2025 INSC 47

R E P O R T A B L E

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 116 OF 2011

GOVERDHAN & ANR. **...APPELLANT(S)**

VERSUS

STATE OF CHHATTISGARH **…RESPONDENT(S)**

J U D G M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

1. The present appeal has been preferred against judgement and order dated 30.11.2009 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in the Criminal Appeal No. 290/2002 whereby the High Court upheld the conviction and sentence imposed upon the present two appellants under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred as 'IPC') while setting aside the conviction of the third accused and thus, acquitting him.

2. As the two appellants are seeking reversal of the concurrent findings by two courts, the Sessions Court and the High Court, this Court has to

tread very cautiously as observed by this Court on numerous occasions including in ***Mekala Sivaiah v. State of Andhra Pradesh, (2022) 8 SCC 253*** wherein it has been held that unless the findings are perverse and rendered in ignorance of material evidence, this Court should be slow in interfering with concurring findings. Thus it was, observed in ***Mekala Sivaiah*** (supra) as follows:

> ***"15.*** *It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice.*
>
> ***16****. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact."*

In the above case, this Court, while dealing with a criminal appeal against an order of the High Court of Judicature of Andhra Pradesh upheld the conviction of the accused by the Sessions Court, and declined to interfere with the conviction.

3. Keeping the aforesaid principle in mind, this Court would proceed to decide the appeal at hand to examine whether there is some manifest error or illegality and if any grave and serious miscarriage of justice on account of misreading or ignoring material evidence has occurred in the present case. This invariably would require a proper examination of the

facts and context of the case, for which we must revisit the background facts of the case and evidence adduced.

4. It may be noted that since the State has not preferred any appeal against the acquittal of the third accused, Chintaram, the father of the two appellants, we may not burden ourselves in detail with the evidence relating to the initial conviction and the subsequent acquittal of the third accused Chintaram except those as may have ramifications for the present two appellants.

5. The case of the prosecution in brief is that on 23.09.2001, at about 7.00 am, the complainant, Santosh Kumar Mandle (PW-6), who was employed by the parents of the deceased, namely Shatrughan Sharma (PW5) and Lata Bai (PW-10), while washing utensils at the house of the deceased Suraj, heard a cry for help from Suraj. Upon hearing, he came out of the house and saw the three accused Goverdhan, Rajendra and Chintaram assaulting Suraj with an axe (tangiya) and iron pipe. Chintaram was also hitting the deceased with fists and kicks and urging his two sons, Goverdhan and Rajendra, the present appellants to kill Suraj. Santosh (PW-6) immediately informed Shatrughan Sharma (PW-5) and Smt. Lata Bai (PW-10) about the incident. Santosh also mentioned about the altercation between Chintaram and Suraj the previous night about ganja.

6. Soon, thereafter, an FIR was lodged by Santosh which was registered u/s 307 IPC vide Ex. P/12 at around 7.30 am on the same day i.e. 23.09.2001.

7. The injured Suraj was immediately rushed to the local hospital and was examined by the doctor, Dr. G.R. Agarwal (PW-1) who found as many as nine injuries on the deceased, which were as follows :

i) One contusion of 6 cm x 5 cm with active bleeding, and fracture of under beneath bone over right temporal region.

ii) One incised wound of ½ cm x ½ cm x screen deep just above right ear.

iii) One incised wound over occipital region of 5 cm x 1 cm x skin deep.

iv) One incised wound over frontal region of 4 cm x 1 cm x skin deep.

v) One incised wound of 4 cm x 1 cm x skin deep 10 cm from injury No.3.

vi) One lacerated wound over right hand of 7 cm x 3 cm x skin deep.

vii) One incised wound over left hand of 2 cm x ½ cm x skin deep.

viii) One lacerated wound over right hand of 3 cm x 2 cm x skin deep.

ix) One lacerated wound over right elbow of 3 cm x 2 cm x skin Deep. Active bleeding was present over the injury.

In view of the seriousness of the injuries, the victim was referred to the Medical College Hospital, Raipur and thereafter, shifted to MMI Hospital where he succumbed to his injuries on 25.09.2001 at about 9.22 pm. The cause of death was mentioned as coma as a result of injuries received and death was opined to be homicidal in nature. Subsequently,

charge under Section 302 IPC was added to the FIR. Necessary investigation was carried out by the Investigating Officer.

8. Based on the disclosure statement made by Goverdhan, Appellant No. 1 on the same day on 23.9.2001, two blood-stained axes were recovered at his instance from his father's room vide Ex.P/6. Appellant No. 2 Rajendra also made a disclosure statement on 23.9.2001 at about 3.45 p.m. relating to iron pipe vide Ex.P/4, and the same was recovered from his father's room vide Ex.P/5. Blood-stained soil and plain soil were recovered from the place of incident vide Ex.P/7. Blood-stained clothes were seized from Shatrughan Sharma (PW-5) vide Ex.P/10. Spot map was prepared by the Patwari (PW-8) vide Ex.P/16 as witnessed by Santosh (PW-6), Kanhaiya (PW-11) and Shailu (PW-2). Goverdhan and Rajendra were arrested on 23.9.2001 vide Exs. P/23 and P/24. Seized articles were examined by Dr. G.R. Agrawal (PW-1) vide Ex.P/2. The seized articles were sent for medical analysis. The presence of blood over two axes recovered at the instance of Goverdhan and iron pipe recovered at the instance of Rajendra, was confirmed vide Ex.P/30. The Investigating Officer (IO) recorded the statements of the witnesses under Section 161 CrPC.

9. To prove the guilt of the accused, the Prosecution examined as many as 15 witnesses. Statements of the accused were also recorded under Section 313 of the Code, where they denied the circumstances appearing against them and claimed innocence by pleading false implication in the crime in question. The accused had also produced two defence witnesses, Ramlal Yadav (DW-1) and Lakhan Lal Sahu (DW-2) to prove that the

police pressurised the mother of the deceased Suraj, Lata Bai (PW-10) to give evidence against the accused persons.

10. The Court of the Second Additional Sessions Judge, Raipur, on appreciation of the evidence before it and after hearing the parties, convicted all the three accused persons under Section 302 read with Section 34 of the IPC, and sentenced them to undergo rigorous imprisonment for life along with a fine of ₹10,000, and in default of payment of such fine, each accused was directed to undergo additional rigorous imprisonment for 3 years in terms of the judgment dated 06.03.2002.

11. In the statutory appeal preferred by the three accused persons, the High Court affirmed the conviction of the present two appellants while acquitting the third accused, Chintaram, by the impugned judgment dated 30.11.2009.

12. Before the High Court, the appellants had taken various pleas, including that the convictions were not based on cogent evidence, the sole eye witness account of Lata Bai (PW-10) was uncorroborated and wholly unreliable as her initial statement under Section 161 CrPC, was recorded belatedly after 5 days of the incident and that all the remaining non-official witnesses had turned hostile, including the Complainant (PW-10) and the father of the deceased (PW-5) who were cited to be eye-witnesses by the Prosecution, and seizure witnesses.

13. On the other hand, it was contended on behalf of the Prosecution before the High Court that there was no reason to disbelieve the testimony

of the mother of the deceased, Lata Bai (PW-10) merely because her statement was recorded belatedly as her name finds place in the FIR filed by Santosh (PW-6) which was filed within half an hour of the incident and the filing of the FIR was proved by the evidence of the hostile witness Santosh (PW-6), and there were other corroborating evidence. The Prosecution also relied on the decision of this Court in ***State of U.P. v. Satish, (2005) 3 SCC 114*** in submitting that mere delay in examination of witnesses would not be fatal if plausible and acceptable explanations are offered.

14. The High Court, after a detailed analysis of the evidence on record, repelled the contentions of the appellants and convicted them while acquitting Accused No. 3, their father, Chintaram, giving him benefit of doubt about his participation in the crime.

15. Thus, the two appellants before us are impugning the judgment passed by the High Court upholding their conviction.

16. The pleas of the appellants before us summarized as below:

(i) Since the third accused namely Chintaram, who is the father of the two appellants had been acquitted by the High Court on the same set of evidence on which the two appellants had been convicted, the two appellants should have also been acquitted on the ground of parity since there is no material difference in the nature and quality of evidence *qua* all the three accused.

