SUPREME COURT OF INDIA

Sheesh Ram

Vs.

State of Rajasthan

Crl.A.No.191 of 2004

(Sudhansu Jyoti Mukhopadhaya and Ranjana Prakash Desai JJ.)

29.01.2014

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellants are original Accused Nos.1, 2 and 4 respectively in S.T. No.12 of 1993. The appellants were convicted, inter alia, under Section 302 of the IPC for the murder of one Balram and sentenced to life imprisonment. They have challenged judgment and order dated 29/5/2003 passed in Criminal Appeal No.322 of 1998 by the Rajasthan High Court, confirming their conviction and sentence.

2. One Heera son of Surajmal lodged a complaint (Ex. P-7) at Jagal Tan, Village Lapawali on 04/02/1991 at around 3.50 p.m., stating that on 04/02/1991 at 8.00 a.m., he and his son Rameshwar accompanied his other sons Balram and Bhagwan Singh who were going to Hindaun School to see them off. They were standing on the road near the turn between Lapawali and Dhara. While they were waiting for the bus, Rajdhar of village Lapawali, along with others, arrived there in a tractor. Accused-1 Sheesh Ram, Accused-2 Radhey, Accused-3 Battu, Accused-4 Rameshwar (in S.T. No.12 of 1993), Accused-Ram Kunwar, Accused-Hansey and Accused-Har Sahai (in S.T. No.350 of 1992) stopped the tractor. Accused-3 Battu exhorted "do not let this opportunity slip off". All the persons jumped from the tractor. Complainant Heera and his son Rameshwar saved their life by fleeing towards the village. His elder son Balram fled towards the south from the road. The accused followed them. Accused-2 Radhey caught hold of Balram and assaulted him with a Kulhari. Balram fell down. Later on, Accused-3 Battu dealt an axe blow on his throat. Others too continued assaulting Balram. Balram was

badly injured. He succumbed to the injuries. Accused-1 Sheesh Ram followed Bhagwan Singh, caught hold of him and inflicted injuries on him. Other accused also inflicted injuries on him. Under the impression that Bhagwan Singh had died, all the accused left the place. Bhagwan Singh was admitted in the hospital at Karauli. On the basis of this report, a case under Sections 147, 148, 324, 326, 302, 307 read with Section 149 and Section 341 of the IPC was registered. Accused Ram Kunwar was arrested on 23/6/1991. On completion of investigation, charge-sheet was laid against Ram Kunwar. Another charge-sheet was laid against accused Hanse, Har Sahai and Rajdhar. The case was committed to the Sessions Court and numbered as S.T. No.356 of 1992. Against the appellants, charge-sheet was laid on 3/2/1993. After committal of the said case to the Sessions Court, it was numbered as S.T. No. 12 of 1993. Both the cases were tried together as they arose out of the same FIR.

3. In support of its case, the prosecution examined 20 witnesses out of which, four are eye-witnesses. The eye-witnesses are PW-2 Khushiram, PW-3 Rameshwar, PW-4 Yadram and PW-5 Bhagwan Singh, who is an injured witness. The accused pleaded not guilty to the charge and examined seven witnesses in their defence. The trial court convicted all the accused under Sections 148, 302 read with Section 149 and Section 307 read with Section 149 of the IPC. On appeal, the High Court acquitted Hansey, Har Sahai, Rajdhar and Ram Kunwar. The High Court acquitted Accused Battu of the charges under Sections 148 and 307 of the IPC. His conviction and sentence under Section 302 of the IPC was confirmed. He has not appealed against the order convicting and sentencing him. Appellant–Sheesh Ram was acquitted of the charges under Sections 148, 302 and 307 of the IPC. Instead, he was convicted under Section 302 read with Section 34 of the IPC and Section 307 read with Section 34 of the IPC. He was sentenced to suffer imprisonment for life and a fine of Rs.1,000/-, in default, to further suffer six months rigorous imprisonment and to suffer rigorous imprisonment for five years and fine of Rs.2,000/-, in default, to further suffer simple imprisonment for three months, respectively. Appellant–Rameshwar was acquitted of the charges under Sections 148, 307 and 302 read with Section 149 of the IPC. Instead, he was convicted under Section 302 read with Section 34 and Section 307 read with Section 34 of the IPC. He was sentenced to suffer imprisonment for life and a fine of Rs.1,000/-, in default, to suffer further six months rigorous imprisonment and to suffer rigorous imprisonment for five years and a fine of Rs.2,000/-, in default, to further suffer simple imprisonment for three moths, respectively. Appellant-Radhey was acquitted of charges under Sections 148, 302 and 307 read with Section 149 of the IPC. Instead, he was convicted under Section 302 read with Section 34 and Section

