

Sikander @ Mohd. Shafi Vs. State

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Court : Delhi

Decided On : May-27-1992

Reported in : 1992(2)Crimes970; 1992(24)DRJ295; ILR1993Delhi40

Judge : P.K. Bahri and; Mohd. Shamim, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 354(3)

Appeal No. : Criminal Appeal No. 109 of 1991 and Murder Reference No. 3 of 1991

Appellant : Sikander @ Mohd. Shafi;state

Respondent : State;sikander @ Mohd. Shafi

Advocate for Pet/Ap. : Mr. Sethi

Judgement :

Mohd. Shamim, J.

(1) This appeal is directed against the judgment and order dated 5.8.91/9.8.91 passed by Shri S.M. Aggarwal learned Additional Sessions Judge whereby he found the appellant guilty under Section 302 of the Indian Penal Code and sentenced him to death. The learned Additional Sessions Judge while passing the said judgment and order also referred the same to this Court under Section 366

Criminal Procedure Code . for confirmation of the sentence of death as required under the said Section vide murder reference No.3 of 1991.

(2) Both the above appeal and reference are being taken up together for disposal as the common questions of law and facts are likely to arise while disposing them of.

(3) The case of the prosecution as adumbrated in the statement of the complainant Ghulam Mohd. (Public Witness 1) and the F.I.R. and various other documents placed on record (vide Exts-PW1 /A, Public Witness 8/B and Public Witness 8/C) is as under: that one Ghulam Mohammed who is a resident of House No.1584, Gali Peepal Wali, Pahari Bhojla, Turkman Gate, Delhi, made a statement on 17.10.88 at about 9.00 p.m. before Si Mahabir Singh (Public Witness 19) that he was a dealer and a manufacturer of umbrellas and has been carrying on the said business Along with his brother-in-law known as Mohd. Rafique at Shop No. 1509, Situated at Pahari Rajan. He has got two wives known as Firdaus and Zohra Bi @ Noor Jahan. Mst. Firdaus has been residing at house No. 377.

(4) Welcome Colony, Seelampur, Along with her three children named Mehboob, Gulaam Hassan and Shabana. Her other three children have been residing with him at the above given address. They are: Sikandar aged 26 Years (hereinafter referred to as appellant), Maqbool and Shamirn. His second wife is Zohra @ Noor Johan (hereinafter referred to as deceased for the sake of brevity) had been residing with him along-with her six children, including Gulzar Bano aged 17 Years i.e. the deceased, on the address alluded to above. He has got a house at Bandra Road, Bombay where his first wife adverted to above was earlier residing before she shifted to Welcome Colony, Seelampur. There was a dispute in between him, on the one hand, and his wife Firdaus and her children, on the other, with regard to the said house. Appellant and his brother were insisting for the transfer of the said house in the name of their mother at the earliest. In this connection with the said end in view he went to Tis Hazari on 17.10.88 Along with his son-in-law Aftab Ahmad and met his counsel who advised him to come on the next day. Consequently the above said property could not be transferred in the name of his wife referred to above. On coming to know this, his sons i.e. the appellant and

Maqbool went into tantrum and declared that they would not spare him. One of them Maqbool went inside a room at nearabout 7.00 p. m. and brought out a dagger from there and attacked him. His wife Zohra deceased caught hold of the hand of Maqbool in which he was holding the dagger. He sustained a minor injury on his eyebrow above his left eye. Having failed in his attempt Maqbool inflicted a dagger injury on the abdomen of his wife. Meanwhile, his daughter i.e. Gulzar Bano deceased intervened and tried to stop Maqbool whereupon the appellant pushed him aside, snatched the dagger from the hand of Maqbool and inflicted dagger injuries on the person of his wife and his daughter till both of them collapsed and fell down. As a corollary of the above attack both of them got drenched with blood. Maqbool did not allow him to come to their rescue. Having seen no alternative he started raising an alarm as a result whereof sufficient number of people gathered there. Both the appellant and Maqbool made good their escape while brandishing a dagger. Mst. Zohra Bi and Gulzar Bano succumbed to the injuries sustained at the hands of the appellant at the spot.

(5) Si Mahabir Singh sent the said statement Along with his endorsement to the Duty Officer Ps Chandni Mahal for the registration of a formal F.I.R. whereupon the formal Fir Ex. Public Witness 8/B was recorded by Duty Officer. Hc Deshpal Singh. Si Mahabir Singh stated in his endorsement that he was present at Chowk Gadhawala, Turkman Gate in connection with his usual patrol duty on 17.10.88 at about 7.15 p.m. Along with Constable Chanderpal and Constable Ramesh Chand. He met over there Asi Om Prakash Along with Rajesh Kumar constable. Asi Om Prakash handed over to him D.D.No. 32 dated 17.10.88 (Ex.PW13/B) with regard to the murder of a lady at Gali Peepal Wali, Pahari Bhojla i.e. the above said place of occurrence. On receipt of the said report he Along with Shri Om Prakash, Asi, immediately rushed to the above said place of occurrence and recorded the above said statement of Public Witness I Ghulam Mohd.

