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SooperKanoon Citation : sooperkanoon.com/684068

Court : Delhi

Decided On : Dec-16-1977

Reported in : ILR1978Delhi633; 1978RLR493

Judge : S. Rangarajan and; T.P.S. Chawla, JJ.

Acts : Evidence Act, 1872 - Sections 8, 134, 145, 155 and 157; Code of Criminal Procedure (CrPC) , 1973 - Sections 161 and 310

Appeal No. : Criminal Appeal No. 135 of 1975

Appellant : inder Singh and ;surender Singh

Respondent : State

Advocate for Pet/Ap. : O.P. Soni,; Amarjit Singh,; Kamlesh Bansal and;

Judgement :

T.P.S. Chawla, J.

(1) By a judgment dated 19th May 1975, the two appellants Inder Singh and Surender Singh, have been found guilty by the Additional Sessions Judge, Delhi, of murdering Randhir Singh and also attempting to murder his brother Ram Kishan. Both the offences were held to have been committed by the appellants in, furtherance of their common intention. For the offence of murker each of them has been sentenced to imprisonment of life, an,d, for the attempt to murder each has

been sentenced to rigorous imprisonment for 4 years, the sentences to run concurrently. After discussing the evidence, the judgment proceeded :

(2) Counsel for the appellants maintained that in order to prove that the first information report had been recorded at the time noted, the daily diary and the copy of the first information report sent to the area Magistrate ought to have been produced. We have seen the daily diary, and it clearly mentions that the first information report was recorded at 5 a.m. We also sent for the first information, report from the Magistrate. It bears an endorsement indicating that it was 'seen' by him on 22nd June 1974. We looked at those documents for our own satisfaction. As a matter of law the prosecution were not bound to produce either of those documents of their 'own accord. Neither of them is substantive evidence in the case. It was recognised in Bhola Nath vs . The State , that, hitherto, it has not been the practice in this jurisdiction for the prosecution to produce in evidence the copy of the first information report sent to the Magistrate, though a change in the practice was recommended. The present case was tried before that recommendation was made. Without knowing the facts we cannot go into the question why the first information report was seen by the Magistrate on 22n,d June 1974, and not earlier. The point was never probed at the trial,

(3) Before passing on from the first information report, it is worth getting the nature of the submission that was made into proper legal perspective. A first information report can be used in a variety of ways under the Indian Evidence Act 1872. Almost invariably it is tendered in evidence by the prosecution under section 157 to corroborate the informant. It is then available to the defense for contradicting the informant under section 145 or impeaching his credit under section 155. Even in the unlikely event that the prosecution do not tender the first information report, the defense may itself prove it for achieving those very ends : see Azimaddy and others vs . Emperor : AIR1927 Cal17 . Of course, it can only be used for 'contradicting or impeaching the credit of the informant, and no one else: see Dharma Ram Bhagare vs . State of Maharashtra, : 1973 CriLJ680 , and Hasib vs . The State of Bihar, : 1972 CriLJ233 .

(4) When used in any of those ways, it is settled law that the first information, report is not substantive evidence : see The State of Bombay v. Rusy Mistry and another, : AIR 1960 SC391 . That means, the first information report is not evidence of the matters mentioned therein. The court cannot base its findings on, the contents of the first information report. It can merely be used for testing the credibility of what the informant says in court. The findings of the court must ultimately rest on the evidence given at the trial of the case. For this reason the court cannot reject the prosecution case simply because it does not tally with the version given in the first information report : see Dharma Ram Bhagare vs. State of Maharashtra, : 1973 CriLJ680 Mrs. Meera Puri vs. The State of Nagaland, ; Ra]a and others vs. King Emperor A. I. R. 1924 Lah 591 and Naurang Singh Deva Singh-vs. The State Air 1956 Pepsu 50.

(5) However, the lodging of a first information report is not only the making of a statement but also an act of complain,t. The statement accompanies and explains the act. As such it constitutes the conduct of the informant and is relevant under section 8 read with Explanationn I or as part of the rest gestae : see Damodar Prasad Chandrika Prasad and others vs. State of Maharashtra, : 1972 CriLJ451 Aghnoo Magesia vs. State of Bihar, : 1966 CriLJ100 Azimaddy and others vs. Emperor : AIR1927 Cal17 and Mahla Singh vs. Emperor Air 1931 Lah 38. Delay in lodging the report, unless satisfactorily explained, reflects upon the conduct of the informant and adversely affects the prosecution's case: see Thulia; Kali vs. The State of Tamil Nadu : 1972 CriLJ1296 and Apren Joseph alias Current Kunjukunju & others vs. The State of Kerala, : 1973 CriLJ185 . This is because delay can enable the facts to be 'forgotten or embellished' see Emperor vs. Khwaja Nazir Ahmad . But if information has been promptly given, and the police delay the recording of it, no blame can fall on the informant. It is a different matter that the delay by the police may itself, as in Balwant Singh vs. The State, 1976 C L.R. (Delhi) 41, raise doubts regarding the prosecution case.

(6) Now, here, the submissions made by counsel for the appellants were all directed against the police. His contention' was that the first information report had been 'ante-timed' by the Investigating Officer. I have rejected those submissions for the reasons already stated. Nevertheless, it is important to observe that even if

any of those submissions had succeeded, however else it might have affected the case of the prosecution, it could not have touched the testimony of Ram Kishan, as no delay is attributed to him. His conduct would remain unblemished in, any event.

