

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2024:AHC-LKO:46705-DB

Reserved on :- 22.02.2024
Pronounced on :- 10.07.2024

Court No. - 3

Case :- CRIMINAL APPEAL No. - 304 of 1993

Appellant :- Mool Chandra And Others

Respondent :- State of U.P.

Counsel for Appellant :- Subodh Misra,Aakash
Srivastava,Anita,Anshuman Singh,Anurag
Singh,M.A.Khan,Naved Ali,Subodh Mishra,Sushil
Kumar

Counsel for Respondent :- G.A.,Anshuman
Singh,Harsh Vardhan Singh,Kuldeep Singh,Pallavi
Dixit,R.N.Shukla

with

Case :- CRIMINAL APPEAL No. - 299 of 1993

Appellant :- Veere @ Veerendra

Respondent :- State

Counsel for Appellant :- Subodh
Mishra,Anshuman Singh,Madhulika Yadav

Counsel for Respondent :- G.A.,Anshuman Singh

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per :- Sangeeta Chandra, J.)

1. Heard Sri Naved Ali, learned counsel for the appellants No.1, 2 and 3 in Criminal Appeal No.304 of 1993, Ms. Madhulika Yadav, learned counsel for the

appellant in Criminal Appeal No.299 of 1993, learned A.G.A. for the State, Sri Anshuman Singh, learned counsel for the complainant and perused entire record.

2. Under challenge in these criminal appeal is the impugned judgment and order dated 13.07.1993 passed by the learned VI Additional Sessions Judge, Sitapur in Sessions Trial No.495 of 1992 State vs. Mool Chand and others, arising out of Crime No.63 of 1992, under Sections 147, 148, 149, 302 of the Indian Penal Code¹, Police Station Pisawan, District Sitapur, whereby the surviving appellants No.1, 2 and 3, namely, Mool Chand, Jagdish and Lekhram in Criminal Appeal No.304 of 1993 and the appellant, Veere @ Veerendra in Criminal Appeal No.299 of 1993, have been convicted and sentenced to undergo one year's rigorous imprisonment for the offence under Section 147 I.P.C. They have also been convicted and sentenced to undergo one year's rigorous imprisonment for the offence under Section 148 I.P.C. They have also been convicted and sentenced to undergo life imprisonment for the offence under Section 302/149 I.P.C. All the sentences were directed to run concurrently.

3. Since the aforesaid criminal appeals have been preferred against the judgment and order dated 13.07.1993 passed by the learned VI Additional Sessions Judge, Sitapur in Sessions Trial No.495 of 1992 titled as State vs. Mool Chand and others arising out of Crime No.63 of 1992, under Sections 147, 148,

¹ hereinafter referred to as "I.P.C."

149, 302 of the I.P.C., Police Station Pisawan, District Sitapur, therefore, they have been heard together and are being decided by a common judgment.

4. Criminal Appeal bearing No.304 of 1993 was initially filed by four accused/ appellants, namely, Mool Chand, Jagdish, Lekhram and Sukhlal. However, the accused/ appellant No.4, Sukhlal has died during pendency of the appeal and the appeal in respect of accused/ appellant No.4 has already been abated by this Court vide its order dated 29.07.2022.

5. The case of the prosecution in nutshell is that a written report was submitted by the first informant, Shambhu Dayal at Police Station Pisawan, District Sitapur stating therein that on 30.05.1992 at about 10:00 AM, the first informant alongwith his elder brother, Khoob Chand, went to Pisawan Market on a bicycle to purchase some articles. Meanwhile, the first informant's elder brother, Nand Kishore met them in the Pisawan Market. After making some purchases, all three were returning from the market to their house alongwith Shyam Lal, who belonged to their village. The first informant's elder brother, Khoobchand was ahead on the bicycle. He was followed by the first informant and his brother, Nand Kishore and Shyamlal, who were also on their bicycles. When the first informant's brother, Khoobchand reached the grove of Gaya Prasad Lohar at about 01:00 PM, which is situated towards the west direction of the village, the accused,

