

# SUPREME COURT OF INDIA

Kripal Singh

Vs.

State of Rajasthan

CrI.A.No.2100 of 2008

(A.M.Khanwilkar and Ajay Rastogi,JJ.,)

15.02.2019

## JUDGMENT

**Ajay Rastogi,J.,**

1. This appeal has been filed against the judgment and order dated 4th February, 2008 passed by the High Court of Judicature of Rajasthan at Jaipur Bench confirming the conviction of the appellant for the offence punishable under Section 302 IPC passed by the learned trial Court under the impugned judgment dated 22nd November, 2002. The brief facts as per the prosecution case are that on 28<sup>th</sup> July, 2001, at 9.15 p.m. informant Sunil Kumar Goyal(PW-13) submitted a written report(Exh. P-1) at Police Station Dug wherein it was stated that around 6.30 p.m., he was going along with his brother Yashwant and Paras Mal on motor cycle bearing no.RJ-20 8M 9309 to their agricultural farm situated at village Doodhlai. Yashwant was on the driving seat, Paras Mal(PW-1) was in the middle and the informant Sunil Kumar Goyal(PW-13) was sitting on the rear seat. While they were returning back, the accused Kripal Singh along with Ramlal, Arjun Singh and Sultan Singh met them near the house of Dhool Singh. All the four were armed with axe, lathi, dharia, sword and pharsa surrounded their motor cycle and exhorted to kill Yashwant. Informant Sunil Kumar Goyal(PW-13) and Paras Mal(PW-1) got down and distanced themselves but Yashwant could not do so and was severely beaten up. All the assailants inflicted blows with axe, dharia, sword, pharsa and lathi on the person of Yashwant. They attempted to kill even the informant Sunil Kumar Goyal(PW-13) and Paras Mal(PW-1) while they were running for their life. They were chased by Kripal Singh who gave a blow with axe on the left shoulder of Paras Mal(PW-1). On the complaint made by Sunil Kumar Goyal(PW-13), the first information report(Exh. P2) came to be registered. Autopsy on the dead body of deceased Yaswant was conducted. Initially, all the four accused persons, namely, Kripal Singh, Ram Lal, Arjun Singh and Sultan Singh were arrested and on completion of investigation, charge-sheet was filed and charges under Sections 302, 394, 394/34, 324 or 324/34 IPC were framed against them who denied the charges and claimed trial. The prosecution in support of its case examined as many as 24 witnesses. The appellant claimed innocence in the explanation under Section 313 CrPC, three witnesses in support of defence were examined and learned trial Court after hearing acquitted co-accused persons namely, Ram Lal, Arjun Singh and Sultan Singh and convicted the

appellant and sentenced him under Sections 302, 204, 394 and 324 IPC. Against conviction & sentence, accused appellant preferred appeal & the State of Rajasthan also preferred appeal against acquittal of the other three accused persons, both the appeals were dismissed affirming the judgment of the trial Court vide judgment impugned dated 4th February, 2008.

3. Against the said judgment, this appeal by way of special leave has been filed.

4. Heard Mr. Sushil Kumar Jain, learned senior counsel for the appellant and Ms. Ruchi Kohli, learned counsel for the State.

5. The main emphasis of Mr. Sushil Kumar Jain, learned senior counsel for the appellant is that PW-13 Sunil Kumar Goyal was the sole eye witness on whose statement conviction has been recorded and the present appellant has been assigned only an injury on the head of the deceased Yashwant which is not the only cause of death as per the statement of PW-6 Dr. Bhupesh Dayal and PW-7 Dr. Ramesh Chandra Khatik and further submitted that after the acquittal of other three accused persons namely Ram Lal, Arjun and Sultan Singh who too inflicted injuries on the various parts of the body of the deceased Yashwant, the appellant alone cannot be held guilty of causing the fatal injury and conviction under Section 302 IPC cannot be sustained and he at the most is liable to be convicted under Section 304 Part I or II IPC.

6. Learned senior counsel further submits that conviction of the appellant is only based on the statement of PW-13 Sunil Kumar Goyal who has been disbelieved qua the other three accused persons, namely, Ram Lal, Arjun Singh and Sultan Singh by the learned trial Court as well as by the High Court. The High Court has come to the conclusion that the three co-accused persons namely Ram Lal, Arjun Singh and Sultan Singh were falsely implicated for the various reasons and presence of these co-accused persons at the time of the incident itself was doubtful at least based on the statement of PW-13 Sunil Kumar Goyal who was highly interested and unreliable witness and on whose statement, at least the appellant could not have been held guilty and convicted under Section 302 IPC.

