the balance of evidence after excluding the testimony of the two eye witnesses is not of the standard required in cases dependent wholly on circumstantial evidence. Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon weilded it in offence. The statement accompanying the discovery is woefully vague to identify the authorship of concealment, with the result that the pointing out of the weapon may at best prove the appellant's knowledge as to where the weapon was kept. The evidence of the Ballistic expert carries the proof of the charge a significant step ahead, but not near enough, because at the highest, it shows that the shot which killed Pappoo was fired from the pistol which was pointed out by the appellant. The evidence surrounding the discovery of the pistol may not be discarded as wholly untrue but it leaves a few significant questions unanswered and creates a sense of uneasiness in the mind of a Criminal Court, the Court of conscience that it has to be: How could the

appellant have an opportunity to conceal the pistol in broad-day light on a public thoroughfare ? If he re-loaded the pistol as a measure of self protection, as suggested by the prosecution, why did he get rid of it so quickly by throwing it near the Hathi Park itself ? And how come that the police hit upon none better that Ram Kishore (P.W. 4) to witness the discovery of the pistol ? Ram Kishore had already
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deposed in seven different cases in favour of the prosecution and was evidently at the beck and call of the police.

But the real hurdle in the way of the appellant is the evidence of the eye witnesses: Ashok Kumar (P.W. 1) and Harish Chandra (P.W. 3). Shri R. C. Kohli who appears for the appellant made a valiant attempt to demolish their evidence but in spite of the counsel's able argument, we find it difficult to hold that the eye-witnesses have perjured themselves by claiming to be present at the time and place of the occurrence. It is true that Harish Chandra, who was working as a domestic servant with the deceased's family, should normally have been doing his daily morning chores. Few masters would permit a household servant to go away on a sight-seeing spree right in the morning. But there are at least two plausible reasons which lend assurance to the claim that Harish Chandra left the house almost immediately after the deceased Pappoo drove away with his sister Ranjana. Ashok Kumar had come to Allahabad the previous evening and he wanted to go to the Hathi Park where, though it is called a children's park, adults too find their merriment. There is nothing fundamentally improbable in Ashok Kumar coming to Allahabad in search of employment and equally, nothing inherently strange in the two friends going out on a frolic. And though a small consideration, it is relevant that the normal morning routine of Harish Chandra was to help in the kitchen but the 2nd November, 1976 was an Ekadashi day and therefore, there was not much to do for him.

The second reason is more weighty and almost clinches the issue. The evidence of Ranjana (P.W. 2) shows beyond the manner of doubt that Harish Chandra and Ashok Kumar broke to her the news of her brother's murder, while she was in the school. The events after the murder happened in such quick succession that there was no time for any one to contrive and confabulate. Within ten minutes of the occurrence, Ranjana was informed of the incident by the two eyewitnesses and within a few moments thereafter she went to the scene of the tragedy. Her F.I.R. (Ex. Ka-1) was recorded at the police station at 9-45 a.m. A fact of preponderating importance is that the story which Ranjana disclosed in the F.I.R. is precisely the same as the witnesses, including herself, narrated in the Court. The F.I.R. is a brief document of a page and half. But it is remarkable that it mentions (1) that the appellant wanted to marry Ranjana and was harassing her towards that end; (2) that there was a quarrel between the appellant and Pappoo the previous evening, in which the former gave a threat of life to the latter (3) that Ranjana left for the school on the day of occurrence at 8-45 A.M.; and (4) that soon thereafter Harish
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Chandra and Ashok Kumar met her at the school and conveyed to her that they had gone to see the Hathi Park when, while Pappoo was passing along the road, the Appellant fired a shot at him. We consider it beyond the normal range of human propensities that Ranjana could have built up the whole

story within three quarters of an hour which intervened between the time that she learnt of her brother's murder and the lodging by her of the F.I.R. She could not have taken the risk of creating a false witness by placing Ashok Kumar, who normally, resided in Kanpur, alongside Harish Chandra. With the death of her brother, her own house was left without a male member. At home was an ailing mother and two other sisters, more or less of her own age. There was no one to advise her upon the hatching of a conspiracy to involve the appellant and she could not have been in a proper frame of mind to do anything of the kind on her own. Her inexperience of life, the promptness with which she gave the F.I.R. and the wealth of details she mentioned therein afford an assurance that the story of the eye-witnesses is true in so far as it goes. Shri Kohli's submission that Ranjana's F.I.R. is anti-timed and must have been recorded late in the evening leaves us cold.

Shri Kohli has pointed a defect here and an improbability there in the evidence of the eye-witnesses but it has to be borne in mind that the Trial Court and the High Court have concurrently believed that evidence. We do not suggest that the mere circumstances that two or more courts have taken the same view of facts shuts out all further inquiry into the correctness of that view. For example, concurrence is not an insurance against the charge of perversity though a strong case has to be made out in order to support the charge that findings of fact recorded by more than one court are perverse, that is to say, they are such that no reasonable tribunal could have recorded them. The merit of the normal rule that concurrent findings ought not to be reviewed by this Court consists in the assumption that it is not likely that two or more tribunals would come to the same conclusion unless it is a just and fair conclusion to come to. In the instant case, the view of the evidence taken by the Sessions Court and the High Court is, at least, a reasonable view to take and that is why we are not disposed, so to say, to re-open the whole case on evidence. We have indicated briefly why we consider that the eye-witness account accords with the broad probabilities of the case.

