

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 738 of 2004

SUFIAN SK.
VS.
STATE OF WEST BENGAL

For the Petitioner : Mr. Amartya Ghosh, Adv.,
Mr. Sanat Kumar Das, Adv.,
Mr. Sujan Chatterjee, Adv.

For the Opposite Party : Mr. Antarikh Basu, Adv.

Hearing concluded on : 9th September, 2022

Judgement on : 14th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This proceeding stems out of an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the petitioner praying for quashing of the judgement passed by learned Additional Sessions Judge, Berhampore, Murshidabad in Criminal Appeal No. 16 of 2000, affirming the judgement and order of conviction passed by learned Chief Judicial Magistrate, Berhampore, Murshidabad convicting the petitioner and sentencing him to suffer rigorous imprisonment for three years for commission of offence punishable under Section 25 (1) (a) of the Arms Act and to pay fine with default clause, rigorous imprisonment for three years for

committing offence within the meaning of Section 27 (1) of the Arms Act and to pay fine of Rs. 1000/- with default clause and rigorous imprisonment for three years for committing offence within the meaning of Section 326 of the I.P.C. and to pay fine of Rs. 1000/- with a default clause. All the sentences run concurrently.

2. Briefly stated, on 24th May, 1989, one Abdul Malik set the criminal administration of justice into motion by informing the Officer-in-charge of Farakka Police Station in writing about the alleged incident that took place at about 4.00 a.m. when his brother Jalaluddin Sk. sustained gunshot injury.
3. It is contended that the informant, Jalaluddin along with Ali Beda were walking down the road from village Abhla; in between Abhla and Damodarpur there was a culvert. When three of them reached there the informant heard a sound of fire and found Jalaluddin to fall on the road with injury on his right leg. He further found that Sufian Sk. of Rozipur was fleeing. They raised alarm which attracted Enamul Hoque, Idrish Sk. and Mojid Sk. who were ploughing the land. They caught Sufian Sk. with the fire arm and brought him to their house. Mojtuba Ali was requested to inform the police, with the help of police Jalaluddin was sent to Farakka Barrage Hospital wherefrom he was referred to Malda District Hospital.
4. According to the informant perhaps due to some previous grudge Sufian Sk. opened fire at Jalaluddin.
5. As the information disclosed offence cognizable in nature police registered the case being Farakka P.S. Case No. 49 of 1989 under

Section 326/307 of the I.P.C. and Section 25/27 of the Arms Act, and took up investigation which culminated into submission of charge sheet.

6. Learned Trial Court upon perusal of material on record was pleased to frame charge against accused Sufian Sk. under Section 326 I.P.C. and 25 (1) (a) and 27 (1) of the Arms Act. The accused person pleaded his innocence and claimed to be tried.
7. Learned Trial Court after considering the evidence adduced by the witnesses on behalf of the prosecution was pleased to record an order of conviction, which was challenged in the appeal before the learned Additional Sessions Judge, Barhampore and learned Appellate Court having found no reason to interfere with the judgement of learned Trial Court was pleased to dismiss the appeal. Hence this application under consideration.
8. Assailing the impugned judgement Mr. Amartya Ghosh, learned Advocate for the petitioner submits that the impugned judgement suffers from serious infirmities. The charge was not framed with necessary details so as to make the accused understand about the place as well as nature of occurrence. There is lack of consistency in the testimony of prosecution witnesses and the discrepancies as forthcoming, makes the prosecution case doubtful. According to Mr. Ghosh both the learned Courts below failed to take note of such discrepancies appearing in the testimony of the witnesses and learned Appellate Court committed grave error in maintaining the order of conviction. Upon perusal of the record it appears that the charges have

been framed by the learned Trial Court which is free from vagueness. Mr. Ghosh criticized the framing of charge but could not indicate any prejudice that was caused to the accused person or there is any failure of justice for the charges as framed by learned Trial Court.

9. Hon'ble Supreme Court pronounced in the case of **CHANDRA PRAKASH VS. STATE OF RAJASTHAN** reported in **(2014) 8 SCC 340** held:-

“66. The next aspect which needs to be adverted to is non-framing of specific charge. On a perusal of the record, we find that the learned trial Judge has framed the charges specifically by putting the charges to the accused. The purpose of framing of charges is that the accused should be informed with certainty and accuracy of the charge brought against him. There should not be vagueness. The accused must know the scope and particulars in detail. In this context, we may refer to decision in Santosh Kumari v. State of Jammu and Kashmir and Ors. reported in (2011) 9 SCC 234, wherein it has been held as follows:

17. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.

