



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 12.09.2024
Date of Pronouncement : 11.11.2024

1.

CRA-D No. 1069 of 2022 (O&M)

Sahil alias Sallu

Versus

State of Punjab

... Appellant

...Respondent
2.

CRA-D No. 1116 of 2022 (O&M)

George Masih

Versus

State of Punjab

... Appellant

...Respondent
3.

CRA-D No. 1154 of 2022 (O&M)

Rahul alias Lahla

Versus

State of Punjab

... Appellant

...Respondent

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON’BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. P.B.S. Goraya, Advocate,
Mr. S. P. S. Sandhu, Advocate and
Mr. S. S.Bhullar, Advocate, for the appellant
in CRA-D No. 1069 of 2022.

Ms. G. K. Mann, Senior Advocate assisted by
Mr. Anmol Jeevan Singh Gill, Advocate and
Ms. Simrat Kaur, Advocate, for the appellant
in CRA-D No. 1116 of 2022.

Mr. Rajiv Kumar Saini, Advocate, for the appellant
in CRA-D No. 1154 of 2022.

Mr. Dhruv Dayal, Additional Advocate General, Punjab.

SANJEEV PRAKASH SHARMA, J.

All the three appeals were heard together which are directed
against the judgment/ order of the learned Additional Sessions Judge,

Amritsar dated 12.10.2022/18.10.2022, convicting and sentencing the appellants as under:-

Name of appellant	Under section	Punishment	Fine	In default of fine
Sahil alias Salu	302 read with Section 149 IPC	Imprisonment for life	₹10,000/-	Rigorous imprisonment for 03 months
	307 read with Section 149 IPC	Rigorous imprisonment for 05 years	₹ 5,000/-	Rigorous imprisonment for one month
	120-B IPC	Imprisonment for life	₹ 10,000/-	Rigorous imprisonment for 03 months
	148 IPC	Rigorous imprisonment for 03 years	₹ 2,000/-	Rigorous imprisonment for 15 days
George Masih	302 read with Section 149 IPC	Imprisonment for life	₹10,000/-	Rigorous imprisonment for 03 months
	307 read with Section 149 IPC	Rigorous imprisonment for 05 years	₹ 5,000/-	Rigorous imprisonment for one month
	120-B IPC	Imprisonment for life	₹ 10,000/-	Rigorous imprisonment for 03 months
	148 IPC	Rigorous imprisonment for 03 years	₹ 2,000/-	Rigorous imprisonment for 15 days
Rahul alias Lahla	302 read with Section 149 IPC	Imprisonment for life	₹10,000/-	Rigorous imprisonment for 03 months
	307 read with Section 149 IPC	Rigorous imprisonment for 05 years	₹ 5,000/-	Rigorous imprisonment for one month
	120-B IPC	Imprisonment for life	₹ 10,000/-	Rigorous imprisonment for 03 months
	148 IPC	Rigorous imprisonment for 03 years	₹ 2,000/-	Rigorous imprisonment for 15 days

2. The police had submitted it’s final report under Section 173 Cr.P.C. against six persons, namely, Sahil alias Salu, Kuljit Singh alias Shiva, Rahul alias Lahla, Babbal Joseph, George Masih and Gautam. Kuljit Singh alias Shiva son of Ginder was declared as proclaimed offender on 20.02.2020.

3. At the first stage, challan was presented against Sahil, Rahul alias Lahla, Kuljit Singh, Babbal Joseph. During investigation conducted by Bal Kishan Singla, ACP North, Amritsar, Robin son of Gora and Aman son of Mana were found innocent and were put in column no. 2. Gautam and

VARINDER SINGH
2024.11.11 17:17
I attest to the accuracy and
authenticity of this
order/judgment



George Masih were mentioned, yet to be arrested. Thereafter, supplementary challan was presented against George Masih on his arrest on 28.03.2019. On 22.07.2019 accused Gautam was arrested and supplementary challan qua him was filed.

Thus all of them were in the list of accused. After considering the evidence and the prosecution version, learned Additional Sessions Judge has acquitted Babbal and Gautam, while Sahil alias Salu, Rahul alias Lahla and George Masih have been convicted.

4. We have heard Ms. G. K. Mann, learned senior counsel appearing for George Masih as well as the respective counsels appearing for other accused and also perused the trial court records.

