

\$~R-11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A.46/2005

% **Judgment dated 21st October, 2013**

ANGREJ SINGH & ORS. Appellants
Through : Mr.Sudarshan Rajan, Adv.

versus

STATE Respondent
Through : Mr.Firoz Ahmed Ghazi, Adv for State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. The challenge in the present appeal under Section 374 of the Criminal Procedure Code is to the judgment dated 10.12.2004 and order on sentence dated 14.12.2004 by which the appellants have been held guilty under Section 307 read with section 34 IPC and sentenced to undergo rigorous imprisonment for a period of five years and fine of Rs.3,000/- and in default of payment of fine further rigorous imprisonment for three months. The facts of the case as noticed by the trial court are as under:

“2. On dated 17.12.02 on receiving DD No.64 B SI B.D. Sharma on being directed by SHO went to LBS Hospital and obtained the MLC of Tulsiram s/o. Jwala Prashad r/o.D-118, South Ganesh Nagar, Delhi and obtained his statement which is Ex.PW-2/A. As per said statement of injured Tulsiram he has been residing at the aforesaid place and is the owner of Balaji Band. Angrej Singh who is owner of Shiv Shankar Band is their tenant and despite several request said Angrej

Singh has not been paying the rent. On that day that is on 17.12.02 at about 9:15 p.m. Angrej Singh, Sandeep Kumar @ Neetu and Ganja @ Raghuvir came and threatened him to finish him as he has been demanding for rent time and again and influencing their customers and thereafter Ganja @ Raghuvir and Angrej Singh caught hold of him and Sandeep tried to give knife blow on his chest on which he saved by taking said blow on his right hand and thereafter Sandeep gave knife blow on his left side chest and abdomen on which he raised alarm. Thereafter his father and his sister who came were also given injury by the accused persons. As the accused persons have attacked him and his family members therefore legal action be taken against them. In view of the aforesaid statement of the injured Tulsiram and his MLC FIR bearing No.513/02 for offence U/S.307/34 IPC was registered as against the accused persons. During the course of investigation site plan was prepared at the instance of Jwala Prasad, statement of witnesses were recorded, accused Angrej Singh and his son Sandeep Kumar were arrested on 18.12.02 and at the instance of accused Sandeep Knife was recovered. Afterwards the third accused, Ganja @ Raghuvir was also arrested. After the conclusion of investigation chargesheet against all the three accused was filed in the court of concerned Ld. M.M. and after compliance of recruitment U/S. 207 Cr.P.C. matter was committed to the court of Sessions as offence U/S.307 IPC is session triable offence and thereafter the case was assigned to this court for trial.

3. On hearing both the sides, vide order dated 15.10.2003 charge for the offence under section 307/34 IPC was framed against all the three accused and additional charge for the offence U/S.27 Arms Act was framed against accused Sandeep Kumar to which the accused persons pleaded not guilty and claimed trial.

4. The prosecution in support of its cases got examined 9 prosecution witnesses including the complainant Tulsiram as PW-2, Jwala Prasad who is also an injured and father of the complainant as PW-1, Prem Lata, who is an injured and sister of complainant as PW-3. Dr.A.K. Verma is PW-4. Dr.Alok as PW-5. HC Vijay Dutt as PW-7 besides SI B.D. Sharma who happens to be IO of this as PW-9.”

2. Counsel for the appellants submits that the trial court has failed to appreciate that the appellants have been falsely implicated in this case on account of enmity between the complainant and the appellants. It is contended that the appellants are the tenants of the complainant, who wanted to get the shop vacated and this was the prime motive for falsely implicating the appellants. It is contended that the trial court has failed to appreciate that there are material contradictions in the evidence of the witnesses; besides the appellants have been held guilty based on the evidence of the witnesses, who are interested witnesses. It is contended that besides the interested witnesses, no independent person has been associated in the investigation, nor cited as a witness, despite the fact that the incident took place in a crowded locality; moreover, the contradictions in the evidence of PW-1 and 3 create a serious doubt in their testimony. It is further submitted that there are serious lapses on the part of the

prosecution.