(6) The investigation of the case was entrusted to Public Witness 19, Si Mahabir Singh. He arrested the appellant at nearabout 12.00 in the night on 17.10.88 from the main road, Seelampur at the instance of Public Witness 1 Ghulam Mohd. while he was going towards his house. Accused Maqbool, on the other hand was arrested on 18.10.88 during the night from a park near his house. Si Mahabir

Singh seized the dagger Ex.P9 from the right side dub of the shalwar worn by the appellant. He also took into police custody clothes of the appellant which were found stained with human blood vide Ex. Public Witness 1/H. He prepared the inquest reports Ex. Public Witness 1919/B and Public Witness 19/C. The dead bodies of Mst. Zohra Bi and Gulzar Bano were sent for postmortem. Autopsy on the dead bodies was conducted by Dr.L.T.Ramani, Public Witness 12. His reports in connection therewith are Exts. Public Witness 12/A and Public Witness 12/C. Si Mahabir S'nggh also recorded the statements of the majority of the prosecution witnesses under Section 161 Criminal Procedure Code .

(7) Later on Inspector, M.S. Chhikara, Sho, Chandni Mahal, himself took up the investigation on 20.10.88. He got sent to the Central Forensic Science Laboratory. Central Bureau of Investigation, Lodhi Road, New Delhi, the clothes of the deceased persons as well as that of the appellant, dagger, blood stained earth and control earth for their Chemical examination. The reports of the serologist/Chemical examiner are Exts. Pa, Pb & PC. After completing the investigation he submitted a charge-sheet against Sikandar appellant and accused Maqbool before the Magistrate concerned i.e. Shri R.K. Yadav. Public Witness 16.

(8) Since the case was exclusively triable by the Court of Session the learned Magistrate committed both the accused persons to the Court of Session for standing their trial under Sections 302/324/34 Indian Penal Code vide his order dated 21.2.89.

(9) Charges under Section 307/34 Indian Penal Code and Section 302/34 Indian Penal Code were framed by the learned Additional Sessions Judge against the accused Maqbool and appellant Sikandar. They pleaded not guilty to the charges and claimed trial.

(10) The learned lower court after the appraisal of evidence, documentary as well as oral, came to the conclusion that the prosecution had succeeded in bringing home the guilt to both i.e. the accused Maqbool and appellant Sikandar beyond any reasonable doubt. He thus found accused Maqbool guilty under Section 307 Indian Penal Code and convicted him there under. He then found the appellant herein guilty under Section 302 Ipc for causing murders of Mst. Zohra Bi @ Noor

Jahan, his step mother, and step sister, Gulzar Bano, and convicted him accordingly. Accused Maqbool was sentenced to undergo simple imprisonment for a period of three months under Section 324 IPC. He was further sentenced to rigorous imprisonment for the period already undergone by him, and with a fine of Rs. 5000.00 . In case of default it was ordered that he would undergo rigorous imprisonment for six months under Section 307 Indian Penal Code The appellant herein was sentenced to death under Section 302 IPC.

(11) Convict Maqbool did not prefer any appeal against the impugned judgment and order passed against him by the learned Additional Sessions Judge. Hence, we need not dwell upon the evidence so far as relating to convict Maqbool is concerned, on the record of the court.

(12) Appellant Sikandar aggrieved and dis-satisfied with the said judgment and order has approached this Court through the present appeal. On the other hand. the learned Additional Sessions Judge has referred the present case to this Court under Section 366 Criminal Procedure Code . for confirmation of the sentence of death on the appellant.

(13) Learned counsel for the appellant Mr. Sethi while animadverting on the evidence led by the prosecution, has vehemently contended that there is absolutely 'f no evidence worth the name on record against the appellant to warrant a finding on conviction. The statement of the prosecution witnesses are not even worth the paper on which they have been recorded. The learned Additional Sessions Judge thus fell into a grave error by coming to the conclusion that' the prosecution has successfully proved the guilt of the appellant beyond any shadow of doubt. According to the learned counsel the entire alleged incriminating evidence against the appellant consists of four ocular witnesses, two of them namely Ghulam Mohd. Public Witness 1, and Fetch Mohd. Public Witness 3 are the notorious bad characters. Thus their statements do not inspire confidence and are not worth placing the reliance. The two other eye witnesses are Public Witness 2 Mehtab Bano and Public Witness 4 Bilquees Akhtar. Both of them are child witnesses. It is well established principle of criminal jurisprudence that the statements of the child witnesses are to be looked upon with suspicion and caution

as the possibility of tutoring them cannot be ruled out. Furthermore, all the ocular witnesses are highly interested witnesses. They are inimically disposed towards the appellant. The learned counsel has further contended that the statements of the prosecution witnesses are replete with material contradictions which render nugatory the entire prosecution version.

(14) Mr. B.D. Batra, learned Standing Counsel for the State, has urged to the contrary.

(15) We have heard the learned counsel for the appellant Mr. Sethi and the learned Standing Counsel for the State at -sufficient length for a number of days and have very carefully examined their rival contentions and have given our anxious thoughts there to.

