

*

IN THE HIGH COURT OF DELHI

%

Judgment reserved on : 05.03.2009

Judgment delivered on: 18.03.2009

+

CRL.A. No.126/2001

ANURAG & ANR.

...Appellants

Through : Mr. K.B.Andley, Sr. Adv. with
Mr. M.L.Yadav and Mr. Mohit
Mathur, Advocates

versus

STATE

...Respondent

Through : Ms. Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. On 28.12.1995, at 9:00 PM the duty officer at PS Harsh Vihar recorded DD No.21, that a boy named Brijesh, resident of H.No.29, Mandoli Extension, near Nand Nagri had been stabbed with a knife.

2. Accompanied with Const. Siri Kishan PW-9, SI Jit Singh PW-20, reached the spot. Simultaneously, other police officers, namely, Inspector Rajbir Sharma PW-21 and Const. Raj Kumar PW-15, who had also received the information, reached the spot. On learning that the injured person has been removed to GTB Hospital, PW-21, PW-20 and

PW-15 proceeded to the hospital where they were informed that the injured person whose name is Brijesh (hereinafter referred to as the "Deceased") had been declared brought dead as noted in MLC Ex.PW-18/A. It may be noted that the MLC records that Brijesh had been brought to the hospital by Pyare Lal.

3. At the hospital, the police officers met Jagwati PW-2, the mother of the deceased, who claimed to have witnessed the incident. Inspector Rajbir Sharma PW-21, recorded the statement Ex.PW-2/A of Jagwati and made an endorsement Ex.PW-21/A thereon, and at around 10.20 P.M. and handed over the same to Const. Raj Kumar PW-15, for registration of an FIR. PW-15 took Ex.PW-2/A to the police station and handed over the same to SI Raj Kumar PW-19, who recorded the FIR No.645/1995, Ex.PW-19/A, at 11.20 P.M. on 28.12.95.

4. In her statement Ex.PW-2/A, Jagwati stated that she resides in Mandoli Extension with her family and is a housewife. That she is the mother of three boys and one girl. That Brijesh aged 21 years is her eldest son and works as a clerk in Tis Hazari Courts. That he was having a love affair with one Rekha, daughter of Sobraj, who resides in their neighbourhood. That around 4-5 months ago, on learning about the said affair, Sobraj and his son Anurag quarreled with her family and also threatened to kill the deceased. That despite the objections raised by the family of Rekha, the deceased and Rekha kept on exchanging love letters, which infuriated the family of Rekha. That today evening i.e. on 28.12.95, the deceased had returned home

from work. At around 8.40 P.M. under influence of liquor Sobraj started abusing them while standing on the street between their respective houses. The deceased requested Sobraj to stop the abuses. At that, Sobraj started hitting the deceased. That she tried to save the deceased, but Sobraj caught hold of the deceased from behind and asked his son to bring a knife. Thereafter, Anurag brought a knife from his house and inflicted a stab wound on the neck of the deceased. That blood started oozing from neck of the deceased. He became unconscious and fell on the ground. In the meantime, her husband and brother Sunil, came to the spot and removed the deceased, who was in an unconscious condition, to the hospital where he succumbed to his injuries. That Sobraj and his son Anurag had murdered the deceased. That many residents of the neighbourhood had witnessed the incident. That she had also sustained an injury in the said incident.

5. The MLC Ex.PW-16/A of Jagwati PW-2, records that one injury was noted on her left palm and that the said injury was caused by a blunt object.

6. Thereafter, the afore-noted police officers returned to the spot where the crime was committed. PW-21 prepared the site plan, Ex.PW-21/B, recording therein the place at point marked 'A' where the deceased was stated to have been stabbed. Blood sample earth and sample earth control were lifted from the spot and seized vide memos Ex.PW-9/B and Ex.PW-9/A respectively.

7. Since the police photographer was not available, the services of one Sunil Kumar PW-8, were obtained. PW-8 took 5 photographs being Ex.PW-8/A1 to PW-8/A5.

8. Apart from recording the statement of Jagwati PW-2, the statements of the persons who were instrumental in removing the deceased to the hospital namely, Ganga Ram PW-2, Pyare Lal PW-3, the father of the deceased and Chandan Chakravarty PW-7, were also recorded.