18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether

the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. reported in AIR 1956 SC 116 SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.

67. In K. Prema S. Rao v. Yadla Srinivasa Rao reported in (2003) 1 SCC 217, the Court opined that though the charge specifically Under Section 306 Indian Penal Code was not framed, yet all the ingredients constituting the offence were mentioned in the statement of charges. In that context, a three-Judge Bench of this Court ruled that mere omission or defect in framing of charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The said principle has been reiterated in Dalbir Singh v. State of U.P. reported in (2004) 5 SCC 334, State of U.P. v. Paras Nath Singh reported in (2009) 6 SCC 372 and Anna Reddy Sambasiva Reddy v. State of A.P. reported in (2009) 12 SCC 546.”

10. Drawing my attention to the testimony of the informant Abdul Malik as PW-1, Mr. Ghosh submits that according to PW-1 Sufian Sk. was chased and caught. He was taken to Farakka Police Station together with the pistol in his possession. While in the written information he stated that Sufian Sk. was taken to their house. PW-2 stated that both Sufian Sk. and Jalaluddin were taken to Police Station

and police found the pistol from the possession of the accused person which is quite contrary to the testimony of PW-1.

11. Drawing my attention to the testimony of PW-12 the I.O. of the case, Mr. Amartya Ghosh submits that the I.O. claimed to have arrested the accused person from Damodarpur and on search recovered the improvised revolver from his waist and he prepared the seizure list which belies the claim of prosecution witnesses like PW-1 and PW-2 that the accused person was taken to Police Station and fire arm was recovered there at Police Station from his possession.

12. It is further adverted by Mr. Ghosh that though evidence Act does not prescribe any particular number of witnesses to be examined to prove the charge in a criminal trial, the oral testimony of the witnesses when found neither wholly reliable nor unreliable, Court should look for corroboration.

13. To buttress of his submission Mr. Amartya Ghosh, learned Counsel for the petitioner relied upon the judgement of Hon'ble Supreme Court passed in the case of **VADIVELU THEVAR VS. THE STATE OF MADRAS** reported in **AIR 1957 SC 614** wherein it is held:-

"1. xxxxxx

2. xxxxxx

3. xxxxxx

4. xxxxxx

5. xxxxxx

6. xxxxxx

7. xxxxxxx

8. xxxxxxx

9. xxxxxxx

10. xxxxxxx

11. xxxxxxx

12. xxxxxxx

13. *It is not necessary specifically to notice the other decisions of the different High Courts in India in which the court insisted on corroboration of the testimony of a single witness, not as a proposition of law, but in view of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the [Indian Evidence Act](#), the following propositions may be safely stated as firmly established:*

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

14. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality

and not with the quantity of the evidence necessary for, proving or disproving a fact.

Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.*

15. In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

14. Mr. Ghosh, learned Counsel for the petitioner adverted further that the cardinal principle of law is that the prosecution should prove the charges beyond reasonable doubt and while recording an order of conviction. Learned Trial Court relied upon evidence of interested witnesses and committed grave error.
15. According to Mr. Ghosh, learned Advocate for the petitioner admittedly the relation between the victim and the convict was inimical. The prosecution witnesses are relatives of the victim.
16. Relying upon the decision of Hon’ble Apex Court pronounced in **BALDEV SINGH & ORS. VS. STATE OF M.P.** reported in **AIR 2003 SC 2098**. Mr. Ghosh argued that admittedly the informant is the uncle of the victim and other persons accompanying the victim at the time of incident are the brothers of the informant. Therefore, they are all in

relation, naturally they would be interested in getting the petitioner convicted. Learned Courts below should have no reason to record order of conviction particularly when the enmity between the Jalaluddin and Sufian Sk. stands admitted.

17. Mr. Ghosh argued that Hon'ble Supreme Court in the case of Baldev Singh (supra) refused to rely on the interest witnesses and set aside the order of conviction.

18. Mr. Ghosh painstakingly argued that the victim was taken to hospital but did not say anything to the attending doctor about the assailant. He took the name of the assailant for the first time while adducing evidence on oath on 9th January, 1997, almost 8 years after the incident. The victim as PW-5 claimed to have narrated the incident to the Investigating Officer. The Investigating Officer PW-12 also stated that he recorded the statement of victim in the hospital but no such statement was found during trial.