(7) Next, it is convenient to deal with the real evidence produced in the case. The chip of bone and the blood-stained earth picked - up by the Investigating Officer have no probative value. As to the spades, the Additional Sessions Judge did not believe that they had been discovered in the manner alleged by the prosecution, and, thereforee, ruled that they had to be 'completely ignored'. His reason for reaching this conclusion was that the statement of Constable Ram Singh established 'that the spades had been, recovered by the police itself when the police arrested the accused and the spades as well as the accused were sent to the police station soon thereafter.....'. Combining this with his finding that the police had arrived at the spot at 11 a-m.., he rejected the evidence of the Investigating Officer on this point. I do not agree that the statement of Constable Ram Singh, properly construed, means or implies that the spades were 'recovered by the police itself;. and I have already tried to show that he did not, in fact, say that the police had arrived at the spot at Ii a.m. However, I will not dwell on these matters because the group of the blood on the spades could not be determined, so there is nothing to associate them with the murder of Randhir Singh. For that reason, I would agree, they must be excluded from consideration.

(8) Whilst dealing with the spades, counsel , the appellants referred to Mohinder Singh vs. The State, : [1950]1SCR821 , and contended that they ought to have been shown to the medical witness to obtain his opinion whether the injuries on Randhir Singh's body could have been caused by such 'weapons'. Dr. Bharat Singh has said 'injuries No. 1and '2 could be caused by spade (kassi)', and that meets the requirement of that authority. It is not necessary that the specific spades should have been shown to the witness.

(9) The position with regard to the wrist watch is not very satisfactory. In examination-in-chief Ram Kishan said this 'is the same watch which was worn by Inder Singh accused at the time of occurrence'. The cross-examination, on this

statement was rather perfunctory. Only two or three questions were asked, in answer to which Ram Kishan said that the watch was lying at the spot when he returned with the police, and denied a suggestion that the watch really belonged to him: or his people. On, this state of the evidence the Additional Sessions Judge did not accept that it was the watch of Inder Singh, as Ram Kishan had not identified it by any marks or peculiarity, not indicated how he was in a position to know who was its owner. Besides, he thought, Ram Kishan could not have noticed the fallen watch When Randhir Singh was being murdered. Although these deficiendes in the evident are largely the result of inadequate cross-examination, I agree with the Additional Sessions Judge that the evidence as it stands does not induce in the mind a State of certainly. Like him, will, thereforee, disregard the watch.

(10) About the hair, the.submission made to as was not put before the Additional..Sessions Judge. Still, it has to be considerad The Central Forensic Science .Laboratory found the hair to be those of Ram Kishan In the recovery memorandum it is riot indicated whose they are or were alleged or thought to be. Yet, in the relevant entry in the 'Malkhana register, .under the head 'Memo of Possession the Moharrir has written 'stated to be containing the hair of the head of deceased Randhir Singh'. Neither the Moharrir nor the Investigating Officer nor anyone else was asked how that statement came to be made. Despite that omission, counsel for the appellants invited us to surmise that there must, at one time. have existed a recovery memorandum describing the hair to be that of Randhir Singh, and it had subsequently been replaced by the one now on record.

(11) There is little to commend this speculation. It could well be that the words in, the register represent the Moharrir's own inference. A similar discrepancy appears with regard to the blood- stained earth. In the register he has described it as 'the earth stained with blood of deceased Randhir Singh' whereas the memorandum of recovery only says that it was 'lifted from near the head of the dead body of Randhir Singh. . . . . .' The Moharrir seems to have jumped the gap between those two statements of his own. The Investigating Officer could not be sure whose the hair were, because on 26th 1974 he requested the Central Forensic Science Laboratory to give its opinion. It is highly unlikely that he would ever have prepared

a memorandum saying that the hair were of Randhir Singh, especially when it is observed that even as regards the chip of bone, the blood on the earth and the wrist watch he did not hazard a statement as to whom they pertained. Moreover, the injury on Ram Kishan's head was sufficient to prove his presence at the place where Ran,dhir Singh was murdered. So there was no need to make up a Story about the hair being Ram Kishan's as there was no object to be achieved.

(12) In any case, counsel cannot be allowed to propound that argument when there has been atotal lack of cross-examination on the poin,t. Too often in this appeal we have been asked to draw inferences adverse to the prosecution or their witnesses on the basis of statements not assailed in cross-examination. Frequently, a single .answer to a multiple question has t)een treated as the answer to each of it parts. The witness has thus been deprived of the chance of answering each component question separately. No doubt a cross- . examiner- is entitled to frame his questions in his own way and according to his own style. But he must lie fair to the witness, and the court must ensure that he is. The questions should not be too.. complex or..designed to confuse. Nor should they assume the existenxce of some fact which the witness has not admitted.

(13) There aro two, old rules of practice which must never be forgotton. First, the witness must be cross-examined on all parts of his .testmony which it is intended to dispute. Otherwise;, what the Witness has said in, his examination-in-chief will be accepted as being true: see R. V. Walter Berkley Hart, (1932)23 C. A.R. 202; Karnidan Sarda and another vs. Sailaja Kanta Mitra : AIR1940 Pat683 ; Jayalakshmidevarma vs. Janardhan Reddy, : AIR 1959 AP272 Bobulall Choukhani vs. Caltex (India) Ltd., : AIR1967 Cal205 and Rama Nand and others vs. The State I.L.R. 1974 H. P. 509. Second, the attention of the witness must be drawn, to any contradiction in his statement, or with any previous statement, and he must be afforded an opportunity to explain. H that is not done, no argument founded on the contradiction is permissible.

