

**SOHRAB S/O BELI NAYATA & ANR.**

v.

**THE STATE OF MADHYA PRADESH**

May 2, 1972

[P. JAGANMOHAN REDDY AND G. K. MITTER, JJ.]

*Practice and Procedure—Power of High Court in appeal against acquittal.*

In an appeal against acquittal, the High Court, while maintaining the acquittal of some of the accused, reversed it in respect of the appellants and convicted them of offences under s. 302 read with s. 34, I.P.C.

Dismissing the appeal to this Court,

HELD : Under ss. 417, 418 and 423, Cr.P.C., the High Court has full power to review at large the evidence upon which an order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. But in exercising this power the High Court should give proper weight and consideration to such matters as, (a) The views of the trial judge as to the credibility of the witnesses; (b) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (c) the right of the accused to the benefit of any doubt, and (d) the slowness of the appellate court to disturb a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. It should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the Court below in support of its order of acquittal, but should express its reasons in its judgment which led it to hold that the acquittal was not justified. [478 E—H; 479 A—C]

In the present case, the High Court did consider all the aspects considered by the Sessions Court, with most of which it has also concurred especially those aspects of the case in respect of which witnesses tried to embellish and exaggerate. But that by itself, does not assist the accused nor can the broad features of the evidence of the prosecution case be doubted in respect of its version. Merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses it did not mean that the entire evidence of the prosecution had to be discarded. It was only after exercising caution and care and sifting the evidence to separate the truth from untruth, exaggeration, embellishment and improvement, that the High Court had come to the conclusion that what could be accepted implicated the appellants and convicted them. This Court has held that *falsus in uno falsus in omnibus* is not a sound rule for the reason that hardly any one comes across a witness whose evidence does not contain a grain of untruth or at any rate some exaggeration or embellishment. Where, however, the substratum of the prosecution case, or a material part of the evidence, could not be believed, it would not be permissible for the Court to reconstruct a story of its own out of the rest. [477 G—H; 478 A—D]

*Sheo Swarup and Ors. v. King Emperor*, A.I.R. 1934 P.C. 227; *Sanwant Singh v. State of Rajasthan*, [1961] 3 C.C.R. 120 and *Agarwal v. State of Maharashtra*, [1963] 2 S.C.R. 405, referred to.

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 240 of 1969.

Appeal by special leave from the judgment and order dated August 5, 1969 of the Madhya Pradesh High Court, Indore Bench in Criminal Appeal No. 26 of 1967.

B Frank Anthony, P. C. Chandi, A. T. M. Sampat, E. C. Agarwala and K. C. Agarwala, for the appellants.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by

C **P. Jaganmohan Reddy, J.** The Sessions Judge of Indore acquitted all the seven accused who were charged with the murder of one Sobal Singh. In an appeal by the State, the High Court while maintaining the acquittal of five of them viz. Jinnatbai, Gaburia, Ismail, Sardar and Bashir; reversed it in respect of Sohrab and Nadar, whom he convicted under Section 302/34 and sentenced each of them to life imprisonment. They were also convicted under Section 25-A of the Arms Act and each of them was sentenced to one year's rigorous imprisonment. The sentences were directed to run concurrently. This appeal is by certificate against the said convictions and sentences.

D The prosecution case is that there was a strained relationship between the accused and the deceased inasmuch as in December, 1963, one Kudrat, the husband of Jinnatbai, was murdered and for that murder, Sobal Singh, the deceased, was prosecuted along with another person, but they were acquitted. It is alleged that on the morning of 26th February, 1966 all the seven accused started from the house of Sohrab. Jinnatbai with her little son and Nadar went in a chhakda driven by Gaburia. Ismail, Bashir and Sardar were on bicycles and Sohrab was riding a mare and was carrying unlicensed revolver with him. At the time when they left, it also appears that Jinnatbai handed to Nadar an unlicensed gun which he kept in the Chhakda. It is further alleged that shortly before the departure of the accused persons, Sobalsingh left Solsindhi for Sanwer on foot accompanied by one Chhogia and were closely followed by Madhosingh, Kishandas, Kana and Bhawarsingh in a Chhakda. Near the village Maharajganj, the accused persons were alleged to have overtaken the two groups of persons and went further ahead. Then Sohrab turned his mare round and began to chase Sobalsingh across the fields which lie within the boundaries of mouza Ranwer. Chofia however ran away. It is the prosecution case that in the course of the chase