(ii) That otherwise also, conviction could not have been sustained on the basis of the uncorroborated testimony of a sole eye witness, who is also an interested witness namely, Lata Bai (PW10), the mother of the deceased.

(iii) The Sessions Court had convicted the appellants primarily on the testimony of the Lata Bai (PW-10), the alleged eyewitness, though she could not have been an eye witness, as Santosh (PW-6), in his FIR mentioned that he informed about the incident to the mother and father of Suraj, which shows that Lata Bai (PW-10) only after being informed of the incident after the incident had occurred, came to know of the incident and hence, could not have seen the incident.

(iv) Further, the statement of Lata Bai (PW-10) was recorded after 5 days of the incident and the Prosecution has not explained the delay in recording her statement under Section 161 of the Code and in absence of a proper explanation, her statement is not reliable in connection with which the defence relied upon on the decision of this Court in ***State of Orissa v. Brahmananda Nanda*****,** ***(1976) 4 SCC 288*** wherein this Court held that failure to mention the names of the accused for one and half days is fatal.

(v) It was also contended that according to the Prosecution, the mother (PW-10) and father (PW-5) of the deceased were present but they made no attempt to intervene or try to rescue the victim which shows that, they did not witness the incident and hence the statement of Lata Bai is highly doubtful. In this regard, the defence had cited the

decision of this Court in ***State of Punjab v. Sucha Singh, (2003) 3 SCC 153*** wherein, it was observed by this Court that any father, worth the name, who was claiming to be present at the place of incident would not remain a mute spectator when his son is being inflicted as many as twenty-four injuries under his very nose.

(vi) It was also contended that there have been improvements, and embellishments in the testimony of Lata Bai (PW-10), thus rendering her evidence unreliable and not credible.

(vii) The appellants also have contended that almost all the non-official prosecution witnesses, except the mother, had turned hostile and had not supported the prosecution case including the informant Santosh (PW-6) and seizure witnesses, PW-2 and PW-12.

17. On the other hand, before us also, it has been contended on behalf of the Prosecution that as far as the two appellants are concerned, it can be said that the conclusion drawn by the Trial Court as well as the High Court is based on admissible and relevant evidence and as such their conviction cannot be said to be suffering from any illegality, and since there is no perversity in the finding arrived at by the two courts below, this Court ought not interfere with the judgment of the High Court.

ANALYSIS BY THIS COURT

18. In case of a crime committed, upon completion of investigation by the investigation agency, the accused are brought before the court to face trial. Under our criminal jurisprudence, the court ordinarily is not privy to

the evidence collected during the investigation by the investigation agency. After completion of the investigation, what is brought before the trial court is an array of evidence, both documentary and oral, collected by the investigating agency against the accused which are required to be marshalled and analyzed by the court to arrive at appropriate conclusions. The prosecution seeks to recreate the incident of crime before the court in sequence, based on the evidence so collected, linking the accused with the commission of crime. Such recreation of crime by the prosecution before the court is akin to putting the evidence together as in a jigsaw puzzle whereby all the relevant pieces of evidence are put together to complete the picture of the crime. The prime responsibility of the court is to see whether this jigsaw puzzle has been properly placed by the prosecution from which a clear picture emerges as to the happening of the incident with the assigned role of the accused as part of the aforesaid jigsaw puzzle. Only, thereafter, the role of the accused in perpetrating the offence can be properly ascribed and proved and accordingly, criminal liability fastened on the accused.

19. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

20. It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. In other words, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the penal code, in contradistinction to the requirement of proof based on the preponderance of probabilities as in case of civil proceedings.

21. It will be relevant to discuss, at this juncture, what is meant by "reasonable doubt". It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense as observed in ***Ramakant Rai v. Madan Rai, (2003) 12 SCC 395*** wherein it was observed as under :

> *"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."*

22. While applying this principle of proof beyond reasonable doubt the Court has to undertake a candid consideration of all the evidence in a fair

and reasonable manner as observed by this Court in ***State of Haryana v. Bhagirath (1999) 5 SCC 96*** as follows:

> *"8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression 'reasonable doubt' is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.*
>
> *9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book Wharton's Criminal Evidence (at p. 31, Vol. 1 of the 12th Edn.) as follows:*
> *'It is difficult to define the phrase "reasonable doubt". However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster case [Commonwealth v. Webster, 5 Cush 295 : 59 Mass 295 (1850)] . He says:"It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."'*
>
> *10. In the treatise The Law of Criminal Evidence authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:*
> *'The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.'*

23. The concept of reasonable doubt has to be also understood in the Indian context, keeping in mind the social reality and this principle cannot be stretched beyond a reasonable limit to avoid generating a cynical view

of law as observed by this Court in ***Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793*** as follows:

> ***"6.*** *Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent …." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago."*

24. Further, what would be the standard degree of "proof" which would be required in any particular case was also discussed in the aforesaid case of ***Ramakant Rai*** **(supra)** in the following words:

> ***"23.*** *A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to (sic) of probability amounts to "proof" is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, as learned author says : [see The Mathematics of Proof II : Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]*
>
> > *"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."*
>
> ***24.*** *……..*
>
> *……..*
>
> ***25.*** *The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was)*

in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] ."

25. At this point, it may be also relevant to mention an observation made by Lord Denning, J. in ***Miller v. Miller of Pensions (1947) 2 All ER 372, 373 H:***

> *"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the court of justice...."*

26. Thus, the requirement of law in criminal trials is not to prove the case beyond all doubt but beyond reasonable doubt and such doubt cannot be imaginary, fanciful, trivial or merely a possible doubt but a fair doubt based on reason and common sense. Hence, in the present case, if the allegations against the appellants are held proved beyond reasonable doubt, certainly conviction cannot be said to be illegal.

27. In the present case, as far as the death of the deceased is concerned, there is no dispute about the same. The appellants have not contested the case of the Prosecution that the deceased died on account of grievous injuries caused by sharp weapons. Their plea is that of ignorance of the death and also alibi, that they were in another village. As such, it may be unnecessary for us to go into detail as regards the nature of injuries received by the deceased which has been already described in the earlier part of the judgment and the cause of the injury, except for corroboration of the evidence of the sole eye witness.

28. Since the appellants have contended that the non-official prosecution witnesses, except for one, have not supported the prosecution case, it would be necessary for us to revisit the evidence and testimonies of the prosecution witnesses and to see whether appreciation of the same by the Trial Court and the High Court suffers from any material illegality.

29. For this, it may be appropriate to commence our analysis of the evidence of the complaint filed by Santosh (PW-6) which triggered the criminal process and his testimony in the court in which he resiled from his previous incriminating statement made against the appellants under Section 161 CrPC as well as the FIR.

30. Though the FIR is not a piece of substantive evidence, especially, when the Complainant, i.e., PW-6 did not fully support the contents of the FIR, yet, it cannot be totally ignored and is to be treated as a relevant circumstance if the same is proved by other prosecution witness, in this case by PW-14, the SHO who recorded the report in the form of FIR as stated to him by the complainant.

In this regard, we may profitably refer to the decision of this Court in ***Bable v. State of Chhattisgarh, (2012) 11 SCC 181*** wherein it was observed as follows:

> *"14. Once registration of the FIR is proved by the police and the same is accepted on record by the court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. The FIR, Ext. P-1, has duly been proved by the statement of PW 10, Sub-Inspector, Suresh Bhagat. According to him, he had registered the FIR upon the statement of PW 1 and it was duly signed by him. The FIR was registered and duly formed part of the*

records of the police station which were maintained in the normal course of its business and investigation. Thus, in any case, it is a settled proposition of law that the FIR by itself is not a substantive piece of evidence but it certainly is a relevant circumstance of the evidence produced by the investigating agency. Merely because PW 1 had turned hostile, it cannot be said that the FIR would lose all its relevancy and cannot be looked into for any purpose."

31. In the present case, PW-14, Ram Krishna Dubey who was the SHO of the Police Station, Newra at the relevant time testified that on 23.09.2001 he registered the FIR No. 125 of 2001 under Section 307 IPC against the three accused persons at 7:30 am on oral information of the informant Santosh Mandley (PW-6), and proved the FIR (Ex-P/12) and his signature and the signature of the informant PW-6 which was marked as 'A' to 'A' on Ex P/12. Therefore, we have no reason to doubt the filing of the FIR which stands proved by the evidence of PW-14, the SHO.