7. Learned senior counsel further submits that the conviction of the appellant on the sole ocular testimony of PW-13 Sunil Kumar Goyal is otherwise not sustainable for the reason that the material portion of the prosecution case with regard to the manner of the incident and the injuries assigned to various other alleged accused persons, namely, Ram Lal, Arjun Singh and Sultan Singh has been disbelieved and the very genesis of the incident is itself doubtful and in the given circumstances, the learned trial Court and the High Court has committed a serious manifest error in holding conviction of the appellant based on the testimony of PW-13 whose sole testimony was not believed with regard to the material portion of the prosecution case as alleged in the first information report and the statement of witnesses and in support thereof placed reliance on the judgment of this Court in *Hari Kishan Vs. State of Haryana*<sup>1</sup> and *Arshad Hussain Vs. State of Rajasthan*<sup>2</sup> and submits that once the substantial part of the prosecution story has been disbelieved and the conviction of the appellant rests solely on the testimony of Sunil Kumar Goyal(PW-13) whose statement otherwise lose credibility, it will not be sufficient to hold conviction

under Section 302 IPC and further submits that the cause of death is the common factor for all the injuries assigned to four accused persons out of which three of them, namely, Ram Lal, Arjun Singh and Sultan Singh have been acquitted and in the statement of Dr. Bhupesh Dayal(PW-6) and Dr. Ramesh Chandra Khatik(PW-7), it is clearly stated that cause of death of the deceased Yashwant was due to shock which occurred due to haemorrhage because of the injuries inflicted in the brain which has been recorded even in the post-mortem report(Exh. 33). In the given facts and circumstances, it could not be established that the fatal injury was caused by the appellant and he could not have been convicted under Section 302 IPC.

8. Learned senior counsel further submits that the recovery memos of axe(Exh. 40), dhoti(Exh. 36) and motorcycle(Exh. 51) has been attested by the police personnel with no independent witnesses i.e. PW 15 Dhara Singh and PW 22 Raghuvver Singh for axe and Birdhi Chand, SHO(PW-20) and Shafiq Mohammed(Head Constable) PW-23 for motor cycle have been produced to attest the said recoveries and a presumption with regard to statement by police officer as independent evidence cannot be presumed under Section 114 of the Evidence Act.

9. Learned counsel Ms. Ruchi Kohli, for the respondent, on the other hand, submitted that although the State has not preferred any appeal against the acquittal of other accused persons but in the light of evidence adduced by the prosecution assigning the specific role of the appellant, no error has been committed by the High Court in confirming his conviction and prays for dismissal of the appeal. Learned counsel submits that the testimony of the eye-witness Sunil Kumar Goyal(PW-13) is reliable and he has withstood the same in his cross-examination as well which has been discussed in detail by the learned trial Court and also by the High Court as well and needs no further re-appraisal of the evidence and further submits that what is being stated by the eye-witness Sunil Kumar Goyal(PW-13) is corroborated by the medical evidence of PW-6 Dr. Bhupesh Dayal and PW-7 Dr. Ramesh Chandra Khatik who have conducted the autopsy on the body of the deceased Yashwant and who, in their cross-examination, has stated that the injury caused to deceased Yashwant by the accused appellant was sufficient to cause death. Learned counsel further submits that although Paras Mal(PW-1- injured) was turned hostile but still it proves the presence of the accused and the deposition of Sunil Kumar Goyal(PW-13) that the accused hit the deceased Yashwant on his head and the injury on the shoulder of Paras Mal(PW-1) is also being supported by the medical evidence on record and apart from the corroboration of the medical evidence, the recovery of axe(Exh.P- 40) at the behest of the accused appellant from his house has been proved by Dhara Singh(PW-15) and Raghuvver Singh(PW- 22) and recovery of Motorcycle of the deceased has been proved by Birdhi Chand SHO(PW-20) & Shafiq Mohammed(Head Constable)(PW-23) in their respective statements and merely because they are the police witnesses, their evidence cannot be disregarded as unworthy and placed reliance on the judgment of this Court in *Baldev Singh Vs. State of Haruana*<sup>3</sup> and *Girja Prasad(Dead) bu LRs Vs. State of M.P.*<sup>4</sup> and submits that the High Court was justified in upholding the conviction of the appellant.

