

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1751 of 2017

Arising Out of PS. Case No.-46 Year-2003 Thana- DARAUNDA District- Siwan

1. Chunnu Singh, Son of Late Arjun Singh.
2. Bichhan Singh, Son of Late Arjun Singh. Both Resident of Village-
Pinarthunkala, Police Station- Daraunda, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Param Hansh Singh-Amicus Curiae
For the Respondent/s	:	Mr. Bipin Kumar-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

27-06-2019

None appears on behalf of appellants on account

thereof, Sri Param Hansh Singh, Advocate has been requested to
assist the Court as an Amicus Curiae.

2. From the record, it appears that four accused
persons have had faced trial namely Banke Singh, Jalandhar
Singh, Chunnu Singh and Bichhan Singh and they all were
convicted under different Sections, but out of them, only
Chunnu Singh and Bichhan Singh have preferred instant appeal.
There happens to be no information with regard to steps, if any,
having taken at the end of convicts Banke Singh as well as
Jalandhar Singh.

3. Appellant Chunnu Singh has been found guilty
for an offence punishable under Section 326 I.P.C. and



sentenced to undergo S.I. for five years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for six months, under Section 27 of the Arms Act, wherein sentenced to undergo S.I. for three years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for six months, additionally. Appellants Chunnu Singh and Bichhan Singh including two none others sentenced to undergo S.I. for six months for an offence punishable under Section 323 I.P.C. and to undergo S.I. of one month for an offence punishable under Section 341 I.P.C., and to undergo S.I. for three months for an offence punishable under Section 448 I.P.C. with a further direction to run the sentences concurrently, with a further direction to have period of custody during course of trial be subject to set off in accordance with Section 428 Cr.P.C. vide judgment of conviction and order of sentence dated 18.05.2017 passed by the Additional Sessions Judge-6th, Siwan in Sessions Trial No.103 of 2004 arising out of Daraunda P. S. Case No.46 of 2003.

4. Injured Ramrup Singh (PW-4) gave his fard-bayan on 06.06.2003 at 6.30 A.M. at Daraunda Police Station disclosing therein that in the preceding evening (05.06.2003 at about 7.30 p.m.) while he was sitting at his darwaza, all of a



sudden his Pattidar Chunnu Singh came armed with Katta (illegal firearm) and shot at him with an intention to kill causing injury over his right hand, chest. He became injured. Thereafter, another Pattidar Banke Singh, Bichhan Singh, Jalandhar Singh conjointly assaulted with fists and slaps. When his father intervened, he was also assaulted with fists and slaps. Pendency of Partition Suit has been shown to be motive for commission of the aforesaid occurrence.

5. After registration of Daraunda P. S. Case No.46 of 2003, investigation commenced and after completing the same, chargesheet has been submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

6. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is that the prosecution party themselves happen to be member of anti-social elements and during course thereof, the informant might have sustained injury in different manner at different place which, in the background of persisting land dispute taken as a golden chance to implicate the accused persons. In an alternative, it has also been suggested that informant might have sustained the injury at the hands of others



while committing rape over Fulmani Devi. Though, no document has been filed at the end of the defence to substantiate the same. But, it has been admitted by PW-1 regarding institution of rape case by Fulmati against them including informant.

7. Altogether five PWs have been examined on behalf of prosecution, who are PW-1, Umesh Singh, PW-2, Bhim Singh, PW-3, Prithvi Raj Singh, PW-4, Ramrup Singh and PW-5, Kumar Shankar Singh as well as also exhibited as Exhibit-1, signature of informant over fard-bayan, Exhibit-2, injury report. As stated above, nothing has been adduced on behalf of defence.

8. The learned Amicus Curiae while challenging the finding recorded by the learned lower Court has submitted that from the evidence of the witnesses, it is evident that PW-1 and PW-3 is the brother of PW-4 (informant) while PW-2 is the father. That means to say, no independent witness has been examined and for that, no explanation has been furnished. Furthermore, it has also been submitted that I.O. has also not been examined. In the facts and circumstances of the case, as the interest of appellants/ accused is found jeopardized on account of non-examination of I.O. coupled with the fact that



only family members are the witnesses, whereupon the judgment impugned would not survive.

