

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1851 OF 2010

BIJENDER SINGH

..

APPELLANT

VERSUS

STATE OF HARYANA

..

RESPONDENT

WITH

CRIMINAL APPEAL NO.1852/2010

WITH

CRIMINAL APPEAL NO.1876/2010

AND

WITH CRIMINAL APPEAL NO.1853/2010

O R D E R

1. These appeals are directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 169-DB of 2005, wherein and whereunder the High Court has allowed the appeals filed by the six accused persons namely, Kishori Lal, Gulbir, Chander Pal, Dharam Pal, Desh Raj and Sher Singh and dismissed the appeals filed by the other accused persons and thereby confirmed the judgment and order of the Trial Court *qua* the other five accused persons.

2. Tragic case of a double murder of Ram Kishan and Rattan Singh ("the deceased" for short) on 04.12.1996. The dispute between the accused persons and the injured and deceased persons pertained to a piece of land in village Gurwari. The Prosecution story, as

noticed by the High Court, is as under:

"That on 04.12.1996, Complainant, Lachhman, resident of Gurwar, along with his uncle Rattan Singh and Ram Kishan alias Rama were irrigating their fields situated near Yamuna river. At about 12.30 p.m. Kishore Lal son of Nathi and Desh Raj son of Lakhi came there on their tractors. Charan, Dharam Pal, Chander Pal, Gulbir alias Gulli, Amar Singh alias Amri, Sher Singh, Bijender, Manohar Lal and Mahipal were on the tractors. Manohar Lal was armed with a licenced gun, Charan was having a double barrel gun, Mahipal was armed with country made pistol. Amar Singh alias Amri, Dharam Pal, Kishori Lal, Sher Singh, Bijender, Desh Raj and Gulbir were armed with ballams, Chander Pal was armed with a lathi. Accused started ploughing the land with their tractor. Objection was raised by the complainant party and requested the accused party not to plough the land because the land was in their possession and wheat crop was sown. Complainant came forward to stop the tractor then Charan fired a shot hitting the complainant. Charan again fired a shot hitting the complainant. On receipt of fire arm injuries, complainant fell down then Kishore Lal gave ballam blow on the back of his right palm. Amar Singh alias Amri gave lathi blow on the back of his right palm. Amar Singh alias Amri gave lathi blow hitting his left shoulder. Chander Pal gave lathi blow on his waist. After that Ram Kishan and Rattan Singh tried to intervene and rescue the complainant then Amar Singh alias Amri gave ballam blow to Ram Kishan which hit on his thigh near his left leg. Dharam Pal gave ballam blow to Ram Kishan on the left ankle of Ram Kishan. Ram Kishan on receipt of injuries fell down. Then Sher Singh and Bijender gave blows with their respective weapons hitting on the back of Rattan Singh. Mahipal fired a shot from his country made pistol hitting on the head of Rattan Singh. Bijender gave ballam blow hitting on the right side of the head near armpit of Rattan Singh, Raula was raised. Chander Pal and Hukam came to the spot and had witnessed the occurrence. They had rescued the complainant from the clutches of the accused-party. Thereafter, accused had fled away from the spot with their respective weapons on the tractors. Injured was being shifted to Palwal Hospital but on the way, Ram Kishan alias Rama had succumbed to his injuries. First aid was given to the injured in the Palwal Hospital. Rattan Singh was referred to Delhi Hospital."

3. It transpires from the record that the accused persons had reached the said land in their tractors armed with weapons including

guns. They witnessed the deceased persons and others cultivating the land and therefore forcibly entered the lands and upon resistance being offered, they assaulted the deceased persons and others with lethal weapons carried by them. As a result of the assault, few were injured and two succumbed to death; one while being rushed to the hospital and the other at the hospital even after being provided medical aid.

4. The FIR was registered based on the statement of Lachhman Singh (PW-1). Post-Mortem of the dead bodies of Ram Kishan and Rattan Singh was conducted by Dr. Dhara Singh (PW-14) and Dr. Alexander F. Khakha (PW-15), respectively. Several recoveries including the weapons were made at the instance of accused persons. On completion of investigation, the case was committed for trial.

