

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.752 of 1989

1. Manharan Lal, S/o Jogiram Pathanwar, aged 40 years (Dead).
2. Pawan Kumar, S/o Bhanguram Patanwar, aged 22 years.
3. Sate alias Ashwani Kumar Pathanwar, S/o Manharanlal, aged 20 years.
4. Tota Ram Patanwar, S/o Chhoturam Patanwar, aged about 27 years (Dead).
5. Ujjain, S/o Sukhdev Patanwar, aged 20 years.

All above R/o Village Bitkula, P.S. Ratanpur, Distt. Bilaspur, M.P. (now C.G.)

---- Appellants

Versus

State of M.P. (now State of C.G.), through P.S. Ratanpur, District Bilaspur, M.P. (now C.G.)

---- Respondent

For Appellants:	Mr. R.K. Jain, Advocate.
For State/Respondent:	Mrs. Madhunisha Singh, Panel Lawyer.
For Complainant:	Mr. S.K. Agrawal, Advocate.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Curia Advisari Vult Judgment

28/06/2016

The Judgment of the Court was delivered by

Sanjay K. Agrawal, J: -

1. Six accused namely Manharanlal (A-1), Pawan Kumar (A-3), Bhakti @ Bhagati Prasad @ Ayodhya Prasad (A-5) (not before us), Sate @ Ashwani Kumar Patanwar (A-6), Totaram Patanwar

(A-7) and Ujjain (A-8) were tried by the 3rd Additional Sessions Judge, Bilaspur in Sessions Trial No.24/1985 (State of Madhya Pradesh v. Manharanlal and eleven others) along with six other acquitted co-accused (total twelve in number) for committing murder of Bhaiyaram Patanwar. By judgment of conviction and order of sentence dated 24-6-1989, learned Additional Sessions Judge convicted A-1, A-3, A-5, A-6, A-7 & A-8 under Sections 302 read with Section 149 & 148 of the IPC and sentenced each of them to undergo imprisonment for life and RI for three years, respectively, and further directed that the sentences shall run concurrently.

2. Accused persons are being referred to as per their status before the trial Court.
3. The accused persons namely Radhe, Dariyao and Bahoran were acquitted of the offence under Section 120B of the IPC, however, accused Jivanlal, Sudharam and Kripal Singh were acquitted of the offence under Sections 148 and 302 read with Section 149 of the IPC.
4. Accused persons Manharanlal (A-1), Pawan Kumar (A-3), Sate @ Ashwani Kumar Patanwar (A-6), Totaram Patanwar (A-7) and Ujjain (A-8) preferred Cr.A.No.752/1989 before the High Court of Madhya Pradesh. However, Totaram (A-7) also preferred a separate appeal being Cr.A.No.844/1989 before the High Court of Madhya Pradesh. The High Court of Madhya Pradesh by its

common judgment dated 15-9-1997 allowed both the appeals and set aside conviction and sentences awarded to the appellants herein.

5. Feeling aggrieved against the judgment of acquittal recorded by the appellate Court (High Court of Madhya Pradesh) in the above stated criminal appeals, Moti Bai, wife of deceased Bhaiyaram Patanwar, preferred two criminal appeals being Cr.A. Nos.1310-1311/1998 (Moti Bai v. Manharan Lal and others) before the Supreme Court of India. The Supreme Court by its order dated 16-12-1998 set aside the judgment passed by the High Court of Madhya Pradesh on 15-9-1997 acquitting the accused A-1, A-3, A-5, A-6, A-7 & A-8 of the above stated offences and remitted the matter to the High Court of Madhya Pradesh to consider the appeals afresh. Upon reorganization of the State of Chhattisgarh with effect from 1-11-2000, the criminal appeals have been transferred to this Court and this is how the two appeals have come up before this Court.
6. During the pendency of this appeal and Cr.A.No.844/1989 preferred by Totaram (A-7), Manharanlal (A-1) and Totaram (A-7) died as such, this appeal so far as it relates to A-1 and A-7 and also the separately preferred appeal of A-7 being Cr.A. No.844/1989 were disposed of having been abated by order dated 4-4-2016. Thereafter, complainant Moti Bai was put to notice of this appeal and she is duly represented in this appeal before this Court.

