

A.F.R.

Reserved

Court No. - 46

Case :- CRIMINAL APPEAL No. - 2682 of 1982

Appellant :- Aman Singh And Others

Respondent :- State of U.P.

Counsel for Appellant :- G.S.Hajela, A.N. Misra, Anuj.Bajpayee, Dinesh Kumar
Sony, K.R.Yadav, R.K. Singh. Rajput, Zafar Abbas

Counsel for Respondent :- A.G.A.

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Vikas Kunvar Srivastav,J.

(As per Hon'ble Vikas Kunvar Srivastav, J.)

1. The instant criminal appeal is directed against the judgment of conviction and order of sentence dated 18.10.1988 passed by the Special Judge, Lalitpur in Session Trial No.15 of 1980 (State Vs. Aman Singh, Hallu and Bhaiyan) and Session Trial No.23 of 1980 (State Vs. Kishora), convicting the accused persons under Section 302/149 I.P.C. and sentencing them to suffer imprisonment for life and further convicting the appellant Bhaiyan under Section 147 I.P.C. and sentencing him to undergo rigorous imprisonment for six months. Rest of the appellants namely Aman Singh, Hallu and Kishora have been convicted under Section 148 I.P.C. and sentenced to suffer rigorous imprisonment for a period of one year. All the sentences are to run concurrently.

2. The aforesaid two Sessions Trial Nos. 15 of 1980 and 23 of 1980 were connected by the trial judge as they have arisen from crime case no.53 of 1979, Police Station Saujana, District Lalitpur and the evidences against the accused in both the cases being the same, recorded in the leading Sessions trial No. 15 of 1980.

The accused Karan Singh S/o Majboot Singh Thakur was separately tried as he was absconding in Sessions Trial No.47 of 1983 under Sections 302, 147, 149 I.P.C., Police Station- Saujana, District Lalitpur.

Factual Matrix

3. The prosecution case as emerged from the written information given by the first informant, Kashiram on 22.11.1979 in the Police Station- Saujna, District Lalitpur, the evidence on record both documentary and oral to state briefly as follows:-

The first informant Kashiram alongwith his real brother Ramphal both S/o Motilal R/o Village Agodi, Police Station Saujna, District Lalitpur went to their agricultural field of 'jowar' to take care and protection of the crops. The first informant (Kashiram) handed over his licensed gun no.1516 of 12 bore with 25 cartridges to his brother 'Ramphal' and went himself into the field to cut grass. After cutting the grass at about 5:00 p.m. in the evening, when the day light was still existing, the first informant lift the bundle of grass and moved on the way to his house with his brother 'Ramphal' ahead of him. About ten paces away from their field on the way to their home, when they reached near the agricultural field of Baldu Lodhi, the accused persons Karan Singh S/o Majboot Singh Thakur armed with axe (kulhari), Amaan Singh S/o Majboot Singh Thakur armed with sickle (hasiya), Kishora S/o Kamatua Nai armed with axe (Kulhari), Hallu S/o Kamatua Nai armed with axe, all residents of Agodi Police Station Saujana, District Lalitpur with brother-in-law of Kishora namely 'Bhaiyan Nai' R/o Village Rangaon, Police Station Mandwara, District Lalitpur, came out from the crops of 'jowar' in aforesaid field of Baldu Lodhi. They caught hold the informant's brother Ramphal and tossed him on the earth. They inflicted blows of axe (Kulhari) and sickle (Hasiya) on him. Informant's brother Ramphal began to scream and the informant was also raising alarm for help, upon which Pooran, Pragi, Jagan, Sunnu, all residents of Village Agodi rushed to the spot, but after killing Ramphal, all the five assailants fled from the spot snatching the licensed gun, cartridges and the wrist watch from the hands of the deceased. When the witnesses began to gather near the spot of the incident, Kishora Nai made a fire from the licensed gun of the informant. The dead body of Ramphal (deceased), the informant's brother was lying in the agricultural field of Baldu Lodhi and some of the villagers stayed near the dead body.

This written information dated 22.11.1979 was given by the informant in the police station Saujana at about 8:00 a.m. The first information report was lodged accordingly, on the basis of written information under Section 396 I.P.C. The distance of the spot of the incident from the Police Station Saujana is shown as about 13 k.m. in the F.I.R. towards south west from the police station.

After registering the F.I.R., police reached at the spot of the incident and started the proceeding of inquest, prepared site map on the orientation of witnesses, collected the blood stained soil and plain earth soil from the spot of the incident, prepared memo thereof and sent the body for post-

mortem. After getting the post mortem report, charge sheet was submitted before the court.

4. All the five accused in above two sessions trial were charged with the offence under Section 147 I.P.C. for having formed an unlawful assembly alongwith another associate namely Karan Singh on 21.11.1979 at about 5:00 p.m. near the agricultural field of one Baldu Lodhi having crops of 'jowar', situated in village Agodi, Police Station- Saujna, District Lalitpur, with a common object whereof to commit the murder of Ramphal (brother of the first informant Kashiram) and in furtherance of their common object of that unlawful assembly, the accused persons allegedly had committed the offence of rioting. They were further charged under Section 302/149 I.P.C. as they committed the murder of Ramphal intentionally causing his death on the relevant date and time of the incident on the spot of the incident in furtherance of the common object of their unlawful assembly. The accused persons were also charged under Section 307/149 I.P.C. for having attempted to commit the murder of Kashiram by firing at him in pursuance of their common object on the relevant date and time on the spot of incident. They were also charged under Section 396 I.P.C. for having committed dacoity as they allegedly snatched the licensed gun alongwith 25 cartridges and automatic wrist watch and in the course of commission of the dacoity, murder of 'Ramphal' was committed by one or some of them. Further, three accused Aman Singh, Hallu and Kishora were charged under Section 148 I.P.C. also for being armed with deadly weapons namely axes and sickle at the time of committing the offence of rioting.

5. Kishora, the accused in Sessions Trial No.23 of 1980 was charged under Section 379 I.P.C. for having committed theft of the gun bearing no. 1516 alongwith 25 cartridges and automatic wrist watch by taking it out from the hands of the deceased Ramphal on the relevant date and time at the spot of incident.