F Sohrab fired at Sobalsingh several times with his revolver and at one point caught him by the shirt which came off. Sohrab threw away that shirt and continued to chase the deceased a little farther after which he dismounted the mare. Just then Nadar came

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running with a double-barrelled shot-gun, which he handed to Sohrab and caught hold of Sobalsingh. Sohrab is then alleged to have fired the gun at Sobalsingh as a result of which both Sobalsingh and Nadar fell down. Nadar, however, got up and thereafter Sohrab again fired at Sobalsingh who was lying on the ground, face up. Just at that time Bashir and Sardar came running to the spot and struck Sobalsingh with knives. It is said that as a result of the cumulative effect of firing by Sohrab and stabbing by Bashir and Sardar, Sobalsingh died on the spot, after which Sohrab, Nadar, Bashir and Sardar went upto the Chhakda, and on Jinnatbai asking whether the man was dead or alive, she was told that he had been finished and Kudarat avenged.

Within an hour of the incident, the deceased's father, Madhosingh, who himself claims to be an eye witness, made a report at the police station, Sanwar, which is only a mile and a half from the scene of the occurrence. After recording the information an F.I.R. was issued. The police reached the spot where the body of Sobalsingh was lying and from that place and the fields in the vicinity, seized several articles, including used and unused ammunition of shotgun and revolver, a shirt and a stirrup with a piece of its strap which was detached from the saddle.

The prosecution case was that after the accused persons were arrested as a result of the statement made by Bashir two knives were recovered from the trunk of a date palm tree near the border of villages Bhaori and Deorakhedi; Sohrab is said to have pointed out a place also on the border of those villages, as the place where he is alleged to have broken up the revolver and the gun and cut up and burnt the wooden components of the gun. As a consequence of this statement, several articles connected with the firearm were recovered. It was also the case of the prosecution that divers were employed to explore the bottom of the river Kshipra near that place from where the other parts of the gun were recovered and a number of disjointed and mutilated firearm parts, some used and unused cartridges were recovered. A saddle from which one of the stirrups with a part of the strap was missing was recovered from the house of one Darvesh, the maternal uncle of accused Sohrab. The strap which is alleged to have been found near the scene of the occurrence according to the prosecution case, matched with the stirrup and strap found on that saddle. The pyjama of the deceased and the two knives, said to have been recovered at the instance of accused Bashir, were sent to the Chemical Examiner and Serologist and according to his report only on one of the knives blood was found, but it could not be confirmed as human blood. Autopsy on Sobalsingh's body showed that he had died of internal haemorrhage and shock resulting from gunshot wounds and injuries to vital parts like liver, spleen and lungs. Accused Nadar was twice operated on and five bullets were extracted, three

A from the left hand and two from the right. These pellets were  
identified to be gun shots. The ballistic experts who also examined  
several articles, said to have been recovered at the instance of the  
accused Sohrab were sought to be pieced. The shirt which was  
recovered from the scene of the incident which had a hole, was  
examined by the expert who was of the opinion that that hole  
B could only be caused by 0.38 revolver. The shots recovered from  
the body of the deceased were found to be gun shots and not  
revolver bullets. All the accused denied that guilt and in so far  
as the appellants are concerned with whose case alone we are con-  
cerned in their statement under Section 342, they do not say that  
no such incident took place but that the death of Sobalsingh was  
not caused by them. We shall examine their statement in the  
C context of the prosecution case as spoken to by the eye witnesses.

The Sessions Judge found serious infirmities in the prosecution  
evidence. The story that Sobalsingh was chased by Sohrab while  
riding a horse or that Sohrab had fired pistol shots and had pulled  
out Sobalsingh's shirt during the chase was characterised as a pure  
D fabrication. It was also held that there is no evidence to prove  
that either the shirt belongs to Sobalsingh or that the hole in the  
shirt which could only be caused by a revolver bullet could not  
have been caused by Sohrab because the pieces found in the body  
of Sobalsingh were not from the revolver but are pellets fired from  
a gun. The evidences of Madhosingh P.W. 1, the father of the  
deceased and the other witnesses Arjun P.W. 2, Kishandas P.W. 6,  
E Babulal P.W. 31 were disbelieved. Of the seven incised injuries,  
most of them were post-mortem wounds as spoken to by Dr. Pawar  
and at any rate the story that Bashir and Sardar stabbed Sobal-  
singh with knives was not to be believed. The Sessions Judge came  
to the conclusion, even though the ballistics expert had not been  
asked to give his opinion by reference to the autopsy report, from  
F at least the first set of injuries found on Sobalsingh on the abdomen,  
on the back, and on the epigastric region that they were not the  
result of the deceased having been shot while lying, face up, on  
the ground; the pellets came out of the body at a higher level than  
the level at which they had entered the body which would show  
that the person who shot should have been at a considerable lower  
G level than the victim, unless it be that the latter was bending or the  
former kneeling; the evidence, however, shows that the incident  
happened on even ground and no one speaks of anybody bending  
or kneeling, nor can it be a case where the victim was held by a  
person other than the shooter; even the second set of injuries were  
held not to have been probably inflicted while the victim was lying  
on the ground and assailant was standing; from the pellets ex-  
tracted from Nadar's hands, they could not have been caused in  
H the manner spoken to by the witnesses; and the story of firing  
with the pistol forms such an integral part of the story of the