3. Mr.Rajan, counsel for the appellants submits that the recovery of the weapon i.e. the knife is disputed and unreliable for the reason that no independent witness was joined by the Investigating Officer during the recovery of the weapon, which was from an open space and accessible to the general public. In support of this submission, reliance is placed on *Anil Kumar Goswami Vs. State (NCT of Delhi)* 2012 [1] JCC 47 and more particularly paragraphs 15 and 16, which are reproduced below:

“15. Regarding recovery of weapon of offence i.e dagger Ex.P-1 at the instance of the appellant in pursuance of the disclosure statement, again there are serious contradictions and inconsistencies. The prosecution has failed to prove recovery of weapon of offence Ex.P-1 beyond any reasonable doubt at the instance of the appellant. Admittedly, no independent witness was joined by the IO at the time of recording disclosure statement of the appellant or at the time of affecting the recovery of the weapon of offence. No plausible explanation has been offered by the IO for not joining independent public witnesses at both the occasions. Dr.Dhan Pal Singh (PW-4) at the first instance in examination-in-chief testified that the accused persons did not disclose anything in the police station in his presence. Subsequently he changed his version and stated that accused Anil Kumar got recovered a knife from the bushes on the Jamuna pushta. He even did not testify that any ground was dug by the appellant to take out the dagger Ex.P-1 which he had allegedly concealed therein.

16. Mere recovery of dagger Ex.P-1 cannot be counted as incriminating as this dagger was never shown to the doctor who had conducted post-mortem on the dead body of the deceased to prove that the injuries found on the body of the deceased could be possible with the said weapon got recovered by the appellant. When PW-3 (Dr.Anil Kohli) appeared as a witness before the court, dagger/knife Ex.P-1 was not shown to him at that time also.

4. Counsel for the appellants next contends that the story of the prosecution

is unbelievable for the reason that the alleged weapon of offence was not shown to the doctor for his opinion as to whether the injuries on the victim could have been caused by such a weapon. It is contended that in the case of *Kartarey & Ors. Vs. State of U.P.* reported at 1976, CrL.L.J. 13, the Supreme Court has emphasised the importance of eliciting the opinion of the medical witnesses, who had examined the injuries of the victim. Counsel has placed reliance on paragraph 25 of the judgment which reads as under:

“25. We take this opportunity of emphasising the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for the proper administration of justice particularly in a case where injuries found are forensically of the same species, e.g. stab wounds, and the problem before the Court is whether all or any of those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration in the course of justice. Fortunately, in the instant case, the number, nature and dimensions of the injuries of the deceased, as deposed to by Dr. Sohan Lal, afford a sure indication that they were caused with three different weapons. There were sixteen stab-wounds which fall into three groups, the wounds in each group being of almost identical length and breadth. Thus, the length of each of the wounds 1, 3, 4, 5 and 15 was 3 cm. The breadth of each of these wounds (excepting that of Nos. 1 and 15 which was slightly less) was 1.5 cms. Wound No. 2 was 3.5 cm. x 1.5 cms. The length and breadth of wound No. 15 was 2.5 x 1 cm. The length of wounds 6, 8, 11, 12, 13 and 16 was 4 cms. each. Giving allowance for slight variations, it can be said that the breadth of these six injuries was very nearly the same.”

5. Counsel for the appellant further points out that the prosecution has failed to establish the guilt of the appellants, as the weapon was not sent to the

CFSL for examination, as according to the Investigating Officer there was blood on the weapon and in the absence of any opinion from the CFSL the recovery of the knife could not have been connected to the act committed by the appellants. Counsel for the appellants has placed reliance on *Vishwajit & Anr. Vs. State* [CrI.A.No.360/1998] decided by the Division Bench of this court, and stated that the appellants were acquitted in the said matter. Counsel has relied on paragraph 18 of the said judgment, which reads as under:

“18. Moreover, no human blood was detected on these weapons and they were not sent to Forensic Science Laboratory (FSL) to find out if it contained blood of the deceased. These weapons were not shown to the autopsy doctor to ascertain if injuries found on the deceased were possible with those weapons.”

