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RAM UDGAR SINGH

v.

STATE OF BIHAR

B NOVEMBER 3, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Penal Code, 1860/Arms Act, 1959—Section 302/ Sections 25A and 27—
C *Prosecution for murder—Prosecution case supported by witnesses—Conviction by Courts below—On appeal, held : Conviction justified.*

Criminal Trial :

Related witnesses—Evidentiary value of—Held: Relationship is not a
D *factor to affect credibility of a witness.*

Deficient evidence—Evidentiary value of—Held: Conviction can be based on such evidence—Falsity of particular material witness or material particular would not ruin it from the beginning to end—Court is to separate truth from falsehood—But where truth and falsehood are inextricably mixed up and in
E *the process of separation an absolutely new case is reconstructed, the evidence is to be discarded in toto—Principle of 'Falsus in uno falsus in omnibus'.*

Normal Discrepancies and Material Discrepancies—Difference between—Discussed.

F *Maxim :*

*"***Falsus in uno falsus in omnibus***"—Applicability and nature of—Held: The maxim has no applicability in India as it has no general acceptance and has not attained the status of rule of law—It is not mandatory rule of evidence.*

G **Appellant-accused alongwith 8 others, was tried for having caused death of a person by firing a gunshot and assaulting PW-5 and PW-2. Trial Court relying on the evidence of PWs 1, 2, 3 and 5 held the appellant guilty of the offences u/s 302 IPC and Sections 25A and 27 of the Arms Act, 1959. The eight other accused who were charged for offences punishable u/s 302**

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r/w Section 34 IPC were acquitted giving them benefit of doubt. High Court dismissed the appeal of the appellant. A

In appeal to this Court, appellant contended that the conviction of the appellant was not justified; that the witnesses being relatives of the deceased were partisan and hence were not reliable; that having acquitted 8 out of 9 accused on the same set of evidence it was not proper to convict B the appellant by applying a different yardstick; that the time of death as given by the prosecution was improbablised in view of medical evidence according to which *rigor mortis* could not have set in the dead body within two hours.

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Dismissing the appeal, the Court

HELD : 1. The courts were justified in holding that appellant was the assailant, and accordingly convicted him. Evidence of PWs 1, 2, 3 and 5 clearly establish the definite role played by the accused-appellant. So far as plea that *rigor mortis* could not have set in the dead body within D two hours, High Court has rightly concluded that the time which is usually three to four hours may vary according to climatic conditions. No exception could be taken to the well merited reasoning squarely found supported by overwhelming relevant, convincing and concrete evidence placed on record by the prosecution in this case, and no error could be made out or substantiated in them, to call for interference of this Court. E [76-D-E]

2. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation or a friend would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has F to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. [74-C-D]

Masalti and Ors. v. *State of U.P.; State of Punjab* v. *Jagir Singh,* AIR (1973) SC 2407 and *Lehna* v. *State of Haryana,* [2002] 3 SCC 76 AIR (1965) G SC 202, relied on.

Gangadhar Behera and Ors. v. *State of Orissa,* [2002] 8 SCC 381, referred to.

3.1. Applicability of principle of *'falsus in uno falsus in omnibus'* (false H

A in one thing, false in everything) is untenable in the present case. Even if major portion of evidence is found to be deficient, in case residue 'is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated B from 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 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 has not received C general acceptance nor has this maxim come to occupy the status of 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 discarded. 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'. [74-G-H; 75-A-C]

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Nisar Alli v. *The State of Uttar Pradesh,* AIR (1957) SC 366, referred to.

3.2. Where it is not feasible to separate truth from falsehood, because E grain and 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. [75-G-H; 76-A]

F *Gurucharan Singh and Anr.* v. *State of Punjab,* AIR (1956) SC 460, referred to.

3.3. The doctrine of *"falsus in uno falsus in omnibus"* is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some G 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

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matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. [75-D-G]

Sohrab s/o Beli Nayata and Anr. **v.** *The State of Madhya Pradesh,* **[1972] 3 SCC 751 and** *Ugar Ahir and Ors.* **v.** *The State of Bihar,* **AIR (1965) SC 277, referred to.**

3.4. 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. [75-C-D]

3.5. 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 to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. [76-B-C]

Krishna Mochi and Ors. **v.** *State of Bihar etc.,* **JT (2002) 4 SC 186, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 992 of 2002.

