

The State Vs. Bal Kishan @ Bali

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Court : Delhi

Decided On : Jun-02-2006

Reported in : 2006CriLJ3508; 130(2006)DLT242; 2006(89)DRJ427

Judge : Manmohan Sarin and; J.M. Malik, JJ.

Acts : Arms Act; Indian Penal Code (IPC) - Sections 302 and 307; Code of Criminal Procedure (CrPC) - Sections 157(1), 161, 174, 175 and 313

Appeal No. : Crl. Appeal No. 89/1982

Appellant : The State

Respondent : Bal Kishan @ Bali

Advocate for Def. : K.B. Andley, Sr. Adv. and ; M.L. Yadav, Adv.

Advocate for Pet/Ap. : Sunil Sharma and; Jagdish Prasad, Advs

Judgement :

J.M. Malik, J.

1. The respondent/accused was exonerated from the charges under Sections 302 of I.P.C. and 25/27/54/59 of Arms Act by the Learned Additional Sessions Judge vide his order dated 24th December, 1981. Aggrieved by that order, the State has preferred the present appeal. In brief, the facts of the prosecution case are: Lakhi

Shah Kohli and Kirori Shah Kohli, cousins were partners in business. After the death of Lakshi Shah Kohli, his son Satpal Kohli, the deceased, continued his business with Kirori Shah Kohli. The said business terminated 10-12 years prior to the present incident. Their relations became sour due to disputes over money matters. Bal Kishan, respondent/ accused, is the son of Kirori Shah Kohli. Satpal Kohli, his brother Dharampal Kohli, their wives Pushpa Kohli and Asha Kohli, their mother Vidya Wanti and family including Deepak deceased's son aged about 10 years resided in house No. I-48, Kirti Nagar, Delhi.

2. On 3rd July, 1980 at about 9.25 p.m., ASI Krishan Kumar received an information on telephone from Krishan Murari PW about a quarrel at I-56, Kirti Nagar. Pritam Singh ASI and constable Bhawani Dass visited the spot. It transpired that Krishan Murari, G.S. Bedi, O.P. Verma and two ladies had already nailed the assailant/respondent instantaneously on the spot itself. It transpired that the deceased had been removed to the hospital by his mother and wife. The said police officials also found that a sword, two wheeler scooter bearing No. DHV 2601, one helmet, one blood stained cot, a sheath of sword, a pair of V-shape chappal and blood was lying on the spot. Lakshmi Chand, Sub- Inspector, Emergency Officer, after being informed by the SHO, P.S. Moti Nagar also arrived at the spot. He recorded the statement of Smt. Asha Kohli. She made a statement to the effect that Satpal and Dharampal were canteen contractors. Relations between respondent/accused and Satpal were strained due to prior business and money matters. Satpal was to arrive in Delhi on 3rd of July. Bal Kishan, respondent visited their house early in the morning and enquired about the arrival of Satpal. He was informed that Satpal would be returning during the evening time. Bal Kishan left the place. The bell of their house rang at about 8.45 p.m. when Pushpa Kohli, Asha Kohli, Satpal, Deepak and Vidyawanti were present in their house. Deepak opened the door, came back and informed that Bal Kishan uncle was calling Satpal outside the house. All of them came outside and requested Bal Kishan to come inside the room. However, Bal Kishan insisted that he would talk to Satpal outside the house. Bal Kishan started moving on his two wheeler scooter, conversed with the deceased, who started going along with him on foot. Due to strained relations between them, all the above said near and dear of the deceased kept on standing on the road. Bal Kishan stopped his scooter in front of

house No. I-46 and parked it there. In a fit of rage, he brought out a sword and inflicted a number of blows upon Satpal. Satpal tried to ward off the blows with his hands and ultimately fell down. At the time of inflicting blows, Bal Kishan shouted have a taste for withholding the money. The above said relations of the deceased raised an alarm. Many persons from the neighborhood collected and apprehended the accused. The deceased was removed to the hospital by Vidyawanti and Pushpa Kohli in a taxi.

3. A case under Section 307 IPC was got registered. Satpal was declared to be unfit for making a statement, when Lakshmi Chand visited the hospital. Lakshmi Chand SI came to the spot, arrested the accused formally and seized his blood stained shirt, pants, one undervest, which accused was wearing at that time. Satpal succumbed to his injuries during the night at about 11.15 p.m. Autopsy on the dead body was conducted on 4.07.1980 at about 3 p.m. Dr. L.T. Ramani, PW6, gave the following opinion:-

All injuries were anti mortem caused by sharp weapon. Injuries over the neck (cut throat) and over the scalp were individual sufficient to cause death in ordinary course of nature. Death was due to haemorrhage and shock resulting from injuries time since death was about 16 hours.

During his cross-examination Dr. L.T. Ramani deposed that he had seen the sword which was quite sharp and injury No. 4 could possibly be caused by the weapon. His opinion about the other injuries was also the same.