5. FIR was registered on 13.11.2016 at 23:45 hrs. under Sections 302, 307, 379-B, 148, 149, 427 and 120-B IPC at Police Station Sadar, Amritsar on the basis of statement of Sunil Masih son of Kishan Masih aged about 18-1/2 years stating that he was studying in 12th standard and residing at House No. 625, Kirpal Colony, Tung Bala, Majitha Road, Amritsar, that today i.e. on 13.11.2016 at about 03:30 PM, he alongwith his elder brother Chand Masih @ Vicky and one Manjinder Singh son of Baldev Singh, resident of Kirpal Colony were riding on motorcycle bearing no. PB-02-BU-6493 Hero Honda Splendor and were going to the market for getting the Malaysian currency exchanged. His brother Vicky was driving the motorcycle and Manjinder Singh was sitting behind him. The complainant was sitting in the last. When they reached near the house of Dilbagh Singh, then on the next turn Sahil @ Sallu son of Babbal Joseph, Kuljit Singh @ Shiva son of Ginder, George Masih son of Swaran Masih, Rahul @ Lahla



son of Sucha Masih, residents of the same colony, alongwith 2-3 other unidentified persons, armed with Datar and Kirpans came there. Sahil @ Sallu raised lalkara that Chand and others should not be allowed to go dry and should be taught a lesson for fleeing Meenu daughter of Sahil @ Sallu's uncle (Chacha) with Raja son of my (Sunil Masih's) aunt (Masi). On this, Rahul @ Lahla gave a Datar blow which hit on the motorcycle. The complainant jumped from the motorcycle and stepped backwards. His brother Chand and Manjinder Singh fell down from the motorcycle. Sahil @ Sullu gave a Datar blow on Chand, who raised his right hand in order to save himself and the Datar blow hit on his right hand. Then, Kuljit @ Shiva gave a Kirpan blow on Manjinder, which hit on his head. Then Rahul @ Lahla gave a Datar blow on Chand, which hit on his head at back of his right ear. Thereafter, George gave Datar blow on Chand, which hit on his right bicep. His brother Chand and Manjinder became injured and derenched in a pool of blood. He raised hue and cry. Then all the assailants ran away from the spot with their weapons. While leaving, they took away mobile and 2000 Malaysian currency. He took his brother Chand Masih and Manjinder Singh on motorcycle and got them admitted in Guru Nanak Dev Hospital where his brother died due to multiple injuries, while leaving mother namely Satya near the dead body of his brother Chand Masih, he proceeded to the Police Station but Police met him on the way. He mentioned motive behind the occurrence is that about three years ago, Masi's son Raja son of Lubhaya eloped with Meenu daughter of David Masih uncle (Chacha) of accused Sahil @ Sallu. Sahil @ Sallu was suspecting that the same was by the complainant and his brother. He mentioned that the entire incident was witnessed by him.



6. The FIR records that the Inspector along with his team was on regular patrolling duty where the complainant met him and his statement was recorded and on the basis of which the FIR was registered. Intimation was given to the control room whereafter the police party proceeded for the place of occurrence at 10.40 P.M. As per the medical report, Chand Masih was admitted in hospital in serious conditions.

7. Investigation was initiated on the basis of proceedings and during investigation accused were arrested. Statements of the witnesses were recorded, site plans were prepared, weapons were recovered and after completion of all the necessary formalities, challan against accused Sahil alias Salu, Kuljit Singh alias Shiva, Rahul alias Lahla and Babbal Joseph was presented in the Court under Section 173 Cr.P.C. It was stated that accused Gautam and George Masih were yet to be arrested and as and when they would be arrested supplementary challan would be presented in the Court after completion of investigation against them. The concerned Ilqa Magistrate provided copies of documents in terms of Section 207 Cr.P.C. to the concerned accused Sahil alias Salu, Kuljit Singh alias Shiva, Rahul alias Lahla and Babbal Joseph whereafter the case was committed for trial to the Court of Sessions by him on 26.04.2017.

8. On 28.03.2019 accused George Masih was arrested and supplementary challan was filed against him whereafter his case was also committed to the Court of learned Sessions Judge vide order dated 22.07.2019 by the Ilqa Magistrate. On 22.07.2019, another accused Gautam, who had been declared as proclaimed offender under Section 82 Cr.P.C., was also arrested and challan against him was also presented in the



Court of Ilaka Magistrate who committed the case for trial to the Court of Sessions at Amritsar on 14.10.2019.

