

been set aside. But s. 100 in terms provides that if the Tribunal was of the opinion, as it was in this case, that the result of the election had been materially affected by the improper rejection of the nomination paper, "the Tribunal shall declare the election to be wholly void". The election in this case was in respect of a double seat constituency and was one integral whole. If it had to be declared void, the Tribunal was justified in setting aside the election as a whole.

As all the contentions raised in support of the appeal fail, it must be dismissed with costs to the contesting respondents.

Appeal dismissed.

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v.

THE STATE OF UTTAR PRADESH

(JAGANNADHADAS, JAFER IMMAM and GOVINDA
MENON JJ.)

Criminal Trial—Murder—Circumstantial evidence—Opinion of fire-arms expert—Whether conclusive.

One Daya Ram had been murdered by shooting with a country made pistol. The circumstantial evidence established against the appellant was (1) that he had a motive for the murder, (2) that three days before the murder the appellant had held out a threat to murder the deceased, (3) that a cartridge Ex. I was found near the cot of the deceased, and (4) that the appellant produced a country made pistol Ex. III from his house in circumstances which clearly showed that he alone could have known of its existence there. The fire-arms expert examined the recovered pistol and the cartridge and after making scientific tests was of the definite opinion that the cartridge Ex. I had been fired from the pistol Ex. III.

Held, that the opinion of the fire-arms expert conclusively proved that the cartridge Ex. I had been fired from the pistol Ex. III.

The circumstantial evidence was sufficient to establish the guilt of the appellant.

CRIMINAL APPELLATE JURISDICTION : Criminal
Appeal No. 135 of 1956.

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*Surendra Nath
Khosla*

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Dalip Singh

B. P. Sinha J.

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November, 21

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Appeal by special leave from the judgment and order dated November 25, 1955, of the Allahabad High Court, in Criminal Appeal No. 702 of 1955 and Referred No. 77 of 1955 arising out of the judgment and order dated May 17, 1955, of the Court of Sessions Judge, at Moradavad in Sessions Trial No. 29 of 1955.

P. S. Safer, for the appellant.

G. C. Mathur and *C. P. Lal*, for the respondent.

1956. November 21. The Judgment of the Court was delivered by

IMAM J.—The appellant was sentenced to death for the murder of Daya Ram by shooting him with a country made pistol. He was also convicted for being in possession of an unlicensed fire-arm under the Arms Act for which offence he was sentenced to two years rigorous imprisonment. He appealed to the High Court of Allahabad, but his appeal was dismissed and the conviction and sentence was affirmed. Against the decision of the Allahabad High Court the appellant obtained special leave to appeal to this Court.

According to the prosecution, the occurrence took place at about midnight of July 4, 1954, when Daya Ram was sleeping on a cot on a platform. Near him were sleeping Gokul, Doongar and Jai Singh, while two women Ratto and Bhuri slept in a room to the north of the platform and adjoining it. The report of the shot fired woke up these people. According to them, they saw the appellant running towards the east. He was accompanied by three others who were armed with *lathis*. Daya Ram died almost instantaneously as the result of the injuries on his chest and stomach from where pellets were recovered at the time of the *post mortem* examination. Daya Ram had been shot from a close distance because the skin was charred over the entire area of the wound. Near the cot, on which he slept, a cartridge Ex. I. was found which was handed over to the Police Officer when he arrived for investigation. A first information report was lodged at the police station five miles away at 8-10 a. m. on July 5, 1954.

The motive for the murder, as alleged by the prosecution, was that on the death of one Bhai Singh the appellant hoped to become guardian of Ratto's property, who, however, appointed Daya Ram to take charge of it. The appellant resented this very much. Three days before the murder of Daya Ram there had been a quarrel between the appellant and his wife on the one side and Ratto and Bhuri on the other. The quarrel arose over an attempt by the appellant to construct a wall over Ratto's land. The appellant uttered a threat that he would soon settle with the person on whom Ratto was depending, that is to say, the deceased Daya Ram. According to the High Court, the defence did not seriously challenge these allegations and the appellant himself admitted that Ratto wanted him to be turned out of his house.

The appellant was arrested on the night between July 5 and July 6, 1954, at a village fourteen miles away from the village of occurrence Dhakeri. On July 7, he informed the Sub-Inspector that he was prepared to produce the pistol Ex. III. The Sub-Inspector and the appellant went to village Dhakeri and Kartar Singh, Mahtab Singh and Khamani were invited to witness the events that might follow. On reaching the appellant's house, which adjoins the residential house of Ratto, the appellant stated that the pistol Ex. III had been concealed by him in a corn-bin. From a secret place he took out a key and opened the lock of his house with it. He then took the Sub-Inspector and the witnesses to a mud corn-bin inside his house, which appeared to be freshly plastered at one place. The appellant removed the plaster at this place and from inside took out the country made 12-bore pistol Ex. III, and three live 12-bore cartridges. The cartridge Ex. I, which was found near the cot of Daya Ram, and the pistol Ex. III were sent to Shyam Narain, a Deputy Superintendent of Police, who is a fire-arms expert of the C. I. D. of Uttar Pradesh Government. He made scientific tests. He came to the conclusion as the result of the various tests made by him that the cartridge Ex. I was fired from the pistol Ex. III and no other fire-arm.

