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RAMESH HARIJAN

v.

STATE OF U.P.

(Criminal Appeal No. 1340 of 2007)

B

MAY 21, 2012

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

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Penal Code, 1860 - ss. 302 and 376 - Rape and murder of a minor girl aged 5-6 years - Deceased last seen with the accused by two witnesses - Recovery of the part of bed sheet having blood and semen, in the presence of panch witnesses - Medical evidence supporting prosecution case - Acquittal by trial court - Conviction by High Court - On appeal, held: Appellate court to interfere with acquittal order only in exceptional cases - In the instant case High Court rightly interfered with acquittal order - Acquittal order by trial court was illegal, unwarranted and was based on mis-appreciation of evidence as it gave undue weightage to unimportant discrepancies and inconsistencies which resulted in miscarriage of justice.

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Criminal Trial - Benefit of doubt - Held: The doubt should be reasonable based upon reason and common sense and not an imaginary, trivial or merely possible doubt - The duty of the court is to ensure that miscarriage of justice is avoided.

G

Witness - Hostile witness - Evidentiary value - Held: Evidence of hostile witness cannot be discarded as a whole - Relevant parts thereof which are admissible in law, can be used - Evidence.

H

The appellant-accused was prosecuted for having raped and caused death of minor girl aged 5-6 years. The

prosecution case was that PW-2 (mother of the deceased) lodged an FIR alleging that the deceased was raped and killed by the appellant-accused, when the deceased with her blind grandmother was sleeping in the house of the accused. She also made a request to exhume the dead body of the deceased as the same was buried. As per the post-mortem report of the dead body, death was due to shock and hemorrhage as a result of ante-mortem vaginal injuries. Case was registered against the accused u/ss. 302 and 376 IPC, on the basis of the post-mortem report. Trial Court acquitted the accused, of both the charges. The appeal preferred by the State was allowed by High Court, convicting the accused for both the charges. Hence, the present appeal by the accused.

Appellant-accused contended that the High Court committed an error in reversing the acquittal order; that there was no evidence to establish that the deceased used to sleep in the house of appellant or the appellant had the opportunity to commit the offence; that the evidence of PW1 (the scribe of the FIR), PWs 7 and 8 (the alleged eye-witnesses to the commission of offence) which have been relied upon by the High Court, cannot stand judicial scrutiny as these witnesses were motivated; that depositions of PWs 7 and 8 was liable to be discarded as a whole as there were improvements in their depositions, and that other witnesses also could not be relied upon as they turned hostile.

Dismissing the appeal, the Court

HELD: 1. Only in exceptional cases, where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters

A the presumption of innocence. Interference in a routine manner where the other view is possible, should be avoided, unless there are good reasons for interference. The acquittal in the instant case by the trial court was totally illegal, unwarranted and based on mis-
 B appreciation of evidence for the reason that the court had given undue weightage to unimportant discrepancies and inconsistencies which resulted in miscarriage of justice. Thus, the High Court was fully justified in reversing the order of acquittal. [Paras 16 and 27] [703-
 C A-B; 709-A-B]

State of Rajasthan v. Talevar and Anr. AIR 2011 SC 2271: 2011 (6)SCR 1050; *State of U.P. v. Mohd. Iqram and Anr.* AIR 2011 SC 2296: 2011 (6) SCR 1017; *Govindaraju @ Govinda v. State by Srirampuram Police Station and Anr.*
 D (2012) 4 SCC 722; *State of Haryana v. Shakuntla and Ors.* (2012) 4 SCALE 526 - relied on.