32. It is to be noted that the informant PW-6 in his testimony did not deny the filing of the FIR, though denied having mentioned the names of the accused in the FIR during his testimony. Under the circumstances, it must be considered as to how far his denial can be believed contrary to his complaint and his previous statement made under Section 161 CrPC.

33. For better appreciation, the relevant portions of the FIR registered based on the statement of Santosh, PW-6 are reproduced below:

"I am residing near to the house of Shatrughna Sharma at Shikshak Colony and work as a dishwasher in their house. It is about an incident that has occurred on 23.9.01 at about 7 A.M. As usual, when I was clearing and washing the household utensils, from outside the house I could hear the shouts "Rescue me, Rescue me" and on alerted as such, I came out of the house from my work spot and saw that Suraj was being assaulted by Govardhan, Rajendra and their father Chintaram Sahu by using Pipe, Tangia etc. due to which Suraj's body was drenched in

blood. Govardhan hit with Tangia whereas Rajendra hit Suraj's with pipe and Chintaram Sahu was kicking and giving first blows to Suraj and were instigating the other assaulters to beat Suraj to death by· abusing him meanwhile by calling the victim as "harlot's son". Immediately I informed Suraj's parents about the said incident by alerting them. Guru, Bhau's mother, and neighbouring residents have also witnessed the said incident. At 11 P.M. on the previous night, Suraj visited the house of Chintaram Sahu for asking him some Ganja Seeds where they had a quarrel there too when Chintaram has asked him why he visited his house for procuring Ganja. In the attack upon· Suraj that has occurred in the morning Suraj suffered serious injuries on head, both his hands, on the eyes which bleed too, thereby Suraj has become unconscious after which I am reporting this matter to you and request you to take necessary proceeding further."

34. From the aforesaid Complaint/FIR, it can be inferred that the informant who was examined by the prosecution as PW-6 would be an eyewitness. However, during the trial, he resiled from his narration and turned hostile by not mentioning the names of any of the three accused in his testimony though he had specified them as the assailants in the FIR.

35. Since PW-6, who was declared hostile is vital to understanding of the real picture that unfolded before the trial court, it may be appropriate to reproduce the relevant portions of the same as per records as follows:

" 1. I know all the three members of the accused party present before me in this Court. Of them, one person's name is known to me as Chintaram and the other two are his sons, but I don't know their names .. I am not literate. I am staying in the house of Shatrughna Sharma _since past 2 -.2.5 years. I know Suraj, he is 1 - 2 years elder to me. It's about an incident that occurred before about three months back. It was about 7 A.M. on that day. I was engaged in dish washing at that time. In that particular house where I was washing the dishes at the relevant house of which the residents are 'papa' Shatrughna Sharma, 'mummy' Lata Sharma,'sister' Anju Sharma. When I was thus engaged in washing dishes of the said hold, these residents of the said house were sleeping. It that time, suddenly I heard the shouts "Rescue me, Rescue me", I thought that Suraj is calling from outside and went outside, but could not see anybody present there, but Suraj was only

lying on the ground flat. Then I went near him and saw that he was lying there unconscious. His temple and back portion of the head had injuries and blood was even scattered on the ground.

2. It is correct to say that I have reported the matter in the Police Station and got it recorded in writing there. The report got dictated by me is marked Ex. P-12. On the said report my signature is 'A to A'. The incident narrated to the police was told to them as seen by me. The police too recorded my statement. Although I am not a literate, but I know to write my signature. Whatever I knew, I have informed the same to the police."

(emphasis added)

Because of the aforesaid discrepant testimony before the trial court where he omitted to mention the presence of any of the accused/appellants as the assailants, PW-6 was declared hostile by the Prosecution.

36. We will also reproduce the remaining part of the testimony of PW-6 in the course of the cross-examination as recorded which will indicate the nature of his evidence which are as follows:

"*In the 'B to B' part of my police report Ex. P-12 I have not told them "I came out and saw ..... Killed him". I have also dictated the police in my said report that the said incidence has also been witnessed by Bhuru Bai's mother and neighborhood residents. In my Police Station I have not said that in the night at 11 o'clock Suraj went to the house of Chintaram to ask for ganja seeds regarding which Chintaram came to the house of Suraj and indulged in a brawl with him. But if in Ex. P-12, if it has not been mentioned the 'C to C' portion - "In the night, Suraj ..... why went to ask Ganja" has not been said to the police, but I do not know the reason for the police mentioning as such in Ex. P-12.*

4. In my police report, I have not told them that when went out of the house I saw Suraj was being beaten by the accused party members with pipe, tangiya. Ex. P-8 map too contains my signature. I have showed the place where Suraj was found lying to the Patwari. It is correct to say that on either sides of the road houses exist in Shikshak Colony.

5. It is correct to say that the houses of Shatrughan Sharma, Ram Kumar Sahu, Govardhan Sahu, Ramesh Kumar Varma and Pramila

Pandey exist adjoining each other. It is· also correct to say that all these houses exist within a circumference of 30 - 40 foot. The distance between the place where I was washing the dishes and where the victim Suraj fell down was approximately 30 - 35 feet. It is also correct to say that if one shouts from the very spot where Suraj's body was lying, the 'call' can be heard at the house of Shatrughan Sharma. After I started shouting, the neighbors woke-up.

6. In my Police station Ex. P-12, how police could write about the assault related matter of Suraj is not known to me or I do not even know the reason why they have written as such. On being persuaded the police, I put my signature· on 'A to A' part of Ex. P-12. I am not a literate, but still able to put my own signature. It is wrong to say that whatever I narrated to the police have been recorded by them as it is. I have not informed the police that the accused party members have assaulted Suraj. I can't give any reason for the action of the Police who wrote like that on this own in Ex. P-12 as I do not know to read what they have written in it except putting my own signature. A copy of my report has not been issued to me by -the Police. The police have also not read over the contents of my report back to me. I have not come to know only later that the brawl of Suraj occurred with the accused party members due to hearsay discussions going in our village. The accused party members too stay at a very short distance from the house of Shatrughan Sharma. The accused Chintaram never came to or visited the house of Shatrughan Sharma for Ganja usage. Not even to Suraj too.

8. It. is wrong to say that in order to protect the accused persons, I am not deposing correctly before the Court.

(emphasis added)

37. From the above, the following important aspects of the evidence of PW-6 emerge :

(a) In paragraph no. 2 of his evidence in the cross examination PW-6 categorically states that, it is correct to say that he had reported the matter at the Police Station and got it recorded in writing there and also proved it which was marked as Ex. P/12 (FIR). He admitted the signature on Ex P/12 as his and he also testified that the incident was narrated to the police as seen by him. He also states that it was mentioned in the report that the

incident was seen by Bhuri Bai and other passers-by. Thus, filing of the FIR by PW-6 is proved, though there is some controversy about its actual contents.

(b) It may be also noted that when asked, PW-6 merely states that he cannot tell the reason as to how the statement in respect of causing of assault to Suraj was recorded by the police in his statement in Ex P/12 and states that he had not stated the fact of assault by the appellants. From this, it is clear that he did not allege any coercion or threat meted out by the police to him to implicate the appellants falsely by naming them in the FIR, as alleged by some other witness (PW-2). Shailu, PW-2 who was produced by the Prosecution as a seizure memo witness to Ex-P/3 had claimed that the police obtained his signature by threatening him. As far as putting his signature on the FIR is concerned, he states that he was persuaded to do so. Thus, there can be no inference of wrongdoing or coercion by the police, if the police asked him to put his signature on the complaint, as the complainant is required to put the signature if present in the police station. After all it is not a statement recorded under Section 161 CrPC which does not require signature to be put, but the first information report is expected to be signed by the informant.

(c) PW-6 also states that if anyone shouts from the very spot where Suraj's body was lying, the 'call' can be heard at the house of Shatrughan Sharma and as he shouted, on the day of the incident, the neighbours woke up. This indicates that when the incident happened, people were alerted. Hence, it was very natural for the mother of the victim, Lata Bai (PW-10) who was already in the house, being alerted and to witness the incident.

