A BUR SINGH AND ANR.

*v.*

STATE OF PUNJAB

(Criminal Appeal No. 1598 of 2008)

OCTOBER 13, 2008

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**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]**

*Penal Code, 1860: s.302 r.w. s.34 – Conviction under, by* C *trial court – Affirmed by High Court – Correctness of – Held: On facts, correct – Evidence of witnesses established the prosecution case.*

*Evidence: Related witness – Testimony of – Evidentiary value of – Held: Can be relied upon unless allegation of* D *interestedness is established.*

*Doctrines/Principles: of 'falsus in uno falsus in omnibus' – Applicability of.*

**Prosecution case was that a day prior to incident,** E **accused-appellant no.1 gave beating to a boy to which deceased objected. The accused was annoyed with him and challenged to teach him a lesson. The next day at 6.00 A.M., deceased was going towards his well alongwith his son, complainant. The accused persons came there** F **and started inflicting several blows to him with their respective weapons. The deceased succumbed to injuries. The complainant went to the police station, but ASI met him on the way and he recorded statement of complainant which was completed at 7.30 AM on the basis of which** G **FIR was registered at 8.30 AM. The distance of police station was 4 Kms. from the place of occurrence. The Illaqa Magistrate received the FIR at 9 A.M.**

**Accused persons were arrested and weapons were recovered in pursuance of their disclosure statements.**

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The trial Court found the evidence of eye witnesses PW-2 and 3 to be cogent and credible and recorded conviction of appellants under s.302 r.w. s.34 IPC. High Court upheld the conviction. Hence the instant appeal.

Appellants contended that the evidence of PW-2 and 3 cannot be believed and their presence at the spot was highly improbable; that they were interested witnesses and their evidence cannot be relied upon; that the presence of semi-digested food showed that the occurrence could not have taken place in the morning as claimed by the prosecution; that in the FIR and the application made for postmortem, the investigating officer had not stated that the injuries on the person of the deceased were caused by sharp weapon; that evidence tendered by PW-3 was not accepted and thus would throw out the entire prosecution case and the principle of *"falsus in uno falsus in omnibus"* was applicable.

Dismissing the appeal, the Court

HELD: 1. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation 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. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. [Paras 6, 9] [342-C-D-E; 343-D]

A *Dalip Singh and Ors. v. The State of Punjab* **AIR (1953) SC 364**; *Guli Chand and Ors. v. State of Rajasthan* **(1974) 3 SCC 698** *Vadivelu Thevar v. State of Madras* **AIR (1957) SC 614**; *Masalti and Ors. v. State of U.P.* **AIR (1965) SC 202**; *State of Punjab v. Jagir Singh* **AIR (1973) SC 2407**; *Lehna v. State* B *of Haryana* **(2002) 3 SCC 76**; *Gangadhar Behera and Ors. v. State of Orissa* **(2002) 8 SCC 381**; *Babulal Bhagwan Khandare and Anr. v. State of Maharashtra* **(2005) 10 SCC 404**; *Salim Saheb v. State of M.P.* **(2007) 1 SCC 699 – relied on.**

**2.1 The plea to apply the principle of** *"falsus in uno* C *falsus in omnibus"* **is untenable. 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. It is merely a rule of caution.** D **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** E **of evidence. [Para 13] [344-G-H; 345-A-B]**

**2.2. The doctrine is a dangerous one specially in India for if a whole body of the testimony was to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal** F **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** G **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** H **hardly comes across a witness whose evidence does not**

**contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. [Para 13] [345-D-F]** A

*Nisar Ali v. The State of Uttar Pradesh* **AIR (1957) SC 366;** *Gurcharan Singh and Anr. v. State of Punjab* **AIR (1956) SC 460;** *Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh* **(1972) 3 SCC 751;** *Ugar Ahir and Ors. v. The State of Bihar* **AIR (1965) SC 277;** *Zwinglee Ariel v. State of Madhya Pradesh* **AIR (1954) SC 15;** *Balaka Singh and Ors. v. The State of Punjab* **AIR (1975) SC 1962;** *Rajasthan v. Smt. Kalki and Anr.* **AIR (1981) SC 1390;** *Krishna Mochi and Ors. v. State of Bihar etc.* **JT (2002) (4) SC 186 – relied on.** B C