prosecution case as a whole, it would be unsafe to believe the witnesses in this regard, whether in respect of pistol or generally.

The High Court noted that a number of contradictions were pointed out in the account given by the eye witnesses P.W. 3, P.W. 4, P.W. 5, P.W. 6, P.W. 7 and P.W. 31 and that the prosecution has not been able to explain the injury which Nadar had on the palms of his hands which injuries, according to the High Court, indicated that he was protecting himself against gun fire. It is also observed that the contradictions were not minor as they relate to the spot of the murder, the fields through which the accused passed and the manner in which the killing took place. There is also the question of incompatibility with the medical evidence regarding the distance from which the gun was shot and the way it was shot. It was of the view that the incised wounds were more likely to have been caused after death and the likelihood of a false story of knives of the assailant cannot be ruled out. As regards firing of a pistol, there is absolutely no corroboration and the evidence was characterised as a myth. The hole in the shirt could have been only caused by the firing of the pistol and nothing collected on the spot showed that Sohrab fired a pistol or he fired a pistol on Sobalsingh. The story of the pistol was, therefore, discarded. Notwithstanding these findings, the High Court found that there was unanimity in the evidence of all the witnesses that Sohrab fired the fatal shot or shots with a gun given by Nadar. This was corroborated by the medical evidence which indicates that the injuries on the deceased were due to gun shot injuries. There is also the evidence of the incident having taken place in a field in which the deceased was found and there was unanimity on the point that Nadar handed over the gun to Sohrab and Sohrab fired a shot on Sobalsingh who fell down after which a second shot was fired. The version of the accused that the gun shot injuries were caused accidentally, well not believed. The defence story that Nadar was easing himself when he was attacked all of a sudden after which a scuffle between Sohrab and Sobalsingh took place resulting in the accidental firing of the gun was difficult to comprehend. The High Court however dealt with the several contentions urged in respect of the story that Nadar had handed a gun to Sohrab which he could have easily fired himself or that Nadar who is said to have caught Sobalsingh from behind should have been the first to have been injured, or that the directions of the injury on Sobalsingh indicates that the firing was from below when Sohrab was at a higher level, or that the witnesses could not have been seen from the place where they were or that Sohrab fired at Sobalsingh, or that he fired it when its barrel was at a distance of 1½ cubits from Sobalsingh were all discussed, but they were not considered to throw any doubt on the main version of the eye

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A witnesses that it was Sohrab who had fired the gun while Nadar held the deceased. The conclusions of the High Court have been set out as under :—

B “The argument that the shooter should have been at a level lower than the victim and such a state has not been told by witnesses. Rather the story clearly excludes such a possibility has no doubt some merit if we accept the story of the prosecution witnesses as told by them. We do not fully accept the same. In fact they saw the incident from a distance and the detailed descriptions are all inferences as even admitted by one of them. A man running for life and a mare following would be away quite far from the witnesses. Number of fields mentioned by the witnesses intervened the witnesses and the spot. In fact it has been a point taken up by the defence that on account of the distance they could not see. What we feel is they could see that broad facts. Sohrab’s running on a mare, broad and easily visible actions that one could see from a distance. The rest of the details are imaginations and inferences Nadar’s injuries on his palms cannot be explained strictly on the basis of the prosecution version; but as we have seen the details are unbelievable we can only say the witnesses could not see how the injuries on Nadar’s palms were received. They were received undoubtedly on the spot and when gun was fired. Sobalsingh was no doubt held or appeared to have been held by Nadar from a distance. He must have tried to move. That movement was responsible for injury to his palms. The unassailable story therefore remains is that Sohrab fired a gun at Sobalsingh and Nadar handed over the gun to him. Both of them are therefore guilty.”