2. The trial court committed an error in recording the finding of fact that the thatched house of roof of the
 E maternal grandmother of the deceased had fallen and she as well as the deceased used to sleep in the house of the appellant/accused which was in very close vicinity. The trial court has not made any reference to the depositions of PW.2 and also of PW.1 in respect to this fact. DW.1 has
 F stated that on the day of occurrence, the deceased and her grandmother did not sleep in the house of the accused, cannot be taken into consideration so far as this issue is concerned, because he did not say that he was present on that day in the village. The defence also did not cross-examine PW. 1 and P.W. 2 on this issue. [Para
 G 17] [703-E-H]

3. The trial court ought not to have drawn adverse inference for not examining the grandmother of the
 H prosecution. It has come on record that she was an old, infirm and totally blind woman and it was for this reason

that the deceased was left for her assistance. Thus, the adverse inference drawn by the trial court on this count is unwarranted and uncalled for. [Para 17] [704-A-B]

4. The trial court held that PW.1 had been inimical to the accused/appellant and his family for the reason that appellant's father had been working in the agricultural field of the said witness and after joining the service, appellant's father had rendered financial help to other poor persons of the village and thus those poor persons were not available for work to the said witness. In this regard, the defence has examined DW.1 who had deposed that his family was also looking after the agricultural work of PW 1, but 8 years prior to the date of incident. He had also left the village and opened a beetle shop in the city after getting financial aid from appellant's father. Such an evidence is required to be examined in the light of attending circumstances and particularly taking into consideration the proximity of time. In case the appellant's father had left working in the field of the witness 14 years prior to the date of incident and the family of DW 1 has left 8 years prior to the said date, the time gap itself falsifies the testimony, for the reason that the time gap is a factor of paramount importance in this regard. More so, it is not the defence case that any other family or labour was available in the village to look after the agricultural work of the said witness. [Para 17] [704-B-G]

5. The recovery of part of the sheet and white clothes having blood and semen as per the FSL report has been dis-believed by the trial court in view of the fact that PW.5 and PW.10 did not support the prosecution case like other witnesses who did not support the last seen theory. The trial court failed to appreciate that both the said witnesses, had admitted their signature/thumb impression on the recovery. The factum of taking the material exhibits and preparing of the recovery memo

A with regard to the same and sending the cut out portions
to the Serologist who found the blood and semen on
them is not disputed. The serological report also revealed
that the vaginal swab which was taken by the doctor was
also human blood and semen stained. [Para 17] [704-H;
B 705-A-C]

C 6. The evidence of a prosecution witness cannot be
rejected in toto merely because the prosecution chose to
treat him as hostile and cross examined him. The
evidence of such witnesses cannot be treated as effaced
or washed off the record altogether, but the same can be
accepted to the extent that their version is found to be
dependable on a careful scrutiny thereof. [Para 18] [705-
D-E]

D *Bhagwan Singh v. The State of Haryana* AIR 1976 SC
202: 1976 (2) SCR 921; *Rabindra Kumar Dey v. State of*
Orissa AIR 1977 SC 170: 1977 (1) SCR 439; *Syad Akbar v.*
State of Karnataka AIR 1979 SC 1848: 1980 (1) SCR 95;
E *Khujji @ Surendra Tiwari v. State of Madhya Pradesh* AIR
1991 SC 1853: 1991 (3) SCR 1; *State of U.P. v. Ramesh*
Prasad Misra and Anr. AIR 1996 SC 2766: 1996 (4) Suppl.
SCR 631; *Balu Sonba Shinde v. State of Maharashtra* (2002)
7 SCC 543: 2002 (2) Suppl. SCR 135; *Gagan Kanojia and*
Anr. v. State of Punjab (2006) 13 SCC 516; *Radha Mohan*
F *Singh @ Lal Saheb and Ors. v. State of U.P.* AIR 2006 SC
951: 2006 (1) SCR 519; *Sarvesh Narain Shukla v. Daroga*
Singh and Ors. AIR 2008 SC 320: 2007 (11) SCR 300;
Subbu Singh v. State by Public Prosecutor (2009) 6 SCC
462: 2009 (7) SCR 383; *C. Muniappan and Ors. v. State of*
G *Tamil Nadu* AIR 2010 SC 3718: 2010 (10) SCR 262;
Himanshu @ Chintu v. State (NCT of Delhi) (2011) 2 SCC
36: 2011 (1) SCR 48 - relied on.