307 read with Section 34 of the IPC. He was sentenced to suffer imprisonment for life and a fine of Rs.1,000/-, in default, to suffer six months rigorous imprisonment and to suffer rigorous imprisonment for five years and a fine of Rs.2,000/-, in default, to further suffer simple imprisonment for three months, respectively. This judgment is challenged in the instant appeal.

4. Mr. P.C. Agarwala, learned senior counsel appearing for the appellants submitted that out of the eight accused, the High Court acquitted four accused. The High Court has, in fact, observed that the four acquitted accused have been falsely implicated. Counsel submitted that it is, therefore, risky to rely on the evidence of the prosecution witnesses to convict the appellants. These witnesses exaggerated the prosecution story and involved the acquitted accused. It is possible that even so far as the appellants are concerned, they have not come out with the truth. This is a case where truth and falsehood are inextricably mixed and truth cannot be separated from falsehood. The doctrine of 'falsus in uno falsus in omnibus', is clearly attracted to this case. Counsel pointed out that the eye-witnesses appear to be tutored. They are related to each other and, hence, are interested witnesses. Their evidence will have to be read cautiously. Moreover, complainant Heera has not been examined. Admittedly, there is enmity between the two sides. There is a land dispute between complainant Heera and accused Rajdhar. Ram Kunwar's son Kamal was murdered and, in that connection, complainant Heera and others, are facing trial. During the pendency of this trial, complainant Heera's son Balram was murdered. False involvement on account of long standing enmity cannot be ruled out. The conviction of the appellants, therefore, deserves to be set aside.

5. Mr. S.S. Shamshery, learned Addl. Advocate General appearing for the State, on the other hand, submitted that the evidence of four eye-witnesses is consistent. PW-2 Khushiram and PW-4 Yadram are independent witnesses. There is no reason to cast any doubt on their testimony. Counsel submitted that in a catena of judgments, this Court has held that the doctrine 'falsus in uno falsus in omnibus' is not applicable in India. Even if some portion of the evidence of a witness is found to be deficient, the remaining portion can be relied upon, if it is sufficient to establish prosecution case. In this connection, he relied on Rizan & Anr. v. State of Chhattisgarh[1]. Counsel submitted that there is enough credible evidence on record which bears out the prosecution case. The appeal, be therefore, dismissed.

6. Deceased Balram was most brutally murdered. According to PW-12 Dr. Meena, the cause of death was haemorrhage and shock due to head injury leading to injury to brain and injury to carotid artery in neck. PW-5 Bhagwan Singh was also