4. During the investigation it transpired that scooter No. DHV 2601 was registered in the name of accused's father. The CFSL report Ex. PW20/G goes to depict that blood was detected on exhibits 1 (one metallic sword having a long blade and a handle), Ex.-2 (dark brown putrefied liquid approx. 2ml), Ex.3 (black concrete material approx. 5 gms.), Ex.4 (black concrete material having dark brown stains), Ex.5 (dark brown putrefied liquid approx. 10 ml.), Ex. 6A (one dirty white cotton underwear having extensive dark brown stains), Ex. 6B (one printed cotton tehmad having reddish brown stains), Ex. 7 (dark brown putrefied liquid approx. 2 ml.), Ex. 8 (one yellow full sleeved open shirt having dark brown stains, Ex. 8A (one black pant having dark brown stains) and Ex. 8C (one dirty white cotton

baniyan having dark stains). Ex. PW20/H goes to show that human blood was recovered from sword (post-mortem blood), underwear with inclusive results. However blood stained earth, tehmad belonging to the deceased and shirt, pants and baniyan belonging to the respondent gave B- grouping. The respondent was indicted for an offence punishable under Sections 302 IPC and 25 and 27 Arms Act.

5. Charges were framed against the respondent on 10.11.1980. Respondent pleaded not guilty and defended the present case. The story put forward by the respondent under Section 313 Cr.P.C. is this. His father Kirori Shah Kohli was doing joint business with Satpal. His father is bed ridden for the last about 7-8 years. The respondent himself is doing separate and independent business. There used to be some quarrel between his father and Satpal over money matters, the details of which were not known to him. On 3.7.1980 he had gone to the house of Satpal in a rikshaw and remained with him in his house for about 15-20 minutes. Both accused and deceased came out of the house of the deceased and the deceased accompanied him to see him off. They were on foot. They had gone ahead near milk booth and house No. I-46, Kirti Nagar. Satpal started returning and proceeded towards his house. The accused heard the cries from backside when he had gone about 8-10 yards ahead. He noticed that two persons were attacking Satpal and perhaps one of them was having a sword. The accused also received an injury on his little finger at the hands of the assailants. The assailants ran away after throwing the sword at the spot. The accused raised an alarm. While trying to rescue Satpal, blood fell on his clothes. The accused called Asha Kohli from her house after this incident and then all the family members came out. Since Satpal and his family members were not on good terms with his father, therefore, they got him framed in this case as the real assailants had escaped. The accused alleged that he is victim of the rumour created by the family members of Satpal. Krishan Murari, O.P. Verma and J.S. Bedi have been introduced as false witnesses after the death of Satpal since they had acquaintance with the family of Satpal. He did not produce defense evidence.

6. Learned Additional Sessions Judge has mentioned in his judgment that while signing his statement recorded under Section 313 Cr. P.C. the respondent gave

the following writing :

It is respectfully submitted as under :

That in my statement it could not be incorporated that since it was dark and I could not identify the assailants, it may kindly be incorporated in my statement. Prayed accordingly.

(Sd-)

Applicant Bal Kishan

8th Dec. 81.

7. We have heard learned Counsel of the parties. Mr. K.B. Andley on behalf of respondent submitted that the Appellate Court is entitled to re- appreciate the evidence on record but it will not interfere with the order of acquittal unless it finds the view of the Court acquitting the accused to be unreasonable or perverse. In order to bring his point home, he cited Balbir Singh and Ors. v. State of Punjab and Ors. 2005 S.C. C (Cri) 1245. He also referred to State of Karnataka v. K. Gopalakrishna 2005 S.C. C (Cri) 1237, wherein it was held:-

We are conscious of the fact that we are dealing with an appeal against an order of acquittal. In such an appeal the appellate court does not lightly disturb the findings of fact recorded by the court below. If on the basis of the same evidence, two views are reasonably possible, and the view favoring the accused is accepted by the court below, that is sufficient for upholding the order of acquittal. However, if the appellate court comes to the conclusion that the findings of the court below are wholly unreasonable or perverse and not based on the evidence on record, or suffer from serious illegality including ignorance or misreading of evidence on record, the appellate court will be justified in setting aside such an order of acquittal. We find this case to fall under the latter category. We find no rational justification for the conclusion reached by the High Court.

8. We are in full agreement with the learned Counsel for the respondent so far as legal proposition cited by him is concerned. Furthermore, the observations made

by the apex Court, in *Main Pal and Anr. v. State of Haryana and Ors.* 2004 V A.D. (S.C.) 150, neatly dovetail with this proposition. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [see *Bhagwan Singh and Ors. v. State of Madhya Pradesh* 2002 (2) SC 567. The principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. This position has been recently reiterated in *Joseph v. State of Kerala* : 2003 CriLJ813 , *Devatha Venkataswamy @ Rangaiah v. Public Prosecutor, High Court of A.P.* : 2003 CriLJ4332 , *State of Punjab v. Phola Singh and Anr.* : 2003 CriLJ5010 , *State of Punjab v. Karnail Singh* : 2003 CriLJ3892 , *State of U.P. v. Babu and others* : 2003 CriLJ4982 and *Suchand Pal v. Phani Pal and Anr.* : 2004 CriLJ628 .