6. Counsel further submits that the recovery of the knife is also unbelievable as the place where the knife was hidden defies human behaviour as after running from the spot it is unacceptable that the appellants would hide the knife near the place of the incident. Counsel further points out that the weapon of offence was not shown either to the eye witnesses for identification that whether the same was used in the commission of offence nor shown to the doctor and in fact the doctor, PW-5 has testified that he cannot state that if the wound was caused by a single or double edge weapon. Thus the recovery of the knife cannot be connected to the injury caused on the complainant. In the absence of any connection between the knife and in the alleged incident, the recovery of the knife cannot be relied upon by the prosecution.
7. Counsel has next contended that in the absence of the knife being connected to the offence having been committed, the only evidence against the appellants is the testimony of the three witnesses, i.e. PW-1,

PW-2 and PW-3. Counsel submits that the testimony of the interested witnesses is to be treated with great care and caution. In support of his submission, counsel has placed reliance on Anvaruddin Vs. Shakur reported at AIR 1990 SC 1242 and more particularly paragraph 8, which reads as under:

“8. It is well-settled law that evidence of witnesses to the occurrence cannot be thrown over-board merely because they are interested and partisan witnesses. All that the law demands is that their evidence should be scrutinised with great care and caution to safeguard against the normal temptation to falsely implicate others.....”

8. Counsel for the appellants submits that there is conflict in the evidence of PW-1, PW-2 and PW-3 and the medical evidence placed on record. It has been pointed out that as per the evidence of all the three witnesses (PW-1, PW-2 and PW-3) there were at least three injuries / various injuries caused by knife on the body of the injured i.e. PW-2, Sh.Tulsiram, however, as per the MLC report of Sh.Tulsiram, there was only one stab injury 2x1 cm over the abdominal aspect of left lower chest. Similarly all the three witnesses have testified that PW-3 sustained knife injuries on her hand, whereas as per the MLC she did not sustain any knife injury and had sustained only a simple blunt injury. PW-1 had stated that he had sustained a knife injury, however, there is no such mention in the MLC where the injury has been shown as blunt and simple. It is also the case of the appellant that the complainant had reason to falsely implicate the appellants as there was history of civil litigation, which had arisen on account of a landlord tenant dispute. No independent witnesses were examined and in these circumstances the appellants have prayed that they be acquitted.

9. Counsel for the State has submitted that the State has been able to prove their case beyond any shadow of doubt. The appellants were named in the FIR; there was no delay in lodging the FIR; the appellants were named in the statement of the complainant which was recorded in the hospital by the police. The MLC clearly proves the injuries caused on the victims.
10. I have heard counsel for the parties and carefully examined the evidence placed on record and duly considered the rival submissions made by counsel for the parties. It is extremely surprising to note that the weapon of offence was not shown to the doctor for his opinion, as to whether the injuries could have been caused on the complainant with the weapon which was produced. It is equally surprising to note that the weapon of offence was also not put to the eye witnesses for identification as to whether the same was used in the commission of the offence. It is also strange that although the Investigating Officer has testified that there was blood on the weapon of offence, the weapon of offence was not sent to the CFSL for its opinion, however, in my view the above factors alone cannot be a ground for acquittal of the appellants for the reason that it has been repeatedly held by the Apex Court that faulty investigation by itself cannot be a ground for acquittal. In the case of Allarakhia K. Mansuri Vs. State of Gujarat reported at (2002) 3 SCC 57 it has been held as under:

“8. In the instant case the trial court relied upon certain aspects of the case as noticed earlier for passing an order of acquittal. Examined critically, none of the aforesaid circumstances or aspects can be held to be based upon legal evidence. Whether Exhibit 36 or Entry No.20/89 is the First Information Report would not change the nature of the allegation made against the accused as no discrepancy is pointed out in the aforesaid entries. Entry No.20 is recorded on the basis of report received from the Hospital and Exhibit 36 is on the basis of statement of the complainant Ali Mohamed. In the absence of any discrepancy in the aforesaid two documents, the accused-appellant could not be acquitted. The two

