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

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CRL.A.No.1378/2015

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Reserved on : 29th August, 2016

Date of decision : 15th September, 2016

SURENDER

..... Appellant

Through : Mr. Ajay Verma and Ms.
Divya Chugh, Advs.

Versus

STATE

..... Respondent

Through : Mr. Varun Goswami, APP
for the State

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE R.K. GAUBA

JUDGMENT

GITA MITTAL, J

1. The appellant assails the judgment dated 26th September, 2015 whereby the appellant has been found guilty for commission of the offences under Sections 302 and 323 of the Indian Penal Code (hereafter 'IPC') with which he was charged. The appellant has also challenged the consequential order on sentence dated 30th September, 2015 whereby he has been sentenced to imprisonment for life with fine of ₹5,000/-, in default to undergo further rigorous imprisonment for a period of six months for the commission of the offence under Section 302 IPC. He was sentenced to rigorous

imprisonment for a period of six months for commission of the offence under Section 323 IPC. Both sentences were directed to run concurrently and benefit of Section 428 of the Code of Criminal Procedure (hereafter 'CrPC') was allowed to the appellant.

2. On the 4th of April, 2012, at about 07:15 AM. ASI Dharampal (PW-12) who was Incharge of a PCR Van in the South West Zone, Delhi received telephonic information with regard to an incident at the premises no. G-5, Gali No. 4, Vishwas Park, Delhi and upon reaching found Lalu and Sheela in an injured condition. He also noted a bloodstained brick, the handle of a *tava*, and a bloodstained pillow and mattress (*gudri*) lying on the spot. He rushed the injured to the Deen Dayal Upadhyaya Hospital in the PCR Van. Ct. Kuldeep who was examined as PW-1 has corroborated the above facts in his testimony.

3. As per the case of the prosecution, at about 07:25 AM in the morning of 4th April, 2012, information of the incident was received by HC Harikesh (PW-10) from the wireless operator regarding an incident at the premises no. G-5 in Gali No. 4, Vishwas Park which was logged as DD no. 9A (Exh.PW-10/A). The information was transmitted to SI Dinesh Kumar (PW-14) on emergency duty who along with Ct. Surjeet reached the spot.

4. At the spot, which was on the first floor of the said property, SI Dinesh Kumar (PW-14) found one piece of brick (Exhibit P-1) and a handle of an iron *tava* (Exhibit P-2) having bloodstains as well as blood inside the room. One witness namely Sh. Ashok

Kumar Pareva (PW-2) came forward as an eye witness to the incident and informed the police personnel that the injured had been taken to the hospital in the PCR Van.

5. The police were also informed that the appellant Surrender, who was staying in a room in front of the room of the injured, had caused injuries to one Lalu @ Sonu and his mother Sheela and run away from the spot.

6. SI Dinesh Kumar (PW-14) effected the seizure of the piece of the brick and the *tava* handle vide seizure memo (Exh.PW-1/A) which was scribed and endorsed by him and witnessed by Sh. Ashok Kumar (PW-2).

7. At 9:30 AM, telephonic information was received at Police Station Dabri, from Ct. Pramod located at the Deen Dayal Upadhyaya Hospital that ASI Dharampal has got admitted Sheela vide MLC No. 6114/12 and her son Lalu vide MLC No. 6318/12 in an injured condition after a "*jhagra*" (fight). This information was noted at the Police Station Dabri vide DD No. 22B (Exh.PW-9/A) and telephonic information of their admission was conveyed to SI Dinesh Kumar (PW-14) who consequently proceeded to Deen Dayal Upadhyaya Hospital.

8. Our attention has been drawn to the MLC of Lalu being MLC No. 6318/12 (Exh.PW-11/A). We shall deal with the injuries noted in the MLC at a later stage. It was found that he had come to the hospital at 7:40 am after having suffered "A/H/O" and "B/B" injuries. However, at this stage, it is sufficient to note that the doctor had noted the patient's history as that of physical assault as

conveyed by the patient himself. The doctor had also opined that the patient was unfit to give a statement.

