Court No. - 43

Case :- CRIMINAL APPEAL No. - 3379 of 2002

Appellant :- Suresh
Respondent :- State of U.P.
Counsel for Appellant :- S.K. Mishra, Mohd. Raghib Ali,Mohd. Raghib Ali,A.C.,Saghir Ahmad.A.C.
Counsel for Respondent :- A.G.A.

Hon'ble Ashwani Kumar Mishra,J.
Hon'ble Shiv Shanker Prasad,J.

1. Accused appellant Suresh has been convicted under Section 302 IPC and sentenced to rigorous life imprisonment alongwith fine of Rs. 1000/- and on failure to pay the fine to undergo six months additional imprisonment; while his two brothers Hansu and Rakesh who were charged under Section 302/34 IPC have been acquitted vide a composite judgment and order of the Additional Sessions Judge (Fast Track Court No. 4), Firozabad, dated 21.6.2002 and 22.6.2002. Thus aggrieved the accused appellant Suresh is before this Court in the present appeal filed under Section 374 of the Code of Criminal Procedure. No appeal is preferred by the State against the acquittal of the two co-accused Hansu and Rakesh, who are the real brothers of accused appellant Suresh.

2. A written report was given by the first informant Harish Kumar Fanda (PW-1) stating that the accused appellant at about 10.30 in the morning came to his shop to purchase Tobacco for Rs. 2.00. The informant refused to accept the tender as the Two Rupee Note offered was torn. The accused appellant went back after threatening that he would see the informant and his family. At about 11.30 accused appellant armed with a knife, his two brothers Hansu armed with a bottle of Acid and Rakesh armed with two iron rods (saria) rushed towards him. The informant out of fear closed the door of the shop. The accused then rushed to enter the adjoining house of the informant, which was objected by the wife of informant Karuna Fanda, when the accused appellant inflicted knife blow below her chest. Accused Hansu is stated to have thrown acid bottle towards Karuna Fanda which ricocheted and the acid got sprinkled on Hansu

and Suresh. The informant rushed his wife to the hospital where she died. The incident is said to have been seen by Ram Lal Fanda (PW-2), Sumitra Devi (mother of informant) and Banwari. Sumitra Devi has not been adduced in evidence while Banwari has died. On the basis of such written report scribed by PW-2 the first information report in Case Crime No. 509 of 1995, under Section 302 IPC, Police Station Shikohabad, District - Firozabad, was registered at 12.45 pm on 7.11.1995 in respect of the incident occurring at 11.30 am on the same day.

3. The Investigating Officer recovered two iron rods (saria), edge of one of which was pointed while the other was flat near the place of occurrence vide Exhibit Ka-2. Bloodstained earth from the spot was also recovered vide Exhibit Ka-3. Panchayatnama was conducted at the hospital, where the dead body was kept, and the cause of homicidal death appeared to be the wound six fingers below the chest of the deceased. Panch witnesses were of the view that the deceased has died on account of stab wound. The dead body was accordingly sealed and sent to mortuary where the postmortem was conducted by Dr. R.K. Garg (PW-4). In the postmortem, the cause of death has been determined as shock and bleeding on account of following ante-mortem injury:-

> "1. Incised wound 4.0 cm x 1.0 cm x chest cavity deep on (Lt) side front of chest 9.5 cm below and lateral to left nipple at 5 'O' clock position."

4. The investigation proceeded and ultimately a charge sheet (Ex. Ka. 11) was submitted by the police against the accused appellant and his two brothers Rakesh and Hansu. The Magistrate took cognizance and committed the case to the court of sessions where the charges were framed against them. Vide order dated 23.10.1998, the accused appellant was charged of offence under Section 302 IPC, while his two brothers namely Hansu and Rakesh were charged under Section 302/34 IPC by a separate order. The charges were read out to the accused who denied them and demanded trial.

5. The prosecution in order to establish the charges against accused appellants produced oral testimonies of following witnesses:-

"1. Harish Kumar Fanda PW-1
2. Ram Lal Fanda PW-2
3. Yogesh Kumar PW-3
4. Dr. R.K. Garg PW-4
5. Shiv Charan Pal PW-5
6. Siyaram Sharma CW-1
7. Dr. Lakhan Singh CW-2"

6. Documentary evidences have also been adduced by the prosecution consisting of FIR as Ex.Ka. 12; written report as Ex.Ka.1; recovery memo of Iron 'Saria' as Ex.Ka. 2; recovery memo of blood from stairs as Ex. Ka.3; Postmortem Report as Ex.Ka. 10; Panchayatnama as Ex. Ka. 4 and Charge Sheet as Ex. Ka. 11.

