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DALBIR SINGH

v.

STATE OF HARYANA

(Criminal Appeal No. 899 of 2008)

MAY 15, 2008

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(DR. ARIJIT PASAYAT AND P.SATHASIVAM, JJ.)

Penal Code, 1860 – ss. 302 and 148 – Conviction under – Prosecution case that nephew killing his uncle over property dispute – Other co-accused also caused injuries to deceased – Incident witnessed by grandfather and he identified his grandson – Conviction of nephew, however, acquittal of other co-accused by courts below – Held: Grandfather identified the accused from his voice at dark night – His evidence cannot be discarded, though he did not identify other assailants – Duty of Court is to separate grain from chaff – Where chaff can be separated from grain, the Court can convict accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons – Thus, order of conviction upheld.

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Evidence Act, 1872 – s.9 – Identification of accused – Dark night – Ocular identification – Possibility of – Held: Is possible if person is acquainted and closely related to another from manner of speech, gait and voice identification – On facts, grand father of accused recognized the accused from his voice in a dark night.

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Maxims – Falsus in uno falsus in omnibus - Meaning and applicability in India – Stated.

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Evidence – Normal discrepancies and material discrepancies – Difference between.

According to the prosecution case, DS is nephew of RP. RP was cultivating land of his father-SR, who is the grandfather of DS. On account of the same DS was on

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inimical terms with RP. On the fateful day, during night hours, when RP had gone to his field with SR, 5-6 armed persons came there in a jeep. DS raised lalkara to RP that he should be taught a lesson for cultivating his grandfather's land. SR recognized the voice of DS and went towards the scene of occurrence. He saw that DS and others were causing injuries to RP. SR raised alarm and all the assailants fled away. RP was taken to the hospital and he succumbed to his injuries. Investigation was carried out. Trial court convicted and sentenced DS-accused u/s.302 and 148 IPC. However, the other co-accused were acquitted. DS filed appeal on the ground that PW-8 had undergone eye operation about two years prior to the date of occurrence and in the dark night there was no scope of identification. High Court holding that the identification by PW8 was possible, upheld the conviction. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. With regard to the acquittal of the co-accused and its effect on prosecution version, courts below noted the fact that the only person named was PW8 who was the grand father of the present appellant. He did not identify the co-accused person i.e. the other assailants. PW8 had categorically stated that he did not recognize other assailants, and though he knew other assailants, he did not know their names and, therefore, had not given their names. He had categorically also stated that from the voice of accused who raised the lalkara he recognized the assailant as his grandson. In a dark night ocular identification may be difficult in some cases but if a person is acquainted and closely related to another, from the manner of speech, gait and voice identification is possible. Therefore, there is nothing to discard the evidence of PW8 so far as his claim to have recognized the appellant is concerned. [Para 6 and 7] [1034-C,E,F,G, 1035-A]

A *Anwar Hussain v. The State of U.P. and Anr.* **AIR 1981 SC 2073 – relied on.**

1.2. It is emphatically urged that the evidence is partisan, lacks cogency and credibility. Acquittal of other accused persons is the foundation for such plea. [Para 8]
B **[1035-B]**

1.3. Coming to applicability of the principle of *falsus in uno falsus in omnibus*, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt
C **of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the Court has to carefully screen the evidence. It is the duty of Court to separate grain from**
D **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**
E **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. [Para 9] [1035-C,D,E]**

1.4. The maxim *"falsus in uno falsus in omnibus"* (false in one thing, false in everything) has not received general
F **acceptance in different jurisdiction in India, 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 disregarded. The doctrine merely involves the question**
G **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". [Para 10] [1035-F,G]**

Nisar Alli v. The State of Uttar Pradesh **AIR 1957 SC 366 - relied on.**

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1.5 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 the accused who had been acquitted from those who were convicted. [Para 10] [1035-G, 1036-A] A B

Gurucharan Singh and another v. State of Punjab AIR 1956 SC 460 - relied on.

1.6. 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. The 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. [Para 10] [1036-B,C,D] C D E F

Sahrab s/s Belli Nayata and another v. The State of Madhya Pradesh (1972) 3 SCC 751; *Umar Ahir and others v. The State of Bihar* AIR 1965 SC 277 - relied on.

