

Court No. - 86

Case :- CRIMINAL APPEAL No. - 959 of 1991

Appellant :- Balram

Respondent :- State

Counsel for Appellant :- Amit Tripathi, Anil Kumar Yadav, Jaishankar Prasad Tyagi, Lallan Chaubey, Raghuraj Kishore

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Feeling aggrieved with the judgement and order dated 30.4.1991 passed by Additional District and Sessions Judge, Meerut, whereby the accused was convicted under Section 324 I.P.C. and was sentenced to pay a fine of Rs.2,000/- along with default sentence, the present criminal appeal has been preferred.
2. The prosecution case in brief is that accused appellant, who happens to be a family member of the informant Brahm Singh was having some grudge with Jaiveer, the brother of the informant as he was making some jokes with his wife. On 26.7.1987 at 1.30 pm the accused took his brother Jaiveer with him to bring wood but at a lonely place he made an assault upon Jaiveer over his neck with knife with intention to kill him. He sustained injuries and on his noise witnesses came on spot and the accused fled away. FIR was lodged on the same day and injured was medically examined.
3. The matter was investigated and the I.O. after completing the formalities submitted the charge sheet under Section 307 I.P.C. against the sole accused Balram.
4. The offence being exclusively triable by the Court of Sessions was committed to the Sessions Court where the charge under Section 307 I.P.C. was framed against the accused to which he denied and claimed to be tried.

5. In order to prove its case the prosecution has relied upon oral and documentary evidence.
6. In oral evidence P.W.1 Brahm Singh the informant, P.W.2 Jaiveer Singh the injured, P.W.3 Charni the eyewitness, P.W.4 Cons. Jai Prakash GD writer, P.W.5 Dr. Ashutosh, P.W.6 S.O. K.P. Singh Investigating Officer, P.W.7 Cons. Suresh Kumar scribe have been produced.
7. To corroborate the version given by the witnesses, the prosecution further relies upon documentary evidence. In documentary evidence written report Ex.Ka-1, copy of G.D. Ex.Ka- 2 and Ka-3, injury report Ex.Ka-4, site plan Ex.Ka-5, charge sheet Ex.Ka-6, chick FIR Ex.Ka-7, registration G.D. have been produced.
8. After conclusion of the prosecution evidence the incriminating circumstances and evidence were put to the accused in his statement under Section 313 Cr.P.C. recorded wherein he claimed the prosecution evidence to be false and fabricated and also claimed for his false implication on account of some animosity.
9. In defence evidence D.W.1 Dharm Singh has been produced from the accused side.
10. After analyzing the facts and circumstances and the evidence on record, the learned trial Court found that no offence under Section 307 I.P.C. is made out against the accused rather he might be held guilty under Section 324 I.P.C. The learned trial Court proceeded to record the conviction of the accused appellant under Section 324 I.P.C. and he was sentenced for a fine of Rs.2,000/- with default clause.
11. P.W.1 the informant, Brahm Singh in his examination-in-chief has supported the prosecution version and has given ocular evidence regarding the incident. He has made a categorical statement that he had seen the accused making assault upon Jaiveer with a knife and the incident was seen by witnesses Khadku, Dalu, Charni and Madan as well. He further states that the written report was dictated by him to Dharm

Singh, which bears his signature and in that way he has proved the written report as Ex.Ka-1.

12. P.W.2 Jaiveer Singh is the injured witness. In his examination-in-chief he has stated that the accused was unhappy with him because he used to make some jokes with his wife and for that reason on 26.7.1987 at 1.30 pm the accused came to his gher and took him with him pretending to take some wood and near the sugar cane field of Mahaveer he made an assault upon him with a knife. On his noise Bhram Singh, Charni, Khadku and Dalu came over there. The witnesses tried to hold him but he fled away. He further stated that he was medically examined in the hospital at Ghaziabad and was discharged after about 8 days.