9. So far as Sheela (PW-4) is concerned, her injuries were recorded by the doctor on MLC No. 6114/12 (Exh.PW-17/B) . The MLC noted her admission at 08:15 AM. It was found that she had come to hospital after having suffered physical assault. Sheela (PW-4) was found having a clear lacerated wound on the right side of face measuring 1.5cm x 0.3cm and abrasions on the back side of the left flank region. The doctor had opined that the injury was suffered by a blunt weapon. The wound required stitches in the hospital. She was found fit for statement.

10. SI Dinesh Kumar thereupon recorded the statement of injured Sheela (Exh.PW-4/A) which disclosed that the appellant was also residing in the same property near their tenanted premises with his mother, sister and brother. About 15 days prior to the incident, the appellant's sister Babli had left their house and the appellant suspected Sheela's son Lalu @ Sonu as having enticed her away. Sheela stated that on prior occasions also, the appellant had threatened her son, Lalu that he would kill him. That morning at about 7 a.m., when her son Lalu and she were sleeping, the appellant who was holding a brick in one hand and a *tava* in the other, suddenly barged into their room and started alleging that the deceased had run away with his sister and that he would kill him today. Saying this, the appellant attacked the head and face of the deceased "*tarbator*" (repeatedly) hitting him with the brick. When Sheela tried to save her son, the appellant started hitting her also

with the handle of the iron *tava*. Several members of the public gathered there who saved them. Sheela was categorical that the appellant had caused the injury to her son Lalu with the intention of killing him and sought action against him.

11. SI Dinesh Kumar made his endorsement Exh.PW-4/A thereon and recommended registration of a case under Section 308 of the IPC and handed over to Ct. Kuldeep (PW-1). The same resulted in registration of a FIR No. 114/2012 (Exh.PW-8/C) under Section 308 of the IPC at the Police Station Dabri on 4th April, 2012 itself at 1210 hours by HC Seema (PW-8), copy whereof had been sent to SI Dinesh Kumar (PW-14).

12. In the meantime, SI Dinesh Kumar returned to the spot and seized the pillow and the mattress (*gudri*) vide Exh.PW-1/H on the same day. He also lifted bloodstained earth control (Exh.PW-1/G) and plain earth control (Exh.PW-1/F) from the spot. He also prepared a site plan (Exh.PW-14/B) at the pointing out of the eye witness Ashok Kumar Pareva (PW-2) and then proceeded to search for the appellant.

13. The appellant was apprehended near a petrol pump at a red light, Raja Puri on the same date and was arrested vide arrest memo Exh.PW1/B in the presence of Sh. Ashok Kumar Pareva (PW-2). The personal search of the appellant was conducted vide memo Exh.PW-1/C which was scribed by SI Dinesh Kumar (PW-14) and stood witnessed by Ct. Kuldeep (PW-1).

14. After his arrest, the appellant got recovered his bloodstained clothes which he was wearing at the time of the incident which

were seized vide a seizure memo Exh.PW-1/E . The appellant also led the police to the place of incident as well as to the tenanted premises where he was residing and got recovered a half pant as well as a shirt having bloodstains which were seized vide Exh.PW-1/E.

15. After his medical examination, the appellant was produced before the Metropolitan Magistrate and was sent to the judicial custody.

16. Unfortunately, the injured Lalu @ Sonu died on 8th April, 2012. Information of his death was given to the Police Station Dabri from the hospital and was recorded as DD 39A (Exh.PW-10/B).

17. The body of the deceased was identified by his brothers on 9th April, 2012 vide Exh.PW-14/C. SI Dinesh Kumar (PW-14) made a request to the hospital authorities for conducting the inquest proceedings. The autopsy on the body of Lalu @ Sonu was conducted by Dr. Shalini Girdhar (PW-6) at the Deen Dayal Upadhyaya Hospital itself who proved her report as Exh.PW-6/A. The deceased had suffered extensive injuries which were on the scalp as well as the neck which included the following injuries:

“External Examination : External injuries

“1. Stitches 4 in numbers present over the forehead near the medical aspect of right eye.