Counsel for the appellant pressed hard upon us that the defence evidence establishes the alibi of the appellant. We think not. The evidence led by the appellant to show that, at the relevant time, he was on duty at his usual place of work at Naini has a certain amount
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of plausibility but that is about all. The High Court and the Sessions Court have pointed out many a reason why that evidence cannot be accepted as true. The appellant's colleagues at the Indian Telephone Industries made a brave bid to save his life by giving evidence suggesting that he was at his desk at or about the time when the murder took place and further, that he was arrested from within the factory. We do not want to attribute motives to them merely because they were examined by the defence. Defence witnesses are entitled to equal treatment with those of the prosecution. And, Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses. Granting that D. Ws. 1 to 5 are right, their evidence, particularly in the light of the evidence of the two Court witnesses, is insufficient to prove that the appellant could not have been present near the Hathi Park at about 9-00 A.M. when the murder of Pappoo was committed. The plea of alibi postulates the physical impossibility of the

presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. The evidence of the defence witnesses, accepting it at its face value, is consistent with the appellant's presence at the Naini factory at 8-30 A.M. and at the scene of offence at 9.00 A.M. So short is the distance between the two points. The workers punch their cards when they enter the factory but when they leave the factory, they do not have to punch the time of their exit. The appellant, in all probability, went to the factory at the appointed hour, left it immediately and went in search of his prey. He knew when, precisely, Pappoo would return after dropping Ranjana at the school. The appellant appears to have attempted to go back to his work but that involved the risk of the time of his re-entry being punched again. That is how he was arrested at about 2-30 P.M. while he was loitering near the pan-shop in front of the factory. There is no truth in the claim that he was arrested from inside the factory.

That settles the issue of guilt. We agree with the view of the High Court and the Sessions Court and uphold the appellant's conviction under section 302 of the Penal Code.

The question of sentence has gravely agitated our minds. A young college-going boy was murdered because he was trying to wean away his sister from the influence of the appellant who had set his heart upon her. But there are two reasons why we are not disposed to confirm the death sentence. In the first place, the appellant was smarting
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under the insult hurled at him by the deceased Pappoo, the previous evening. As stated by Ranjana in the F.I.R., when the appellant proclaimed his determination to marry her, Pappoo retorted: "You are a man of two Paisa's worth. How can you dare to marry my sister ? I will break your hands and feet." A poor motor-car driver that the appellant was, he must have been offended enormously that his poverty was being put up as the reason why Ranjana would not be allowed to marry him. The dispute thus assumed the proportions of a feud over social status, the poor man fretting that the rich man's daughter would not be allowed to marry him for the mere reason that he did not belong to an equal class of society. And it is evident that he believed, rightly or wrongly, that Ranjana was not unwilling to take him as a husband. It is in the immediate background of the previous evening's incident that the question of sentence has perforce to be considered. That incident cannot certainly be considered as affording "sudden" provocation to the appellant for the crime committed by him the next morning and, therefore, it cannot reduce the offence of murder into a lesser offence. But, the mental turmoil and the sense of being socially wronged through which the appellant was passing cannot be overlooked while deciding which is the appropriate sentence to pass, the rule being that for the offence of murder, the normal sentence is the sentence of life imprisonment and not of death.

Secondly, Harish Chandra and Ashok Kumar do not appear to have revealed the whole truth to the Court. If the appellant had fired a shot at Pappoo while the latter was driving along on his scooter, and if Pappoo, as is alleged, dropped dead, his scooter would have dragged him ahead and in that process he would have received some injury. The scooter too would have been damaged, howsoever slightly. But it is strange that apart from the gun-shot wound, Pappoo had

no other injury on his person except an abrasion on the left side of the chest which was evidently caused by the gun-shot itself. The scooter was not dragged at all, except for the mark of pellets. And, most importantly, the scooter was not lying on the road but was "standing". Pappoo seems to have stopped on seeing the appellant and quite clearly, there was an exchange of hot words between them which culminated in Pappoo's murder. The death of the brave, young lad which has deprived the family of the succour of its only male member is to be deeply lamented. But, if witnesses on whose evidence the life of an accused hangs in the balance, do not choose to reveal the whole truth, the Court, while dealing with the question of sentence, has to step in interstitially and take into account all reasonable possibilities, having regard to the normal and natural course of human affairs.
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Since a part of the crucial event has been screened from the Court's scrutiny and the possibility of an altercation between the appellant and the deceased cannot reasonably be excluded, we consider it unsafe to sentence the appellant to the extreme penalty.

In the result, we confirm the conviction of the appellant under section 302 of the Penal Code but set aside the sentence of death imposed upon him. We sentence the appellant to imprisonment for life. The appeal is, accordingly, allowed partly.

P.B.R. Appeal allowed partly.
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