13. P.W.3 Charni is the witness of the occurrence, who has deposed in the same tone as of P.W. 1 and 2. He has made a categorical statement that he had seen the accused Balram making assault upon Jaiveer with knife and Bhram Singh was also present over there.

14. P.W.4 Cons. Jai Prakash has proved two G.Ds. in his statement. For the first G.D. he states that the injured was sent for medical treatment from the police station on 26.7.1987 at 15.30 pm and the ravangi G.D. in respect thereof has been proved by him as Ex.Ka-2. He further proves G.D. of the police station, which was prepared after returning back to the police station after medical check up on 27.7.1987 at 10.25 am and the said G.D. has been proved by him as Ex.Ka-3.

15. P.W.5 Dr. Ashutosh Mishra medically examined the injured on 26.7.1987 at district hospital, Ghaziabad at 4.55 pm. He deposed that he had found following injuries over the body of the injured:

- 1. Incised wound 2.5 cm. x 1 cm. x muscle deep on the left side of the neck.*
- 2. Incised wound 1 cm. x 0.5 cm. on the left side of the cheek at a distance of 3 cms. from the mouth.*
- 3. Incised wound 1 cm. x 0.8 cm. x muscle deep at a distance of 2 cms. from the left side of the ear.*

4. Incised wound on the right hand near the root of the thumb c xms. x 1 cm. x muscle deep.

5. Incised wound on the lower middle part of the back 1 cm. x 0.4 cm. x skin deep.

16. He further states that all the injuries were caused by use of some sharp edged weapon and it might be inflicted on 26.7.1987 at 1.30 pm and injury no.1 might be dangerous for life. The injury report has been proved by P.W.5 as Ex.Ka-4.

17. P.W.6 S.O. K.P. Singh is the Investigating Officer of the case. In his deposition he has proved the proceeding of the investigation. He recorded the statement of Bhram Singh, Jaiveer, Charni etc. and also made an inspection of the place of occurrence and the site plan has been proved as Ex.Ka-5. He further states that after collecting sufficient evidence charge sheet was submitted by him, which he proves as Ex.Ka-6.

18. P.W.7 Cons. Suresh Kumar is the scribe, who has proved chick FIR of this case as Ex.Ka-7 and registration G.D. as Ex.Ka-2.

19. On the basis of the aforesaid evidence the impugned conviction judgment was passed by the learned trial court.

20. The impugned judgment has been assailed by the learned counsel for the appellant on various grounds. He has vehemently submitted that on the basis of insufficient and unreliable evidence of the prosecution the impugned conviction order has been passed in the present case. It is also submitted that the trial Court completely discarded the fact that the appellant has been falsely implicated in this case only because of previous enmity. It is also submitted that since the appellant belongs to the family of the informant he had absolutely no motive or occasion to inflict injuries upon the injured, who was the brother of the informant with the use of knife with intention to kill him. It is further submitted that there is no reliable ocular evidence in favour of the prosecution on record. There are material contradictions in the deposition of the witnesses of fact and the medical evidence does not corroborate the prosecution version. It has

further been submitted that the trial Court did not consider the oral evidence of D.W.1, who was produced by the appellant. It is further submitted that although a charge was framed against the appellant under Section 307 I.P.C. but the learned trial Court found that no injury was inflicted upon the injured with intention to kill and that is why the charge under Section 307 I.P.C. was found to be not proved by the trial Court itself. On these grounds a prayer has been made to allow the present appeal and to record the acquittal of the appellant by setting aside the impugned judgment.

21. Per contra, learned A.G.A. vehemently opposed the prayer. It is submitted that the prosecution has succeeded to prove its case against the appellant beyond reasonable doubt. The injured witness as well as the eye-witnesses of the case support the prosecution version and whatsoever inconsistency is found in their statements is ignorable. It is also submitted that the medical evidence is absolutely in conformity with the prosecution case. It is also submitted that there is no gross negligence or omission on the part of the I.O. of the case. It is further submitted that the FIR in this case is prompt and free from any deliberations or consultations. It is also submitted that D.W.1 Dhru Singh is not a reliable witness and does not offer any assistance to the appellant. On these grounds, the prayer has been made for the dismissal of present appeal.