7. The accused persons were prosecuted for committing the murder of Bhaiyaram Patanwar in commission of their common object. Undisputed fact in the case is that there were two opposing factions in Village Bitkula, one led by Bhaiyaram Patanwar – deceased and another led by accused Manharanlal (A-1) on account of the deceased having purchased a land 3-4 years back from the cousin of A-1 namely Jwala Prasad which resulted in heartburning and registration of offence under Section 307 of the IPC against accused Manharanlal (A-1) and others.
8. The prosecution case as set out in the FIR (Ex.P-1) lodged by complainant Vidya Bhushan (PW-1), son of deceased Bhaiyaram, at Police Station Ratanpur is that on account of land dispute between his family members and accused Sate, Totaram and others for which a criminal case was pending against the appellants and others, accused/appellants Totaram, Ujjain, Pawan Kumar and Kripal Singh (since deceased) had assaulted his Mama Mohanlal, and for that he had come to the police station in the morning along with his Mama Mohanlal and lodged the report. In the evening while he was returning home along with his Mama Mohanlal on Luna, after lodging the report, his uncle Ishwarlal met him in Village Dhaniya and told him that accused Manharan, Sate, Totaram, Ujjain, Kripal Singh, Dariyao, Pawan Kumar, Sudharam, Bhakti, Radhe and Bahoran, had killed his father Bhaiyaram and cut the dead body into pieces and they had surrounded his house and were searching Bootan

(PW-4) to assault him. On getting information, he returned to the police station and lodged this report. On the basis of FIR, morgue intimation (Ex.P-8) was recorded and Head Constable Awadh Naresh came to the spot and prepared panchnama as per Ex.P-13 of the dead body of the deceased and sent the dead body to hospital for postmortem examination. Dr. N.N. Mandal (PW-8) conducted autopsy on the dead body of the deceased and found as many as 10 injuries on the person of the deceased. Neck of the deceased was cut and hanging with a thin skin. In the opinion of the Doctor, all the injuries were antemortem caused by sharp objects. Death was due to shock and haemorrhage on account of injuries inflicted to the deceased as detailed in the postmortem report Ex.P-10. On the memorandum of accused Manharan, Lathi, Tabbal, Bhala and other incriminating articles were recovered and seized and sent to the Forensic Science Laboratory, Sagar for chemical examination and report. Lathi (Art. F) and Tabbal (Art. H) were found stained with blood. But, there is no report of the Serologist that the articles were stained with human blood.

9. The jurisdictional police after usual investigation charge-sheeted the convicted accused persons and the acquitted co-accused persons for the above stated offences. During the course of trial, in order to bring home the offence, the prosecution examined as many as eleven witnesses and brought on record the documents Exs.P-1 to P-18. The accused persons abjured the guilt and

entered into defence. They pleaded that they have been falsely implicated in the case and claimed to be innocent. However, on behalf of the trial Court, four witnesses namely, Balludas (DW-1), Makhanlal (DW-2), Baldau Prasad Sahu (DW-3) and Kirtanlal Patanwar (DW-4) were examined and documents Exs.C-1 to C-6 were brought on record. The accused persons in their statements recorded under Section 313 of the CrPC, denied the incriminating evidence appearing against them and they pleaded to be innocent.

10. Learned Additional Sessions Judge on appraisal of entire evidence on record held A-1, A-3, A-5, A-6, A-7 & A-8 guilty of charges and convicted them under Sections 302 read with Section 149 and 148 of the IPC, and sentenced them as stated above in opening paragraphs. However, learned trial Judge acquitted six co-accused persons of the charges.

11. In convicting the appellants herein namely Manharanlal, Pawan Kumar, Sate @ Ashwani Kumar Patanwar, Totaram Patanwar & Ujjain and another accused Bhakti @ Bhagati Prasad @ Ayodhya Prasad (not before us), learned Additional Sessions Judge recorded following findings: -

(a) Death of deceased Bhaiyaram Patanwar was homicidal in nature, he was murdered and the fact of murder was not challenged but the accused persons defended and pleaded to be innocent.

(b) Testimonies of eyewitnesses namely Vidya Sagar (PW-2) – son of deceased Bhaiyaram Patanwar, Balistar Lal Patanwar (PW-3) – brother-in-law of deceased Bhaiyaram Patanwar and Bootan Ram (PW-4) are trustworthy and reliable and their testimonies cannot be discarded merely on the ground that they are close relatives of the deceased.

(c) Witness Balistar Lal Patanwar (PW-3) was present at the time of incident.