2. Stitches 4 in numbers present over the nose.

3. One stitches present over right eye lid.

4. One stitches present over left angle of right eye.

5. *Two stitches present below right eye.*
6. *Three stitches present above left eyebrow.*
7. *Two stitches present above left eye lid.*
8. *One stitches present at lateral angle of left eye.*
9. *One stitches present at left angle of left eyebrow.*
10. *Four stitches present at left parietal region.*
11. *Four stitches present at middle of scalp 13cm from left mastoid.*
12. *Two stitches present over right frontal region. 2cm from midline.*
13. *One stitches present above the upper lip.*
14. *Three stitches present at right chin.*
15. *3stithces present at left chin.*
16. *One stitches present at mid occipital region, 13 cm from left mastoid.*
17. *Graze abrasion present over index finger of size 0.5cm x 0.5cm.*
18. *Graze abrasion present over middle finger of varying sizes from 1cm x 0.5cm to 0.5cm x 0.5cm."*

Internal injuries

Head

A. Scalp/Skull :Sub scalp contusion present over the right fronto-parietal region of size 14 cmx10cm. Closed fracture of anterior cranial fossa and it temporo-parietal and rt temporo-parietal bone. Closed fracture of nasal bones with associated haematoma.

B. Brain, Meninges & Vessels : SDH present over right and left parieto-occipital region. Brain was oedematous soft in consistency. Haemorrhagic Contusion Present over the rt left hemisphere.

C. Base of Skull : Intact.

Neck

Hyoid Bone/Thyroid Cartilage/Cricoid Cartilage: On cut section extra vacation of blood present on the left side and muscle deep. Right side thyroid cartilage fractured with associated haematoma. Lymph nodes congested.

Tracheal Rings & Mucosa : Congested

Any Foreign Body in Trachea : Frothy secretion.

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18. The autopsy doctor Dr. Shalini Girdhar (PW6), had opined the cause of death as “*coma due to head injury caused by blunt force which is sufficient to cause death in ordinary course of nature*”. The injuries were opined to be ante-mortem in nature and of the same duration.

19. SI Dinesh Kumar (PW-14) thereafter sought a subsequent opinion, as to whether the injury to Sheela, noted in MLC No. 6114, was possible with the handle of the *tava*. Dr. Shalini Girdhar (PW-6) had opined vide Exh.PW-6/B that the injuries mentioned in MLC No. 6114 dated 4th April, 2012 (which related to PW-4, the injured victim) “*could be produced by the said weapon or similar weapon*”. It is noteworthy that the doctor has carefully drawn a sketch of the weapon, which was produced in the opinion in the

body of the report. A blood sample of the deceased was preserved on a gauze piece & also handed over to the police.

20. SI Dinesh Kumar (PW-14) also sought a subsequent opinion from the doctor who conducted the post mortem, so far as the recovered brick was concerned. Vide her opinion Exh.PW-6/C, Dr. Shalini Girdhari (PW-6) had opined that the injuries mentioned in the post mortem report no. 352/12 dated 9th April, 2012 relating to FIR No. 114/2012 dated 4th April, 2012 “*could be produced by this weapon or similar weapon*”. The doctor has drawn a sketch of the half brick in Exh. PW-6/C and has also indicated the spot at which the bloodstains were still present on it.

21. The seized articles were deposited with the malkhana of the Police Station Dabri by SI Dinesh Kumar. The extract of the register has been proved on record as Exh.PW-19/A.

22. The seized articles including the gauze with the blood of the deceased were sent to the Forensic Science Laboratory, Government of NCT of Delhi, Rohini, Delhi under cover of a letter dated 4th June, 2012 by the SHO, Police Station Dabri.