9. Charges were framed on 09.03.2021 under Sections 120-B, 148, 302, 307 read with Section 149 IPC, 302 read with Section 149 IPC, 379-B, 427, 201 read with Section 149 IPC to which accused Sahil alias Salu, Gautam, Rahul alias Lahla, Babbal Joseph and George Masih pleaded not guilty and claimed trial.

10. During trial, the prosecution examined 14 witnesses, namely, PW1 Sunil Masih, PW2 Satya, PW3 Dr. Manpreet Kaul, PW4 Retired Inspector Ravi Dutt, PW5 Retired Inspector Sukhwinder Singh, PW6 ASI Davinder Singh, PW7 ASI Dharampal, PW8 ASI Harwant Singh, PW9 ASI Sarabjit Singh, PW10 Harwinder Singh, PW11 ASI Sukhdev Singh, PW12 Retired ASI Satnam Singh, PW13 Dr. Madhuri Raina, PW14 Harmandeep Singh Hans, Commandant Third IRB and PW15 Dr. Mandeep Mittal.

11. Statements of accused Sahil alias Salu, Gautam, Rahul alias Lahla, Babbal Joseph and George Masih were recorded under Section 313 Cr.P.C. Number of documents were exhibited whereafter the trial Court heard the arguments and delivered its judgment on 12.10.2022 holding accused Sahil alias Salu, George Masih, Rahul alias Lahla guilty and convicted them, as mentioned above, on 18.10.2022. Accused Babbal Joseph and Gautam were acquitted of the charges framed against them.

Arguments

12. Learned Senior counsel appearing for appellant George Masih alleged that the entire investigation was a washed up by the police with the sole purpose to name the appellants as accused and FIR was itself registered

DAVIDER SINGH
2024.11.11 17:17
I attest to the accuracy and
authenticity of this
order/judgment



at a much later point of time with the sole purpose to save the actual assailants. The reason mentioned in the FIR as motive to kill Chand Masih has been developed artificially as none of the accused were directly related to Meenu, daughter of Sahil @ Sallu's uncle (chacha), who allegedly ran away with one Raja, son of maternal aunt of Sunil and deceased Chand Masih. It is her submission that the entire story had been cooked up because the motive attributed was wholly mischievous as the incident of Raja son of maternal aunt of Sunil Masih eloping with Meenu, daughter of uncle of Sahil @ Sallu had happened long back. In fact, the motive behind the incident was on account of deceased Chand Masih and Manjinder Singh injured having criminal cases registered against them. It was alleged that deceased Chand Masih and Manjinder Singh were actually attacked by some unknown assailants on account of their criminal background and due to possible enmity.

13. She further submitted that the accused cannot be in any manner connected with the incident as it was a case of hitting in the dark. The alleged recovery of weapons stated to have been used in the incident was not proved and no independent witness had joined to prove the recovery. The so called murder weapons were not sent to FSL. Injured Manjinder Singh was not produced during trial. Accused Babbal who alleged to have caused injuries to Manjinder Singh was acquitted by the trial Court after it was proved that he was not present on the scene of occurrence. Learned counsel, therefore, stresses that there is a cloud of doubt on the credibility of the investigating authority and the manner in which incident has been stated by the complainant in his FIR. More so, complainant Sunil Masih was going with his brother Chand Masih @ Vikcy (deceased), who is stated to have



been riding the motorcycle, when the deceased was waylaid on the way, has not supported the prosecution and the FIR.

14. Appellant George Masih was not present at the place of occurrence and he had not caused injuries to the deceased or the other injured Manjinder Singh as per the statements of the complainant and PW2 Satya, which were recorded after the supplementary chargesheet was filed against the appellants. She submitted that the statement of PW1 Sunil Masih, which was recorded after commitment of the case to the Sessions Court in 2017 could not be read against accused George Masih as he never got a chance to cross-examine PW1 Sunil Masih. It is her submission that once PW1 had resiled from his earlier statement in the Court, the trial Court could not have relied upon the earlier statement of PW1 and wrongfully convicted the accused. Similarly, she submitted that the statement of PW2 Satya could not have been relied upon her earlier statement recorded before commitment of the case to the Sessions Court in 2017. Hence, the conviction is wrongful.

15. It was further submitted that the motive itself was too vague and weak. The alleged incident relates to the relative of the complainant with whom Meenu had eloped, however, the couple as well as their parents were not cited as prosecution witnesses. Moreover, the complainant himself has resiled from his statement and the motive. She relied on Supreme Court judgment in Kanakarajan @ Kanakan vs State of Kerala 2017 (13) SCC 597.