9. It has also been submitted that enmity is a double edged sword. It may be a cause for false implication, it may be a cause for commission of an occurrence. In the background of the fact that there happens to be admission at the end of the prosecution party that they were inimical since before, reliability of witnesses were at stake, P.O. has not been properly fixed. In the aforesaid background, non-examination of I.O. as has caused not only prejudice to the interest of the appellants, rather also caused dent in the prosecution case, hence, the cumulative effect did not justify the finding. Contrary to it, the probability of the defence version, more particularly when PW-1 has admitted that on the alleged date and time of occurrence, Fulmani Devi had instituted a case prior to the present case regarding commission of rape wherein after investigation, chargesheet has already been submitted. So, really it was possible for the accused to have shot at the informant, who was a witness in that case and that being so, the whole episode if analytically approached, would not justify the occurrence, as suggested. In the aforesaid background, it was incumbent upon the learned lower Court to have properly



analyzed the evidence, situation which, if properly appreciated, would not have allowed the finding.

10. It has also been submitted that if evidence of a witness is taken together, it is apparent that PW-1, PW-2 and PW-3 were not at the P.O. They came after hearing sound of firing. Furthermore, the time of occurrence as alleged being dusk darkness having fallen and that could not have given an opportunity to them to become witness of the occurrence. In likewise manner, the improbability in the evidence of PW-4, did not justify the prosecution as projected. Hence, the judgment impugned did not justify its finding.

11. Now, coming to injury, it has been submitted that when evidence of PW-5, doctor is gone through, it is evident that though, it has been incorporated that injured (PW-4) had sustained gunshot injury, but the manner whereunder injury has been described as grievous did not justify such finding and so, the finding of the learned lower Court holding the appellant Chunnu Singh to be guilty for an offence punishable under Section 326 I.P.C. is not at all substantiated from the materials available on the record. Consequent thereupon, the finding so recorded by the learned lower Court is fit to be set aside.

12. The learned Additional Public Prosecutor



while refuting the submission having made at the end of the learned Amicus Curiae has submitted that non-examination of the I.O. is prejudicial to the interest of the accused only in a case where there happens to be presence of inconsistency/ exaggeration/ material development in the evidence of the PWs, inconsistency over the place of occurrence, any other circumstances so visualizing from the record, which in the facts and circumstances of the case, found absent, hence did not justify the submission having so made at the end of the learned counsel for the appellants. Furthermore, it has further been submitted that from the evidence of the doctor, it is evident that PW-4 (informant) had sustained firearm injury, which remaining PW-1, PW-2, PW-3 had consistently substantiated and affirmed. PW-4, the informant properly identified the activities of each of accused during course of occurrence. That being so, the judgment of conviction and sentence recorded by the learned lower Court is fit to be confirmed.

13. The impact of non-examination of I.O. is to be seen later on. The PW-5 (doctor) had examined the victim Ramroop Singh on 06.06.2003 and found the following:-

1) 5 mm diameter wound with roughed margin on right pectoral region and shoulder region 4 in number deep upto ribs but purism.



II) Two 5 mm diameter wound lacerated roughed margin on right upper arm and shoulder/ caused by firearm.

Nature of injuries-grievous/ injury within six hours..

During cross-examination, he has stated that depth has been shown on an imagination may be true, may not be true. Also submitted that he had mentioned injury no.2, charred, blackish. So, it was fired from close range.