9. The first reason given by learned Additional Sessions Judge was that the prosecution has not succeeded in proving motive though it was alleged. Asha Kohli, PW1, stated that sometimes back the respondent had joint business with

her father-in-law and there was some money dispute between them. She, however, could not state up till what time that joint business continued. She admitted that respondent did not join business with the deceased. She deposed that respondent used to visit their house and demand money from Satpal. Smt. Pushpa, PW2, stated that after the death of her father-in-law the joint business between father of the respondent and her husband continued. She deposed that the said business ended about 10-12 years back and there was some controversy over payment of money between her husband and the respondent. Dharam Kohli, PW7, deposed that his father and father of the respondent had joint business in army canteen. He deposed that his brother used to tell him that the respondent used to demand money occasionally from him regarding their business. He stated that he found letter mark X written to his brother by the respondent. Letter mark X, which is an inland letter, is addressed to the deceased. This letter purports to have been written by Bali, the respondent who is also known by this name as well, wherein he mentioned that he had received money partially and a sum of Rs. 10371.18 paise was due to the deceased. The learned A.S.J. did not place reliance upon letter mark X because it was produced at a belated stage. The learned A.S.J. observed that the above said PWs did not have personal knowledge about the business dealings between their father and the father of the respondent. Again, they also did not state that the deceased had told them about dispute regarding the settlement of accounts between the two. He further held that if motive as a circumstance is put forward by the prosecution, it must like any other incriminating circumstance has to be fully established. In support of his case he has referred to an authority reported in Lal Singh v. State (Raj.).

10. It is pertinent to note that the learned A.S.J. did not discuss the statement made by the respondent himself. It may be recalled that in his statement the respondent admitted that his father had joint business with Lakhi Shah Kohli, which continued to be joint with Satpal after the death of his father. Respondent explained that he is doing separate and independent business and his father is bed-ridden for the last about 7-8 years. It is significant to note that the accused himself admitted that there used to be some quarrel between his father and Satpal over money matters, the details of which were not known to him. The learned senior counsel for the respondent Mr. K.B. Andley conceded that there is some

evidence regarding motive. We are of the considered view that the evidence of all the above said witnesses PW1, 2 and 7 clearly indicate that respondent used to quarrel with the deceased over money matters. This fact stands established sans letter mark X. It is well said that money is the biggest seed of strife in this world. There is sufficient evidence to establish the existence of motive. However, it is well settled that motive by itself is not sufficient to prove the guilt. [see State of M.P. through CBI and Ors. v. Paltan Mallah and Ors. : 2005 CriLJ918 and Ramareddy Rajeshkhanna Reddy and Anr. v. State of Andhra Pradesh : AIR 2006 SC1656 .

11. The prime reason for acquittal given by the Trial Court Judge is that the FIR was not recorded at the time at which it is purported to have been recorded. He enumerates the following reasons for coming to this conclusion. Asha Kohli PW1 stated that Sikh Thanedar did not record her statement. SI Laxmi Chand came to the spot about 5-10 minutes after the arrival of sikh police officer, Laxmi Chand remained at the spot only for 5-10 minutes before going to the hospital, where he had gone alone. On coming back to the spot SI Laxmi Chand inspected the spot and before recording her statement he interrogated Krishan Murari, Verma Sahab and Bedi Sahab.

12. On the other hand, Investigating Officer deposed that he recorded the statement of Asha Kohli before going to the hospital. He deposed that he reached the spot and recorded the statement of Asha Kohli at 10.25 p.m., arrived at the hospital and collected the MLC of Satpal, who was declared by the Doctor to be unfit for making a statement. The said endorsement Ex.PW21/A was recorded on MLC Ex.PW20/A at 10.45 p.m. to the effect that Satpal was unfit for making a statement. SI Laxmi Chand came back to the spot. He stated that he had taken about ten minutes to reach the hospital from the spot and in this way, the Judge opined that he would have taken almost the same time for coming back to the spot. The learned Judge observed, in this way the possibility of the Investigating Officer recording the statement Ex.PW1/A of Smt. Asha Kohli and recording of endorsement Ex. PW14/B and sending the rukka to the Police Station at 10.25 p.m. is an impossibility. ASI Pritam Singh, PW11, stated that SI Laxmi Chand went to the hospital after sending the rukka but this fact did not find mention in his statement under Section 161 Cr. P.C.