19. According to Mr. Ghosh the prosecution suppressed the statement of victim made immediately after the incident before the I.O. which was recorded under Section 161 of the Cr.P.C. Therefore, it should be presumed that the victim did not disclose the name of the assailant at the first place otherwise the prosecution would not have kept the said statement away from the notice of the learned Trial Court.

Mr. Ghosh further argued that PW-1, PW-2 and PW-5 were allegedly coming down the road together. Neither the informant PW-1 nor PW-2 Beder Ali saw the accused Sufian Sk. near the culvert. Only PW-5 during his evidence-in-chief claimed to have noticed Sufian Sk.

standing near the culvert. This claim of PW-5 is undoubtedly improbable, as during cross examination PW-5 stated that after being struck by bullet he found one person was fleeing. Therefore it is to be presumed that PW-5 did not see Sufian Sk. to open fire. He found one person fleeing.

According to Mr. Ghosh benefit of doubt should have been extended to the Sufian Sk. instead of recording the order of conviction against him.

20. Mr. Antarikh Basu, learned Advocate representing the State submits that learned Trial Court upon consideration of evidence came to finding that it was Sufian Sk. and none else who committed the alleged incident. Such finding of learned Trial Court when affirmed by learned Appellate Court, this Court may not alter the order of conviction as imposed upon the accused person.

21. Mr. Basu, learned Advocate for the State relying upon the judgement passed by Hon'ble Supreme Court in **STATE OF WEST BENGAL VS. MIR MOHAMMAD OMAR & ORS.** reported in **(2000) 8 SCC 382**, submits that presumption of fact is a rule of law of evidence. When inferring the existence of fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition when Section 114 is incorporated in the evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened.

22. According to Mr. Basu, when Jalaluddin, the victim got struck by bullet and fell down, the assailant made an unsuccessful attempt to flee. The persons like PW-1 and PW-2 and others caught hold of the said man only to find it was none else but Sufian Sk. who was carrying a fire arm with him. This evidence is sufficient to draw the presumption that none else but Sufian Sk. opened the fire and made the victim sustain injury. Sufian Sk. had the obligation under Section 106 of the Evidence Act to explain as to why he was fleeing from the scene of offence and why was he caught red handed with fire arm in his possession, which he did not do.
23. According to Mr. Basu, learned Advocate for the State the discrepancies pointed out by Mr. Ghosh, learned Counsel for the petitioner are of trivial nature and may be ignored.
24. To buttress his submission, Mr. Basu placed his reliance upon the judgement of Hon'ble Supreme Court pronounced in the case of **NARAYAN CHETANRAM CHAUDHARY & ANR. VS. STATE OF MAHARASHTRA** reported in **(2000) 8 SCC 457**.
25. I have carefully perused the evidence on record. PW-1 who set the criminal administration of justice into motion did not prepare the information by his own hand, he lent his signature while it was written by one Mustofa. PW-1 and PW-2 together with PW-5 were walking down the road at about 4.00 a.m. According to the victim he noticed Sufian Sk. standing near the culvert while PW-1 and PW-2 did not claim to have noticed Sufian Sk. They got attracted by the sound of fire and fall of Jalaluddin instantly. PW-1 and PW-2 raised alarm and

chased the man whom they found fleeing. The said man was caught red handed with a fire arm. Both PW-1 and PW-2 stood the test of cross-examination and their testimony are found to be convincing and they are also lending support the testimony of victim who claimed to have noticed Sufian Sk. standing near the culvert at a distance to 10-12 cubits and saw him to open fire and the struck his thigh.

26. Drawing my attention to the cross-examination of the victim when he stated to have found backside of a man, while fleeing Mr. Ghosh, learned Counsel for the petitioner strenuously argued that there was no witness who saw Sufian Sk. to open fire and there is no reason to saddle accused Sufian Sk. with the criminal liability for committing offence by opening fire at Jalaluddin. But such argument does not inspire any confidence in me particularly when the said man was found to be Sufian Sk., soon after the incident when he was caught after being chased by PW-1 and PW-2. This evidence unerringly suggests that none but Sufian Sk. committed the offence by causing gunshot injury on the thigh of Jalaluddin.