(d) PW-6 also stated that he came to know only later that a brawl occurred between Suraj and the accused party due to hearsay discussions going on in the village. He admitted that the accused persons were staying at a very short distance from the house of the deceased. Even if it is assumed that he did not know the identity of the assailants and came to know from the talk in the village about the involvement of the accused, the fact that there was no talk of involvement of others who were not the appellants assumes significance. The fact that there was no discussion of involvement of persons other than the appellants speaks volumes about what had happened. Further, no defence witness was produced from the village about the absence of the accused from the village on the fateful day or their non involvement in the incident. There was no witness categorically stating that the accused persons were not the assailants. The non official prosecution witnesses merely feigned ignorance of this incident. We are, however, not suggesting that merely because no one came forward to testify in defence of the accused, it should go against them, inasmuch as the onus is always on the prosecution to prove the charge and not the other way round. However, this is a circumstance which does not diminish the credibility of the eyewitness account of Lata Bai (PW-10) or prejudices the prosecution case.

(e) Thus, in our view, during the cross-examination, even if the PW-6 had denied mentioning the names of the appellants to the police, it will be difficult to believe that he did not mention their names to the police when he himself stated that he informed the police what he saw and the police

recorded the same in the FIR. We find it hard to believe that the police somehow wrote the names of the appellants in the FIR on their own within such a short period of the occurrence by falsely implicating the appellants. The incident happened at about 7 am as mentioned in the FIR and the complaint was lodged at 7:30 am within half an hour of the incident on the basis of which the FIR was registered. Apparently, there was also a talk in the village of the assault by the appellants as also stated by PW-6.

38. From the above discussion, we have no reason to question the reliance placed on the FIR (Ex-P/12) by the trial court as well as the High Court as corroborating the prosecution case.

39. As discussed above, since the complainant (PW-6) who filed the FIR was initially projected as the eye witness but later turned hostile during the trial and it is only Lata Bai (PW-10) who claims to be the eye witness, it would be necessary to examine the evidence of Lata Bai (PW-10), as the prosecution case and the conviction by the Sessions Court and High Court are primarily based on her account.

40. PW-10, Lata Bai is the mother of the deceased who was an eye witness as per the Prosecution. If it is established that this eye-witness testimony is credible and is corroborated by the other evidence on record as held by the trial court as well as the High Court, the conviction of the appellants cannot be said to be illegal and would not warrant interference from this Court. On the other hand, if her evidence is found to be not credible and not reliable as contended on behalf of the appellants, they would certainly be entitled to the benefit of doubt and would warrant

reversing the decision of the courts below. Therefore, it is necessary to examine the evidence of the PW 10 in more detail.

41. PW-10, Lata Bai deposed to have witnessed the three accused including the present appellants assaulting the deceased, her son, on the fateful day as narrated below:

> *"I recognize all the three accused present in the court. Name of old man is Chintaram and the name of two sons are Govardhan and Raju. Accused persons reside at some distance from my house. Suraj was my son, he was running small shop from the house. It was incident of Sunday at 7:00 O'clock in the morning on 23 September. I was standing near the door with broom and my husband Shatrughan Sharma and daughter Anju Sharma were sleeping. My servant Santosh was cleaning utensil near the door of house. Santosh and Suraj went outside for excretion and come back from there. Suraj asked me to get the tea ready, he said that I am coming from Verma's house. After 5 minute son of Verma came to me in my house and told that brother Suraj is sitting with father and has demanded Chilam, then the boy take Chilam and went away. After some time the same boy come to return the Chilam. Then after 10 minutes heard the voice of Suraj calling 'papa'. My servant Santosh went outside the house and came inwards in a disturbed way and stated that they killed brother Suraj. I immediately came out with broom, Govardhan, Chinta and Raju, all three were causing attack over my son. Chintaram was armed with Pipe one accused was armed with small Axe and one with Adze. All three were assaulting Suraj and he was lying on earth. I went inside the house calling my husband. I got awaken my husband by pulling his hand that they had killed Suraj. When I and my husband reached near Suraj then all three accused person fled away after assaulting him. All three accused were saying "kill-kill".*

42. She also stated that she used to visit the house of the appellants quite frequently but was not aware of occurrence of any fight involving her husband or her son with the appellants. She also stated that her husband was already scared as soon as he went out and he told her to go to the police station and accordingly, she went to the police station. In the meantime,

the appellants Rajendra and Govardhan too came to the police station and on seeing them she informed the police that these two persons had killed her son and these two also informed the police that they had come there after killing Suraj. Then the police detained both of them at the police station. Thereafter, the police accompanied her back to the Shikshak Colony, and with the assistance of police, she immediately took her injured son to the Government Hospital, Tilda on a rickshaw where he was given treatment and later was advised to be taken to Specialist Hospital at Mekahari.

43. She also deposed that when Suraj shouted for help, she came out and saw that many of her neighbours were already present at the place of the incident namely Verma, Shyam Bai, Bhoori, Bhau, Govardhan alias Bhuru, Neelu, Kumari etc. and it was Verma (PW-9) who advised her to take her injured son immediately to the hospital. She then narrated how she took Suraj to the Government Hospital and then to the MMI Hospital for his treatment and she was present throughout the treatment till he expired. She was also present during the preparation of panchnama of the dead body.

44. Since Lata Bai (PW-10) testified as the eye witness to the assault and had given a detailed account of the incident, she was subjected to a lengthy cross-examination by the defence to discredit her evidence. It is therefore, of utmost importance that her evidence be analysed minutely to ascertain whether the same is credible and trustworthy, which the defence has strenuously sought to project as such.

45. A sustained endeavour was made by the defence counsel to establish that the deceased son of the PW-10 had a criminal background having been involved in numerous acts of brawls and hooliganism because of which he earned the enmity of many, thus suggesting that he could be a victim of retaliation or vengeance of his other enemies but not of the appellants.

46. During the cross examination of PW-10, by way of suggestion there was a specific insinuation that the deceased had a quarrel with another neighbour, Verma (PW-9) the previous day and it was Verma's family who had assaulted the deceased near the house of Verma. We shall refer to the testimony of the said Verma (PW-9) at a later stage.

47. The following aspects of the statement of the PW-10 during the cross-examination, deserve to be noticed.

(i) When asked whether the neighbours too had heard her son's distress call, she stated,

> *"I am also not sure whether they have heard the instigational calls of Chintaram who said "Beat him! Kill him" as my attention was upon son who was getting beaten at the relevant time I could not make any other observation in the surrounding keenly. I rushed out, saw him, then again rushed back inside and woke my husband, when any son was being beaten when I saw him, he has already fallen on the ground with his face too facing the ground.*

(ii) She mentioned about the delayed response of her husband to the incident and her anger at her husband for not responding promptly on her urging to come out and abusing him as a "dog".

(iii) She stated that she had also gone to the police station and informed that the accused Goverdhan and Rajendra had assaulted

her son and when they came to the Police Station, she slapped one of them in the police station.

(iv) She also stated that she did not inform the police that the accused party held weapons such as pipe, basoola and tangia as the police did not give any opportunity to tell all these nor did they enquire from her. She also states that police did not make a formal enquiry from her as she was in a state of shock.

(v) Interestingly, when a suggestion was made on behalf of the appellants during the cross-examination that police told her in the police station when she went to inform them that the report will be recorded later and they should visit to spot first, she admitted it to be correct.

(vi) She reiterates that she had seen with her own eyes the appellants fleeing away from the spot after assaulting Suraj.

(vii) She admits to have met and talked to Vaishnav, ASI (PW-15) outside the courtroom but denied her being pressured by him to give a statement as per their dictation that she did not see anybody assaulting Suraj.

48. The grounds for questioning the credibility and reliability of the evidence of the Lata Bai, PW-10 by the appellants may be stated below: -

(a) Her statement was recorded very belatedly after 5 days on 28.09.2001 after the incident which occurred on 23.09.2001 giving scope for fabrication.

(b) There are material contradictions in the statements made before the police and the court.

(c) There are improvements, and embellishments in her testimony before the court over the statement, recorded during the investigation.

(d) Her presence at the place of occurrence is doubtful as she is an interested witness who is not supported even by her own husband (PW5) who was staying with her at the time of the incident.