13. Secondly, there was delay in sending the special report to the Ilaka Magistrate by 10-11 hours. The case was firstly registered under Section 307 IPC. Consequently, there was no need to send the FIR to the Ilaka Magistrate. The learned A.S.J. considered the question whether the Investigating Officer knew about the death of Satpal before the recording of the FIR or not. Smt. Asha Kohli admitted in her cross-examination that information about the death of Satpal was received at the spot at about 11.30 p.m. on 3rd July, 1980. O.P. Verma PW3 deposed that as soon as SI Laxmi Chand came to the spot from the hospital information of death of Satpal was received and it may be between 11.30 p.m. and 11.50 p.m. According to O.P. Verma he himself rang up the hospital at about 11.30 p.m. and confirmed this information. Constable Munshi Ram PW19 also admitted that he came to know about the death of Satpal at the spot. SI Laxmi Chand, Investigating Officer admitted that he came to know about the death of Satpal at the spot.

14. However, Ex. PW 20/DC true copy of DD No. 4-A written by SI Laxmi Chand at 4.00 a.m., wherein he recorded that Satpal had expired and inquest proceedings under Section 174 Cr. P.C. would be taken up in the hospital. The learned A.S.J. observed that after coming to know about the death of Satpal, a copy of the special report was not sent to Ilaka Magistrate immediately. Lakshmi Chand SI stated that he came to the Police Station at about 2.00/2.30 a.m. on 4th July, 1980. The Trial Court came to the conclusion that document Ex. PW20 DC is not the correct record and he has mentioned wrong details therein. He further observed that the Investigating Officer did not record the correct time of his coming to the Police Station.

15. In his cross-examination SI Laxmi Chand PW20 stated that on 4th July, 1980 at 5.50 a.m. he had recorded DD No. 5-A for going to the Willington hospital for recording inquest proceedings. He further deposed that he first went to House No. I-48, Kirti Nagar, New Delhi so that they may send the persons to the Willington hospital to identify the dead body during inquest proceedings. He has further given Explanationn that he was also to confirm from that house about the death of Satpal. The learned Trial Court observed that this Explanationn is devoid of any force and becomes patently wrong in as much as Smt. Asha Kohli had clearly

stated that they came to know about the death of Satpal at about 11.30 p.m. on 3rd July, 1980. Secondly, this Explanationn is contradictory to what SI Laxmi Chand wrote in Ex.PW20/DC at 4.00 p.m. Again SI Laxmi Chand stated that he had received the copy of DD No. 7-A dated 4th July, 1980, wherein Constable Sultan Singh, Duty Constable Willington hospital had informed at 8.10 a.m. on 4th July, 1980 that Satpal deceased had expired. SI Laxmi Chand deposed that on receipt of this information he went to the Police Station to give a direction to the Duty Officer to send two constables and pick up van to the hospital and only thereafter they went to the hospital. The learned Additional Sessions Judge displayed his surprise in the following words:-

If really the purpose of the Investigating Officer for going to the house of Satpal at 5.50 a.m. was to make a request for sending two persons to the hospital to identify the dead body of Satpal, it is not clear as to why and for what purpose he stayed there up till 8.25 a.m. when he received copy of DD No. 7-A regarding the death of Satpal. The submission of the Learned Counsel for the accused has been that infact FIR had not been recorded even up till 5.50 a.m. of 4th July, 1980 and the purpose of sending SI Laxmi Chand to the house of Satpal deceased was only to get the statement of Smt. Asha Kohli for recording of the FIR. This is a reasonable and plausibleExplanationn which could not be controverted by the prosecution. It appears that the Investigating Officer SI Laxmi Chand was intentionally delaying inquest proceedings since the case had not been registered and thus he was gaining time otherwise after recording DD No. 5-A as 5.50 a.m. of 4th July, 1980 he would have gone straight to the hospital and would have taken the inquest proceedings. It appears that the Investigating Officer came to the police station at about 8.25 a.m. of 4th July, 1980 and only thereafter the FIR was registered. Copy of the FIR received by the Illaka Metropolitan Magistrate is available on the file which shows that it was delivered at 10.00 a.m. on 4th July, 1980.

16. Another connected reason for arriving at the above said conclusion given by the Trial Court was that as per prosecution case the FIR was registered at 10.45 p.m. The FIR number was available with the Investigating Officer, while sending the respondent to the hospital. Ex. PW20/C is the application of SI Laxmi Chand in this context. The Trial Court observed that FIR No. 471 at the top of this

application is in different ink and the remaining writing is with another ink.

17. Another circumstance which went a long way to impress the Trial Court was document Ex.PW20/DB. This is DD No. 3-A dated 4th July, 1980 P.S. Moti Nagar. This document was recorded at 2.45 a.m. about arrival of Bal Kishan respondent at the Police Station after his medical examination. The Learned Additional Sessions Judge observed :

It would, thus, mean that up till that time the FIR number was not available from which the only irresistible conclusion could be that the FIR did not come into existence by that time.

18. The next reason given by the learned Trial Court for doubting the FIR is that statement of Asha Kohli, Ex.PW1/A, does not mention the names of the three independent witnesses in their statements. Asha and Pushpa testified that they had named the independent witnesses but when they were confronted with their statements those did not figure therein.