(14) The locus classicus on this topic is the passage in the speech of Lord Herschell, I.C., in Browne v. Dunn (1893) 6 R. 67, where he sand :-

ITseems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any Explanationn which is open to him: and, as it seems to me, that is not only a rule of professional practice in the conduct 'of a case, but is essential: to fair play and fail dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue; but it seems to me that a cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination and afterwards to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility Of the story which he is telling. Of course I do not deny for a moment that there are cases in which that notice has been so distinctly and unmistakably give?, and the point upon which he is impeached, and is to be impeached, is so manifest, that it is not necessary to waste time in putting questions to him upon it. All I am saying is that it Wui not do to impeach the credibility of a witness upon a matter on which he has not had any opportunity of giving an Explanationn by reason of there, having been no suggestion whatever in the course of the case that his story is not accepted.....'

Concurring with this view. Lord Halsbury said :--

'MYLords, with regard to the mann,er in which the evidence was given in this case, I cannot too heartily express my concurrance with the Lord Chancellor as to the mode in which a 'trial should be conducted. To my mind nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they

have given, so as to give them notice, and to give them an opportunity of Explanationn, and an opportunity very often to defend ' their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.'

In another passage Lord Halsbury castigated such conduct of the case at a trial as 'perfect outrage'.

(15) These rules are not mere outworn technicalities. In the adversary system they are essential for the attainment of justice : see A.E.G. Carapiet vs. A. Y. Derderian, : AIR1961 Cal359 . Of course, there are a few exceptions, and they are stated in para 1544 on page 649 of Phipson on Evidence (11th ed.) as follows :-

'FAILUREto crosa-examine. however, will not always amount to an acceptance of the witness's testimony, e.g., if the witness has had notice to the contary beforehand, or the story is itself of an incredible or romancing character, or the abstention arises from mere motives of delicacy, as where young children are called as Witnesses for their parents in divorce cases, or when counsel indicates that he is merely abstaining for convenience, e.g., to save time. And where several witnesses are called to the same point if 18 not always necessary to cross-examine them all.'

(16) Counsel for the appellants cited Pratap Misra and others vs. State of Orissa, : 1977 CriLJ817 , as representing another exception. That case holds that it is 'open to the accused to prove his defense even from the admissions made by the prosecution witnesses Or the circumstances proved in the case'. It has no bearing on the question under discussion. Nor does Bansidhar Mohanty vs. State of Orissa, : 1955 CriLJ1300 , which says that if a previous statement made by a witness is not available when he is examined, the cross-examiner cannot be expected to confront him with it; and that a witness need not be confronted with a different statement made by another witness. Neither of these propositions detracts from the rules I have been emphasising.

(17) Though counsel for the appellants initially ventured the submission that those rules did not apply to a criminal case, he did not find it worth pursuing. The cases, such as Nanhku Singh vs. The State Of Bihar : 1972 CriLJ1204 , and State vs. Bhola Singh, , make it plain that they apply equally, if not more strictly, on the criminal side.

(18) In respect of the present point, none of the exceptions can be invoked. The Moharrir and the Investigating Officer bad not made any statements which were 'incredible' or of a 'romancing character'. It is impossible now to divine what they might have said if asked to explain the entry in the Malkhana register. It would be grossly unjust, without giving them an opportunity, to assume that they would have had no answer.

(19) Summing upon the real evidence, I would say, that, apart from the hair, none of the objects produced is of much assistance in deciding the case. Since the hair only prove that Ram Kishan was there, and this is otherwise amply established by the injury he received, even the hair can be disregarded. Hence, it is unnecessary to deal with the criticisms made of Chandgi Ram and Prabhu who witnessed the seizure of all the objects.

(20) This brings me to the other evidence. The whole case depends on Ram Kishan and Ram Karan, the two eye witnesses. That Ram Kishan was present at the time and place of the murder is proved by the injury on his head. But the fact that he was present, does not guarantee that he is telling the truth, or is not falsely implicating the appellants : see Balak Ram vs. State of U.P. and Mohd. Sayeed Khan and others vs. State of U.P., : 1974 CriLJ1486 . I thereforee, proceed to examine the doubts thrown upon his veracity.

(21) It was contended that Ram Kishan could not possibly have identified the assailants, as the murder was committed on a dark night when the moon was not shining. Ram Kishan and Ram Karan say they had.a lantern with them, which was placed on the Western boundary of their field, and they were able to identify the appellants by the light of that lantern, as also by their voices. In the evidence there is some discord about the lantern. I do not attach any importance to the- fact that it is not mentioned in the first information report. That . document is supposed to

record 'information relating to the commission of a cognisable offence' and is not a preview of the entire evidence. Neither Ram Kishan nor Ram Karan appear to have mentioned the lantern in their statements recorded by the police. For the first time. Ram Kishan mentioned it 2 or 3 days later in a supplementary statement. All this, I think, was due merely to inadvertence.

(22) In his statement in court Ram Kishan said : 'The watch and the lantern were there at the spot when I returned'. A little later, he said : 'Except the watch, my shirt and the lantern, no other thing was taken into possession by the police at that time'. From the structure of this sentence I get the feeling that the question itself presumed that the watch, the shirt and the lantern had been taken by the police, and the query really was whether any 'other thing was taken into possession' by them. But, I will let that pass. The Investigating Officer said he did 'not see any article or any other object which could give light at night at the place of occurrence'. Whether he made this statement because, for some reason or other, he had ommitted to take possession of the lantern, or because what he said was true. is difficult to know. The fact remains that whereas Ram Kishan says the lantern was there at the spot in the morning, the Investigating Officer says it was not.