16. Learned senior counsel further argued that surprisingly there is no injury on the person of the complainant while the other two persons are stated to have been beaten up so badly that one of them expired. It is



improbable that one of the person, namely, the complainant who was allegedly also present at the time of incident and was also sitting on the same motorcycle should go scot free unscathed specially when there is an allegation of many assailants together with arms.

17. She further submitted that as per the medical report prepared by the doctor, the deceased was brought alive in the hospital at 03:30 PM and expired at 03:36 PM. In spite of the death having occurred in the hospital, it is unexplained as to why the police did not register the FIR till late 10:40 PM.

18. Learned Senior counsel further submitted that the deceased and injured Manjinder Singh were history sheeter and habitual offenders, having scores of cases of extortion, dacoity, etc. registered against them. It is always possible that they were injured by unknown assailants because of their criminal rivalry and background. They might have been injured by unknown assailants. She submitted that it is for this reason that both the star witnesses PW1 Sunil Masih and PW2 Satya had turned hostile. She stated that ocular evidence is not corroborated by medical evidence. As per the PMR, injury no.3 is only an abrasion on the right bicep of the deceased and not an incised wound as alleged, while the learned Additional Sessions Judge has recorded the injury to be with a sharp edged weapon. The allegations in the FIR even if taken to be correct, mentions of the appellants snatched the Malaysian currency and the mobile phone of the deceased, which were later on found to be false. The appellants have been acquitted of offence under Section 379-B and 201 IPC. They would have no reason to snatch away the Malaysian currency or the mobile phone of the deceased. There is no recovery of such currency or mobile phone. The other two accused Babbal and Gautam were



found to be innocent by the trial Court while the *kirpan* was recovered on his own disclosure statement. The story as cooked up by the complainant taking his brother and Manjinder Singh to hospital on the motorcycle cannot be accepted as it is not possible to take seriously injured bodies on a motorcycle to the hospital. More so, it has been stated that Chand Masih was unconscious. Such material discrepancies on the part of the complainant, whose statement under Section 161 Cr.P.C. was also recorded, reflected that the complainant has not spoken the truth.

19. Learned counsel appearing for the other accused Rahul alias Lahla submitted that delay in registration of FIR stands unexplained. It is not understood as to why initially information would not have been sent from the hospital to the police station about the death having been occurred of an injured person at 3:33 PM. The statement of the police official of their going on patrolling in the night and meeting by chance to the complainant at 9:30 PM is highly improbable. The complainant in his previous statement, which he resiled later on, has stated that after leaving Chand Singh in the care of PW2 Satya, he departed from the hospital and was heading to the police when he encountered the police and informed them about the incident which reflects the clear contradiction in the timings of the inquest report and the FIR and casts serious doubt and credibility to the investigation report. It appears that the police have put the entire burden on the appellants to save the actual assailants and have prepared a story which is extremely doubtful. It is also submitted that on the medical papers of the deceased, the signatures do not bear the name of complainant Sunil Masih and gives names of the persons, who had brought the concerned deceased, were totally different.



20. Learned counsel for appellant Rahul has also submitted that there is inconsistency in the timings of various events which reflects weakness in the credibility of the prosecution story. It is further alleged that Manjinder Singh is stated to have absconded from the hospital on 17.11.2016 but his statement is recorded on the subsequent date by the police. He was not examined by the prosecution during trial on the ground that he had died while no document to prove that he had died was produced in the Court. Hence, the charges under Section 307 IPC causing injury to Manjinder Singh also stands disproved with the medical evidence not being corroborated by any person.

21. It is further submitted that the presence of the complainant at the scene of occurrence is in a great shadow of doubt. He submitted that the trial Court itself did not believe the story of exchange of Malaysian currency and if the statement of the complainant is considered, it would reflect that the same is false. The real brother of the deceased would not have been a mute spectator. More so, he was a younger brother nor he states that he had run away from the place. Similarly, the statement of PW2 Satya which she recorded before the Court is alleged to be highly improbable, while PW1 stated of his house being situated at a distance of 500 square yards from the place of occurrence after crossing one street and that the place of occurrence is visible from the residence. PW2 Satya also states that the place of occurrence is not visible from her house, however, it is surprising that none of the family members in front of whom the alleged incident took place had joined as witnesses during investigation by the police.