1.7. An attempt has to be made to 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 G H

A **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 discard the evidence in toto. [Para 10] [1036-E,F,G]**

B *Zwieolae Ariel v. State of Madhya Pradesh* **AIR 1954 SC 15;** *Balaka Singh and others v. The State of Punja:* **AIR 1975 SC 1962;** *State of Rajasthan v. Smt. Kalki* **AIR 1981 SC 1396 - relied on.**

C **1.8 Normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and these are always there however honest and**
D **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 categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. [Para 10] [1036-G,H, 1037-A,B]**
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 899 of 2008

From the final Judgment and Order dated 28.4.2007 of the High Court of Punjab and Haryana or Chandigarh in Crl.
F Appeal No. 843-DB/1997

B.S. Jain, Ajay Vir Singh Jain, Manish Raghav and Dr. Vipin Gupta for the Appellant.

Rajesh Ranjan, Rajeev Gaur 'Naseem', T.V. George and
G Naresh Bakshi for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

H 2. Challenge in this appeal is to the judgment of the Divi-

sion Bench of the Punjab and Haryana High Court dismissing the appeal filed by the appellant who was convicted for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'), and Section 148 of IPC. He was sentenced to undergo RI for life and one year respectively for the two offences.

3. This is one of the cases of a nature which are increasing by leaps and bounds i.e. commission of offence for property. In the instant case the key player is the appellant Dalbir (hereinafter referred to as the 'accused') who killed his uncle Ram Pratap (hereinafter referred to as the 'deceased') and the key witness is Surja Ram (PW8), the grandfather of the accused.

4. Flittering out unnecessary details the case of the prosecution is as follows:

> On 17.5.1995 on receipt of a ruqa from the doctor, CHC Rania, regarding admission of injured Ram Partap (since deceased), Sub Inspector Ram Partap, visited the hospital where the doctor produced before him a ruqa regarding death of Ram Partap, Surja Ram, complainant, father of the deceased, was found present there near the dead body. He made a statement to the effect that he had two sons, namely Banwari and Ram Partap. Banwari had two sons, namely, Dalbir the accused and Om Parkash. Banwari had already died two years ago. Ram Partap used to reside with him and they also owned landed property in village Mameran, where family of Ram Partap used to reside and cultivate the land. His deceased son Ram Partap had come to him three-four days earlier for thrashing the wheat and when they were thrashing the wheat, at about 9.30 p.m. after stopping the operation of thrasher, Ram Partap went to nearby canal for taking a bath. After some time, a jeep came and stopped near the bank of the canal and in the meanwhile, five-six persons came down from the jeep and went near Ram Partap. Accused Dalbir Singh raised a lalkara to Ram Partap

A deceased that he should be taught a lesson for cultivating the land of his grand father. Complainant recognized the voice of Dalbir and rushed towards them and saw that Dalbir had a tangli in his hands, whereas other persons were armed with lathi, jallis and gandasis and were causing B injuries on his son Ram Partap. He raised an alarm as to why they were attacking Ram Partap and on seeing him, all the assailants ran away with their respective weapons in the said jeep and he did not know the names of the remaining persons. He further disclosed that the C relationship between them and Dalbir was strained, as he wanted to take share of his land. His son became unconscious due to the injuries suffered by him. He went to village for making arrangement of a jeep of one Sukh Ram at about 12.00 during night he shifted Ram Partap to CHC Rania for medical treatment, where doctor treated D Ram Partap and during treatment he succumbed to his injuries. Dalbir alongwith his companions caused injuries to his son without any right. On the basis of this statement, Ex. PD/1 and an endorsement made by Sub Inspector Amar Singh thereon, a case was registered against the E accused. The Investigating Officer started the investigation, recorded statements of the witnesses and thereafter sent the dead body for autopsy.

Dr. Dharambir Singh conducted post mortem examination F on the dead body of Ram Partap the deceased and found ten injuries on his person. He disclosed the cause of death to be due to shock and hemorrhage as a result of injuries to vital organs, which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. G Sub Inspector Amar Singh went to the place of occurrence and lifted blood stained earth from there and sealed the same in a parcel and took it into possession after preparing recovery memo of the same. He also recorded the statements of Kamla, the widow and Durga, the daughter of Ram Partap deceased on the same day. From their H

statements, it was revealed that in the evening on the previous day at about 7 P.M., they were going to the fields to serve meals to Ram Partap Surja and others, who were thrashing the wheat in the fields. When they passed near the house of Dalbir accused, they saw a jeep bearing No.HR-44A 0856 standing in his courtyard and there Pala Jani, Sube Singh, Krishan, Kuldeep and Parkash, all accused, were talking to each other. They were known to these witnesses. Two persons were sitting in the jeep and when these witnesses were returning from their fields towards home and reached near the culvert of canal, the same jeep came near them and stopped. From the side of the jeep, Dalbir asked them about the whereabouts of Ram Partap, and they told him that he was in the fields. Then Dalbir asked Madan to take the vehicle ahead. In the meantime, one person got down the jeep for urinating and when the jeep started Sube Singh called him by the name of Devi Lal to come immediately and then all of them occupied their seats in the jeep and went. They had seen all the persons in the house of Dalbir in the evening and these witnesses came to know that during night hours Dalbir and others had caused injuries to Ram Partap, who died later on. After completion of necessary formalities, accused were sent up for trial.