(e) Her testimony is contradictory to the testimony of her husband who also was present in the house when the incident occurred, who apparently did not see the appellants assaulting their son.

(f) The name of Lata Bai was not mentioned as an eye-witness in the complaint/FIR, which would indicate that she was not an eyewitness.

49. It goes without saying that to be an eyewitness, the witness must have been at the place of occurrence or in the vicinity within the range of visibility when the incident occurred.

50. If we critically examine the other evidence on record, it cannot be said that Lata Bai (PW-10) did not see the incident.

For this, we will first refer to the evidence of Santosh (PW-6). Even though Santosh (PW-6) had claimed during his court testimony that he did not see who the assailants were, yet, in the cross-examination he specifically stated that it is true that the information of the incident was given immediately by him to the mother (PW-10) and father (PW-5) of Suraj. Therefore, the presence of Lata Bai near the place of occurrence cannot be doubted. It is to be noted that in the site map of the place of occurrence (Ex/16) it is mentioned that the body of the victim was found

very near about 21ft on the lane opposite the house of the deceased. Thus, it cannot be said that it was impossible on her part to have witnessed the incident. PW-10 is not a chance witness but a natural witness. She did not suddenly appear at the place of occurrence where she was not expected to be present.

If the presence of Lata Bai (PW-10) at the place of occurrence cannot be doubted, the next consideration will be whether she had witnessed the incident when the appellants assaulted Suraj.

Therefore, the critical question is whether Lata Bai PW-10 saw the incident as claimed by her which has been questioned by the appellants.

51. As we proceed to examine this crucial aspect, it may be apposite to keep in mind certain observations made by this Court relating to discrepancies in the account of eye witnesses.

In ***Leela Ram (Dead) through Duli Chand v. State of Haryana, (1999) 9 SCC 525*** it was observed as follows:

> *"9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105]. In para 10 of the Report, this Court observed : (SCC pp. 514-15)*
>
> > *'10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read*

as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.'

10. In a very recent decision in Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] this Court observed : (SCC p. 656, para 24)

'24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

This Court further observed : (SCC pp. 656-57, paras 25-27)

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for

confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

*"**155.Impeaching credit of witness**.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—*

*(1)-(2) ****

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231]).'"

52. Further, this Court also cautioned about attaching too much importance on minor discrepancies of the evidence of the witnesses in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217*** as follows:

"5. ... We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel

for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

> *(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 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 takes place in rapid succession or in a short 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 the 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 subconscious 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."*

53. To the same effect it was also observed in ***Appabhai v. State of Gujarat (1988) Supp SCC 241*** as follows:

> *"13. ... The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do*

not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] observed : [SCC p. 756, para 8 : SCC (Cri) p. 824, para 8]

> *'8. ... This Court has held that falsus in uno, falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered....'"*

54. We must also remember that the scene of the crime was in a rural area and the witness being rustic, their evidence has to be appreciated in the light of the behavioral pattern in the rural environment. In this regard, we may refer to the decision of this Court in ***Shivaji Sahebrao Bobade v. State of Maharashtra, (supra)*** wherein it was held that:

"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 naiveté and clever equivocation, manipulated conformity and ingenious inveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety 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."

55. This Court also reminded that while dealing with the evidence of witnesses who are rustic, because of minor inconsistencies, the evidence should not be ignored. It was held in in ***Prabhu Dayal v. State of Rajasthan*, *(2018) 8 SCC 127*** wherein dealing with witnesses from rustic background it was observed as follows;

"18. *It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in State of U.P. v. M.K. Anthony [State of U.P. v. M.K. Anthony, (1985) 1 SCC 505 : 1985 SCC (Cri) 105], held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows : (SCC p. 514-15, para 10)*

> *"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier*

evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

(emphasis supplied)

19. *……..*

20. *The Court can separate the truth from the false statements in the witnesses' testimony. In Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , this Court held as follows : (SCC p. 534, para 12)*

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

> ***21.*** *Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] : (SCC p. 392, para 15)*
>
> *"15. To the same effect is the decision in State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and Lehna v. State of Haryana [Lehna v. State of Haryana, (2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded."*

56. Keeping the aforesaid observations of this Court in mind, we will examine the evidence of the mother of the deceased, Lata Bai, PW-10. The High Court had meticulously examined the evidence of PW-10 before coming to the conclusion that her evidence is reliable and credible.

57. Much emphasis was laid on the plea of delayed recording of the statement of PW-10 by the defence, which was duly considered by the High Court. The High Court observed that the Investigating Officer (IO) was not questioned as to why there was a delay in the examination of the witness, failing which the defence cannot gain any advantage therefrom.

In this regard, we may refer to the decision of this Court in the ***State of U.P. v. Satish*, *(supra)***, wherein it was held that,

> ***"18.*** *As regards delayed examination of certain witnesses, this Court in several decisions has held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. (See Ranbir v. State of Punjab [(1973) 2 SCC 444 : 1973 SCC (Cri) 858 : AIR 1973 SC 1409] , Bodhraj v. State of J&K [(2002) 8 SCC 45 : 2003 SCC (Cri) 201] and Banti v. State of M.P. [(2004) 1 SCC 414 : 2004 SCC (Cri) 294])*
>
> ***19. ……...***
>
> ***20.*** *It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused hhas to be tested by the court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses."*

58. In the present case, we have also noted that, no such question was asked by the defence from the IO about the delayed recording of the statement of PW-10. The witness was also not asked about it, which would have afforded an opportunity to the witness to explain the reason for such a delayed recording of her evidence. Hence, such a plea could not be taken now to discredit PW-10.

Moreover, what we have noticed, as also observed by the High Court is that PW-10 being the mother and on seeing the serious condition of her

injured son was more concerned about his well-being and survival and rushed to the Police Station for informing the police about the incident, and thereafter, she immediately went to the government hospital taking her injured son and thereafter to other specialist hospitals for treatment. She was throughout with the injured son for his treatment till he succumbed to the injuries. Thus, she was busy in getting proper treatment of her injured son and was not in the village till she returned after the death of her son and she was present also when the post-mortem examination was conducted. Therefore, if PW-10 was preoccupied with the treatment of her son soon after the incident and her statement under Section 161 CrPC could not be recorded earlier, it could not render her evidence untrustworthy, more so when her presence in the house when the incident occurred was proved by the evidence of PW-6, the informant, who is not a member of the family of the deceased.

59. PW-10 claimed that she had rushed to the Police Station to inform about the incident and the police told her that they would go to the place of occurrence first and would later record her evidence. That she went to the Police Station is also supported by the evidence of her husband (PW-5), who testified that after he and his wife (PW-10) came out of the house and saw their injured son, he immediately sent his wife to the police station. It may be also noted that the defence did not cross examine PW-5 at all including on this aspect, perhaps in view of his non mentioning the names of the accused as assailants, because of which he was declared a hostile witness by the court at the instance of the Prosecution.

As mentioned above, PW-10 agreed to the suggestion made on behalf of the appellants during the cross-examination that police told her in the police station when she went to inform them that the report will be recorded later and they should visit to spot first. Her response was in the following words:

> *"It is true to say that police person asked me that your report will be recorded later, let's visit the spot first."*

This suggestion from the defence neutralises the very plea of the defence on the issue of delay in recording the statement of PW-10. This is also natural for the reason that since PW-10, the mother was in a state of shock and was more interested in the treatment of her son, if the police did not record the statement of PW-10 at that time, it could not be said to be abnormal. We are of the view that under the circumstances, the delay in recording the statement of PW-10 under Section 161 CrPC can not be said to be a deliberate act on the part of the Investigating Officer to manipulate or fabricate evidence to falsely implicate innocent persons. Accordingly, we are of the view that the decision in ***State of Orissa vs. Brahmanada Nanda*** (supra) relied upon by the appellants is not applicable in the present case. In the said case, the High Court as well as this Court did not find the evidence of the sole eye witness trustworthy for not mentioning the name of the accused for one and a half day and declined to accept her plea of fear of the accused by not naming him as the police and her nephew had already arrived at the scene and that the accused was not known to be a gangster or a confirmed criminal of whom people would be afraid. In the said case this Court also found that there were many other reasons assigned by the High Court in not believing the evidence of the said sole witness.