9. Since the deceased was declared brought dead, his body was sent to the mortuary, where Dr.L.K. Tyagi PW-17, conducted the post-mortem at 2.15 P.M. on 29.12.95 and gave his report Ex.PW-17/A, which records that an incised wound of 11 X 4.5 X 2.5 cms was present over left side and front of the neck of the deceased; that the injury had cut the left side jugular vein carotid artery; that the cause of death was haemorrhage caused by injuries to structures of neck; that the injury was caused by a sharp-edged cutting or stabbing weapon and was sufficient to cause death in the ordinary course of nature.

10. The clothes worn by the deceased were preserved. After the post-mortem the same were handed over by PW-17, to Const. Raj Kumar PW-15, who seized the same vide memo Ex.PW-15/A.

11. Since in her statement Ex.PW-2/A, made to Inspector Rajbir Sharma PW-21, Jagwati had informed that the appellants were the assailants, the police set out to apprehend the appellants.

12. Appellant Anurag (hereinafter referred to as the "Accused No.1") was apprehended on the intervening night of 29/30.12.95. He was interrogated by Inspector Rajbir Sharma PW-21, in the presence of SI Jeet Singh PW-20 and Pyare Lal PW-3, the father of the deceased. He made a disclosure statement Ex.PW-3/A confessing to his guilt and stated that he can get recovered the knife with which he had stabbed the deceased as also the T-Shirt which he was wearing at the time of the incident. Pursuant to the disclosure statement accused No.1 led the police party which inter-alia consisted of Inspector Rajbir Sharma PW-21 and SI Jeet Singh PW-20 and were accompanied by Pyare Lal PW-3, to the house of his uncle and got recovered a knife and a red colored blood-stained t-shirt from a room of the house. The knife and t-shirt so recovered were seized vide memos Ex.PW-3/D and Ex.PW-3/E respectively. PW-21 prepared the sketch Ex.PW-21/H of the said knife.

13. Appellant Sobraj (hereinafter referred to as the "Accused No.2") was apprehended at about 2 P.M. on 30.12.95.

14. The seized materials, namely, the clothes of the deceased, the T-shirt of accused No.1, the knife recovered at the instance of accused No.1 and the blood sample earth and sample earth control seized from the spot were sent to a serologist for a serological test. Vide CFSL Report Ex.PW-1/A it was opined that human blood of 'A' group was detected on the T-shirt of accused No.1, human blood was detected on the knife and blood sample earth, group whereof could not be determined.

15. Armed with the aforesaid material, a challan was filed, accusing the appellants of having murdered the deceased. Charges were framed against them for having committed offences punishable under Sections 302/34 IPC. Additionally a charge under Section 341 IPC was framed against accused No.2 for wrongfully restraining the deceased.

16. At the trial, apart from examining the police officers who were associated with the investigation of the case, Jagwati, Ganga Ram, Pyare Lal, and Chandan was examined as PW-2, PW-3 and PW-7 respectively. (It may be noted that Jagwati and Ganga Ram have both been numbered as PW-2).

17. Jagwati PW-2, the mother of the deceased, deposed same facts as she has disclosed in her statement Ex.PW-2/A recorded soon after the incident. Pertaining to the manner in which the deceased was removed to the hospital, on being cross examined, she stated that she along with Ganga Ram and Chandan had removed the deceased to the hospital in a three-wheeler scooter. She also stated that some of the love letters exchanged between the deceased and Rekha were burnt one year prior to the incident at the asking of the mother of Rekha and that some of the letters are not traceable and that she had sustained a knife injury on her left palm while trying to save the deceased from the accused persons.

18. Ganga Ram PW-2, deposed that he along with Chandan and Sunil had removed the deceased to the hospital in a three-wheeler scooter. Regarding the presence of Jagwati at the time of the removal of the deceased to the hospital, he first deposed that she was not

present at the spot but later on deposed that she might have been present at the spot and that he might not have seen her as large crowd had gathered at the spot. Regarding the time of arrival of Jagwati at the hospital, he deposed that Jagwati reached the hospital after 5-7 minutes of their (himself, Chandan and Sunil) arrival in the hospital. Regarding the presence of Pyare Lal, the father of the deceased at the time of removal of the deceased to the hospital, he deposed that he was not present at the spot at that time and had subsequently reached the hospital.

