

A AMRIK SINGH, SATNAM SINGH AND ANR.

v.

THE STATE OF RAJASTHAN

DECEMBER 17, 1993

B [DR. A.S. ANAND AND N.P. SINGH, JJ.]

Indian Penal Code 1860—Section 302—Trial—Appreciation of evidence—Evidence has to be weighed and not counted—Testimony of the sole eye-witness not suffering from any infirmity itself can form the base for conviction—Where other evidence is convincing and reliable, absconding of accused assumes some importance—Falsus in uno falsus omnibus, has never been accepted either as a rule of law or evidence. Re-opening now, of an acquittal recorded in 1984 in respect of an occurrence in 1976—Held not proper.

D *Appeal against acquittal—Principles to be followed—Held : That High Court should take into consideration and be alive of the factors which influenced the Trial Court to record an order of acquittal.*

E *Circumstantial evidence—Surrender of absconding accused only after the verdict of acquittal by the Trial Court in respect of the other co-accused—Held : A circumstance against the accused.*

F *While returning from the Mela ground in the evening deceased S and deceased L along with the injured witness T and B were attacked in the station wagon of S by the accused by gunshots. The injured witness T managed to reach the Doctor's dispensary and informed him of the attack. The Doctor seeing his serious condition sent him to the Government dispensary. Another witness N who was present at the dispensary of the Doctor, informed the Police Station about the incident over telephone. Consequently the Police Officer proceeded to the spot and found the bodies of S & L.*

G *In the Government Dispensary the Doctor finding the condition of T to be serious, transferred him to the hospital where on seeing his condition, the Magistrate was requested to record his dying declaration which was accordingly recorded. After prolonged treatment in the hospital, T managed to survive and was the sole eye-witness at the trial.*

H *There were separate trials of accused A as well as the other six*

accused as A had surrendered only after the trial Court verdict in the case of the other co-accused and in so far as A was concerned, both the Sessions Court and the High Court convicted him under Section 302 read with Section 149 IPC to life imprisonment.

In the other trial arising from the same incident six co-accused were tried and acquitted by the Sessions Judge and in Appeal while acquittal of four accused were upheld by the High Court the acquittal of S & M were set aside and they were convicted and sentenced for offences under Sections 302 and 307 read with Section 34 IPC. Hence this appeals.

Dismissing the appeals, this Court

HELD : 1. The evidence of the sole eye-witness T could be relied upon as he was injured during the occurrence and had identified the accused during the attack by the accused. [1001-C-D]

2. In the normal course of human conduct T would not leave out the real culprits and falsely implicate innocent persons. He is a truthful witness and the statement given by him was registered as F.I.R. and non-disclosure of all the names of the assailants did not detract from the reliability of the FIR. The testimony of the sole eye-witness T suffer from no infirmity and could itself form the basis for conviction especially when it received corroboration from the medical and other evidence. [1001-F-H, 1002-A-D]

3. Absconding of A though not of conclusive circumstantial value, could be a circumstance which could not be ignored and if the other evidence was convincing and reliable the evidence relating to absconding assumed importance. The surrendering of A only after the Trial Court's acquittal of the other co-accused was a circumstance rightly relied upon by the Trial Court and High Court in considering the guilt of A. [1002-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 859 and 232 of 1985.

From the Judgment and Order dated 27.4.83 and 7.12.84 of the Rajasthan High Court in D.B. CrI. A. No. 487/80 & D.B. CrI. A. No. 73 of 1979.

Sushil Kumar, U.R. Lalit, S.K. Jain, Kailash Mutha Jain and Sudhan-shu Atreya for the Appellants.

R. Sasiprabhu and Mahabir Singh for the Respondent.

A The Judgment of the Court was delivered by

DR. ANAND, J. These two appeals arise out of an occurrence which took place on october 31. 1976, resulting in the deaths of Satveer and Lal Chand and injuries to Trilok Kumar and Bal Chand and are being disposed of by this common judgment.