7. PW-1 is the first informant who has supported the prosecution case by stating that the accused appellant Suresh is a resident of Punjabi Colony Shikohabad who came to his shop and offered a two rupee torn note for purchasing Kapoori Tobacco and as the note was torn, the informant refused to accept it, on which Suresh threatened the informant that he would see him and his family. After about an hour, on the same day, Suresh armed with a knife alongwith Hansu and Rakesh who had acid bottle and iron rods in their hands rushed towards the shop of the informant. On seeing this PW-1 put the shutters down. The accused then rushed towards the house of the informant hurling abuses. Informant's wife was standing near the gate/shutter and she objected to their entry on which the accused appellant Suresh stabbed her. Acid bottle was also allegedly thrown by Hansu but the acid got sprinkled on Suresh and Hansu. PW-1 has proved the written report (Ex.Ka-1) and has also supported the recoveries of plain earth; bloodstained earth and two iron rods by signing on the memo of recovery.

8. In the cross-examination PW-1 has admitted that accused Suresh, Hansu and Rakesh are the sons of his real uncle, which indicates that the accused and the informant are first cousin. He has also admitted that the lane passing between the house of accused and his house is rather narrow. At the time of incident accused appellant Suresh was not working while Hansu was working in a hotel running a tandoor. He has stated that one of the two iron rods recovered had a sharp edge while the other was flat and these rods were used for preparing chapatis in tandoor. He has stated that these iron rods have not been used for commissioning of offence and there was no scuffle of accused with any of the witnesses. He has shown ignorance about the arrest of Hansu or his medical examination. He has also admitted that no injuries from acid have been caused to first informant or the deceased or any of the witnesses. He has further admitted that at the time of collection of bloodstained earth no empty bottle of acid was found. PW-1 further stated that acid bottles were taken by the accused persons and non mentioning of such facts cannot be explained by him. He has further admitted that acid stained earth have not been recovered from the spot, nor any acid was found and even on the wall or the channel of his gate no stains of acid were found. PW-1 has stated that he saw accused appellant stabbing his wife while standing at a distance of 4 ft. in the gallery from the place of occurrence. PW-1 denied the suggestion that there was any dispute on account of his father having grabbed the ancestral house of the accused or that Hansu was attacked with knife by informant while he was going for work or that acid was thrown on Hansu by the deceased and the deceased while turning after throwing the acid got accidentally stabbed with the knife in the hands of the informant. He has further denied the suggestion that he did not allow the report of Hansu to be registered when he had gone to the police station or that Hansu was falsely implicated.

9. PW-2 is the father of informant who has similarly supported the prosecution case. In the cross-examination he has stated that he saw the incident from the road in front of the shop of the informant.

In cross-examination he has also denied the suggestion that he wanted to grab the ancestral house of the accused or that the incident occurred when his son (PW-1) attempted to stab Hansu and the deceased threw acid and that she got accidentally stabbed while turning back.

10. PW-3 Yogesh Kumar was posted in the concerned Police Station and has proved the panchayatnama as also site plan. He has admitted that he was not the Investigating Officer, but he had made the recoveries on the asking of the SHO. The iron rods recovered, however, have not been produced before the Court.

11. Dr. R.K. Garg is PW-4 who has conducted the autopsy on the deceased. He has stated that there was only one injury on the deceased and her 8th rib was cut. Both sides of injury were sharp. He has also stated that it was not necessary that the weapon of assault in this case be necessarily sharp for causing the aforesaid injury.

12. PW-5 Shivcharan Pal, Investigating Officer, has proved the chargesheet and has stated that PW-3 Yogesh Kumar was orally directed to undertake investigation and that there was no order by him in writing to conduct investigation by him. He has also stated that plain earth was not taken from the place of occurrence and the place from where the bloodstained earth has been taken has also not been specified in the site plan. This witness has clearly stated that neither any acid has been found on the spot, nor the place where bottle of acid fell has been specified. It has also not been specified as to what happened to the acid bottle.