(16) It has been urged for and on behalf of the appellant that Public Witness 1 Ghulam Mohd. as well as Public Witness 3 Fateh Mohd. are both notorious bad characters. They are involved in a large number of cases. They were also convicted in certain cases. They also remained in jail. Moreover, all the witnesses examined by the prosecution are highly interested witnesses inasmuch as they are related to the deceased persons. Public Witness I Ghulam Mohd. is the husband of the deceased Zohra Bi and father of the deceased Gulzar Bano. Public Witness 2 Mehtab Bano and Public Witness 4 Bilquees Akhtar are the daughters of the deceased Zohra Bi and sister of Gulzar Bano deceased. Public Witness 3 Fateh Mohd. is a bosom friend of Public Witness I Ghulam Mohd. He has admitted on being cross-examined that he visits the house of Ghulam Mohd. daily. He further goes on to state that he is in straitened circumstances and Public Witness I Ghulam Mohd. has been giving him financial succour. In view of the above, the learned counsel has argued that it would not be safe, just and proper to place any reliance on their statements. The learned counsel in support of his above argument has led us through a case reported in *Bir Singh & Ors. v. State of Uttar Pradesh*. : 1978 CriLJ177a , wherein it has been held.. 'Where all the witnesses examined by the prosecution had serious animus against the accused and were interested in implicating the accused and neither independent witnesses were examined nor any reasonable Explanationn was given by the prosecution, the

Court would be justified in drawing an adverse inference against the prosecution.'

(17) The learned counsel on the basis of the above authority has urged that the above observations are fully applicable to the facts and circumstances of the present case. According to the learned counsel all the witnesses examined here are interested and inimically disposed towards the appellant. The independent witnesses were available, yet they were not examined as is manifest from the statement of Public Witness 1 Ghulam Mohd. in Ex. Public Witness 1/A. The contention of the learned counsel we feel is devoid of any force. Admittedly, the murders in the instant case were committed inside a house in a room with doors closed. Thus, the only natural witnesses who could have seen the occurrence would have been the inmates of that house i.e. the members of the family of the deceased. On being asked during the course of examination Public Witness 1 Ghulam Mohd. has very categorically stated that the occurrence was witnessed besides him by Bilquees Akhtar, Mehtab Bano and Patch Mohd. Admittedly all the three persons have been examined. Thus, the learned counsel cannot have any quarrel on that score.

(18) The next limb of the arguments of the learned counsel is that all the ocular witnesses are none else but the relations and friends of the husband of the deceased Zohra Bi, hence their statements are liable to be ignored also does not hold any water. It is a well established principle of evidence that the statement of a particular witness is not liable to be discarded and ignored simply because he happens to be a relation of the deceased and thus interested in the conviction of the accused if the impugned witness is found to be truthful and if his statement inspires confidence. As we have already observed above that the murder in the instant case was committed inside a house, thus, the relations of the deceased i.e. the members of the family of the deceased are the only natural witnesses. We are supported in our above view by the observations of their Lordships of the Supreme Court as reported in *State of U.P. V. Ranjha Ram & Ors*, : 1986 CriLJ1906 The remaining three witnesses are no doubt the sons of the deceased, but it is needless to say that their evidence does not lose credibility on that score. Their evidence has only to be scrutinised with greater care in order to find out whether it suffers from embellishments or exaggerations due to interestedness. The High

Court has unfortunately failed to judge the evidence of Public Witness s 1, 6 and 7 by this well accepted standard.' To the same effect are also the observations of a Division Bench as reported in Dayaram Singh v. The State of M.P. 1981 Cr. I.L.J.530 'The evidence of relation and partisan witnesses has to be scrutinised with caution, but the evidence of such witnesses does not deserve to be rejected outright simply because they are relation or inimical witnesses.' To the same effect are the observations as reported in Mulu and others v. State of Hiaryana. : 1976 CriLJ1895 .

(19) The next contention of the learned counsel is that the two of the prosecution witnesses namely Public Witness 2 Mehtab Bano is only 11 years of age whereas Public Witness 4 Bilquees Akhtar is only 12 years of age. Thus, both the above named witnesses are amenable to influence from their elders. The possibility of their being tutored cannot be ruled out. Thus, the learned counsel wants that no reliance should be placed on their statements. We are sorry. We are unable to agree with the contention of the learned counsel. There is no such proposition of law that a child witness cannot be a truthful witness. It is true that children are amenable to influence from their elders yet, at the same time, we should not be oblivious of the fact that the children are nearer to Nature than their elders. They never tell lies because by now they have not developed the art of telling lies. It is their elders who teach them to tell lies. Otherwise a child always speaks the truth and would like to reproduce the incident in its purest, unadulterated form and without any addition and subtraction there from. If the statement of a child witness appears to be natural, spontaneous, truthful in a given set of circumstances there is no reason why it should not be relied upon. We have very carefully examined the statements of Public Witness 2 Mehtab Bano and Public Witness 4 Bilquees Akhtar, yet we are unable to find any fault with their statements. Furthermore, the statements have been corroborated by the statements of other witnesses namely, Public Witness 1 Ghulam Mohd. and Public Witness 3 Fateh Mohd. and the other documentary evidence placed on record in the form of post mortem reports Exts. Public Witness 12/A and Public Witness 12/C and the reports of the Chemical examiner Exts. Pa, Pb and PC. The above view was also given vent to by the Hon'ble Supreme Court in : 1986 CriLJ1906 (supra).... 'Insofar as the evidence of Public Witness s 1 and 6 are concerned it is no doubt true that Public Witness s 6

is a child witness, being aged only 11 years. However, his evidence is not at variance with the evidence of Public Witness I who is a grown up person. The Sessions Judge has found the witness to be truthful and consistent....The High Court has rejected the evidence of Public Witness 6 for trivial reasons and has even gone to the extent of doubting his presence inside the hut of Shital Das without Realizing that a young boy like Public Witness 6 would have more likely been in the house with his parents at 2.30 p.m. than elsewhere when they were attacked.'