19. Again the names of three witnesses were not mentioned in the inquest proceedings. However, the Trial Court noted the fact that seizure memos Ex.PW1/B and PW1/C bear the signatures of O.P. Verma and Krishan Murari. The Trial Court held that these documents were not sent along with the inquest proceedings because they did not bear the signatures of Dr.L.T. Ramani, while the Doctor had signed inquest proceedings Ex.PW20/A and the application Ex.PW20/E.

20. Learned defense counsel Sh. K.B. Andley laid stress only upon the point that there was delay of 10-11 hours in sending the special report to the Metropolitan Magistrate, in context of this point.

21. A bare look on the judgment passed by the Trial Court goes to show that it went into the subject only skin deep and did not delve deep to find out the truth. The effort of the criminal court should not be to prowl and to find out imaginative doubts. The court has to be empirical and practical in confronting with reality.

22. After mulling over the document Ex.PW20/DB, DD No. 3-A recorded at 2.45 a.m., it is crystal clear that the conclusion drawn by the Trial Court is wholly incorrect as would be evident from complete reading of the document. Seventh line from the top, clearly, specifically and unequivocally mentions the number of FIR as 471/1980, Moti Nagar. Learned Judge came to the conclusion that the FIR was not recorded till 5.45 a.m. due to this document. It is clear that the assumption drawn by learned Additional Sessions Judge was not warranted.

23. Now Ex. PW 20/C, application addressed to police surgeon for medical examination of the accused, deserves a look. To our mind, the conclusion drawn by the Trial Court is erroneous. To a naked eye it is apparent that in Ex.PW20/C the FIR number is also written with the same pen.

24. Again, there was not much delay in sending the report to the learned Magistrate. In *Alla China Apparao and Ors. v. State of Andhra Pradesh* 2002 VIII AD (S.C.) 516 it was held:-

This apart, it is a matter of common experience that there has been tremendous rise in the crime resulting into enormous volume of work, but increase in the police force has not been made in the same proportion. In view of the aforesaid factors, the expression 'forthwith' within the meaning of Section 157(1) obviously cannot mean that the prosecution is required to explain every hour's delay in sending the first information report to the Magistrate, of course, the same has to be sent with reasonable dispatch, which would obviously mean within a reasonable possible time in the circumstances prevailing. thereforee, in our view the first information report was sent to the Magistrate with reasonable promptitude and no delay at all was caused in forwarding the same to the Magistrate.

25. In *Krishna Gope v. State of Bihar* 2003 VI A.D. S.C. 575 it was held as under:-

The counsel for the appellant also contended that there was a long delay in sending the First Information Report from the police station to the Magistrate. Even though the police station is very close to the Magistrate's court, the First Information Report reached the court on 27.6.1984. Though the incident happened on 25.6.1984, injured Sarjug Gope passed away during the night of 25th / 26th

June, 1984. There was only one day's delay in sending the First Information Report to the Magistrate. The 'fardebeyan' was received in Hilsa police station on 25.6.1984 and from there it was sent to Hilsa court. This must have caused some delay in sending the F.I.R. to the Magistrate.

26. In Balram Singh and Anr. v. State of Punjab 2003 V A.D. S.C. 143 it was held that delay in sending the FIR to the Magistrate may be of no consequence when ocular evidence inspires confidence. The latest pronouncement of law is available in Rabindra Mahto and Another v. State of Jharkhand : 2006 CriLJ957 .

27. Moreover, it is well settled that mere non mentioning of the name of three independent witnesses does not rock the boat at all. In Chhittar Lal v. State of Rajasthan 2003 V AD (SC) 514, it was observed,

Evidence of the person whose name did not figure in the FIR as witness does perforce become suspect. There can be no hard and fast rule the names of all witnesses more particularly eye-witnesses should be indicated in the FIR. As was observed by this Court in Shir Bhagwan v. State of Rajasthan : 2001 CriLJ2925 mere non-mention of the name of any eye-witness does not render prosecution version fragile.

28. In Raj Kishore Jha v. State of Bihar and Ors. 2003 VIII AD (SC) 386, it was held at page 391,

The High Court has noted that the names of witnesses do not appear in the first information report. That by itself cannot be a ground to doubt their evidence as noted by this Court in Bhagwan Singh and Ors. v. State of M.P. : 2002 CriLJ2024 , Chittar Lal v. State of Rajasthan AIR SCW 3466 and State of Madhya Pradesh v. Man Singh and Ors. 2003 (6) SC 202. There is no requirement of mentioning the names of all witnesses in the first information report.

29. It is now well settled that non mention of the name of witnesses in the inquest report does not turn the corner. In Radha Mohan Singh @ Lal Saheb and Others v. State of U.P. : 2006 CriLJ1121 it was held:-

An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details.