brutally attacked. He received four incised wounds. He suffered a fracture of left parietal bone. Being an injured witness, he is the most important witness in this case. He has described the incident in question. The defence has not made any dent in his evidence by cross-examining him. In fact, in the cross-examination, he has given more details about the incident in question, which are consistent with what he has stated in the examination–in-chief. He has stated that he, deceased Balram, his father Heera and his other brother Rameshwar were standing near the road near the boundaries of village Dehra and Lapawali. At that time, a tractor driven by Rajdhar came from village Lapawali side. Rajdhar halted the tractor near them. The appellants, who were sitting in the tractor, got down. Accused Battu was armed with an axe. Appellant Radhey was also armed with an axe. Appellant Sheesh Ram was armed with a sword. Appellant Rameshwar was armed with a dhariya and others were having lathis. They encircled PW-5 Bhagwan Singh, his father and brothers. His father and brother Rameshwar ran towards the village. Balram also ran towards the village. He ran towards Katara village. Accused Radhey caught hold of the collar of Balram and dealt an axe blow on Balram's head. Balram fell down. Appellant Sheesh Ram dealt an axe blow on Balram when he had fallen down. Accused Rameshwar dealt a blow with a dhariya on the right hand of Balram. According to PW-5 Bhagwan Singh, thereafter, appellant Sheesh Ram caught hold of him (Bhagwan Singh). Appellant Rameshwar hit on his left temple with a dhariya. He fell down. Appellant Sheesh Ram dealt an axe blow behind his ear when he had fallen down. Accused Hanse dealt a lathi blow on his face. Thereafter, he became unconscious.

7. PW-2 Khushiram, PW-3 Rameshwar and PW-4 Yadram have corroborated this witness. It is submitted that all these witnesses are related and therefore their evidence cannot be drelied upon. Assuming they are related to each other and, hence, interested witnesses, it is well settled that the evidence of interested witnesses is not always suspect. It has to be scrutinized with caution and can be accepted if it is found reliable. Presence of PW-5 Bhagwan Singh at the scene of offence can hardly be disputed since he is an injured witness. His evidence has strengthened the prosecution case. Evidence of PWs-3, 4 and 5 also inspires confidence. So far as the acquitted accused are concerned, the evidence of these witnesses qua them is found to be exaggerated. But, on account of that, their entire evidence cannot be discarded. All these witnesses stated that the acquitted accused had lathis and they dealt lathi blows on PW-5 Bhagwan Singh. This part of their evidence is disbelieved. It is true that these witnesses have improved the prosecution story to some extent. But, that improvement or that exaggerated version can be safely separated from the main case of the prosecution. So far as the

main prosecution case is concerned, all the witnesses are consistent. This is not a case where truth and falsehood are inextricably mixed up. Witnesses tend to exaggerate the prosecution story. If the exaggeration does not change the prosecution story or convert it into an altogether new story, allowance can be made for it. If evidence of a witness is to be disbelieved merely because he has made some improvement in his evidence, there would hardly be any witness on whom reliance can be placed by the courts. It is trite that the maxim 'falsus in uno falsus in omnibus' has no application in India. It is merely a rule of caution. It does not have the status of rule of law. In Balaka Singh v. State of Punjab[2], this Court has said that where it is not feasible to separate truth from falsehood, because the grain and the chaff are inextricably mixed up, and in the process of separation, an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, the Court cannot make an attempt to separate truth from falsehood. But, as we have already noted, this is not a case where the grain and chaff are inextricably mixed up. 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". (See Nisar Ali v. State of U.P AIR 1957 SC 366.)"

8. The appellants examined defence witnesses. Testimony of defence witnesses is not believed by the trial court as well as the High Court. We find no reason to take a contrary view. It is pertinent to note that Kamal, the brother of the appellants was murdered and for that murder, complainant Heera and some of the witnesses are facing trial. There is, therefore, strong motive to kill Balram, son of Heera. It is not possible, however, to come to a conclusion that because of this enmity, the appellants have been falsely implicated. We have already discussed the evidence on record. The evidence of eye-witnesses, particularly the evidence of PW-5 Bhagwan Singh, the injured eye-witness, is trustworthy. Therefore, the argument that on account of previous enmity, the appellants have been involved in this case is rejected. Taking an overall view of the matter and examined in light of Balaka Singh and Rizan, we are of the opinion that no interference is necessary with the impugned judgment. The appeal is dismissed.

[1] (2003) 2 SCC 661
[2] (1975) 4 SCC 511