6. The prosecution proposed the following witnesses for oral examination and documents to prove the case before the trial court and documents given herein below in a table for the purpose of easy reference:-

P.W.1, Kashiram (brother of the deceased)	Proved the written report Ex.Ka.1 Ex. Ka.2 Receipt Misil Ex.(i) Vest Ex.(ii) undergarment Ex.(iii) Shirt
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	Ex.(iv) Pen Ex.(v) Kanthi Ex.(vi) Tabeez Ex.(vii) Ring
P.W.2, Jainarayan Dubey, Constable, Police Station Kotwali, District Lalitpur.	Carried the sealed dead body of the deceased for post mortem.
P.W.3, Sunnu	Proved the statement under Section 164 Cr.P.C. of Sunnu as Ex. Ka-11
P.W.4, Dr. Suresh Sakalya	Proved the post-mortem report as Ex.Ka-3
P.W.5, Lal Singh	Proved G.D. report as Ex.Ka.7
P.W.6, Ghanshsyam Das	Proved the deposit of sealed samples of Maalkhana.
P.W.7, Devi Charan Shukla	Proved the sealed samples for examination in hospital.
P.W.8, Jagan	Proved Ex. Ka-8 recovery of blood stained soil and plain earth soil. Ex. Ka-9 recovery of shoes of the deceased from the spot of the incident. Ex. Ka-10 recovery of kanthi and Mala
P.W.9, Pooran	Proved the statement under Section 164 Cr.P.C. of Pooran as Ex.Ka-12
P.W.10, Pragi	Proved the statement under Section 164 Cr.P.C. of Pragi as Ex. Ka-13
P.W.11, Surjan Singh	Proved inquest report as Ex.Ka-14 Ex.Ka-23 statement of Pooran Ex.Ka-25 Statement of Pragi Ex.Ka-28 and 29 Charge sheets against Hallu and Bhaiyan
P.W.12., Peetam Lal	
P.W.13, Bichitra Kumar Gupta, Railway Magistrate	Proved statement of Kashiram under Section 164 Cr.P.C. as Ex.Ka-30 Ex.Ka-31 statement of Pragi Ex.Ka-11 statement of Sunnu Ex.Ka-32 statement of Jagan

7. Appellant no.1, Aman Singh is still absconding whereas the appellant no.2, Kishora, appellant no.3, Hallu and appellant no.4, Bhaiyan are in jail.

8. Learned counsel Sri Satyendra Kumar Mishra holding brief of Sri A.N. Misra Advocate appeared on behalf of the appellants. Sri Sanjay Kumar Dubey learned Advocate for the appellant no. 2 Kishora also appeared before the court. Sri Patanjali Mishra learned A.G.A. for the State respondents argued the prosecution case.

Arguments of the learned counsels-

9. Learned counsel for the appellants contended that the incident as stated by the prosecution witnesses is not as such and the deceased was killed somewhere else by some anonymous enemies earlier to the alleged date of incident i.e. 21.11.1979. He further submitted that even the presence of P.W.1 (first informant, Kashiram) is doubtful because the first information report had been lodged with extraordinary delay without any plausible explanation. He contended that as alleged in the First Information Report, the incident of killing the deceased 'Ramphal' occurred at 5:00 p.m. on 21.11.1979, the spot of incident was 13 k.m. away from the Police Station but the First Information Report was lodged at 8:00 a.m. on the next day i.e. 22.11.1979.

10. The next argument of the learned counsel for the appellant is with regard to impossibility of hiding of accused-appellants allegedly in the field of 'jowar', the crops whereof were more or less two feet in height. He further drew the attention towards the statement of P.W.1 who stated that the accused appeared out from the field when the deceased reached near the '*med*' (boundary) of that field of 'jowar', and submits that the informant could see them pouncing on the deceased. According to the learned counsel for the appellant, hiding of the accused between the crops of approximately 2 feet in height was quite impossible.

11. Learned counsel for the appellant further contended that evidence on record reveals that the deceased 'Ramphal' was member of a gang of dacoits and he might have been killed in a bid to commit dacoity at some other place or by some other rival gangs or by the villagers. For the reason of enmity, the first informant has taken undue advantage to make false implication against the accused-appellants. It is further argued that when the deceased was having gun with 25 cartridges, no one could muster courage to attack him in the manner as alleged in the F.I.R.

12. The motive is stated by the informant himself in the written information and the First Information report establishes the enmity

between the parties to the incident. Learned counsel for the appellant emphasises that the conviction is only based on suspicion, raised by the informant against the accused-appellants that the accused were suspecting the hands of the deceased in the killing of their family members in an earlier incident. It is argued that the suspicion, however, strong it may be can not take place of the facts established on the evidence.

13. Learned counsel for the appellants lastly argued that the prosecution evidence itself raised doubt as to the killing of deceased on some earlier date from the alleged date of incident 21.11.1979, somewhere else and, thereafter, the dead body was planted on the alleged spot of the incident. The medical evidence (post-mortem report) also corroborates the oldness of the dead body of the deceased alleged to have been killed on 21.11.1979 at about 5:00 p.m. Learned counsel submitted that since the prosecution remained unsuccessful in proving its case beyond all reasonable doubts, therefore, the conviction recorded by the trial judge and the sentence awarded can not be sustained in the eye of law.

14. Learned counsel for the appellant- Kishora, Sri Sanjay Kumar Dubey added that the eye witnesses were planted in the case falsely and for this reason which they had turned hostile and did not support the case of the prosecution. As such, the evidence on record was not sufficient and material for recording the conviction of the present accused-appellants.

15. In rebuttal, it is argued by the learned A.G.A. that the contention of learned counsel for the appellants as to the doubt about the presence of P.W.1 (first informant) is not correct because his presence is admitted by all other prosecution witnesses consistently and without any contradiction. The prosecution case which finds support from the oral evidences of P.W.1 which is un-shaken. Further, he argued that the arguments of the learned counsel with regard to the false implication and concocting a case by the prosecution, is baseless. P.W.1 in his statement has explained satisfactorily about the delay in lodging the F.I.R. He further argued that the entire prosecution case is well supported with the direct evidences of eye witnesses and also the motive setforth in the written information and the prompt F.I.R. is well established.

16. Learned A.G.A. lastly drew the attention towards the statements of the prosecution witnesses who turned hostile and contended that they were not under any coercion, fear or terror while their statements under Section 164 Cr.P.C. was recorded, as such, the statements of such witnesses in the course of their examination in the Court shall not be treated as wholly unworthy. The statement of such witnesses to the extent of lagging

support to the prosecution shall be read being reliable as corroboratory evidence. He further submits that the principle of “*falsus in uno falsus in omnibus*” does not apply in India. He referred on the case laws **(2013) 82 ACC (SC) 401 Prabhash Kumar Vs. State of Haryana**, **(2011) 72 ACC (SC) 988 Iyappa & Ors. Vs. State of Tamil Nadu** and **2006 3 SCC 374 Zahira Habibullah Sheikh & Anr. Vs. state of Gujarat**.

On the basis of above arguments, learned A.G.A. submitted the impugned judgment of conviction and order of sentence is good in law and deserves to be confirmed, no interference is required in the impugned judgment under appeal, as such the appeal is liable to be dismissed.

Discussion

Motive-

17. In *Sheo Shankar Singh Vs. State of Jharkhand and Anr.*¹ the principles for the proof and relevance of motive in establishing the guilt of the accused and its varying importance in cases based on circumstantial evidence and in those of which are based on the testimony of eye witnesses, has been discussed. Para 15 of the said judgment is being quoted hereunder:-

“15. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eye witnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye-witnesses.”