H 7. Undoubtedly, there may be some exaggeration in
the evidence of the prosecution witnesses, particularly,
that of PW.1, PW.7 and PW.8. However, it is the duty of

the court to unravel the truth under all circumstances. Even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. 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 witness cannot be branded as a liar. In case this maxim is applied in all the cases, 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 credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. [Paras 20 and 24] [706-C-D; 787-E-H; 708-A]

Balka Singh and Ors. v. State of Punjab AIR 1975 SC 1962: 1975 (0) Suppl. SCR 129; *Zwinglee Ariel v. State of Madhya Pradesh* AIR 1954 SC 15; *Sukhdev Yadav and Ors. v. State of Bihar* AIR 2001 SC 3678: 2001 (3) Suppl. SCR 91; *Appabhai and Anr. v. State of Gujarat* AIR 1988 SC 696; *Sucha Singh v. State of Punjab* AIR 2003 SC 3617: 2003 (2) Suppl. SCR 35 - relied on.

8. The benefit of doubt, particularly in every case may not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. In such a case, the paramount importance of the court is to ensure that miscarriage of justice is avoided. [Para 26] [708-F-H]

Shivaji Sahebrao Bobade and Anr. v. State of

- A *Maharashtra AIR 1973 SC 2622; 1974 (1) SCR 489; Bhagwan Singh and Ors. v. State of M.P. AIR 2002 SC 1621; Gangadhar Behera and Ors. v. State of Orissa AIR 2002 SC 3633; Sucha Singh v. State of Punjab AIR 2003 SC 3617: 2003 (2) Suppl. SCR 35; S. Ganesan v. Rama*
- B *Raghuraman and Ors. (2011) 2 SCC 83: 2011 (1) SCR 27 - relied on.*

Case Law Reference:

	2011 (6) SCR 1050	Relied on	Para 16
C	2011 (6) SCR 1017	Relied on	Para 16
	(2012) 4 SCC 722	Relied on	Para 16
	(2012) 4 SCALE 526	Relied on	Para 16
D	1976 (2) SCR 921	Relied on	Para 18
	1977 (1) SCR 439	Relied on	Para 18
	1980 (1) SCR 95	Relied on	Para 18
E	1991 (3) SCR 1	Relied on	Para 18
	1996 (4) Suppl. SCR 631	Relied on	Para 19
	2002 (2) Suppl. SCR 135	Relied on	Para 19
	(2006) 13 SCC 516	Relied on	Para 19
F	2006 (1) SCR 519	Relied on	Para 19
	2007 (11) SCR 300	Relied on	Para 19
	2009 (7) SCR 383	Relied on	Para 19
G	2010 (10) SCR 262	Relied on	Para 19
	2011 (1) SCR 48	Relied on	Para 19
	1975 (0) Suppl. SCR 129	Relied on	Para 21
H	AIR 1954 SC 15	Relied on	Para 21

2001 (3) Suppl. SCR 91	Relied on	Para 22	A
AIR 1988 SC 696	Relied on	Para 23	
2003 (2) Suppl. SCR 35	Relied on	Paras 24 and 25	
1974 (1) SCR 489	Relied on	Para 25	B
AIR 2002 SC 1621	Relied on	Para 25	
AIR 2002 SC 3633	Relied on	Para 25	
2011 (1) SCR 27	Relied on	Para 25	C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1340 of 2007.

From the Judgment and Order dated 23.03.2007 of the
High Court of Judicature at Allahabad in Government Appeal
No. 1246 of 1999.

Rajender Pd. Saxena for the Appellant.