F In the above view it was held that both Sohrab and Nadar were guilty of an offence of murder under Section 302 read with 34.

G We have at some length pointed out that the Sessions Judge and the High Court were in agreement on certain aspects of the case in respect of which witnesses tried to embellish and exaggerate. But that by itself, in our view, does not assist the accused, nor can the broad features of the evidence of the prosecution case be doubted in respect of the version that on the day of the occurrence both the appellants and the deceased were in the field where the dead body was found, that Sohrab was riding a mare that he chased the deceased, that Nadar came with a gun and handed it over to Sohrab and that Sohrab fired at the deceased, which also caused injury to Nadar. The position of the eye witnesses in relation to the occurrence may have been such that all the details could not have been noticed, but that the salient features of the

prosecution story was true is established by the evidence of the eye witnesses. It appears to us that merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses does not mean that the entire evidence of the prosecution has to be discarded. It is only after exercising caution and care and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvement, the Court comes to the conclusion that what can be accepted implicates the appellants it will convict them. This Court has held that *falsus in uno falsus in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the Court to reconstruct a story of its own out of the rest. It is also urged that in an appeal against acquittal, the Appellate Court must consider the reasons which impelled the Trial Court to acquit the accused but whereas in this case the High Court having agreed with most of the conclusions arrived at by the Sessions Judge it could not reverse the order of acquittal. The Privy Council case in *Sheo Swarup and Ors. v. King Emperor*<sup>(1)</sup> and the judgment of this Court adopting the view enunciated therein have been referred to us. It is now well established that under Sections 417, 418 and 423 of the Code of Criminal Procedure, the High Court has full power to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. This principle was adopted in *Sanwant Singh v. State of Rajasthan*<sup>(2)</sup>; in *Agarwal v. State of Maharashtra*<sup>(3)</sup> and it was pointed out that the different phraseology used

(1) A.I.R. 1934 P.C. 227.

(3) [1963] 2 S.C.R. 405.

(2) [1961] 3 S.C.R. 120.

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in the earlier judgment of this Court such as “substantial and compelling reasons”, “good and sufficiently cogent reasons” and “strong reasons” are not intended to curtail the powers of the Appellate Court in an appeal against the acquittal to review the entire evidence and to come to its own conclusion but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the Court below in support of its order of acquittal in arriving at a conclusion on those facts but should express the reasons in its judgment, which led it to hold that the acquittal was not justified. In those cases it was pointed out by this Court that the principles laid down by the Judicial Committee in *Sheo Swarup* case afford a correct guide of the court’s approach to a case disposing of such appeal. We have in this case shown earlier the High Court did consider all aspects considered by the Sessions Court with most of which it also concurred. It, however, dealt with some of the aspects in which Sessions Court had not given a clear cut finding and in fact that Court had lost itself in a maize of contradictions and omitted to consider the overwhelming evidence that Sohrab had fired the fatal shot at Sobalsingh with the gun given by Nadar. Both Sessions Court as well as the High Court rejected the story of Nadar that he was urinating when he received the injuries and both of them further rejected the story that the gun went off in the struggle. Once the Sessions Judge had rejected the defence story, he should have considered the evidence of the prosecution that Sohrab had fired the gun given by Nadar and fired it at Sobalsingh but if it did not accept that story, it could have given a reason for not doing so. But as we said earlier it was overwhelmed by the various contradictions and failed to consider what effect it had on unanimous version of the prosecution witnesses that Nadar had given the gun to Sohrab and Sohrab had fired with it at Sobalsingh. Within an hour of the incident, an F.I.R. was lodged in which the main story as spoken to by the witness was given. In it the informant, Mahadeo had stated as follows :—

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“I saw that Sohrab caught Sobal on the boundary line of the field of Chensingh and Nadar came with a gun from the side of the cart. Bashir and Sardar came there running from the side of the cart road and reached there. Nadar gave the gun to Sohrab and caught Sobal and Soharab fired at the back of Sobal. As a result of which Sobal fell down and he made another fire at him while fallen. Sardar and Bashir struck blows with knives having knelt on Sobal to kill him while fallen. After this Soharab got on his mare and went with Nadar, Bashir and Sardar to the place where

the cart of the wife of Kudarat was parked and from there they went towards Panod." A