22. The prosecution case in the matter in hand rests upon eyewitness account and not only the injured witness Jaiveer Singh but eye-witnesses of the incident Bhram Singh and Charni have also been produced to corroborate the prosecution version.

23. The injured witness always stands at a privileged and distinguished place in any criminal trial. The injuries sustained by the injured is prima facie proof of the fact that at the time and place of occurrence he was present over there.

24. The prosecution case starts with an allegation that since the injured used to make some jokes with the wife of the accused Balram, he had a grudge with the injured and that was the reason why he made an assault upon him.

25. Further the prosecution case is supported by the ocular evidence of P.W.1 and P.W.3. As an Appellate Court this Court has to examine whether the prosecution case is proved beyond reasonable doubt on the basis of oral and documentary evidence on record.

26. Since it is a case of injuries caused by knife, the medical evidence and also the ocular evidence parallel to it is to be examined by this Court.

27. The prosecution comes forward with a specific case that several injuries were inflicted upon the body of the injured by the accused with the aid of a knife. P.W.5, the doctor while examining the injured found five incised wounds upon neck, cheek, ear, hand and back portion of the injured. It is notable that all the injuries found over the body of the injured by the doctor are in the nature of incised wounds. P.W.5 has made a categorical statement that the injuries might be caused by use of some sharp edged weapon and this opinion given by the medical expert adds force to the prosecution version. P.W.5 also opines that the injuries might be inflicted on 26.7.1987 at 1.30 PM and that was the date and time of incident which the prosecution also alleges.

28. The veracity of the FIR has also put to question by the learned counsel for the appellants. It is submitted that the FIR has been lodged belatedly in this matter but however no explanation for the same has been given by the prosecution. The said plea was vehemently opposed by the learned A.G.A. FIR Ex.Ka-7 is available on record, from the perusal of which it appears that the incident in the case in hand happened on 26.7.1987 at 1.30 pm whereas the FIR has been lodged the same day at 15.30 pm. It is to be noted that after lodging of the FIR the injured was taken to hospital for medical treatment. Bhram Singh, P.W.1 proves the

written report, which was dictated by him to the scribe Dhram Singh. Apart from this the chick FIR of this case and registration G.D. have also been proved by P.W.7. Hence FIR of this case is a genuine document and since the place of occurrence is situated at a distance of 6.50 kms. from the police station, the FIR lodged after about 2 hours of the incident cannot be said to be a delayed FIR and since the FIR is not taken as a delayed FIR it is free from all the consultations and deliberations and the prosecution is permitted to rely upon the written report Ex.Ka-1, chick FIR Ex.Ka-7 and registration G.D. Ex.Ka-8.

29. The Court further takes notice of the fact that the injured Jaiveer Singh in the case in hand corroborates the prosecution version and the other eye-witnesses of this case P.W.1 and P.W.3 also support the prosecution case in their testimony, however, the learned counsel for the appellant vehemently submitted that the ocular evidence produced by the prosecution in this case is not worth of credit.

30. Assailing the deposition of P.W.3 Charni it is submitted that he is the real uncle of the informant. He has stated in his testimony that when the accused Balram was making assault upon injured Jaiveer with a knife he reached the spot after hearing noise and saw the accused appellant making assault upon the injured with knife and the incident occurred in front of the field of Mahaveer Singh. At that time he along with Dalu, Khadku and Madan was going by a buggi and Bhram Singh also came on spot. He further states that when they tried to catch hold the accused he fled away. In his cross-examination P.W.3 admits that he is the real uncle of the Bhram Singh, the informant. He further states that the buffalo cart (buggi) was owned by him and at the time of incident he was coming back from the market. He further states that the injuries sustained by Jaiveer Singh were bleeding. The injured was firstly taken to the village on a cot and then by the tractor of Pritam, he was taken to the hospital. He further states that the cot was placed inside the tempo and they were sitting on the floor of tempo.