Vikrant Yadav, Jyoti Sharma, Vinay Kumar Garg, Gunnam
Venkateswara Rao for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This criminal appeal has been
preferred against the judgment and order dated 23.3.2007
passed by the High Court of Allahabad in Government Appeal
No. 1246 of 1999 by which the High Court has reversed the
judgment of Additional District and Sessions Judge, Basti in
Sessions Trial No. 312 of 1996 dated 2.2.1999 acquitting the
appellant. Thus, the High Court has convicted the appellant for
the offence punishable under Sections 302 and 376 of Indian
Penal Code, 1860 (hereinafter called as 'IPC') and awarded
him the life imprisonment for both the offences. However, both
the sentences have been directed to run concurrently.

2. Facts and circumstances giving rise to this appeal are
that:

A A. One Smt. Batasi Devi (PW.2) lodged an FIR on 2.2.1996 in Haraiya Police Station alleging that her daughter Renu, aged 5-6 years, was found dead on her cot in Muradipur, the village of her maternal grandmother on 30.1.1996 at about 9.00 p.m. Initially, she had been told that her daughter died of paralysis and she was buried at the bank of Manorama river. B Later on she got information from Shitla Prasad Verma (PW.8), Jata Shankar Singh (PW.7) and other persons of the same village that her daughter had been raped and killed by Ramesh, appellant. She also made a request that the dead body of the C child be exhumed and sent for post-mortem.

B. On the order of the concerned Sub-Divisional Magistrate, the dead body of Renu was dug out from the grave and sent for post-mortem on 3.2.1996. The autopsy was conducted by Dr. Ajay Kumar Verma and Dr. S.S. Dwedi of D District Hospital. In their opinion, death was due to shock and haemorrhage as a result of ante-mortem vaginal injuries.

C. On the basis of the post-mortem report, Case Crime No. 22 of 1996 was registered against the appellant under E Sections 302 and 376 IPC. After having the investigation, the police filed the chargesheet against the appellant. During the trial prosecution examined 14 witnesses to prove its case including Kunwar Dhruv Narain Singh (PW.1), the scribe of the FIR, Batasi Devi (PW.2), mother of the deceased Renu, Jata F Shankar Singh (PW.7), Shitla Prasad Verma (PW.8) and after conclusion of the trial and considering the evidence on record, the trial court vide its judgment and order dated 2.2.1999 acquitted the appellant of both the aforesaid charges.

D. Being aggrieved, the State preferred Criminal Appeal G No. 1246 of 1999 which has been allowed by the High Court vide judgment and order dated 23.3.2007 and the appellant has been convicted and awarded the sentence of life imprisonment on both counts.

H Hence, this appeal.

3. Shri Rajender Parsad Saxena, learned counsel appearing for the appellant, has submitted that High Court has committed an error by reversing the well-reasoned judgment of acquittal by the trial court. There is no iota of evidence against the appellant on the basis of which the conviction can be sustained. The evidence relied upon by the High Court particularly that of Kunwar Dhruv Narain Singh (PW.1), Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) cannot stand judicial scrutiny as these witnesses had been motivated; improvement in the depositions of Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) had been to the extent that it is liable to be discarded as a whole. The other witnesses have turned hostile, therefore, there is nothing on record to show that the appellant was connected with the crime by any means. There is no evidence on record on the basis of which it can be established that Renu (deceased) used to sleep in the house of the appellant or the appellant had an opportunity to commit the offence. The findings recorded by the High Court are perverse not being based on evidence on record. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri Manoj Kumar Dwivedi, learned counsel appearing for the State has vehemently opposed the appeal contending that the judgment of the trial court has rightly been reversed by the High Court being contrary to the evidence on record. The High Court has recorded the findings of fact on correct appreciation of evidence. Thus, no interference is warranted. The appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the records.

6. Admittedly, Renu, aged 5-6 years of age, died of vaginal injuries. The post-mortem report disclosed the following ante-mortem injuries:

- (1) Contusion 4 cm x 2 cm over the right side face below the right ear lobules on upper part of the neck.