13. Siyaram Sharma, Pharmacist, R.N.M. Hospital, Shikohabad has appeared as CW-1 and has produced the records in respect of the injury caused to Hansu S/o Deshraj. The original register has also been produced by him. Dr. Lakhan Singh has also been adduced as CW-2 who had examined Hansu at 5.15 pm on 7.11.95 and following injuries have been found on him by the concerned doctor:-

> ''चोट नं0 1 – जलने की चोट (निशान) पूरे चेहरे के आधे हिस्से मे, गर्दन छाती पेट दोनो हाथों के अगले हिस्सो में दोनो जॉघो के अगले हिस्से में ये चोट सुपरफिशियल थी। लगभग 45% शरीर के हिस्से पर थी लाल रंग की थी। फुोले नहीं थे।''

It was, however, opined by the doctor that these injuries were superficial and could be caused by chemical burn. He has also certified that injuries were fresh and could come from acid. The doctor has further stated that Hansu was kept under observation and although he described the injury as superficial but it could prove fatal since burn percentage was more than 20% and he was referred to the district hospital. The doctor was not informed of any further development in the matter.

14. Trial Court found the testimony of PW-1 and PW-2 to be truthful and reliable and on its basis came to the conclusion that deceased has been stabbed by the accused appellants and consequently convicted the accused appellant for offence under Section 302 IPC. So far as injuries on Hansu is concerned the court below has not given much importance to it as the injuries were allegedly superficial and thus ignored. A finding has been returned that accused persons were present on the spot. The court below however found that prosecution has not been able to prove the guilt of Hansu and Rakesh beyond reasonable doubt and they were acquitted by giving them benefit of doubt.

15. Sri Saghir Ahmad, learned Senior Counsel assisted by Sri Raghib Ali, has appeared as Amicus Curiae for the appellant, and submits that the prosecution has not established the genesis of crime in the manner disclosed by it on the strength of prosecution evidence. He further submits that the cause of death and the manner of death have not been proved. He also argues that injuries of Hansu have not been explained and as the witnesses are interested witnesses their testimony is not reliable and trustworthy and consequently the accused appellant is entitled to benefit of doubt. He further submits that the acquittal of Hansu and Rakesh by the trial court despite offences alleged under section 34 IPC, on the basis of same set of evidence, is also a ground to extend same benefit to the

accused appellant. Contention is that PW-1 and PW-2 since are not reliable witnesses and are otherwise interested persons and the injuries on Hansu have not been explained and the weapon of assault i.e. the knife has not been recovered, as such, the conviction of accused appellant is bad in law.

16. Learned AGA, on the other hand states that the ocular evidence matches the postmortem report and since PW-1 and PW-2 have specifically seen the incident, in which solitary stab wound was caused by the accused appellant, as such, the conviction recorded by the court below is valid.

17. Having heard the respective counsels, we have examined the original records of the case in order to determine whether the prosecution has succeeded in establishing the guilt of accused appellant, beyond reasonable doubt?

18. The first information report in the present case has been lodged on the basis of written report wherein the genesis of crime is alleged to be a dispute regarding non acceptance of tender of Rs. 2.00 on the ground that the note was torned. This, according to the prosecution, is the cause of provocation and also the motive on account of which the accused appellant came armed with a knife alongwith his two brothers and attacked the informant with knife, acid and iron rods.

19. The genesis of crime is thus required to be examined in the facts of the present case before adverting to the credibility and reliability of the two eye-witnesses, whose testimony forms the basis of conviction of accused appellant. The FIR version as also the statement in chief of PW-1 suggests that accused is a stranger and on flimsy premise has stabbed the deceased. This apparent impression, however, is not supported by the evidence on record.

20. Firstly, the dispute regarding non acceptance of two rupee note does not, on its own, constitutes sufficient provocation for the

assault on the informant and deceased. Moreover, in the cross-examination of PW-1 it is clearly admitted that the three accused are the uncle's son of informant and, therefore, informant is the first cousin of the three accused. PW-1 moreover has admitted in his cross-examination that the mother of accused has been subsequently murdered wherein the informant is the prime accused.

21. Although there is no defence evidence substantiating any alternative genesis of crime or motive for occurrence of incident or false implication but a suggestion has been given to PW-1 that his father wanted to grab the ancestral house, in which the accused also had a share, which suggestion is nevertheless denied. It is also to be noticed that according to the site plan the accused and informant live in close vicinity and their houses are just across a narrow lane. The close relationship between the parties as also the admission of PW-1 that he is accused of murdering the mother of accused appellant clearly goes to show that relationship between them was not cordial.