¹ (2011) 3 SCC 654

18. The suspicion of the accused persons over Ramphal (deceased) of having murdered their family members is, however, proved by the witness P.W.1. In his cross-examination by the defence he stated that a criminal case with regard to the incident of killing of the family members of the accused-appellants was instituted against his brother 'Ramphal' (deceased) and father. Police was searching his brother (Ramphal) but he could not be traced by them. Ramphal ultimately surrendered alongwith other '*baghis*' (dacoits) in District-Chatarpur. He also stated that he does not know about the gang of dacoits to which the deceased 'Ramphal' belonged, however, in the murder case he was acquitted by the court concerned.

Witness P.W.8, Jagan has also stated in the cross-examination that the parents of the accused appellants Aman Singh and Karan Singh were murdered and father of the accused-appellants Hallu and Kishora was also murdered. He further stated that deceased 'Ramphal' was prosecuted for the above three murders, wherein he was acquitted.

P.W.9, Pooran has also stated in the cross-examination about the murder of parents of accused Karan Singh, Aman Singh and father of Kishora and Hallu in the village. He admitted that the accused persons had a strong suspicion over the deceased 'Ramphal' of having committed their murder. This witness then stated that he heard that the Ramphal (deceased) had joined the gang of dacoit of 'Moni Ram Sahai' and the people from the village were witnesses in the murder case against deceased Ramphal.

P.W.10, Pragi stated that when the murder of the parents of the accused-appellants had occurred, they were very young. He himself also young age. As such, all the witnesses Kashiram (P.W.1) Sunnu (P.W.3), Jagan (P.W.8), Pooran (P.W.9), Pragi (P.W.10), even those who did not support the case of the prosecution in toto had supported the fact constituting the motive behind the killing of Ramphal. The motive as setforth in the written information and the first information report is, thus, proved and is a relevant fact under Section 8 of the Indian Evidence Act, 1872.

Relevant date and time of the incident

19. Though it is argued by the learned counsel for the appellant that the evidence on record shows that the deceased might have been killed somewhere else prior to the alleged date of the incident 21.11.1979 and the dead body was planted maliciously by the first informant by reason of enmity with the accused-appellants. We have gone through the evidences

of P.W.1 and as discussed above, it may be recorded that there was no enmity between the first informant Kashiram (P.W.1) and the accused appellants. Kashiram (P.W.1), the first informant himself stated that being the villagers of the same village, the accused appellants and he were on normal terms of visiting each other houses and talking to each other. None of the witnesses of the prosecution stated about the 'enmity', if any, of Kashiram with the accused-appellants nor any suggestion of enmity had been given to the first informant. So far as enmity of the accused appellants with deceased Ramphal is concerned, it is established by the evidence of the prosecution witnesses that the same was because of the deceased being the accused in the murder case of parents of the accused, who had been acquitted. The arguments of the learned counsel for the appellants of planting of the dead body on the spot of the incident by the informant (P.W.1) is not acceptable. Particularly when the spot of the incident is proved satisfactorily by all the witnesses of fact as well as the formal witnesses.

20. The doctor P.W.4, Dr. Suresh Sakalya had also not been confronted to impeach him about his assessment that the deceased might have died on 21.11.1979 at about 5:00 p.m. in the evening. No questions were put to him by the defence about the condition of the dead body on the date of the post-mortem examination so as to relate the same to the oldness of the dead body and to reach at the proximate time of death prior to the established date and time of the incident, i.e. on 21.11.1979 at about 5:00 p.m., It is needless to discuss on this point.

21. The written information itself reveals that the accused persons are related to each other. The accused Karan Singh and Aman Singh are real brothers, sons of 'Majboot Singh Thakur', accused Kishora and Hallu are real brothers, sons of 'Kamatua Nai', all residents of Village Agodi where the incident had occurred and the first informant P.W.1 resides. The accused Bhaiyan is related to Kishora and Hallu being their brother-in-law (sister's husband) who is resident of Village Rangaon, Police Station Mandwara, District Lalitpur. P.W.1, in his examination-in-chief, stated that the father of accused Kishora and Hallu was murdered and parents of Karan Singh and Aman Singh were also murdered. They all were suspecting 'Ramphal' to be the perpetrator of the crime and, therefore, hatched enmity with the deceased 'Ramphal'. Due to the suspicion, out of vengeance, the accused had killed the deceased Ramphal. In cross examination, this witness stated at the very inception that he is residing in village Agodi and during his lifetime the parents of the accused persons were killed. He further stated that being local resident of the same village,

he had conversations eventually with the accused persons also. Accused persons also used to visit the first informant, P.W.1 if need be in connection with some work. As such, P.W.1 established that the accused-appellants had no enmity with him (P.W.1).

About witnesses

22. Kashiram, P.W.1 is the brother of the deceased, Sannu P.W.3, is the eye witness, Jagan, Pooran, and Pragi are also the eye witnesses. P.W.-8, 9 and 10 produced by the prosecution had turned hostile. The witnesses were all residents of the same village Agodi where the spot of the incident situates and the informant of the incident used to reside. They were agriculturists having their fields in the near vicinity of the spot of the incident (the field of Baldu Lodhi).

23. Before going through the statement of the aforesaid witnesses of fact we would like to refer para-5 of the judgment of Apex Court in the case of ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat***² where Apex Court observed that:-

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment 1.1 at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time- sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short

² (1983) 3 Supreme Court Cases 217

time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him- Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

24. In view of the aforesaid circumstances and the witnesses' status, milieu and their normal prudence we think it proper to observe on the basis of evidences that the prosecution witnesses of fact are rustic villagers, not highly educated, even illiterate or simply literate.

25. In the context of the aforesaid observation, we further refer to the judgment of the Apex Court in ***Shivaji Sahab Rao Bobade Vs. State of Maharashtra***³ which deals with an incident of murder in a rural area where the witnesses to the case were rustic and so it was observed that their behavioural pattern perceptive and un-perceptive habits have to be judged as such. The relevant para from the aforesaid judgment is reproduced hereunder:-

"8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity

³ (1973) 2 Supreme Court Cases 793 (801)

and ingenious untruthfulness of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or truthfulness of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the Court of first instance. Nor can we make a fetish of the trial Judge's psychic insight."

Evidence as to the status, character and profession of the deceased, Ramphal.

26. In the case before us there are five witnesses of fact. They are first informant Kashiram (P.W.1), Sunnu (P.W.3), Jagan (P.W.8), Pooran (P.W.9), Pragi (P.W.10). Alongwith P.W.1 (brother of the deceased), the rest of the witnesses namely Sunnu, Jagan, Pooran and Pragi were all examined as eye witnesses of the incident whose names have been given in the written information also. It is stated in the written report by the first informant that at the time of the incident, hearing the screams of the deceased and alarm raised by the first informant P.W.1, the other witnesses came running on the spot as they were working in the nearby agricultural fields. On being challenged by them, the accused Kishora made a fire towards them and they succeeded in fleeing away from the spot. P.W.1 being the brother of the deceased is a related witness. Learned counsel for the appellant has raised objection as to his credibility and reliability for the reason of his interestedness. Except P.W.1, rest of the witnesses turned hostile as they denied having seen the accused appellants committing the offence. The question, thus, would be as to the evidentiary value of the statement of the hostile witnesses, with regard to the facts deposed by them and the effect of the portion of their statement not supporting the prosecution case.