(20) It has then been urged for and on behalf of the appellant that Public Witness I Ghulam Mohd. and Public Witness S Fateh Mohd. are both bad characters. They have been involved in a number of cases and were even convicted. Hence it is not expected of them that they will tell the truth. Thus, it would not be safe to rely upon their statements. It is true that Public Witness 1 and Public Witness 3 by no stretch of imagination can be said to be respectable members of the society. Public Witness 1 Ghulam Mohd. has admitted during the course of cross-examination that three cases of running a brothel are pending against him. It has further been admitted by him that he was arrested in connection with the kidnapping of one Chaman from Mohalla Ganj Meer Khan, Darya Ganj, Delhi. He further goes on to admit that a case of kidnapping of one Shamima was also registered against him. He has also admitted that he was arrested on 10.8.88 in connection with a case and he remained in jail for one month and ten days. Similarly, Public Witness 3 Fateh Mohd. has admitted during the course of his cross-examination that he has undergone imprisonment four or five times. Fine has also been imposed on him four or five times. However, we feel that a mere fact that a man does not come of a higher strata of society would not by itself ipso facto render his statement unworthy of credence. If the contention of the learned counsel is taken to be correct in that eventuality no member of the society who does not enjoy good reputation would be in a position to vindicate his rights inasmuch as he would not be believed. We feel that the statement of even a witness who is so called a bad character and does not enjoy a good reputation deserves to be treated with the same respect and esteem and would be considered as truthful unless proved otherwise particularly when it appears to be true and correct in the circumstances of a given case. However, the Court should

scrutinise more carefully the statements of such witnesses who are bad characters and who do not enjoy good reputation in the society. We have in the instant case very carefully scrutinised the statements of Public Witness 1 Ghulam Mohd. and Public Witness 3 Fateh Mohd. We see no reason to discard their statements on the ground that they have been involved in a number of cases or on the ground that they were convicted and remained in jail.

(21) The next contention put forward by the learned counsel for the appellant is that the statements of the prosecution witnesses are replete with material contradictions. Their statements are inconsistent with and contradictory to one another. They contradict each other on material points and set at naught the case of the prosecution. The learned counsel in this connection has led us through the statements of prosecution witnesses. Public Witness 1 Ghulam Mohd. has deposed to the fact that while the appellant Sikandar was apprehended the police had struck their jeep against him. The appellant did not try to run away at the sight of the police. After apprehension the appellant was taken to the police post Turkman Gate where writing work was done. Public Witness 5 Constable Ramesh Chand has contradicted him by stating that the writing work with regard to the recovery of the dagger and apprehension of the appellant was done while sitting on the jeep at Seelampur. He further goes on to state that the appellant was surrounded by the police and was thus not allowed to run away. Public Witness 19 Si Mahabir Singh, on the other hand, has stated that while apprehending the appellant the jeep was not struck against him. However, the appellant tried to free himself on being caught hold of by the police. His statement is thus altogether different from the statement of Public Witness I Ghulam Mohd. Public Witness I Ghulam Mohd. has averred that Public Witness 3 Fateh Mohd. was very much inside the room and witnessed the occurrence. It is contradictory and inconsistent with the statement of Public Witness 19 Si Mahabir Singh who has asserted that PW3 Fateh Mohd. was standing outside when the incident took place. It is in the statement of Public Witness 4 Bilquees Akhtar that Public Witness 1 Ghulam Mohd. remained in the house throughout the night near the dead bodies. The above statement is contradictory and inconsistent with the statement of Public Witness 1 Ghulam Mohd. According to Public Witness 19 Si Mahabir Singh appellant was arrested at the instance of Public Witness 1 Ghulam Mohd. at 12.00

in the night on 17.10.88. This shows that Public Witness 1 Ghulam Mohd. left the place of occurrence and went out to join the investigation. Public Witness 4 Bilquees Akhtar has averred during the course of her cross-examination that nobody from the house informed the police on telephone. Public Witness 3 Fateh Mohd. has got a different tale to tell on this point. According to him Public Witness 1 Ghulam Mohd. had informed the police on telephone.

(22) The learned counsel on the basis of the above contradictions has urged that above contradictions are very much relevant and material. They cut at the very root of the case of prosecution. Hence, the statements of the prosecution witnesses can by no stretch of the imagination be said to be truthful and as such worthy of placing reliance. The contention of the learned counsel, we feel, is without any substance. It is said that human memory is very short and fleeting. Everything sinks into oblivion with the passage of time. Any event which occurs soon starts fading in the memory with the result that recall and reproduction of the same becomes well nigh impossible. The occurrence in the instant case took place on 17.10.88. The evidence was recorded from 27.4.89 onwards and continued being recorded till 9.4.91. Thus, there is nothing strange, the said contradictions crept in the statements of the prosecution witnesses. The said contradictions, we feel, are a pointer to the fact that the witnesses have neither been tutored nor have crammed their statements. Their statements are rather natural, truthful and spontaneous version of the incident. In any case, we feel, the above said contradictions do not go to the root of the matter and are in no way detrimental to the case of the prosecution. We are supported in our above view by the observations of a Division Bench of Madhya Pradesh High Court reported in Dayaram Singh v. The State of Madhya Pradesh. 1981 Cr. L. J. 530 'The maxim *'falsus in uno falsus in omnibus'* is not a sound rule for the reasons that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In such a situation, a cautious scrutiny of the prosecution evidence appears to be necessary and the substratum of prosecution case or material part of the evidence has to be judged to find out whether the disbelieving part of the prosecution version affects the reliability of the main plank of the prosecution version, the remaining part can be believed, there will be no bar to its acceptance.'