namely, Mool Chand, Lekhram and Jagdish armed with countrymade firearms, and the other accused, Sukhlal armed with *Banka* and Veere armed with *kanta* suddenly came out from the grove of Gaya Prasad and exhorted to kill Khoobchand. Thereafter, when Khoobchand tried to escape, the accused persons, namely, Moolchand, Lekhram and Jagdish shot at Khoobchand with countrymade firearms. Resultantly, Khoobchand sustained firearm injuries and fell down on the ground. Thereafter, the other accused, Sukhlal and Veere also assaulted Khoobchand with *banka* and *kanta* respectively. Upon hearing the noise of Khoobchand, the first informant, Shambhu Dayal, his elder brother, Nand Kishore, Shyamlal and Shri Krishna and other villagers rushed to the spot, which led the accused persons fleeing away from the spot towards the southwest direction. They tried to apprehend the accused persons, but they failed to chase them for long because of fear of countymade firearms, *banka* and *kanta*, which the accused were carrying. It is also stated in the written report, Ex. Ka-1, that in the month of March, 1992, Moolchand's brother, Dwarika was killed and a case was lodged against the first informant's brother, Khoobchand and others. For taking revenge, the accused, Moolchand, Lekhram, Jagdish, Sukhlal and Veere killed the first informant's brother, Khoobchand using countrymade firearms, *banka* and *kanta*.

6. The inquest proceeding started on 30.05.1992 at 03:30 PM and got concluded on same day at 04:45 PM. The inquest report has been duly proved by P.W.-5, Syed Ishrat Hussain as Ex. Ka-6.

7. According to postmortem report of the deceased, Ex. Ka-5, which has been proved by P.W.-4, Dr. Abhishek Verma. The deceased died due to shock & haemorrhage as a result of ante-mortem injuries.

8. On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, P.W.-1, Shambhu Dayal, the first information report, Ex. Ka-3 came to be lodged against the accused/ appellants on 30.05.1992 at 02:10 PM. for the offence under Sections 147, 148, 149 and 302 I.P.C.

9. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure². He visited the place of occurrence and prepared a site plan, Ex. Ka-12 thereof.

10. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ex. Ka-2 against the accused/ appellants.

11. Charges for the offences under Sections 147, 148 and 302/149 I.P.C. were framed against the accused/ appellants, who denied the charges and claimed to be tried.

² hereinafter referred to as " Cr.P.C"

12. In order to bring home guilt of the appellants, the prosecution has examined Shambhu Dayal, who is the first informant, as PW-1, Shri Krishna as PW-2, S.I. Ashok Singh as PW-3, Dr. Abhishek Verma as PW-4 and S.O. Syed Ishrat Hussain as PW-5.

13. The appellants in their statements recorded under Section 313 Cr.P.C. have stated the prosecution story to be false. They have also stated to have been falsely implicated in this case and they claimed to be innocent.

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

15. The learned trial court, after appreciating the evidence available on record adduced by the prosecution, convicted and sentenced the appellant as stated herein above.

16. In such circumstances referred to above, the accused-appellants are before this Court with the present criminal appeals.

17. Learned counsel for the appellants have submitted that the appellants are innocent, who have been falsely implicated in this case. The finding of guilt of the appellants recorded by the learned trial court is against the weight of evidence, therefore, the same cannot be sustained.

18. Their further submission is that the prosecution story is unbelievable and the appellants have been falsely implicated on the basis of false and fabricated facts. The statements of witnesses of fact have not been considered in their right perspective, therefore, the appellants came to be convicted wrongly by means of impugned judgment and order dated 13.07.1993, which is not based on due analysis of evidence available before the learned trial court.

19. Counsel for the surviving appellants in Criminal Appeal No.304 of 1993 had doubted the presence of the PW-2 saying that PW-2 could not show as to why he had walked through 7-8 fields to reach the Place-E shown in the site plan, Ex. Ka-12 from where he is said to have witnessed the incident wherein the appellants had fired upon the deceased. He has also stated that the Investigating Officer did not mark any Tubewell or source of water at Place-E where the PW-2 had allegedly gone to quench his thirst.