(d) The prosecution has failed to bring home the offence against other six accused persons as accused Kripal Singh, Jeevanlal and Sudharam are said to have caused injury to Bhaiyaram Patanwar by barchi or bhala, however, no injury was found on the body of the deceased by such weapon as there was no such kind of injury said to have been caused by such a pointed weapon.

12. Feeling aggrieved against the judgment of conviction and order of sentence dated 24-6-1989 passed by the 3rd Additional Judge, Bilaspur in S.T.No.24/1985, Cr.A.No.752/1989 was originally preferred by appellants Manharanlal, Pawan Kumar, Sate @ Ashwani Kumar Patanwar, Totaram Patanwar and Ujjain. However, the appeal of appellants Pawan Kumar, Sate @ Ashwani Kumar Patanwar and Ujjain now survives for consideration which has been heard and is being disposed of by this judgment.

13.Mr. R.K. Jain, learned counsel appearing for the appellants, would vehemently submit that the prosecution has failed to bring home the offence against the appellants and the evidence adduced on behalf of the prosecution is neither sufficient nor convincing to warrant conviction of the appellants herein. He would further submit that the evidence of Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) should not be accepted as all the three are interested witnesses closely related to deceased Bhaiyaram. He would also submit that witness Balistar Lal Patanwar (PW-3) was not present at the time of incident, as he was at Village Kukda. He would contend that learned Additional Sessions Judge is absolutely unjustified in convicting the present applicants for the aforesaid offences after having disbelieved the evidence of said witness relating to acquitted co-accused persons namely Sudharam, Jeevanlal, Kripal Singh, Radhe Patanwar, Bahoran and Dariyao, and the appellants could not have been convicted relying upon the same set of evidence of Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) and therefore their conviction is liable to be set aside in view of the judgment rendered by the Supreme Court in the matter of **Prem Singh v. State of Punjab**¹.

14.On the other hand, Mrs. Madhunisha Singh, learned Panel Lawyer appearing on behalf of the State/respondent, would

¹ (1976) 1 SCC 805

support the impugned judgment and submit that the prosecution has led sufficient evidence to bring home the offence and merely because Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) happen to be relatives of the deceased, their testimony cannot be discarded. She would further submit that the evidence of relative witnesses / relatives should be scrutinized with care and caution as a rule of prudence and the fact of being a relative cannot by itself discredit their evidence. She would also submit that the case of acquitted accused is distinguishable with the facts of the present case and as such, the judgment rendered in the case of **Prem Singh** (supra) is not applicable to the facts of the present case and the judgment of conviction recorded and sentence awarded does not warrant any interference by this Court, therefore, the appeal deserves to be dismissed.

15.Mr. Agrawal, learned counsel appearing for the complainant, would adopt the arguments advanced by the State/respondent and submit in the line of arguments raised by the State counsel and would submit that the judgment of conviction recorded and sentence awarded does not deserve interference as it is based on evidence available on record.

16.In order to appreciate the rival contentions of learned counsel for the parties, we have independently scrutinized the oral and documentary evidence appearing on record.

17. The question for consideration in this appeal would be, firstly, whether the death of deceased Bhaiyaram Patanwar was homicidal in nature and secondly, whether the appellants herein have murdered deceased Bhaiyaram Patanwar and they are guilty of the murder.

18. Ex.P-10 is the postmortem report. Autopsy has been conducted by Dr. N.N. Mandal (PW-8) on 28-5-1983. On the examination of deceased Bhaiyaram, Dr. N.N. Mandal (PW-8) found that head was separated from rest of the body except hanging with thin skin and following wounds were found: -

1. Incised wound on neck middle, neck was divided into two pieces – only 2” skin attached head and trunk. There were two blows on the same place as there was 4 tails. All the structures were cut of the neck except 2” skin of left side cervical vertebra were cut 2nd & 3rd spinal cord in two places.
2. Incised wound 8” x 3” x bone deep on right shoulder joint to down arm. Humerous bone was cut.
3. Incised wound 8” x 3” x liver (abdomen & chest) just below right nipple on chest. Ribs were cut and liver was cut 6” x 1¼” x 1” transverse.
4. Incised wound 5” x ½” x muscle deep on neck lower left side.
5. Lacerated wound 1½” x skin deep on right lateral angle of right eye.
6. Lacerated wound ¾” on right cheek.
7. Lacerated wound ¼” x ¼” x bone deep middle of nose. Nasal bone was fractured.

