this appeal must be allowed. We therefore allow the appeal and set aside the order of the High Court and dismiss the writ petition. The High Court allowed no costs to the respondent. We think in the circumstances that the parties should bear their own costs.

Appeal allowed.

SEWA SINGH

v.

STATE OF PUNJAB

(K. C. DAS GUPTA, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Murder—Nature of gunshot wound—Proximity of shot—Medical evidence—Consideration—Witnesses—Evidence—value of—Assessment— Doctor's evidence —Cross-examination —No challenge —Indian Penal Code, 1860 (46 of 1860), s. 302.

The appellant was tried and convicted for murder and sentenced to death. Two eye witnesses testified that he shot and killed the deceased from a shop while the later was passing on a motor cycle. The doctor who conducted the post-mortem gave evidence that the shot might have been fired from a distance of three or four feet. This evidence was not challenged in cross-examination. On appeal to the High Court the conviction and sentence were confirmed. The appeal came up before the Supreme Court by way or special leave.

The main contention on behalf of the appellant was that the characteristic of the wound which would have shown that the deceased was shot from a distance of few inches and not from the distance stated by the witnesses were not taken into consideration by the High Court. It was contended that if the High Court had considered these factors the credibility of the witnesses would have become doubtful.

Held, that the nature and features of the fatal wound should ordinarily be taken into consideration in assessing the

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value of the evidence of the eye witnesses. On consideration of all the features of the wound as described by the doctor the conclusion is reached that the doctor's opinion, which was not challenged in cross-examination, that the shot was fired from a distance of three to four feet is correct.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 60 of 1962.

Appeal by special Leave from the judgment and order dated October 25, 1961, of the Punjab High Court in Criminal Appeal No. 890 of 1961 of Murder Reference No. 74 of 1961.

Jai Gopal Sethi, C. L. Sareen and *R. L. Kohli*, for appellant.

Gopal Singh, D. Gupta, P. D. Menon, for respondent.

1962. April 27. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J.— The Appellant was convicted by the Sessions Judge, Patiala, of an offence under s.302 of the Indian Penal Code for the murder of Gurdev Singh and sentenced to death. The Punjab High Court dismissed his appeal and confined the sentence of death. The present appeal is on the strength of special granted by this Court.

The prosecution case is that at about 2.30 p.m. on November 18, 1960 when Gurdev Singh was passing the tea-stall of Charan Singh, not far from the courts at Barnala on a motor cycle, the appellant Sewa Singh, who was at that time in that shop with a double barrel gun stood up and fired a shot at him. Gurdev Singh was hit on the right side of his chest and died instantaneously. The appellant and one Gogar Singh, who was with him, ran away.

The accused pleaded not guilty. It was not disputed that Gurdev Singh had died of a gun shot

injury at the time and place as alleged. It was strenuously contended, however, that he was not the culprit.

According to the prosecution this occurrence was witnessed by Charan Singh, the owner of the shop and Mukhtiar Singh, a Student, and Bakhtawar Singh, the two persons who were having tea in the shop.

At the trial Charan Singh denied any knowledge as to who had fired the shot and was declared hostile by the prosecution. The other two witnesses gave evidence that they saw the present appellant, who was known to them from before, firing the shot from a double barrel gun. Their evidence was believed by the Trial Judge and also by the High Court.

In support of the appeal it is contended by Mr. Sethi that we should look at the evidence ourselves as the High Court does not appear to have taken into consideration, in appreciating the evidence, the Characteristics of the injuries caused by the shot. He has drawn our attention to a decision of this Court in *Zora Singh* v. *The State of Punjab* (Criminal Appeal No. 81 of 1957: Judgment delivered on 10-5-1957).

According to the learned Counsel these features of the injury as they appear from the Doctor's evidence clearly show that when the gun was fired it was held in close contact with the body of the victim or within two or three inches of it. This, argues the learned Counsel, shows that the witnesses who have claimed to have been the occurrence did not actually see the occurrence as they give a totally different version as regards the distance of the gun from the body of the victim. It has to be mentioned that the judgment of the High Court contains no discussion on this point and it does not appear that the attention of the learned Judges was

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drawn to the features of the injury on which we are now asked to hold that the shot which killed Gurdev Singh was fired from a very close range, not exceeding a few inches. Even so, we have thought it proper to hear the Counsel on this question, as in our view these features ought ordinarily to be taken into consideration in assessing the value of the evidence of the eye-witnesses. The doctor's evidence shows: (1) that the wound caused was a roundish wound 1-1/2" × 1-1/4" communicating with the right chest cavity; (2) that the wound was plugged with a cork wadding and card board disc of 12 bore cartridge; (3) that the right fourth and fifth ribs were blown off under the wound and also the right lung was punctured over an area 2-1/2"x 2" about in its middle lobe about its interior margin in the middle which was blown off; (4) that the woollen coat, which was on the body of the deceased, was blood-stained with a corresponding rent blackened charred; the shirt was also blood stained with a corresponding rent blackened. The doctor gave the opinion that the distance from which the shot was fired might be three to four feet. There was some cross-examination of the doctor in the Committing Court but the correctness of this opinion was not challenged. The doctor did not appear to give evidence before the Sessions Court. His deposition as recorded by the Committing Court was treated as evidence in the Sessions Court under the provisions of s.509 of the Code of Criminal Procedure.