30. In *Gurpreet Singh v. State of Punjab* 2005 IX AD (S.C.) 410 it was held that mere non-disclosure of the name of witnesses in the daily diary as well as mortuary register, ipso facto cannot effect the prosecution case more so.

31. The contradiction in the statement of SI Laxmi Chand and Asha Kohli cannot be said to be material. It is difficult to recollect all these facts after the expiry of such a long time. It goes without saying that human memory is vicissitudinarian. Considering the strenuous and exacting schedule and duties of Police Officers, it is not for practically possible for them to explain the delay hour by hour. In a recent authority reported in *State of A.P. v. S.Rayappa and Ors.* : 2006 CriLJ1616 , it was held:-

Minor discrepancies in the statement of prosecution witnesses pointed out by the counsel for the respondents need not detain us any longer. Every discrepancy in the witness statement is not fatal to the prosecution's case. The discrepancy, which does not materially affect the prosecution case, does not create any infirmities.

32. In *Surender Singh v. State of Haryana* : (2006)9SCC247 it was held:-

It is a well-established principle of law that every discrepancy in the witness statement cannot be treated as a fatal to the prosecution case. The discrepancy,

which does not affect the prosecution case materially, does not create infirmity.

33. The key argument urged by the learned Counsel for the respondent/accused was that the presence of all the three independent public witnesses namely O.P. Verma, Krishan Murari and Jagjeet Singh Bedi is open to doubt. First of all, the three public witnesses did not render any help to the injured or in transportation of the injured to the hospital. They did not clarify who had lifted the deceased, who had put him on cot and who had taken him to the hospital. On the contrary the evidence goes to show that the mother and wife of the deceased had taken him to the hospital. The learned Counsel for the respondent argued that omission on their part to do the needful envelopes their presence on the spot with an element of doubt.

34. Secondly, in his statement Krishan Murari made an improvement by stating that he had seen the accused throwing away the sword. He contended that this statement was made in the court for the first time. Second improvement made by him was that when he saw the accused, he rushed to the spot. PW4 stated that quarrel was going on and he gave the information to the police 10/15 minutes after this incident. Again, he gave incorrect information by stating that the quarrel was going on at I-56 instead of I-46, Kirti Nagar. Although the quarrel took place at about 8.45 p.m. yet he informed the police at 9.25 p.m.

35. Lastly, there is a confusion about PW8. It cannot be said for granted that J.S. Bedi is the same person, who was arrayed as a witness in this case because sometimes his name is mentioned as Jitender Singh Bedi instead of Jagjeet Singh Bedi. To us, it appears to be a clerical mistake because his parentage i.e. s/o Balram Singh Bedi and address i.e. I-46, Kirti Nagar are the same in all the documents and the learned Counsel for the respondent did not join issue on these facts which were specifically brought to his notice. It is urged that J.S. Bedi used the word kripan instead of sword. He made improvements by stating that he had seen the quarrel while he was sitting in his balcony. He could not tell the name of the person, who had put Satpal on a cot and thereafter in a taxi.

36. O.P. Verma stated that the scooter had fallen down on the spot but photograph Ex. PW18/B shows the scooter in a standing position.

37. Besides the above, counsel for the respondent doubts the presence of Asha, Pushpa, Deepak and Vidya Wanti on the spot. It is contended that Asha PW1 did not disclose the name of the witness in the statement made by her before the Investigating Officer. There is no evidence that they had tried to help the injured in any manner for example putting them on the cot or they tried to stop the bleeding. Thirdly, since they were apprehending the danger from the hands of the respondent why did they prompt him to go near the respondent. Again, they should have sent Deepak along with Satpal. Most importantly all the five witnesses should have seen the kirpan which could not have been concealed in a Vespa scooter. Last but not the least, they are the relatives and, therefore, interested witnesses. Learned Counsel for the respondent/accused vehemently argued that the court should not pin any value upon any of the above said five witnesses. He also pointed out that Deepak and Vidya Wanti were not produced in the dock for the reasons best known to the prosecution.

38. After having subjected the prosecution evidence to a close scrutiny, we find no force in these faint submissions. Their evidence is the backbone of the prosecution case. They have made explicit statements. They did not hesitate to plump out the truth. As a matter of fact a galaxy of witnesses have supported the prosecution case down the line. Their evidence has an aura of dependability. They withstood the test of cross-examination. The objections raised by the defense counsel do not in any way blot out the credibility of their evidence.