22. Learned senior counsel submitted that the statements of the witnesses cannot be relied upon to hold the appellants guilty and that the



trial court has wrongly convicted the appellants. She in her written submissions made the following salient features to buttress the arguments:-

1. Hospital report - The hospital never sent any report to the police officials regarding the admission of the deceased or when he succumbed to his injuries.
2. The police officials alleged that they were patrolling the area but it is hard to believe that they never received any information about the alleged occurrence.
3. Robin, Aman were declared innocent at initial stage and Babbal at a later stage which further makes the prosecution story full of doubts.
4. The failure to consider all the mentioned points when convicting the accused undermines the case. While a single discrepancy might not invalidate the allegation on its own, the cumulative effect of multiple inconsistencies weakens the prosecution's story. Overall, the prosecution's case is riddled with discrepancies, leaving it unconvincing and unable to overcome the shadow of doubt.
5. That Manjinder Singh who was the actual witness to the occurrence escaped from the hospital without getting his statement recorded clearly shows that genesis of the story is a different one.
6. That in reality, Chand Masih (deceased) and Manjinder Singh were habitual offenders and history sheeter (having several cases of extortion, dacoity, etc., registered against them) and they were injured by unknown assailants because of their criminal rivalry and background. Even though the FIRS against Manjinder Singh and Chand Masih who were in the same gang were not made part of the record but the question regarding the criminal past was put forth during the cross examination of PW1 and PW2. PW2 in her cross examination has categorically stated that many cases of



theft and robbery were pending against Manjinder Singh and also accepted that her deceased son was friend of Manjinder Singh.

7. As held by the Apex Court in *R. Rachaiah v. Home Secretary, Bangalore* [2016 (3) Criminal Court Cases 296 (SC)], once there is an amendment,

23. Learned counsel appearing for appellant Sahil alias Sallu has adopted the arguments of counsel for the other two appellants and relied on judgments of Supreme Court *Tara Singh vs State* 1951 AIR 441 (Larger Bench); *Jagir Singh vs State (Delhi Administration)* 1975 (3) SCC 562; and Calcutta High Court judgment in *Amanat SK and others vs The State of West Bengal* 1988 (2) Crimes 323, to submit that the evidence laid afresh by a witness where two sets of evidence have been recorded of a single witness would be treated as the substantive evidence.

24. Learned counsel for the appellants has extensively argued that the prosecution witnesses cannot be termed as worthy witnesses and the benefit of doubt should, therefore, go to the appellants and they should be acquitted forthwith.

25. Learned counsel for the appellants have cited Supreme Court judgment in *Jagir Singh* (supra), to submit that cross-examination of hostile witness is for the purpose to discredit that witness altogether and not merely to get rid of a part of his testimony. The Supreme Court held such eye-witness to be unreliable.

26. Learned State counsel has supported the judgment/ order of the trial Court convicting and sentencing the accused and submitted that the requisite evidence was collected by the Investigating Officer and the same



was duly proved. It is also submitted that merely on account of short delay in lodging of FIR, no benefit can be granted to the accused who are found to be involved in the commission of crime. Their presence at the place of occurrence has been duly proved. Weapons used in the crime were also recovered at their instance. The statement of the complainant, which was recorded during trial, remained intact and was in consonance with the statement recorded at the time of lodging FIR and statement made under Section 161 Cr.P.C. The cross-examination of the witness was also conducted at the relevant time and his statement could not be shaken. It is a case of winning over the witnesses. Even the statement of PW2 Satya was not shaken during trial. Third accused, George Masih, deliberately remained absconding and surrendered only after he had assured that the witnesses are won over. He has misused the due process of law. After his surrender, knowing that fresh statement of witnesses would be recorded when his trial will start, he had already won over all the witnesses. It is submitted that PW1 Sunil was a young boy of 18 years of age at the time of incident, must have been threatened by the accused, who have criminal antecedents and had killed his brother in open day light mercilessly. The subsequent statements of PW1 and PW2 where they have turned hostile deserve to be rejected.

27. In support of his arguments, learned State counsel relies on Supreme Court judgments in State of Gujarat vs Anirudhsing 1997 (6) SCC 514; State of Rajasthan vs Bhawani and another 2003 (7) SCC 291; Radha Mohan Singh @ Lal Saheb and others vs State of U.P. (2006) 2 SCC 450; Mahesh vs State of Maharashtra (2008) 13 SCC 271; Rajendra and another vs State of Uttar Pradesh (2009) 13 SCC 480; Govindappa and



others vs State of Karnataka (2010) 6 SCC 533; and *Paramjeet Singh @ Pamma vs State of Uttarakhand* 2010 (4) RCR (Criminal) 548.