19. Pyare Lal PW-3, the father of the deceased, deposed that on 28.12.95 at about 8.30 P.M. he was returning home from his workplace when he was informed by someone that a quarrel is taking place in his street. That when he reached the corner of his street he saw accused persons running away from the street. That on walking a little ahead in the street, he found that the deceased has been stabbed. That the deceased was being lifted by his wife Jagwati, Chandan and Ganga Ram and that they were putting the deceased in a three-wheeler scooter. That Jagwati, Chandan, Ganga Ram and Sunil removed the deceased to the hospital in the said three-wheeler scooter. That he went to the hospital in a separate three-wheeler scooter.

20. Chandan Chakravarty PW-7, deposed that on 28.12.95 at around 8.30 P.M. he had come out of his house to fetch water from the hand pump when he heard a loud cry. That on turning back he saw that accused No.2 was holding the deceased from behind and

that accused No.1 was holding a blood-stained knife in his hand. That on seeing him, the two accused persons ran away from the spot. That he, with the help of Ganga Ram lifted the deceased and put him in a three-wheeler scooter. That in the meanwhile Pyare Lal and Dr.Sunil also reached the spot. Regarding the manner in which the deceased was removed to the hospital, he deposed that he, Jagwati, Ganga Ram and Sunil removed the deceased to the hospital. That he sat with the driver of the scooter and Jagwati, Ganga Ram and Sunil sat in the rear portion of the scooter and that the deceased was lying in their lap. That Pyare Lal had reached the hospital in a separate three-wheeler scooter. Relevant would it be to note that on being cross-examined whether his clothes got stained with blood of the deceased, Chandan stated that they did not.

21. Accused No.1 in his examination under Section 313 Cr.P.C. pleaded false implication and denied everything.

22. Accused No.2 in his examination under Section 313 Cr.P.C. pleaded false implication and denied everything. He raised the defence of alibi by stating that he was performing his duty at FCI, Shakti Nagar at the time of the occurrence.

23. Accused No.1 did not lead any evidence in his defence.

24. On behalf of accused No.2, one Const. Chakradhari, one Baldev Singh, one M.K. Bhatnagar and one J.K.Bhatnagar were examined as DW-1, DW-2, DW-3 and DW-4 respectively.

25. Const. Chakradhari DW-1, Home Guard, Delhi deposed that he was posted at gate no.8, FCI godown, Shakti Nagar on 28.12.95 and that his duty hours were from 4:00 P.M. to 12.00 midnight on that day. That accused No.2 who is a watchman employed with FCI was performing his duty at gates nos. 9 and 10 on that day.

26. Baldev Singh DW-2, a watchman with FCI deposed that he was on double duty on 28.12.95 and his duty hours were from 8.00 A.M. to 4.00 P.M. and 4.00 P.M. to 12.00 midnight on that day. That accused No.2 was also on double duty on that day and that his duty hours were the same as his.

27. M.K.Bhatnagar DW-3, Depot Manager FCI, proved the attendance/duty register Ex.DW-3/DA pertaining to attendance of accused No.2 and Baldev Singh on 28.12.95. He also proved attendance register Mark A pertaining to attendance of Const. Chakradhari on 28.12.95. Being relevant for considering the defence of alibi, his deposition in cross examination may be noted; the same is as under:-

"The attendance register of watchman used to remain in the custody of Head Watchman/Shift Incharge. I cannot say the writing in register is of which Head Watchman. Vol. Baldev Singh was the Head Watchman in the shift from 4:00 PM to 12:00 PM (midnight). It is correct that during the day time in shift 8:00 AM to 4:00 PM there used to be more watchmen on duty and night shifts from 12:00 midnight to 8:00 AM and from 4:00 PM to 12:00 midnight there used to be less watchmen on duty. It is correct that in shift from 12:00 PM to 8:00 AM on 28.12.95, 4 persons including one Head Watch were deputed on duty and one of the watchman was not on duty. It is correct that after sl. No. 4 in shift from 12:00 PM (midnight) to 8:00 AM there is a line under Sl No.4 at point A in Ex.DW-3/A. It is correct that there is also foot a line below Sl. No.4 in the shift 4:00

PM to 12 midnight at point B. It is correct that the name of Sobraj is mentioned below the line of Sl. No.4. Vol. there are two more names are also mentioned below the name of Sobraj, because three persons were on off duty on that day."

(NB: Being a verbatim reproduction of the extract of the cross-examination, the grammatical and syntax errors have been recorded as they are)

28. J.K. Bhatnagar DW-4, Assistant Manager, Depot, Storage Loss Section, FCI also proved the afore-noted attendance registers.