- A (2) Contusion 5 cm x 3 cm over the left side face in front and above tragus of the left ear.
- (3) Abraded contusion 4 cm X 3 cm over the back of the right shoulder joint and scapular region.
- B (4) Contusion 3 cm x 2 cm over the upper part of the left scapula and back portion of the shoulder tip.
- (5) Abraded contusion 4 cm x 1 cm on each side of office and labia majora.
- C (6) Abraded with tearing of labia majora of both side 2 cm x 1 cm.
- (7) Hymen absent, lower part of vagina badly lacerated and pubic lower part upper abdomen, and vaginal tear up to upper part of Guel orifice.
- D

The internal examination of the supra pubic region on opening the abdomen revealed that blood and gases were present and the lower part of the uterus had a bloodstained tear 1 cm x 1 cm. The cause of death was shock and haemorrhage. The death could have taken place on 30.1.1996 between 9.00 or 9.30 pm. If a hard object like a human penis was inserted in the vagina it could have caused the injuries Nos. 6 and 7."

- E
- F 7. The prosecution has examined Kunwar Dhruv Narain Singh (PW.1), the scribe of the FIR lodged by Batasi Devi (PW.2), mother of the deceased Renu. He deposed that Renu was living with her maternal grandmother Smt. Phulpatta Devi who was totally blind and a very poor woman. Her thatched house had fallen down so she used to sleep in the house of Ramesh, appellant which was adjacent to her house. Renu was found dead on 30.1.1996 in the night on her cot in the house of Ramesh, appellant. Ramesh, appellant made the extra-judicial confession before him in presence of Jata Shankar
- G Singh (PW.7) and Shitla Prasad Verma (PW.8). The father of
- H

Ramesh used to work in his house, however, at the relevant time, he was working in Sidharth Nagar. Batasi Devi (PW.2) had come to him and asked him to write the FIR so that she can lodge the same with the police station. However, he denied the suggestion that he had a grudge against Ramesh, appellant as it was because of the appellant and his father that other persons of the village were not working at his house.

8. Batasi Devi (PW.2), mother of Renu, deceased, deposed that her mother was very poor and her house was having a thatched roof which had fallen down so she used to sleep in the house of Ramesh, appellant which is in very close proximity of her house. In the fateful night, Renu slept with her maternal grandmother in the house of Ramesh, appellant. She had been informed that her daughter died of paralysis. Renu had been buried at the bank of Manorama river. However, on the next day, the rumour broke out that Ramesh, appellant, had committed rape and she died of the same. Then, she lodged the FIR.

9. Jata Shankar Singh (PW.7) deposed that he was originally of another village but was living in the house of Kunwar Dhruv Narain Singh (PW.1), in the same village for 15-16 years. He told that on 30.1.1996 when he was returning alongwith Shitla Prasad Verma (PW.8), to his house after marketing at about 9.00 p.m., he heard some whispering near the house of appellant Ramesh. He was having a torch so he focussed it in the same direction and found that Ramesh, appellant was committing rape on a little girl of 6 years beneath a tree situated outside his house. His associate Shitla Prasad Verma (PW.8) raised a cry as a result of which some persons from the village gathered but appellant Ramesh ran out. The girl had died of rape.

10. Shitla Prasad Verma (PW.8). has supported the prosecution case narrating the similar facts as stated by Jata Shankar Singh (PW.7).

A 11. Doctor Ajay Kumar Verma (PW.11) who has conducted the autopsy on the body of Renu, deceased, supported the prosecution case to the extent that deceased was having the ante-mortem injuries as mentioned hereinabove on her body.

B 12. Sharafat Hussain, S.I., (PW.13), the Investigating Officer, deposed that he had recovered a part of Khatari (thin mattress) and white sheet with which Renu was covered. He tried to search the appellant/accused, however, the appellant
C could be arrested at 3.35 a.m. in the intervening night of 3/4.2.1996 from the junction of three roads at Mahulghat when he was waiting for some transport to leave the area.