60. We have also considered the evidence of Shatrughan Sharma, PW-5, the father of the deceased who denied having seen the appellants assaulting his son on whose evidence, the defence has harped much to contend that he being the father of the victim did not support his wife's evidence. He stated in the examination-in-chief that on the fateful day when he was sleeping he was woken up by his wife, Lata Bai (PW-10) informing that there was a quarrel outside the house and when he came out he saw blood spread everywhere and his son drenched in blood and he then immediately sent his wife to the police station. He also saw some other neighbours standing near the body of his son. During the cross examination he denied having mentioned the names of the appellants in his statement recorded under Section 161 CrPC.

61. What is to be noted is that his wife Lata Bai (PW-10) stated that after seeing the assault of her son by the appellants, she went inside the house and woke up her husband and came out pulling his hands and when both of them reached the place of occurrence, all the assailants had fled.

It may be also noted that PW-10 in the cross-examination stated that after her husband was woken up, he rather than rush to the scene, was looking for his shoes to which the PW-10 abused him calling him a "dog" and only then he came out in his underwear. Thus, from this statement of PW-10, it can be clearly inferred that PW-5 could not have seen the assailants. Thus, there is no question of his testimony being contrary to the evidence of PW-10, since PW-5 did not witness the assault. Thus, the evidence of PW-5 does not contradict the evidence of PW-10 and supports her on certain critical areas as discussed above.

62. What we have also noted is that Shatrughan Sharma, PW-5 in the cross examination clearly admits his close association with the father of the appellants, Chintaram on account of smoking of ganja. PW-5 admits that he used to consume ganja and liquor. He also stated that he and Chintaram, the acquitted father of the appellants, were regular smokers of ganja.

It may be also noted that in the cross-examination by the Prosecution after PW-5 was declared a hostile witness, he stated (as per the case court records) as follows:

> *" (8) ..... It is true that I and Chintaram had smoked Ganja several times together. It is true that I also came to the court yesterday. It is true that I and Chintaram hugged each other. It is also true that all the three accused obeisance my leg. ....."*

Thus, in spite of denials to the suggestion that due to old friendship he was not giving statements against accused persons, it is apparent that he was won over, as otherwise, there was no reason for the accused to be so warm to him and all the three accused pay obeisance to him by touching his feet.

63. If we examine the evidence of PW-10 in the light of other evidence brought on record and proved by the Prosecution, it can be seen that the evidence of PW-10 stands corroborated and hence, we have no reason to disbelieve the evidence of PW-10.

64. We have taken note of the fact that the High Court had noticed that the victim Suraj was examined by Dr G.R. Agarwal (PW-1) on 23.9.2001 at about 8 a.m. which is about one hour after the assault vide Ex.P/1 and in

the said document, the names of the two appellants, Goverdhan and Rajendra were mentioned as the ones who had assaulted the victim by axe and iron pipe but the name of the third accused Chintaram was not mentioned. Though mere mention of the names of the two appellants in the said medical record may not be the basis to implicate the two appellants, yet, it provides the circumstances in which the victim came to be brought to the hospital and thus, lends credence to the truthfulness of the contents of the FIR in which the appellants were named as the assailants.

65. The noting made by the doctor on the medical record that the appellants, Goverdhan and Rajendra were the ones who assaulted the victims can partake the character of hearsay evidence, yet, this was recorded within about half an hour of the filing of the FIR in the police station and within about one hour of incident and is directly related to the incident. Though the medical report was not made immediately after the incident, it was made without much time gap and it was made almost contemporaneously with the incident. Further, the medical record was in conformity with the FIR filed by the complainant, PW-6, thus corroborating the contents of the FIR in which the appellants were named as the assailants. In our opinion, since the FIR was filed soon after the incident occurred and the names of the appellants were again mentioned in the medical record as the assailants within a very short span of time, there was hardly any scope for fabrication of evidence and falsely implicating the appellants in the case, as they were already named in the FIR. The matter would have been otherwise, if the names of the appellants were not mentioned in the FIR but subsequently mentioned in the medical record in

which event, a valid plea could be taken by the defence that it was an afterthought. However, such is not the situation in the present case.

66. We must also keep in mind that in a trial, the assessment of evidence cannot be made in a technical manner and the realities of life must be kept in mind for arriving at the truth as observed by this Court in ***State of H.P. v. Lekh Raj (2000) 1 SCC 247*** as follows;

> *"10. The High Court appears to have adopted a technical approach in disposing of the appeal filed by the respondents. This Court in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886] held: (SCC pp. 285-86, para 23)*
>
> *'23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.'*
>
> *The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused.*

The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilisation and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind."

67. As regards the seizure of the weapons of crime, the Investigating Officer (IO) Ram Kumar Vaishnav, (PW-15) testified that at the instance of the Appellant No. 1 (Goverdhan), the small axe was recovered and the Panchanama was prepared (Ex-P/3). Similarly, one iron pipe was recovered at the instance of Appellant No.2, Rajendra and the Panchanama (Ex-P/5) was prepared. Both the seizures were witnessed by Shailu (PW-2) and Kanhaiya (PW-12). Though the IO (PW-15) proved his signature and preparation of the aforesaid two seizure memos, both the witnesses turned hostile claiming that they merely put their signatures at the instance of the police and they put their signatures on blank forms.

What is important to note is that these two witnesses, however, did admit putting their signatures on the seizure memos. What they pleaded is that they did so at the instance/threat of the police and they did not know what was written on these documents. They also stated that the seizure was not preceded by any enquiry by the police from the accused persons.

It is also to be noted that while both the witnesses, Shailu (PW-2) and Kanhaiya (PW-11) were from the same village, Tilda where the murder took place and both of them claimed that they had no knowledge of this case, both of them admitted that they knew the appellants. Shailu (PW-2) stated that he knew the appellants and they resided at some

distance from his house. In the cross-examination, Shailu, PW-2 claims that he had no knowledge of the case.

Kanhaiya, PW-11, the other seizure witness, admits that the seizure memo was prepared in his presence, and the police asked him to put his signature on the same and admitted his signature, though he also stated that no seizure was made from the Appellant Rajendra in his presence. He also states that the police seized the small axe and showed it to both the witnesses and police informed that the axe was found in the house of the appellants.

In his cross-examination by the Prosecution after being declared hostile, PW-11, admitted that he used to smoke ganja with the appellants often and whenever he used to pass through the Teachers Colony, he used to stay with Chintaram, the acquitted accused and father of the two appellants for smoking ganja and admitted being familiar with Chintaram. He, however, denied the suggestion of the Prosecution that he was not telling the truth as he was well acquainted with Chintaram.

68. Thus, what emerges from the above is that both the seizure witnesses have not denied their signatures on the seizure memo and admitted putting their signatures. PW-11 even goes to the extent that the police showed to them a small axe which the police said was seized from the house of the appellants.

Though both the witnesses have denied having any knowledge of the actual recovery of the weapons at the instance of the appellants, their denials do not appear convincing. However, since the IO of the case, PW-

15 had proved the said seizure memos, we find no reason to hold that there was no seizure that was affected merely because the two seizure witnesses had turned hostile.

It may be noted that the axes were seized on the same day of the incident on 23.0.2001 at 4:45 pm and these were blood stained as recorded in Ex-P/6 and also mentioned by Dr. G.R. Agarwal, PW-1 while forwarding these items for chemical examination.

69. Even assuming that the seizure of the weapons was effected without meticulously following the procedures and thus doubtful, in the view of the medical evidence which clearly showed that the deceased died because of the injuries caused by sharp weapon which was seen by a direct eye witness, namely, Lata Bai (PW-10), in our opinion, it would not prejudice the prosecution case. The doctor (PW-1) who examined the victim testified that he examined the weapons of crime on 29.9.2001 which were brought to him by the police in a sealed packet and he opined that the injuries no. (ii), (iii), (iv), (vi) and (vii) may be caused by the sharp edge of an axe and injuries no. (i), (vi), (viii) and (ix) may be caused by the iron pipe. There was no cross examination of this witness PW-1 by the defence on this crucial medical evidence. Thus, this medical opinion remained unshaken, which supports the prosecution case and evidence of Lata Bai, PW-10.