From the Judgment and Order dated 19.4.2002 of the Patna High Court in Crl. A. No. 385 of 1987.

S.B. Upadhyay and Sujit K. Singh for the Appellant.

H.L. Aggarwal, Kumar Rajesh Singh and B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Politics, which was once considered the choice of noble and decent persons is increasingly becoming a haven for law breakers. The 'Nelsons' eye' turned by those wielding power to criminalisation of

A politics by their solemn and determined patronage and blessings by vying with each other has been encouraging and facilitating rapid spread and growth with rich rewards and dividends to criminals. The alarming rate of social respectability such elite gangsterism gaining day by day in the midst of people who chose and had given unto themselves the right to elect their rulers, mostly guided by misdirected allegiance to party politics and self oriented profit making endeavours seem to provide the required nectar for its manifold and myriad ways of ventilation with impugnity. Though it is an irony, yet accepted truth is that the 'Home rule' we could achieve by 'non-violence' has become the root cause for generating 'homicidal' culture of political governance effectively shielded by unprincipled mass sympathies and highly profit-oriented selfish designs of unscrupulous 'people' who have many faceted images to present themselves at times to the extent of their deification. For some it brings seal for respectability and for some others, it is intended to be used as a shield for protection against law enforcing agencies and that is how reports of various Commissions and Committees have become sheer cry in wilderness.

About three decades back one Ram Anugrah Singh alias Annu Singh (hereinafter referred to as 'deceased') was a victim of political rivalry. He paid price for allegedly being a loyal member of one political party which was not to the liking of some including the present appellant. Debacle of Parliamentary by-election of 1969 is said to have provided the impetus to do away with the life of the deceased on 7.4.1969. The appellant along with 10 others including the members of the Parliament and legislative assembly were alleged to be responsible for his death. Eleven persons in total faced trial for offences punishable under various provisions of Indian Penal Code, 1860 (for short the 'IPC'). Appellant was charged for commission of offence punishable under Section 302 IPC and Sections 25A and 27 of the Arms Act, 1959 (for short the 'Arms Act'). Eight others were charged for commission of offence punishable under Section 302 read with Section 34 IPC. Two others breathed their last during trial.

Prosecution case as unfolded during trial is essentially as follows:

Ram Bilash Singh (PW5), deceased and one Ramanand Jha (PW-2) had gone to withdraw money from a bank at Barauni. The deceased also carried some amount to be paid to a wood seller. After withdrawal of money from the bank all the three persons proceeded on bicycle and reached near the post office of their village Bihat. At that time three of the accused persons namely,

Surya Narain Singh, Rameshwar Singh and Deoki Nandan Singh coming from a place of some political meeting saw them. They were followed by many other persons including the accused persons. Four accused persons including the appellant caught hold of the deceased. While accused Ram Ratan Singh and Umesh Singh caught hold of the informant (PW5), accused Ram Shankar Singh and Sahdeo Singh caught hold of Ramanand Jha (PW-2). Accused Surya Narain Singh, Rameshwar Singh and Deoki Nandan Singh who were leaders of a political party directed others to kill the deceased, as it was a good opportunity to kill him. At the behest of these three persons as aforesaid four persons caught the deceased and took him towards North in the field. Accused-appellant Ram Udgar Singh fired a gun shot on the chest of the deceased. Other accused Suro Singh (since dead) also shot at the deceased. Receiving the gunshot injuries the deceased fell down. Thereafter the accused persons ran away after taking the cash carried by the deceased. The occurrence was witnessed by Kapildeo Singh, and others arrived there on hearing the sound of firing. The deceased was taken to the hospital in injured condition, but he breathed his last there. First information report was lodged and investigation was undertaken. On completion of investigation, charge sheet was placed as aforesaid. As the Criminal Procedure Code of 1898 (for short the 'Old Code') was in operation, proceedings were initiated under the existing law. While the case was still pending for inquiry under Chapter XVIII of the Old Code, the new Code came into force, and the case was committed to the Court of Sessions in 1977. Charges were framed. PWs. 1 to 4 were examined. As some witnesses were not examined earlier petition was filed and it was taken note of and some other persons were examined.