27. It is well settled that in a criminal trial, evidence of a hostile witnesses can form the basis of conviction. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence matters.

Reliance on the hostile witnesses

28. In the case before us, we have already noticed that the prosecution witnesses Sunnu (P.W.3), Jagan (P.W.8), Pooran (P.W.9), Pragi (P.W.10) were examined as the prosecution witnesses to prove the fact in issue as to whether the accused persons at the relevant date and time committed the killing of the deceased 'Ramphal' on the spot of the incident, inflicting blows of lethal weapons like axe, sickle, etc.

29. The Apex Court in the case of ***Mrinal Das Vs. State of Tripura***⁴ in para 67 has held as under:-

67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

30. In view of the aforesaid guidelines laid down by the Apex Court, the evidence of the prosecution witnesses (declared hostile) is required to be evaluated. In the present case, since the learned counsel have raised objection as to the credibility and reliability of P.W.1, Kashiram (first informant) also and blamed him to concoct the case for false implication of the accused appellants, we would discuss the evidence of P.W.1 later, after evaluating the evidence of hostile witnesses and finding out which part of their testimony finds corroboration from other proved facts and circumstances and as such is admissible and reliable.

31. In ***Siddharth Vashisth @ Manu Sharma Vs. State of N.C.T., Delhi***⁵ it is held that if the prosecution witnesses turned hostile, the court may rely upon so much of his testimony which supports the case of prosecution and is corroborated by other evidences.

32. The Apex Court in a series of decision, (one of such is ***Babu @ Balasubramaniam & Arn. Vs. State of Tamil Nadu***⁶) held that :- “The doctrine of “*falsus in uno falsus in omnibus*” not applicable in indian judicial system, the court has to separate grain from chaff and apprise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected. The witnesses may be speaking untruth in some respect and it has to be appraised in each case as

4 (2011) 9 SCC 479

5 (2010) 69 SCC 833

6 (2013) 8 SCC 60

to what extent the evidence is worthy of acceptance. Merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.”

33. In *Ashok Kumar Chaudhary Vs. State of Bihar*⁷ and *Sucha Singh Vs. State of Punjab*⁸, it was held that, if the testimony of a witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal and natural contradictions have appeared in his testimony. If the inconsistencies, contradictions, exaggerations, embellishments and discrepancies in the testimony are normal and not material in nature, then the testimony of an eye witness has to be accepted and acted upon. The distinction between normal discrepancies and material discrepancies are that while normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

34. In view of the above legal position, we first of all would like to remind that the spot of the incident is alleged to be the field of 'jowar' in village Agodi, belonging to Baldu Lodhi on the boundary (med) of which the deceased Ramphal was about to reach when the accused appellants alleged to have pounced on him coming out from their hiding in the crops of 'jowar'. The time of the incident was about 5:00 p.m. in the evening of 21.11.1979. The field of witnesses Sunnu (P.W.3), Jagan, Pooran and Pragi were situated near the spot of the incident. Hearing the noise of screaming of the deceased and alarm raised by the first informant, the witnesses reached there. A fire from the gun was also made after killing the deceased by the accused Kishora towards the witnesses so as to ward off them.

35. In the context of the aforesaid fact stated in the written information, we would go through the statements of witnesses one by one.

36. P.W.3, Sunnu S/o Sultan resident of village Agodi who by profession is an agriculturist when appeared before the court on 16.7.1982 approximately after three years from the incident, stated that the incident occurred about 2 year 8 months ago by the time of the sunset. He went to the field for cutting grass and after that when coming back to his house he and Pooran (P.W.9) heard the alarm raised by Kashiram. In response thereto, he (P.W.3), Pooran (P.W.9), Pragi (P.W.10), and Jagan (P.W.8) reached near the first informant (P.W.1). They heard the sound of the gunshot but did not see anything. At this stage, this witness was declared

⁷ (2008) 12 SCC 173

⁸ (2003) 7 SCC 643

hostile. He, thus, admitted that the witnesses Sunnu, Pragi and Jagan were present in their fields near the spot of the incident. He also admitted the presence of P.W.1 Kashiram whose alarm he heard and in response thereto alongwith others reached the spot of the incident. During the cross examination by the prosecutor, this witness further admitted that the fire from the gun was made in the field of Baldu Lodhi and hearing the sound of fire, he immediately fled away from the spot. P.W.3 also admitted that the height of 'jowar' crops was about two feet reaching above the head. His agricultural field was situated towards the north near the spot of the incident. Other witnesses met him at a distance of 25 to 30 paces away from the spot of the incident when the fire was made. In the cross examination, this witness further stated that Kashiram, (P.W.1-the first informant) and Ramphal (deceased) were co-sharers in the field of 'jowar'. Ramphal usually visited the field and Kashiram used to stay there in the night on his own. He further stated that he heard about the incident of killing of Ramphal in the same evening. This witness, as such, in very clear and unambiguous words has established, 'the spot of the incident' and 'relevant date and time of the incident'. In his cross examination, he supported the contents of the written report given by Kashiram to the police to the above extent.

37. P.W.-3, Sunnu further admitted that Ramphal and Kashiram being co-sharers of their agricultural field consisting of 'jowar' crops usually in the habit of going to the field daily to take care of the crops. The probability of presence of the deceased, Ramphal with the first informant, P.W.1 (Kashiram) on the spot of the incident on the relevant date and time is also corroborated by the fact that the incident had occurred at the time of the sunset, as stated in the F.I.R.

38. So far as the statement of P.W.-3 to the police about the role of the accused appellants in committing murder of the deceased Ramphal by inflicting blows of axe, sickle in their hands, this witness retracted from his statement and turned hostile before the trial judge in the examination-in-chief. He was read over the relevant portion of his statement reduced into writing under Section 161 Cr.P.C. by the Investigating Officer with regard to the involvement of the accused appellants in commission of the offence, he denied giving any such statement to the Investigating Officer. But similar statement as to the involvement of the accused appellants in the commission of the offence of killing the deceased Ramphal and their mode and manner, the weapons used by them was recorded by the Magistrate under Section 164 Cr.P.C., When it was read over to him, he

admitted that the said statement had been given by him before the Magistrate and admitted his thumb impression thereupon.

The prosecution has examined the Magistrate, Sri Bichitra Kumar Gupta (P.W.13) who stated that the statement of witnesses Kashiram and Pooran was recorded by him under Section 164 Cr.P.C. on 15.12.1979. Whatever the witness stated was recorded and reduced into writing which was read over and then he put his thumb impression. The statement under Section 164 Cr.P.C. was proved by the Magistrate whereupon Ex. Ka-12 and Ex.Ka-30 was marked. P.W.-13 further stated that on 17.12.1979 and 15.12.1979, he took the statement of witnesses Pragi, Sunnu and Jagan under Section 164 Cr.P.C. which bear thumb impressions, it was proved as Ex.Ka-31 and Ex.Ka-11. As such the prosecution has successfully established that the witnesses turned hostile retracting their statement made before the investigating officer, purposely and falsely. Their statement as to the involvement of the accused persons, the mode and manner adopted in the killing of the deceased Ramphal and the weapons used by the accused, all supported the case of the prosecution.