39. Learned Counsel for the respondent/accused has tried to make light of the evidence produced by the prosecution when he argued that none of the above said five witnesses rendered help to the injured/deceased. Let us examine the role played by each of the witnesses during this mishap. O.P. Verma PW3 deposed that on seeing the above said occurrence, Krishan Murari, Mr. Bedi and he himself tried to apprehend the respondent and in that attempt respondent's scooter fell down but they were able to apprehend him. It, therefore, means that the accused was apprehended red handed. He testified that within 10-12 minutes, two police officials came to the spot and they handed over the accused to them. PW3 further deposed that Krishan Murari had left for ringing up the police without telling him but on his return he told him that he had done the needful. He explained that the

respondent tried to run away after starting his scooter. He stated that although, he had started the scooter, yet, he could not sit on it. He deposed that first of all he had caught hold of him followed by Bedi Sahab and Krishan Murari. He further explained that when the respondent could not escape through the scooter, he tried to run away but he was nicked after a distance of 30 feet from the place of the scooter. Krishan Murari PW4 and Jagjeet Singh Bedi PW8 also deposed in the same vein. They deposed that in the melee the scooter fell down on the spot. Under these circumstances, it cannot be said that the above said three witnesses did not render help. It also stands established that Vidya Wanti and Pushpa Kohli had taken the deceased to the hospital. It is also clear that the deceased was removed to the hospital before the accused was handed over to the police. Deepak was a helpless child aged about 10 years. The depositions made by all the witnesses are in conformity with the medical evidence for example prosecution witnesses deposed that the deceased had tried to ward off the attack with his hands. M.L.C. Ex. PW21/A goes to reveal:-

(2) incised wound (R) palm 3 long; (3) incised wound (L) palm 3 long; (4) incised wound (L) forearm 4 long

40. Now, we turn to the improvements made by the witnesses in their statements which have already been discussed above. These are minor and insignificant improvements. It is very difficult to speak the same language after the lapse of so much time. This incident took place on 3rd July, 1980 and the statement of PW4 was recorded on 31st July, 1981 i.e. after the expiry of more than one year. In *Bhargavan v. State of Kerala* 2003 IX AD SC 403, it was held that normal discrepancy is expected, however, honest or truthful a witness may be, this does not corrode the credibility of the witness. Similar view was taken in *State of Maharashtra Jagmohan Singh Kuldip Singh Anand and Ors.* 2004 VIII AD SC 381. We have already held that there appears to be a clerical mistake in respect with the name of J.S. Bedi as Jitender Singh Bedi.

41. There is no inkling in the evidence on the record that these witnesses harboured hostility or enmity with the respondent. They appear to have no guile, duplicity, deception, trickery, fraud or craft. We see no reason as to why they

should not be taken at their words. To say that they are reliable and honest witnesses is no exaggeration. It must be borne in mind that O.P. Verma PW3 resident of I-48-A, Kirti Nagar, Krishan Murari resident of I-56, Kirti Nagar and J.S. Bedi, PW8 resident of I-46, Kirti Nagar are the natural witnesses. They are immediate neighbours of the deceased. Their presence on the spot is natural and probable.

42. Now, we advert to the testimony of relative witnesses. Their presence on the spot is admitted by the independent witnesses. They are the natural witnesses. Their Explanationn that they had come out of the house because of animosity between the parties appears to be quite cogent and plausible. We see no reason why the relatives will rope in respondent falsely and would give benefit to the real assailants. The kith and kin always want that the real culprit should be brought to the book. This is well settled that relationship is not a factor to affect credibility of a witness. In Bhargavan and Ors. v. State of Kerala 2003 IX A.D. S.C. 403 while relying upon Dilip Singh and Ors. v. State of Punjab : [1954]1SCR145 it was held:-

Speaking through Vivian Bose, J. It was observed: we are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the wihtnesseses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavored to dispel in 'Rameshwar v. State of Rajasthan : 1952 CriLJ547 at p.59. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

Again in Masalti and Ors. v. State of U.P. : [1964]8SCR133 this Court observed (p.209-210 para 14):

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast

rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

43. Similar view was taken in Harbans Kaur and Anr. v. State of Haryana 2005 III A.D. S.C. 331. In this case eye-witnesses were relatives. No infirmity was found in their cross-examination. Secondly, there was delay in lodging the FIR. It was held that there can be no generalization that whenever there is delay in lodging the FIR, the prosecution case becomes suspect.

44. The argument urged by the learned defense counsel that non-examination of Deepak and Vidya Wanti is fatal must be eschewed out of consideration. The prosecution is not supposed to multiply witness after witness. In Birendra Rai and Ors. v. State of Bihar 2004 Supp. 1 AD (S.C.) 501, it was held that mere failure to examine all witnesses will not result in outright rejection of prosecution case if witnesses examined by prosecution are found to be truthful and reliable.