29. Holding that the evidence of Jagwati PW-2, inspires confidence and that evidence led by accused No.2 to prove his defence of alibi is not cogent, vide judgment and order dated 08.02.01 the learned Trial Judge has convicted the accused persons and has sentenced the accused persons to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default, to undergo RI for one month. Additionally, accused No.2 has been sentenced to undergo SI for one month for committing offence punishable under Section 341 IPC.

30. Discussing the defence evidence pertaining to the plea of alibi raised by Sobraj, learned Trial Judge has discussed the evidence as under:-

"46. Now coming to DWs, it may be mentioned that all of them are aimed at establishing the plea of alibi by accused Sobraj. DW-1 and DW-2 have deposed that accused Sobraj was on duty at the time of incident in FCI, Shakti Nagar. DW-3 and DW-4 have been examined to prove the copy of attendance register of the employees of the FCI dated 28.12.1995. Cross examination of DW-3 washes of the value of the attendance register copy of which is Ex.DW-3/A. He has admitted that during day time in shift 8:00 AM to 4:00 PM there used to be more watch-man on duty than in night shift from 12:00 mid night to 8:00 AM. He further stated that from 4:00 PM to 12:00 mid night there used to

be less watch man on duty. In the night shift from 12:00 PM to 8:00 AM there were four persons including one head watch man and one of them was not on duty meaning thereby that practically there were three persons on duty. There was a line under Sr. No.4 at point A in Ex.DW-3/DA which pertained to night shift from 12:00 PM to 8:00 AM. A line was put below Sr. No.4 in the shift of 4:00 PM to 12:00 mid night at point B and name of accused Sobraj was mentioned below that line. There was no fun of having seven persons in the said shift in view of earlier admission that during night shift of 12:00 mid night to 8:00 AM there used to more watch man on duty. The possibility of name of accused Sobraj at Sr. No.5 having been added below line put under Sr.No.4 later on, to create evidence of alibi cannot be ruled out. It has been held in 1994 SCC (Criminal) 358 that plea of alibi must be proved by cogent evidence."

31. In support of the appeal, learned counsel for the appellant advanced under-noted submissions:-

A. There is a material discrepancy in the evidence of Jagwati vis-a-vis the evidence of the other witnesses regarding the manner in which the deceased was removed to the hospital. Learned counsel pointed out that Ganga Ram and Chandan had deposed that Sunil was also present in the three-wheeler scooter in which the deceased was removed to the hospital, whereas Jagwati did not depose about the presence of Sunil in the scooter. Likewise, Jagwati did not depose about the presence of Ganga Ram in the three-wheeler scooter in her examination-in-chief. Learned counsel further pointed out the testimony of Ganga Ram where he deposed that he, Sunil and Chandan were present in the scooter in which the deceased was removed to the hospital and that Jagwati had reached the hospital after 5 – 7 minutes of their arrival at the hospital. Learned counsel urged that aforesaid casts a serious doubt whether Jagwati was at all present at the spot.

B. Learned counsel urged that the conduct of Jagwati which emerges from her version regarding the happening of the incident is most unnatural and this also casts a doubt about her presence at the spot. First instance of unnatural conduct pointed out by the learned counsel was that as per the version of Jagwati, accused No.2 had caught hold of the deceased and asked accused No.1 to bring a knife from inside the house. In such a situation, the natural conduct of a person would have been to raise an alarm and seek help from the people present around the spot argued the counsel. Second instance of unnatural conduct pointed out was that Jagwati had deposed that her brother runs a clinic situated at about 15 houses away from her house. According to the learned counsel, had Jagwati been present at the spot, she would have first taken the deceased to her brother's clinic for medical aid.

C. The third submission advanced was that there is a material variation in the ocular evidence of Jagwati and medical evidence pertaining to her injury. Learned counsel pointed out that Jagwati had deposed that she had also sustained a knife injury in the process of saving the deceased from the clutches of the accused persons; whereas her MLC Ex.PW-16/A records that the injury received by her was caused by a blunt object. According to the learned counsel, said variation establishes that the version of Jagwati that she had witnessed the accused persons murdering the deceased is nothing but a cock and bull story.

D. The fourth submission advanced was that the deposition of Jagwati PW-2, proved that no street light was installed in the street where her son was injured. Thus, learned counsel urged that it was not possible for Pyare Lal PW-3 to have seen the features of the accused persons whom he claimed having seen from a distance in the process of fleeing. Counsel submitted that even Chandan was a planted witness because he admitted that his clothes did not get stained with the blood of the deceased; a fact which was not possible, argued learned senior counsel for the appellants because of the fact that if the jugular vein is cut, excessive blood oozes out.