(23) Notwithstanding that discrepancy, I agree with the Additional Sessions Judge that it is not credible that the three brothers would go to draw water for their field on a pich dark night and not carry a lantern with them. Diverting water to their field necessarily involved some digging which could not conveniently be done without a light. Besides, in the hot month of June there are serpents about at night, and carrying a light is the least precaution. In villages, everyone owns a lantern. What good is it, if it is not going to be used at the time of need So there is no reason why a lantern, should not have been taken by the brothers, and every reason that they should. In the background there was, in addition, the continuing animosity with the other branch of the family resulting from the murder of Mool Chand, and the constant fear of attack. Probably, the lantern escaped the notice of the Investigating Officer or he realised its significance only afterwards. If a lantern was there, as I am convinced there was. Ram Kishan and Ram Karan could have had no difficulty in recognising the appellants. They had known them for years before

and were neighbours in the village, apart from being related. 'Persons well-known can be recognised within a very short time'

(24) Alternatively, even if there was no lantern, 'the appellants could still be recognised. Inder Singh had shouted before striking Randhir Singh. His voice was familiar to Ram Kishan and Ram Karan, and they could easily distinguish it. Surender Singh may not have spoken, but he came so close to Ram Kishan, to strike him on the head, that recognition must have been immediate. At close quarters it is possible to recognise a familiar person from his outline, posture and walking style though it be dark . Also, as I shall explain later, there are 'odd coincidences' which confirm the iden,tifying evidence. It has been held in that 'odd coincidences can, if unexplained, be supporting evidence' which is as good as 'corroboration in the sense lawyers use that word'.

(25) Then, it was urged, that Ram Kishan had lied about hiding under the bridge and that in reality he must have sought refuge in the Patshala. In the first information report Ram Kishan says : Kiran and reached Patshala and hid myself there'. Likewise, in the inquest report, the Investigating Officer narrates that Ram Kishan ran and hid himself in the Patshala near the bridge over . the canal'. Wherever necessary, I am translating from the originals and not going by the translations in the paper book, which are faulty. In court, Ram Kishan said : 1 hid myself in, a small bridge over the canal'. He denied in cross-examination that he had hidden himself in the Patshala or had made a statement to that effect to the police. On the contrary, he asserted, he had told the police that he had hidden under the bridge. To a suggestion that he had gone inside the Patshala and had his head bandaged, and had told the inmates that in the dark he had not been able to identify the persons who had assaulted him and his brother, he answered in the negative.

(26) Ram Karan's statements on this matter exhibit a similar variation. In the course of the inquest proceedings he said: 'Near the bridge over the canal, Ram Kishan came out of the Patshala. It seems that by mistake a copy of this statement was furnished to the appellants before the trial as being the one recorded under section 161 of the Criminal Procedure Code. In the actual statement recorded

under that section. Ram Karan said : 'At the bridge Ram Kishan came out'. At the trial, he expanded this to : 'Ram Kashan came out from the bridge on seeing us, which was near the Patshala. He clarified in cross-examination that 'Ram Kishan, Public Witness , was hiring himself just along the wall of the bridge' and maintained that he had told the police 'that Ram Kishan came out from the bridge and not from the Patshala'.

(27) Chandgi Ram told the police : 'When we reached near the bridge over the canal, Ram Kishan came out of the Patshala'. In cross-examination in court, he said : 1 do not know as to whether Ram Kishan had come out of the Patshala or not. We had met him on the small bridge. I did not tell the police that Ram Kishan had come out from the Patshala when he met us'.

(28) Lakshmi, in her cross-examination, said : 'When we reached near Patshala we saw Ram Kishan standing on the road'. She also stated that 'Ram Kishan's head was bandaged when he met us for the first time on that day on the road. Ram Kishan did not tell me as to who had bandaged his head'.

(29) I think it has to be conceded that there is a uniform and noticeable shift in the statements made by Ram Kishan, Ram Karan and Chandgi Ram in the course of the investigation and those made by them at the trial. The earlier statements put Ram Kishan in the Patshala : the subsequent ones put him under the bridge. The Investigating Officer recorded in the inquest report that Ram Kishan 'hid himself in the Patshala'. Yet, at the trial the prosecution, took the stand that he had hidden himself under the bridge.

(30) The Additional Sessions Judge 'thought that the possibility that Ram Kishan had hidden under the bridge 'cannot be deemed to be remote' having regard to the fact that Ram Kishan was a 'young boy' who, had seen his brother murdered and been injured himself, and whose uppermost thought must have been to conceal 'himself from everybody for some period, so that he may not be pursued by the assailants'. This does not explain the simultaneous change in the statements of the three witnesses, which cannot be coincidental. Nor does it explain the bandage on the head of Ram Kishan which Lakshmi observed.

(31) It seems to me, the truth is that Ram Kishan did seek refuge in the.Patshala. A frightened man running away from pursuers seeks human company, if it is available, and not isolation. Even if, initially, Ram Kishan stood under the bridge, , find it hard to believe that he stayed there for 2 hours. At some stage he must have gone into the Patshala for medical aid and protection. Or, it may be, that some of the inmates happened to come out and on seeing him took him in. It was. there that he acquired the bandage.