28. In this trial, the statements of the witnesses have been recorded twice. PW1 Sunil Masih, who is stated to be around 18 years of age at the time of incident which occurred as on 13.11.2016, had lodged the FIR and mentioned being present at the place of occurrence before the Court. For the first time on 14.11.2017 when he was 19 years of age, he deposed before the Court. His evidence could not be shattered in cross-examination, which was conducted on behalf of the accused. He deposed that he carried his brother to the hospital. His brother has suffered blows with sharp edged weapon datar at the hands of Sahil, Lahla and George Masih. He stated that he had gone to the hospital. The police station was 1½ km from the place of occurrence. He again went to the alleged place of occurrence at 8:30 PM. The test identification parade was also conducted by the police in the month of January, 2017. Only three accused were identified by him. The police recorded his statement at about 8:00 PM. He also stated that Manjinder Singh had died on account of injuries caused by the accused. He denied the suggestion that Manjinder Singh died due to overdose of drugs. He has also deposed that number of people gathered when the alleged occurrence took place and their statements were recorded by the police. His house was situated nearby the place of occurrence after crossing one street at a distance of about 500 yards. The place of incident was visible while standing on the turning. The statement, as above, was, however, refuted and denied by the same prosecution witness Sunil Masih when he deposed on 06.10.2021 after accused George Masih was arrested on 28.03.2019. He became hostile and was cross-examined by the Additional PP. He denied each and every fact.



When his attention was drawn to his statement recorded with police, he denied the said facts and also denied all the contents of the FIR. He also denied the test identification conducted earlier by him, however, he does not gave any reason for such statement having been recorded earlier. He further stated that *“it is correct that on 14.11.2017, I got recorded my statement in the Court. Voluntarily on that day, that statement was given by me at the instance of the police as the police was standing outside.”* The examination-in-chief was read over to the witness but the witness denied making such statement. Identification of accused Gautam conducted by the police was also denied. Thus, we find that this witness has given two diametrically opposite statements.

29. Similarly, the mother of deceased PW2 Satya had given her statement before the Court first time on 06.03.2018. In her earlier statement, she deposed that she was running a *Kiryana* shop. She further stated that the shop was damaged by the accused after committing murder of her son. She also stated that a separate FIR was recorded with regard to the damage of her shop. She denied the suggestion of wrongful impleadment of the accused. But surprisingly after accused Geroge Masih was arrested, she has completely turn over leaf and denied of any such incident. She denied of knowing any person who caused injuries to her son and Manjinder Singh. She denied the facts as marked in the FIR during cross-examination and also denied all the facts which she has deposed earlier and states that *“It is correct that on 06.03.2018, I got recorded my statement in the Court. It is wrong to suggest that I am intentionally concealing the facts from the Court. It is wrong to suggest that I have compromised the matter with accused persons.”* These two star witnesses have, thus, denied their stand and all



other witnesses have turned hostile in the subsequent statements, while the earlier statements made in the Court were in favour of the prosecution.

30. The question, therefore, hinges as to whether the statement of the complainant (eye-witness) recorded subsequently or the statement recorded in January 2017 within one year of the incident should be taken into consideration.

31. The Larger Bench of the Supreme Court in Tara Singh's case (supra), held as under:-

“I am of opinion that the matter is deeper than that, and, giving effect to the plain meaning of the words "subject to the provisions of the Indian Evidence Act" as they stand, I hold that the evidence in the Committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by section 145 of the Evidence Act. Of course, the witness can be cross-examined about the previous statement and that cross-examination can be used to destroy his testimony in the Sessions Court. If that serves the purpose of the prosecution, then nothing more is required, but if the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under section 288. As two of the eye witnesses were not confronted in the manner required by section 145, their statements will have to be ruled out, and if that is done, the material on which the conviction is based is considerably weakened.”

32. In the Constitution Bench reported as Neeraj Dutta vs State (Government of N.C.T. of Delhi) 2023(4) SCC 731, the Supreme Court was examining whether the conviction under Sections 7 and 13 (1)(d) of the



Prevention of Corruption Act, 1988, was impermissible in the absence of primary evidence of the complainant due to his death. After considering the law, it reached to the conclusion that where either on account of death or refusal to support the prosecution case, a presumption under Section 20 of the Prevention of Corruption Act could be drawn. While dealing with such reference, the following observations made in Neeraj Dutta's case (supra) of the Apex Court need to be noticed with respect to the present case:-

“67. Therefore, this Court cautioned that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence. Even, the evidence of a “hostile witness” if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.”