5. The prosecution has examined as many as 20 witnesses, while the defense has only examined DW-1 - the Patwari of the village to speak about the ownership of the land where the incident occurred. PW-1 is the complainant and also the injured witness. Chander Pal - PW-3 is an eye-witness to the incident. Dr. Lekhi - PW-7, who had medically examined deceased Rattan Singh and accused person - Amar Singh, has testified in respect of the injuries on the bodies of the two persons. PW-14 and PW-15 were also examined in respect of injuries sustained by the deceased persons.

6. The Trial Court, keeping in view the evidence of PW-1 and PW-3 and the injuries sustained by the deceased persons, has rejected the defense version with respect to right of private

defense in its entirety and has reached the conclusion that all the eleven accused persons had participated in the brutal assault and therefore convicted them for the offence punishable under Sections 302 and 307 read with Sections 148 & 149 of the IPC. The accused persons were sentenced to undergo imprisonment for life under Section 302 of the IPC and to pay a fine of Rs.5,000/- each and in default, to undergo further rigorous imprisonment for one year and under Section 307 IPC, for seven years rigorous imprisonment with a fine of Rs.2,000/- each and in default, to undergo further rigorous imprisonment for six months each. The aforesaid sentences were directed to run concurrently. It is this order passed by the Trial Court which was called in question by the accused persons before the High Court.

7. The High Court, after re-appreciating the entire evidence on record and carefully analyzing the submissions made by the learned counsel for the parties, has come to the conclusion that the oral evidence in respect of injuries caused by Desh Raj, Kishore Lal, Dharam Pal, Chander Pal, Gulbir alias Gulli and Sher Singh is not corroborated by the medical evidence on record. The injuries alleged to have been caused by them have neither been noticed by the doctors while examining the accused persons nor have they surfaced in the post-mortem reports. Therefore, the High Court has extended the benefit of doubt to the aforesaid six persons and has reached the conclusion that the story of the prosecution, insofar as they are concerned, cannot be believed and the prosecution witnesses might have exaggerated their statements to include the aforesaid persons

along with the actual perpetrators of the offence. Accordingly, the Court has acquitted the six accused persons and confirmed conviction of the remaining five accused persons. It is these five accused persons namely, Amar Singh, Charan Singh, Bajinder, Manohar Lal and Mahipal, who are before us in these appeals.

8. We have heard Shri Vivek Sood, Shri M.Z.Chaudhary, learned counsel appearing for the accused persons and Shri Roopansh Purohit, Shri Ramesh Kumar, learned counsel for the respondent-State in these appeals. We have also carefully perused the judgment and order of the Courts below and the evidence of PW-1, PW-3, PW-7, PW-14 and PW-15 alongwith the Post-Mortem Reports.

9. Shri Sood and Shri Chaudhary would submit that since the High Court, on the same set of evidence, has acquitted the six out of the eleven accused persons, the same benefit of doubt should be extended to the remaining accused persons as well. They would place reliance on the observations of this Court in *Balaka Singh & Ors. v. The State of Punjab*, (1975) 4 SCC 511, wherein while noticing the principles laid down in *Zwinglee Ariel v. State of M.P.*, AIR 1954 SC 15, this Court has highlighted the caution that must be exercised while convicting or acquitting the accused persons differentially on the basis of same piece of evidence. Shri Sood would further rely on the evidence of PW-1, wherein he has stated that two of the accused persons were driving the tractor on the date of the incident has not been believed by the High Court. He would contend that since the genesis of the prosecution story itself was not believed by the High Court, the evidence of PW-1 raises element of doubt defeating

immense reliance placed on it while convicting the five accused persons.

10. In essence, the learned Counsel would seek application of principle of *falsus in uno, falsus in omnibus*, in other words false in one thing, false in everything. This Court has consistently observed in number of cases that even when the major portion of evidence is found to be deficient, if the residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the 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 the guilt of other accused persons. Falsity of particular material witness or material particular in the evidence would not render it non-useful in its entirety.

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11. This Court in *Nisar Ali v. State of U.P.*, AIR 1957 SC 366, has observed that the maxim *falsus in uno, falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. This Court explained that this maxim has neither received general acceptance nor has it been elevated to attain the status of rule of law but is merely a rule of caution. All what it implies is that in such cases testimony may be disregarded but not discarded. The maxim merely involves the question of importance which the court may apply to the evidence in a given set of circumstances, but it is not what

may be called 'a mandatory rule of evidence'.

12. In *Gurcharan Singh & Anr. v. State of Punjab*, AIR 1956 SC 460, this Court has observed that 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.