23. The Forensic Science Laboratory submitted a report dated 30th October, 2012 (Exh.PW-18/A) concluding the DNA profiling performed on the broken piece of brick (Exh.PW-9/B); the pillow (Exh.2A); *gudri* (Exh.PW2/B) and underwear of the appellant (Exh.PW-4/B) was similar to the DNA profile from the blood gauze of the deceased (Exh.3).

24. On completion of the investigation, on 3rd July, 2012 the police filed a charge sheet under Sections 302/304/323 of the IPC

before the Magistrate who committed the matter for trial to the Court of Sessions in accordance with law.

25. By the order dated 13th January, 2012, the trial court framed charges against the appellant under Section 302 read with Section 323 of the IPC. The appellant pleaded not guilty and claimed trial.

26. The prosecution examined a total of 19 witnesses which included, *inter alia*, the mother of the deceased and injured witness Sheela as PW-4; Sh. Ashok Kumar Pareva, the landlord of the premises where the incident occurred and who was also an eye witness as PW-2 and his mother Smt. Savitri Devi as PW-3.

27. After a consideration of the entirety of the evidence placed before the court and the statement of the appellant under Section 313 of the CrPC, by a judgment dated 26th September, 2015 the trial court found the appellant guilty of offence punishable under Section 302/323 IPC. The trial court considered and passed the aforementioned order on sentence on 30th September, 2015 holding that the case did not fall in the category of rarest of rare cases which warranted the death sentence

28. We have been carefully taken through the entire evidence and record of the case by Mr. Ajay Verma, learned counsel for the appellant as well as by Mr. Varun Goswami, learned APP for the State. We find that the testimony of Smt. Sheela (PW-4), the injured mother of the deceased, is clear and has remained unchallenged. She has categorically deposed with regard to the prior incident which occurred 15 days before in which the appellant had doubted that her son Lalu @ Sonu (deceased) had enticed the

appellant's sister and had consequently threatened to put her son to death. Her narration of events of the morning of 4th April, 2012 is also corroborated by the testimony of their landlord Shri Ashok Kumar Pareva (PW-2) as well as Smt. Savitri Devi (PW-3) and stands clearly established.

29. The prosecution has established beyond doubt that the appellant on the one hand and the deceased & his mother injured Sheela (PW-4) on the other, were tenants in different rooms of the premises G-5, in Gali No. 4, Vishwas Park, Delhi. These premises were owned by Sh. Ashok Kumar Pareva (PW-2) who was also residing in another portion of the same premises. Smt. Savitri Devi (PW-3), mother of PW-2 was residing with him. At around 7 a.m. in the morning of 4th April, 2012, when Sheela (PW-4) & her son Lalu & Sonu (the deceased), were sleeping the appellant had entered their tenanted premises, carrying the piece of brick (Ex. P1) & the *tava* handle (Ex. P2). He had attacked the deceased Lalu @ Sonu yelling out that he would kill the deceased as he had ravished his sister. The appellant is stated to have hit the deceased repeatedly at his head and face with a piece of the brick. As per Sheela, when she had tried to rescue her son, the appellant had started hitting her as well with the brick. Savitri Devi (PW-3) has also stated that public persons had gathered there and rescued both Sheela (PW-4) as well as the deceased.

30. In her testimony in court, Sheela (PW-4) had stated that Sh. Ashok Kumar Pareva (PW-2) had locked up the appellant in a

room wherefrom he had escaped.

31. Mr. Ajay Verma, ld. counsel for the appellant has submitted that the trial court has ignored material contradictions and improvements in the testimony of Sheela (PW-4) from her statement to the police recorded on 4th April, 2012 (Exh.PW-4/A). Mr. Verma would submit that Sheela had made a material contradiction in as much as she had first stated that the appellant had escaped after attacking the deceased herself whereas in her statement recorded in court she has stated that the accused was bolted in a room. Mr. Verma had submitted that Sheela had also stated in her statement to the police (Exh.PW-4/A) that the appellant had hit her with the handle of a *tava* whereas in court, she has stated that he attacked her with a brick.