31. In this context the Hon'ble Apex Court in **Bhagwan Jagannath Markad Vs. State of Maharashtra (2016) 10 SCC** has held that the testimony of a witness in a criminal trial cannot be discarded merely because the witness is a relative or family member of the victim of the offence. In such a case Court has to adopt a careful approach in analyzing the evidence of such witness and if the testimony of the related witness is otherwise found credible, accused can be convicted on the basis of the testimony of such related witness.

32. P.W.2 is the injured witness. In any criminal trial the injured enjoys a distinguished place in the array of witnesses of fact as the injuries sustained by him, prima facie, show his presence over the place of occurrence at the time of the incident.

33. PW.2 in his deposition discloses the motive of the case and he further states that the incident of making jokes with the wife of the accused happened about one month before the occurrence, however, no date or time thereof was disclosed by P.W.2. However he has clarified in his testimony that after the aforesaid incident of making jokes with the wife of the accused a settlement was made between the two by his elder brother Bhram Singh. P.W.2 also states that the accused commenting upon his conduct of making jokes with his wife started making assault upon him with some knife.

34. In **State of Haryana vs. Krishan, AIR 2017 SC 3125** it has been so held that the deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of contradictions and discrepancies for the reason that his presence on the scene has been established in the case and it is proved that he suffered injuries during the incident.

35. Although the prosecution case is based upon ocular evidence the learned counsel for the appellant vehemently argued that since the incident occurred in the day light on public place it is very strange that

except P.W.1 who is the brother of the informant and P.W.3, who is the real uncle of the informant no other independent witness was produced by the prosecution. The said plea has been responded by the learned A.G.A. who argued that if the prosecution case is well supported by the deposition of injured witness and eyewitnesses the non-examination of independent witnesses is not fatal for the prosecution. In the light of the aforesaid submissions it is found that P.W.3 Charni is a chance witness, who was returning from the market to the village and heard noise in front of the field of Mahaveer. P.W.3 also states that he was coming to the village through the way of big canal. Narrating the incident he states in his cross-examination that the injured Jaiveer and accused both were standing at the time of the incident and he further makes a denial to the suggestion that when the accused appellant was making assault upon the injured he had fallen down, however, in his statement under Section 161 Cr.P.C. he states that if a statement contrary to it has been recorded by the I.O. he cannot tell the reason thereof. He further states that the injured was brought back to the village on a cot.

36. Whether a chance witness is devoid of trust and only by levelling him as chance witness whether his evidence can be shattered as without any foundation, has been discussed in the judgment of **State of A.P. vs. K. Srinivasulu Reddy and another, (2003) 12 SCC 660** wherein the Apex Court has held that :

“(13).....In a murder trial by describing the independent witnesses as “chance witnesses” it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”.

37. Learned State counsel has argued that P.W.2, the injured, states specifically that he had sustained five knife injuries and the same number of injuries have been found over his body by P.W.5, the doctor.

38. Learned counsel for the appellant at this stage emphasised upon the fact that if five injuries inflicted by sharp edged weapon were sustained by the injured naturally he ought to have brought to the nearest hospital which was existing at Khekda but for unknown reasons he was taken to the District hospital, Ghaziabad which was not natural in the facts and circumstances of this case. Responding to that the learned AGA clarifies that the injured was taken to a better medical center in view of the seriousness of his injuries and even by the police he was referred to Ghaziabad, as per endorsement made on chitthi majroobi mentioned on the back of Ext. A4, the injury report.

39. Learned counsel for the appellant has further argued that the blood stained clothes of the injured were not taken into possession by the police but it being a mere omission on the part of I.O. cannot be given much weightage and hence, is ignorable.