22. In the facts of the case there are only two eye-witnesses who are interested witnesses being the husband and father-in-law of deceased. Law is settled that testimony of interested witnesses can always be looked into but only after subjecting it to cautious and careful scrutiny.

23. As we have already seen from the evidence brought on record that the genesis of crime disclosed by the prosecution is not entirely reliable and eye-witnesses are close relatives of the deceased the facts asserted by the prosecution will have to be minutely scrutinized.

24. The prosecution witnesses have stated that the accused appellant alongwith his two brothers rushed towards the informant's shop on account of the motive disclosed i.e. non acceptance of two rupee note. Accused appellant is alleged to have carried a knife which admittedly is neither recovered nor produced before the court. The two rupee torn note, which was the bone of contention as per

prosecution and provided the genesis has also not been recovered or produced in evidence. So far as Hansu possessing acid bottle is concerned neither any acid has been found on the ground at the place of crime nor any acid marks were noticed on the nearby walls/shutter. These are circumstances which adds to the cloud on the prosecution case. The further fact that the informant or the deceased did not sustain any chemical burn injuries despite the prosecution case that acid was thrown on them by Hansu also puts a question on the prosecution case.

25. PW-1 has disclosed that Hansu threw acid bottle and the acid fell on Suresh and Hansu. No burn injuries from acid attack is found on Suresh. Such injuries are found only on Hansu. The statement of PW-1 that acid fell on Suresh is thus found incorrect.

26. It is difficult to believe that acid thrown on deceased/informant from close distance would not cause any injuries upon them nor any signs of acid would be available on the nearby walls/shutter/floor. No acid bottle has been recovered either.

27. Although there is no defence witness on this aspect, yet, it may be worth noticing that the accused Hansu in his statement under section 313 Cr.P.C. has denied that he was carrying acid. Moreover, he has stated that he was going to hotel for work when the deceased threw acid on him and the deceased was hit by knife of informant by which the informant intended to assault him. The reply of Hansu to question no.13 is relevant and is reproduced hereinafter:-

> ''मै होटल पर काम करने जा रहा था। करूणा फण्डा ने मेरे पर तेजाब डाला था। हरीश चाकू मेरे मार रहा था जो करूणा फण्डा के लगा। मेरा भाई राकेश रिपोर्ट करने मुझे रिपोर्ट करने थाने ले गया पुलिस ने मुझे जली हुई अवस्था में वहीं बैठा लिया तथा रिपोर्ट प्राप्त कर मेरे भाई को दे दी तथा मुझे मेडिकल कराने के नाम पर वहीं बैठा लिया।''

28. Accused appellant has also stated under section 313 Cr.P.C. that deceased was hit by the knife of informant and that the deceased threw acid on Hansu.

29. Dr. Lakhan Singh has appeared as court witness and proved that burn injuries were caused to Hansu on his half face, neck, chest, both hands and thighs which was on 45% of his body. He has opined that such burn injuries could be caused by acid attack. He has further stated that though he recorded the injuries to be superficial but as the burn was above 20% and could be fatal as such the patient was kept under observation and was referred to S.N.M. Hospital, Firozabad.

30. It is not clear whether Hansu was actually referred to S.N.M. Hospital, Firozabad. No complaint/report at the instance of Hansu is otherwise on record. The only explanation furnished under section 313 Cr.P.C. is that Hansu went to police station for lodging the report but he was detained and the report was received by the police.

31. The trial court has ignored the injuries caused to Hansu only on the ground that such injuries were superficial. The statement of Dr. Lakhan Singh that burn was above 20% and could be fatal or that Hansu was referred to the district hospital has been completely overlooked.

32. On the basis of evidence led by the prosecution on the aspect relating to alleged throwing of acid by Hansu, and his sustaining burn injuries as acid also fell/sprinkled on him, we are not impressed by the reasoning assigned by the trial judge for ignoring the injuries caused to Hansu. We are not inclined to accept that burn injuries would be sustained on 45% of the body only because some acid fell/ got sprinkled on Hansu while throwing the acid bottle upon the informant or the deceased, particularly when no burn injuries are found on the deceased or the informant, although acid was allegedly thrown on them.