(23) The learned counsel Mr. Sethi has drawn our attention to the statement of PW4 Bilquees Akhtar where she has stated during the course of her cross-examination that her aunt Smt. Firoza was inside the house when murders were being committed. The learned counsel on the basis of the said statement has vehemently argued that if it is so the prosecution is guilty of suppressing the best possible evidence which this court could lay its hands on in the circumstances of the present case. Hence, an adverse inference under Section 114(g) of the Evidence Act is liable to be drawn against the prosecution in favor of the appellant. The argument of the learned counsel is a specious one and is without any substance. The prosecution, we feel, is under no obligation to produce each and every witness whosoever happens to witness the occurrence. No useful purpose is served by increasing the number of witnesses and thereby making the record bulky and burden the same.. They are required to produce only as many witnesses as they think proper to prove their case. We are supported in our above view by the observations of the Hon ble Supreme Court in *Bir Singh and others* (supra) 'It is true that it was not incumbent on the prosecution to examine each and every witness so as to multiply witnesses and burden the record. This rule however does not apply where the evidence of the eye witnesses suffers from various infirmities and could be relied upon only if properly corroborated. '

(24) Mr. Sethi, counsel for the appellant, has then contended that Public Witness 3 Fateh Mohd. is a false witness. He was not at all present at the time of occurrence, yet he has deposed to have witnessed the incident. This casts serious suspicion with regard to the authenticity of the case of the prosecution. He thus wants the case of the prosecution to be flung to the winds on this short ground alone. The learned counsel in support of his argument has cited *Naurang Singh and others v. The State* 961 P.L.R.908. 'Mr. Har Parshad, the learned counsel for the appellants, has further canvassed the proposition before us that the prosecution having deliberately introduced a false witness in this case the entire evidence should be rejected. There is no doubt that the Courts are expected to be very astute in examining the evidence where there is deliberate introduction of false witnesses. It is their duty to see that the evidence on which conviction can be sustained is of an unimpeachable character.' In the Division Bench authority of the Lahore High Court in *Abdul Sattar v. The Crown* 2nd 17 Lah-460, it was held... 'Where the

prosecution produces a false witness for the purpose of procuring a conviction the credibility of the rest of the evidence is also affected and it becomes extremely unsafe to act upon any of the evidence in such a case.' According to the learned counsel the same view was reiterated in *Dilbagh Singh v. State.* (Cri. Appeal No. 223/75 decided on 6.9.79 by a Division Bench of this Court consisting of Prithvi Raj J. and O.N. Vohra,J).

(25) In view of the above let us now see as to whether Fateh Mohd. (Public Witness 3) is a false witness? Learned counsel in this connection has laid much stress on the statement of Public Witness 19, Si Mahabir Singh. Si Mahabir Singh has stated in his averment on oath that Public Witness 3 Fateh Mohd. was outside the gate when the incident took place whereas according to the site plan Ex. Public Witness 10/A his presence has been shown inside the door. The learned counsel thus wants us to conclude there from that Public Witness 3 Fateh Mohd. is a liar. He is a false witness and has been introduced to help the prosecution in securing conviction. A perusal of the statement of Public Witness 3 Fateh Mohd. reveals that he has himself admitted that he was standing outside the door and he witnessed the occurrence there from through the chinks of the said door. Thus, the statement of PW19 and of Fateh Mohd. are identical on this point and there is absolutely no discrepancy. It appears that the presence of Public Witness 3 Fateh Mohd. has been inadvertently shown inside the door in the plan Ex. Public Witness 10/A. It thus appears to be a lapsus calami. PW1 Ghulam Mohd. has very categorically stated in his statement on oath that Fateh Mohd. was also present at the time of the occurrence and witnessed the same. Both the above named Public Witnesses appear to be truthful witnesses. In the facts and circumstances of the present case the statement of Public Witness 3 Fateh Mohd. when he states that he witnessed the occurrence through the chinks of the door sounds a ring of truth inasmuch as he could have very well stated that he saw the incident from inside the house.