Mr. Ajay Verma would contend that these improvements in court which are not supported by the testimony of Sh. Ashok Kumar Pareva (PW-2).

32. In our view, nothing material turns on the above. The substantive evidence of Sheela (PW-4) is identical to the statement made by her to the police recorded on 4th April, 2012 (Exh.PW-4/A). The testimony of Sheela (PW-4) is also corroborated in all material particulars by the evidence of Ashok Kumar Pareva (PW-2) who also testified with regard to the suspicion nursed by the appellant on the aspect of Lalu @ Sonu having enticed Babli the appellant's sister who had gone missing and that he believed that the two were having an affair. He has also referred to arguments

between the two of them on this count.

33. So far as the incident on 4th April, 2012 is concerned, the witness (PW-2) was attracted at about 7 a.m. by noise from the first floor. The witness has testified that he had actually seen the appellant hitting Lalu @ Sonu on his face with a brick who was sleeping on the floor. He also testified that Sheela (PW-4) was trying to rescue her son from the appellant and that when he himself intervened, the appellant assaulted Sheela (PW-4) with the handle of the *tava*. This witness called the PCR on telephone no.100 but the appellant slipped from the spot before the arrival of the police. The witness has given a detailed narration of the investigation carried out by the police and proved the different stages of the investigation including the seizures and recoveries effected by the police.

34. We find that the cross examination on behalf of the appellant before the trial court related to the character of the deceased. This was completely irrelevant so far as the charge against the appellant is concerned. Even if the deceased was of a bad character, he had a right to live.

35. We extract certain observations on the aspect of variation between the testimonies of the witnesses *vis-a-vis* their previous statements made to the police in a judgment rendered by one of us (*Gita Mittal J.*) in the decision dated 02nd April, 2014 in Crl. Appeal No. 741/2008 ***Vishal Yadav v. State of UP*** wherein we had held thus:

"1235. On the aspect of the conduct of witnesses, some observations made by the Supreme Court on the variations in the manner in which people, who may be witnesses to criminal offences, may react deserve to be noticed. The Supreme Court has discussed and laid down the law on variations, discrepancies, omissions, improvements and contradictions between different parts of testimony of the witness as well as between narrations of different witnesses about the same fact or circumstances in several judgments. In this regard, para 11 of the judgment reported at (1999) 9 SCC 595 *Leela Ram (Dead) through Duli chand v. State of Haryana* wherein reference is made to several judicial precedents, is material and read 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.

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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.”

(Emphasis by us)

1236. The judgment of the Supreme Court in *Leela Ram* (supra) was followed in another judgment reported at (2011) 9 SCC 698, *Rakesh & Anr. v. State of M.P.*

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1238. In (2011) 8 SCC 65 *State of Rajasthan v. Abdul Menon*, the court stated thus:-

“32. Some discrepancies or some variations in minor details of the incident would not demolish the case of the prosecution unless it affects the core of the prosecution case. Unless the discrepancy in the statement of witness or the entire statement of the witness is such that it erodes the credibility of the witness

himself, it may not be appropriate for the Court to completely discard such evidence.”

1239. Again in the judgment reported at (2011) 7 SCC 295, **Wamman and Ors. v. State of Maharashtra**, the court reiterated its previous decision thus:

“33. In **Gurbachan Singh v. Satpal Singh** [(1990) 1 SCC 445:1990 SCC (Cri) 151] this Court has held that despite minor contradictions in the statements of prosecution witnesses, the prosecution case therein has not shaken and ultimately accepting their statement set aside the order of acquittal passed by the High Court and restored the sentence imposed upon them by the trial court.”

1240. In **AIR 2012 SC 3539, Shyamal Ghosh v. State of West Bengal**, on this aspect, the court has laid down the principles which would guide the present adjudication thus:-

“46. ...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. The variations pointed out as regards the time of commission of the crime are quite possible in the facts of the present case. Firstly, these witnesses are rickshaw

pullers or illiterate or not highly educated persons whose statements had been recorded by the police. Their statements in the court were recorded after more than two years from the date of the incident. It will be unreasonable to attach motive to the witnesses or term the variations of 15-20 minutes in the timing of a particular event as a material contradiction. It probably may not even be expected of these witnesses to state these events with the relevant timing with great exactitude, in view of the attendant circumstances and the manner in which the incident took place.”