Though in so far as the part played by Sardar and Bashir as stated therein has not been accepted with respect to the other part the evidence of the eye witnesses fully agrees with the version given in the F.I.R. The salient feature of the evidence of the prosecution case are not really denied by the appellants Soharab and Nadar, Soharab admitted that they had started at 7 A.M. to attend the Court, that he was on the mare, that Nadar, his sister-in-law, servant Gabbu and one child were going in a cart, that they had a dispute with Chhogya Chamar and he was going ahead of them, and that the cart was behind him. The prosecution witnesses have also deposed to these facts. What the accused Sohrab says thereafter is that he had heard the sound of the firing of the gun. He got down from the mare and saw, in the meantime one more fire was shot. He saw that Nadar was running away towards North and Sobalsingh was following him. He got to him on the mare. At that time Sobalsingh was filling a cartridge in the gun. He jumped off from the mare and caught hold of the gun. Sobalsingh caught the gun from the side of the barrel and tried to get hold of him. While Sobalsingh and he were both trying to catch hold of the gun, the gun fired and Sobalsingh fell down. We find the following narration by Sohrab thereafter to be significant. He says : B

"I dropped the gun. As it fell down again fired. Blood was coming out of the hands of Nadar. I went to Kadava being afraid where I have relatives. I told Nadar to go and make a report at the Police Stations. I got myself relieved of the fear and then after two-three days I myself went to the Police Station." C

This statement shows that the gun was in his hands and it is only after that two shots emanated from it. Of course, according to the accused version, it went off when Sobalsingh and he were struggling with it and again when he dropped it. That Nadar was injured as a result of that gun shot was also not denied. However, when Nadar was running away, he was injured on the palms is not denied. D

Nadar in his statement also admits that on the day of the occurrence Gabbu, his sister-in-law and he was going to attend the dated fixed in the case of Chhogya Chamar at Sawer, that Sohrab had started on a mare before them, that their cart came ahead of Maharajganj, that behind the cart at some distance Sobalsingh and Chhogya were coming, that Sobalsingh had a E

A gun in his hands, and that he (Nadar) got down from the cart and sat for urine in a field at some distance. At once a gun was fired. It struck on his hands, and he lay down facing the sky. One more fire was shot but it did not strike him. He got up and ran and cried out "save, save". Sobalsingh came behind him.

B He ran and went towards the cart. Having sat in a cart he came to Sawyer with his sister-in-law and from there he sent her to Khajrana by a motor bus, and went to the Police Station to lodge a report. There the Sub-Inspector gave him beatings and did not record his report. Now, according to the version of this

C accused, the very first shot had injured his hands and he lay down facing the sky. But according to the version given by Sohrab after he heard the fire from the gun, he saw that Nadar was running away towards the north, but this is not spoken to by Nadar, who says he fell down with his face upward. The

D second shot according to Sohrab was the one which went off in the struggle and the third shot was the one which went off when he dropped the gun and it was then that he saw blood was coming from the hands of Nadar. The statements of these two

E accused, as we have said earlier, lend further credence to the evidence of the prosecution that the incident took place as alleged in the field where Nadar and Sobalsingh were present, that there was a fire from the gun as a result of that fire and the subsequent one, Sobalsingh died. That the shot was fired when the gun was in the hands of Sohrab, is spoken to by all the witnesses and the High Court is justified in coming to the conclusion that Sohrab had fired it deliberately at Sobalsingh. The version of

F the accused Sohrab also lends support to it. The actual fatal shot was fired when the gun was in the hands of Sohrab as a result of scuffle or deliberately and the second shot also occurred when the gun was in the hands of Sohrab, whether it was fired on it being dropped or deliberately as spoken to by the witnesses.

G As we stated earlier both the Sessions Judge as well as the High Court have disbelieved that the firing of the gun was accidental as a result of which Sobalsingh was killed. In our view, the defence version does not fit in with the post-mortem report or the evidence of the Doctor who conducted it. Even on the statement of the accused the theory that the shooter was at a

H lower level of the victim or the victim was kneeling is not borne out by anything in the medical evidence. Injury number (1) is sought to be linked with injury (xi) by pointing out that the

latter is an entry wound and the former exhibit wound of that entry wound. It has not been pointed out to us nor could we find any justification for this assumption from the doctor's evidence. All that was said is that one was an entry wound and the other exhibit but that does not mean that the exhibit wound (i) is that of the entry wound (xi). No probe was made and no position the gun was fired or in what position assailant and the victim were poised, it is difficult to determine from the evidence.

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In this view, we confirm the judgment of the High Court and dismiss the appeal.

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V.P.S.

Appeal dismissed.