B Satnam Singh, Mohar Singh, Pritam Singh, Atrik Singh, Jagdish, Harbans, Amrik Singh and Chetan were arraved as accused persons in respect of that occurrence. Pritam Singh, Harbans, Atrik Singh and Jagdish were committed to stand their trial by an order of the Judicial Magistrate dated 25.1.77, while Mohar Singh and Satnam Singh were committed to stand their trial by a separate order. However, both the cases were consolidated vide order dated 19.8.77. Since, Amrik Singh and Chetan were absconding, they were not tried alongwith the other six accused persons. Subsequently Amrik Singh was also apprehended and was committed to stand his trial before the learned Session Judge, Jhalawar, in Sessions Case D No. 63/91 Chetan accused is still absconding.

E In the first consolidated trial, the trial court accepted the evidence of *alibi* of Pritam Singh, Atrik Singh, Jagdish and Harbans and acquitted them. Satnam Singh and Mohar Singh were also acquitted on being granted the benefit of doubt. Thus all the six accused in the consolidated trial were acquitted by the trial court. The State of Rajasthan filed criminal appeal against their acquittal. The High Court vide judgment dated 7.12.84 dismissed the appeal filed by the State as against Pritam Singh, Atrik Singh Jagdish and Harbans but set aside the order of acquittal made against Satnam Singh and Mohar Singh. They were both found guilty of causing F murder of Satveer and Lal Chand and for causing injuries to Trilok Kumar and Bal Chand. They were convicted for an offence under Section 302/34 I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs. 1,000 and in default of payment of fine to undergo rigorous imprisonment for one year each. They were also convicted for an offence under Section G 307/34 I.P.C., and sentenced to seven years' rigorous imprisonment and to pay a fine a Rs. 1,000 and in default of payment of fine to undergo rigorous imprisonment for one year. The substantive sentences were directed to run concurrently. They have filed criminal appeal No. 232/85, by special leave to question their conviction and sentence.

H In Sessions Case No. 63/79 the learned Sessions Judge, Jhalawar,

convicted Amrik Singh for an offence under Section 302/149 I.P.C. and sentenced him to imprisonment for life and to pay a fine of Rs. 1,000 and in default of payment of fine to undergo rigorous imprisonment for one year. He was also convicted for an offence under Section 307/149 I.P.C. and sentenced to seven years rigorous imprisonment and to pay fine of Rs. 1,000 and in default of payment of fine to undergo rigorous imprisonment for one year. Conviction was also recorded against him for an offence under Section 148 I.P.C. and he was sentenced to two years' rigorous imprisonment. The appeal filed by Amrik Singh against his conviction and sentences in the High Court was dismissed by the Division Bench vide judgment dated April 27, 1983 and his conviction and sentences were upheld. He has filed criminal appeal No. 859/85 challenging his conviction and sentence.

The State has not filed any appeal against the acquittal of Pritam Singh, Atrik Singh, Jagdish and Harbans. Thought the incident in both the appeals is the same, we shall first notice the prosecution case and the arguments in the Appeal filed by Amrik Singh (Crl. A. No. 859/85)

On October 31, 1976 Satveer (deceased) also known as Bhai Sahab had gone to Mela ground at Bhawani Mandi to play hockey along with Trilok Kumar (PW-2). Bal Chand (PW 3) and Lal Chand (deceased). At about 6.15 P.M. all the four of them were returning in the station-wagon bearing registration No. RJO 1057 belonging to Satveer (deceased). Trilok Kumar (PW-2) was driving the station-wagon while Satveer was sitting by his side on the front seat. Bal Chand and Lal Chand were sitting in the back seats. Hardly had the station-wagon covered a distance of about one furlong from the play ground and reached near the sawing machine of Pritam Singh, all the eight accused named in the earlier part of this judgment emerged and started firing at them indiscriminately. By the first shot the left tyre of the rear side of the station-wagon burst bringing the vehicle to a halt. The accused persons are alleged to have there upon surrounded the vehicle and started firing. Trilok Kumar managed to get down from the station-wagon and to save his life made an attempt to run away but was shot at in his back and hip while still near the bonnet of the station-wagon. Trilok Kumar rushed to the nearby dispensary of Dr. Shanti Lal (PW-1) in that injured condition and told him that he and Satveer Bhai had been shot at. Seeing his condition. Dr. Shanti Lal instructed his compounder Babu Khan (PW-4) to take Trilok Kumar to the Government