45. The Trial Court found force with the defense story. The learned Judge concluded that the chappals on the spot belonged to the third person, who managed to escape leaving behind his chappals. He, however, also observed that the plea of the accused that he had not come on scooter stands falsified. He found credence in the plea of the accused that he received cut injuries at the hands of the real assailants and that blood of Satpal had fallen on his clothes. The prosecution has failed to explain the injuries on the person of the respondent/accused. The Trial Court observed:-

There is documentary evidence in the form of D.D. No. 21-A dated 3.7.80 (actually it is DD No. 24-A) recorded at 10.05 p.m. by Duty Officer that pick up No. DHD 4658 was sent to the spot on a requisition of SI Lakshmi Chand when constable Daya Nand was also sent. This very vehicle was used for taking the accused to the police hospital as is apparent from Ex.PW20/DB copy of D.D. No. 3- A dated 4.7.80. The plea of the Investigating Officer that he sent information to the police through the SHO at about 2.00 a.m. of 4.7.80 stands contradicted from Ex.PW20/DC, copy of D.D. No. 4-A dated 4.7.80 where the Investigating Officer has shown his arrival at the police station along with the SHO at 4.00 a.m. These

facts clearly show that the vehicle was requisitioned by the Investigating Officer at 10.05 p.m. and the only purpose of getting the same could be that they were making search for the assailants or for the witnesses.

46. It was strenuously argued by the learned respondent's counsel that the prosecution should have lifted the finger prints from the sword in order to establish the identify of the culprit. The respondent-accused contended that he had received injuries while he was trying to save the deceased. The record reveals that Investigating Officer had moved an application before the Police Surgeon, Police Hospital, Delhi, Ex.PW20/C. At the back side of the page, there is report of Dr. A.K. Bhardwaj Ex. PW12/A which mentions the following injuries on the person of the respondent-accused.

Injuries 1. Incised wound x 1/5 x 1/5 left hand little finger Palmar side base area and 2/3 x 1/6 x 1/6 inner side base ring finger left hand.

2. Complaint of Pain shoulder no injury clinically opinion Injury simple caused by sharp object Duration About 12 to 18 hours.

47. The defense story is incredulous. The accused has tried to evade the truth by a quibble. The defense of the accused is that the chappals left on the spot belonged to the another assailant. SI Laxmi Chand PW20 stated that spot was inspected by him and he had prepared correct rough site plan Ex.PW20/B with correct marginal notes. It clearly, specifically and unequally mentions that note mark-I is that where chappals of Satpal were found. Likewise the scaled site plan marked Ex.PW10/A clearly depicts that place mark-3 shown in the site plan is the place where chappals of the deceased were lying. There is not even an iota of evidence which may go to show that these chappals did not belong to the deceased. This part of story was introduced at the eleventh hour, none of the witnesses were asked whether those chappals belonged to the deceased or assailants.

48. Secondly it is surprising to note that the respondent-accused did not furnish the names or at least the description of those two assailants, who according to him had attacked the deceased. Even in dark one can give at least the broad

description of the assailants. There is no inkling in the evidence on record that he had disclosed the presence of those persons before the police orally or in writing.

49. The possibility of these injuries caused during the scuffle cannot be ruled out.

50. It also stand established that the respondent-accused made a false statement before the court. He deposed that he had arrived at the house of the deceased in a rickshaw. However, in his statement under Section 313 Cr.P.C. he admitted the scooter in question belongs to his father. It stands established that the scooter was recovered at the spot. In an authority reported in *State of Maharashtra v. Suresh* 2000 (1) S.C.C. 484 it was observed, that a false answer offered by the accused to explain away the incriminating circumstances which are supposed to be within his knowledge provides a missing link for completing the chain.

51. Since the respondent-accused was apprehended and he had injury, therefore, IO wanted to get him medically examined. He called the vehicle at 10.05 p.m. After getting him medically examined, he was brought back to the Police Station at 2.55 a.m. as per Ex.PW20/DB. In between he also performed other duties i.e. going to the hospital, where deceased was admitted, coming to the scene of occurrence where memos, site plan etc. were prepared. It is thus apparent that the vehicle was not used for making search for the assailants or the witnesses who were already available at the spot and were living in the neighborhood.

52. Learned defense counsel finally submitted that the name of the assailant does not appear in the M.L.C. Ex. PW21/A. It mentioned the name of the patient Satpal brought by her mother. There is alleged history of assault. Name of the assailant is conspicuously missing.

53. This argument is lame of strength. In *Shrawan Bhadaji Bhirad and Ors. v. State of Maharashtra* 2002 IX AD (S.C.) 455 it was held that merely because Doctor who treated victim deposed that victim did not disclose names of accused to him, would not make their identification doubtful.

54. The evidence discussed above clearly goes a long way to scotch all the doubts raised above. We are satisfied that there is not even a scintilla of doubt regarding the perpetration of crime by the accused/respondent. Respondent's culpability can't be wished away. The judgment passed by the learned Trial Court is wholly erroneous, unreasonable and unsustainable. From the facts as proved and evidence adduced, ingredients of the offence under Section 302 IPC stand fully established. Consequently, we reverse the order passed by the learned Additional Sessions Judge and convict the respondent/accused for offence punishable under Section 302 IPC. The present case does not fall within the category of rarest of the rare case. The accused is, therefore, sentenced to life imprisonment and to pay a fine of Rs. 3,000/- failing which he shall further undergo S.I. for two months.

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