33. In Hemudan Nanbha Gadhvi vs State of Gujarat 2019 (17) SCC 523, the Supreme Court held as under:-

“10. A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor can the victim be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the



theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in Zahira Habibullah Sheikh v. State of Gujarat 2006 (3) SCC 374 and Mahila Vinod Kumari v. State of M.P. 2008 (8) SCC 34. If the medical evidence had not confirmed sexual assault on the prosecutrix, the TIP and identification therein were doubtful, corroborative evidence was not available, entirely different considerations may have arisen.

11. *It would indeed be a travesty of justice in the peculiar facts of the present case if the appellant were to be acquitted merely because the prosecutrix turned hostile and failed to identify the appellant in the dock, in view of the other overwhelming evidence available. In Iqbal v. State of U.P. 2015 (6) SCC 623, it was observed as follows:*

“15. Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject-matter of dacoity and the alleged weapons used in the commission of the offence.”

34. In Selvamani vs The State Rep. by the Inspector of Police

2024 (5) Scale 952, the Supreme Court held as under:-

“13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC, and the evidence of the Medical Expert



(PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.”

35. The Supreme Court in **Jayantilal Verma vs State of Madhya Pradesh (Now Chhattisgarh)** 2021 (12) SCC 71, held as under:-

“20. It is no doubt true that a large number of witnesses turned hostile and the Trial Court was also not happy with the manner of prosecution conducted this case. But that is not an unusual event in the long drawn out trials in our country and in the absence of any witness protection regime of substance, one has to examine whatever is the evidence which is capable of being considered, and then come to a finding whether it would suffice to convict the accused.”

36. The Supreme Court in **Anirudhsing** (supra), held as under:-

"Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the commission of cognizable offence has a duty to lay information before the police and cooperate with the investigating officer who is enjoined to collect the evidence and if necessary summon the witnesses to give evidence. He is further enjoined to adopt scientific and all fair means to unearth the real offender, lay the charge-sheet before the court competent to take cognizance of the offence. The charge-sheet needs to contain the facts constituting the offence/s charged. The accused is entitled to a fair trial. Every citizen who assists the investigation is further duty-bound to appear before the Court of Session or competent criminal court, tender his ocular evidence as a dutiful and truthful citizen to unfold the prosecution case as given in his statement. Any betrayal in that behalf is a step to destabilise social peace, order and progress."



37. While dealing with the credibility of the statement of hostile witness, the Supreme Court in **Radha Mohan Singh @ Lal Saheb** (supra), held as under:-

".....It is well settled 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 witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof..."

38. The Supreme Court considered the value of the deposition of a hostile witness in **Mahesh** (supra) and held as under:

".....If PW1, the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW.1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution."

39. Relevant extracts of Supreme Court judgment in **Paramjeet Singh @ Pamma** (supra), are reproduced as under:-

"17. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His



evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide: State of Rajasthan v. Bhawani & Anr., (2003) 7 SCC 291)

XXX

XXX

XXX

22. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution. Section 313 Cr.P.C.”

40. Having noticed the law relating to the consideration of the statement of a witness, who is declared as hostile, in the facts of the present case, we find that complainant PW1 Sunil Masih has deposed twice before the Court. Firstly, during the trial of accused Sahil @ Shalu, Kuljit @ Shiva, Rahul @ Lahla and Babbal Joseph on 14.11.2017 wherein he has stated on oath the facts which he also mentioned in his complaint and ascertained in cross-examination also. He stated that his brother Chand Masih had been injured severely before him at the hands of Sahil @ Salu, Rahul @ Lahla and George Masih. They had injured his brother with blows and sharp edged weapons. He also stated that third person namely Manjinder Singh had died on account of the injuries caused by the accused. However, we find that surprisingly the police stated that Manjinder Singh was not found in the hospital. They had not even made efforts to search him out. The Investigating Officer has stated that later on Manjinder Singh died but does not mention when and where.