8. Contusion 5" x 1" on back right scapular region.

9. Contusion 6" x 1" on back right kidney region.

10. Contusion 3" x 1" on middle on right thigh middle front.

19. Perusal of the injuries would show that there can be no doubt that the deceased has been assaulted in a most brutal and dastardly manner by the accused persons as would appear from the number of injuries received by the deceased. An analysis of these injuries would show that there were four incised wounds being injuries No.1, 2, 3 and 4 and injuries No.5, 6 and 7 were crushed injuries. According to Dr. N.N. Mandal (PW-8), deceased Bhaiyaram died on account of injuries sustained by him and injuries No.1 to 4 were caused by hard and sharp-edged weapon and injuries No.5 to 10 were caused by hard and blunt object. Death was due to shock and haemorrhage on account of injuries inflicted to the deceased as detailed in the postmortem report Ex.P-10. Thus, direct evidence of the Autopsy Surgeon regarding injuries caused by sharp-edged weapon is consistent with medical evidence. From the aforesaid injuries, it is evident that Bhaiyaram was murdered with an intention to kill. It has also not been challenged seriously by the appellants, but they have pleaded innocence and their main defence was that they have been falsely implicated due to factional animus. Thus, it is proved beyond doubt that deceased Bhaiyaram was murdered and his death was homicidal in nature.

20. The question for consideration is, whether the appellants have

murdered the deceased.

21. Now, we shall turn to discuss the testimonies of prosecution witnesses.

22. Out of the witnesses examined by the prosecution, complainant Vidya Bhushan Patanwar (PW-1) is a hearsay witness. Vidya Sagar (PW-2) is son of the deceased. Balistar Lal Patanwar (PW-3) is brother-in-law (bahnoi) of the deceased. Bootan Ram (PW-4) is brother-in-law (sala) of the deceased. Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) are the only material witnesses / eyewitnesses. Dr. N.N. Mandal (PW-8) is autopsy surgeon. Therefore, it has been claimed that all the three witnesses (PW-2, PW-3 and PW-4) are interested / partisan witnesses and their testimonies cannot be relied upon and it has to be discarded, as PW-2 to PW-4 are closely related to the deceased and conviction cannot be based upon their evidence.

23. The question for consideration at this stage, would be, whether the evidence of relatives of the deceased is admissible. The law on the subject regarding admissibility / acceptability or otherwise of the testimony of interested witnesses is very well settled by Their Lordships of the Supreme Court in umpteen number of cases. Few of them may be noticed herein profitably and usefully.

24. Their Lordships of the Supreme Court recently, in the matter of

Waman and others v. State of Maharashtra² taking into consideration its earlier decisions in the matters of **Sarwan Singh v. State of Punjab**³, **Balraje v. State of Maharashtra**⁴ and other decisions in this regard have held that the evidence of such interested witnesses should be scrutinized with a little care as a rule of prudence, not as a rule of law and the fact being relative cannot by itself discredit the evidence. Their Lordships concluded in paragraph 20 of **Waman's** case (supra) as under: -

“20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

25. Thus, the first submission raised on behalf of the appellants that the testimonies of three witnesses ought not to be considered being the testimonies of interested and partisan witnesses, cannot be accepted.

26. In light of above-stated principles, we may examine the testimonies of above-stated witnesses one by one.

27. The first eyewitness is Vidya Sagar (PW-2) who is son of deceased Bhaiyaram Patanwar. He states that on the date of incident i.e. the date on which his father was assassinated, his uncle (phupha) Balistar Lal (PW-3) was also present in their

2 (2011) 7 SCC 295

3 (1976) 4 SCC 369

4 (2010) 6 SCC 673

house, on hearing the cry of his father, he, Balistar Lal (PW-3), Vinod, Sukrita Bai and Ganga Devi came out from the house and saw accused Sate, Ujjain, Tota and Pawan assaulting his father by sharp-edged weapon (tabli). He further states that acquitted co-accused persons Kripal, Jeevan, Sudharam and one another person was assaulting his father by barchi – pointed weapon and accused Bhakti and Manharan were assaulting his father by lathi, and when Balistar (PW-3) came forward to protect his father from assault, accused Sate and Ujjain threatened him by pistol to kill him. In the cross-examination of this witness, nothing has been extracted to discredit the evidence of this witness or the case of the prosecution.