**3. The trial court and High Court noticed that though PW2 was working as a Development Officer at Gurdaspur, there was no evidence to show that he could not have been present at the time of occurrence in the village which was not very far off from Gurdaspur. Merely because the investigating officer had not noticed any blood stains on the clothing of PW 3, would not mean that PW 3 was telling a lie. PW 11 stated that he had not noticed the bloodstains. That was not the same thing to say that there was no bloodstain. There can be several reasons for which blood stains may not have been noticed by PW 11 because he may not have focussed his attention to that aspect. So far as the presence of semi-digested food was concerned, High Court stated that the people in the villages get up early in the morning, take some food and then start their daily pursuits. No question was asked to the witnesses as to when the deceased woke up and when he took his food if any. It is of significance to find that PW1 conducted the autopsy and found the presence of rigor mortis on the upper limbs whereas it was partially present on the lower limbs when the autopsy was conducted on 6.10.1999 at 1.15 P.M. This indicates that rigor mortis was just in the process of setting and had not completely set towards the body. In view of all this the presence of 150cc food in the stomach of the deceased can-** D E F G H

A not be a factor to disbelieve the evidence of PWs 2 and 3. FIR was very promptly lodged, occurrence is supposed to have taken place around 6 AM and the statement of the complainant was recorded at 7 A.M. So far as the non-mention about the use of blunt weapon in the inquest re-
B port for post mortem is concerned, there is no requirement in law that the police officials making inquest or conducting of post mortem should describe in detail as to the nature of the injuries sustained by the deceased and/or by the type of weapons used. That cannot be a factor
C to discard the prosecution version. [Para 15] [346-E-H; 347-A-D]

CASE LAW REFERENCE

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|---|---|---|
| AIR (1953) SC 364 | relied on | Paras 7, 9 |
| D (1974) (3) SCC 698 | relied on | Para 8 |
| AIR (1957) SC 614 | relied on | Para 8 |
| AIR (1965) SC 202 | relied on | Para 10 |
| AIR (1973) SC 2407 | relied on | Para 11 |
| E (2002) 3 SCC 76 | relied on | Para 11 |
| (2002) 8 SCC 381 | relied on | Para 11 |
| (2005) 10 SCC 404 | relied on | Para 12 |
| (2007) 1 SCC 699 | relied on | Para 12 |
| F AIR (1957) SC 366 | relied on | Para 13 |
| AIR (1956) SC 460 | relied on | Para 13 |
| (1972) 3 SCC 751 | relied on | Para 13 |
| AIR (1965) SC 277 | relied on | Para 13 |
| G AIR (1954) SC 15 | relied on | Para 13 |
| AIR (1975) SC 1962 | relied on | Para 13 |
| AIR (1981) SC 1390 | relied on | Para 13 |
| JT (2002) (4) SC 186 | relied on | Para 13 |

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1598 of 2008

From the final Judgment and Order dated 11.9.2007 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 217 DB of 2005

Sushil Kumar, Aditya Kumar, Sudarshan Singh Rawat, Vinay Arora and Sanjay Jain for the Appellants.

Adish C. Agarwala, Ajay Pal for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellants for conviction punishable under Section 302 for appellant no.1 and Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') for appellant no.2 while directing acquittal of co-accused Parminder Singh. Four persons faced trial. The learned Sessions Judge Gurdaspur directed acquittal of Lakhbir Singh, while holding the present appellants and Parminder Singh to be guilty of offence punishable under Section 302 and Section 302 read with Section 34 IPC as noted above. By the impugned judgment the High Court as noted above directed acquittal of the co-accused while confirming the conviction and sentence so far as the appellants are concerned.