20. Learned counsel for the appellants in Criminal Appeal No.304 of 1993 has also pointed out that although the deceased was fired upon at Place-C no cartridges or pellets were recovered from that place, and five fire arm injuries were found on the body of the deceased but no bloodstained soil was also recovered from Place-C. Pointing out the site plan at Page no.61 of the Paper book, learned counsel for the appellants has stated that the deceased was said to have been

fired upon at Place-C where he fell down from his cycle and then he is said to have reached at Place-A near the well where his body was lying, but bloodstained soil was taken only from Place-A and not from Place-C. He has also doubted the presence of PW-1 saying that PW-1 is the brother of the deceased and PW-1 did not try and save his brother when he was being fired upon by the appellants. He just watched the incident and came back and reported the matter.

21. Counsel for the appellants has also argued that PW-1 had the motive to falsely implicate the appellants because DW-1 was an accused in the murder of the brother of the appellants which happened during the time of Holi Festival in the very same year.

22. It is the case of the appellants that it was a blind murder and only because of the motive to falsely implicate the entire male members of the family of the appellants, the story has been cooked up with the assistance of the Investigating Officer.

23. Counsel for the appellants has also argued on the basis of Medical Officer's statements regarding setting in of Rigour Mortis in the body of the deceased to say that the incident did not take place on 30.05.1992 at around 01:00 P.M. in the afternoon, and that the deceased died in the early hours of the morning on 30.05.1992.

24. Ms. Madhulika Yadav, learned counsel for the appellant in Criminal Appeal No.299 of 1993 has also submitted that according to first information report, Ex. Ka-3, the appellant, Veere @ Veerendra was carrying a *kanta* and he inflicted injuries by *kanta* to the deceased. However, drawing attention of this Court to the postmortem report, Ex. Ka-5, she argued that there is no such injury, which corresponds to weapon of assault i.e. *kanta* assigned to the appellant, Veere @ Veerendra. Therefore, his participation in this incident is doubtful and he deserves to be accorded benefit of doubt.

25. Per contra, learned A.G.A. for the State and learned counsel for the complainant have submitted that the accused/ appellants rightly came to be convicted vide impugned judgment and order dated 13.07.1993, which is well discussed and reasoned. The appellants were named in the first information report. Accordingly, interference by this Court is neither warranted nor justified. They, accordingly, pray for dismissal of the instant criminal appeals.

26. At the outset, it is relevant to mention that that S.I. Ashok Singh has been examined as P.W.-3, who has proved the chargesheet as Ex. Ka - 2 and the First Information Report as Ex. Ka-3. This witness has also proved G.D. report as Ex. Ka-4. Dr. Abhishek Verma has been examined as P.W.-4, who conducted the postmortem of the deceased and he reported the

cause of death of the deceased to be ante mortem injuries. He proved the postmortem report of the deceased as Ex. Ka- 5. S.O. Syed Ishrat Hussain has been examined as P.W.-5, who proved the inquest report as Ex. Ka- 6 and sample sealed as Ex. Ka-7. He has also proved photograph of the dead body as Ex. Ka-8. This witness has also proved the report to C.M.O. as Ex. Ka- 9, report to R.I. as Ex. Ka.- 10 and challan of the dead body as Ex. Ka-11. He has also proved the site plan as Ext. Ka-12. He has also recovered a cycle, a bag containing a pair of shoes, 1 Kg. tomatoes and one slipper and proved the recovery memo as Ex. Ka-13. He had also taken bloodstained soil from the spot and proved its memo as Ex. Ka- 14.

27. Having heard learned counsel for the parties in the light of submissions advanced by them, we have gone through the entire record, which reveals that in order to bring home guilt of the appellants, the prosecution has examined two witnesses of fact, namely, P.W.-1, Shambhu Dayal, who is the first informant and brother of the deceased, and P.W.-2, Shri Krishna.