70. It is now well settled that non recovery of the weapon of crime is not fatal to the prosecution case and is not *sine qua non* for conviction, if there are direct reliable witnesses as held in ***Rakesh v. State of U.P., (2021) 7 SCC 188,*** wherein it was observed as follows:

> ***"12.*** *Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW 1 and PW 2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A-1 Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr Santosh Kumar, PW 5. Injury 1 is by gunshot. Therefore, it is not possible to reject the credible ocular evidence of PW 1 and PW 2 — eyewitnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW 1 and PW 2 that A-1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW 2 and PW 5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW 1 and PW 2.*
>
> *(emphasis added)*

71. In this context one may also refer to the decision of this Court in ***Karamjit Singh v. State (Delhi Admn.), (2003) 5 SCC 291*** in which it was observed that the testimony of the police personnel involved in recovery of articles need not be disbelieved and testimony of police personnel is to be treated similarly as testimony of any other witness. It was held that,

> ***"8.*** *Shri Sinha, learned Senior Counsel for the appellant, has vehemently urged that all the witnesses of recovery examined by the prosecution are police personnel and in the absence of any public witness, their testimony alone should not be held sufficient for sustaining the conviction of the appellant. In our opinion the contention raised is too broadly stated and cannot be accepted. The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as*

much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down. ……."

(emphasis added)

Thus, we do not find any reason to doubt the testimony of the police/I.O. (PW-15).

72. It is to be noted that the plea of the defence is of total denial. The appellants also claimed complete ignorance of the incident. They have taken the plea that they were not in the village during the time of the incident and had gone on 22.9.2001 to another place at Nayapara, to attend the housewarming ceremony of one Champa Lal Sahu on 23.09.2001 and returned only in the evening of 23.09.2001. However, the defence did not lead any evidence about the plea of alibi.

The appellants also sought to put the blame of assault to Ramesh Kumar Verma, PW-9 which miserably failed.

They also took the plea that the prosecution witnesses, more particularly PW-10, were coerced by the police to falsely implicate the accused in support of which the appellants had adduced two defence witnesses. However, we find their evidence unconvincing as also held by the High Court.

73. We have also noted the testimonies of other neighbours, which we consider to be highly unnatural and untruthful and they appear to be reluctant to come up with the truth in order to protect the appellants.

Shyam Bai, PW-3, who was mentioned by PW-6, the complainant and both the husband and wife, PW-5 and PW-10 (parents of the deceased) to have been present at the place of occurrence feigned ignorance of the cause of the death of Suraj and did not support her previous statement recorded under Section 161CrPC where she had named the appellants as the assailants. In the cross -examination, she stated that when she came after bath, she saw the mother and father of Suraj taking the injured in a rickshaw and saw blood on the body, but she did not ask how the injured suffered the injuries. It defies logic and appears to be contrary to human instinct and nature that when a person sees a neighbour in a seriously injured condition, no query is made about the injury. PW-3 obviously is not telling the truth.

74. Same is the case with Ramesh Kumar Verma, PW-9, in front of whose house the incident occurred and an immediate neighbour of the deceased. He was also named by both PW-5 and PW-10 to be present at the place of occurrence and at the time of occurrence. However, he categorically states that, he was having no knowledge of the incident and that he had neither seen nor heard of what happened to the victim. It is very strange and rather unbelievable that though he admitted seeing blood spread over in the corner of his garden, he did not make any query about it. He states that he read about the news of the death of a boy in the newspaper and he came to know about the injuries received by Suraj from the newspaper and that he did not have any knowledge as to who had killed Suraj. He also admits that he drinks liquor and that Chintaram used to drink liquor with him and had good terms with Chintaram till date.

Interestingly, the appellants made unsubstantiated suggestion to PW-10 that Verma (PW-9) and his family had in fact assaulted the deceased.

The only inference we can draw is that the statement of PW-9 is untrue, being highly unnatural and defying normal human instinct and behaviour and he appears to have been influenced by Chintaram because of his close acquaintance as a comrade in arms in drinking, which relationship he admitted in the cross examination.

75. Because of the unnaturalness of the testimonies of these neighbours before the court, which defy human behaviour, the reasonable inference one can draw is that these witnesses have been won over. The fact that all these witnesses had close association with Chintaram on account of consumption of ganja also clearly indicates the influence Chintraram, the acquitted father of the present two appellants may have on these witnesses.

76. However, it is also to be noted that merely because the witnesses turn hostile does not necessarily mean that their evidence has to be thrown out entirely and what is supportive of the prosecution certainly be used. In ***Gangadhar Behera v. State of Orissa (2002) 8 SCC 381***, it was observed as following:-

> *"15. To the same effect is the decision in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886] and Lehna v. State of Haryana [(2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of* falsus in uno, falsus in omnibus *(false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused,*

notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus *has no application in India and the witnesses cannot be branded as liars. The maxim* falsus in uno, falsus *in omnibus has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Ali v. State of U.P. [AIR 1957 SC 366 : 1957 Cri LJ 550]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827] .) The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and 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. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and Ugar Ahir v. State of Bihar [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of*

felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and Balaka Singh v. State of Punjab [(1975) 4 SCC 511 : 1975 SCC (Cri) 601] .) As observed by this Court in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220] . Accusations have been clearly established against the appellant-accused in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned."

77. To the same effect it was held in ***Raja v. State of Karnataka, (2016) 10 SCC 506*** as follows:

"32. That the evidence of a hostile witness in all eventualities ought not stand effaced altogether and that the same can be accepted to the extent found dependable on a careful scrutiny was reiterated by this Court in Himanshu [Himanshu v. State (NCT of Delhi), (2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] by drawing sustenance of the proposition amongst others from Khujji v. State of M.P. [Khujji v. State of M.P., (1991) 3 SCC 627 : 1991 SCC (Cri) 916] and Koli Lakhmanbhai Chanabhai v. State of Gujarat [Koli Lakhmanbhai Chanabhai v. State of Gujarat, (1999) 8 SCC 624 : 2000 SCC (Cri) 13] . It was announced that the evidence of a hostile witness remains admissible and is open

for a court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record."

78. We are also mindful of the position of law that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. However, in the present case, inspite of the untruthful and evasive testimony of the neighbours, the prosecution has been able to prove its case beyond reasonable doubt and the false plea of the appellants only strengthens the case of the prosecution.

79. There is no compelling reason or such material on record on the basis of which this Court should take the view that Lata Bai (PW-10), did not really witness the assault of the victim by the appellants. Merely because her statement under Section 161 CrPC was recorded belatedly i.e. after five days which have been duly considered by the High Court and there are some inconsistencies and embellishments in her testimony before the trial court, we are not persuaded to take the view that PW-10 cannot be an eye-witness and her testimony not credible.

PW-10 was subjected to intense and extensive cross-examination by the defence, yet her testimony could not materially be shaken, except for pointing out minor discrepancies.

No material contradiction between the statement made by her before the court and the previous statement recorded under Section 161 CrPC could be shown by the defence under Section 162 (1) and *Explanation* thereto as to render her testimony doubtful.

A careful perusal of the testimony of PW-10 shows that her narration of the incident was natural, and trustworthy.

80. The appellants had also contended that the PW-10 was an interested witness and her testimony may not be believable. In this regard, it must be noted that PW-10, the mother of the deceased though was related to the victim cannot by any stretch of imagination be said to be an interested witness. As to who is an "interested witness" and the "related witness" has been succinctly explained by this Court in the case of ***Mohd. Rojali Ali Vs. The State of Assam, (2019) 19 SCC 567,*** wherein it was held that:

> ***"13.*** *As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] ; Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] ; and Gangabhavani v. Rayapati Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]). Recently, this difference was reiterated in Ganapathiv. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , in the following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] : (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , SCC p. 555, para 14)*
>
> *"14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only*

possible eyewitness in the circumstances of a case cannot be said to be "interested"."

14. *In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, (1953) 2 SCC 36 : 1954 SCR 145 : AIR 1953 SC 364 : 1953 Cri LJ 1465] , wherein this Court observed: (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 relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. *In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. State (UT of Pondicherry) [Jayabalan v. State (UT of Pondicherry), (2010) 1 SCC 199 : (2010) 2 SCC (Cri) 966] : (SCC p. 213, para 23)*

"23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

81. As also observed by the High Court, we do not see any reason why the mother of the victim should falsely implicate the appellants without any rhyme or reason more so when apparently there was no previous animosity of the mother Lata Bai with any of the appellants.