(32) Then why was it necessary for him, and the others, to deny at the trial that he had- gone into the Patshala Obviously for the reason that the prosecution would then have had to produce unwilling witnesses from the Patshala or account for their non-production. It is notorious that. in a case of murder the average man, particularly if he lives in the same locality, is reluctant and afraid to get involved. 'The expedient for avoiding the dilemma was to keep Ram Kishan out of the Patshala and lodge him under the bridge. This must have dawned on the prosecution after the investigation was over, and the trial was about to begin. But it is too far-fetched to infer that the reason was that Ram Kishan had told the inmates that he had not been able to identify the assailants. Had that been the fact, one would expect some of the inmates to be called as witnesses for the defense. No such witness appeared.

(33) How does this affect the appraisal of Ram Kishan's evidence In Nisar Ali vs. The State of Uttar Pradesh, : 1957 CriLJ550 , it has been made clear that the maxim 'Falsus in uno, falsus in omnibus' is not a rule of law, but merely a rule of caution. It is concerned, not with admissibility, but with the weight of evidence. The rule is so feeble that, in the case just mentioned, the Supreme Court upheld the conviction of the appellant before them relying on the testimony of witnesses who, it had been held, had falsely implicated another person. In para 1008 of Wigmore on Evidence, Vol. Iii (3rd ed.), the maxim has been deplored as follows :

ITmay be said) once for all, that the maxim is in itself worthless ;- first, in point of validity, because in one form it merely contains in loose fashion a kernel of truth which no one needs to be told, and in the others it is absolutely false as a maxim of life; and secondly, in point of utility, because it merely tells the jury what they

may do in any event, not what they must do or must not do, and thereforee it is a superfluous form of words. It is also in practice pernicious, first, because there is frequently a misunderstanding of its proper force, and secondly, because it has become in the hands of many counsel a mere instrument for obtaining new trials upon points wholly unimportant in themselves.'

One of the reasons mentioned in para 1010 why the maxim is unsound is that-

IT is untrue to human nature. It is not correct that a person who tells a single lie is thereforee necessarily lying throughout his .testimony, nor that there is any strong probability that he is so lying. The probability is to the contrary.

(34) thereforee, if Ram Kishan has not told the truth about the place where he hid himself, it does not follow that everything else he says is not to be believed. What follows is that his evidence must be scrutinised with 'care and caution' : see Deep Chand and others vs. State of Haryana, : (1969)3SCC890 . The rest of his testimony has been susceptible to very little and immaterial criticism. By and large, all that he says sounds true. And, it must be borne in mind, that his hiding in thePatshala or under the bridge has no logical relevance to the question who murdered Randhir Singh.

(35) The probabilities and the circumstances give overwhelming support to Ram Kishan's identification of the appellants as the persons who committed the murder. When Ram Kishan was injured he must have been facing the man who struck him. The injury on the front side of the head could not have been delivered from the rear. Hence Ram Kishan must have got a close view of his assailant, and easily identified him. The instinctive desire for revenge would induce Ram Kishan to name the right person. It is contrary to human nature that an injured witness should let his real assailant go free and substitute a different person, as the culprit : see Jamuna Chaudhary and other vs. State of Bihar, : 1974 CriLJ890 . No motive has been suggested for Ram Kishan wanting to do so. The irresistible conclusion is that Surender Singh was the man who struck Ram Kishan.

(36) Patently, the murder could not have been committed by SurenderSingh alone. He would have been outnumbered, 1 to 2 or 3, and would not have dared to take

the initiative. There had to be at least one other person with him. The only conceivable reason for Surender Singh to be in the fields at dead of night on that occasion was that a field in which he was interested was to receive water. That field could be no other than Inder Singh's. Surely, Inder Singh must also himself have .gone to draw water for his own field. He must have taken his nephew Surender Singh with him turn help and company. So, from the fact that Surender Singh was. there, the presence of Inder Singh is deducible without difficulty.

(37) A little reflection discloses that the most telling circumstance in the case, though also the least obtrusive, is the fact that in the morning, when the police came, the water was still running into Inder Singh's field and Randhir Singh's field was dry. This appears from the sketch map prepared by the Investigating Officer at the spot. Arrow marks thereon indicate the flow of water and lead to Inder Singh's field. The channel leading to Randhir Singh's field is 'dry'.

(38) Counsel for the appellants argued that this sketch map must have been prepared afterwards when the police had finalised their story, because in the sketch on the inquest report there is nothing to indicate the flow of water or the state of Randhir Sing's field. In the printed form of the inquest report a small space, about 2' wide is allocated for a 'Sketch plan of the place wrere the body was found'. There is not enough space for a large or detailed drawing. Apparently the sole purpose is to give the doctor, who performs the post-mortem, trough idea of 'the place where the body was found'. Accordingly, in the space provided, all that the Investigating Officer has done is to draw a rectangle to represent Randhir Singh's field, and two short parallel lines to indicate the immediately connecting part of the water channel. He has marked with symbols the places where the body and the wrist watch were lying ; and that is all. No mention is made of the place where the hair were found. Inder Singh's field not' shown. Nor the channel leading to that field. Even the full length of the channel which goes to Randhir Singh's field has not been delineated.