40. P.W.6 is the I.O., he has been cross-examined at the length by the defence. He has proved the site plan as Ex.Ka-5 and narrated in his cross-examination that the incident of assault happened near bamba and he himself explains that bamba is called small canal. So far as the place of occurrence is concerned, the field of Mahaveer has been clearly shown in the site plan Ex.Ka-5 and this is the same place the eye-witnesses and the injured witness claim to be the place of occurrence. The statement made by the witnesses of fact and that of the I.O., if taken into entirety correspond to each other, so far as the situation of place of occurrence is concerned.

41. Besides above, the learned counsel for the appellant vehemently argued that D.W.1 Dharam Singh, the scribe of the written report does not support the prosecution case and he has averred in his deposition that the

written report was dictated to him by the police and not by Bhram Singh, the informant. He explains that he resides between the house of the injured Jaiveer and the room of accused Balram. He deposes that written report Ex.Ka-1 available on record is in his hand writing and it was dictated to him by the police on 27.7.1987 at 9.00 am and whatsoever was dictated by the police he wrote the same and thereafter signature of Bhram Singh was also obtained by the police before him. He also states that on 26/27.7.1987 there was no rain in the village and the weather was clear. Hence, the learned counsel for the appellant on the basis of genuineness of written report Ex.Ka-1, the uncertainty of place of occurrence and the contradictions occurred between the statement of witnesses and the story of the prosecution vehemently argued that the appellant is entitled for benefit of doubt and the learned trial Court while recording the conviction of the appellant committed grave error of law and the impugned judgement is full of perversity and errors.

42. In the same manner written report Ex.Ka-1 has been proved by P.W.1. He has specifically averred that the said written report was dictated by him to Dharam Singh and whatsoever dictated by him, the scribe wrote the same and after hearing he made his signature over the same and later on he went to the police station and on the basis of his tehriri report FIR was lodged. P.W.1 proves the written report as Ex.Ka-1 and in the same manner P.W.7, the scribe, proves this fact that Bhram Singh had come to the police station along with the written report Ex.Ka-1 and on the basis of the same he prepared the chick FIR in the police station. The chick FIR was further proved by him as Ex.Ka-7. Hence, it appears that on any point of time D.W.1 Dharam Pal was won over by the accused and stood as a defence witness. After lodging of the FIR investigation started and all the contents made in Ex.Ka-1 were found correct during the investigation. Hence, I find no force in the contention made by the learned counsel for the appellant that FIR and written report in this case are not genuine

documents and cannot be relied upon, particularly in the light of testimony of D.W.1.

43. No doubt, there are some minor contradictions and omissions occurred in the testimony of the witnesses but the otherwise reliable case of the prosecution cannot be thrown out merely on the basis of the same. This Court cannot ignore this fact that evidence in this case started in the year 1990 after about 3 years of the occurrence and in this long span of time some contradictions, omissions and exaggerations occurred in the evidence of the witnesses are quite natural and due weight should be given to this fact and also to the fact that with the passage of time the human memory naturally fades and this theory has been strengthened on the basis of law promulgated in the plethora of the judgements.

44. The conjoint reading of the decisions rendered in **State of Karnataka Vs. Suvarnamma, (2015) 1 SCC 323, Babu Vs. State of T.N., (2013) 8 SCC 60, Rajendra Singh Vs. State of Uttaranchal, (2013) 4 SCC 713, Ramesh Harijan Vs. State of UP, (2012) 5 SCC 777 and Ram Rahis Vs. State of U.P., 2008 (61) ACC 925 (All-D.B.)** guides this Court to reach the following conclusion:

“In India doctrine of falsus in uno, falsus in omnibus does not apply. 'Maxim 'falsus in uno, falsus in omnibus' is not applicable in India. It is merely a rule of caution. Thus even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. The court has to separate grain from chaff and appraise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto. A witness may be speaking untruth in some respect and it has to be appraised in each case as to what extent the evidence is worthy of acceptance and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law

that it must be disregarded in all respects as well. Falsity of particular material witness on a material particular would not ruin it from the beginning to end. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain untruth or at any rate exaggeration, embroideries or embellishment."