3. Prosecution versions as unfolded during trial is as follows:

On 5.10.1999 Bur Singh had given beatings to the son of Manjit Singh for passing through their fields to which Surjan Singh had objected, therefore, the accused were annoyed and challenged to teach him a lesson.

On 6.10.1999 at about 6 AM Sukhraj Singh (hereinafter referred to as the 'complainant') along with his father Surjan

A Singh was going towards his well to milch the cattle. Surjan Singh was ahead of complainant. When they came near the field of Hazara Singh, the accused came there. Bur Singh raised lalkara that they be caught and taught a lesson for showing sympathy with the police. Kulwinder Singh accused inflicted datar blow
B on the right arm of Surjan Singh, Bur Singh inflicted sua blow on his right temporal region, and, resultantly, he fell down. Thereafter Parminder Singh accused inflicted dang blow to him on his shoulders. Thus, all the accused inflicted several blows to him with the respective weapons. The hue and cry raised by Sukhraj
C Singh attracted Jasbir Singh and Kulbir Singh to the spot. At this, the accused fled away with their respective weapons. Surjan Singh succumbed to the injuries at the spot.

After leaving Jasbir Singh and Kulbir Singh near the dead body, the complainant went to the police station, but ASI Lakhbir
D Singh met him at Aliwal Chowk to whom he got recorded his statement Ex.PD, which was completed at 7.30 AM on the basis of which FIR Ex. PD/2 was registered at 8.30 AM. The distance of police station Sadar, Batala is 4Kms. from the place of occurrence. The FIR was received by the illaqa Magistrate at 9
E A.M. ASI Lakhbir Singh visited the place of occurrence; prepared the rough site plan; lifted blood stained earth from the spot; took into possession one shoe of plastic; got conducted postmortem examination the dead body of the deceased; and took the clothes of the deceased into possession. Accused Bur
F Singh was arrested on 11.10.1999 and he got recovered dang fitted with sua under the chaff in his residential house and Kulwinder Singh accused got recovered datar from underneath the heap of chaff lying in his verandah in pursuance of their disclosure statements under Section 27 of the Indian Evidence Act,
G 1872 (in short the 'Evidence Act'). On 28.10.1999, Parminder Singh accused was arrested by Inspector Lakhbir Singh CIA staff, Batala. Completion of the investigation was followed by a report under Section 173 of the Code of Criminal Procedure, 1973 (in short 'Code').

H In order to substantiate the accusations twelve witnesses

were examined. PWs 2&3 were stated to be eye witnesses. The accused persons abjured guilt as noted above and in the examination under Section 313 of the Code stated that they had been falsely implicated. Acquitted accused Parminder Singh stated that he was staying at the different State and was not present at the date. Four witnesses were examined to further the defence version about false implication. The trial Court found the evidence of PWs 2 & 3 to be cogent and credible and recorded conviction. In appeal, High Court upheld their conviction.

4. In support of the appeal learned counsel for the appellant submitted that the evidence of PWs 2 & 3 cannot be believed. Their presence at the spot is highly improbable. The conspiracy angle as projected by the prosecution having been disbelieved that defence version of false implication stand substantiated. The two witnesses are interested witnesses and their version should not have been relied upon. In any event when on the self same evidence, two of the accused persons were acquitted the present appellants should not have been convicted. With reference to evidence of PW 3 it was stated that he claimed that there were bloodstains on his clothes when the deceased was taken by him. PW 11 the Investigating Officer (in short the 'I.O.') has categorically stated that so far as PW 2 is concerned, it is stated he was working as a Development Officer and was staying at a different place. Added to that, the time of the alleged occurrence has been varied. Presence of semi-digested food clearly shows that the occurrence could not have taken place in the morning as claimed by the prosecution. It is also submitted that in the First Information Report (in short the 'FIR') and the application made for postmortem, the I.O. had not stated that the injuries on the person of the deceased were caused by sharp weapon. There was no mention of any blunt weapon. With reference to Exhibits D1 and D2 it is stated that there were blank spaces and, therefore, there was scope for manipulation.