D 13. The prosecution also examined Sumaiya Devi (PW.3), Urmila Devi (PW.4), Hira Devi (PW.6), Sona Devi (PW.9). However, they did not support the prosecution case and had been declared hostile. According to the aforesaid witnesses, they reached the place of occurrence after having the information of Renu's death and they found her dead body lying at the house of her maternal grandmother Smt. Phulpatta Devi.

E 14. The learned trial court after appreciating the evidence on record acquitted the appellant on the following grounds:

F I) The prosecution could not produce any evidence to prove that in the night of the incidence, Renu, deceased, had been sleeping in the house of the appellant Ramesh or her dead body had been lying on the cot in his house.

G II) Smt. Phulpatta, maternal grandmother of Renu, deceased, was neither examined, nor any satisfactory explanation had been given for not examining her.

H III) The deposition of Kunwar Dhruv Narain Singh (PW.1) was not worthy of reliance as he has deposed that the appellant had made extra-judicial

confession before him for committing the aforesaid crime in the presence of Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8). Such statement had not been made by either of the said witnesses.

A

IV) Kunwar Dhruv Narain Singh (PW.1) was a Jamindar and it was because of the appellants father that other poor persons were not rendering service to him and Kunwar Dhruv Narain Singh (PW.1) had been inimical to the appellant.

B

V) The deposition of Sumaiya Devi (PW.3), Urmila Devi (PW.4), Hira Devi (PW.6) and Sona Devi (PW.9) was not in support of the prosecution case and all the aforesaid four witnesses had been cross-examined but they could not be held to be hostile witnesses.

C

D

VI) Sharafat Hussain, S.I., (PW.13), the Investigating Officer, had recovered a part of the bed sheet and it had been sent for CFSL report and to the said recovery Ram Prasad alias Parsadi (PW.5) and Bhikari (PW.10) did not support the recovery and, therefore, recovery of the aforesaid incriminating material is to be disbelieved.

E

VII) The evidence of Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) could not be relied upon as they had made knowingly improvements in the case of having last seen Renu, deceased, with the appellant rather distorted the whole case of the prosecution totally as both of them had deposed that they had seen the appellant committing rape on Renu, deceased.

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15. In the appeal, the High Court has reversed the findings recorded by the trial court on the following grounds:

H

- A (I) There was sufficient evidence on record to show that Smt. Phulpatta Devi, maternal grandmother of Renu, deceased, was totally blind and a very poor woman and the roof of her thatched house had fallen and she used to sleep in the house of the appellant Ramesh in her neighbourhood with Renu, deceased.
- B
- C (II) It was no one's case that Kunwar Dhruv Narain Singh (PW.1) was inimical to the appellant for any reason whatsoever as none of the witnesses had deposed that after the appellant's father joined the service, he had supported the other villagers financially and, therefore, they stopped working at the house of Kunwar Dhruv Narain Singh (PW.1).
- D (III) The witnesses Sumaiya Devi (PW.3), Urmila Devi (PW.4), Hira Devi (PW.6) and Sona Devi (PW.9), once had been cross-examined by the prosecution as they had not supported the case of the prosecution, the trial court was wrong that they were not hostile witnesses. Similarly remained the position of the witnesses of the recovery of sheet cover and bichona i.e. of Ram Prasad alias Parsadi (PW.5) and Bhikari (PW.10).
- E
- F (IV) The evidence of Kunwar Dhruv Narain Singh (PW.1), Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8) could be relied upon at least to the extent that deceased was last seen in the company of the appellant.
- G (V) The trial court had given undue importance to the minor contradictions in the depositions of the witnesses. In fact, there was evidence that after committing the crime outside, the appellant brought the corpus of the child and placed it on the cot.
- H

16. The law of interfering with the judgment of acquittal is well-settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: *State of Rajasthan v. Talevar & Anr.*, AIR 2011 SC 2271; *State of U.P. v. Mohd. Iqram & Anr.*, AIR 2011 SC 2296; *Govindaraju @ Govinda v. State by Srirampuram Police Station & Anr.*, (2012) 4 SCC 722; and *State of Haryana v. Shakuntla & Ors.*, (2012) 4 SCALE 526).