39. P.W.8, Jagan has also admitted before the trial judge on 7.4.1982 that the incident occurred approximately three years ago at the time of sunset, however, he did not see the incident of killing OF the deceased Ramphal. He further admitted that the investigating officer came on the spot on the next day, he conducted the inquest, prepared the report whereupon the inquest witnesses put their thumb impressions. He further admitted the collection of blood stained and plain earth soil from the spot of the incident and that he put his thumb impression thereon as witness. The collection of other articles like shoes of the deceased near the dead body, pen and the articles on the person of the dead body, preparation of their memo was proved by P.W.-8. He assertatively stated that the deceased was murdered on the relevant date and time but he himself did not see the incident, as such, this witness in unambiguous words admitted the killing of the deceased 'Ramphal' at the spot of the incident given in the written information, on the relevant date and time, i.e. 21.11.1979 at about 5:00 p.m. Like P.W.3, this witness also refused his statement recorded by the Investigating Officer under Section 161 Cr.P.C. with regard to the involvement of the accused appellants in killing of the deceased Ramphal from the weapons assigned to them and the mode and manner adopted by them in killing but when confronted about his statement under Section 164 Cr.P.C., he also admitted that the same was given by him to the Magistrate and it bears his thumb impression. However, this witness in cross examination, has stated that he knew about

the dead body of the deceased Ramphal lying on the spot of the incident in the morning. This witness was though examined by the defence but no question was put to him as to the statement of P.W.3 that on the date of the incident on 21.11.1979 at the relevant time about 5:00 p.m. he met with the other witnesses including P.W.8, when the sound of fire was heard by them from the field of Baldu Lodhi (spot of incident). As such, the statement of P.W.3 stood proved as to the presence of P.W.8 on the spot of the incident at the relevant date and time and his conduct in retracting from the statement given to the Investigating Officer, and promptly, thereafter, to the Magistrate under Section 164 Cr.P.C. as to the involvement of the accused appellants, in the commission of the offence of killing the deceased Ramphal, the weapons used by them and the mode and manner adopted in killing of the deceased is suggestive of him being a liar, his testimony, therefore, cannot be relied in favour of the accused appellants.

40. P.W.9 Pooran by profession was an agriculturist, resident of village Agodi, stated before the court when produced as prosecution witnesses on 4.8.1982 has denied seeing the accused appellants committing the murder of the deceased 'Ramphal' and also taking away the licensed gun and cartridges and wrist watch from the hands of the deceased. In cross examination, he admitted that the investigating officer had interrogated him but denied from giving any such statement of seeing the accused persons committing the offence. P.W.-9, however, admitted that Ramphal was killed in the field of Baldu Lodhi adjacent to the field of the informant Kashiram. But when asked about his statement recorded by the Magistrate under Section 164 Cr.P.C., he admitted that the same was given by him. This witness was also not confronted by the defence, in the cross examination, about his presence alongwith other witnesses on the spot of incident, particularly the statement of P.W.-3 in that regard. The presence of this witness alongwith P.W.3 on the spot, on 21.11.1979 at the relevant time of the commission of offence is proved. His conduct in retracting from his statement under Section 161 Cr.P.C. but admitting the statement and that recorded by the Magistrate under Section 164 Cr.P.C. will be treated as an afterthought and, therefore, a false statement made in the court. This witness has further proved the motive set up by the prosecution that the parents of accused Karan and Aman Singh (real brothers) as well as father of Kishora and Hallu (real brothers) were murdered in the village and the deceased Ramphal was a suspect for committing the said murders and a criminal case lodged against him wherein he was acquitted.

41. P.W.10, Pragi like P.W.9 has denied watching the incident. In cross examination though he denied his previous statement that under Section 161 Cr.P.C. to the above extent but admitted under Section 164 Cr.P.C. recorded by the Magistrate. This witness also in a very unambiguous and clear words admitted the spot of the incident being near the agricultural field of Baldu Lodhi adjacent to the agricultural field of Kashiram as stated in the first information report. He has further admitted that when the incident occurred in the evening, he was harvesting the crop of 'jowar' in his field and when he heard the gunshot from the field of Baldu Lodhi, he ran towards the spot but stated that he did not see the accused appellants therein. He further stated that the dead body of Ramphal was lying there, Kashiram was standing near the dead body with other witnesses Sunnu, Pooran and Jagan. In the same breath when this hostile witnesses was cross examined by the defence he stated that Kashiram came later on the spot from his field which was about 2 k.m. far away from the spot of the incident. This statement as to the arrival of Kashiram on the spot of the incident later, in the same course of examination, in view of his statement of the presence of Kashiram alongwith other witnesses near the dead body of the deceased Ramphal before his arrival on the spot of the incident, is self contradictory. Since the earlier part of the cross examination with regard to the presence of witnesses near the dead body of deceased Ramphal on the spot of the incident is consistent with the statement of other witnesses namely Sunnu, Jagan and Pooran, therefore, the contradictory statement is not being taken into consideration.

42. The witnesses, discussed above, though turned hostile but they all had proved the spot of the incident where deceased Ramphal was killed on the relevant date and time of the incident, i.e. 21.11.1979 at about 5:00 p.m. as also the presence of witnesses namely P.W.1 (Kashiram), P.W.3 (Sunnu), P.W.8 (Jagan), P.W.9 (Pooran) and P.W. 10 (Pragi) at the spot. As such, the statement of these witnesses was correctly taken into account by the trial court and read in favour of the prosecution. We are of the considered opinion that their evidence to the above extent is admissible and to be read accordingly.

43. The Investigating Officer, Sub Inspector Surjan Singh (P.W.11), posted in the Police Station Saujana on the relevant date and time of the incident as S.H.O. when confronted with the statement of the aforesaid hostile witness about denial from their previous statement under Section 161 Cr.P.C., assertingly stated that the statements of witnesses Jagan, Pragi, Sunnu, Pooran etc. were recorded by him in his own hand writing