A dispensary and accordingly Babu Khan took Trilok Kumar injured on his motor-cycle to the Government dispensary Bhiwani Mandi where he was examined by Dr. Jagdish Kumar Arora (PW-20). At the time when Trilok Kumar had reached the dispensary of Dr. Shanti Lal (PW-1). Naval Kishore (PW-5) was also present there and he informed the police station Bhawani Mandi on telephone at about 6.20 P.M. that somebody had fired on Satveer. On this telephonic information, Shri Ponakali (PW-16) in-charge of the police station along with A.S.I. Mohan Singh (PW-15) rushed to the shot and found Satveer and Lal Chand lying unconscious inside the station-wagon. They took charge of the dead bodies. Dr. Arora found the condition of Trilok Kumar to be serious and therefore recorded his dying declaration (Ex.P1) at 6.50 P.M. In the meantime, the S.H.O. brought the dead bodies of Satveer and Lal Chand along with the injured Bal Chand (PW) also to the government dispensary where Trilok Kumar was already lying in a serious condition. On the advice of Dr. Arora Trilok Kumar was removed to Jhalawar Hospital. At the Jhalawar Hospital, doctor examined Trilok Kumar and got his X-rays taken. The condition of Trilok Kumar was deteriorating. A magistrate was requested to record the dying declaration of Trilok Kumar and accordingly Ex. P2 was recorded by the magistrate at the hospital. Trilok Kumar was, thereafter, referred to Kota Hospital where he was operated upon and a bullet was taken out from his hip and back side. He remained in the Kota Hospital for more than a month. The blood stained clothes of the injured were seized by the police at the Kota hospital during the course of investigation. After investigation was completed, challan was filed and Amrik Singh on being committed to the Sessions Court was put on trial.

F The prosecution examined various witnesses to connect Amrik Singh with the crime. Since both the trial court and the High Court have dealt with the evidence of the witnesses in extenso and have reproduced the same, we need not refer to that evidence except to the extent necessary while dealing with the submissions made by learned counsel for the appellant-Amrik Singh.

G

Mr. Sushil Kumar, learned counsel appearing for the appellant, firstly submitted that Trilok Kumar who was stated to be the sole eye-witness could not be relied upon in as much as he did not disclose either to Dr. Shanti Lal (PW) or to Babu Khan (PW) the names of all the accused

H persons at the earliest opportunity. According to learned counsel, though

the cryptic telephonic information given to the police by Naval Kishore (PW) may not constitute the F.I.R. the failure of Trilok Kumar to disclose the names of the alleged assailants to Naval Kishore would effect the credibility of the witness. It is submitted that the statement of Trilok Kumar recorded by Dr. Arora (Ex.P1) which is the FIR in the case could not be relied upon, as that document appears to have come into existence after deliberations and at the instance of Dharamveer, who was interested in getting a false case against Amrik Singh and others foisted to settle his earlier scores. We are afraid we cannot agree. Trilok Kumar (PW), sole eye witness was himself injured during the occurrence. He had not only seen the accused persons before reaching the place of occurrence and pointed them out to Satveer (Deceased) but had also identified them when they surrounded the vehicle and started indiscriminate firing. He had rushed to the dispensary of Dr. Shanti Lal (PW) in an injured condition and told him that Satveer and he had been fired upon. In that injured condition, it could not be expected that Dr. Shanti Lal would detain Trilok Kumar to get any other information from him as his natural anxiety would be to send him for medical aid and for that reason Babu Khan (PW) was told to take Trilok Kumar on his motor-cycle to the Government dispensary. There is nothing on the record to indicate that Dharamveer had in any way influenced Trilok Kumar to falsely implicate the accused persons in his statement (Ex.P1) recorded by Dr. Arora. Indeed Dharamveer being the brother of the deceased had reached the hospital and was present near Trilok Kumar (PW-2) but no suggestion even was made to Dr. Arora that the statement (Ex-P1) given by Trilok Kumar (PW-2) was not a voluntary one but a statement given on the tutoring of Dharamveer. In the normal course of human conduct, no victim would leave out the real culprits and falsely implicate innocent persons. Trilok Kumar (PW) was in a critical condition. He had no enmity with the accused to falsely involve them in such a serious case. A cursory look at Ex.P1, the statement of Trilok Kumar (PW) as recorded by Dr. Arora shows that it has a ring of truth in it and is a voluntary statement. In that statement the names of all the accused persons have been disclosed. The place of occurrence and manner of occurrence has been indicated. The time of occurrence and the weapon used by the assailants have been stated. Nothing more could be expected from Trilok Kumar (PW.2) in that injured condition to be said in that statement. We are unable to agree with Mr. Sushil Kumar that the non-disclosure of the names of all the assailants to Dr. Shanti Lal. Naval