On consideration of the evidence on record, the Trial Court held the accused-appellant guilty while giving the benefit of doubt to others. In appeal filed by the accused-appellant before the High Court the plea of innocence and false implication due to political rivalry which was pressed into service before the Trial court was reiterated and the evidence was stated to be not worthy of credence. It was submitted that the so-called PWs 1 and 3 were chance witnesses and their credibility was open to doubt. The High Court held that the prosecution has established its accusations so far as the accused-appellant is concerned and did not find any merit in the appeal.

In support of the appeal, Mr. S.B. Upadhyay, learned counsel submitted that when 8 out of the 9 persons who faced trial have been acquitted on the same set of evidence it was not proper to convict the accused-appellant by applying different yardstick. The *mala fides* are patent when one considers

A the findings that many persons were roped in though they were innocent. It was pointed that the time of death as given by prosecution witnesses is improbabilised by the doctor's evidence. The witnesses were relatives of the deceased and, were therefore, partisan. In essence it was submitted that the Trial Court and the High Court were not justified in convicting the accused.

B In response, Mr. H.L. Aggarwal, learned senior counsel supported the judgment and submitted that both the Trial Court and the High Court have analysed the evidence in great detail and no infirmity can be noticed therein to warrant interference.

C Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation or a friend would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible (See *Gangadhar Behera and Ors.* v. *State of Orissa,* [2002] 8 SCC 381). The D trial Court and High Court have kept the legal principles in view and made detailed and elaborate analysis of the evidence.

Again in *Masalti and Ors.* v. *State of U.P.*, AIR (1965) SC 202 this Court observed: (p. 209-210 para 14):

E "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence 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. Judicial F 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."

To the same effect is the decision in *State of Punjab* v. *Jagir Singh,* AIR (1973) SC 2407 and *Lehna* v. *State of Haryana,* [2002] 3 SCC 76. Stress G was laid by the accused-appellant on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out 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 major portion of evidence is found to be deficient, in case residue is H sufficient to prove guilt of an accused, notwithstanding acquittal of number

of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from 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 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 liar*. The maxim "*falsus in uno falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of 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 discarded. 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 Alli* v. *The State of Uttar Pradesh,* AIR (1957) SC 366). 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. (See *Gurucharan Singh and Anr.* v. *State of Punjab,* AIR (1956) SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because 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 sifted 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. (See *Sohrab s/o Beli Nayata and Anr.* v. *The State of Madhya Pradesh,* [1972] 3 SCC 751 and *Ugar Ahir and Ors.* v. *The State of Bihar,* AIR (1965) SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and 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

A 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. (See *Zwinglee Ariel* v. *State of Madhya Pradesh,* AIR (1954) SC 15 and *Balaka Singh and Ors.* v. *The State of Punjab,* AIR (1975) SC 1962. As observed by this Court in *State of Rajasthan* v. *Smt. Kalki and Anr.*, AIR (1981) SC 1390, normal discrepancies in evidence are those which B 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 to which C 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 and Ors.* v. *State of Bihar etc.* JT (2002) 4 SC 186. Accusations have been clearly established against accused-appellant in the case at hand. The Courts below have categorically indicated D the distinguishing features in evidence so far as acquitted and convicted accused are concerned.

Evidence of PWs 1, 2, 3 and 5 clearly establish the definite role played by the accused-appellant. So far as plea relating to time of death on the basis of medical evidence is concerned, emphasis is laid on the fact that rigor E mortis could not have set in the dead body within two hours. High Court has referred to several treatises on medical jurisprudence to conclude that the time which is usually three to four hours may vary according to climatic conditions. We find no infirmity in the conclusion. The courts were justified in holding that appellant was the assailant, and accordingly convicted him. No exception could be taken to the well merited reasoning squarely found F supported by overwhelming relevant, convincing and concrete evidence placed on record by the prosecution in this case, and no error could be made out or substantiated in them, to call for our interference.

There is no merit in this appeal, which is accordingly dismissed.

G K.K.T. Appeal dismissed.