33. Learned Senior Counsel for the appellant submits that where the genesis of crime is suppressed and the injuries on accused are not explained the evidence of prosecution witnesses relating to the incident cannot be treated as true or at any rate not wholly true and

cannot be relied upon to convict an accused. Reliance is placed upon a judgment of Supreme Court in Kumar Vs. State Represented by Inspector of Police, 2018 (6) JT 85, wherein the Court observed as under in para 27 to 29 of the report, which is reproduced hereinafter:-

> "27. Another point put forth by the learned counsel on behalf of the accused—appellant is that the prosecution has not explained the injuries suffered by the accused and hence prosecution case should not be believed. At the outset, it would be relevant to note the settled principles of law on this aspect. Generally failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true [See : Mohar Rai and Bharath Rai v. The State of Bihar, 1968 CriLJ 1479].
>
> 28. In Lakshmi Singh and Ors. v. State of Bihar, 1976 CriLJ 1736 this Court observed:
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> "Where the prosecution fails to explain the injuries on the accused, two results follow :
>
> (1) that the evidence of the prosecution witnesses is untrue; and
>
> (2) that the injuries probabilise the plea taken by the appellants.
>
> It was further observed that:
>
> In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :
>
> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;
>
> (3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."
>
> 29. In the case on hand, admittedly, the accused—appellant was also injured in the same occurrence and he too was admitted in the hospital. But, prosecution did not produce his medical record, nor the Doctor was examined on the nature of injuries sustained by the accused. The trial Court,

> instead of seeking proper explanation from the prosecution for the injuries sustained by the accused, appears to have simply believed what prosecution witnesses deposed in one sentence that the accused had sustained simple injuries only."

34. Recently, a three judge bench of the Supreme Court in Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh, Criminal Appeal Nos. 64-65 of 2022, decided on 13.10.2022, has again examined the issue and reiterated the law on the subject in paras 111 to 115, which are reproduced hereinafter:-

> "111. In Dhananjay Shanker Shetty v. State of Maharashtra, (2002) 6 SCC 596, in paragraph 10 in reference to the circumstantial evidence, in the case of murder, the nonexplanation of injuries on accused by prosecution was held to be significant when there are circumstances which makes prosecution case doubtful. For the relevant purpose, the relevant extract of paragraph 10 is extracted as below:
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> "10. ....But nonexplanation of injuries assumes significance when there are material circumstances which make the prosecution case doubtful. Reference in this connection may be made to recent decisions of this Court in the cases of Takhaji Hiraji v. Thakore Kubersing Chamansing [(2001) 6 SCC 145 : 2001 SCC (Cri) 1070] and Kashiram v. State of M.P. [(2002) 1 SCC 71 : 2002 SCC (Cri) 68]. In the present case, nonexplanation of injuries on the appellant by the prosecution assumes significance as there are circumstances which make the prosecution case, showing the complicity of the appellant with the crime, highly doubtful."
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> [Emphasis supplied]
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> 112. In Mohar Rai and Bharath Rai v. State of Bihar, AIR 1968 SC 1281, it was observed:
>
> "6. …..In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."
>
> [Emphasis supplied]
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> 113. In another important case Lakshmi Singh and Others v. State of Bihar, (1976) 4 SCC 394, after referring to the ratio laid down in Mohar Rai (supra), this Court observed:
>
> "12. …..where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants….."
>
> 114. It was further observed that:
>
> "12. …..in a murder case, the nonexplanation of the injuries

> sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:
>
> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
>
> (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case…..”
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> 115. In Mohar Rai (supra) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true, or at any rate, not wholly true. Likewise in Lakshmi Singh (supra) it is observed that any nonexplanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a nonexplanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijay Singh and Ors. v. State of U.P., (1990) CriLJ 1510.”

35. It appears that the trial court itself was not entirely convinced with the prosecution case and that is why it granted benefit of doubt to the co-accused Hansu and Rakesh on the basis of same set of evidence. Since the two co-accused were also charged under section 34 IPC, therefore, their acquittal on the basis of same set of evidence is also a ground available for the accused appellant to claim benefit of doubt.

36. Upon overall evaluation of the evidence led in the matter we are not convinced of the genesis of crime as disclosed by the prosecution nor are we satisfied with the explanation offered by the prosecution regarding injuries sustained by the accused Hansu in the matter. The testimony of the two eye witnesses PW-1 and PW-2, in our considered view, cannot be entirely relied upon to convict the

accused appellant when on the same set of evidence two other accused have been acquitted by granting them benefit of doubt.