41. In the subsequent trial conducted after accused George Masih was arrested, PW1 Sunil Masih on 06.10.2021 has turned turtle and denied all what he had already stated on oath earlier. It is a clear case where out of sheer pressure and fear of the accused persons, a young boy who was only 18½ years of age at the time of incident, has recoiled from his earlier statement. However, we find that the facts as have been stated by him in trial at the first stage were corroborated by the other witness PW2 Satya, his mother, who also later on has turned hostile. Therefore, the statement of the eye-witness has to be taken into consideration with the pinch of salt.

42. The Court would have to be very careful to rely solely upon his deposition to either convict or acquit the accused. The evidence has to be read and considered as a whole to find out whether any weight should be attached to it and we will have to, therefore, look for corroboration of his testimony.

43. The medical evidence, which has come on record in terms of statements of PW3 Dr. Manpreet Kaul, who conducted the post-mortem and PW13 Dr. Madhuri Raina, who had examined deceased Chand Masih reflect that there was a wound present over right temporal parietal skull; on right arm lateral aspect and on right palm and also on the back of the right ear, which were incised wounds.

44. The statement of PW Sunil Masih, which was recorded on 14.11.2017 reflects the injuries caused by accused when he states "*On that Sahil gave datar blow on the person of my brother, which hit on his right hand. Thereafter, Lahla gave datar blow, which fell behind right ear of my brother. Then George Masih gave datar blow on the right shoulder of my*



brother. Accused Shiva gave kirpan blow on the head of Manjinder Singh. Then, Sahil gave datar blow on the right wrist of Manjinder Singh.”When PW1 Sunil Masih gave his statement on 06.10.2021 he admits that he was present along with his brother and also mentioned that *“when we reached near the house of Dilbagh Singh in narrow street, some unknown persons with deadly weapons met us and caused injuries to Manjinder Singh and my brother Chand Masih, due to which my brother Chand Masih died on the spot.”*He, however, states *“I do not know the names of those persons, who had caused injuries to my brother Chand Masih and Manjinder Singh”,* which clearly reflects that he is withholding the information from the Court for the reasons best known to him which is apparent that he has been won over by the accused or appears to be threatened by the other accused person George Masih, who remained absconded and surrendered after he could manage the witnesses.

45. The incident is loud and clear. The version of the witness, as recorded in the Court and mentioned in the complaint, corroborates with the medical evidence. We, therefore, have no hesitation in rejecting the subsequent version of the same witness made on 06.10.2021. It is also possible that the eye-witness may have forgotten the names of the accused persons after several years but his deposition made earlier within one year of the incident cannot be discarded.

46. This Court has a bounded duty to clear the grain from the chaff and also do justice with the victim of the crime committed. Merely because someone has been twisted or made to speak a wrong version subsequently out of fear or force of coercive, this Court would search out the truth. We



find that Chand Masih was murdered in open day light by the three persons together, who had a common intention to kill. Other witnesses and the recovery exhibits, all direct the crime to have been committed by the appellants.

47. The trial Court has also convicted the appellants for injuries caused on Manjinder Singh, who is stated to have absconded from the hospital on 18.11.2016. Although the doctor has proved the MLR prepared of Manjinder Singh, but he has not appeared before the Court to prove that he was injured in the incident. The concerned complainant PW1 Sunil Masih has also deposed in his first statement that Manjinder Singh died on account of the injuries caused by the accused but the said factum has not been proved in the Court. The prosecution has set up the case regarding murder of Manjinder Singh although he is stated to have died subsequently and his death certificate was not produced in the Court, we deem it appropriate to give benefit of doubt to the appellants keeping in view the fact that injured Manjinder Singh did not disclose the names to the doctor or to any person of his assailants.

48. The site plan corroborates with the site as explained by the complainant in his initial version. The motorcycle of the deceased was recovered from the same place. The incident, therefore, has occurred. We find that all the three accused having committed the offence within the meaning of Section 302 read with Section 149 IPC; Section 120-B IPC and Section 148 IPC with a motive to murder Chand Masih, therefore, the trial court has rightly convicted them. The other injuries caused on the body of Chand Masih were in ordinarily course sufficient to cause death, therefore,



offence under Section 307 IPC would not require to convict under Section 307 IPC separately.

49. Having considered the nature of crime and cold blooded murder whereby after pre-planning all the three accused have brutally killed Chand Masih, they do not deserve any reprieve and are, therefore, rightly punished for offences corroborating imprisonment for life and fine of ₹ 10,000/-.

50. All the appeals are accordingly dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

11.11.2024
vs

(SANJAY VASHISHT)
JUDGE

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