(39) It is manifest that in drawing the sketch on the inquest report the Investigating Officer was confining himself to the barest outline necessary to comply with the requirement of the printed form. He never intended it to be a complete or detailed

sketch for use in court. Knowing, as he did, that he was going to prepare a more comprehensive sketch separately for that purpose, it is understandable that be should not be inclined to spend too much time on this part of the inquest report. Not a single question was put to him in cross-examination impeaching the sketch map, and I can find no reason to doubt its accuracy. It does not appear that the prosecution at all realised, at any stage, the significance of the water flowing to Inder Singh's field. It is, thereforee, hardly likely that the Investigating Officer would have deliberately misrepresented .the direction of the water on the sketch map.

(40) But even if the sketch map be cast aside, the requisite facts are conclusively proved by Lakshmi. In examination-in-chief she said : 'When we reached the spot we saw the water of the canal flowing in the field of Surender Singh. There was no water in our, fields'. Cross-examination on ihe subject was started, and she repeated 'There was no water in our fields'. Thereafter, the subject was quickly dropped. So her statements in examination-in-chief went unchallenged.

(41) Perhaps, the only person who realised the importance of the matter was counsel for the appellants. Right at the beginning he tried to suggest that the field of Inder Singh was on high land and water could not reach it. But, after Ram Kishan and Ram Karan controverter the suggestion, and even described the exact' course of the channel to that field, it was not put to any other prosecution witness. In their examination by the court, both ihe appellants categorically asserted that water from the canal 'does not come to our fileds as it is located at a higher level'. Though two witnesses were called indefense, no attempt was made to prove what the appellants had said. When the evidence on both sides had closed and arguments commenced, an application was moved by the appellants requesting the Additional Sessions Judge to view the site and see for himself that canal water could not reach Inder Singh's field because of its height. That application was rejected by the Additional Sessions Judge as he felt that no useful purpose would be served by visiting the site since there was sufficient evidence on record 'which (made) the facts clear'. Earlier, in his judgment, he said, that it did not lie in the mouth' of the appellants to say that canal water did not reach their field as they had admitted that Mool Chand had been murdered as a result of a dispute over water.

(42) This last reason given by the Additional Sessions Judge is not altogether right, because, at least, Inder Singh did also add that the dispute leading to Mool Chand's murder was in respect of a different field. Notwithstanding this little flaw, I think the ruling of the Additional Sessions Judge was correct. The power to inspect, conferred by section 310 of the Criminal Procedure Code, is to be exercised 'for the purpose of properly appreciating the evidence' given at the trial. Here, there was no difficulty in comprehending the evidence produced, and, thereforee, nothing to 'appreciate'. The plain fact was that the appellants had been unable to produce any evidence at all to support their contention. They did not even dare to put their case to the Patwari called by the prosecuticta. He had been posted in the village for two years past, and would have been able to say authoritation whether Randhir Singh's field received canal water or not. The want of evidence was sought to be filled by the application moved before the Additional Sessions Judge, and thus convert him into a witness. I think the Additional Sessions Judge was perfectly justified in not acceding to the prayer.

(43) Although the appellants deny it, the evidence establishes that it was the turn of Inder Singh to draw water from 10 p.m. to 2.30 a.m' and that of Randhir Singh from 2.30 a.m. to 3.30 a.m. 'The timing and turns' Ram Kishan said 'had been in existence since long prior to the date of occurrence'. There is scarcely any cross-examination of Ram Kishan and Ram Karan on this point, and the little there is does not in any manner discredit them.

(44) From the sequence of the turns, and the flow of the water as found in the morning, the identity of the assailants can be determined to a practical certainty. Since the water was flowing to the appellants' field, they must have gone at night to draw it. In the ordinary course they would remain there till their time was over. If for nothing else, they would stay to ensure that no one cut into their time. At 2.30 a.m. the water should have stopped flowing in their direction, and been directed to Randhir Singh's field. It is crucial that neither of these two things happened.

(45) That Randhir Singh went to draw water for his field is established by his dead body being found there. Obviously, the reason why water never flowed into his field must be that he was murdered before - the water could be diverted. Hence,

the time and location of the murder suggest most strongly that there was a dispute regarding water. Of course, the dispute could have been with anyone, and not-necessarily the appellants. But. why did the appellants not stop the flow of water into their field at 2.30 a.m' the appointed time The only plausible answer is that for some reason they were not there. What could that reason, be 7 In the neighbouring field there lay a murdered man. If the appellants had been more uninvolved spectators they would have reported the matter to the police or run. for help. That, they never did. The only other possible conclusion is that they were involved in the murder, and having committed it, they fled. So the water continued to flow into their field unattended, furnishing unspoken, yet conclusive, evidence of their guilt.

(46) To these 'odd coincidences', must be added another : both the appellants belong to Mool Chand's branch of the family, Inder Singh being a brother, and Surender Singb at newphew of Mool Chand, The origin of the dispute which led to Mool Chand's murder was that Inder Singh had diverted the waiter to his field, and thereby incurred the wrath of Om Parkash. Next day, Mool Chand was done to death in front of Inder Singh, who was unable to rescue his brother. It is not difficult to imagine Inder Singh's yearning for revenge. Other members of his branch of the family must have felt the same, and a feud thus came about. Clearly, Inder Singh and Surender Singh had a powerful primitive motive for killing Randhir Singh, who was the brother of 0m Parkash. Motive, it has often been held, is both relevant and good corroboration of the evidence of eye-witnesses : see Dagdu and others vs. State of Maharashtra, : 1977 CriLJ1206 Udaipal Singh vs. The State of U.P. Air 1972 S.C. 54(36); Atley vs. State of.Uttar Pradesh, : 1955 CriLJ1653 and State vs. Bhola Singh . It is not a coincidence that Randhir Singh, like Mool Chand, should have been murdered in a dispute about water. In a feud, the theme of the recurrent murders would tend to remain, constant.