27. From the evidence of attending Doctors, PW 7 and PW 10, it is established that victim Jalaluddin sustained bullet injury and got his thigh fractured. True it is the Medical Officer did not record the name of the assailant while attending the victim. But that itself does not make the case of prosecution absolutely doubtful. It is a fact that statement of victim recorded under Section 161 of the Cr.P.C. by the I.O. was not found with the C.D. when the I.O. was examined as PW-12. But for that reason alone it cannot be said that charges have not

been proved particularly when nothing is found to impeach the credibility of PW-5. The victim has suffered bullet injury on his leg causing fracture of thigh. He obviously had no reason to implicate any other person falsely to protect the real assailant.

28. Hon'ble Supreme Court in **ALAMGIR VS. STATE (NCT, DELHI)** reported in **(2003) 1 SCC 21** held:-

“The second limb pertains to the statement under Section 161 CrPC. Admittedly, this piece of evidence was not available in the statement of the witness under Section 161 CrPC, but does it take away the nature and character of the evidence in the event there is some omission on the part of the police official? Would that be taken recourse to as amounting to rejection of an otherwise creditworthy and acceptable evidence – the answer, in our view, cannot but be in the negative. In that view of the matter, the evidence of PW 6 thus ought to be treated as creditworthy and acceptable and it is to be seen the effect of such an acceptability.”

29. Here in this case also a ring of truth can be perceived in the testimony of the victim Jalaluddin. He had no control over the case diary or the statement recorded under Section 161 Cr.P.C. Therefore non-availability of such statement in course of cross-examination of the Investigating Officer cannot make the victim suffer. Particularly when nothing in this regard was said before the learned Trial Court or learned Appellate Court.

30. I have no reason to disagree with Mr. Ghosh, learned Advocate for the petitioner that there are discrepancies in the testimony of the prosecution witnesses. But in each and every criminal trial some discrepancies are bound to occur. When the witnesses in a criminal

trial are found to be consistent with each other in their narratives it is said that they are tutored; when some discrepancies are found it is said that the case is not proved beyond doubt.

31. If such discrepancies are in the form of pebbles Court should feel no hesitation to tread upon the same. However, if it is in the form of boulders Court should not make any attempt to jump over it. The discrepancies as pointed out by Mr. Ghosh, learned Counsel for the petitioner are pebbles in nature and do not strike at the root of the case. Hence those discrepancies should be ignored particularly when the testimony of PW-5 together with the testimony of doctors are found worth-credence.

32. Hon'ble Supreme Court in **VINOD KUMAR VS. STATE OF HARYANA** reported in **(2015) 3 SCC 138** held:-

“24. It is well settled in law that minor discrepancies on trivial matters not touching the core of the case or not going to the root of the matter could not result in rejection of the evidence as a whole. It is also well accepted principle that no true witness can possibly escape from making some discrepant details, but the Court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence. It is expected of the Courts to ignore the discrepancies which do not shed the basic version of the prosecution, for the Court has to call into aid its vast experience of men and matters in different cases to evaluate the entire material on record. (See State of U.P. v. M.K. Anthony reported in (1985) 1 SCC 505, Rammi v. State of M.P. reported in (1999) 8 SCC 649 and Appabhai v. State of Gujarat reported in (1988) Supp SCC 241).”

33. Hon'ble Supreme Court pronounced in the case of **SEESH RAM & ORS. VS. THE STATE OF RAJASTHAN** reported in **AIR 2014 SCW 891** held:-

"The evidence of eye-witnesses is not discrepant on the material aspect of the prosecution case. Reliance can, therefore, be placed on them. In this connection, reliance placed by the counsel for the State on Rizan is apt. The same principle is reiterated by this Court in Rizan. We may quote the relevant paragraph from Rizan.

"Even if a major portion of 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 the 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 a 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".

34. Under such circumstances, I do not find any infirmity in the judgement passed by learned Appellate Court warranting interference of this Court to prevent miscarriage of justice. In my view, the petition

under consideration is bereft of any merit and should be rejected which I accordingly do.

35. Let a copy of the judgement together with the Lower Court Record be sent down to learned Trial Court for information and necessary action.

36. It is obvious that the petitioner shall have to comply with the direction of learned Appellate Court to surrender to the jurisdiction of learned Trial Court to serve out sentence. Interim order, if any, stands vacated.

37. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)