Lata Bai, PW-10 is certainly not an interested witness even though she was related to the victim and her testimony cannot be impeached on this ground.

82. We must also remember that, while recording the testimony of Lata Bai PW-10, the trial court noted the demeanour of the witness. Section 280 of the CrPC enjoins upon the Judge to record such remarks as he thinks material respecting the demeanour of the witness while under examination since the demeanour can provide insights into the witness's truthfulness and reliability, which are critical for the court's assessment of the evidence presented, which ought not be ignored by the Appellate Court.

It was noted by the trial court in para 2 of her examination-in-chief, that the witness was crying while deposing that there were several injuries on her son's body and that he sustained grievous injuries over the right auricle and was bleeding. She stated that she then carried him on her lap with the help of the police and took him to the hospital in a rickshaw.

83. The trial court after recording the testimony of the PW-10 and on consideration of the same found her evidence trustworthy and credible. We see no reason to question the assessment about the credibility of the witness by the Trial Court which had the advantage of seeing and hearing above the witness and all other witnesses. Nothing has been brought to our notice of any serious illegality or breach of fundamental law so as to warrant taking a different view of the evidence of PW-10.

In this regard we may keep in mind the valuable observations made by this Court in ***Jagdish Singh v. Madhuri Devi*, *(2008) 10 SCC 497*** in the following words:

> ***"28.*** *At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.*
>
> ***29. ……...***
>
> ***30.*** *In Sara Veeraswami v. Talluri Narayya [(1947-48) 75 IA 252 : AIR 1949 PC 32] the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated [Quoting from Watt v. Thomas, (1947) 1 All ER 582, pp. 583 H-584 A.] : (IA p. 255)*
>
> *"... but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."*

84. In view of the above, we are of the opinion that even if there are certain embellishments and improvements and contradictions which are of minor nature, the evidence of PW-10 on the whole does appear to be consistent and we do not see any cogent reason to disbelieve her claim that

she had witnessed the incident. Thus, we are of the opinion that there appears to be no patent illegality in the view taken by the trial court and the High Court.

85. We also hold that just because the Chintaram, father of the Appellants was acquitted will not warrant their acquittal as there is sufficient and cogent material evidence against them to prove the case beyond reasonable doubt whereas the case against the acquitted Chintaram is doubtful.

Since there is no appeal against the acquittal of the father, we do not wish to go into the subsequent acquittal of Chintaram.

The High Court had noted that, on close scrutiny of the evidence on record, there is no clinching evidence of the said Chintaram taking part in the assault and his name does not figure in the Ex-P/1 which was prepared soon after the incident by the police for referring the injured to the Community Hospital, Tilda and also the evidence of PW-10 that she did not mention his presence in the police station while naming the appellants. We are of the opinion that the role of Chintaram does not come out clearly as to fasten criminal liability on him along with the appellants. Thus, the present two appellants cannot be placed at par with the case of the acquitted accused, Chintaram.

86. As regards applicability of the case of ***State of Punjab vs. Sucha Singh*** (supra) is concerned wherein this court found the inaction of the father to come to the rescue of the victim son is concerned, it is to be noted that, unlike in the said case, the evidence which has emerged is that the

father PW-5 came to the scene after the assailants appellants had fled. Hence, the question of his intervening does not arise. If the said case of ***Sucha Singh*** (supra) is to be applicable as contended by the appellant, it would mean that the father, PW-5 would have witnessed which goes against their own case.

As far as the mother PW-10 is concerned, on seeing the assault she ran inside to wake up her husband and when they came out, the assailants had fled. It cannot be considered to be highly unnatural for a woman not rushing to intervene and instead seek the help of a male member (her husband) when there were two persons with deadly weapons assaulting her.

87. In conclusion, we are of the view that, the evidence of the sole eye witness, a hapless rustic illiterate woman visited with the vicissitude and tragedy of her son being fatally assaulted by co-villagers before her own eyes**,** has withstood intensive cross examination and judicial scrutiny. She has answered the questions put to her during her cross examination with spontaneity without any jitteriness and her response was natural and not elusive and prevaricating, which all are signs of truthfulness of the witness. We, therefore, have no hesitation to hold that her testimony is trustworthy and reliable. Her evidence finds corroboration from the admissible part of the evidence of the complainant, and her husband even though they had turned hostile, and the medical evidence, evidence of the Investigating Officer and other official witnesses.

88. In the present case, we are satisfied that in the facts and circumstances as evident from the records, the Prosecution has been able to establish beyond reasonable doubt that the appellants were responsible for the death of the deceased, Suraj for which they were convicted by the trial court under Section 302 of the IPC.

89. We do not see any glaring illegality or perversity in the findings arrived at the trial court and the High Court causing any grave miscarriage of justice to the appellants.

90. However, in spite of our finding that the appellants had assaulted the deceased with deadly weapons causing the death of the deceased, we have noted that the death of the deceased was not instantaneous. He survived the brutal attack for a few days and later succumbed to his injuries. The deceased was assaulted in the morning of 23.9.2001 and died on the night of 25.9.2001.

The doctor, Dr. G. R. Agarwal, PW-1, opined that the injuries no. (i), (vi), (viii) and (ix) might be caused by the iron pipe and these were not described as grievous. On the other hand, the other injuries no. (ii), (iii), (iv), (v) and (vii) were described as grievous head injuries which might be caused by the axe. The deceased later succumbed because of the accumulated effect of these head injuries as testified by PW-13, Dr. Arvind Neralwar who conducted the post mortem examination of the body of the deceased. According to him the cause of death was coma due to head injuries. If we closely examine these injuries, it is seen that though the injuries on the head were identified as grievous, these are shown as skin

deep injuries and no particular injury was identified as being the fatal one. Since the cause of death is attributed to coma because of the head injuries and it was opined that the injuries are sufficient in ordinary course of nature to cause death, it appears that it is the cumulative effect of these head injuries.

What is also observable is that he did not succumb to the injuries immediately and he died on the third day of the incident.

It is also noticeable that the circumstances under which the assault took place and the reason for causing the injuries by the appellants and the motive behind their assault has not come out clearly. Even the sole eye witness, Lata Bai (PW-10), the mother of the deceased testified that her son was having visiting terms with the accused persons as they were residing in the same locality and she cannot tell why the quarrel occurred suddenly. It has not been established clearly that it was premeditated and the assault was preplanned with the intention to kill the deceased. Any prior enmity between the appellants and the deceased has not been established. Thus, the motive for committing the crime has not been clearly established and proved.

91. However, it is established beyond reasonable doubt that the appellants had caused the death of the deceased fully knowing that the bodily injuries caused by the appellants were likely to cause death as the appellants were armed with deadly weapons, we are inclined to convert the conviction of the appellants from Section 302 IPC to Part I of Section 304

IPC. Accordingly, we convict the appellants under Part I of Section 304 IPC.

92. Having convicted the appellants under Part I of Section 304 IPC, the next consideration is the quantum of punishment that may be imposed on them.

93. Under Part I of Section 304 IPC, whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

As per the records, the appellants have already undergone 10 years 3 months of incarceration during the trial and pendency of the appeals before the High Court and this Court.

This Court by an order dated 06.01.2012 had enlarged the appellants on bail during the pendency of this appeal and the appeal has remained pending before this Court since 2011.

94. Under the facts and circumstances discussed above, we are of the view that interest of justice will be served if the appellants are sentenced to the period already undergone by them and impose a fine of Rs.50,000/- each on the appellants, which shall be paid to the family of the deceased through his mother, namely Lata Bai (PW-10), failing which the appellants will undergo additional 6 (six) months simple imprisonment. In the event of the appellants paying the amount, as ordered above, the bail bonds shall

stand discharged. In the event of non-payment, the bail bonds shall stand discharged after undergoing the default sentence.

95. For the reasons discussed above, the appeal is partly allowed as above.

…….J.
(B. R. GAVAI)

…….J.
(K.V. VISWANATHAN)

…….J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi:
January 09, 2025.