5. Learned counsel for the respondent on the other hand submitted that the police officials were not investigating prop-

A erly and, therefore, lapse had been committed. These lapses were committed with a view to help the accused persons for which complaint was made to the higher officials. The accused persons cannot take any advantage of the lapses committed by the police officials, if any, with a view to help them. It is also B submitted that the evidence of PWs 2& 3 is clear, cogent and credible and therefore the trial court and the High Court had rightly convicted them.

6. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is alle- C gation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the wit- D nesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation 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 E to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

7. In *Dalip Singh and Ors. v. The State of Punjab* (AIR 1953 SC 364) it has been laid down as under:-

F "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be G the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far H

from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

8. The above decision has since been followed in *Guli Chand and Ors. v. State of Rajasthan* (1974 (3) SCC 698) in which *Vadivelu Thevar v. State of Madras* (AIR 1957 SC 614) was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh's* case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – *'Rameshwar v. State of Rajasthan'* (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

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

A "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 B to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. 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."

C 11. To the same effect is the decisions in *State of Punjab v. Jagir Singh* (AIR 1973 SC 2407), *Lehna v. State of Haryana* (2002 (3) SCC 76) and Gangadhar Behera and Ors. v. State of Orissa (2002 (8) SCC 381).

D 12. The above position was also highlighted in *Babulal Bhagwan Khandare and Anr. v. State of Maharashtra* [2005(10) SCC 404] and in *Salim Saheb v. State of M.P.* (2007(1) SCC 699).

13. As noted above, stress was laid by the accused-ap- E pellants on the non-acceptance of evidence tendered by PW-3 to contend about desirability to throw out the entire prosecution case. In essence the 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 F 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 the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the G 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 H

"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 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 Ali 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 *Gurcharan 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 was 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 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 the 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 pro-

A cess 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. (See *Zwinglee Ariel v. State of* B *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 are due to normal errors of observation, normal errors of C 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 D to 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 in *Krishna Mochi and Ors. v. State of Bihar etc.* (JT 2002 (4) SC 186).

E 14. It is to be noted that the trial court and the High Court have noticed that though PW2 was working as a Development Officer at Gurdaspur, there was no evidence to show that he could not have been present at the time of occurrence in the village which is not very far off from Gurdaspur. Merely because F the investigating officer had not noticed any blood stains on the clothing of PW 3, that does not mean that PW 3 was telling a lie. PW 11 has stated that he had not noticed the bloodstains. That is not the same thing to say that there was no bloodstain. There can be several reasons for which blood stains may not have G been noticed by PW 11 because he may not have focussed his attention to that aspect. So far as the presence of semi-digested food is concerned, the High Court has stated that the people in the villages get up early in the morning, take some food and then start their daily pursuits. No question was asked to the witnesses as to when the deceased woke up and when he took H

his food if any. It is of significance to find that Dr. Harbhajan Singh, PW1 conducted the autopsy and found the presence of rigor mortis on the upper limbs whereas it was partially presence on the lower limbs when the autopsy was conducted on 6.10.1999 at 1.15 P.M. A

15. This indicates that rigor mortis was just in the process of setting and had not completely set towards the body. In view of all this the presence of 150cc food in the stomach of the deceased cannot be a factor to disbelieve the evidence of PWs 2&3. FIR was very promptly lodged, occurrence is supposed to have taken place around 6 AM and the statement of the complaint was recorded at 7 A.M. So far as the non-mention about the use of blunt weapon in the inquest report for post mortem is concerned, there is no requirement in law that the police officials making inquest or conducting of post mortem should describe in detail as to the nature of the injuries sustained by the deceased and/or by the type of weapons used. That cannot be a factor to discard the prosecution version. B C D

16. Looked at from any angle, the appeal is without merit, deserves dismissal, which we direct. Appellant No.1 was exempted from surrendering considering his age. Both the accused appellants shall surrender to custody forthwith to serve remainder of sentence. E

17. Appeal is dismissed.

D.G. Appeal dismissed. F