E. The fifth submission advanced was that the alleged motive for the crime i.e. the anger of the accused against the deceased on account of the deceased having a love affair with the sister/daughter of the accused was not proved. Learned counsel urged that the non-production of the love letters allegedly exchanged between the deceased and sister/daughter of the accused persons and flimsy explanation given by Jagwati for non-production of the same by stating that some letters were burnt and some are untraceable, shows that the parents of the deceased were attributing a false motive.

F. The sixth submission advanced was that the burden of proof upon an accused to prove his defence is no higher than that of a party to a civil proceeding, that is, a preponderance of probabilities alone is sufficient. Therefore, it was urged, that the learned Trial Court has committed an illegality in rejecting the defence of alibi

taken by accused No.2 as a result of wrongly placing a higher degree of proof upon the accused No.2 for proving his plea of alibi.

G. The last submission advanced was that it is not safe to sustain the conviction of the accused persons by placing reliance upon the evidence of a solitary eye-witness, more so, when such eye-witness is a close relative of the deceased.

32. The first submission predicated upon the contradictions appearing in the evidence of the witnesses of the prosecution regarding the manner in which the deceased was removed to the hospital pertains to the contradiction in the deposition of Chandan and Ganga Ram regarding the presence of the Jagwati in the three-wheeler scooter in which the claimed having removed the deceased to the hospital and the omission in the deposition of Jagwati regarding the presence of Sunil and Ganga Ram.

33. The presence of Jagwati at her house, at the time of the incident, is not doubtful, inasmuch as no suggestion to the contrary was given to her with respect to her deposition that she was present in the house and heard Sobraj hurling abuses at her family. The fact that the deceased was murdered outside his house is proved beyond any doubt. It is also relevant to note that Inspector Rajbir Sharma PW-21 has recorded Jagwati's statement Ex.PW-2/A in the hospital and had forwarded the same at 10.20 PM for registration of an FIR. Thus, Jagwati's presence in the hospital stands corroborated. That in her statement Ex.PW-2/A, Jagwati has implicated the appellants and has described the various acts committed by them and that Jagwati

has withstood the test of cross-examination, lends credence to her testimony. The incident took place around 8.45 PM. By 10.20 PM the statement of Jagwati was recorded. It is difficult to assume that within this short span, Jagwati spun a fabricated story. Statements given to the police by witnesses immediately after the incident have an inherent strength of truth because of the fact that anything told by an eye-witness soon after the incident is presumably the correct version because the witness gets no time to fantasize or cook up facts.

34. It is natural conduct for a person to go outside his house and request the offender who is hurling abuses at his family to stop the tirade for the reason the reputation of the family is presumably sullied if one permits the offender to continue the abuses from the street outside the house. Thus, Jagwati going outside her house on hearing the abuses is a natural conduct.

35. Now, a three-wheeler scooter can at best accommodate three persons in the seat behind the driver's seat. It is not uncommon to see, on the streets in Delhi, a passenger sitting next to the driver of a three-wheeler scooter, on the driver's seat. Thus, two persons holding on to the injured to give him support, being seated along with the injured in the rear seat and one sitting along with the driver of the three-wheeler scooter is a probability; in any case is a situation which cannot be ruled out.

36. The testimony of the witnesses shows that Jagwati, Chandan, Sunil, Ganga Ram and Pyare Lal had gathered at the spot. Including

the injured, it becomes 6 persons. It is obvious that a second scooter was used to transport some of them. This explains the fact that Jagwati reached the hospital after about 5 minutes. It is obvious that she took the second scooter.