- A Kishore or Babu Khan (PWs) would detract from the reliability of Ex. P1. We have carefully pursued the statement of Trilok Kumar (PW.2). His evidence has neither been shattered in the cross-examinations nor has any inconsistency been pointed out in his testimony which may effect its creditworthiness. His testimony has impressed us and we find him to be a reliable witness who can be trusted upon in support of the prosecution case.
- B We find that the testimony of Trilok Kumar (PW-2) suffers from no infirmity whatsoever. Even though the statement of Trilok Kumar as recorded at the hospital (Ex-P2) cannot be treated as a dying declaration, learned counsel for the appellant was unable to point out any infirmity or inconsistency in Ex. P2 either which could in any way cast any doubt on the testimony of
- C Trilok Kumar (PW-2), the driver of the station-wagon of Satveer deceased on the fateful evening, when the appellant along with others opened fire causing the death of Satveer and Lal Chand and injuries to Trilok Kumar and Bal Chand. It is settled law that evidence has to be weighed and not counted. The testimony of a sole eye-witness. Whose testimony suffers from
- D no infirmity, whatsoever, can by itself form the basis for conviction. We have found Trilok Kumar (PW-2) to be a highly reliable witness whose testimony suffers from no blemish at all. His testimony has also received corroboration from the medical evidence and other evidence.

- E The prosecution placed strong reliance during the trial of Amrik Singh on his absconding. Indeed, absconding by itself may not be of any conclusive evidentiary value but it is a circumstance which cannot be ignored while considering other evidence connecting the accused with the crime, where the other evidence is convincing and reliable, absconding assumes some importance. Amrik Singh was named at the earliest opportunity as one of the assailants in Ex. P1. He absconded from October 31, 1976, the date of the occurrence, and surrendered only on May 3, 1979. It may be a coincidence but is a rather curious one, that he surrendered only after the learned Sessions Judge had acquitted all the six co-accused in Session case No. 33/77 vide judgment dated August 4, 1978. No explanation much less a reasonable one, has been offered by Amrik Singh for his long
- F absence from October 31, 1976 to May 3, 1979. Both the trial court and the High Court were, therefore, quite justified in taking note of that circumstance while considering the guilt of Amrik Singh and using the same against him.
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- H Learned counsel for the appellant then argued that since Pritam Singh.

Atrik Singh, Jagdish and Harbans had been acquitted in the connected case by the Sessions Court and their acquittal was upheld by the High Court, it would not be safe to convict Amrik Singh on the basis of the prosecution evidence, which had implicated the acquitted co-accused also and which evidence had not been believed. The argument does not appeal to us. *Falsus in uno falsus in omnibus* has never been accepted either as a rule of law or evidence. The High Court was aware of the acquittal of the co-accused and has after considering the evidence independently confirmed the order of the learned Session Judge convicting appellant Amrik Singh. We find that the appreciation of evidence by both the courts is sound and proper. We agree with the reasoning of the High Court in holding that the prosecution has established the case against appellant Amrik Singh beyond a reasonable doubt. In the established facts and circumstances of the case, we however, alter the conviction of Amrik Singh from the offence under section 302/149 I.P.C. to one under Section 302/34 IPC and sentence him to suffers imprisonment for life and to pay a fine of Rs. 1.000 and in default of payment of fine to undergo rigorous imprisonment for one year. We also convict him for the offence under Section 307/34 I.P.C. (instead of under Section 307/149 IPC) and sentence him to seven years' rigorous imprisonment and to fine of Rs. 1.000 and in default of payment of fine to undergo one year rigorous imprisonment. His conviction and sentence for the offence under Section 148 IPC is maintained.