(26) Assuming, argue do that Public Witness 3 Fateh Mohd. is not a truthful witness and the prosecution has introduced him in order to secure the conviction of the appellant, even then, we feel, there is no such law that the moment a Court comes to the conclusion that there is an introduction of a false witness the Court

will immediately discard the prosecution case and would not look into the statements of other witnesses and the other material on record. We have very carefully examined the two authorities alluded to above cited by Mr. Sethi in support of his above argument. A perusal of the same reveals that what the Hon'ble Judges opined therein was simply this that once a Court comes to the conclusion that there is an introduction of a false witness it would place the Court on its tiptoe and guard and in that eventuality the Court would examine the other material on record placed by the prosecution in the form of oral evidence and documentary evidence very carefully. We feel the correct position of the law on the above point is that when the truth and the falsehood are so inextricably mixed and intertwined in the statement of a particular witness that it is well nigh impossible for the Court to separate the grain from the chaff in that eventuality the entire statement of that particular witness is liable to be ignored and discarded. However, where the Court is in a position to disengage the truth from the falsehood in that eventuality the portion of the statement of that witness which is false would be rejected and the Court will accept the rest. The above view was also given vent to by the Hon'ble Supreme Court in *Soma Bhai v. State of Gujarat*. : 1975 CriLJ1201' It is well settled that the Courts should make an effort in disengaging the truth from falsehood. Merely because a portion of the testimony of a witness is unreliable, it is no ground to brush aside his entire testimony. In these circumstances, therefore, even if the dying declaration on the part of the prosecution case be treated as unnecessary embellishment or orientation in this case that will not detract from the testimony of the eye witnesses with respect to the other portion of their evidence to which they have deposed and regarding which they have not been shaken in cross-examination.'

(27) In view of the above, we feel that even if we accept the argument advanced by the learned counsel for the appellant that Public Witness 3 Fateh Mohd. is not a truthful witness, even then the Court would ignore and reject the evidence of Public Witness 3 Fateh Mohd. only. However, we feel that even if the statement of Fateh Mohd., is excluded from the zone of consideration even then the prosecution has placed on record ample material to bring home the guilt to the appellant. Public Witness 1 Ghulam Mohd. Public Witness 2 Mehtab Bano and Public Witness 3 Bilquees Akhtar, all of them have stated in unequivocal terms

that both the deceased persons were killed by the appellant with a dagger. There is absolutely nothing in their cross-examination to render their testimonies unworthy of credence. Besides the above dagger Ex. P9 i.e. the weapon of offence was recovered from the possession of the appellant. It was found to be stained with human blood of 'B' group i.e. of Miss Gulzar Bano. The clothes of the deceased were also found stained with the blood of the deceased Miss Gulzar Bano (vide Exts. Pa, Pb & PC).

(28) The prosecution has also placed on record MLCs in respect of both the deceased i.e Miss. Gulzar Bano and Smt. Zohra Bi vide Exts. Public Witness 18/A & Public Witness 18/ B. A perusal of the same reveals that there is a mention therein that the deceased Zohra Bi was brought dead with the alleged history of being stabbed by her step son (vide Ex. Public Witness 18/A). Similarly, there is a mention in Ex. Public Witness 18/B that the deceased Gulzar Bano was brought dead with the alleged history of her being stabbed by her step brother. The said facts were mentioned in the above said two documents at the earliest possible opportunity. Thus, we find therein the most natural, spontaneous and untainted version of the case of the prosecution.

(29) The prosecution has then placed on record the reports of the Chemical examiner (vide Exts. Pa, Pb & PC). The Chemical examiner opined with regard to query No.7 (Ex. PA) that the cut marks Q1 to Q5 on the blouse Ex. BC. Q6 on the brassieres Ex. 8D, on the saree Ex, 8E, Q33 to Q58 on the chunni Ex. 9A, Q59 to Q69 on the ladies shirt Ex. 9B have been caused by sharp-edged weapon having both edges sharp. Hence, the same could have been caused by the dagger Ex. No.P9. Admittedly, the dagger which was recovered from the possession of the appellant is a double edged weapon. Thus, the above cut marks on the clothes of the deceased persons could have been caused by the dagger which had been recovered from the possession of the appellant. This again, to our mind, links the appellant with the offence in question and thus, we find that the learned Additional Sessions Judge was right in his conclusion that the appellant caused the death of the deceased persons.

(30) The other point raised by Mr. Sethi, learned counsel for the appellant, is that the weapon of offence was recovered from the right side dub of the shalwar worn by the appellant (vide statement of Public Witness 19 Si Mahabir Singh), yet the blood stains were found on the left side of the shalwar. This casts suspicion on the entire case of the prosecution. The contention of the learned counsel is without any merit. It is true that the dagger was recovered from the right side dub of the appellant at nearabout 12.00 in the night (vide Ex. Public Witness 1/H). It is also true that the blood stains were found on the left side of the shalwar. However, this in no way detracts us from believing the case of the prosecution. Admittedly, the murder in the instant case was committed at 7.00 p.m. on 17.10.88. Thus, it is possible that the appellant might have kept the dagger on the left side of the dub of the shalwar immediately after committing the murders with the result that the left dub of the shalwar might have soaked the blood whatever little drops were left on the blade of the dagger. The appellant might have shifted, the dagger to the right side dub later on at a time when there was no blood on the blade of the dagger with the result that no blood stains were found on the right side dub of the shalwar when the dagger was recovered at 12.00 in the night.