37. The mental condition of Jagwati, Chandan and Pyare Lal when Brijesh was lying injured and profusely bleeding from the neck has to be kept in mind while evaluating their evidence. Jagwati and Pyare Lal are the parents of Brijesh. Obviously, they would be extremely perturbed, confused and in a state of excitement. Was their concern to remember as to who sat in which scooter, or was their concern to remove Brijesh without any loss of time to a hospital. It has to be noted that the jugular vein of Brijesh was slit and it is apparent that excessive blood was flowing out. The very sight of blood unnerves even those who have nerves of steel. Thus, the so-called contradictions on which the first submission was predicated by learned senior counsel for the appellants are not contradictions at all. The witnesses are bound to err while narrating happening of a chaotic situation. As observed by the Supreme Court in the decision reported as Bharwada Bhoginbai Hirjibhai v State of Gujarat AIR 1983 SC 753:-

“Over much 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 take 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 counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him- Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses." (Emphasis supplied)

38. With regard to the submission that the conduct of Jagwati which emerges from her version is unnatural, it would be relevant to note the decision of the Supreme Court reported as Rana Pratap v State of Haryana (1988) 3 SCC 327 where it was observed as under:-

“Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

39. Jagwati had categorically deposed that she had grappled with the accused persons to save the deceased. The conduct of Jagwati attempting to save the deceased is completely natural and the fact that she not raise an alarm to gather help is of no consequence in the view of afore-noted observations of the Supreme Court in Rana Pratap's case (supra).

40. The second instance of alleged unnatural conduct of Jagwati pointed out by the counsel is built on surmises and conjectures.

41. Jagwati had deposed that her brother Sunil was present at the spot at the time Brijesh was removed to the hospital. She further deposed that her brother runs a clinic which is situated 15 houses away from her house. It is thus clear that Sunil was present at the spot and therefore the question of removing Brijesh to Sunil's clinic

becomes irrelevant. Besides, the injury on Brijesh was of a kind which required surgical intervention and not treatment at a clinic by a general physician. There is no evidence that Sunil was a surgeon and had surgical facility in his clinic. We do not even know whether Sunil had a proper qualification to be a doctor or was merely a registered medical practitioner (RMP).

42. Pertaining to the plea that Jagwati has deposed that when she attempted to save Brijesh, she received a knife injury on her hand but her MLC shows that the injury was a result of being hit by a blunt object and hence Jagwati stands discredited, suffice would it be to state that the possibility of Jagwati being hit by the handle of the knife is a probability and thus we find no hiatus in the ocular and the medical evidence.

43. A somewhat comparable situation arose before Madhya Pradesh High Court, in the decision reported as Motilal v State of M.P. 1990 CriLJ 125. In the said case, the witnesses had deposed that the accused persons had given two farsa blows on the head of the deceased whereas medical evidence showed that two lacerated wounds on the forehead of the deceased were caused by a blunt weapon. The court held that the same is no contradiction inasmuch as it is possible that the blunt side of farsa was used by the accused persons.

44. With regard to the submission pertaining to falsity of the evidence of the father of the deceased and Chandan PW-7, suffice would it be to state that the witnesses and especially in India, have a

tendency to over state or exaggerate their cases. As observed by the Supreme Court in the decision reported as State of Punjab v Hari Singh AIR 1974 SC 1168:-

“As human testimony, resulting from widely different powers of observation and description, is necessarily faulty and even truthful witnesses not infrequently exaggerate or imagine or tell half truths, the Courts must try to extract and separate the hard core of truth from the whole evidence. This is what is meant by the proverbial saying that Courts must separate "the chaff from the grain". If, after considering the whole mass of evidence, a residue of acceptable truth is established by the prosecution beyond any reasonable doubt the Courts are bound to give effect to the result flowing from it and not throw it overboard on purely hypothetical and conjectural grounds. In so far as the grounds given for rejecting the evidence of Zora Singh appear to us to be patently unreasonable.....”

45. Thus, there is a possibility that Pyare Lal who reached the spot soon after his son was stabbed, on hearing from his wife that the accused had inflicted the injury on Brijesh, started believing that he himself had seen the accused. It is in evidence that the street on which Brijesh was stabbed was having no street light. The vague image of two persons seen running away by Pyare Lal got converted into a perception in his mind that the image was of the accused, when he heard from his wife that the accused had caused the injury on his son. We, therefore, discard the testimony of Pyare Lal that he saw the accused running away from the spot. Similarly, we discard the testimony of Chandan because we agree with the contention urged on behalf of the appellants that it is not possible that clothes worn by Chandan would not get stained with the blood of the deceased. However, the presence of Chandan at the spot soon after

the incident took place and his limited involvement in either fetching a three-wheeler scooter or/and helping the others in lifting Brijesh and putting him inside the scooter cannot be ruled out.