With the aforesaid modification in the conviction the appeal filed by Amrik Singh fails and is hereby dismissed.

Coming now to the appeal filed by Satnam Singh and Mohar Singh.

As already noticed, both these convicts along with Pritam Singh, Atrik Singh, Jagdish and Harbans were acquitted by the learned Sessions Judge. It was on an appeal filed by the State of Rajasthan, that while the acquittal of Pritam Singh, Atrik Singh, Jagdish and Harbans was upheld that of Satnam Singh and Mohar Singh was set aside, and they were convicted and sentenced for offences under Section 302/34 I.P.C. and 307/34 I.P.C. by the High Court.

The prosecution story is the same as has been noticed in the case of Amrik Singh in an early part of this judgment and needs no repetition. Mr. Lalit, the learned senior counsel appearing for the appellants, however, assailed the conviction of Satnam Singh and Mohar as recorded by the

A High Court, on various grounds and we shall presently deal with the same:

B According to Mr. Lalit, the non-disclosure of occurrence by Trilok Kumar to anyone prior to the recording of his statement Ex.P1, renders his testimony doubtful. We have already dealt with and rejected a similar contention raised on behalf of Amrik Singh and those reasons hold equally good for repelling the submission made by Mr. Lalit also. Emphasis was laid by Mr. Lalit, on the testimony of PW6 Satar Mohd., who had stated that he resides at Bhiwani Mandi, on the road going to Mela ground and that he was present on December 31, 1976 at about 6.00 P.M. at a distance of about 35 feet from the saw mill of Pritam Singh, when he found that the jeep of Satveer deceased was fired upon by six or seven persons and that the accused were not amongst those persons. He of course, did not know the names of any of the persons who resorted to firing but went as to say that they were wearing dhoties. In our opinion, the evidence of this witness does not at all damage the prosecution case. His testimony on the other hand, to an extent, lends credence to the prosecution case both as regards the time, the place and the manner of occurrence. This witness also did not disclose to anyone, even after knowing that accused persons had been named, that he had seen the occurrence and that none of the accused persons were involved in the same. His negative evidence does not cast any doubt, much less a reasonable doubt, on the authenticity of the prosecution evidence. Mr. Lalit rightly did not refer to, much less place any reliance on the testimony of other defence witnesses, produced at the trial by the accused persons.

F From the evidence on the record it is established that Trilok Kumar (PW) knew all the accused before the date of the occurrence. He had identified them as the assailants in his statement Ex.P1 recorded at a time when his condition was critical. The argument that Dharamveer had influenced Trilok Kumar to falsely name the accused deserves notice only to be rejected and there is nothing on the record to support that theory, which we have also rejected while dealing with the case of Amrik Singh. The reasoning given therefor applies to the case of these two appellants also.

H Mr. Lalit lastly argued that the reasoning of the Sessions Judge was not so preserve as to warrant being upset by the High Court in an appeal against acquittal. The Division Bench of the High Court has not only dealt with and reproduced the evidence *in extenso* but we find that the apprecia-

tion of evidence and its consideration by the High Court is perfectly second in so far as the conviction of the two appellants is concerned though we have some reservations in accepting the genuineness of the *Alibi* pleaded by Pritam Singh, Atrik Singh, Jagdish and Harbans Singh. However, since no appeal has been filed against their acquittal in this Court, their acquittal may not be interfered with at this late stage, because we do not think it proper to reopen the case by issuing fresh notices to the acquitted co-accused for the occurrence which took place as early as in 1976 to reconsider their acquittal as recorded by the Sessions Court and uphold by the High Court in 1984.

