CASE NO.:
Appeal (crl.) 761 of 2001

PETITIONER:
KRISHNA MOCHI AND ORS.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 15/04/2002

BENCH:
Arijit Pasayat

JUDGMENT:

WITHDEATH REFERENCE NO. 1 OF 2001

J U D G M E N T

ARIJIT PASAYAT, J.

While I respectfully agree with Brother B.N. Agrawal that the appeal deserves dismissal, few aspects are indicated by me to supplement his conclusions and views.

Accused appellants have placed strong reliance on the decision of this Court in Masalti and Ors. v. State of Uttar Pradesh (AIR 1965 SC 202) to contend that since large number of accused persons were involved, evidence of one or two/three witnesses would not suffice.

To bring home accusation against appellant No.2 (A-9) Dharmendra Singh @ Dharu Singh, prosecution placed reliance on the evidence of Brajesh Kumar (PW11), Dhananjay Singh (PW19) and Sumiran Sharma (PW 21). Evidence of PWs 11 and 19 has not been considered credible. So PW 21 also pointed out accusing fingers at appellant No.3 Nanhe Lal Mochi (accused No.13) and appellant No.4 -Bir Kuer Paswan (accused No.5). So far as accused-appellant No.2 Dharmendra Singh @ Dharu Singh is concerned, PW21's evidence is the only material against him, while in case of the other two accused-appellants other witnesses have also corroborated the version of this witness. Masalti's case (supra) cannot be said to have laid down any rule of universal application as contended by learned counsel for accused-appellants that conviction cannot be made on the basis of a single witness's evidence, as large number of accused persons are on trial. It is a well settled principle in law that evidence is to be considered on the basis of its quality and not the quantity. Section 134 of Indian Evidence Act, 1872 is a pointer in that regard. This provision follows the maxim that evidence is to be weighed and not counted. In Masalti's case (supra), the desirability to have at least two witnesses has been stated to be a matter of prudence. Such a requirement can never be said to be inviolable, as would be culled out from Anil Phukan v. State of Assam (AIR 1993 SC 1462), Maqsoodan v. State of U.P. (AIR 1983 SC 126). Appreciation of evidence cannot conceive of any rule of universal application and is certainly not to be treated as a theorem, and there can be no empirical formula. The evidence on the

facts of each case has to be analysed and conclusions drawn, and there cannot be pigeon-holing of evidence on any set formula. It has not been shown by accused-appellants as to how evidence of PW 21 suffers from any infirmity. Since in Masalti's case (supra) a rule of caution was laid and not a mandatory rule of universal application, it is certainly not to be treated as a rule of law. There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. (See Padamasundara Rao (dead) and Ors. v. State of Tamil Nadu and Ors. (JT 2002 (3) SC 1). It is more so in a case where conclusions relate to appreciation of evidence in a criminal trial.

Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of falsus in uno falsus in omnibus. This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate 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 India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" (false in one thing, false in everything) has not received general acceptance 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 evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See Gurucharan Singh and Anr. v. State of Punjab (AIR 1956 SC 460).The doctrine is a dangerous one specially in India for if a whole body of the testimony 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. 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. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh (1972) 3 SCC 751) and Ugar Ahir and Ors. v. The State of Bihar (AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metapher, 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 case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh (AIR 1954 SC 15) and Balaka Singh and Ors. v. The State of Punjab. (AIR 1975 SC1962). As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. (AIR 1981 SC 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. Accusations have been established against accused-appellants in the case at hand.

The factual scenario highlighted and established by the prosecution shows how gruesome and macabre acts were perpetrated by the accused persons. Thirty five people lost their lives and several others have been seriously injured because of caste war. The gruesome acts were diabolic in their conception and cruel in execution. There was deliberate and planned destruction of extensive properties and annihilation of large number of persons. All these happened, as noted above, on account of caste war. In a country like ours where discrimination on the ground of caste or religion is a taboo, taking lives of persons belonging to another caste or religion is bound to have dangerous and reactive effect on the society at large. It strikes at the very root of the orderly society which the founding fathers of our Constitution dreamt of. It has been conclusively held that accused persons were not innocent by-standers or onlookers. Chain of evidence clearly shows what their object was.

The guidelines which emerge from Bachan Singh's case (supra) have to be applied to the facts of each individual case where the question of imposition of death sentence arises. In case at hand, in the minimum guidelines (1) and (4) which are as follows are clearly applicable:-

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

x x x x x

x x x x x

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of

each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Punishment ought always to fit with the crime.
In Ram Deo Chauhan v. State of Assam (2000 AIR SCW 2784), this court observed that though it is time that in a civilized society a tooth for tooth, and a nail for nail or death for death is not the rule, but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life according to the procedure established by law, as Constitution itself has recognized the death sentence as a permissible punishment for which sufficient constitutional provisions for an appeal, reprieve and the like have been provided under the law. Above being the position, the accused-appellants deserve death sentence which has been awarded by the Trial Court. In conclusion, the conviction and the sentence as awarded by the Trial Court are to be upheld and appeal deserves to be dismissed.

J.
(ARIJIT PASAYAT)

April 15, 2002