37. In Raghunath vs. State of Haryana, (2003) 1 SCC 398 the Supreme Court in similar circumstances observed as under in paragraph 22 to 24 and 33, which are reproduced hereinafter:-

> "22. As already pointed out, accused Ram Kishan sustained as many as six injuries on his body, Injuries 3 and 4 stated to be grievous in nature. Both the trial court and the High Court accepted the version of PW 2 that the injuries were caused in self-defence. We have already disbelieved the version of PW 2. No explanation whatsoever has been afforded by the prosecution with regard to the injuries on the person of the accused Ram Kishan.
>
> 23. The question whether the prosecution is obliged to explain the injuries sustained by the accused in the same occurrence and failure to explain injuries on the accused would construe that the prosecution has suppressed the truth and also the origin and genesis of the occurrence, has been in controversy before this Court in a catena of decisions. A three-Judge Bench of this Court in *Ram Sunder Yadav* v. *State of Bihar* [(1998) 7 SCC 365 : 1998 SCC (Cri) 1630] (at SCC p. 366, para 3) referred to another three-Judge Bench decision of this Court in *Vijayee Singh* v. *State of U.P.* [(1990) 3 SCC 190 : 1990 SCC (Cri) 378] , SCC at p. 202, para 10, which held as under:
>
> "In *Mohar Rai case* [*Mohar Rai* v. *State of Bihar*, AIR 1968 SC 1281 : 1968 Cri LJ 1479] it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate *not wholly true*. Likewise in *Lakshmi Singh case* [*Lakshmi Singh* v. *State of Bihar*, (1976) 4 SCC 394 : 1976 SCC (Cri) 671] also it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case."
>
> 24. In the present case, as noticed earlier, the prosecution evidence consists of interested or inimical witnesses. Therefore, non-explanation of the injuries sustained by Ram Kishan may assume greater importance. There is also the defence version which competes in probability with that of the prosecution. In our view, therefore, non-explanation of

> the injuries sustained by the accused Ram Kishan, which are grievous in nature, renders the prosecution story not wholly true.
>
> 33. In the facts and circumstances recited above, we are clearly of the view, that the prosecution has not come up with the true story. It has suppressed the facts. If that be the case, the whole prosecution story would stand on quicksand. The prosecution has failed to establish its case beyond reasonable doubts. It is now a well-settled principle of law that if two views are possible, the one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted."

38. In Khema and others vs. State of U.P. and others, AIR 2022 SC 3765, the Supreme Court has reiterated the previous judgment of the Court in Vadivelu Thevar vs. State of Madras, 1957 SCR 981, wherein the Court emphasized that well established rule of law is that the Court is concerned with quality and not the quantity of evidence necessary for proving or disproving a fact. Generally speaking, oral testimony may be classified into three categories, namely: (1) wholly reliable, (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. In the first category the court may acquit or convict on the testimony of a single witness, if it found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category the court has equally no difficulty in coming to its conclusion. It is in the third category of cases that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial…….

39. On the conspectus of above consideration, we are of the opinion that prosecution has not succeeded in proving the guilt of accused appellant beyond reasonable doubt on the basis of evidence led by it.

40. For the reasons recorded above, this appeal succeeds and is allowed. The accused appellant is held entitled to the benefit of doubt and consequently, the judgment and order dated 21/22.6.2002, passed by the Additional Sessions Judge (FTC-4),

Firozabad in Sessions Trial No. 157 of 1997, State Vs. Rakesh and others; whereby the appellant Suresh has been convicted under section 302 IPC in Case Crime No.509/1995, Police Station Shikohabad, District Firozabad and sentenced to rigorous life imprisonment alongwith fine of Rs. 1000/- and on failure to pay the fine to undergo six months additional imprisonment, is set aside.

41. The accused appellant Suresh since is already on bail, his bail bond and sureties shall stand discharged and he shall be set at liberty, unless he is wanted in any other case subject to compliance of Section 437A Cr.P.C.

42. We also record our appreciation for the *pro bono* services rendered by Sri Saghir Ahmad, learned Senior Counsel, who has appeared as Amicus Curiae for the appellant. Sri Raghib Ali, Advocate, who has assisted the senior counsel shall however be entitled to his fee from the High Court Legal Service Authority.

Order Date:- 20.10.2022
Ranjeet Sahu

(Shiv Shanker Prasad, J.) (Ashwani Kumar Mishra, J.)