28. Before we undertake scrutiny of aforesaid two witnesses of fact examined by the prosecution, we would like to refer to paragraph No.11 of a judgment rendered by Hon'ble the Supreme Court in **Dahari and others vs. State of Uttar Pradesh**³, which is quoted herein below :-

³ (2012) 10 SCC 256

"11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. [Vide *Himanshu v. State (NCT of Delhi)* [(2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] , *Ranjit Singh v. State of M.P.* [(2011) 4 SCC 336 : (2011) 2 SCC (Cri) 227 : AIR 2011 SC 255] and *Onkar v. State of U.P.* [(2012) 2 SCC 273 : (2012) 1 SCC (Cri) 646]]"

(emphasis supplied by us)

29. Keeping aforesaid principle of law in mind, when we examine the testimonies of P.W.-1, Shambhu Dayal and P.W.-2, Shri Krishna, carefully, we find that P.W.-1, Shambhu Dayal has deposed that the incident occurred on 30.05.1992 at about 01:00 PM. On the date of incident, this witness and his elder brother, Khoobchand, the deceased, had gone to Pisawa market on bicycle, where Shyamlal, who belongs to his village, also met them in the market. While they were returning to their home at around 11:00 AM and 12:00 noon, Khoobchand, who was on a bicycle, was ahead of this witness, whereas, the first informant, P.W.-1/ Shambhu Dayal, his brother, Nand Kishore, and Shyamlal were also coming on bicycles behind the deceased, Khoobchand. When these people crossed Village Mooda Khurd and reached to the south of village, near the grove of Gaya Prasad, the appellants, namely, Mool Chand, Jagdish, Lekhram, Sukhlal and Veere @

Veerendra, came out from the grove of Gaya Prasad and charged at Khoobchand. According P.W.-1/ Shambhu Dayal, Mool Chand, Lekhram and Jagdish are real brothers, Veere @ Veerendra is the cousin brother of aforesaid three accused, and Sukhlal is the father of Mool Chand. Mool Chand, Lekhram and Jagdish were armed with countrymade firearms, whereas, Sukhlal was carrying a *banka* and Veere @ Veerendra was armed with *kanta*. They challenged Khoobchand and exhorted to kill him. Khoobchand alighted from the bicycle and tried to run away, upon which, Mool Chand, Lekhram and Jagdish fired at him with their countrymade firearms. Khoobchand received firearm injuries and fell down near a well in the field of Shyamlal. When the deceased, Khoobchand, fell down on the ground, the appellants, Veere @ Veerendra and Sukhlal assaulted him with *kanta* and *banka*, respectively. This witness alongwith Nand Kishore and Shyamlal shouted for help. Meanwhile, P.W.-2, Shri Krishna, who was hoeing his sugarcane field, had also reached the place of occurrence. The appellants thereafter ran away towards west direction. This witness alongwith other persons present there at the place of occurrence tried to apprehend the appellants, however, they did not succeed in their efforts. This witness has proved the written report, which he had given in his own handwriting, as Ex. Ka-1.

30. Shri Krishna, who is said to have also reached at the place of occurrence on the date of

incident, has been examined as P.W.-2. He has deposed that on 30.05.1992 at about 01:00 PM, he was hoeing his sugarcane field. Feeling thirsty, he went to fetch water to quench his thirst. The field, which he was hoeing, is towards west of the scene of occurrence. This witness stated that near the place of occurrence, there is a pumping set, from which he had gone to fetch water. When he heard the sound of fire, this witness ran towards scene of occurrence and reached near the well of Shyamlal and saw appellants, Mool Chand, Jagdish and Lekhram armed with countrymade firearms. He also saw Sukhlal and Veere @ Veeendra armed with *banka* and *kanta* respectively, who were attacking Khoobchand with their weapons. Khoobchand fell down near the well after sustaining firearm injuries. This witness alongwith the first informant, Shambhu Dayal, Nand Kishore and Shyamlal raised alarm, which led to arrival of many persons of the village at the place of occurrence. However, after attacking and mortally wounding Khoobchand, the appellants ran away towards southwest direction. This witness stated that the bicycle and a bag of the deceased was lying near the dead body towards south of it.