10. In order to appreciate the rival submission of the parties, it may be apposite to refer the first information report(Exh. P2) made by Sunil Kumar Goyal(PW-13) which reads as

under:-

“Today at about 6-30 O’clock in the evening as usual my elder brother Yashwant Kumar, Parasmal ji son of Shri Sobhagmal ji and I in my Hero Honda Motorcycle, the number of which is RJ20-8M 9309 and LOVE is written in English on the backside number plate, we three went to village Dudhlai village to look after our agricultural farm. After staying there for about an hour when we are coming back via Dudhlai village, we met these four persons, namely Kripal singh, son of Than Singh, caste Rajput, resident of Dudhlai, 2. Ramlal, son of Anar singh ji, caste Rajput, resident of Mandpur, 3. Arjun Singh, son of Bheru Singh, caste Rajput, resident of Padla, 4. Sultan Singh, son of Bheru Singh, caste Rajput, resident of Padla in front of the house of Dule Singh. Kripal singh was having axe and Ramlal was having a lathi fitted with Dharia, Sultan Singh was having sword and Arjun Singh was having farsa. On seeing us they said that today do not allow Yaswant Singh to go alive today. Got a good opportunity today. Saying this, these four surrounded us. Seeing this Paras and I got down from the motorcycle. When my brother Yashwant ji, who was driving the motorcycle, when wanted to get down Kripal Singh hit axe on his head. After that Ramlal hit the lathi fitted with Dharia above the left eye and Arjun Singh gave blow with his sword on his neck. Sultan Singh hit the lathi fitted with farsa on the head. While we were standing there they stated that these two should not be left alive. Then we ran away from there. While fleeing Kripal Singh gave a blow with his axe on the left shoulder of Parasmal ji. We two in order to save our lives when ran towards the field, Kripal Singh took my motorcycle and chased us. In the dark we hid ourselves in the field. After some time everything became quite there. We went there and saw that my brother Yashwant had died because of serious injuries on his body. Those four persons killed my brother and took away my Hero Honda Motorcycle No. RJ 8M 9309, the colour of which is Maroon. These persons committed this criminal act on account of our old enmity in connection of our lands. Report is submitted for appropriate action.”

11. On scrutinising the content of the first information report recorded by Sunil Kumar Goyal(PW-13), it is clear that the occurrence took place on 28th July, 2001 at around 6.30 p.m. when the informant Sunil Kumar Goyal(PW-13) along with his brother Yashwant and Paras Mal were returning back on a motor cycle from their agricultural farm situated at Village Doodhlai, they met the present accused appellant along with Ram Lal, Arjun Singh and Sultan Singh near the house of Dhoole Singh. All the four were armed with axe, lathi, dharia, sword and pharsa. The informant Sunil Kumar Goyal(PW-13) and Paras Mal(PW-1) got down and distanced themselves but deceased Yashwant could not do so and the accused inflicted blows with axe, dharia, sword, pharsa and lathi on the person of the deceased Yashwant. The accused appellant chased Paras Mal(PW-1) and gave blow with axe on his shoulder. The analysis of the evidence came on record and the learned trial Court after hearing acquitted the other accused persons, namely, Ram Lal, Arjun Singh and Sultan Singh and held the present appellant guilty under Section 302 IPC and sentenced him to life imprisonment and the appeal preferred by the appellant came to be dismissed by the High Court under the impugned judgment dated 4th February, 2008.

12. Before we proceed to examine the rival submissions of the parties, it will be apposite to take note of post-mortem report on the body of the deceased Yashwant which is as under:-

1. Incised wound 4" x 2" x cervical vertebrae deep ocropagus trachea & CS vertebrae tractmend present on the anterior side of neck at the level of thyroid region.
2. Incised wound 3" x 2" x muscle deep sustained on the right side of base of neck.
3. Incised wound 2 V 2 " x 1" x muscle deep present on the right shoulder.
4. Incised wound 7" x 1" x muscle deep sustained on the front of neck just below the thyroid region.
5. Incised wound 6" x 1 V" x muscle deep sustained just below the ramus of left mandible.
6. Incised wound 3" x 1" x brain deep sustained on the left side of forehead just above the left eye brow, bone cut and brain matter present.
7. Incised wound 4" x 1 V" x brain deep sustained on the left parietal region of the scalp, bone cut and brain matter present.
8. Incised wound 2 V " x 1" x bone deep sustained on the right temporal region of the scalp bone cut & brain matter present.
9. Incised wound 1 V " x V " x brain deep sustained on the upper half of right ear pinna. Mastoid process cut and brain matter present.