(Underlining by us)

It is thus well settled that every contradiction or discrepancy would not render unacceptable the entire evidence of a witness.

1241. It is often found that in the witness box, witnesses make statements of matters not stated by them before to the investigating officer. Such witnesses render themselves open to criticism, and their evidence to challenge, by the other side on the ground that it is an improvement or a concoction whereas it may only be the reaction of the witness to the importance he is receiving as a witness in the court. The statement may contain additional matters which may not be material, or, which in any case make no impact on the core evidence. Do such additions and improvements impact the substantive evidence of the witness? The answer to this question is to be found in the observations of the Supreme Court in para 13 of the judgment reported at (1988) *Supp. SCC 241, Appabhai v. State of Gujarat*. On the issue of

appreciation of evidence in such eventuality, the court ruled thus:

“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.”

(Underlining by us)

1242. In the judgment reported at **(2001) 8 SCC 86 para 3** ***Sukhdev Yadav v. State of Bihar***, the Supreme Court has noted that “*there would hardly be a witness whose evidence does not contain some amount of*

exaggeration or embellishment sometimes there would be a deliberated attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness box detail out an exaggerated account“.

1243. These principles were reiterated by the Supreme Court in a recent judgment reported at **(2012) 5 SCC 777 Ramesh Harijan v. State of U.P.** The court also authoritatively ruled that the maxium '*falsus in uno, falsus in ombnibus*' is not a recognized principle in administration of criminal justice and the court is to give paramount importance to ensure that there is no miscarriage of justice. The court has also noted that witnesses can not help embroidering a story in the witness box and that the court must appraise the evidence to assess the extent to which the testimony is creditworthy....

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1245. On the aspect of effect of contradictions, inconsistencies, embellishments, improvements and omissions in evidence, our attention is also drawn to the pronouncement reported at **(2010) 13 SCC 657, Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra** wherein the court made the following important observations:

“30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be

made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide *State v. Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] .)

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34. In *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593 : AIR 1981 SC 1390], while dealing with this issue, this Court observed as under: (SCC p. 754, para 8)

“8. ... In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies 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 the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.”

35. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (See Syed

Ibrahim v. State of A.P. [(2006) 10 SCC 601 : (2007) 1 SCC (Cri) 34 : AIR 2006 SC 2908] and *Arumugam v. State* [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130 : AIR 2009 SC 331] .)

36. In *Bihari Nath Goswami v. Shiv Kumar Singh* [(2004) 9 SCC 186 : 2004 SCC (Cri) 1435] this Court examined the issue and held: (SCC p. 192, para 9)

“9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

37. While deciding such a case, the court has to apply the aforesaid tests. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited.”

(Emphasis supplied)

1246. It is therefore trite that the conduct of a person in the witness box varies from person to person and a solemn duty is attached to the role of the judge in appreciating the evidence which has been led. The

judicial pronouncements emphasise that witness testimony has to be examined keeping in mind that exaggerations or embellishments on the part of human beings appearing in the witness box are in fact natural. It is well settled that it is only contradiction in material particulars and not in matters of detail which would render the testimony of witnesses unacceptable.

1247. It is equally well settled that embellishments in testimony would also by themselves not detract from a truthfulness of the testimony of a witness and that the court has to separate embellishments from the factual narration.

1248. Variations in testimony in minor details thus are immaterial so far as appreciation of evidence is concerned. It is contradictions and variations in material particulars which would require the court to evaluate the extent of the witness to be considered credible. "

36. Therefore it is trite that every contradiction, discrepancy or improvement would neither render the entire evidence of a witness unacceptable, not be fatal to the case of the prosecution. Sheela (PW4), is a natural witness and not an inducted one, and therefore her testimony cannot be discarded on the ground of minor contradictions as urged by Mr. Ajay Verma, learned counsel for the appellant. No contradiction or improvement is pointed out qua the appellant's fatal attack on the deceased Lalu @ Sonu.