17. In the aforesaid fact-situation, we have to weigh as to whether the High Court is justified in reversing the judgment and order of acquittal recorded by the trial court.

We have been taken through the entire evidence on record and after re-appreciating the same we can unhesitatingly record that:

(i) Undoubtedly, the trial court has not made any reference to the depositions of Batasi Devi (PW.2) and also of Kunwar Dhruv Narain Singh (PW.1) in respect to the fact that the thatched house of roof of Smt. Phulpatta Devi, maternal grandmother of Renu, deceased had fallen and she as well as Renu used to sleep in the house of Ramesh, appellant which was in very close vicinity of Smt. Phulpatta's house. Ganga Ram (DW.1) has stated that on the day of occurrence, Smt. Phulpatta Devi and Renu did not sleep in the house of Ramesh, however, as he was living permanently in the city and did not say that he was present on that day in the village, his evidence cannot be taken into consideration so far as this issue is concerned. The defence did not cross-examine Kunwar Dhruv Narain Singh (PW.1) and Batasi Devi (PW.2) on this issue. Thus, the trial court committed an error recording such finding of fact.

A (ii) It has come on record that Smt. Phulpatta Devi was an
old, infirm and totally blind woman and it was for this reason
that Renu, deceased was left for her assistance. The trial court
ought not to have drawn adverse inference for not examining
Smt. Phulpatta Devi by the prosecution. Thus, the adverse
B inference drawn by the trial court on this count is unwarranted
and uncalled for.

(iii) The trial court has held that Kunwar Dhruv Narain Singh
(PW.1) had been inimical to Ramesh and his family for the
reason that appellant's father had been working in the
C agricultural field at the said witness and after joining the service
appellant's father had rendered financial help to other poor
persons of the village and thus those poor persons were not
available for work to the said witness. In this regard, the defence
has examined Ganga Ram (DW.1) who had deposed that the
D appellant's father had been looking after the agricultural work
of that witness, however, joined the service in court 14 years
prior to the date of incident and Ganga Ram's family was also
looking after the agricultural work of the said witness but 8
years prior to the date of incident. He had also left the village
E and opened a beetle shop in the city after getting financial aid
from appellant's father.

Such an evidence is required to be examined in the light
of attending circumstances and particularly taking into
F consideration the proximity of time. Time is the greatest healer.
In case the appellant's father had left working in the field of the
witness 14 years prior to the date of incident and Ganga Ram's
(DW.1) family has left 8 years prior to the said date, the time
gap itself falsifies the testimony for the reason that the time gap
G is a factor of paramount importance in this regard. More so, it
is not the defence case that any other family or labour was
available in the village to look after the agricultural work of the
said witness.

(iv) The recovery of part of the sheet and white clothes
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having blood and semen as per the FSL report has been dis-
believed by the trial court in view of the fact that Ram Prasad
alias Parsadi (PW.5) and Bhikari (PW.10) did not support the
prosecution case like other witnesses who did not support the
last seen theory. The trial court failed to appreciate that both
the said witnesses, Ram Prasad alias Parsadi (PW.5) and
Bhikari (PW.10) had admitted their signature/thumb impression
on the recovery

The factum of taking the material exhibits and preparing
of the recovery memo with regard to the same and sending the
cut out portions to the Serologist who found the blood and
semen on them vide report dated 21.3.1996 (Ext. Ka 21) is not
disputed. The serological report also revealed that the vaginal
swab which was taken by the doctor was also human blood and
semen stained.