14. PW-4 is the informant/ injured. He has deposed that on 05.06.2003 at about 7.00 P.M. while he was sitting at his darwaza, at that very time, accused Chunnu Singh, Banke Singh, Bichhan Singh, Jalandhar Singh came at his darwaza, out of whom, Chunnu Singh was armed with pistol and rest were armed with lathi. No sooner than their arrival, fired causing injury over his chest (right side), firing was made with an intention to kill. Bichhan Singh and Jalandhar Singh assaulted with lathi. His father came in rescue. He was also assaulted with lathi as well as fists and slaps. Then thereafter, he was taken to Rajapur Pashuban market where none was present. Then, he was taken aback. On the following morning, he was taken to police station, from there, he was sent to hospital. His fard-bayan was recorded at the hospital by the Darogaji (Exhibited). Umesh Singh had put signature in his presence. His further statement was also recorded. Identified the accused. During cross-



examination at Para-2, he has stated that when he reached at the police station, he disclosed regarding assault before the police. In Para-3, he has stated that at the time of firing, he was sitting at his darwaza. Firing was made from Western side, from a distance of five feet. X-ray was conducted at Siwan Sadar Hospital. Injury report was prepared at Daraunda Hospital. In Para-4, he has stated that after the occurrence, his father, brother Umesh and Prithvi came. Then at Para-5 denied that he is engaged in harbouring criminals. Then has denied the suggestion that he might have sustained injury in different manner and in different place and in order to grab the land of the accused persons, got this case filed. In Para-6, he has stated that accused persons happen to be his close agnate with whom litigation on account of land dispute was going on. His father used to look after the litigation. At the time of occurrence, darkness had not fallen rather it was dusk. In Para-7, he has shown the boundary of the P.O. as North-Pond and School, South-road, East-house, West-house of the accused.

15. PW-1 is Umesh Singh, brother of the informant/ victim. He has deposed that on the alleged date and time of occurrence, he was over roof while his brother was sitting outside darwaza in a sahan. Chunnu Singh came from his



house and fired aiming at his brother causing injury over his hand as well as chest. Then thereafter, Banke Singh, Bichhan Singh, Jalandhar Singh came and assaulted his brother Ramrup Singh with lathi and danda. When his father came in rescue, he was also assaulted with fists and slaps. His brother was treated at Daraunda hospital. On account of land dispute, this occurrence has been committed. During cross-examination at Para-2, he has stated that no litigation was fought in between Banke Singh and Jalandhar Singh before this occurrence. Then has stated that he has got no information whether mother of Banke Singh namely Shivrati Devi had filed a case against his father, mother and brother for an occurrence dated 18.10.1982. He has further stated that one 107 Cr.P.C. proceeding has been drawn up after institution of this case. In Para-3, he has stated that none came after occurrence at the P.O. He has further stated that he along with his brother Prithvi Raj Singh and father got down from their roof 1-1 ½ minute after the occurrence. When they came, they have seen Ramrup Singh lying on the ground. They have seen injury over the body of Ramrup. Then thereafter, they lifted Ramrup Singh to Rajapur, but doctor refused to see. Then they returned back. It has further been disclosed by him that occurrence took place after sunset.



Darkness had fallen. On the following morning, they have taken the injured to police station and then, to hospital. In Para-4, he has stated that police had simply taken signature of his brother as well as of Doctor after examining his brother at Daraunda, issued injury report. Then thereafter, they taken the victim to Siwan Sadar Hospital where X-ray was conducted and then, they returned back to the hospital. In Para-6, he has admitted that he happens to be full-brother of informant/ injured. Then has denied the suggestion that on account of land dispute, Banke Singh and Jalandhar Singh has been implicated. During cross-examination on behalf of others at Para-7, he had admitted that Chhote Lal had instituted one case prior to this occurrence. He has further stated that all the persons, who are inimical to him, have been made an accused in this case. He has further stated that at the time of occurrence, they were on the roof, there was no firing over roof. He heard sound of firing coming from Western side. Then, they got down and found his brother Ramrup Singh in an injured condition. At Para-8, he said that Ramrup Singh had not disclosed regarding the occurrence prior to fard-bayan. In Para-9, he has stated that only he along with accused persons have got houses at the P.O. At the time of occurrence, none came. He has further admitted that Fulmati



had instituted a rape case against him, his brother and Ramrup Singh wherein chargesheet has been submitted. He is not aware whether Chunnu Singh is witness in that case or not. Then has denied the suggestion that in order to get themselves rescued from the rape case, this false case has been instituted.

16. PW-2 has deposed that on the alleged date and time of occurrence, he was at his darwaza feeding his cattle. At that very time, Chunnu Singh, Banke Singh, Bichhan Singh, Jalandhar Singh came, out of whom, Chunnu Singh fired upon his son Ramrup Singh causing injury over his chest (right side). Then thereafter, he was assaulted by lathi. He came in rescue, during course thereof, Banke Singh assaulted him with lathi as a result of which, he sustained fracture of the little finger. They were taken to Daraunda Hospital where from they were referred to Siwan Sadar Hospital. Identified the accused. During cross-examination, he has stated that it was 7.30 P.M. He has further stated that he had not shown his injury to doctor, though, he had gone to hospital. He has further admitted that he was looking after all the litigation. He has further stated that he heard sound of firing, coming from Western side, whereupon he rushed. He found his son. He was not in a position to speak loudly. His son had not disclosed anything to him. His son had not disclosed



anybody before recording of fard-bayan. Then has denied the suggestion that his son happens to be one of the member of the anti-social group and during course thereof, he had sustained injury. He has further stated that when he reached at the P.O. he had seen Ramrup Singh. Then, he was lifted to market where doctor refused to see him as it was a case of firing. On the following day, the injured was taken to police station and then, to hospital.

17. PW-3 is another brother of informant. He has stated that on the alleged date and time of occurrence, he was at his roof. At that very time, Chunnu Singh, Banke Singh, Bichhan Singh, Jalandhar Singh assaulted Ramrup Singh. Chunnu Singh fired causing injury over shoulder (right side), Banke Singh assaulted with lathi, Jalandhar Singh, Bichhan Singh assaulted with fists and slaps. He along with others lifted the injured to market, but doctor refused to see as it was a case of firing. Then, they have gone to Daraunda police station and from there, to hospital where Ramrup Singh was treated identified. During cross-examination at Para-3, he has stated that just after receiving gunshot injury, his brother shouted, whereupon they got down. None others came. Wall lies just behind the place where his brother was shot at. His brother was



shot at ten feet away from the said wall. At that very time, he was over the roof and so, he is unable to disclose in detail. In Para-4, he has stated that on the following day, statement was recorded in the police station. He denied the suggestion that Shivrati Devi, mother of Jalandhar Singh had instituted a case against them. Then has denied the suggestion that his brother happens to be a member of anti-social element, during course thereof, he had sustained injury. He has further admitted that all the witnesses are father, brothers. He has further admitted that civil as well as criminal case were going on amongst the parties. In Para-7, he has stated that when they got down from the roof they found Ramrup Singh lying. Then has stated at Para-9 that they have gone to police station from where, police had sent the injured to hospital. Police accompanied the injured to hospital. Police had taken signature of the injured and then, returned back. Then has denied the suggestion that injured had sustained injury at different place in different manner in the background of anti-social activity and on account of litigation, having amongst the parties, this false case has been filed.

18. It is needless to say that all the witnesses including injured are own family members. By way of suggestion, there happens to be an admission regarding presence



of gunshot injury over the person of PW-4. So, the only question now remains to be properly sorted out whether accused/appellant Chunnu Singh is the author.

19. From the deposition of PW-1 and PW-3, they all claimed including PW-2 (father) over roof, which PW-2 controverted, but after having minute scrutiny, it is apparent that PW-1, PW-2, PW-3 remained over roof. The location of roof, as disclosed by the PW-3 would not enable them to claim as an eye witness. However, their testimony is in fact along with PW-4, the injured over place of occurrence, being Sahan (darwaza). Furthermore, it is crystal clear from the evidence of PW-4/ injured that he has not been cross-examined over manner of occurrence as well as appellant Chunnu Singh to be author of the injury. The doctor (PW-5) also not been challenged over nature of injury. No improvement/ inconsistency has been found in the evidence of any of the PWs. That means to say, neither status of PW-4, being an injured by way of firearm injury, nor the place of occurrence have been put under controversy. The worst part is that from the evidence of PW-1, an institution of a case is exposed, but PW-4 has not been cross-examined nor suggested.