13. Before we delve into the merits of the submissions made by the learned Counsel for the parties, we intend to place on record the decision of this Court in *Balaka Singh* case (supra) where this Court has observed:

"8...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 truth 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...."

14. This Court in *Ugar Ahir & Ors. v. State of Bihar*, AIR 1965 SC 277 and *Sohrab S/O Beli Nayata & Anr. v. State of M.P.*, (1972) 3 SCC 751 has cautioned that if upon operation of the aforesaid doctrine, the whole body of the testimony were to be rejected, because the witness was evidently testifying falsehood in some aspect, it is to be feared that administration of criminal justice

would come to a dead halt. The witnesses, as is observed generally, do sprinkle a few embellishments and strokes of embroidery in their stories. Therefore, appraisal in each case as to what extent the evidence is worthy of credence and acceptance has to be done and disbelieve in one respect may not lead to the necessary assumption in law that it must be disregarded in all respects as well. The evidence, therefore, has to be sifted with utmost care. This Court has further observed that it 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: *Krishna Mochi & Ors. v. State of Bihar*, (2002) 6 SCC 81; *Sucha Singh & Anr. v. State of Punjab*, (2003) 7 SCC 643; *Syed Ibrahim v. State of A.P.*, (2006) 10 SCC 601; *Jakki @ Selvaraj & Anr. v. State represented by the IP, Coimbatore*, (2007) 9 SCC 589 and *Dalbir Singh v. State of Haryana*, (2008) 11 SCC 425.)

15. In our considered view, the aforesaid submissions of the learned Counsel do sound striking but on deeper consideration is devoid of any merit whatsoever. To say so, we have carefully perused the evidence of PW-1 and PW-3, including their examination-in-chief and the cross-examination, alongwith the evidence of doctors. Both the eye-witnesses have spoken in one voice that it is the accused persons, namely, Amar Singh, Charan, Bijender Singh, Manohar Lal and Mahipal who were present at the field on the fateful day and had assaulted the deceased persons and the injured eye-witnesses. The evidence of PW-1 stands unimpeached in his cross examination and the prosecution story insofar as the aforesaid five accused persons

stands unaffected. However, the said evidence of eye-witnesses when read in consonance with the medical evidence does raise a reasonable doubt about the presence of the other six accused persons. In our considered view, even if we separate the chaff from the grain, it is difficult to hold that the said five accused persons had not participated in the incident. In view of the above, we agree with the reasoning and the conclusion reached by the High Court while convicting the aforesaid accused persons.

16. Insofar as the discrepancy pointed out by the learned counsel to the initial version of the PW-1 insofar as these accused persons entering into the agricultural field in their tractors is concerned, upon careful perusal of the testimony of PW-1, we are in agreement with the observations of the High Court. However, it assumes significance that the testimony of PW-1 in respect of the manner in which the incident has unfolded and the offence has been committed, including the individual role attributed to the five accused persons, has been believed by the High Court. The factum of recovery of weapons from the said accused persons and the injuries caused by them being corroborated by the medical evidence, leaves no room for doubt that the said accused persons were not only present but had also actively participated in the commission of the offence. Therefore, we are of the considered opinion that the High Court was justified in relying upon the evidence of PW-1 to reach the conclusion of guilt of the five accused persons.

17. Lastly, the learned counsel would submit that since the

genesis of the incident has not been believed by the High Court, it was not justified in convicting the five accused persons, and since the accused persons were not aggressors of the assault and in the scuffle might have caused injuries in exercise of their right of private defense, the conviction and sentence awarded by the Trial Court and confirmed by the High Court requires to be modified from Section 302 to Section 304 Part II of the IPC. In our considered view, this submission of the learned counsel has no merit whatsoever, since the trial court and the High Court, with the available evidence on record, has rejected the plea of self defense while concluding it is the accused persons who were aggressors on the date of the incident and had caused injuries to the opposite party which has resulted in the death of two persons.

18. In view of the above discussion, we are of the considered opinion that both the Courts below have not committed any error, insofar as convicting the appellants. Accordingly, the appeals are dismissed.

19. If any of the appellants are released on bail during the pendency of these appeals, their bail bonds are cancelled and they are directed to surrender forthwith to undergo their respective sentences.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(DIPAK MISRA)

NEW DELHI;
FEBRUARY 21, 2013.

SUPREME COURT OF INDIA



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