and bear his signature. The original was placed before the court and proved by him whereupon Ex.Ka-23 and Ex.Ka-24, Ex.Ka-25 and Ex.Ka-26 were endorsed. This witness has further stated that since the accused persons were absconding, therefore, the witness were hesitant in giving their statement. They were, therefore, produced before the Magistrate also for recording their statement under Section 164 Cr.P.C. He further stated that even on the date of recording of his statement in the court, one of the accused Karan Singh was still absconding and he was known to be an active member of the dacoit 'Gabbar Singh' gang. In the cross examination, he negated the suggestion given by the learned counsel for the defence that the statements of aforesaid witnesses were recorded in the Court of Magistrate under Section 164 Cr.P.C. under threat. The prosecution has also produced the Magistrate Bichitra Kumar Gupta in the witness box. The learned Magistrate P.W.13 proved that he recorded the statement of P.W.1, Kashiram and Pooran (P.W.9) on 15.12.1979 and it was the same as stated before him. The original copy of the statements under Section 164 Cr.P.C. was proved by him before the trial court, identification of the hand writing and signature and thumb impression of Pooran whereof Ex.Ka.12 is endorsed. Likewise he proved the statement of Kashiram dated 15.12.1979 whereupon he identified the signature made by witness Kashiram and the said document is proved as Ex.Ka.13 is endorsed thereupon. Further on 17.12.1979 and 15.12.1979, the statements of Pragi, Sunnu and Jagan were also recorded under Section 164 Cr.P.C. by him and he identified his hand writing upon the statement and thumb impression of the witnesses thereupon. The statement of Pragi is marked as Ex.Ka.31, Sunnu as Ex. Ka-11 and Jagan as Ex.Ka. 31. P.W.13, the Magistrate stated that the statement of all the witnesses were voluntarily made to him and he recorded them on their free will without any pressure. This witness in cross examination, denied the suggestion as to the recording of the statements of the witnesses under pressure. As such, the portion of the statement of Sunnu (P.W.3), Jagan (P.W.8), Pooran (P.W.9) and Pragi (P.W.10) wherein they had retracted from their earlier statements made to the Investigating officer, just after incident in the course, is found to be absolutely false and cannot be read against the prosecution.

Witness P.W.1

44. Since the presence of P.W.1, Kashiram is admitted by other witness of fact though they turned hostile and his presence is also found to be quite natural and probable in his agricultural field for the standing crop of 'jowar', his evidence now has to be evaluated keeping in mind that this

witness was present on the spot of the incident and had seen the entire incident as stated in the written report filed by him.

Objection as to P.W.-1 being Relative witness

45. Merely, being relative of the deceased he can not be said to be interested for any otherwise reason to get the accused persons falsely implicated.

46. In ***Vijendra Singh Vs. State of Uttar Pradesh with Mahendra Singh Vs. State of Uttar Pradesh***⁹, the Apex Court has held in para 31 as under:-

“31. In this regard reference to a passage from Hari Obula Reddy v. State of A.P. [Hari Obula Reddy v. State of A.P., (1981) 3 SCC 675 : 1981 SCC (Cri) 795] would be fruitful. In the said case, a three-Judge Bench has ruled that : (SCC pp. 683-84, para 13)

“[it cannot] be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in Kartik Malhar v. State of Bihar [Kartik Malhar v. State of Bihar, (1996) 1 SCC 614 : 1996 SCC (Cri) 188] has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.”

47. In ***Sucha Singh and Another Vs. State of Punjab***¹⁰, it is held that relationship is not a factor to effect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a

⁹ (2017) 11 Supreme Court Cases 129

¹⁰ (2003) 7 Supreme Court Cases 643

careful approach and analyse evidence to find out whether it is cogent and credible. Para 13 of the said judgment is quoted under:-

13. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

48. In the context of evidences on record, we are of considered opinion that the argument of the learned counsel for the appellant about the witness (P.W.-1) being a close relative is a partisan witness and his evidence should not be relied upon, has no substance. This impression in the mind of any person that relatives are not independent is not correct. In para '14' of the ***Sucha Singh and Another Vs. State of Punjab (Supra)***, the Apex Court has considered it as under:-

"14. In Dalip Singh v. State of Punjab [AIR 1953 SC 364 : 1953 Cri LJ 1465] it has been laid down as under : (AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

49. In this regard, para '22' from the judgment of the Apex Court in the case of *Shyam Babu Vs. State of U.P.*¹¹, is reproduced hereunder:-

*“This Court has repeatedly held that the version of an eye-witness cannot be discarded by the Court merely on the ground that such eye-witness happened to be a relative or friend of the deceased. It is also stated that where the presence of the eye-witnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the Court to discard the statement of such related or friendly witnesses. To put it clear, there is no bar in law on examining family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. If the statement of witnesses, who are relatives or known to the parties affected is credible, reliable, trustworthy and corroborated by other witnesses, there would hardly be any reason for the court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party or friend etc. These principles have been reiterated in *Mano Dutt and Another vs. State of Uttar Pradesh*, (2012) 4 SCC 79 and *Dayal Singh and Others vs. State of Uttaranchal*, 2012 (7) Scale 165.”*

Enmity

50. We have gone through the statement of P.W.-1 'Kashiram' and do not find any prior enmity of Kashiram himself with any of the accused persons. Even Kashiram stated that the accused persons were on the normal terms of visiting and conversing with him, if needed in connection with any work, as they were residing since a long time in the same village.

51. Learned counsel for the defence could not carve out any fact of complaint of any enmity of Kashiram with any of the accused persons prior to the date of the incident or any civil or criminal litigation pending between them. No question was put to the witness (P.W.-1) 'Kashiram' so as to elicit his interestedness in falsely implicating the accused persons for putting them behind the bars.

Spot of the incident.

52. As, already discussed above, from the evidence of prosecution witnesses Sunnu (P.W.3), Jagan (P.W.8), Pooran (P.W.9) and Pragi (P.W.10) that they admitted the place of incident being near the agricultural field of Baldu Lodhi and that their own fields were situated

¹¹ (2012) 8 Supreme Court Cases 651

nearby. They have consistently and without any contradiction proved that the dead body was lying on the spot of the incident when they reached there hearing the gunshot. The blood stained soil and plain earth soil were collected by the Investigating Officer from the spot and was proved in the court. The prosecution witnesses had also admitted the collection of aforesaid samples from the spot of the incident by the Investigating Officer. The inquest proceeding was done and proved by the witnesses which also establishes the spot of the incident being the same place. The Investigating Officer (P.W.11, Sub Inspector, Surjan Singh) in his examination-in-chief before the trial court proved that the dead body of the deceased 'Ramphal' was lying on the spot of incident, where he made the inquest proceeding. He also proved preparation of the site plan on the orientation of witnesses Kashiram (P.W.1) and Jagan (P.W.8). The site plan Ex. Ka.20, shows the place whereof the dead body of the deceased was lying as 'D'. There is a remark that "at its south nearby the vicinity, the crops of 'jowar' was found broken and the dead body of the deceased was lying". It also shows that the blood stained soil and plain earth soil was collected from the same place. The agricultural field of informant Kashiram has been shown by letter 'C' at about ten paces away from the boundary of the field of Baldu Lodhi where the incident occurred. In the nearby vicinity, the witnesses Jagan and Pooran are shown near the place "C". As such, the spot of the incident as stated by the first informant, Kashiram in the written report submitted to the police was proved to be the boundary (med) of the 'jowar' field of Baldu Lodhi.

Written information and delayed F.I.R.