The jurisdiction and obligation of the High Court to reappraise the evidence is identical in case involving acquittal and conviction and all that is required of the High Court while dealing with an appeal against acquittal is that it shall take into consideration and be alive of the factors which influenced the trial court to record an order of acquittal. In the present cases the High Court has dealt with the case keeping in view these settled principles and has analysed and reappraised the entire evidence with great care and caution. The High Court while upholding the acquittal of the four co-accused found sufficient reliable and clinching evidence to convict Mohar Singh and Satnam Singh. Dealing with the reasoning given by the learned Sessions Judges, the High Court observed :

"The question now remains regarding the two accused persons Mohar Singh and Satnam Singh. The main argument given by the learned Session judge for disbelieving the evidence of Trilok Kumar PW1 was that when his evidence is discarded with regard to the four accused persons, his evidence should not be relied upon regarding the remaining two accused persons also. Suffice it to say, that for this very incident we had examined the evidence of Trilok Kumar while deciding the D.B. Criminal Appeal No. 487/80 and in our judgment dated April 27, 1983 we had held that his evidence was reliable. We have thoroughly pursued the statement of PW1 Trilok Kumar given in the court in the trial of this case and we have no manner of doubt that he was driving the car at the relevant time. His presence on the spot cannot be doubted as he was injured at the spot and his dying declarations were also recorded twice. The bullet was taken out from his body. In the incident two persons sitting inside the car namely, Satveer and Lal Chand have died and

A Trilok Kumar and Bal Chand also received the injuries. The manner in which the shots were fired and the persons injured, there can be no manner of doubt that there were number of accused persons, who had fired thus even if, the four accused persons, viz., Pritam Singh, Jagdish Kumar, Atrik Singh and Harbans Singh are given the advantage of plea of *alibi*, it is no ground to disbelieve the evidence of Trilok Kumar so far as Mohar Singh and Satnam Singh are concerned. The presence of Trilok Kumar on the scene of occurrence remains established beyond any manner of doubt. He had clearly stated that as soon as his car reached near the sawing machine of Pritam Singh, then Pritam Singh, C Amrik Singh, Harbans, Chetan, Mohar Singh, Satnam, Jagdish and Atrik Singh were standing. As soon as the car reached in front of the sawing machine all the accused persons fired at the car. All the accused persons were armed with 12 bore revolvers. He further stated that the rear tyre of the car burst on account of the shot and the car had to stop. The accused persons surrounded the car from two sides and went on firing. Trilok Kumar further stated that as soon as he opened the gate of the car towards him and tried to run then Mohar Singh accused fired the shot which hit at his hip. Thereafter when he went in front of the bonnet of the car then Pritam Singh and Jagdish accused persons fire at him which E struck in his back and side. Then he narrated the story as to how he reached the dispensary of Dr. Shanti Lal and then was taken to Government dispensary by Babu Khan. Thus, so far as Trilok is concerned, he has clearly stated that when he had come out of the car by opening the gate and was trying to run then Mohar Singh accused had fired which hit him on his hip. In the cross examination also he stated that while surrounding the car Chetan and Mohar Singh had come running from the back of the car and had come on the right side. They were coming by firing shots. The rest of the accused persons were towards the left side of the car where Satveer was sitting. In view of these circumstances, we are clearly of the opinion that learned trial court was clearly wrong in not placing reliance on the statement of Trilok Kumar even with regard to the two accused persons Mohar and Satnam Singh."

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We agree with the reasoning of the High Court and learned counsel H for the appellant was unable to pointed out any flaw in that reasoning. On

the basis of the material on the record, particularly the reliable testimony of Trilok Kumar (PW). We find that the High Court was perfectly justified in setting aside the acquittal of the appellants and convicting and sentencing Mohar Singh and Satnam Singh for the offences under Sections 302/34 I.P.C. and 307/34 I.P.C. We do not find any merit in their appeal and consequently dismiss the same. A

As a result of the above discussion both the appeals fail and are dismissed. B

The appellants, who are on bail shall surrender to their bail bonds and shall be taken into custody to undergo the remaining period of their sentences. C

M.M.

Appeals dismissed.