(47) Some aspects of the story told by Ram Kishan were said to be 'inherently improbable'. Relying on some observations of Salveraj vs. The State of Tamil Nadu, : 1976 CriLJ1541 , it was asked: was it credible that Randhir Singh, a sturdy young man holding a spade in his hands, forewarned by the shoute of Inder Singh, would not have defended himself or retaliated when attacked And, how could it be.

that the blows struck with spades by both the appellants fell systematically on the back of Randhir Singh's neck Or, again, how did Randhir Singh get injury No. 3, i.e. the bruise behind the left shoulder, when Ram Karan admits that the appellants 'did not have any sticks it that time'

(48) It is true that the evidence does not provide ready answers to those question, but it is legitmate on the basis of the material on record to make reasonable conjectures see Jamuna Chaudhary and others vs. Stater Bihar : 1974 CriLJ890 . The injuries seem to indiicate that Raadha- Singh was assaulted from the back. Just because Inder Singh made a preliminary noise docs oot mean Randhir Singh was not caught unawares. That would depend on the time-lag between the shouts and the attack. Ram Karan says that the appellants had come quite near to Randhir Singh when they uttered the words' mentioned by me'. A murder of the kind in question is so swift that the victim has no time to reast. And,-the nature and the speed of the reaction depends upon the temperament and the reflexes of the individual. I would accept Ram Karan's Explanationn that 'Randhir Singh was given the blow suddenly as such he could not use his own spade for his defense'. So many unknown factors are involved that any worthwhile inference is almost impossible.

(49) Moreover, very first cut on the back of Randhir Singh's neck must have rendered him unconscious and totally helpless. Tho blood.' supply to his brain must have ceased forthwith. Probably, the other four cuts, at the very same place, were caused as he lay prostrate on the ground. But all the strokes were not equally well aimed. Injury No. 2 over the right side of the face may represent a stroke that missed the mark. It may be that this was the contribution of Surender Singh.

(50) The bruise behind the left shoulder could have been caused by the blunt side of a spade. Of course, neither of the eye-witnesses says this, but they do not purport to be giving a blow by blow account of the occurrence. They were seeking to save their lives and not taking notes for evidence. I agree with the Additional Sessions Judge that in the course of the onslaught it is possible that a blow may have been struck with the wrong side of a spade, whether wittingly or otherwise. In

Hallu and others vs. State of Madhya Pradesh, : 1974 CriLJ1385 , it was no doubt observed that normally when a witness says that a certain weapon was toed, he does not mean with its blunt side. That does not exclude both sides of a weapon being used. Here, all the injuries, except one, could have been caused by the sharp side of a spade. In the case before the Supreme Court none of the bruisea could have been caused by spears or axes.

(51) Taking an ova-all view, and giving due consideration to the , criticisms made, I feel quite sure that the testimony of Ram Kishan is substantially true. I have no doubt that he recognised the appellants at the time of the murder, and. names them as the assailants because that in the fact. His being the brother of the deceased docs not make his evidence any the less reliable : Indeed, it is more creditworthy for that-reason as he would wish the real offenders to be punished rather than innocent persons: Animosity between the two branches of the family can work both ways. The appellants can pray it in aid to support their plea of false implication, and the prosecution for showing that the appellants had a motive for the murder : Having regard to the proven circumstances in this case, I do not believe that the appellants have been falsely arraigned out of vindictiveness.

(52) Section 134 of the Indian Evidence Act declares that No particular number of witnesses shall in any case be required for the proof of any fact'. thereforee, it is the quality of the evidence that counts, and not the quantity. A conviction can be based even upon the testimony of a single witness. By and large, I regard the quality of Ram Kishan's evidence as good, and would be prepared to uphold the verdict against the appellants on that evidence alone. There may be a small bit of chaff in what he said, but, unlike the position in Balaka; it is easily separable from the grain, as I have already indicated.

(53) It is not necessary as a matter of law to seek corroboration of the evidence of a single witness, unless a statute or a role of prudence so dictates : see Vadivelu Thevar vs. The State of Madras, : 1957 CriLJ1000 . 'No Statute requiring corroboration is applicable to the present case. Assuming that for some reason (whether it be that Ram Kishan is an interested witness or that his statement is not wholly reliable) prudence demands further assurance, I find ample support in the

'coincidence' already mentioned,

(54) In addition there is the statement of Ram Raran. It is not a valid objection that Ram Karan's statement itself may need corroboration for the .same reasons as the statement of Ram Kishan. There is no general rule of law 'that witnesses of a class requiring Sorroboratioin (can) not corroborate one another' : Mutual corroboration is permissible provided the evidence of both the Witnesses is otherwise credible : Of .course, if Ram Kishan's testimony had fallen 'of its own inanition the question of his needing, or -being capable of giving, corroboration (would) not arise' and Halsbury's Laws ibid. But I have already held that his evidence is trustworthy. The question which remains is whether Ram Karan's evidence also inspires confidence.