Turning first to the size of the wound it appears to us that far from supporting the theory of death having been caused by a contact shot it indicates that the shot was fired from about a yard away. Speaking of ordinary shot-guns, Sir Sidney Smith in his Forensic Medicine, 9th Edition; page 182 says : "At about a yard the charge of shot will enter as one mass, making a hole with irregular

edges about an inch in diameter." Major Sir Gerald Burrard in his Identification of firearms and Forensic Ballistics says at P.73 : "It may be assumed for all practical purposes that if the diameter of the wound is an inch, or less, than the distance of the shot was 18 inches or under, irrespective of the gauge of the shotgun or the degree of choke. Up to 2 feet there is very little difference in the spread between guns of various and different chokes, the hole at this distance being slightly over an inch in diameter. At 3 feet the hole is nearly 1-1/2 inches in diameter, and the difference between the two extremes of boring, true cylinder and full choke, begins to be evident.' In Lyon's Medical Jurisprudence, 10th Edition, we find stated at p. 279 thus:—

> "At a distance of 3 feet the shot mass begins to spread, the wound is an inch or slightly more in diameter." In Taylor's Principles and practice of Medical Jurisprudence, 11th Edition, the matter is described thus at page 334:—In the case of shot-guns the distance from which the weapon was fired may be deduced from the amount of scattering of the charge. Up to about a yard the whole of the charge enters in a mass, producing a round hole about the size of the bore of the weapon....."

In view of these authorities, it is reasonable to hold even without knowing whether the gun had an unchoked or a choked barrel that a roundish wound of 1-1/2" x 1-1/4" would be caused if the gun is fired at a distance of about a yard.

We are unable to agree that the burning of the clothes as described by the doctor is any indication that the shot was fired from within a few inches. Mr. Sethi has drawn our attention to the statement made in the several text books that when the gun is fired from a distance of only a few inches the wound would be surrounded by a zone of blackening and burning. In the present case no marks

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of blackening or burning were noticed by the doctor on the skin round the wound or in the depths of the wound; but the rent in the woollen coat was found blackened and charged and the rent in the shirt blackened.

On this question it is important to mention the opinion as given in the Taylor's Principle and Practice of Medical Jurisprudence, 10th Edition at p. 441 thus:—

> "The amount or degree to which the clothes and body of a person may be burnt by the near discharge of firearms has given rise to a medico-legal inquiry. The facts in any given case can be determined only by experiments with the actual weapon used, and loaded as nearly as possible in the same manner as it was when used for the purpose which are being investigated. It is impossible to state rules as to the precise distance from which it is possible to produce marks of burning, for this depends on the quantity and nature of the powder, the method of charging, and the nature of the weapon. It is unusual, however, to get marks of burning beyond a yard or a yard and a half with a shot-gun, or at more than half a yard with a revolver."

According to this view therefore marks of burning may be found in the clothes or body of a person if the shot was fired at a distance of a yard or a yard and a half with a shot-gun. Even though this opinion is not reiterated in Taylor's 11th Edition, it seems clear, in view of this opinion that the presence of the burning marks in the clothes cannot from a reasonable basis for holding that the gun was fired in this case from the close range of a few inches only.

It is necessary next to consider the fact that the cork was found lodged in the body. Glaister

in Medical Jurisprudence and Texicology, 9th Edition at p. 265 says, while speaking of a shot fired close to the body surface up to a few inches that "the wad may be forced in the wound."

It appeas to be clear that in a contact wound the wad is likely to enter the body. But the authorities are not so clear to the maximum distance at which the wad may enter the body. The nearest statement appears to be given by Sir Sidney Smith in his Forensic Medicine, 9th Edition at p. 182 thus :—"the wads enter with the projectile in near discharges." Reading this statement in the light of the discussion in the previous paragraphs, it appears to us that a discharge up to yard has been considered by the learned author as a near discharge. The fact that the wad was lodged in the wound appears therefore to be quite consistent with the shot having been fired from about a yard.

It remains to consider what the doctors has described as the "blowing off" of the ribs and a part of the right lung. This description, if correctly given, indicates the entry of gas into the wound and that, it is true, ordinarily takes place only if the shot is fired within a few inches of the body. As we have already noticed however, the dimension of the wound ifself is a clear indication that shot was fired at a distance of about a yard. There is thus some apparent inconsistency between what is indicated by the size of the wound and what the doctors has described as "the blowing off" of the ribs and a par of the right lung. As there is less likelihood of any mistake being made in the measurement of the wound than about the doctor's view about the "blowing off" of the ribs, we are of opinion that what the doctor has described as "blowing off" is not a good reason for thinking that the shot was fired only a few inches off from the body.

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On a consideration of all the features of the wound as described by the doctors together, we have come to the conclusion that the doctor's opinion as given in his examination-in-chief, which was not challenged in cross-examination before the Committing Magistrate, that the shot may have been fired about three to four feet away should be accepted as correct. We find no reason therefore interfere with the assessment of evidence as made by the High Court and also with the order of conviction and sentence passed by it.

The appeal is accordingly dismissed.

Appeal dismissed.

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April 30

KUMAR BIMAL CHANDRA SINHA

v.

STATE OF ORISSA

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VETKATARAMA AIYAR, JJ.)

Estates, Abolition of—Raiyati right purchased by proprietor—Building on occupancy holding, used as Katcheri—Notification vesting estate in the State—Effect—Whether building on occupancy holding vests in the State—Orissa Estates Abolition Act, 1951 (Orissa 1 of 1952), ss. 2(g), (h), (i), 3, 5, 26.

The appellants held the Paikpara estate as proprietors. They had purchased the properties in question comprising *raiyati* lands with certain buildings thereon from the *raiyat*. Thus the proprietors became occupancy *raiyats* under the tenure holders or sub-proprietors. By virtue of a notification issued under s. 3 of the Orissa Estates Abolition Act, 1951, the Paikpara estate vested in the State of Orissa. But the interest of tenure holders and sub-proprietors within the estate had not been taken over under the provisions of the Act.