53. The witness P.W.1 (first informant, Kashiram) submitted the information in writing to the police on 22.11.1979 stating the date of incident 21.11.1979, and time at about 5:00 p.m. and also his presence in connection with the agricultural work of removing grass from his field of 'jowar' situated near the spot of the incident in village Agodi. He further stated the presence of deceased 'Ramphal' with him at the time of the incident, who was carrying the bundle of grass also carrying licensed gun of the informant and that he was leading to the way to their home. The name of the accused-appellants are, respectively Aman Singh, Kishora and Hallu, all the residents of village Agodi and accused Bhaiyan, the brother-in-law of the Kishora and Hallu resident of village Rangao Police Station Mandwara, District Lalitpur. P.W.-1 has also stated that the aforesaid accused persons were hidden in the field of Baldu Lodhi in the crops of 'jowar', which were about two feet in height and they suddenly came out on the spot of the incident and pounced with their respective

arms like axe and sickle. The deceased was caught hold by them and the accused persons injured him seriously by inflicting the blows of their lethal weapons and done him to death on the spot. In the course of the incident, the accused Kishora snatched the licensed gun of Kashiram from the hands of deceased 'Ramphal' and made a fire on the witnesses who came towards the spot of the incident on hearing the scream of the deceased and alarm raised by the first informant Kashiram (P.W.1) so as to ward off them. The motive is also stated by the first informant that the accused persons were suspecting that the deceased 'Ramphal' had killed their parents much earlier to the present incident.

54. The incident as stated in the written information occurred on 21.11.1979 at about 5:00 p.m. before the sunset, but the first information report was lodged on 22.11.1979 at about 8:00 A.M., on the next morning of the incident. The distance of the spot of the incident from the police station is shown in the F.I.R. 13 K.M.

Learned counsel for accused-appellants vehemently argued that the first information report was lodged with an unreasonable delay which is sufficient to case a doubt as to the genuineness of F.I.R. To deal with this objection, we have gone through the evidence of P.W.-1 (the first informant) and the Investigating Officer (P.W.-11). The first informant (P.W.-1) stated the time of the incident about 4:45 P.M. in the evening before sunset on 21.11.1979. He further stated in the examination in chief that on the very evening of the day of incident he did not go to the police station for lodging the F.I.R. due to the falling of the night and fear of the accused persons. He went to the police station in the morning on the next day i.e. 22.11.1979 for lodging the report, He further stated that the written report of the incident was given in the Police Station who reduced the same into writing and gave him a copy after getting his signature. The written report given by him in the police station was proved as Ex. Ka-1.

55. In the cross examination, this witness stated about the proximate period of the violent fracas committed by the accused persons from 15-20 minutes to half an hour and that after the incident he stayed along with the native villagers near the dead body of his brother throughout the night. He further stated that he left the spot of the incident to go to the police station when dawn fell and came back with the Investigating Officer to the village at about 11 a.m. He clarified that for the whole day just from the dawn upto the sunset, the dead body was lying on the spot. He further stated that the inquest proceeding was started at about 11:00 a.m. on the date of the information of the incident.

56. P.W.11, the Investigating Officer Surjan Singh, Sub Inspector stated that on 22.11.1979 he was present in the police station when P.W.1, Kashiram came to him. No question was put to this witness with regard to the information of the incident, if any, received by him on the same evening nor any wilful delay on his part. Even question was not put nor suggestion given to him as to his interestedness or consultation prior to the lodging of F.I.R. on the basis of the written report submitted by P.W.1 to alter the contents of the same. In cross examination, in answer to the question put by the defence, this witness (P.W.-11) assertingly stated that the first informant came to him at about 8:00 a.m. in the morning of 22.11.1979 to lodge the report. The report was lodged in his presence in the Police Station and he proceeded for the spot of the incident.

57. So far as the delay of more than 12 hours in lodging the F.I.R. is concerned, it is reasonably explained by the P.W.-1, Kashiram that he did not go in the night to lodge the report because of the fear of the accused persons. The evidence of his fear is apparent and can be gathered from the record, the facts as follows; It is reasonably explained by the P.W.1, Kashiram in his examination before the court that he did not travel in the night from his village to the police station by reason of fear of the accused persons. The evidence of his fear is apparent and gathered from the evidences on record as follows;

i) the spot of the incident in the village Agodi was within the territorial limit of District Lalitpur which was declared and notified as a dacoit affected area by the Government,

(ii) carrying a licensed gun even during the agricultural work in the evening in itself is an indication of fear of life to the brothers namely Kashiram and Ramphal (deceased),

(iii) in cross examination of the witnesses, it has come that the deceased 'Ramphal' was arraigned with the charge of murders of parents of the accused persons. A criminal case was also lodged.

(iv) the deceased 'Ramphal' alongwith some other '*baghis*' (dacoits) surrendered in District Chhatarpur. He was known to be an active member of the gang of the dacoits, identified as 'Moniram Sahai Gang',

(v) One of the accused 'Karan Singh' was himself suspected to be an active member of dacoits gang identified as 'Gabbar Singh's Gang',

(vi) The way to the police station from the spot of the incident shown to be about 13 k.m. which was in the outskirts of the area not urbanized and populated, it was not easy to travel in the night,

(vii) the mode and manner adopted by the accused persons was not only violent but also brutal and gruesome,

(viii) The assailants after killing the deceased 'Ramphal' fled away from the spot of the incident and were roaming free.

58. In view of the above, the fear of the first informant (P.W.-1) was quite natural and probable and no adverse inference can be drawn of his act of not moving instantly after the incident to the police station by travelling 13 k.m. on rough and unpopulated way. This witness P.W.1, Kashiram was also not confronted about availability of the means of transport, the nature and condition of the way causing obstruction, risks in the night, the presence of the villagers and company of the Chaukidar or anyone else to go to the police station in the night for lodging the F.I.R. The witness P.W.1 himself has stated that before sunrise, he left the village for going to the police station, he travelled about 13 k.m. on foot. The statement of P.W.11, Investigating Officer proves arrival of the P.W.1, Kashiram in the Police Station at about 8:00 a.m. As such, the reason for not lodging the F.I.R. instantly after the incident in the evening and reaching the police station on the next morning stood explained and is believable. The arguments of learned counsel for the accused appellants as to the ingenueness of the written information and the F.I.R. have no logical footing and thus, liable to be rejected. The written information of the incident was given to the police station with reasonable promptness and there is no extraordinary delay so as to raise any doubt as to the genuineness of the F.I.R.

Mode and manner of the commission of offence

59. The fact of killing of the deceased 'Ramphal' on 21.11.1979 at about 5:00 p.m. before sunset is proved by the witnesses Kashiram (P.W.1), Sunnu (P.W.3), Jagan (P.W.8), Pooran (P.W.9) and Pragi (P.W.10) consistently without any contradiction. The spot of the incident is also proved by the evidences of the witnesses consistent with testimony of P.W.-1 and the corroborative evidence of the inquest proceedings, the collection of the blood stained soil and plain earth soil, the recovery of the shoes of the deceased near the spot of the incident. It is noteworthy here that none of the witnesses amongst Sunnu (P.W.3), Jagan (P.W.8), Pooran (P.W.9) and Pragi (P.W.10) contradicted the statement of P.W.1 (the first informant) as to the involvement of the accused-appellants in the offence. The mode and manner adopted by the accused appellants, their involvement in the commission of offence and the weapons used by them though stated by the aforesaid witnesses Sunnu (P.W.3), Jagan (P.W.8),

Pooran (P.W.9) and Pragi (P.W.10) to the Investigating Officer in the course of the investigation and, thereafter, before the Magistrate under Section 164 Cr.P.C. but they did not stand on their aforesaid pre-trial statements when produced before the trial court. As discussed at length the fear under which the aforesaid witnesses turned hostile, it is held they have retracted and not truthful. As such, the only witness (P.W.1) as eye witness of the incident remains before us as to the mode and manner of the commission of the offence.