13. We also find that Paras Mal(PW-1) was related to the informant Sunil Kumar Goyal(PW-13). The allegation against the appellant is that he inflicted injuries on the person of deceased Yashwant and Paras Mal(PW-1) and took away the motor cycle of deceased Yashwant which was recovered in the presence of Birdhi Chand SHO Ganganagar P.S.(PW-20) and Shafiq Mohammed, Head Constable(PW-23). The axe(Exh. P40) was also recovered in the presence of Dhara Singh, Constable(PW-15) and Raghuveer Singh(PW-22). Although Paras Mal(PW-1) who sustained injury in the incident, did not support the prosecution and he was declared hostile but his medical legal report (MLR) indicates that he too was injured by the present accused appellant in the alleged incident.

14. The emphasis of Mr. Sushil Kumar Jain, learned senior counsel for the appellant that the appellant has been assigned only one injury on the head of the deceased Yashwant which is not only the cause of death and when the statement of Sunil Kumar Goyal(PW-13) has been partially disbelieved qua the other three co-accused persons who are actively shown in participating in the commission of crime and who have been acquitted by the learned trial Court and confirmed by the High Court on dismissal of the appeal preferred

by the State of Rajasthan, no credibility be attached and on the same set of evidence, the appellant could not have been held guilty and his conviction under Section 302 IPC needs interference of this Court.

15. We have already noted the contents of the first information report and the conclusions of the High Court upholding the conviction of the appellant under Section 302 IPC. The ocular witness relied upon by the prosecution is Sunil Kumar Goyal(PW- 13), the complainant/informant. A perusal of the evidence of Sunil Kumar Goyal(PW-13) shows that he supported what was contended by him on which the first information report was registered and his court statement as PW-13 was in conformity with the contents of the first information report. In other words, he reiterated what he has stated in the first information report. It was specifically deposed by him that on 28th July, 2001, i.e. at 6.30 p.m., he along with his brothers Paras Mal(PW-1) and Yashwant(deceased) were returning back on the motor cycle from their agricultural farm situated at Village Doodhlai and while they were returning back on the motor cycle near the house of Dhoole Singh, they met Kripal Singh(appellant) with three other persons namely, Ram Lal, Arjun Singh and Sultan Singh. The accused appellant was having axe and he hit on the head of deceased Yashwant and while returning back, accused appellant hit axe on the shoulder of Paras Mal(PW-1). There was a recovery of axe and motor cycle of the deceased Yashwant by Dhara Singh(PW-15) and Raghuvveer Singh(PW-22) and the injury was supported by Dr. Bhupesh Dayal(PW-6) and Dr. Ramesh Chandra Khatik(PW-7) who conducted the autopsy on the body of the deceased Yashwant. The statement of the doctors was read over to us who in their deposition stated that the injuries were inflicted on the person of the deceased before his death. Injury no. 1 which was caused on the neck and throat and all the injuries caused on the head were separately sufficient to cause death of the injured. In the statement of Sunil Kumar Goyal(PW- 13), the injury on the head of the deceased has been specifically attributed to the accused appellant by axe. The prosecution has proved the case against the present accused appellant beyond reasonable doubt that the injury on the head of the deceased which was attributed to the accused appellant could in itself be sufficient to cause death and this is what has been considered by the learned trial Court and confirmed by the High Court in appeal and we too are of the view that the prosecution has believed the case against the appellant and the possibility of over-implication of co-accused Ram Lal, Arjun Singh and Sultan Singh would not in any manner rule out the case of the present appellant and the prosecution has proved beyond reasonable doubt holding him guilty. It would have been unreasonable on our part if we could have mechanically rejected such evidence available on record on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated but what is required is that judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct. This has been considered by this Court in *Rizan and Another Vs. State of Chhatisgarh through the Chief Secretary, Government of Chhatisgarh, Raipur, Chattisgarh*<sup>5</sup> at para 12 as under:-

“12. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence, prayer is to apply the principle of *falsus in uno falsus*

in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of 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". (*Nisar Ali v. State of U. P.*<sup>6</sup>). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (*Gurcharan Singh v. State of Punjab*<sup>7</sup>). The doctrine is a dangerous one, specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (*Sohrab v. State of M. P.*<sup>8</sup>. and *Ugar Ahir v. State of Bihar*<sup>9</sup>). An attempt has to be made to, as noted above, in terms of the felicitous metaphor, separate the grain from the chaff, truth from falsehood. 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 the background against which they are made, the only available course to be made is to discard the evidence in toto. (*Zwinglee Ariel v. State of M. P.*<sup>10</sup>. and *Balaka Singh v. State of Punjab*<sup>11</sup> As observed by this Court in *State of Rajasthan v. Kalki*<sup>12</sup> normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person.