37. In our view the testimony of Sheela, with regard to the traumatic events of the 4th of April, 2012, was recorded in court a year thereafter on 7th May, 2013. Some benefit on account of

fading of memory or on account of anxiety with having to testify in court about an incident which must have been extremely painful to recount for her has to be allowed. Sheela (PW-4) is an injured and truthful witness and this minor error in court testimony the weapon of the offence (seized at the spot) by which injury was caused to her, when she was trying to prevent the appellant from hurting her son, can be of no benefit so far as the conviction of the appellant is concerned.

38. So far as the weapon which caused injuries to Sheela (PW-4) is concerned, in Exh.PW-4/A, Sheela had stated that he had attacked her with the handle of the *tava*. This statement made by Sheela is corroborated by the oral testimony of eyewitness Sh. Ashok Kumar Pareva (PW-2). It was also the case of the investigating officer that he had recovered the *tava* handle and had sent it to the doctor for opinion with regard to the injuries on the MLC. Dr. Shalini Girdhar (PW-6) vide Exh.PW-6/B has clearly opined that the injuries to Sheela were possible by the handle of the *tava*.

39. There is no ambiguity with regard to the weapon by which injuries were caused to the witness.

40. The police sought opinion on the weapon of offence so far as the injuries noted in the post mortem report were concerned. The brick recovered at the spot in sealed condition was forwarded to Dr. Shalini Girdhar who vide her report (Exh.PW-6/C) opined that the injuries mentioned in the post mortem report could be produced by the recovered brick. In the sketch of the half brick, the doctor

has carefully noted and marked the blood stains which were present thereto.

41. The articles seized by the police (including the broken piece of brick, handle of *tava*, pillow, *gudri*, half pant and shirt of the appellant) as well as the blood sample of the deceased on gauze as preserved by the Deen Dayal Upadhyay Hospital were forwarded on 4th June, 2012 for DNA finger printing. The Forensic Science Laboratory, Rohini, Delhi by its report dated 30th October, 2012 concluded that the DNA profile of the source from the broken piece of brick, pillow, *gudari* and underwear was similar with the DNA profile of the exhibit sourced from the blood gauze of the deceased.

42. There is thus no ambiguity at all about the manner in which fatal injuries were caused to the head and face of the deceased.

43. It has also been contended by Mr. Ajay Verma, learned counsel for the appellant that even if the trial court was correct in concluding that the appellant was guilty for commission of the offence, he could not be convicted for *murder* as he was covered under the fourth exception to Section 300 of the IPC. We may reproduce this exception hereunder:

300. Murder:-

XXX

XXX

XXX

Exception 4:-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

This argument would not come to the aid of the appellant inasmuch as exception 4 to section 300 contemplates the offence having been committed in the *heat of passion upon a sudden quarrel*. This was not so at all in the present case. It is in evidence that Sheela and the deceased Lalu @ Sonu were sleeping in their room when the appellant barged in, armed with a piece of a brick and a *tava* handle and attacked them. As per PW-2, the deceased was lying on the floor when the appellant attacked him.

44. It is also not a case where the offence was without premeditation as urged by Mr. Ajay Verma, learned counsel for the appellant inasmuch as a specific exhortation has been attributed to the appellant that the deceased Lalu @ Sonu had ravished his sister and that he would kill him.

Therefore, we find no substance in this contention raised by the learned counsel for the appellant.

45. Resultantly, we find no merit in this appeal, which is hereby dismissed.

Let a copy of this judgment be sent to the appellant through the Jail Superintendent, Central Jail, Tihar, Delhi.

GITA MITTAL, J

R.K.GAUBA, J

SEPTEMBER 15, 2016