45. On various relevant issues eg: active role played by the accused in the commission of the crime, date and time of the occurrence, motive, place of occurrence, prompt lodging of the FIR, injuries sustained by the injured, medical evidence etc. the prosecution story and evidence rendered by the prosecution is sufficient and reliable to prove the guilt of the accused appellant beyond reasonable doubt. There are no material contradictions in the testimonies of the witnesses of fact and formal witnesses. The defence evidence adduced by the defence in the form of oral evidence of D.W.1 is not sufficient to provide any assistance to the accused appellant.

46. In almost similar circumstances in **AIR 1982 SC 2013, Kundan Singh Vs. State of Punjab**, the Hon'ble Apex Court has observed as under:-

"We are of the view that having regard to the facts and circumstances of the present case and particularly in view of the fact that P.W. 6 and P.W. 7 were in the courtyard of their house when the appellant fired gun shots and he could not, therefore, have intended to injure them, the conviction of the appellant under Section 307, I.P.C. was not justified. We think that the conviction of the appellant could be maintained only under Section 324 of the I.P.C. since P.W. 6 and P.W. 7 received simple injuries. We accordingly allow the appeal and alter the conviction of the appellant to one under Section 324 of the I.P.C. for causing simple injuries to P.W. 6 and P.W. 7 and since the appellant has already suffered imprisonment for about 16 months, we direct that the sentence imposed on the appellant be reduced to that already undergone by him and that he may be set at liberty forthwith."

47. The Apex Court in **AIR 1996 SC 3236, Merambhai Punjabhai Khachar and others vs. State of Gujarat**, wherein in an attempt to commit murder by fire-arm, victim has suffered a pallet injury, the Apex Court held that Section 307 I.P.C. cannot be held to have been satisfied and the conviction was altered to Section 324 of IPC.

48. In **Ramesh vs. State of U.P., AIR 1992 SC 664**, wherein the injury was found on the back of the injured. Accused was tried along with two other was convicted under Section 307/34 I.P.C. and sentenced to undergo rigorous imprisonment for four years, while the two others were acquitted. The Apex Court altered from section 307 of IPC into Section 324 of I.P.C. and sentence was reduced to the period already undergone with fine of Rs. 3000/-, which was to be paid to the complainant as compensation.

49. The learned trial Court has elaborately discussed the evidence on record and the facts and circumstances of the case and reached at the right conclusion to which this Court concurs. The accused appellant has been rightly convicted under Section 324 I.P.C. and further keeping in view the other circumstances relating to the accused to award a sentence of fine of Rs.2,000/- only instead of sending him to jail seems to be proper sentencing.

50. In the light of foregoing discussions and considering the entire aspects of the matter and looking to the circumstances, under which the present offence has been committed, I am of the view that the impugned judgment and order passed by the trial court is well thought and well discussed having no perversity or illegality. The trial court has rightly held that the prosecution has succeeded to prove the guilt of the accused appellant beyond reasonable doubt but the case of prosecution does not travel beyond the scope of Section 324 I.P.C. The conviction in the case in hand is a right ending and sentence as imposed is proper and this Court concurs with the same. As such, the impugned judgement and order passed by the trial court is liable to be upheld and the appeal having no force is liable to be dismissed.

51. Accordingly the present Criminal Appeal is **dismissed**. The conviction and sentence imposed upon the accused appellant Balram vide impugned judgment and order dated 30.4.1991 is hereby confirmed.

52. Let the trial Court record be sent back along with the copy of this judgement for necessary compliance.

53. The appellant will execute, a personal bond and two sureties each in the like amount to the satisfaction of the court concerned within two months in compliance of provisions of Section 437-A Cr.P.C. to the effect that he would appear before the higher court, as and when such court issues notice in respect of any appeal or petition filed against the judgment of this Court, and such bail bonds shall be enforced for six months.

Order Date :- 20.9.2024

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