60. It is well known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that his statement is true and correct version of the case of the prosecution.

61. Section 134 of the Indian Evidence Act, 1872 for ready reference is quoted hereunder:-

“134. Number of witnesses.—No particular number of witnesses shall in any case be required for the proof of any fact.”

62. It is settled that the courts are concerned with the merit of the statement of a particular witness and they are not concerned with the number of witnesses examined by the prosecution. The time honored rule of appreciation of evidence is that it has to be weighed and not counted; the law of evidence does not require any particular number of witness to be examined to prove any fact. As a rule of caution, based on the testimony of a single witness, the court may classify the oral testimony of a single witness, into three categories namely (i) wholly reliable, (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. In the third category of cases, the court has to be circumscribed and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness; ***Lallu Manjhi Vs. State of Jharkhand***¹².

63. In **Veer Singh Vs. State of U.P.**¹³ it is held that conviction can be based on the evidence of sole witness in a criminal trial as quality of evidence matters not the quantity.

64. Keeping in mind the above, we proceed with the P.W.1, Kashiram. It is stated by him that on 21.11.1979 at about 4:45 p.m. in the evening when there was enough day light, he alongwith his brother ‘Ramphal’ was

¹² AIR 2003 SC 254

¹³ (2014) 2 SCC 455

returning to home. Deceased 'Ramphal' was carrying his licensed gun and 25 cartridges and he was about 20 paces behind him carrying the bundle of grass. Accused-appellants Kishora, Karan Singh, Hallu and Bhaiyan pouncing out from the fields of 'jowar' of Baldu Lodhi with the axe (Kulhari), sickle (hasiya). They embraced the deceased from behind, tossed him on the ground and began inflicting the blows of sickle and axe and, thus, the deceased died of the injuries.

Medical Evidence of the mode and manner adopted by the accused

65. The post-mortem report of the deceased is evidence of the aforesaid injuries which are noted as under:-

Ante mortem injuries:-

(i) *Incised wound 14 c.mx4c.m. brain deep on left side face and forehead with under ear of temporal parital and frontal bone of skull and the brain meetter is came at left eye is displaced in socket.*

(ii) *Incised wound 7 cm. X 2 c.m. bone deep on left side of head with under left ear of parital bone.*

(iii) *Incised wound 10 cm x 2 cm bone deep on right side of the face from the root of nose to right angle of mouth.*

(iv) *Incised wound 12 cm x 5 cm vertebral column deep under byers of 3, 4 and 5.*

(v) *Multiple incised wound (five in number) ranging for 2 c.m. x 0.5 cm to 2 cm x 1 cm muscle deep in the area of 15 cm x 16 cm on the front of chest.*

(vi) *Incised wound 2 cm x 1 cm skin deep on the middle of abdon 8 cm above the umbila*

(vii) *Incised wound 3 cm x 2 cm muscle deep the left infernal region.*

(viii) *Incised wound of 3.5 cm x 2 cm muscle deep on lateral side of left thigh on upper 1/3.*

(ix) *Incised wound on 3 cm x 2 cm muscle deep 1.5 cm late to no.8.*

(x) *Incised wound of 6 cm x 2 cm middle deep on right anterol as per upper 1/9 of right thigh.*

(xi) *Incised wound 3 cm x 28 muscle on anten aipet right thigh 8 cm below of no.10.*

66. P.W.4, Dr. Suresh Sakalya the doctor posted in Lalitpur District Hospital who conducted the autopsy of the body proved his report and

that the deceased died of the Ante mortem injuries. He assessed the approximate time of death being 21.11.1979 at about 5:00 P.M. No question was put to him as to the timing of the death. Thus, the death was proved by the ante mortem injuries, the nature of the injuries undoubtedly show that they were caused by some sharp edged and pointed weapons, most of the injuries were incised wounds except injury no.1 i.e. lacerated over the head bone deep. The depth of the injuries upto muscle deep or bone deep confirms the weapon assigned to the accused namely axe (Kulhari) and sickle (hasiya).

67. In this way, in the absence of any contradiction in the statement of the sole witness as to the mode and manner adopted by the accused appellants and the weapons used by them which stood proved with further corroboration from the post-mortem report and the evidence of the medical witness P.W.4, Dr. Suresh Sakalya, it has to be accepted. Nothing carved out from both the witnesses against this proved state of things in the cross examination. It is further reinforced by the circumstances coupled with the motive of the accused persons to commit the crime which is indicative of conclusions that the accused persons are the real offenders who had committed the alleged crime, however, such occurrence had taken place in broad day light and Kashiram (the first informant) had witnessed the entire occurrence from a short distance of about 15-20 paces. There is no possibility of committing any mistake by him, moreover, it will be indeed perverse against the ordinary course of human nature and conduct for Kashiram to permit the real assailants of deceased 'Ramphal' to go unpunished and instead of implicating the accused persons just with a view to satisfy his own ego.

68. In the present case, the evidence as to the presence on the spot of incident at the relevant time and date of the incident proved to be probable and natural, free from contradictions, exaggeration or embellishment. Some minor contradictions or inconsistency are immaterial, irrelevant details which are not in the capacity in anyway corrode the credibility of witness cannot be labelled as omission or contradictions. This settled legal principle is reiterated in various decision of Hon'ble Apex Court. It is held by Hon'ble the Apex Court in ***Brahm Swaroop and Another Vs. State of Uttar Pradesh***¹⁴ as under :-

"It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, may not prompt the court to reject the evidence in its entirety. "Irrelevant details which do not in any way

14 (2011) 6 Supreme Court Cases 288

corrode the credibility of a witness cannot be labelled as omissions or contradictions.” Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and shifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basis version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses.”

69. On the basis of above discussion and perusal of the impugned judgement in the appeal, we do not find any error in the judgment of conviction and order of sentence passed by the trial court. No interference is required. The appeal deserves to be dismissed.

70. Consequently, the appeal against the judgment of conviction and order of sentence in Session Trial No.15 of 1980 (State Vs. Aman Singh) and Session Trial No.23 of 1980 (State Vs. Kishora) under Section 302/149, 147 and 148 I.P.C. is hereby ***dismissed***.

71. Appellants are in jail. Certify this judgment to the court below for further necessary action and compliance. The lower court record be sent back to the District Judgeship, Lalitpur immediately for further action.

Order Date :- 25.05.2022

Gaurav

(Vikas Kunvar Srivastav,J.) (Mrs. Sunita Agarwal,J.)