(55) A few discrepancies do emerge from Ram Karan's evidence. In examination-in-chief he said : 1 had placed the lantern on the border of the field and was sitting there'. He elucidated in cross-examination that he was sitting in the field of Devi Singh, and specifically denied that he was sitting in the field of Randhir Singh. But Ram Kishan said exactly the opposite. Accopding to him 'Ram Karan was sitting in the same field which was to be irrigated with water.....'. In the sketch map prepared by the Investigating Officer, and in another one prepared later by the draftsman of the Crime Branch, Ram Karan's position's located in a vacant field adjoining Randhir Singh's on the West. That was the place pointed out by Ram Kishan to the police.

(56) Again, whereas Ram Kishan said that he was 'cleaning the water course with a spade'. Ram Karan said that 'Ram Kishan did not have any spade at that time' and 'was cleaning the earth from the water course with his hands'. And, whilst Lakshmi said that she, Chandgi Ram and Ram Karan had come from the village in the morning 'on foot'. Ram Karan said that they had come in a 'bullock-cart'. At one place in his cross-examination Ram Karan said : Inder Singh gave (the) first spade blow to Randhir Singh while standing in front'. This does not quite fit with his statement later than 'Randhir Singh fell down on receiving (the) first blow. He got that blow on the back of his neck'.

(57) These discrepancies, it was argued, showed that Ram Karan was not present at the time of the murder, and had been falsely introduced as a witness by the police with the object of corroborating Ram Kishan. To further substantiate this submission reference was made to the admission by Ram Karan that he had never before gone to the fields 'for getting supply of water', an,d this was his first time. In any case, it was said, he was 27 metres away from Randhir Singh, as appeared from the sketch maps, and could not have identified the assailants from that distance in .the dark. His statements that, from where he was sitting, the appellants 'were visible sitting in their fields' and he saw 'Inder Singh coming from his own field before he struck the blow' were cited as a measure of his capacity for exaggeration.

(58) Like the Additional Sessions Judge, I think the discrepancies are too minor. Such discrepencies can and do occur in the statement of any truthful witness. Given the imperfections of the human mind it would be strange if they did not. Hence, the mere existence of some discrepancies is not of itself sufficient to discredit a witness. There must be an 'attempt to appraise their real value and effect', and 'unless there is any g6od ground to think that they are due to a deliberate attempt to suppress or depart from the truth it is unfair to discard the direct testimony of witnesses merely on account of such discrepencies, when there is general agreement as to the material circumstances'.

(59) Applying this test, I would disregard the discrepancies in Rain Karan's statement as being of no consequence. I cannot find in them 'a deliberate attempt to suppress or depart from the truth'. They have little or no bearing on the question, who the assailants were. In all material respects the account of the murder given by Ram Karan conforms entirely with that given by Ram Kishan. Considering that Ram Karan was only a, boy of 15, he withstood cross-examination remarkably well. If there was lantern, as I have held there was, be could have recognised the assailants even from 27 metres away. Randhir Singh was working near the lantern, and when he was murdered the assailants would be fully in the light. It is not impossible that, with a lantern burning, the forms of the appellants should be visible when they were on their own field. That would depend on the distance between them and Ram Karan, which the evidence does not

define.

(60) Ram Karan was not asked why he happened to go to the fields with his brothers on this particular occasion when he had never gone before. In the absence of such a question, no adverse inference can, in fairness, be drawn. He might have had an answer which would quieten all doubts. After Mool Chand's murder, it is understandable that each party should seek security in numbers. The fact that Ram Karan is mentioned in the first information report makes it very likely that he was present. None of .the arguments advanced has been able to persuade me not to rely on Ram Karan's evidence. He, too, was Randhir Singh's brother, and had a fraternal incentive to see the real assailants punished. If corroboration of Ram Kishan's evidence be necessary Ram Karan adequately fulfills that need.

(61) Two witnesses were called by the defense. They establish nothing worthwhile. A clerk from the Government Boys Higher Secondary School, Karala, proved that Surender Singh had joined that School in Class-9A on 11th May 1974. He went to that School for a few days and then stopped, with the result that his name was struck off. the rolls. The School remained closed for the summer vacation from 15th May 1974 to 14th July 1974. I do not know what this evidence was intended to achieve. Randhir Singh was murdered on the night between 20th and 21st June 1974. In any case the School was closed during those days. But even if it had been in session, Surender Siagh could still go to a field one night with his-uncle Inder Singh to draw water. School going boys in villages are not absolved from helping on the land. The suggestion, not accepted by Dr. L. P. Raman in crossexamination That Surender Singh had undergone a skull operation, was not vindicated by calling evidence in defense. Thus, there is no evidence in support of the submission that Surender Singh was incapable of manual work.

(62) The other witness called was an Assistant Manager of the Food Storage Depot at Naraina, of the Food Corporation of India. From the documents which he had brought he deposed that Inder Singh was employed as an ancillary worker in that Depot on 15th June 1973, and was marked present on 20th June 1974. The depot, he said, was 20 or 25 kilometres from Karala, and Inder Singh's working

hours were from 9 a.m. to 6 p.m. Nevertheless, there was plenty of time between 6 p.m. and 10.30 p.m. for Inder Singh to get home from the depot, and, after a while, go to the field. Whatever the other pro-occupations of a villager, he will not neglect his land. Under no circumstances would he miss his turn for water, especially in a summer month when the rains have not yet come. The evidence adduced by the defelice is so utterly flimsy that it merits no further comment.

(63) For these reasons I would uphold the judgment of the Additional Sessions Judge, and dismiss the appeal.