28. Balistar Lal Patanwar (PW-3) who is brother-in-law (bahnoi) of the deceased has also deposed that on 27-5-1983 when he was getting ready in the morning, he heard the cry of Bhaiyaram, he came out along with Smt. Ganga Devi, Vidya Sagar (PW-2) and Sukrita Bai then he saw accused Sate, Tota, Pawan and Ujjain assaulting Bhaiyaram by tabli; accused Sudharam, Jeevan, Kripal and another person were assaulting Bhaiyaram by bhale; and accused Manharan and Bhakti were assaulted him by lathi, and when he tried to interrupt, accused Sate and Ujjain stopped him at gun point and thereafter, he saw the dead body of deceased Bhaiyaram separated from head. In the testimony of this witness, nothing has been extracted to show that either he was not present or he has not seen the incident discrediting the

prosecution case or he has falsely implicated the appellants herein.

29. Bootan Ram (PW-4) is also an eyewitness who deposed that on the date of incident, he was on the way to the house of deceased Bhaiyaram for demanding his buffalo, he saw at square near the house of Baldau that accused Pawan, Sate, Totaram and Ujjain were assaulting Bhaiyaram by sharp-edged weapon and accused Manharan and Bhakti were assaulting the deceased by lathi and thereafter they have absconded after murdering him. This witness though has been subjected to lengthy cross-examination, but at the end, nothing has been brought out to discredit his testimony.

30. Aforesaid three witnesses who are eyewitnesses having seen the incident have clearly deposed against the appellants by which the appellants have caused assault to the deceased by sharp-edged weapon and by which they have brutally murdered him whereas Manharan has caused injury by lathi. Their statements with regard to their presence and having seen the incident is consistent and there is no discrepancy or inconsistency with their statements with regard to the commission of murder by them of deceased Bhaiyaram. It has already been held that merely because they are relatives of the deceased and relative witnesses, their testimonies cannot be discarded. We have gone through their statements carefully and found their version to be consistent as well as true and we have

no reason to hold that merely because Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) are relatives and closely related to the deceased they have implicated the present accused persons and their testimonies cannot be thrown only on the ground that they are close relatives of deceased Bhaiyaram, as their version has been found to be cogent and consistent.

31. In **Balraje** (supra), Their Lordships of the Supreme Court have held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. After saying so, Their Lordships have concluded in para 30 that: (SCC p.679, para 30)

“30. ... if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.”

32. We have already held in foregoing paragraphs that the testimonies of witnesses Vidya Sagar (PW-2) and Balistar Lal Patanwar (PW-3) are acceptable, trustworthy and it lends credence and it cannot be held that merely because they are relatives, they have implicated the present accused persons in light of the principle laid down by the Supreme Court in **Balraje**

(supra).

33. This above-stated finding would bring us to the next plea raised by learned counsel for the appellants that the testimonies of Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) as eyewitnesses to the incident were partly disbelieved and discarded by the learned trial Court while acquitting six co-accused persons whereas the present accused persons have been convicted on the same set of facts based upon the testimonies of aforesaid eyewitnesses. Such a course is impermissible in law in view of the decision rendered by the Supreme Court in **Prem Singh** (supra).

34. In order to decide the plea raised at the Bar, it would be appropriate to refer to the statements of Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) who are eyewitnesses and who have clearly deposed that they have seen the present appellants assaulting deceased Bhaiyaram Patanwar by tabbal and acquitted co-accused namely Kripal Singh, Sudharam and Jeevan causing injury by bhala, a pointed weapon. Dr. N.N. Mandal (PW-8) in his postmortem as well as in his statement clearly recorded that four incised wounds were found on the body of the deceased and all the incised wounds were caused by hard and sharp-edged weapon. No injury as allegedly stated by Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) to be caused by pointed weapon namely bhala was found on the body of the deceased as

such, the ocular evidence of the said witnesses was not found corroborated by medical evidence whereas the ocular evidence of these witnesses was found corroborated by medical evidence with regard to the present appellants. Therefore, testimonies of eyewitnesses Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) were partly accepted by learned Additional Sessions Judge with respect to the present appellants and it was not accepted in respect of six acquitted co-accused persons.

35. The Supreme Court in the matter of **Govindaraju alias Govinda v. State by Srirampuram Police Station and another**⁵ relied upon its earlier decision in the matter of **Lallu Manjhi v. State of Jharkhand**⁶ regarding classification of the oral testimony of the witnesses in three categories. Paragraph 24 of the report states as under: -

“24. It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In **Lallu Manjhi v. State of Jharkhand**⁶ (SCC p. 405, para 10), this Court had classified the oral testimony of the witnesses into three categories:-

- (a) wholly reliable;
- (b) wholly unreliable; and
- (c) neither wholly reliable nor wholly unreliable.