31. A close look at the testimonies of aforesaid two witnesses of fact reveals a consistent prosecution story in respect of presence of the appellants, weapons assigned to the appellants, manner of assault and the manner, in which, they escaped from the place of occurrence. Much emphasis has been laid by the

learned counsel for the appellants on the fact that the prosecution did not examine other witnesses named in the F.I.R., namely, Nand Kishore and Shyam Lal, whereas, the prosecution tried to project P.W.-2, Shri Krishna as an eye witness, who is only a chance witness. In this regard, we would like to refer to Section 134 of Evidence Act, which is quoted herein below:-

“134. Number of witnesses.—No particular number of witnesses shall in any case be required for the proof of any fact.”

32. It is also settled legal position that it is the prerogative of prosecution to choose as to which witness it wants to examine. In this regard, a judgment rendered by Hon’ble the Supreme Court in **Rohtash Kumar vs. State of Haryana**⁴ may be usefully referred to.

33. In **Avtar Singh vs. State of Haryana**⁵, Hon’ble the Supreme Court has also held that in a Sessions trial, the public prosecutor is not bound to examine all prosecution witnesses mentioned in the first information report or in the charge sheet. He is at liberty to choose only some of the several witnesses on the same point, and when there are several eye witnesses or injured witnesses, the public prosecutor may examine only one or two or few of them and he is not obliged to examine all such witnesses.

4 (2013) 14 SCC 434

5 (2012) 9 SCC 432

34. So far as testimony of P.W.-2, Shri Krishna is concerned, according to him, he was hoeing his field, which lies towards the west direction from the place of occurrence. Once it is not in dispute that his field lies towards the west direction of the place of occurrence, it remains to be seen whether the cause which he has shown for being present near the place of occurrence is substantiated or not. This witness says that he had gone towards the place of occurrence to quench his thirst. The date of occurrence according to written report, Ex. Ka-1, is 30.05.1992. In summer season, the days are generally hot and that too at about 01:00 PM. Hence, it does not appear to be unnatural to be thirsty while hoeing an agricultural field. Upon a careful examination of site plan, Ex. ka-12, we find that the Investigating Officer has shown an "engine" towards southwest direction, which in common parlance indicates a pump, which lifts underground water. Therefore, undue emphasis of learned counsel for defence that as there was no source of water near the place of occurrence and the presence of P.W.-2, Shri Krishna, is nothing but an effort of prosecution to plant a witness as a chance witness, appears to us to be untenable.

35. In order to ascertain the veracity of aforesaid two witnesses of fact, we have carefully perused the postmortem report, Ex. Ka-5 of the deceased, which has been proved by P.W.-4, Dr. Abhishek Verma, which reveals following ante-mortem injuries :-

"1- Incised wound 9.00 cm x 1.5 cm x bone deep on the back of skull area occipital protuberance.

2- Incised wound 4.00 cm x 1.00 x bone deep on the left side of skull 8.00 cm above the left ear.

3- Incised wound 2.5 cm x 0.5 cm x skull deep (bone deep) on the left side of skull just above and back of left ear.

4- Incised wound 2.5 cm x 0.5 cm x bone deep on the right side of forehead.

5- Incised wound 3.5 cm x 1.00 cm x bone deep involving root of nose.

6- Gun shot entry wound of 2.5 cm x 2.5 cm x cavity deep on right side of chest 2.00 cm below right nipple, blackening, tattooing and charring present 2.00 cm around the wound.

7- Multiple gun shot entry wound in area of 15.00 cm x 9.00 cm on the left side of lower part of chest and abdomen 5.00 cm below left nipple. Size 0.3 cm x 0.3cm, side to cavity deep.

8- Gun shot entry wound of 3.5 cm x 3.5 cm x cavity deep on left side of abdomen in auxiliary line 24.00 cm below the axillia.

9- Gun shot wound of entry 0.3cm x 0.3 x bone deep on the palmer aspect of left index finger underneath bone fractured present.

10- Multiple gun shot injury wound in area of 35.00 cm x 10.00 on the medial aspect of right arm and forearm. 16 cm below right axilla 0.3 cm x 0.3 cm size skin x muscle deep."