(31) Learned counsel for the appellant has then led us through the reports of the serologist Exts. Pa, Pb & Pc and has urged on the basis of the same that the blood group of the deceased Zohra Bi was 'O' whereas that of Miss Gulzar Bano was 'B'. The appellant, according to the case of the prosecution, is alleged to have committed the murder of both with the same dagger Ex.P9. Thus, the blood of both the groups should have been found on the clothes of the appellant as well as on the dagger. Astonishingly blood of 'B' group only was found on the clothes of the appellant as well as on the dagger. This again casts suspicion on the entire case of the prosecution. The contention of the learned counsel no doubt is an ingenious one, but can be brushed aside with an anon. The admitted case of the prosecution is that the appellant first of all attacked Zohra Bi @ Noor Jahan with the dagger Ex. P9. Admittedly, the blood group of Zohra Bi is 'O'. Thereafter, the appellant hit repeatedly with the same dagger Miss. Gulzar Bano whose blood group is 'B'. The appellant is reported to have caused as many as 11 injuries on the person of the deceased Gulzar Bano. Thus, it is but natural that the traces of the blood group 'O' were wiped of during the course of stabbing done by the

appellant to the deceased Gulzar Bano. Thus, there is nothing strange that no blood of 'O' group was found on the blade of the dagger Ex.P9. This is all the more so because the blade of the dagger is made of steel which cannot absorb the blood. Hence, whatever traces of 'O' group were there must have been obliterated during the second assault on Miss. Gulzar Bano.

(32) The next question raised by the learned counsel for the appellant is that no blood of 'O' group pertaining to the deceased Zohra Bi was found on the clothes of the appellant. The reply to the above argument is very simple. Once a dagger is thrust-into abdomen of a person and taken out of the same there is immediate sealing off the skin with the result that there is no spurting of the blood. Likewise, is the case of the chest of the person whenever an injury is caused to the same. Thus, it is not necessary in every case for the clothes of a person who commits the murder to be stained with blood.

(33) It has then been urged for and on behalf of the appellant that there is a delay in lodging the Fir (vide Ex. Public Witness 8/B & Ex. Public Witness 16/A) which was recorded at 9.10 p.m. though the murders are alleged to have been committed at 7.00 p.m. This casts a serious doubt with regard to the authenticity of the case of the prosecution. The learned counsel in support of his argument has led us through *Gurdev Singh and others v. The State*. (LXV-1963 Plr 409),..... 'that the first information report in respect of a cognizable offence should be lodged as soon as possible. Where the lodging of the report is delayed, it not only gets bereft of its spontaneity, danger also creeps in of the introduction of coloured versions, thought out stories and twists to actual facts. The interested parties can then be sounded and some of them shown as false witnesses. Likewise, some innocent persons can be roped in and named as culprits as a result of much thought, consultation and discussion. To avoid these dangers, the Courts have always insisted upon the prompt lodging of the report to the police....'. There is no dispute with the said proposition of law. However, we are of the view that there is no delay in lodging the Fir in the instant case. A perusal of the record reveals that the information with regard to the murders was given at 7.05 p.m. to the Pcr and was received by one Chander Kala who on her turn informed Pp Turkman Gate, Ps Chandni Mahal at 7.05 p.m. and the same was recorded vide Dd No. 32 dated

17.10.88 (vide Ex. Public Witness 13/B). Si Mahabir Singh on receipt of the said information from Asi Om Prakash, Pp Turkman Gate at 7.15 p.m. immediately rushed to the spot and recorded the statement of Public Witness 1 Ghulam Mohd. The statement of Ghulam Mohd. (Public Witness 1) was sent to the police station for registration of a formal Fir at 9.00 p.m. Along with the endorsement thereon by Si Mahabir Singh.

(34) It has then been argued for and on behalf of the appellant by Mr. Sethi that the names of the ocular witnesses neither find a mention in the Fir nor in the rukka Ex. Public Witness 1/A i.e. the statement of Ghulam Mohd. which forms the basis of the FIR. This gives birth to innumerable doubts with regard to the genuineness of the case of the prosecution. It is true that the names of the ocular witnesses do not find a mention in the FIR. However, the said fact by itself is not sufficient enough for rejection of their testimony on the said ground alone. There is no such rule and law that name of each witness should be mentioned in the Fir before he can be examined and his statement is acted upon. If the statement of a witness on being examined is trust-worthy, it can be safely relied upon irrespective of the fact whether his name finds a mention in the Fir or not. We are supported in our view by the observations of their Lordships of the Supreme Court reported in Narpal Singh and others v. State of Haryana. AIR 1977 Sc 1006,.... 'Secondly, the mere fact that his name was not given in the Fir though of some relevance would not be sufficient by itself to entail rejection of the testimony of the witness.....'

(35) Mr. Sethi has then contended that there was no motive on the part of the appellant to have killed his step mother and his step sister. The contention of the learned counsel is devoid of any force. The motive with regard to the murder finds a mention not only in the statement of Ghulam Mohd. (Public Witness I) (vide Ex.PW1/A), but also finds a mention in the brief facts given Along with the inquest reports (vide Exts. PW19/B) and Public Witness 19/C). A perusal of the same reveals that there was a dispute in between the appellant, his brothers and his mother, Firdaus, on the one side, and the deceased Zohra Bi and Public Witness I Ghulam Mohd, on the-other, with regard to the transfer of property situated at Bombay. Further, there are quite a good number of documents in the form of reports which were lodged by the appellant and his brothers with the police against

the deceased Zohra Bi and Public Witness I Ghulam Mohd. (vide Exts. PW1/R, Public Witness 1/S, Public Witness 1/T and Public Witness 15/A). The said documents go a long way to show and prove that the appellant, his brothers and his mother Firdaus, on the one hand, and the deceased Zohra Bi and Public Witness I Ghulam Mohd, on the other, were inimically disposed against one another. Enmity it is well-known is a double edged weapon. It can, serve as a motive to commit a crime as well as to falsely implicate. Further, we are of the view that it is not necessary for the prosecution to prove motive in each and every case. The law of crimes in our country is a codified one. Each offence has been defined therein with all the ingredients of that offence contained therein. So, what the prosecution is required to prove, are the said ingredients in order to bring home the guilt to the accused. Thus, the motive loses much of its significance.