In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other

5 (2012) 4 SCC 722

6 (2003) 2 SCC 401 : 2003 SCC (Cri) 544

witnesses or by other documentary or expert evidence.”

36. Similarly, it is the settled legal proposition that evidence of a prosecution witness cannot be rejected in toto. The Supreme Court taking note of earlier decision with regard to testimony of hostile witness, in a decision in the matter of **Ramesh Harijan v. State of U.P.**⁷ has stuck a similar proposition that evidence of hostile witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that his/her version is found to be dependable on a careful scrutiny thereof. It has further been held that the paramount importance of the court is to ensure that miscarriage of justice is avoided. Paragraphs 21 to 26 of the report read as follows: -

“21. In *Balka Singh & Ors. v. State of Punjab*, AIR 1975 SC 1962, this Court considered a similar issue, placing reliance upon its earlier judgment in *Zwinglee Ariel v. State of Madhya Pradesh*, AIR 1954 SC 15 and held as under:

“The Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation, the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.”

22. [In Sukhdev Yadav & Ors. v. State of Bihar](#), AIR 2001 SC 3678, this Court held as under:

7 AIR 2012 SC 1979

“It is indeed necessary however to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment, sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness-box details out an exaggerated account.”

23. A similar view has been re-iterated in [Appabhai & Anr. v. State of Gujarat](#), AIR 1988 SC 696, wherein this Court has cautioned the courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. 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 for the reason that witnesses now-a-days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. However, the courts should not dis-believe the evidence of such witnesses altogether if they are otherwise trustworthy.

24. [In Sucha Singh v. State of Punjab](#), AIR 2003 SC 3617, this Court had taken note of its various earlier judgments and held that even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim *falsus in uno falsus in omnibus* has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases 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 credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

25. [In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra](#), AIR 1973 SC 2622, this Court held :

“... Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent ..." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant...”

(See also: [Bhagwan Singh & Ors. v. State of M.P.](#), AIR 2002 SC 1621; [Gangadhar Behera & Ors. v. State of Orissa](#), AIR 2002 SC 3633; Sucha Singh (supra); and [S. Ganesan v. Rama Raghuraman & Ors.](#), (2011) 2 SCC 83).

26. Therefore, in such a case the paramount importance of the court is to ensure that miscarriage of justice is avoided. The benefit of doubt particularly in every case may not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. A reasonable doubt is not an imaginary trivial or merely possible doubt, but a fair doubt based upon reason and common sense.”

37. Following the law laid down by Their Lordships of the Supreme Court in aforesaid cases, it cannot be held that the testimonies of eyewitnesses namely Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4), who were found to be partly trustworthy, reliable and dependable, cannot be discarded

merely because other part of their testimonies were found to unreliable and untrustworthy and partly it was found to be accepted on due scrutiny and examination by learned Additional Sessions Judge.

38. Learned counsel for the appellants has placed heavy reliance on the judgment of the Supreme Court in **Prem Singh** (supra). The facts of that case are clearly distinguishable to the facts of the present case. In that case, evidence of two eyewitnesses, who were brothers of the deceased, with regard to participation of four accused persons was found unreliable by the trial Court and the High Court and in view of non-examination of available independent witnesses and in peculiar facts and circumstances of that case, conviction was set-aside, which is not the case here and that decision is clearly not applicable to the facts of the present case.

39. Thus, we hold that learned Additional Sessions Judge has not committed any illegality in accepting the testimonies of Vidya Sagar (PW-2), Balistar Lal Patanwar (PW-3) and Bootan Ram (PW-4) in part while convicting the appellants herein. The contradictions are trivial in nature and medical evidence corroborates the assertion of the prosecution witnesses. All these materials were correctly analysed and accepted by the trial Court.

40. On perusal of all the materials brought by the prosecution, we

hereby affirm the judgment of conviction recorded and the sentences awarded by the trial Court. We do not find any illegality / material irregularity or valid ground to hold that the appellants have not committed any offence. We also do not find any legal ground for interference in the order of learned Additional Sessions Judge.

41. In consequence of aforesaid discussion, the appeal filed by the appellants is hereby dismissed. Since the appellants are reported to be on bail, their bail bonds are cancelled and we direct that the appellants be apprehended forthwith to suffer remaining sentence.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge