

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

1. CRA-D-573-DB-2017

Mahender Singh and another

... Appellants

Versus

State of Haryana

... Respondent

2. CRA-D-737-DB-2017

Som Pal alias Babli and another

... Appellants

Versus

State of Haryana

... Respondent

3. CRA-D-753-DB-2017

Sandeep @ Khopdi

... Appellants

Versus

State of Haryana

... Respondent

4. CRA-AD-80-2018

Sheeshpal

... Appellant

Versus

State of Haryana and others

... Respondents

**Reserved on : 09.05.2019
Date of decision : 24.05.2019**

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Deepinder Brar, Advocate
 for the appellants in CRA-D-573-DB-2017.

Mr.Amarjit Singh Virk, Advocate
for appellant No.1 in CRA-D-737-DB-2017 and
appellant in CRA-D-753-DB-2017.

Mr.Keshav Partap Singh, Advocate
for appellant No.2 in CRA-D-737-DB-2017.

Mr.Rajiv Kumar Saini, Advocate
for the appellant in CRA-AD-80-2018.

Mr. Vishal Garg, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals, therefore, these are taken up together and disposed of by a common judgment.

2. These appeals are instituted against judgment dated 27.04.2017 and order dated 29.04.2017 rendered by the Additional Sessions Judge, Karnal, in Sessions Case No.18 of 2015. The appellants in CRA-D-573-DB-2017, CRA-D-737-DB-2017 and CRA-D-753-DB-2017 were charged with and tried for offences punishable under Sections 148, 302/149, 120-B and 212 of the Indian Penal Code (in short 'IPC'). They have been convicted and sentenced as under:-

Office under Section	Sentence
148 IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.2000/- (Rs. Two thousand only) each and in default of payment of fine, to undergo further imprisonment for three months.
120-B IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10000/- (Rs. Ten thousand only) each and in default of payment of fine, to undergo further imprisonment for one year.
302/149 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10000/- (Rs. Ten thousand only) each and in default of payment of fine, to undergo further imprisonment for one year.

All the substantive sentences were ordered to run concurrently. They were, however, acquitted under Section 212 IPC.

3. Appellant Sheeshpal, father of the deceased, has filed appeal bearing No.CRA-AD-80-2018 for granting compensation.

4. The case of the prosecution in a nutshell is that on 14.02.2015 ASI Jaipal Singh received a ruqa from CHC, Indri in the police station that Pawan Kumar alias Pintu son of Sheeshpal was admitted in CHC, Indri, due to injuries on his person. Pawan Kumar alias Pintu was referred to Civil Hospital, Karnal. ASI Jaipal Singh along with Constable Devender Singh went to Civil Hospital, Karnal to record the statement of injured Pawan Kumar alias Pintu. He sought opinion of the doctor. The doctor opined that Pawan Kumar alias Pintu was unfit to make statement. On 15.02.2015, a telephonic message was received from Raj Kumar that Pawan Kumar was admitted in Shri Hari Hospital, Karnal from Civil Hospital, Karnal. ASI along with other companion officials reached Shri Hari Hospital, Karnal. Pawan Kumar met them at the gate of the hospital and got recorded his statement that he was aged 35 years. He was Ex-Municipal Councilor of Indri. His office was situated in shop No.201 in the Municipal Council Complex, Indri. On 14.02.2015 he and his uncle (*tau*) Sulekh Chand were working in Municipal Council Complex. At about 5.30/ 6.00 P.M., he came down stairs to make payment of Rs.49,000/- in the committee. Jaspal alias Jassu resident of Barsalu came to him. He was armed with a pistol. Jaspal put his pistol on his ear. In the meantime, companions of Jaspal, namely Surinder alias Dhara armed with an iron rod, Khopri resident of Garhi Gujran armed with an iron rod, Babli Ror resident of Barsalu armed with an

iron rod, Mahinder resident of Butan Kheri armed with an iron rod came at the spot. All the accused administered beatings to him with the rods. He raised both hands to save him. The motive was that the assailants wanted to take possession of his house in Budh Nath Dera in the area of Indri. His uncle Sulekh Chand raised an alarm. Many people arrived at the spot. The assailants fled away. His brother Raj Kumar reached at the spot and got him admitted in CHC, Indri. Thereafter he was referred to Civil Hospital, Karnal. He was referred to PGI, Chandigarh but his brother admitted him in Shri Hari Hospital, Karnal. Accused were arrested. They were also got medico legally examined. Investigation was carried out. Challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants examined two witnesses in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

6. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the prosecution case.

8. Learned counsel for the appellant Sheeshpal in CRA-AD-80-2018 has argued for awarding compensation.

9. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

Kumar, Investigating Officer to the place of occurrence. He reached the place of occurrence. He prepared scaled site plan Ex.P1 on pointing of Sulekh Chand.

11. PW-3 HC Sandeep supplied call details of mobiles vide Ex.P2 and Ex.P3 running into 16 sheets.

12. PW-5 ASI Ram Parkash had recorded formal FIR Ex.P8.

13. PW-8 HC Krishan Kumar deposed that accused Som Pal alias Babli had made disclosure statement Ex. P11.

14. PW-9 Tarun Mehta deposed that they were taking tea in tea-stall which was situated under his office on the ground floor. Pawan Kumar alias Pintu came to them from his office situated on the first floor to know the well beings of Rattan Gandhi. In the meantime, one person came there and took Pawan Kumar with him. Thereafter they got up for going to his office. In the meanwhile, they heard cries and saw that three persons were giving beatings to Pawan Kumar with *dandas*. He and Suresh Bhatia took Pawan Kumar to Civil Hospital, Indri for treatment. He did not know the assailants who caused injuries to Pawan Kumar. He had seen the accused in the Court. They were not those persons who inflicted injuries to Pawan Kumar. He was declared hostile and cross-examined by the Public Prosecutor. He denied the statement Ex.P13. He was confronted with the averments contained in Ex.P13. In his cross-examination by the defence counsel, he deposed that Pawan Kumar alias Pintu injured was taken to CHC, Indri by him and Suresh Bhatia in his car. Raj Kumar, brother of injured was not present at the place of occurrence when they brought the injured to the hospital. They reached CHC, Indri within 10 to 15 minutes.

As soon as they reached there, Raj Kumar brother of injured Pawan Kumar alias Pintu also reached CHC, Indri. They got injured admitted in the hospital. Raj Kumar started attending injured and thereafter they came back to his office.

15. PW-11 Sulekh Chand testified that he was present in the office of his nephew Pawan Kumar near bus stand. His nephew was Ex.MC and used to deal in purchase and sale of the plots. It was around 5.30/6.00 P.M. He and his nephew were sitting in the office. His nephew came down stairs to pay the “committee” of Rs.49,000/-. Then a person named Jassu resident of Barsalu came and put a pistol on the temporal region of his nephew. Jassu threatened to kill him. Four persons namely Surender alias Dhara, Khopri alias Sandeep, Mahender and Babli came on the spot carrying iron rods. All of the five started giving beatings to his nephew. His nephew raised alarm. He was in the office. He raised alarm. Accused presumed Pawan Kumar dead. The motive was that accused wanted to take possession of the house of his nephew which he had got constructed in Budh Nath Dera, Ward No.1, Indri. Police came to the spot and recorded the statement of Pawan Kumar alias Pintu.

The examination-in-chief of PW-11 Sulekh Chand was recorded on 02.12.2016. His cross-examination was recorded on 09.12.2016.

In his cross-examination he deposed that when he came down from the shop of Pawan Kumar, his nephew, he was already taken to CHC, Indri by Tarun Mehta, Advocate. He reached CHC, Indri. He had never seen any of the assailants at the time of occurrence. Accused present in the Court

were not the same persons who inflicted injuries to Pawan Kumar. He made only one statement at the asking of police and the said statement was made by him before the Magistrate under Section 164 Cr.P.C. He could not identify any of the accused present in the Court. In his statement Ex.D1, he stated that 5/6 unknown persons had inflicted injuries to Pawan Kumar with *lathi*. Volunteered the statement was also made by him under the pressure of police. He admitted that injuries sustained on the person of deceased were on non-vital parts, i.e. arm, legs and back. He had completely cured so far as injuries were concerned. He admitted that Pawan Kumar had suffered a heart attack in the hospital and due to which he expired.

At that stage, Public Prosecutor requested to permit him to re-examine the witness as in the examination-in-chief, he had supported the prosecution version whereas in the cross-examination, he had denied the prosecution version. Therefore, to clear the material points from the witness, the permission was sought for re-examination of witness. Request was allowed. He was re-examined on 09.12.2016.

In re-examination, PW-11 Sulekh Chand admitted that he had made earlier statement on 02.12.2016 voluntarily.

He was again cross-examined by learned defence counsel. He reiterated that version given by him was his correct version and he had made his statement voluntarily without any pressure from any corner.

16. PW-12 Raj Kumar is the brother of the deceased. In his examination-in-chief, he deposed that on 14.02.2015 at about 5.15/5.30 P.M. he was present near the complex of Municipal Committee. He received telephonic call that his brother Pawan Kumar alias Pintu was being

administered beatings. He reached the spot. He saw that five accused namely Babli, Jaspal alias Jassu, Mahinder, Surender alias Dhara and Sandeep alias Khopri were armed with iron rods. He was frightened. Accused thought that his brother had died and they ran away from the spot. He took his brother to the Government Hospital, Indri. At about 6/6.15 P.M. the doctors of hospital Indri referred his brother to Civil Hospital, Karnal. The doctors of Civil Hospital, Karnal, kept his brother for one night and in the morning they referred him to PGI, Chandigarh. Since his brother had many injuries, therefore, he admitted him in the Shri Hari Hospital, Karnal. Thereafter he took his brother to Mukesh Jain Hospital, Muzaffar Nagar (U.P.). After three days, doctors at Mukesh Jain Hospital could not treat his brother. He took his brother to Anand Hospital, Meerut. Finally he had taken his brother to Fortis Hospital, Noida. His brother died on 17.03.2015. He identified all the accused present in Court. In his cross-examination, he deposed that he was away from the office of Pawan Kumar when he received telephonic message from Tarun Mehta. He called him in CHC, Indri. Immediately after receipt of information, he rushed to the place of occurrence but nobody was found there. He reached the hospital Indri at about 06.00 P.M. He had not seen any of the assailants who had caused injuries to his brother Pawan Kumar. From Indri, they shifted Pawan Kumar to General Hospital, Karnal. He was unconscious. He was taken to Shri Hari Hospital. His brother was highly qualified. He had seen the statement of his brother in the Court. He denied the signatures of his brother on Ex.D2. According to him, police might have obtained the thumb impressions of some other person and converted the same into Ex.D2. He had seen the

accused in the Court. None of them had caused injuries to his brother. He further deposed that his brother died due to injuries he suffered. The version given by him in the cross-examination was true. The earlier statement recorded on 02.12.2016 was not true version. He was re-examined by the Public Prosecutor for the State. In his re-examination, he denied that his earlier statement dated 02.12.2016 was made voluntarily without any pressure from any corner.

17. PW-13 EHC Vinod Kumar deposed that accused Som Pal alias Babli made disclosure statement Ex.P18. Accused Som Pal alias Babli again suffered disclosure statement Ex.P19.

18. PW-14 HC Sanjay Kumar deposed that accused Sandeep alias Khopri and Surender alias Dara made disclosure statements Ex.P21 and P22. Accused Jassu made disclosure statement Ex.P23. Accused Sandeep alias Khopri got recovered one danda bamboo measuring five pories. Accused Surender alias Dara got recovered one danda bamboo measuring five pories. Accused Jaspal alias Jassu also got recovered one danda bamboo measuring five pories.

19. PW-16 HC Vinesh Kumar had prepared the transcriptions of the CDs Q1, Q2 and S1.

20. PW-17 ASI Pawan Kumar deposed that on 01.04.2015 Raj Kumar, brother of deceased Pawan Kumar handed over to him three CDs which were taken into possession. He moved an application for recording statements of Raj Kumar and Sulekh Chand under Section 164 Cr.P.C. Som Pal alias Babli was arrested. He made disclosure statement Ex.P29. Som Pal alias Babli again suffered disclosure statement Ex.P11. Som Pal alias Babli

demarcated the place of occurrence vide memo Ex.P12. Som Pal alias Babli again suffered disclosure statement Ex.P19. Som Pal alias Babli again suffered disclosure statement Ex.P20. He had taken into possession call details of mobile numbers. The call details belonged to accused Surender, Jaspal alias Jassu and Som Pal alias Babli. Accused Mahender also made disclosure statement Ex.P30. He deposited the case property, i.e. CDs and mobile phone in CFSL, Chandigarh.

21. PW-19 ASI Jai Pal Singh deposed that on receipt of ruqa, he reached G.H. Indri. He received information that patient was referred to G.H.Karnal. Thereafter he reached G.H. Karnal and sought opinion of doctor whether the patient was fit to make statement or not, by moving an application Ex.P34. The doctor gave his opinion that the patient was unfit to make statement vide Ex.P35. He arrested accused Jaspal Singh alias Jassu, Surender and Sandeep. He recorded disclosure statements. Weapons of offence, i.e. *dandas* were got recovered by accused on the basis of disclosure statements.

22. PW-4 Dr.Vikas Moudgil has led his evidence by filing affidavit Ex.PW4/A. He had medico legally examined Pawan Kumar on 14.02.2015. He had noticed following injuries on the person of deceased:-

“1. Abrasion superficial 1 x 0.3 cm in size, linear over right side of lateral neck below right ear. X ray neck, i.e. cervical region was advised. Radiologist and Surgeon opinion sought. Injury kept under observation caused by blunt objects and within 24 hours duration.

2. Over right hand 1) lacerated wound 0.9 x 0.3 cm of size, irregular margins bonds visible over index finger proximal phalanx and palmar surface, bone pieces

visible with complete deformed fingers. X-ray right hand was advised and radiologist and ortho opinion sought. Injury was kept under observation caused by blunt objects and within 24 hours duration.

2. Over right hand 2) middle finger nail is avulsed from nail base and multiple contusion over right hand splint applied. X-ray right hand was advised and radiologist and ortho opinion sought. Injury was kept under observation caused by blunt objects and within 24 hours duration.

3. Reddness and swelling over left upper forearm. X-ray left forearm was advised. Radiologist and ortho opinion sought. Injury kept under observation, caused by blunt objects within 24 hours duration.

4. Multiple contusions of varying sizes over entire right lower limb, knee joint and leg swollen, not able to move right lower limb. X-ray right thigh, knee joint, leg was advised. Radiologist and ortho opinion sought. Injury was kept under observation, caused by blunt objects and within 24 hours duration.

5. Multiple contusions of varying sizes over entire left lower limb, knee joint and leg swollen. X-ray left thigh, knee joint, leg was advised. Radiologist and ortho opinion sought. Injury was kept under observation caused by blunt objects and within 24 hours duration.”

He sent rqua Ex.P6 to SHO, Indri regarding admission of the injured. In his cross-examination, he deposed that injury No.2 was on non-vital part. Injuries No.3, 4 and 5 were also on non-vital part of the body. The patient was well oriented, conscious and was fit to make statement at the time of examination.

23. PW-10 Dr. Rahul Verma has led his evidence by filing an affidavit Ex.PW10/A. He along with his team had conducted post-mortem

examination on the body. He had noticed following injuries on the body:-

- “ (i) Abrasion left nostril 1 x 1 cm.*
- (ii) Abrasion 1 x 1 cm at right angle of mouth.*
- (iii) Healed LW 1 x 1 cm at palmar aspect of right index finger 1 cm. below tip of finger.*
- (iv) Healed abrasion 13 x 13 cm left side front of forearm just below left elbow joint.*
- (v) Multiple healed abraded contusion back of chest, back of abdomen, both buttocks, both thigh, both legs and foot.*
- (vi) Surgical wound oval shape 1 x 1 cm right side abdomen. At 6 o'clock position 20 cm. below right nipple.*
- (vii) Healed stitched wound 18 cm. long over front of left thigh and knee joint.*
- (viii) Multiple old healed wound over both knee joint and lower leg.”*

The post-mortem report is Ex.P15. The cause of death in this case was septicemia followed by treatment of ante mortem injuries. In his cross-examination, he admitted that in the hospitals, a particular type of bacteria develops and might not give response to the medicines. He had noticed pus pockets in the lungs and the liver. He admitted that all the injuries mentioned in the PMR were already healed at the time of post-mortem examination. There was no injury on the lungs, liver and other important organs of the body of the deceased.

24. DW-1 Suresh Bhatia deposed that he along with Tarun Mehta and Rattan Gandhi were sitting in the Municipal Committee Complex, Indri. They were taking tea. Pawan Kumar alias Pintu came to them from his office to know the well being of Rattan Gandhi. In the meanwhile one person came there and took Pawan Kumar with him. Thereafter they got up.

In the meantime, they heard cries. They saw that some persons were quarreling with Pawan Kumar alias Pintu. They caused injuries to him with *dandas*. Many persons assembled there. Assailants ran away from the spot. He and Tarun Mehta took injured Pawan Kumar to Civil Hospital, Indri. He contacted Raj Kumar, brother of injured. They admitted Pawan Kumar alias Pintu in hospital. Pawan Kumar alias Pintu became unconscious.

25. DW-2 Sunil Verma has submitted his report Ex.D3. According to him, thumb impressions mark X1 to X3 are not identical with thumb impressions Mark XA to XC.

26. What emerges from the discussion of the evidence is that Pawan Kumar alias Pintu was in the office. He came down from the office. Jaspal alias Jassu had approached him. Thereafter rest of the accused came on the spot. He was administered beatings. He was taken to Civil Hospital, Indri and thereafter referred to Civil Hospital, Karnal and ultimately he was referred to Fortis Hospital, Noida. The date of incident was 14.02.2015. Pawan Kumar alias Pintu died on 17.03.2015.

27. The cause of death was septicemia due to injuries received by the deceased as per statement of PW-10 Dr.Rahul Verma. PW-4 Dr.Vikas Moudgil had noticed as many as five injuries on the person of Pawan Kumar alias Pintu. PW-11 Sulekh Chand in his examination-in-chief has categorically deposed that the deceased was given beatings by the appellants. He raised alarm and thereafter appellants ran away from the spot. However in his cross-examination which was recorded on 09.12.2016 he has not supported the case of the prosecution in its entirety. It is discernible from the tone and tenor of the cross-examination after declaring him hostile that he was won over. Similarly PW-12 Raj Kumar, brother of the deceased,

has testified that he had seen accused inflicting injuries to his brother but he has not supported the case of the prosecution in its entirety. He was also declared hostile. He was also re-examined on the request the learned Public Prosecutor. The weapons of offence, i.e. *dandas* were recovered on the basis of disclosure statements made by the appellants. It is settled law that entire statement of hostile witness does not become effaced. The prosecution can rely on the portion which supports its case.

28. Their Lordships of the Supreme Court in ***Rameshbhai Mohanbhai Koli and others vs. State of Gujarat, (2011) 11 Supreme Court Cases 11***, have held that the evidence of prosecution witness cannot be rejected in toto merely because prosecution chose to treat him as hostile and cross-examined him. Evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version was found to be dependable on a careful scrutiny thereof. Their Lordships have held as under:-

“16. It is settled *legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof.* (vide *Bhagwan Singh v. The State of Haryana*, AIR 1976 SC 202; *Rabindra Kumar Dey v. State of Orissa*, AIR 1977 SC 170; *Syad Akbar v. State of Karnataka*, AIR 1979 SC 1848 and *Khujji @ Surendra Tiwari v. State of Madhya Pradesh*, AIR 1991 SC 1853).

17. *In State of U.P. v. Ramesh Prasad Misra and Anr.*, AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in

favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in [Balu Sonba Shinde v. State of Maharashtra](#), (2002) 7 SCC 543; [Gagan Kanojia and Anr. v. State of Punjab](#), (2006) 13 SCC 516; [Radha Mohan Singh @ Lal Saheb and Ors. v. State of U.P.](#), AIR 2006 SC 951; [Sarvesh Naraian Shukla v. Daroga Singh and Ors.](#), AIR 2008 SC 320 and [Subbu Singh v. State](#), (2009) 6 SCC 462.

18) *In [C. Muniappan & Ors. vs. State of Tamil Nadu](#), JT 2010 (9) SC 95, this Court, after considering all the earlier decisions on this point, summarized the law applicable to the case of hostile witnesses as under:*

"83... the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. *In the instant case, some of the material witnesses i.e. B. Kamal (PW.86); and R. Maruthu (PW.51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned Counsel for the appellants, but we find them to be very trivial in nature.*

85. *It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the*

residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (vide [Sohrab and Anr. v. The State of M.P.](#), AIR 1972 SC 2020; [State of U.P. v. M.K. Anthony](#), AIR 1985 SC 48; [Bharwada Bhogini Bhai Hirji Bhai v. State of Gujarat](#), AIR 1983 SC 753; [State of Rajasthan v. Om Prakash](#), AIR 2007 SC 2257; [Prithu @ Prithi Chand and Anr. v. State of Himachal Pradesh](#), (2009) 11 SCC 588; [State of U.P. v. Santosh Kumar and Ors.](#), (2009) 9 SCC 626 and [State v. Saravanan and Anr](#), AIR 2009 SC 151)”.

29. Their Lordships of the Supreme Court in ***Himanshu alias Chintu vs. State (NCT of Delhi)***, (2011) 2 Supreme Court Cases 36 have held that evidence of hostile witness remains admissible evidence and it is open to Court to rely upon dependable part of that evidence, which is found to be acceptable and duly corroborated by some other reliable evidence available on record. Their Lordships have held as under:-

“30. In [Prithi v. State of Haryana](#) decided recently, one of us (R.M. Lodha, J.) noticed the legal position with regard to a hostile witness in the light of [Section 154](#) of the Evidence Act, 1872 and few decisions of this Court as under :-

"25. [Section 154](#) of the Evidence Act, 1872 enables the court in its discretion to permit the person who calls a witness to put any questions to him which

might be put in cross-examination by the adverse party. Some High Courts had earlier taken the view that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part, but must be excluded altogether. However this view has not found acceptance in later decisions. As a matter of fact, the decisions of this Court are to the contrary. In [Khujji @ Surendra Tiwari v. State of M.P.](#) [(1991) 3 SCC 627], a three-Judge Bench of this Court relying upon earlier decisions of this Court in [Bhagwan Singh v. State of Haryana](#) [(1976) 1 SCC 389], [Sri Rabindra Kumar Dey v. State of Orissa](#) [(1976) 4 SCC 233] and [Syad Akbar v. State of Karnataka](#) [(1980) 1 SCC 30] reiterated the legal position that: (Khujji case, SCC p. 635, para 6) (2010) 8 SCC 536.

"6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof."

26. *In [Koli Lakhmanbhai Chanabhai v. State of Gujarat](#) [(1999) 8 SCC 624], this Court again reiterated that testimony of a hostile witness is useful to the extent to which it supports the prosecution case. It is worth noticing that in [Bhagwan Singh](#) this Court held that when a witness is declared hostile and cross-examined with the permission of the court, his evidence*

remains admissible and there is no legal bar to have a conviction upon his testimony, if corroborated by other reliable evidence.

27. The submission of the learned Senior Counsel for the appellant that the testimony of PW 6 should be either accepted as it is or rejected in its entirety, thus, cannot be accepted in view of the settled legal position as noticed above."

31. The aforesaid legal position leaves no manner of doubt that the evidence of a hostile witness remains the admissible evidence and it is open to the court to rely upon the dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on record. The High Court and the trial court, thus, cannot be said to have erred in acting on the evidence of PW-11 which was duly corroborated by the other reliable evidence on record. We find no flaw in the judgment of the High Court affirming the conviction of A-2 and A-3 under [Section 302](#) read with [Section 34 IPC](#)."

30. Their Lordships of the Supreme Court in ***Haradhan Das vs. State of West Bengal, (2013) 2 Supreme Court Cases 197*** have held that statement of witness who has been declared hostile by the prosecution is neither inadmissible nor is it of no value in its entirety. The statement, particularly the examination-in-chief, insofar as it supports the case of the prosecution is admissible and can be relied upon by the Court. Their Lordships have held as under:-

"15. It is a settled principle of law that the statement of a witness who has been declared hostile by the prosecution is neither inadmissible nor is it of no value in its entirety. The statement, particularly the examination-in-chief, in so far as it supports the case of

the prosecution is admissible and can be relied upon by the Court. It will be useful at this stage to refer to the judgment of this Court in the case of [Bhajju @ Karan v. State of Madhya Pradesh](#) [(2012) 4 SCC 327] wherein this Court, after discussing the law in some elaboration, declared the principle as follows: -

*“33. As already noticed, none of the witnesses or the authorities involved in the recording of the dying declaration had turned hostile. On the contrary, they have fully supported the case of the prosecution and have, beyond reasonable doubt, proved that the dying declaration is reliable, truthful and was voluntarily made by the deceased. We may also notice that this very judgment, *Munnu Raja* (1976) 3 SCC 104 relied upon by the accused itself clearly says that the dying declaration can be acted upon without corroboration and can be made the basis of conviction.*

*34. Para 6 of the said judgment reads as under: (*Munnu Raja* case, SCC pp. 106-07)*

“6. ... It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated (see [Khushal Rao v. State of Bombay](#) AIR 1948 SC 22). The High Court, it is true, has held that the evidence of the two eyewitnesses corroborated the dying declarations but it did not come to the conclusion that the dying declarations

suffered from any infirmity by reason of which it was necessary to look out for corroboration.”

35. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant-accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under [Section 161 CrPC](#), the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.

36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. [Section 154](#) of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-

examination by the adverse party.

37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases:

- a. Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624*
- b. Prithi v. State of Haryana (2010) 8 SCC 536*
- c. Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1*
- d. Ramkrushna v. State of Maharashtra (2007) 13 SCC 525”.*

31. The same principles have been reiterated by the Supreme Court in ***Krishan Chander vs. State of Delhi, (2016) 3 Supreme Court Cases 108*** as under:-

*“20. He has submitted that the High Court has rightly re-appreciated the evidence of the complainant-Jai Bhagwan and other prosecution witnesses and concurred with the findings recorded on the charges. Further it was submitted by him that the trial court while appreciating the evidence of the complainant-Jai Bhagwan relied upon the decision of this Court in the case of *Sat Paul v. Delhi Administration*[6], paragraphs 42 and 52 of which decision in recording the finding on the charges against the appellant, are extracted*

hereunder:

“42. The fallacy underlying this view stems from the assumption that the only purpose of cross-examination of a witness is to discredit him; it ignores the hard truth that another equally important object of cross-examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. Thus, showing faultiness of the memory in the case of such a witness would be another object of cross-examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or in a leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic attitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way.

xxx xxx xxx

52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed

off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.”

32. Their Lordships of the Supreme Court in ***Ramesh and others vs. State of Haryana, (2017) 1 Supreme Court Cases 529*** have held that witnesses turning hostile may be described as “culture of compromise”. Their Lordships have discussed factors and reasons for witnesses turning hostile. Their Lordships have held as under:-

“39. We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under [Section 161](#) of the Code of Criminal Procedure, 1973 by the police during investigation, the Investigating Officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the Court and justifiably so.

However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.

40. *In some of the judgments in past few years, this Court has commented upon such peculiar behaviour of witnesses turning hostile and we would like to quote from few such judgments. In [Krishna Mochi v. State of Bihar](#), this Court observed as under:*

“31. It is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power.”

41. *Likewise, in [Zahira Habibullah v. State of Gujarat](#), this Court highlighted the problem with following observations:*

“40. “Witnesses”, as Bentham said: “are the eyes and ears of justice”. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied

and paralysed and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control, to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface..... Broader public and social interest require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State representing by their presenting agencies do not suffer... There comes the need for protecting the witnesses. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth presented before the Court and justice triumphs and that the trial is not reduced to mockery.....

41. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those

against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like, caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation (sic repetition). We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the “TADA Act”) have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies.”

42. Likewise, in *Sakshi v. Union of India*, the menace of witnesses turning hostile was again described in the following words:

“32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to

undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of subsection (2) of [section 327 Cr.P.C.](#) should also apply in inquiry or trial of offences under [Section 354 and 377 IPC.](#)”

43. *In [State v. Sanjeev Nanda](#), the Court felt constrained in reiterating the growing disturbing trend:*

“99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people’s faith in the system.

100. This court in [State of U.P. v. Ramesh Mishra](#)

and Anr. [AIR 1996 SC 2766] held that it is equally settled law that the evidence of hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In *K. Anbazhagan v. Superintendent of Police and Anr.*, (AIR 2004 SC 524), this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.

101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 and in *Zahira Habibullah Shaikh v. State of Gujarat*, AIR 2006 SC 1367, had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every

effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, [Section 193](#) of the IPC imposes punishment for giving false evidence but is seldom invoked.”

44. *On the analysis of various cases, following reasons can be discerned which make witnesses retracting their statements before the Court and turning hostile:*

- “(i) Threat/intimidation.*
- (ii) Inducement by various means.*
- (iii) Use of muscle and money power by the accused.*
- (iv) Use of Stock Witnesses.*
- (v) Protracted Trials.*
- (vi) Hassles faced by the witnesses during investigation and trial.*
- (vii) Non-existence of any clear-cut legislation to check hostility of witness.”*

45. *Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: “witnesses are the eyes and ears of justice”. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth*

becoming a casualty. A stern and emphatic message to this effect was given in Zahira Habibullah's case as well.

46. *Justifying the measures to be taken for witness protection to enable the witnesses to depose truthfully and without fear, Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 has remarked as under:*

“11.3 Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise...Time has come for a comprehensive law being enacted for protection of the witness and members of his family.”

47. *Almost to similar effect are the observations of Law Commission of India in its 198th Report[11], as can be seen from the following discussion therein:*

“The reason is not far to seek. In the case of victims of terrorism and sexual offences against women and juveniles, we are dealing with a section of society consisting of very vulnerable people, be they victims or witnesses. The victims and witnesses are under fear of or danger to their lives or lives of their relations or to their property. It is obvious that in the case of serious offences under the Indian Penal code, 1860 and other

special enactments, some of which we have referred to above, there are bound to be absolutely similar situations for victims and witnesses. While in the case of certain offences under special statutes such fear or danger to victims and witnesses may be more common and pronounced, in the case of victims and witnesses involved or concerned with some serious offences, fear may be no less important. Obviously, if the trial in the case of special offences is to be fair both to the accused as well as to the victims/witnesses, then there is no reason as to why it should not be equally fair in the case of other general offences of serious nature falling under [the Indian Penal Code](#), 1860. It is the fear or danger or rather the likelihood thereof that is common to both cases. That is why several general statutes in other countries provide for victim and witness protection.”

48. *Apart from the above, another significant reason for witnesses turning hostile may be what is described as 'culture of compromise'. Commenting upon such culture in rape trials, Pratiksha Bakshi has highlighted this problem in the following manner:*

“During the trial, compromise acts as a tool in the hands of defence lawyers and the accused to pressurise complainants and victims to change their testimonies in a courtroom. Let us turn to a recent case from Agra wherein a young Dalit woman was gang-raped and the rapist let off on bail. The accused threatened to rape the victim again if she did not compromise. Nearly a year after she was raped, she committed suicide. While we find that the judgment records that the victim

committed suicide following the pressure to compromise, the judgment does not criminalise the pressure to compromise as criminal intimidation of the victim and her family. The normalising function of the socio-legal category of compromise converts terror into a bargain in a context where there is no witness protection programme. This often accounts for why prosecution witnesses routinely turn hostile by the time the case comes on trial, if the victim does not lose the will to live.

In other words, I have shown how legality is actually perceived as disruptive of sociality; in this instance, a sociality that is marked by caste based patriarchies, such that compromise is actively perceived, to put it in the words of a woman judge of a district court, as a mechanism for ‘restoring social relations in society’.”

49. *In this regard, two articles by Daniela Berti delve into a sociological analysis of hostile witnesses, noting how village compromises (and possibly peer pressure) are a reason for witnesses turning hostile. In one of his articles, he writes:*

“For reasons that cannot be explained here, even the people who initiate a legal case may change their minds later on and pursue non-official forms of compromise or adjustment. Ethnographic observations of the cases that do make it to the criminal courtroom thus provide insight into the kinds of tensions that arise between local society and the state judicial administration. These tensions are particularly palpable when witnesses deny before the judge what they allegedly said to the police during preliminary investigations. At this very moment

they often become hostile. Here I must point out that the problem of what in common law terminology is called “hostile witnesses” is, in fact, general in India and has provoked many a reaction from judges and politicians, as well as countless debates in newspaper editorials. Although this problem assumes particular relevance at high-profile, well-publicized trials, where witnesses may be politically pressured or bribed, it is a recurring everyday situation with which judges and prosecutors of any small district town are routinely faced. In many such cases, the hostile behavior results from various dynamics that interfere with the trial's outcome – village or family solidarity, the sharing of the same illegal activity for which the accused has been incriminated (as in case of cannabis cultivation), political interests, family pressures, various forms of economic compensation, and so forth. Sometimes the witness becomes “hostile” simply because police records of his or her earlier testimony are plainly wrong. Judges themselves are well aware that the police do write false statements for the purpose of strengthening their cases. Though well known in judicial milieus, the dynamics just described have not yet been studied as they unfold over the course of a trial. My research suggests, however, that the witness's withdrawal from his or her previous statement is a crucial moment in the trial, one that clearly encapsulates the tensions arising between those involved in a trial and the court machinery itself.”

“In my fieldwork experiences, witnesses become “hostile” not only when they are directly

implicated in a case filed by the police, but also when they are on the side of the plaintiff's party. During the often rather long period that elapses between the police investigation and the trial itself, I often observed, the party who has lodged the complaint (and who becomes the main witness) can irreparably compromise the case with the other party by means of compensation, threat or blackmail."

33. Learned counsel for the appellants have vehemently argued that Pawan Kumar alias Pintu died due to septicemia and not due to the injuries inflicted on him.

34. It has come on record that Pawan Kumar alias Pintu died due to septicemia on account of injuries inflicted upon him by the appellants. PW-9 Tarun Mehta has not supported the case of prosecution in its entirety but has admitted that he had taken the injured to hospital. Statement of DW-1 Suresh Bhatia does not inspire confidence. Statement made by Pawan Kumar alias Pintu deceased is Ex.P36. He had put his left thumb impression on the statement on 15.02.2015. He had named the accused in this report on the basis of which FIR was registered.

35. We have gone through the statement of PW-10 Dr.Rahul Verma. According to him, injuries received by the deceased were on non vital organs of the body. Similarly PW-4 Dr.Vikas Moudgil deposed that injuries No. 3, 4 and 5 were also on non vital parts of the body. Injury No.1 was simple and very superficial in nature. Injury No.2 was not fresh one because as per his opinion, the duration was declared within 24 hours. Injury No.2 was on non vital part. Similar was his report qua part II of injury No.2.

36. Statements of Sulekh Chand and Raj Kumar were recorded under Section 164 Cr.P.C. vide Ex.D1 and D2. In statement under Section 164 Cr.P.C., Sulekh Chand categorically deposed that he could identify the accused if they came before him. Raj Kumar in his statement recorded under Section 164 Cr.P.C. categorically deposed the manner in which the appellants had inflicted injuries on his brother. Even from the statement of DW-1 Suresh Bhatia, occurrence is proved.

37. DW-2 Sunil Verma, Handwriting and Fingerprint Expert is silent to the effect that whether thumb impressions on Ex.P36, i.e. statement of Pawan Kumar alias Pintu as well as thumb impression on MLR were one or of the same person. PW-4 Dr.Vikas Moudgil has specifically stated in his cross-examination that he had got left thumb marks of the injured at point D-1, D-2 and D-3 on the MLR Ex.P5. However, the fact of the matter is that though Pawan Kumar alias Pintu has died due to injuries inflicted upon him but the injuries were not caused on vital organs. The appellants had knowledge that if numerous injuries are given on the body, it may result in death. The weapons of offence were recovered at their instance. Pawan Kumar alias Pintu died due to septicemia which was due to injuries received by him.

38. Accordingly the appeals bearing Nos. CRA-D-573-DB-2017, CRA-D-737-DB-2017 and CRA-D-753-DB-2017 are partly allowed. The conviction of the appellants in these appeals is converted from Section 302 read with Section 149 IPC to Section 304 Part II read with Section 149 IPC. Their conviction and sentence recorded by the trial Court under Section 148 IPC is upheld. The appellants are in custody. Let the convicts be produced in Court on 30.05.2019 to hear them on quantum of sentence

under Section 304 Part II read with Section 149 and 120-B IPC.

39. We find no merit in appeal CRA-AD-80-2018 to grant compensation to appellant Sheeshpal. Accordingly the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 24, 2019.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No