

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:41009-DB

Reserved on :- 09.01.2024

Delivered on :- 30.05.2024

Court No:-3

Case :- CRIMINAL APPEAL No. - 368 of 1987

Appellant :- Saheb Din

Respondent :- State of U.P.

Counsel for Appellant :- H.A. Husain, Nitin Kumar
Mishra

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Ajai Kumar Srivastava-I,J.

**(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.
under Chapter VII Rule 1 (2) of Allahabad High Court
Rules, 1952)**

1. This appeal challenges the judgment and order dated 09.04.1987 passed by the learned Vith Additional Sessions Judge, Faizabad in Sessions Trial No.361 of 1986, under Sections 302 and 307 of the Indian Penal Code¹, Police Station Kotwali, District Faizabad, whereby the appellant, Saheb Din has been convicted and sentenced to undergo life imprisonment for the offence under Section 302 I.P.C. He has also been convicted and sentenced to undergo eight years' rigorous imprisonment for the offence under Section 307 I.P.C. with a fine of Rs.1000/- and in default of

¹ hereinafter referred to as "I.P.C."

payment of fine, he has further been directed to undergo six months' additional imprisonment. All the sentences were directed to be run concurrently.

2. We have heard Shri Nitin Kumar Mishra, Advocate for the accused/ appellant and Shri Umesh Chandra Verma, learned A.G.A.-I for the State.

3. The prosecution case, in nutshell, is that the informant had stored some water hyacinth leaves in front of his house on Gaon Sabha land, to be used as fuel for fire in the winter which was being removed forcibly one morning by Saheb Din son of Jagannath Paasi. Babulal's son Maya Ram tried to stop him but Saheb Din started abusing Maya Ram and the informant Babulal, and also tried to attack them. Maya Ram tried to run away, but Saheb Din caught hold of him and threw him to the ground and hit his groin with a brick. Maya Ram fell near the house of Saheb Din. The accused then went inside his house and brought two or three handmade crude bombs and hit Maya Ram head with one of them. Babulal and his wife, Savitri tried to save Maya Ram but Saheb Din threw another bomb at them, which hit his wife Savitri. They shouted for help and Kangali Paasi and Bairagi Passi, and several other villagers came to the spot and tried to catch hold of Saheb Din but he managed to escape. Babu Lal, with help of others took his son to the Sadar hospital and after treatment of his son, his wife was also treated, thereafter he had gone to the police

station along with his wife to report the incident. He had no hope that his son would survive as the injuries caused to him by Saheb Din were grave.

4. On the basis of verbal information given by the first informant, Babu Lal, the first information report, Ext. Ka-9 came to be lodged against the accused/ appellant on 18.12.1985 at Police Station Kotwali, District Faizabad under Section 307 I.P.C., but later in the day, Maya Ram died during the course of treatment at the hospital at around 11:20 A.M. and such information was sent from the hospital through a ward boy to the police station and Section 302 I.P.C. was added later by the Investigating Officer.

5. The inquest proceeding started on 18.12.1985 at 11:45 A.M. and got concluded on 18.12.1985 at 05:00 P.M. The inquest report has been duly proved by P.W.-2, Jitendra Kumar Srivastava, S.I. as Ext. Ka.1.

6. The postmortem on the cadaver has been conducted by Dr. S. K. Rastogi, P.W.-4, which has been proved by him as Ext. Ka-10. As per postmortem report of the deceased, following ante-mortem injuries were found on the person of the deceased :-

"1. Lacerated wound 13 cm x 8 cmx bone on left parietal region 7 cm above left ear.

2. Contusion 9 cm x 4 cm on Rt Parietal occipital region."

7. According to the postmortem report, Ex. Ka-10, the cause of death of the deceased is reported to be shock and haemorrhage as a result of Head injury.

8. According to the injury report of Savitri, which has been proved by Dr. R. P. Pandey, P.W.-8 as Ext. Ka-16, following injuries were found on her body:-

"1. Multiple explosive wounds 4 in number in circular size varying from 0.2 cm to 0.4 cm muscle deep on left side face and neck (x-ray).

2. Multiple explosive wounds 8 in number 0.2 cm to 0.3 cm in diameter x muscle deep on right forearm and hand (x-ray).

3. Firearm wound 0.3 cm x 0.2 cm x muscle deep on medial aspect of left elbow (x-ray)."

9. The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C. He visited the place of occurrence and prepared site plans thereof Ext. Ka-11.

10. Upon conclusion of investigation, a charge-sheet, Ext. Ka-14 came to be submitted in the Court concerned, which has been proved by the Investigating Officer, P.W.-5.

11. The accused/ appellant was charged under Sections 302 and 307 I.P.C., who pleaded not guilty and claimed to be tried.

12. In order to bring home guilt of the accused/ appellant, the prosecution has examined Savitri as

P.W.-1, S. I., Jitendra Kumar Srivastava as P.W.-2, Babu Lal as P.W.-3, Dr. S. K. Rastogi as P.W.-4, S. I. Krishna Gopal Tripathi as P.W.-5, Dr. B. Bhargava as P.W.-6, Bhawani Prasad Mishra as P.W.-7 and Dr. R. P. Pandey as P.W.-8.

13. The accused/ appellant, in his statement, recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He also stated to have been falsely implicated in this case and claimed to be innocent.

14. No evidence in defence was adduced by the accused/ appellant before the learned trial court.

15. At the conclusion of trial, learned Trial Judge found that the prosecution had succeeded in proving its case on the basis of evidence adduced by the prosecution, therefore, learned trial Court convicted the accused/ appellant for the offence under Sections 302 and 307 of I.P.C. as stated above.

16. Aggrieved by the aforesaid impugned judgment and order dated 09.04.1987, the accused/ appellant has preferred the instant criminal appeal.

17. According to the learned counsel for the accused/ appellant, medical evidence of experts relating to the injuries show lacerated wounds only on the head leading to the deceased having bled to death cannot be disregarded more so when the investigating

officer did not produce the bloodstained soil or the defused bomb that was found allegedly on the spot where the incident occurred.

18. It has also been argued by learned counsel for the accused/ appellant that the accused/ appellant is the nephew of the first informant being the son of his real brother of Babu Lal, there was enmity relating to property between them and also over possession of gaddha in front of their house which belongs to the Gaon Sabha.

19. It has been argued by learned counsel for the accused/ appellant that the accused/ appellant has no criminal history and even if he is said to be very short tempered, it cannot be imagined that such a short tempered person could not have been involved in any criminal offence earlier. The fact that the bomb that was allegedly thrown on the deceased and another on the injured witness were not produced in court and that evidence regarding their explosion could not be proved by the prosecution nor any other eye witnesses or even witnesses, who had accompanied Babu Lal and Savitri to the hospital including Bairagi etc., shows that the prosecution story is false.

20. It has also been argued that the daughter-in-law of the first informant i.e. the widow of the deceased, one Jhumra was also present as is evident from the statement of Savitri, and she was also

mentioned in the list of witnesses as a prosecution witness but she was not produced in court.

21. It has been argued that had she been produced in court, some other story would have developed regarding her illicit relationship/ affair with one of the friends of Hridayram @ Nakkan, the elder brother of the deceased, Maya Ram.

22. Learned counsel for the accused/ appellant has placed reliance upon judgments rendered by Hon'ble the Supreme Court in **Amar Singh and others vs. State of Punjab**² and **Viram alias Virma vs. State of Madhya Pradesh**³ and on the basis thereof, he has submitted that as there is no specific medical evidence to suggest that there were injuries on the body of the deceased, Maya Ram and injured, Savitri, P.W.-1, caused by explosion, therefore, their testimonies to the contrary stand belied.

23. Learned counsel for the accused/ appellant has, thus, prayed to set aside the impugned judgment and order dated 09.04.1987 and to acquit the accused/ appellant accordingly.

24. Per contra, learned A.G.A. for the State has submitted that there are no major contradictions in the oral testimony of the injured witness and in the medico legal examination report, the injured witness could not

² (1987) 1 SCC 679

³ (2022) 1 SCC 341

be doubted as in the cross-examination, no suggestion was put to her.

25. He has also submitted that Jhumra, the daughter-in-law of the first informant, may not have been produced or even Bairagi but under Section 134 of the Evidence Act, the prerogative is with the prosecution to produce witnesses. No particular number of witnesses is required to prove a case. The only requirement is regarding the quality of evidence/ statement of the witnesses, which are actually produced in Court and the quantity of such witnesses is irrelevant.

26. His further submission is that certain exhibits for example blood stained soil or the live bomb, which was found on the spot by the Investigating Officer, having not been produced in Court, even though, it was defused, can only be said to be a lapse on the part of the Investigating Officer and negligence on the part of the Investigating Officer cannot detract from the prosecution story as Savitri's injuries have been examined and they have been found to have been caused by an explosive.

27. His next submission is that the case of two eye witnesses, namely, Babu Lal and Savitri is more or less the same that Maya Ram had tried to stop the accused/ appellant from removing the water hyacinth leaves that were stored by Babu Lal in the gaddha in front of their house and the accused/ appellant being

annoyed had at first thrown Maya Ram to the ground then had gone to his house and brought bombs. One of the bombs, he threw on the head of the deceased and since Savitri was close by, another bomb was thrown on her also, from which she suffered injuries. Babu Lal had brought Maya Ram and Savitri to the hospital along with several other villagers, whose names have been mentioned, but they have not been produced by the Investigating Officer.

28. He has also submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 09.04.1987, which is well discussed and reasoned. The accused/ appellant was named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeal.

29. Having heard learned counsel for the accused/ appellant, learned A.G.A. for the State and upon perusal of record, it transpires that P.W.-3, Babu Lal is the first informant. The deceased, Maya Ram was the son of the first informant, P.W.-3, Babu Lal. P.W.-1, Savitri is the mother of the deceased, Maya Ram and wife of the first informant, P.W.-3, Babu Lal. The accused/ appellant Saheb Din is the real nephew of the first informant, P.W.-3, Babu Lal. P.W.-1, Savitri is an

injured witness, who is stated to have sustained following three injuries :-

"(i) Multiple explosive wounds 4 in number in circular size varies from 0.2 cm to 0.4 cm muscle deep on left side face and neck (x-ray).

(ii) Multiple explosive wounds 8 in number 0.2 cm to 0.3 cm in diameter x muscle deep on right forearm and hand (x-ray).

(iii) Firearm wound 0.3 cm x 0.2 cm x muscle deep on medical aspect of left elbow (x-ray)."

30. P.W.-2, Jitendra Kumar Srivastava has prepared panchyatnama and proved the same as Ext. Ka-1. P.W.-4, Dr. S. K. Rastogi has conducted the postmortem on the cadaver of the deceased, Maya Ram. He has reported the cause of death of deceased as shock and haemorrhage as a result of injury on head. Following two antemortem injuries were reported on the body of the deceased :-

"(i) Lacerated wound 13 cm x 8 cm x bone on left parietal region 7 cm above left ear.

(ii) Contusion 9 cm x 4 cm on Rt. Parietal occipital region."

31. P.W.-4, Dr. S. K. Rastogi stated that he had conducted the Postmortem on 19.12.1985 at about 03:00 P.M. The doctor found the deceased to be around 25 years of age and his death having been caused by antemortem injuries which were numerous. There was a lacerated wound 13 cm x 8 cm, bone deep on the left side of the head, 7 cm above the ear. There was also

one contusion 9 cm x 4 cm on the right side of the head towards the back. The parietal bone was broken, and the wound was towards the back of the head. The membranes of the brain were all found filled with blood. Fracture was also found on the occipital region and the cranial fossa was also found broken. The stomach was found empty. There was some material in the small intestine and some faecal matter in the large intestine.

32. P.W.-4, Dr. S. K. Rastogi stated that the deceased had died due to blood loss and shock caused by antemortem injuries. The nature of the injuries were such that they would normally have resulted in death. The fecal matter found in the large intestine would be because of incomplete evacuation in the morning. He had stated that the victim had died at 11:20 AM on 18.12.1985. During the course of cross examination, this witness had stated that the injuries on the body of the deceased could have been caused by a heavy stone.

33. P.W.-6, Dr. B. Bhargava stated that he was on duty on 18.12.1985 at Sadar Hospital, Faizabad. At around 8 A.M. in the morning, Maya Ram son of Babu Lal was brought in an injured state. He did not examine the injuries carefully at that time, as he was concentrating more on giving immediate medical treatment as the deceased was brought in a very serious condition and there were several wounds which were bleeding profusely. During cross examination, this

witness clearly stated that such wounds on the deceased could not have been caused during the night intervening 17-18.12.1985.

34. P.W.-8, Dr. R. P. Pandey deposed that he was on duty on 18.12.1985 at Sadar Hospital, Faizabad when Savitri, wife of Babu Lal came in for treatment. He had medically examined her at around 8:40 A.M. She had several explosion wounds on her body and it appeared that all such wounds were caused early in the morning of 18.12.1985.

35. The two witnesses of fact, namely, P.W.-1, Savitri and P.W.-3, Babu Lal are none other than mother and father of the deceased. They are, therefore, related witnesses. P.W.-1, Savitri is also an injured witness. Before scrutinizing the testimonies of aforesaid witnesses of fact, in the wake of submissions of learned counsel for the accused/ appellant touching their veracity on the touchstone of being related witness and existence of some embellishments/ exaggerations/ discrepancies in their testimonies, we deem it appropriate to refer to para 12 of the judgment rendered by Hon'ble the Supreme Court in **Khema alias Khem Chandra and others vs. State of Uttar Pradesh**⁴, which is quoted herein below :-

"**12.** To examine the correctness of these findings, we will first assess the testimony of Omveer (PW 1) and Inder (PW 2). Both these

4 (2023) 10 SCC 451

witnesses are brothers of deceased Prakash. As such, they would fall in the category of interested witnesses, being related to the deceased. **However, their testimonies cannot be discarded only on the ground that the witnesses are interested witnesses. The only requirement would be that the evidence of such witnesses is required to be scrutinised with greater care and circumspection.**

(emphasis supplied by us)

36. Hon'ble the Supreme Court in **Brahm Swaroop and another vs. State of Uttar Pradesh**⁵ in paragraph No.28 has held as under :-

"28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." (Vide *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] , *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214] , *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630 : AIR 2009 SC 2661] and *Balraje v. State of*

⁵ (2011) 6 SCC 288

Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .)”

(emphasis supplied by us)

37. Hon’ble the Supreme Court in **Brahm Swaroop's case (supra)** in paragraph No.32 has also held as under :-

32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.” Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be

expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See State of U.P. v. M.K. Anthony[(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , State of Rajasthan v. Om Prakash [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411 : AIR 2007 SC 2257], State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] and Prithu v. State of H.P. [(2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502]).

(emphasis supplied by us)

38. When we examine the testimonies of witnesses of fact, namely, P.W.-1, Savitri and P.W.-3, Babu Lal in the light of aforesaid settled legal position, we notice that P.W.-1, Savitri, wife of Babu Lal, the mother of the deceased and also an injured witness has deposed that the accused was her nephew and next door neighbour. Towards the north of their houses, there was gram samaj land which was low lying and that they had filled it up and were in possession of the same. She kept cow dung cakes and water hyacinth leaves on it. Almost one year ago, when dawn was breaking the accused Saheb Din was removing the water hyacinth leaves from such land and her son Maya Ram tried to stop him. Saheb Din did not stop and threatened Maya Ram and also got hold of him and threw him to the ground. Maya Ram extricated himself, but was caught again by Sahab Din who hit Maya Ram with a brick on his groin. Maya Ram fell down and could

not get up again. Saheb Din went inside his house and brought out a bomb which he threw at Maya Ram's head. Such witness stated that she, her husband and her daughter-in-law, Jhumra all ran towards Maya Ram to save him. Saheb Din also threw a bomb at her, which hit her and caused several injuries. He also threw a bomb at Babu Lal, but it did not explode. On their raising an alarm, Kangali and Bairagi and others reached the spot and Sahab Din ran away. Her son Maya Ram, was lying in a pool of blood and could not speak, and she along with Babu Lal and two other persons brought Maya Ram to Sadar Hospital Faizabad where his treatment began. However, he died in the hospital the same day. P.W. 1 also stated that her son was around 22 years old.

39. P.W.-3, Babu Lal, father of the deceased, Maya Ram corroborated the statement of his wife Savitri, and he also stated that Saheb Din wanted to take possession over the low lying land which had been given on Patta by the Gram Pradhan to Babu Lal. One morning Saheb Din was removing the water hyacinth leaves which had been stored by Babu Lal over such low lying land, and when Maya Ram tried to stop him, he was threatened by Saheb Din. Maya Ram began to run, but Saheb Din caught hold of him and threw him to the ground and picked up a brick and hit him in his groin. The injury so caused started bleeding and Maya Ram could not get up. Later, Saheb Din went inside his house and threw a bomb at Maya Ram, which exploded

on Maya Ram's head. He also stated that when Savitri ran towards Maya Ram to save him, she was also hit by another bomb by Saheb Din which caused her injuries. When Babu Lal tried to stop Saheb Din he attacked him also with another bomb which did not explode but fell to the ground. He also stated that on hearing the commotion, Kangali and Bairagi and others had approached the spot and Saheb Din ran away. They alongwith other villagers took Maya Ram on a cot to Sadar Hospital, Faizabad, where his treatment started. He along with his wife went to Kotwali Sadar to lodge a report. After the report was written he came to know at the Kotwali that his son had died and he started crying. He reached the hospital where he was told that the dead body had been sent to the mortuary and, that it would be returned next day after postmortem.

40. A careful examination of testimonies of P.W.-1, Savitri and P.W.-3, Babu Lal reveals that their testimonies are consistent with the case of prosecution. It also shows that they have supported the prosecution case in all material aspects. Their testimonies in respect of manner of assault find support from the postmortem report of the deceased, which was proved by Dr. S. K. Rastogi as Ext. Ka-10 and injury report of P.W.-1, Savitri which has been proved by Dr. R. P. Pandey as Ext. Ka-16.

41. Having regard to the various injuries reported on the person of P.W.-1, Savitri, who is not only an eye-

witness but an injured witness also, her presence at the place of occurrence as shown in site plan, Ext. Ka-11 on the date of incident cannot be doubted.

42. We cannot lose sight of the fact that witnesses, P.W.-1, Savitri and P.W.-3, Babu Lal are not literate and they are rustic villagers, therefore, once they say that bombs were hurled on the date of incident, it does not necessarily mean that sophisticated hand grenades were hurled. They are not supposed to know as to what particular kind of bombs were used in this incident. Use of improvised bombs are very common in these areas. Therefore, unavailability of any remnants of the bomb either at the place of occurrence or on the body of the deceased and the injured witness, P.W.-1, Savitri does not shake veracity of prosecution's case.

43. We have also noticed that the P.W.-8, Dr. R. P. Pandey, who had examined P.W.-1, Savitri, had found multiple explosion wounds on the face and nose, and on the right forearm, and at the same time had mentioned firearm wound muscle deep on the medial aspect of the left elbow.

44. Learned counsel for the accused/ appellant has argued that according to prosecution story, the deceased was hit on his groin by a brick, however, no such corresponding injury was reported in his postmortem report, which belies the entire prosecution story. However, having considered this aspect in its

entirety in the light of testimonies of P.W.-1, Savitri and P.W.-3, Babu Lal, we do not find this argument tenable for the reason that it is not always necessary that a person who has been hit on his groin by a brick would have such injuries as would be ascertainable in his medical examination.

45. The first informant, P.W.-1, Savitri being mother and P.W.-3, Babu Lal being father of the deceased, their presence on the date and time of occurrence at the place shown in site plan, Ext. Ka-11 which has been proved by the Investigating Officer appears to us to be natural and consistent with the case of the prosecution. The Investigating Officer had collected plain earth and bloodstained soil and prepared a recovery memo thereof, Ext, Ka-12. The same was sent to the Forensic Science Laboratory which amply shows that the Investigating Officer had found blood at the place of occurrence soon after the incident. This fact also establishes the prosecution case in respect of place of occurrence.

46. As we do not find the injury report and postmortem report in respect of injuries caused by explosive and cause of death of the deceased to be wholly inconsistent with the ocular testimony produced by the prosecution, therefore, in our considered opinion, the law laid down by Hon'ble the Supreme Court in **Amar Singh's case (Supra)** and **Viram alias Virma's case (supra)** is distinguishable on the facts.

47. Though the defence has tried to project a case that the deceased having some criminal antecedents, was killed by someone else, however, the fact that we have found the case of prosecution to have been proved on the basis of cogent and reliable testimonies of witnesses of facts, namely, P.W.-1, Savitri and P.W.-3, Babu Lal, we find such submissions of learned counsel for the accused/ appellant to be untenable. In this regard, paragraph 29 of **Brahm Swaroop's case (supra)** may again be usefully referred to, which is quoted herein below :-

"**29.** In such a fact situation though Natthu Singh alias Raghunath Singh (D-1) was a history-sheeter and Rajendra Singh (D-2) and Dharampal Singh (D-4) had criminal cases against them and they had large number of enemies, it cannot be inferred that somebody else had killed them."

48. So far as certain lapses on the part of Investigating Officer is concerned, we find it apposite to quote paragraphs No.7 and 8 of a judgment rendered by Hon'ble the Supreme Court in **Dhanaj Singh alias Shera and others vs. State of Punjab**⁶ :-

"**7.** As was observed in *Ram Bihari Yadav v. State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v.*

⁶ AIR 2004 SC 1920

***Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . As noted in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.**

8. The stand of the appellants relates essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets, etc. in the background of defective investigation has been considered in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . In the case at hand, no crack in the evidence of the vital witnesses can be noticed."

(emphasis supplied by us)

49. So far as some embellishment appearing in the testimonies of prosecution witnesses is concerned, in this regard, we may refer to para 13 of the judgment rendered by Hon'ble the Supreme Court in **Appabhai and another vs. State of Gujarat**⁷, which is quoted herein below :-

⁷ 1988 SCC (CrI) 559

"**13.** On the second contention, the learned counsel highlighted many of the contradictions in the evidence of Devji (PW 4) as against his previous statement, one recorded by the Executive Magistrate (Ex. 66) and another by the police during the investigation. We have, however, also examined the relevant evidence. It is true that there are many contradictions in the evidence of Devji. He has not attributed overt acts to individual accused in his statement before the police whereas he has attributed such overt acts in his evidence before the court. But that is no ground to reject his entire testimony. It must not be forgotten that he was a victim of the assault. Fortunately he has survived. He must, therefore, be considered as the best eyewitness. The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. **The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.** Jaganmohan Reddy, J., speaking for this Court in Sohrab v. State of Madhya Pradesh [(1972) 3 SCC 751 : 1972 SCC (Cri) 819 : AIR 1972 SC 2020 : 1972 Cri LJ 1302, 1396] observed: [SCC p. 756, SCC (Cri) p. 824, para 8]

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

(emphasis supplied by us)

50. Thus, in the light of aforesaid overall discussion, we find the testimonies of P.W.-1, Savitri and P.W.-3, Babu Lal to be consistent, cogent and reliable and on the basis thereof, we are of the considered view that the prosecution has been able to prove that on 18.12.1985 at about 07:00 A.M., the accused/ appellant had made a murderous assault on the victim which led to his death later in the day and also inflicted injuries to the P.W.-1, Savitri. Thus, the finding of guilt recorded by learned trial Court on the basis of reliable and cogent testimonies of P.W.-1, Savitri and P.W.-3, Babu Lal does not suffer any illegality or irregularity. We, therefore, do not find any substance in submission of learned counsel for the accused/ appellant to the contrary.

51. In conclusion, we have found no discrepancy in the appreciation of evidence by the trial Court. The appeal lacks merit and is liable to be dismissed and the same is, accordingly, **dismissed**.

52. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

(Ajai Kumar Srivastava-I, J.) (Sangeeta Chandra, J.)

Order Date :- 30.05.2024

Mahesh/Rahul/Darpan