entries did not make the so-called two versions possible. The only inference of the two entries is that occurrence had taken place in which Abdul Karim Ali Mohmed had died and the appellant had inflicted injuries. Similarly the time of death in no way proves the appellant to be innocent. In presence of the ocular testimony of eye-witnesses that occurrence had taken place on 27th March, 1989 at about 7.30 p.m. in which the injuries found on the person of the deceased were caused by the appellant, the time of death of the deceased ascertained on the basis of opinion of the Doctor was in no way helpful to the appellant. We also find that the trial court had no reason to hold that the identity of the weapon of offence was doubtful or Mamudu @ Abdulla (PW9) was not the prosecution witness whose statement had been recorded under Section 161 of the Code of Criminal Procedure. The defects in the investigation holding it to be shaky and creating doubts also appears to be the result of the imaginative thought of the trial court. Otherwise also defective investigation by itself cannot be made a ground for acquitting the accused.....”

11. In the case **Ganga Singh Vs. State of Madhya Pradesh** (2013) 7 SCC 278, it has been held as under:

“17. We are also unable to accept the submission of Mr.Mehrotra that the investigation by the police is shoddy and hasty and there are defects in the investigation and therefore benefit of doubt should be given to the appellant and he should be acquitted of the charge of rape. The settled position of law is that the prosecution is required to establish the guilt of the accused beyond reasonable doubt by adducing evidence. Hence, if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. In the present case, as we have seen, the evidence of PW-5 as corroborated by the evidence of PW-2 and the FIR establish beyond reasonable doubt that the appellant has committed rape on PW-5 and thus the appellant is not entitled to acquittal.”

12. Applying the law to the facts of this case would show that the injury was caused by the knife; the victim, PW-1 as also the eye witnesses have named the appellant in their statements; the appellant has also been named in the FIR; there is no delay in recording of the FIR; the evidence of PW-1, PW-2 and PW-3 are consistent on the date and time of the incident, the persons involved, the use of knife and the injury caused by the knife; and the evidence of PW-1, PW-2 and PW-3 stand duly corroborated by the medical evidence. Thus the appellant cannot gain any advantage of the shoddy manner in which the investigation has been carried out.
13. Another argument raised by counsel for the appellant is that the evidence of PW-1, PW-2 and PW-3 cannot be relied upon, as they are interested witnesses and secondly there are material contradictions in their testimonies.
14. There is no quarrel to the proposition that the evidence of interested or partisan witnesses is to be examined with great care and caution and require great scrutiny. It would be worthwhile to note herein the observations of this Court in CrI.A.No.470/2003 **Harish Vs. The State** and more particularly paragraphs 41, 42, 43 and 44, which read as under:

“41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of **Masalte v. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, relevant portion of which is reproduced below:

“14. Mr. Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to

appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

42. Similar view has also been expressed in the case of **State of Punjab v. Karnail Singh**, reported at AIR 2003 Sc 3613:

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

“We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - Rajasthan' AIR 1952 SC 54 at p.59. We find, however, that it

unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

9. Again in *Masalte and Ors. v. The State of U.P.* AIR 1965 SC 202 this Court observed : (pp. 209-210 para 14):

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

10. To the same effect is the decision in *State of Punjab v. Jagbir Singh* : AIR 1973 SC 2407 and *Lehna v. State of Haryana*: 2002 (3) SCC 76. As observed by this Court in *State of Rajasthan v. Smt. Kalki and Anr.* : AIR 1981 SC 1390, normal discrepancies in evidence are those who 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 who are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in *Krishna Mochi and Ors. v. State of Bihar etc.* : JT 2002 (4) SC 186.”

43. This view has again been reiterated in the case of *State of NCT of Delhi v. Rani Kant Sharma and Ors.* reported at : 2007 (3) JT 501, relevant portion is reproduced below:

11. In some cases persons may not like to come and depose as witnesses and in some other cases the prosecution may carry the impression that their evidence would not help it as there is likelihood of partisan approach so far as one of the parties is concerned. In such a case mere non- examination would not affect the prosecution version. But at the same

time if the relatives or interested witnesses are examined, the court has a duty to analyse the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased. Whenever a plea is taken that the witness is partisan or had any hostility towards the accused, foundation for the same has to be laid. If the materials show that there is partisan approach, as indicated above, the court has to analyse the evidence with care and caution. Additionally, the accused persons always have the option of examining the left out persons as defence witnesses.