46. With reference to the submission that the non-production of the alleged love letters by the family of the deceased is suggestive of the fact that no love affair was going on between deceased and sister/daughter of the accused persons and therefore there was no motive for the accused persons to murder the deceased; it be noted that the parents of the deceased had deposed that an affair was going on between the deceased and sister/daughter of the accused persons which was strongly objected to by the accused persons. No suggestion to the contrary was given to the father of the deceased. In view of the fact that evidence of the father of the deceased in said respect has gone un-rebutted, it has to be held that the prosecution has been able to establish that an affair was going on between the deceased and sister/daughter of the accused persons which was strongly objected to by the accused persons.

47. Be that as it may, it is settled law, that proof of motive is not indispensable for conviction. When the evidence is sufficient to conclude the guilt of an accused person, it is immaterial that the motive has not been proved.

48. The next question which arises for consideration is, whether the accused No.2 has been able to establish the plea of alibi taken by him. This court is required to examine whether the defence witnesses namely, Const. Chakradhari and Const. Baldev Singh are truthful

witnesses and whether interpolations have been made in the Attendance Register Ex.DW-3/DA.

49. Const. Chakradhari DW-1, had deposed that accused No.2 was posted at gates nos.9 and 10 on 28.12.95 in the shift 4.00 P.M. to 12.00 midnight. However, in his cross-examination he deposed that no one was posted on duty at gate no.10 on 28.12.95 in the shift 4.00 P.M. to 12.00 midnight.

50. A perusal of the attendance register Ex.DW-/DA shows that there were four watchmen on duty on 28.12.95 in the shift 12.00 midnight to 8.00 A.M.; a line appears after the last entry relating to said shift. A further perusal of the attendance register Ex.DW-3/DA shows that there were 7 watchmen on duty on 28.12.95 in the shift 4.00 P.M. to 12.00 midnight; a line appears after entry at serial no.4 relating to the said shift; the name of accused No.2 is entered after the said line.

51. An inference can be drawn from the afore-noted facts, that a line is made after the last entry relating to a shift and that a line appears after entry at serial no.4 relating to the shift 4.00 P.M. to 12.00 midnight; evidencing that the name of accused No.2 was subsequently entered in relation to the said shift.

51. The testimony of M.K.Bhatnagar DW-3, that there used to be less watchmen on duty in the shift 4.00 P.M. to 12.00 midnight than the shift 12.00 midnight to 8.00 A.M. clinches the issue, for the reason the attendance register Ex.DW-3/DA records that 4 watchmen

were on duty on 28.12.95 in the shift 12.00 midnight to 8.00 A.M. and 7 watchmen on duty on 28.12.95 in the shift 4.00 P.M. to 12.00 midnight. There was no reason or occasion to have more watchmen on duty on 28.12.95 in the shift 4.00 P.M. to 12.00 midnight. We fully concur with the reasoning of the learned Trial Judge reproduced in para 30 above.

52. It is therefore, clear that accused No.2 had manipulated records to create a false alibi.

53. With reference to the last submission urged that it would unsafe to sustain the conviction on the testimony of Jagwati as she is a solitary eye-witness and a close relative of the deceased, suffice would it be to note the decision of the Supreme Court reported as Kartik Malhar v State of Bihar (1996) 1 SCC 614 wherein it was observed:-

“On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelyu Thevar's case (supra) and, therefore, conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not shaken by any adverse circumstances appearing on the record against him and the Court, at the same time, is convinced that he is a truthful witness. The Court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the Courts insist on the quality, and, not on the quantity of evidence.

We may also observe that the ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dilip Singh's case (supra) in which this Court expressed its surprise over the impression which prevailed in the minds

of the members of the Bar that relatives were not independent witnesses.....”

54. The fact that Jagwati is an injured witness lends credence to her testimony. The fact that accused No.2 manipulated records to create a false alibi is also a relevant circumstance. As held by the Supreme Court in the decisions reported as Mulak Raj v Satish Kumar 1992 Cri LJ 1529 and Balvinder Singh v State of Punjab (1987)1 SCC 1 a false plea of alibi is an incriminating circumstance giving rise to an inference of guilt of the accused.

55. It was not seriously argued; in fact no submission was urged that from the nature of injury, an intention to cause death could not be inferred. The single slit of the throat of the deceased has cut the jugular vein suggestive of the fact that the offender had knowledge that if cut, excessive blood loss takes place from the jugular vein.

56. The appeals are dismissed.

57. The appellants are on bail. Their bail bonds and surety bonds are cancelled. The appellants shall surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 18, 2009
mm