(36) Furthermore, when there is a direct evidence with regard to the assault and the same is worthy of credence, the question of motive more or less loses its importance. We are fortified in our above view by the observations of their Lordships of the Hon'ble Supreme Court in *Molu & others* (supra)..... 'it is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved, sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is credit-worthy and is believed by the Court which has placed implicit reliance on them the question whether there is any motive or not becomes wholly irrelevant.'

(37) In view of our above discussion we are of the view that the learned Additional Sessions Judge was perfectly justified in finding the appellant guilty under Section 302 of the Indian Penal Code.

(38) This brings us to the point of sentence. Learned counsel for the appellant. Mr. Sethi, has argued with great zeal and fervour that the present case is not a fit case for awarding extreme penalty of death to the appellant. According to the learned counsel the learned Additional Sessions Judge while doing so was swept away by emotions and sentiments which have got no place in the realm of law. Justice is to

be administered in a calm and dispassionate manner with an objective altitude. The learned counsel has further contended that now it is a well-settled principle of law that extreme penalty of death is to be imposed in the rarest of rare cases. The instant case, according to the learned counsel, is not one of those cases. Mr. Baira, learned Standing Counsel, has conceded with commendable fairness on his part that the present case does not call for the extreme penalty of death.

(39) We find ourselves in perfect agreement with the learned counsel Mr. Selhi that the extreme penalty of death is to be awarded to a convict only in those discerning few cases where the murder committed by him is shocking, brutal, diabolical and revolting; the tremors of which are felt not only in the family of whose member is killed but are felt far and wide. The said murder should create not only a problem of law and order but a problem of public order where the even tempo of life is disturbed and the entire machinery of the society, so to say, is thrown out of gear.

(40) Furthermore, the Courts while awarding the death penalty should not look only to the crime but also to the circumstances of the criminal. The question as to when death penalty is to be imposed came up for consideration before the Hon'ble Judges of the Supreme Court in *Allauddin Mian and others v. State of Bihar*, 'The court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the community. Unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose the lesser punishment. Only in those exceptional cases in which the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, would it be permissible to award the death sentence.

(41) The matter with regard to the construction of Section 354(3) Criminal Procedure Code . was again the subject-matter of a number of writ petitions as reported in *Bachan Singh v. State of Punjab*. : 1980 CriLJ636 'In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion

of extreme depravity that 'special reasons' can legitimately be said to exist'..... It cannot be over emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3).'

(42) Furthermore, the punishment should always be in proportion to the gravity of the crime committed by a criminal. A severe punishment imposed on a minor crime may unleash a wave of repulsion amongst the public whereas a mild punishment imposed in case of a grave crime may look ludicrous. Thus, the punishment should be commensurate with the gravity of the crime. We are tempted here, to cite a few lines from Kautilya's Arthashastra' in support of our above view: With the above background let us now examine the facts of the present case. Admittedly, the murder in the instant case was not a pre-meditated murder. It was committed at the spur of the moment. The appellant and his brother convict Maqbool did not come out armed with any weapon. Convict Maqbool took out a dagger from a room at the spur of the moment which was Subsequently snatched away by the appellant (vide statement of Public Witness 1 Ghulam Mohd, Public Witness 2 Mehtab Bano and Public Witness 4 Bilquees Akhtar). Appellant herein is a youngman of 23 years of age with a young wife and small children. His father has deserted his mother and his younger brothers and sisters. He is thus the bread-earner of his family along with his other brothers. Looking to the above circumstances of the appellant we feel the learned Additional Sessions Judge should have chosen the lesser penalty i.e. of life imprisonment.

'WHOEVER imposes severe punishment becomes repulsive to the people; while he who awards mild punishment becomes contemptible, but whoever imposes punishment as deserved becomes respectable.'

(43) There is another aspect of the matter. It is said that justice should be tampered with mercy. Justice and mercy are twin sisters. They go hand in hand. It is difficult to visualise the existence of one in the absence of the other. In fact, they supplement each other. Justice bereft of mercy is turned into Cruelty. This aspect of justice can be best described in the words of Shakespeare:

'THE quality of mercy is not strain'd; It dropped as the gentle rain from heaven. Upon the place beneath: It is twice blest: It blessed him that gives and him that takes; 'Tis mightiest in the mightiest; it becomes. The throne monarch better than his crown; And earthly power doth then show likes God's When mercy seasons justice. Shakespeare, Merchant of Venice, Iv, I'.

(44) In the circumstances stated above and in the light of our discussion, we maintain the conviction of the appellant. However, we allow the appeal on the point of sentence only. The order with regard to the death penalty passed by the learned Additional Sessions Judge is hereby set aside. Instead the appellant is sentenced to life imprisonment and to pay a fine of Rs.5000.00 . In case of his failure to clear the fine he will undergo rigorous imprisonment for 18 months. The murder reference is hereby declined and the appeal is allowed on the point of sentence only.

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