44. Again in the case of *Manoj v. State of Tamil Nadu*, reported at JT 2007(5) Sc 145.

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

10. In *Dalip Singh and Ors. v. The State of Punjab* it has been laid down as under:

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

11. The above decision has since been followed in *Guli Chand and Ors. v. State of Rajasthan* in which *Vadivelu Thevar v. State of Madras* was also relied upon.

15. The law laid down by the Supreme Court with regard to reliance on evidence of interested witnesses is to be applied to the facts of this case and more particularly in the light of submissions made by counsel for the appellants that the oral evidence of the witnesses are inconsistent with the medical evidence which has been placed on record. It must be kept in mind that PW-1, PW-2 and PW-3 were injured in the incident which took place on 17.12.2002 at 9:15 p.m. PW-2, Tulsiram, is the complainant and the person who suffered the stab injuries; PW-1, Jwala Prasad is his father and PW-3, Prem Lata, is his sister. As per the evidence of PW-1 on 17.12.2002 he was sleeping at his house at about 9:00 or 9:15 p.m. He heard noise of *Bachao Bachao*. He came out from his house to the shop and saw Ganja @ Raghubir and Angrej Singh, who were his tenants at the shop, were holding his son Tulsiram and son of Angrej Singh who was carrying a knife attacked his son with the knife. He had requested them to leave his son; meanwhile his daughter, Prem Lata also came at the spot; PW-1 was pushed aside and injuries were also caused to his daughter, Prem Lata with a knife on her right hand. PW-1 identified all the accused persons in court. He also testified that his son had sustained injuries on the left side of his chest at a number of places. During cross-examination he testified that he could not say as to the number of injuries which were caused but he described that Angrej Singh had caught hold of his son by right hand and Raghubir had caught hold of his son by his left hand. He also testified that his daughter was stabbed and she had received 2/3 injuries on her hand. He had also sustained knife injuries, but he was not

medically examined. Testimony of PW-2 is also on the lines of the testimony of his father, PW-1. PW-2 has given a description of the date of the incident along with the time, the role ascribed to each appellant and the fact that he was stabbed on the left side of his chest and in his stomach at a number of places. His sister also sustained injuries. It may be noticed that PW-3 has also deposed on the lines of the evidence of her father and brother. The time, date of incident and the role ascribed to each of the appellant is identical.

16. A careful analysis of the evidence of the three material witnesses, PW-1, PW-2 and PW-3 would show that there is consistency with regard to the time and date of the incident, the involvement of the appellants, the role ascribed to each of the appellant, the use of a knife, the correct place of injury caused, i.e. the left side of chest of the complainant. The above factors which have been narrated are the core factors to the issue. Merely because there is inconsistencies with regard to the number of stab injuries or the fact that there was no stab injury on the sister, are the mere exaggeration made by the wife, however, these exaggerations would not affect the core issue. It is trite law that every improvement or contradiction by itself would not weaken the case of the prosecution, unless the contradictions are material and go to the core of the issue.
17. The Apex Court in the case of **Shyamal Ghosh Vs. State of West Bengal** reported at (2012) 7 SCC 646, has held as under:

“46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. It is true that there is some variation in the timing given by PW 8, PW 17 and PW 19. Similarly, there is some variation in the statement of PW 7, PW 9 and PW 11. Certain variations are also pointed out in the statements of PW

2, PW 4 and PW 6 as to the motive of the accused for commission of the crime. Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

47. xxxx

48. xxxx

49. It is a settled principle of law that the Court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused.

xxxxx

68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contra-distinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.

69. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by

picking up an isolated portion from the testimony of a witness without advertent to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety.