20. In *Lahu Kamlakar Patil and another vs. State*



of Maharashtra reported in (2013)6 SCC 417, it has been held:-

“18.
It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar[(2010) 6 SCC 1], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar[(1996) 2 SCC 317], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused.

.....

21. In ***Smt. Shamim vs. State (GNCT of Delhi)*** reported in 2018(4) P.L.J.R. 160 (SC), it has been held:-

“11. *PW2 is an injured witness whose throat was slit in the occurrence causing loss of voice requiring hospitalization for two months. The evidence of an injured witness carries great weight as it is presumed that having been a victim of the same occurrence the witness was speaking the truth. She has deposed that the appellant came upstairs after*



the deceased persons had been shot dead by the other accused. On the exhortation of the appellant accused Naushad, brother of PW4, again assaulted the witness on her throat with the razor. While the accused were leaving the appellant tripped over the witness. The blood stained 'Chunni' of the appellant discovered the next day on her confession, therefore stands explained.

12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police



statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.”

22. After minute observation of the evidence available on the record, it is evident that prosecution evidence is found shaky so far appellant Bichhan Singh is concerned, whereupon the judgment of conviction and sentence recorded against him is set aside. Appeal, to the extent of his interest, is allowed. He is on bail, hence is discharged from its liability.

23. In ***Mahendran vs. State of Tamil Nadu*** with ***Ravi alias Gopu and others vs. State Represented by the Deputy Superintendent of Police reported in (2019) 5 SCC 67,***



it has been held:-

“38. It is argued that prosecution has put on trial twenty-four accused, but presence of A-11 and A-16 to A-24 was doubted by learned trial court and they were acquitted on benefit of doubt. Five accused, A-10, A-12, A-13, A-14 and A-15 have been granted benefit of doubt in appeal as well. The argument that the entire case set up is based on falsehood and thus not reliable for conviction of the appellants, is not tenable. It is well settled that the maxim “falsus in uno, falsus in omnibus” has no application in India only for the reason that some part of the statement of the witness has not been accepted by the trial court or by the High Court. Such is the view taken by this Court in Gangadhar Behera’s case (2002) 8 SCC 381, wherein the Court held as under:-

“15. To the same effect is the decision in [State of Punjab v. Jagir Singh](#) (1974) 3 SCC 277 and [Lehna v. State of Haryana](#) (2002) 3 SCC 76. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of “falsus in uno, falsus in omnibus ” (false in



one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a 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 witnesses cannot be branded as liars. The maxim "falsus in uno, falsus in omnibus " has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of 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”. ([See Nisar Alli v. State of U.P.](#) AIR 1957 SC 366) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. ([See Gurcharan Singh v. State of Punjab](#) AIR 1956 SC 460). The doctrine is a dangerous one specially 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. 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. (See [Sohrab v. State of M.P.](#) (1972) 3 SCC 751 and [Ugar Ahir v. State of Bihar](#) AIR 1965 SC 277.) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See [Zwinglee Ariel v. State of M.P.](#) AIR 1954 SC 15 and [Balaka Singh v. State of Punjab](#) (1975) 4 SCC 511.) As observed by this Court in [State of Rajasthan v. Kalki](#) (1981) 2 SCC 752



normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in [Krishna Mochi v. State of Bihar](#) (2002) 6 SCC 81. Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned.” (emphasis in original)

24. Considering the evidence in its totality, the judgment of conviction and sentence recorded against appellant Chunnu Singh is upheld. Hence, appeal is dismissed to the extent of his interest. He is under custody, which he will remain



till saturation of the period of custody.

25. The first and last page of the judgment be handed over to the learned Amicus Curiae for needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	02.07.2019
Transmission Date	02.07.2019