36. The prosecution witnesseses, namely, P.W.-1, Shambhu Dayal and P.W.-2, Shri Krishna, have deposed

that on the date of occurrence, the appellants, namely, Mool Chand, Jagdish and Lekhram were armed with firearms and the appellants, Sukhlal and Veere @ Veerendra were armed with *banka* and *kanta* respectively. They have also deposed that the appellants, Mool Chand, Lekhram and Jagdish opened fire at the deceased and the appellants, Veere @ Veerendra and Sukhlal assaulted the deceased with *kanta* and *banka* respectively. The postmortem report, Ex. Ka-5, of the deceased reveals five entry wounds, along with five incised wounds. These wounds could certainly have been caused by sharp-edged weapons like *banka* and *kanta*. P.W.-4, Dr. Abhishek Verma, in his testimony, also affirms this view that aforesaid injuries may have been caused by a firearm, *banka* and *kanta*. A bicycle, a bag containing tomatoes, a pair of shoes and a slipper were collected by the Investigating Officer from the place of occurrence and its memo was prepared, which has been proved as Ex. Ka-13 by P.W.-5, S.H.O. Syed Ishrat Hussain. Since the bag was containing about 1 kg tomatoes, it also lends support to the prosecution story that the deceased was returning from the market and was going to his home. Ex. Ka-14 is the memo, which has been proved by P.W.-5, S.H.O. Syed Ishrat Hussain, whereby the Investigating Officer had collected bloodstained and plain soil from the place of occurrence. All the aforesaid facts of recovering a bicycle, a bag containing about 1 kg of tomatoes, a pair of shoes and one slipper coupled with bloodstained and plain soil from the place of occurrence, establish the

place of occurrence as shown in the site plan, Ex. Ka-12, which has been proved by P.W.-5, S.H.O. Syed Ishrat Hussain.

37. Learned counsel for the surviving appellants have vehemently argued that if the testimony of P.W.-1 is scanned carefully, it would reveal certain discrepancies with respect to the place of occurrence, which was towards the east of the grove of Gaya Prasad. It has also been argued by them that P.W.-1, Shambhu Dayal, failed to state that when the deceased fell down after sustaining firearm injuries, he was assaulted by the accused persons, Sukhlal and Veere, who were armed with *banka* and *kanta*. It has been argued that this fact leads to the logical conclusion that P.W.-1, Shambhu Dayal, had not witnessed the incident and was a planted witness.

38. We have given our thoughtful consideration to the aforesaid submissions advanced by learned counsel for the surviving appellants and upon a very careful examination of testimonies of P.W.-1, Shambhu Dayal and P.W.-2, Shri Krishna, in their entirety, we do find some minor discrepancies appearing in the testimony of P.W.-1, Shambhu Dayal, in this regard. However, as discussed above, having regard to the fact that testimony of P.W.-1, Shambhu Dayal, is not only consistent in all material aspects with the initial prosecution story, but the same is substantiated by the reliable testimony of P.W.-2, Shri Krishna as also the

recovery memos, Ex. Ka-13 and Ex. Ka-14 and their corroboration by site plan, Ex. Ka-12, and postmortem report, Ex. Ka-5, we do not find the aforesaid submission of learned counsel for the appellants to be acceptable. We say so because it is settled legal position that minor discrepancies in the testimonies of rustic prosecution witnesses are natural and lend support to the correctness of the prosecution story. The discrepancies, which have been pointed out by the learned counsel for the surviving appellants, are not of such material nature, which would go to the root of matter and would altogether render their testimonies to be unreliable. In this regard, we may refer to paragraph No.32 of the judgment rendered by Hon'ble the Supreme Court in **Darshan Singh vs. State of Punjab**⁶, which is quoted herein below :-

"32. Of course, PW 3 claims to be an illiterate witness and therefore, her testimony must be interpreted in that light. We are cognizant that the appreciation of evidence led by such a witness has to be treated differently from other kinds of witnesses. It cannot be subjected to a hyper-technical inquiry and much emphasis ought not to be given to imprecise details that may have been brought out in the evidence. This Court has held that the evidence of a rustic/illiterate witness must not be disregarded if there were to be certain minor contradictions or inconsistencies in the deposition. [State of