Accused were charge sheeted for offences punishable under Sections 302 and 148 read with Section 149 IPC to which they did not plead guilty and claimed trial.

The Trial Court placed reliance on the evidence led, more particularly, PW8 and directed conviction and imposed sentences as aforenoted so far as appellant is concerned and directed acquittal of co-accused. In appeal, before the High Court the main stand taken was that PW8 had undergone eye operation about two years prior to the date of occurrence and in dark night there was no scope for identification. The High Court did not accept the stand and held that identification was possible, particularly, when

A the accused was the grandson of the witness. The appeal was dismissed by the impugned judgment.

5. In support of the appeal learned counsel for the appellant submitted that all other accused persons have been acquitted except the appellant. The Trial Court and the High Court B should not have accepted the statement of Surja Ram (PW8) that he identified the accused from his voice in a dark night which was probable. Learned counsel for the State on the other hand supported the judgment.

C 6. The first point relates to the acquittal of the co-accused and its effect on prosecution version. Learned Additional Sessions Judge and the High Court have noted the fact that the only person named was PW8 who was the grand father of the present appellant. He did not identify the co-accused person i.e. the D other assailants. In the instant proceedings PW8 had mentioned about 5-6 persons, but only identified by appellant as one of the assailants. PW8 disclosed before the Court that the deceased went for taking a bath in the canal and after 10-15 minutes a jeep came on the bank of the canal. He did not see the other E occupants of the jeep and only identified the appellant who raised the lalkara to teach lesson to the deceased for cultivating the land of his grandfather. The accused persons came with the respected weapons and started inflicting injuries on the person of the deceased. PW8 had categorically stated that he did not recognize other assailants, and though he knew other F assailants, he did not know their names and, therefore, had not given their names. He had categorically also stated that from the voice of accused who raised the lalkara he recognized the assailant as his grandson. The stand of the appellant that in dark night recognition would not have been possible from voice G is clearly untenable. In a dark night ocular identification may be difficult in some cases but if a person is acquainted and closely related to another, from the manner of speech, gait and voice identification is possible.

7. In *Anwar Hussain v. The State of U.P. and Anr.* (AIR H

1981 SC 2073) it was observed that even if there is insufficient light, a witness can identify a person, with whom he is fairly acquainted or is in intimate terms, from his voice, gaits, features etc. Therefore, there is nothing to discard the evidence of PW8 so far as his claim to have recognized the appellant is concerned. A B

8. It is emphatically urged that the evidence is partisan, lacks cogency and credibility. Acquittal of other accused persons is the foundation for such plea.

9. Coming to applicability of the principle of falsus in uno falsus in omnibus, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the Court has to carefully screen the evidence. 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 Indian and the witnesses cannot be branded as liar. C D E

10. The maxim "falsus in uno falsus in omnibus" (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, 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 disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Alli v. The State of Uttar Pradesh: AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evi- F G H

A dence 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 the accused who had been acquitted from those who were convicted. (See Gurucharan Singh and B another 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. The C 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 D 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. (See Sahrab s/s Belli E Nayata and another v. The State of Madhya Pradesh: (1972) 3 SCC 751, and Umar Ahir and others v. The State of Bihar: AIR 1965 SC 277). An attempt has to be made to in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, F 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 the prosecution completely from the context and the background against which they are made, the only available course to be made is G discard the evidence in toto. (See Zwieolae Ariel v. State of Madhya Pradesh: AIR 1954 SC 15; and Balaka Singh and others v. The State of Punjab: AIR 1975 SC 1962). As observed by this Court in State of Rajasthan v. Smt. Kalki and another: AIR 1981 SC 1390, normal discrepancies in evidence are those H which are due to normal errors of observations, normal errors

of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and these 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 cateogrised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

11. The appeal is without merit, deserves dismissal which we direct.

N.J. Appeal dismissed.