Courts have to label the category into which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi v. State of Bihar*<sup>13</sup> and *Gangadhar Behera v. State of Orissa*<sup>14</sup>. Accusations have been clearly established against the accused-appellants in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and convicted accused are concerned.”

16. It was further held in *Vutukuru Lakshmaiah Vs. State of Andhra Pradesh*<sup>15</sup> as under:-

“23. At this juncture, it is worthy to note that the High Court has acquitted A-4, A-8 and A-9 on the foundation that they have been falsely implicated. Learned senior counsel for the appellants has contended that when the appellate court had acquitted the said accused persons, there was no warrant to sustain the conviction of other accused persons. On a perusal of the judgment of appellate court, we find that the judgment of acquittal has been recorded on the score that the names of A-8 and A-9 do not find mention in the evidence of PWs 1 to 3. On a similar basis, A-4 has been acquitted. Suffice it to mention here because the High Court has acquitted A-4, A-8 and A-9, that would not be a ground to discard the otherwise reliable dying declaration, for the evidence in entirety vividly show the involvement of the appellant-accused.”

17. The submission of the learned senior counsel for the appellant that recovery has not been proved by any independent witness is of no substance for the reason that in the absence of independent witness to support the recovery in substance cannot be ignored unless proved to the contrary. There is no such legal proposition that the evidence of police officials unless supported by independent witness is unworthy of acceptance or the evidence of police officials can be outrightly disregarded.

18. The judgments on which the reliance has been placed by learned senior counsel for the appellant in Hari Kishan's case(supra) and Arshad Hussain's case(supra) may not be of any assistance for the reason that earlier was a case where there was a serious dispute when the incident took place and that was not even supported by the medical evidence which has been referred to in paragraph 31 of the judgment which is as under:-

“31. Summing up the discussions made above, we have before us a case where a substantial part of the prosecution story has been disbelieved and the conviction of the appellant rests solely on the testimony of Harkesh (PW 2) who does not seem to have particular respect for truth as observed by the trial court. His credibility as an eyewitness lay only in that the trial court and the High Court assumed that he had received injuries in the same occurrence in which Dinesh was killed. As shown above that assumption does not appear to be very sound and is not borne out by the evidences on record. In such a situation, we find it highly unsafe to uphold and sustain the appellant's conviction for the offence of murder. To us, it appears that the prudent and safe course would be to give him the benefit of doubt.”

19. In Arshad Hussain's case(supra), it was a case where the prosecution suppressed the genesis and the manner in which the incident took place and that was not even supported

by the nature of the weapon used and there were lot of discrepancies pointed out in the case set up by the prosecution of which details have been referred to in paragraphs 17 to 19. That was the reason for which the partial statement of the witnesses could not have been relied upon and as already observed, there cannot be hard-and-fast rule that can be laid down and each case has to be examined on its own facts.

20. In the instant case, the statement of eye-witness Sunil Kumar Goyal(PW-13), the injury attributed to the accused appellant, recovery of weapon and the motor cycle and the statement of Dr. Bhupesh Dayal(PW-6) and Dr. Ramesh Chandra Khatik(PW-7) that the injury on the head attributed to the appellant could have been sufficient to cause death, clearly corroborates the prosecution case which leaves no manner of doubt that the appellant was actively involved in the commission of crime and once that fact is predicated beyond reasonable doubt, the partial statement which has been doubted could not be used by the appellant as a defence to shake the prosecution case which has been discussed by us in detail, deserves rejection.

21. In our considered view, the appeal is devoid of merit and is dismissed. The appellant is on bail. His bail bonds are cancelled. He is directed to surrender forthwith and serve the remaining part of sentence.

Judgment Referred.

<sup>1</sup>(2010) 2 SCC 0131

<sup>4</sup>(2007) 7 SCC 0625

<sup>7</sup>AIR 1956 SC 0460

<sup>10</sup>AIR 1954 SC 0015

<sup>13</sup>(2002) 6 SCC 0081

<sup>2</sup>(2013) 14 SCC 0104

<sup>5</sup>(2003) 2 SCC 0661

<sup>8</sup>(1972) 3 SCC 0751

<sup>11</sup>(1975) 4 SCC 0511

<sup>14</sup>(2002) 8 SCC 0381

<sup>3</sup>(2015) 17 SCC 0554

<sup>6</sup>AIR 1957 SC 0366

<sup>9</sup>AIR 1965 SC 0277

<sup>12</sup>(1981) 2 SCC 0752

<sup>15</sup>(2015) 11 SCC 0102