⁶ (2024) 3 SCC 164

U.P. v. Chhoteylal, (2011) 2 SCC 550 : (2011) 2 SCC (Cri) 674 : AIR 2011 SC 697; *Dimple Gupta v. Rajiv Gupta*, (2007) 10 SCC 30 : (2008) 1 SCC (Cri) 567 : AIR 2008 SC 239] ”

(emphasis supplied by us)

39. We also find ourselves in agreement with the finding recorded by the learned trial court in this regard, to the effect that if there are some inconsistencies or discrepancies in the testimony of a prosecution witness, and even if some parts of it appear to be false, nevertheless considering that in our criminal jurisprudence the principle of “*falsus in uno, falsus in omnibus*” is not applicable, their entire testimony cannot be disbelieved for this reason alone. We are also supported by a judgment rendered by Hon’ble the Supreme Court in **Babu alias Balasubramaniam and another vs. State of Tamil Nadu**⁷. Paragraph No.18 being relevant is quoted herein below :-

“**18.** In this connection we may usefully refer to the observations of this Court in *Sucha Singh v. State of Punjab* [(2003) 7 SCC 643 : 2003 SCC (Cri) 1697] which read thus: (SCC pp. 644f-645a)

“The maxim ‘*falsus in uno falsus in omnibus*’ has no application in India and the witnesses cannot be branded as liars. This maxim has not received general acceptance nor has it come to occupy the status of a rule of law. It is merely a rule of

⁷ (2013) 8 SCC 60

caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. The doctrine is a dangerous one, especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, 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. The evidence has to be sifted with care. Falsity of a particular material witness or 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 of untruth or at any rate exaggeration, embroideries or embellishment.""

40. Upon a careful examination of testimony of P.W.-1, Shambhu Dayal, we find his testimony to be reliable in respect of his presence at the place of

occurrence on the date and time of occurrence. P.W.-2, Shri Krishna, cannot be said to be a chance witness because his agricultural field not only lies near the place of occurrence, but also the reason, which he has assigned for going towards the place of occurrence i.e. to quench his thirst, appears to us to be a plausible reason, which is corroborated by the site plan, Ex. Ka-12. Therefore, his presence at the place of occurrence also appears to us to be trustworthy. The testimonies of P.W.-1, Shambhu Dayal and P.W.-2, Shri Krishna, appear to us to be reliable and cogent, which have been duly corroborated by recovery memos, Ex. Ka-13 and Ex. Ka-14 and postmortem report, Ex. Ka-5. Therefore, for all of the aforesaid reasons, we do not find any illegality or infirmity in the finding of learned trial court in holding the surviving appellants, namely, Mool Chand, Jagdish, Lekhram (in Criminal Appeal No.304 of 1993), and Veere @ Veerendra (in Criminal Appeal No.299 of 1993), guilty for offences under Sections 147, 148 and 302/149 I.P.C. and awarding sentences to them accordingly.

41. In conclusion, we have found no discrepancy in the appreciation of evidence by the learned trial court. The appeals lack merit and are liable to be dismissed and the same are, accordingly, **dismissed**.

42. The surviving appellants, namely, Mool Chand, Jagdish, Lekhram in Criminal Appeal No.304 of 1993 and the appellant, Veere alias Veerendra in

Criminal Appeal No.299 of 1993 are on bail. The surviving appellants, namely, Mool Chand, Jagdish, Lekhram in Criminal Appeal No.304 of 1993 and the appellant, Veere alias Veerendra in Criminal Appeal No.299 of 1993 are directed to surrender in the concerned Court to serve out the remaining sentence within six weeks from today. As soon as they surrender in the court concerned, their personal bonds shall stand cancelled and sureties shall also stand discharged. In case, the surviving appellants do not surrender in the court concerned within the specified period, the learned trial court concerned shall issue warrant for their arrest for serving out the remaining sentence.

43. Let a copy of this judgment be also placed on the records of connected Criminal Appeal No.299 of 1993 titled as Veere @ Veerendra vs. State.

44. Let the trial court record alongwith 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 :- 10.07.2024
cks/-