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While the Sessions Judge believed the testimony of the eye-witnesses, the learned Judges of the High court were of the opinion that they were unable to accept the assertion of the eye-witnesses that they actually saw the appellant with a pistol by the bedside of the deceased. The High Court, however, relied upon the circumstantial evidence in the case in upholding the conviction of the appellant. There was motive for the crime and a few days before the killing of Daya Ram the appellant had held out a threat against him. The appellant was arrested fourteen miles away from his village which is the place of occurrence. He produced a pistol Ex. III from his house in circumstances which clearly showed that he only could have known of its existence there. The opinion of the fire-arms expert clearly established that the cartridge Ex. I, found near the cot of Daya Ram, was fired with the pistol Ex. III produced by the appellant. All these circumstances, in the opinion of the High Court, left no doubt in the minds of the learned Judges of that Court that the appellant murdered Daya Ram by shooting him with his pistol.

The learned Advocate for the appellant urged that the appellant could not have placed the pistol in his house and it must have been planted there by someone because none of the witnesses stated that they had seen him going to his house after the murder and the appellant was certainly not found in his house in the morning. According to the situation of the house of the appellant and where the witnesses were immediately after the occurrence, it was impossible for the appellant to have entered his house without being seen. It was further unlikely that after having committed the murder, the appellant, after having run away, would return to his house. Both the Courts below, however, found no reason to disbelieve the Sub-Inspector and the witnesses that the appellant had produced the pistol Ex. III from the corn-bin inside his house. The appellant had the key of the house which was hidden in a secret place and the corn-bin was itself freshly plastered at one place. These circumstances clearly showed that no one but the appellant could have

known of the existence of the pistol in the corn-bin in his house. As to whether the appellant could or could not have gone to his house after the occurrence that is a matter of pure speculation. It does not appear that any witness was asked anything about it. The High Court found that the witnesses might have caught a glimpse of the people who were fast disappearing from the scene but who had no reasonable opportunity of marking their features. In the confusion of the occurrence the witnesses may not have observed where the culprits had disappeared except that they were seen running towards the east. On the record, there is nothing to show that to enter the appellant's house, after the occurrence, the appellant had necessarily to go into his house within the view of the witnesses. It is quite unnecessary to examine this matter any further because the evidence concerning the production of the pistol Ex. III by the appellant from his house is clear and reliable and, therefore, it is certain that the appellant did enter his house after the occurrence without being seen by anyone.

It was next urged on behalf of the appellant, that it was impossible for a cartridge to have been near the cot of Daya Ram, because after the shot had been fired the cartridge would still remain in the barrel of the fire-arm. This again is pure speculation. That the cartridge was ejected from the fire-arm is certain. Why it was ejected none can say. It may be that the miscreant reloaded his weapon to meet any emergency. The evidence of the Sub-Inspector is clear that on his arrival at the place of occurrence the cartridge E. I was handed over to him by the witness Khamani who cannot be said to be unfavourable to the appellant. The Courts below had no reason to disbelieve the evidence in the case that the cartridge Ex. I was found near the cot of Daya Ram and we can find no extraordinary circumstance to justify us saying that the Courts below took an erroneous view of the evidence.

On the facts found there was a motive for the murder. Apparently, for no good reason the appellant was not found at his house on the morning of July 5, but was

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in a village fourteen miles away at the time of his arrest. The appellant produced the pistol Ex. III in circumstances clearly showing that he had deliberately kept it concealed. We have no reason to doubt the evidence in this respect. The real question is, whether it is safe to act upon the opinion of the fire-arms expert that the cartridge Ex. I was fired from the pistol Ex. III produced by the appellant and none other, because without that evidence the circumstantial evidence in the case would be insufficient to convict the appellant of the crime of murder. The opinion of the fire-arms expert, based on the result of his tests, does not seem to have been challenged in cross-examination or before the High Court. If there is no reason to think that there is any room for error in matters of this kind and it is safe to accept the opinion of the expert, then clearly it is established that the cartridge Ex. I, found near the cot of Daya Ram, was fired from the pistol Ex. III produced by the appellant. To satisfy ourselves we have looked into the works of some authors dealing with the marks left on cartridges and shell cases by fire-arms in order to ascertain that there is no error in the opinion of the fire-arms expert in the present case. Kirk in his book "Crime Investigation" at page 346 states :

"Fired cases are less often encountered in criminal investigation than are bullets, but when found they are usually of greater significance because they receive at least as clear markings as do bullets, have a greater variety of such markings, and are not ordinarily damaged in firing....."

The questions which may be asked as a result of finding such materials are similar to those that require answers when only bullets are located. In the ordinary case, quite definite answers can be given. This is true both of shotgun shells and of cartridge cases from pistols, revolvers, and rifles..... In general, it is possible to identify a certain fire-arm as having fired a particular shell or cartridge. It is often possible to identify the type or make of gun which fired it, though in many instances this must be tentative or probable identification only."