18. It is a settled legal proposition that the evidence of a
prosecution witness cannot be rejected in toto merely because
the prosecution chose to treat him as hostile and cross examine
him. The evidence of such witnesses cannot be treated as
effaced or washed off the record altogether but the same can
be accepted to the extent that their version is found to be
dependable on a careful scrutiny thereof. (Vide: *Bhagwan Singh
v. The State of Haryana*, AIR 1976 SC 202; *Rabindra Kumar
Dey v. State of Orissa*, AIR 1977 SC 170; *Syad Akbar v. State
of Karnataka*, AIR 1979 SC 1848; and *Khujji @ Surendra
Tiwari v. State of Madhya Pradesh*, AIR 1991 SC 1853).

19. In *State of U.P. v. Ramesh Prasad Misra & Anr.*, AIR
1996 SC 2766, this Court held that evidence of a hostile witness
would not be totally rejected if spoken in favour of the
prosecution or the accused but required to be subjected to
close scrutiny and that portion of the evidence which is
consistent with the case of the prosecution or defence can be
relied upon. A similar view has been reiterated by this Court in
Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC

A 543; *Gagan Kanojia & Anr. v. State of Punjab*, (2006) 13 SCC 516; *Radha Mohan Singh @ Lal Saheb & Ors. v. State of U.P.*, AIR 2006 SC 951; *Sarvesh Narain Shukla v. Daroga Singh & Ors.*, AIR 2008 SC 320; and *Subbu Singh v. State by Public Prosecutor*, (2009) 6 SCC 462.

B Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. (See also: C. *Muniappan & Ors. v. State of Tamil Nadu*, AIR 2010 SC 3718; and *Himanshu @ Chintu v. State (NCT of Delhi)*, (2011) 2 SCC 36)

D 20. Undoubtedly, there may be some exaggeration in the evidence of the prosecution witnesses, particularly, that of Kunwar Dhruv Narain Singh (PW.1), Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8). However, it is the duty of the court to unravel the truth under all circumstances.

E 21. In *Balka Singh & Ors. v. State of Punjab*, AIR 1975 SC 1962, this Court considered a similar issue, placing reliance upon its earlier judgment in *Zwinglee Ariel v. State of Madhya Pradesh*, AIR 1954 SC 15 and held as under:

F "The Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the true is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation, the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

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22. In *Sukhdev Yadav & Ors. v. State of Bihar*, AIR 2001 SC 3678, this Court held as under:

"It is indeed necessary however to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment, sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness-box details out an exaggerated account."

23. A similar view has been re-iterated in *Appabhai & Anr. v. State of Gujarat*, AIR 1988 SC 696, wherein this Court has cautioned the courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness for the reason that witnesses now-a-days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. However, the courts should not dis-believe the evidence of such witnesses altogether if they are otherwise trustworthy.

24. In *Sucha Singh v. State of Punjab*, AIR 2003 SC 3617, this Court had taken note of its various earlier judgments and held that even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. 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 witness cannot be branded as a liar. In case this maxim is applied in all the cases 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

A the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

B 25. In *Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra*, AIR 1973 SC 2622, this Court held :

C "...Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent ..." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant..."

E (See also: *Bhagwan Singh & Ors. v. State of M.P.*, AIR 2002 SC 1621; *Gangadhar Behera & Ors. v. State of Orissa*, AIR 2002 SC 3633; *Sucha Singh (supra)*; and *S. Ganesan v. Rama Raghuraman & Ors.*, (2011) 2 SCC 83).

F 26. Therefore, in such a case the paramount importance of the court is to ensure that miscarriage of justice is avoided. The benefit of doubt particularly in every case may not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. A reasonable doubt is not an imaginary trivial or merely possible doubt, but a fair doubt based upon reason and common sense.

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27. In view of the above, we are of the considered opinion that the acquittal in the instant case by the trial court was totally illegal, unwarranted and based on mis-appreciation of evidence for the reason that the court had given undue weightage to unimportant discrepancies and inconsistencies which resulted in miscarriage of justice. Thus, the High Court was fully justified in reversing the order of acquittal.

In view of the above, the appeal lacks merit and is accordingly dismissed.

K.K.T.

Appeal dismissed.