70. In terms of the explanation to Section 162 Cr.P.C. which deals with an omission to state a fact or circumstance in the statement referred to in sub-section (1), such omission may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether there is any omission which amounts to contradiction in particular context shall be a question of fact. A bare reading of this explanation reveals that if a significant omission is made in a statement of a witness under Section 161 Cr.P.C., the same may amount to contradiction and the question whether it so amounts is a question of fact in each case. (*Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* [(2010) 13 SCC 657] and *Subhash v. State of Haryana* [(2011) 2 SCC 715].)
71. The basic element which is unambiguously clear from the explanation to Section 162 CrPC is use of the expression 'may'. To put it aptly, it is not every omission or discrepancy that may amount to material contradiction so as to give the accused any advantage. If the legislative intent was to the contra, then the legislature would have used the expression 'shall' in place of the word 'may'. The word 'may' introduces an element of discretion which has to be exercised by the court of competent jurisdiction in accordance with law. Furthermore, whether such omission, variation or discrepancy is a material contradiction or not is again a question of fact which is to be determined with reference to the facts of a given case. The concept of contradiction in evidence under criminal jurisprudence, thus, cannot be stated in any absolute terms and has to be construed liberally so as to leave desirable discretion with the court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of the prosecution materially.”

18. While there is force in the submission made by counsel for the appellants

that there is exaggeration with regard to the number of injuries which have been caused, in my view the MLC of the complainant shows that stab wound 2x1 cm over abdominal aspect of left lower chest, which is really the main issue. Merely because there is exaggeration with regard to the injuries caused to PW-3, Premlata or the number of injuries caused to PW-2, Tulsiram that would not make the evidence of PW-1, PW-2 and PW-3 unreliable or weak. The Investigating officer in his testimony has deposed that efforts were made to involve the residents but none had come forward to join. It is not unusual for neighbours to stay away and not to get involved in such matters.

19. Having regard to the evidence of the complainant, the fact that an FIR was lodged at the earliest opportunity available, the appellants were named by the complainant and the evidence of PW-1, PW-2 and PW-3 read with the MLC, it cannot be said that merely because the public witnesses were not joined or that on account of defective investigation the appellants are liable to be acquitted. The evidence of PW-1, PW-2 and PW-3 is reliable and trustworthy and leaves no room for doubt that on the fateful day i.e. 17.12.2002 at about 9:15 p.m. injuries were caused to the Tulsiram, PW-2. The evidence of the material witnesses remained unshaken during the cross-examination, resultantly the present appeal is without any merit and the same is dismissed.
20. At this stage, counsel for the appellants submits that the appellants, Sandeep Kumar and Raghubir Singh had already served two and a half years of sentence, which has been recorded in the order dated 16.10.2006. The main accused Sandeep Kumar was merely 20 years of age on the date of the offence, there is no previous history of any involvement in any criminal case. There has been no incident after the appellants were released on bail, hence the period of sentence should be reduced to the

period already undergone.

21. Counsel for the appellants has placed reliance on *Mohinder Singh & Anr. Vs. State of Punjab* 1987 (Supp.) SCC 65 and *Krishnakanta Nag Vs. The State of Tripura* reported at 2012 CrL.L.J. 2179, wherein Apex Court has reduced the sentence awarded from 5 years to 2 years, however, taking into consideration the facts of this case, the ends of justice would meet if the sentence awarded to the appellant, Sandeep Kumar, is reduced from 5 years to three years.
22. As far as the appellant, Raghubir Singh is concerned, while granting bail vide order dated 16.10.2006, this court had noticed that the appellant, Raghubir Singh has undergone two and a half years of sentence. Sentence of Raghubir Singh is modified to one and a half years, although I am informed that he has undergone two and a half years.
23. As far as the appellant, Angrej Singh is concerned his role is *para materia* to the role of Raghubir Singh. Having regard to the role of Raghubir Singh and Angrej Singh, which is common and taking into consideration that the son of Angrej Singh, Sandeep, who is the main accused and has yet to serve his further sentence of approximately six months and Angrej Singh has served approximately 10 months, the sentence of Angrej Singh is reduced from 5 years to one and a half years. The court has also taken into consideration that there was landlord tenant dispute between the parties and after the present incident no other incident has been reported and even during the period of appeal nothing adverse has been reported against them. The appeal stands disposed of, in above terms.

G.S.SISTANI, J

OCTOBER 21, 2013 ssn