After dealing with the marks left by breech-block, firing pin impressions, marks from extractors and ejectors, marks due to expansion, magazine marks and loading mechanism marks, he states,

“Summarizing, the cartridge or shell case usually carries markings which are quite distinctive of the gun in which the charge is fired, and can be used for positive identification of the latter. These marks arise from a variety of contacts with various parts of the gun, an analysis of which is useful in determining the type of weapon in case no suspected gun is available..... Thus, the recovered shell or cartridge case is one of the most useful types of physical evidence which can be found in shooting cases.”

Soderman and O’Connel in their book “Modern Criminal Investigation” also deal with the subject and they refer to the marks from the fire pin, the extractor, the ejector and the breech-block. After referring to comparison being made of the cartridge or shell fired from a fire-arm for the purpose of test, they state at page 200,

“If they are in the same position in relation to one another and their general appearance is the same, one may conclude that they have been fired from a pistol of the same make. An absolute conclusion about the origin of the shells, however, can be reached only after a photomicrographic examination of the markings from the breech-block on the rear of the shell.....

..... Identification, with the aid of the enlargement, should not prove difficult. The characteristic scratches can be easily seen. A photograph of the incriminating shell and one of a comparison shell should be pasted side by side on cardboard, and the characteristic marks should be recorded with lines and ciphers, following the same method as that used in the identification of fingerprints.”

In Taylor’s book on Medical Jurisprudence, Tenth Edition, Vol. I, at page 459, it is stated,

“It is never safe to say that a cartridge case was not fired from a given pistol unless the marks are quite

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different, and a case which bears no marks at all may quite well have been fired from the same pistol as one which leaves well-defined marks. In general, however, though it is unlikely that all marks will be equally good, it is usually possible to obtain definite information from the marks of the firing-pin, extractor, ejector, or breech-block on the base or rim, or from grooves or scratches on the surface. In-weapons of the same manufacture, the marks are of the same general nature, but in each weapon there are individual differences which usually enable it to be definitely identified."

The expert's evidence in this case shows that he had fired four test cartridges from the pistol Ex. III. He found the individual characteristics of the chamber to have been impressed upon the test cartridges Exs. 9 and 10 and that exactly identical markings were present on the paper tube of the cartridge Ex. I. He made microphotographs of some of these individual marks on Exs. 1 and 10. In giving his reasons for his opinion, the fire-arms expert stated that every fire-arm has individual characteristics on its breach face striking pin and chamber. When a cartridge is fired gases are generated by the combustion of the powder, creating a pressure of 2 to 20 tons per square inch. Under the effect of this pressure the cap and the paper tube of the cartridge cling firmly with the breach face striking pin and chamber and being of a softer matter the individualities of these parts are impressed upon them. By firing a number of test cartridges from a given fire-arm and comparing them under a microscope with the evidence cartridge, it can definitely be stated, if the marks are clear, whether the evidence cartridges had been fired or not from that fire-arm. It seems to us that the fire-arms expert made the necessary tests and was careful in what he did. There is no good reason for distrusting his opinion. The learned Judges of the High Court examined the micro-photographs in question and were satisfied that there was no ground for distrusting the evidence of the expert. They were accordingly justified in coming to the conclusion that the cartridge Ex. I, found near the cot of Daya Ram,

was fired from the pistol Ex. III produced by the appellant from his house. There can, therefore, be no room for thinking, in the circumstances established in this case, that any one else other than the appellant might have shot Daya Ram. He was, therefore, rightly convicted for the offence of murder.

The appeal is accordingly dismissed.

P. LAKSHMI REDDY

v.

L. LAKSHMI REDDY

(JAGANNADHADAS, B. P. SINHA and

JAFER IMAM, JJ.)

Adverse Possession—Possession of co-heir, when adverse—Ouster—Possession of Receiver pendente lite, if can be tacked.

V died an infant in 1927 and H, an agnatic relation, filed a suit for the recovery of the properties belonging to V which were in the possession of third parties, on the ground that he was the sole nearest male agnate entitled to all the properties. During the pendency of the suit a Receiver was appointed for the properties in February, 1928. The suit having been decreed H obtained possession of the properties from the Receiver on January 20, 1930, and after his death in 1936, his nephew, the appellant, got into possession as H's heir. On October 23, 1941, the respondent brought the present suit for the recovery of a one-third share of the properties from the appellant on the footing that he and his brother were agnatic relations of V of the same degree as H, that all the three were equal co-heirs of V and that H obtained the decree and got into possession on behalf of all the co-heirs. The appellant resisted the suit and contended that the respondent lost his right by the adverse possession of H and his successor and that for this purpose not only the period from January 20, 1930, to October 23, 1941, was to be counted but also the prior period when the Receiver was in possession of the properties during the pendency of H's suit. It was found that the respondent's case that H obtained the decree and got possession from the Receiver on behalf of the other co-heirs was not true:

Held, that the respondent did not lose his right by adverse possession. Even assuming that H's possession from January 20, 1930, was adverse and amounted to ouster of the other co-heirs, such adverse possession was not adequate in time to displace the title of the respondent and the period during which the Receiver was in possession could not be added, because (1) the Receiver's

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