

Satendra and Another Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-29-2012

Reported in : 2012CrLJ2662

Judge : Amar Saran & Kalimullah Khan

Appeal No. : Criminal Appeal Nos. 5509 & 4954 of 2007

Appellant : Satendra and Another

Respondent : State of U.P.

Judgement :

Kalimullah Khan, J.

1. These two Criminal Appeals No. 5509 of 2007 and Criminal Appeal No. 4954 of 2007 preferred by the convicted appellants Satendra and Neetu respectively have been directed against the impugned judgment and order dated 25.7.2007 passed by Additional Session Judge, Court No.1, Muzaffar Nagar in S.T.No. 472 of 2005 State of U.P. Vs. Satendra and others convicting the appellants under sections 148, 450/149, 323/149, 307/149 and 302/149 I.P.C. and sentencing them to undergo two years rigorous imprisonment for the offence punishable under section 148 I.P.C., to undergo 5 years rigorous imprisonment and to pay a fine of Rs. 5000/- and in case of default in payment of fine to undergo 6 months further imprisonment for the offence punishable under section 450/149 I.P.C.; to undergo one year rigorous imprisonment for the offence punishable under section 323/149

I.P.C.; to undergo 5 years rigorous imprisonment and to pay a fine of Rs. 5000/- and in case of default in payment of fine to undergo 6 months further imprisonment for the offence punishable under section 307/149 I.P.C., and to undergo life imprisonment and to pay a fine of Rs. 10,000/- and in case of default in payment of fine to undergo 6 months further imprisonment for the offence punishable under section 302/149 I.P.C. with the direction that all the sentences shall run concurrently. Co-accused Abdul Rehman son of Afsar, Shamsad son of Khursheed, Shamsad son of Farzanda, Fateh Mohammad alias Photu son of Abbas, Jabir son of Islam and Tausif son of Noora were acquitted by the Court below by the same judgment.

2. Trial court record is available with this appellate court.

3. We have heard Sri Mangala Prasad Rai, the learned counsel for the appellants and the learned A.G.A. for the State and perused the record.

4. The brief, facts giving rise to these appeals are that accused appellants Satendra and Neetu along with 6 other accused entered in the house of first informant Rajveer Singh son of Shri Laxman Singh resident of village Baroda, police station Kotwali Budhana District Muzaffarnagar Uttar Pradesh in between the night of 30/31.1.2004 at about 12.30 hours to commit dacoity. Some of the miscreants started assaulting Sri Laxman Singh and his wife Smt. Chameli Devi who were sleeping in the gallery. On the hue and cry raised by them his other sons including the informant came out with lathis and torches from their respective rooms. A scuffle arose whereupon the bandits opened fire at them with their country made pistols, but none sustained injuries. The Bandits took to their heels and Dharampal the younger brother of informant ran to chase them out of the boundary. They indulged in a scuffle with some of the miscreants whereupon the bandits fired with their country made pistols upon them but none sustained fire arm injuries and all the bandits attempted to make good their escape, but Dharampal the younger brother of the informant chased them out of the boundary of his house whereupon accused Satendra of his own village is said to have fired at him. He sustained fire arm injuries and died in his gallery. Appellant Neetu is said to have been identified by the informant and others in the gallery during the scuffle. The

informant lodged F.I.R. Ext. Ka.4 with police station Budhana District Muzaffarnagar on 31.1.2004 at 2.30 A.M. The case was registered at Crime No. 29 of 2004 under section 398, 302 I.P.C. against appellants Satendra and Neetu along with 3 to 4 unknown miscreants. Chik report (Ext.Ka.1) was drawn accordingly on the basis of the written report filed. Investigation was entrusted to S.I. Jagdish Singh, Officer Incharge, Police Station Kotwali Budhana, Muzaffarnagar. He interrogated the witnesses and recorded their statements under section 161 Cr.P.C.. He prepared the site plan, inquest and other necessary papers and sent the dead body of Dharampal under sealed cover to mortuary for post mortem examination. His body was subjected to post mortem on 31.1.2004 at about 2.00 P.M. According to the post mortem report the following anti-mortem injuries were noticed at the body of the deceased:-

1. Fire arm wound of entry 2.5 cm x 1 cm through and through to Inj. No.2, margins inverted. No blackening tattooing or scorching present. It is on Rt. side front of chest joint below medial end of rt. Clavicle.

2. Fire arm wound of exit 1 cm x 1 cm, through and through to inj. no.1, margins everted blood clotted present. It is in Rt. side back of chest just below inferior angle of Rt. Scapula 3 cm. from mid line.

5. The cause of death was shock and haemorrhage as a result of anti-mortem fire arm injuries.

6. Injured Sri Laxman Singh aged about 66 years P.W. 3 was medically examined on 2.2.2004 at 9.55 a.m. at P.H.C. Budhana, Muzaffarnagar. Following injuries were found on his person.

1. An abraded contusion 7 cm x 3 cm over antero lateral aspect of middle 1/3 of right forearm.

2. A contusion 11 cm x 3 cm over lower 1/3 of left side of back.

3. A lineal abrasion 2 cm x linear over antero aspect of middle 1/3 of Rt. leg.

4. An abraded contusion 2 cm x 1 cm over Anterio medial aspect of middle 1/3 of left leg.

7. In the opinion of the doctor all the aforesaid injuries were simple in nature. Cause of death by hard and blunt object. Duration of injuries were 2 days old.

The Doctor preparing the injury report has proved it as (Ext. Ka.9).

8. The other injured Smt. Chameli Devi aged about 55 years was medically examined on 2.2.2004 at about 9.35 a.m.. Following injuries were found at her person.

1. A contusion 7 cm x 2 cm over left side of face. 1 cm. below and medial to outer center of left eye.

2. Complaints of pain over whole of left side of back, but on examination no visible injury mark seen.

9. Dr. Ashwani Kumar Sharma P.W. 6 has opined that the said injury was caused by hard and blunt object. It was simple in nature and its duration was 2 days old.

He has proved the injury report of Smt. Chameli Devi prepared by him as (Ext. Ka. 8).

10. During the course of investigation on 7.2.2004 at about 8.00 a.m. accused Satendra was arrested by the Investigating Officer from Baroda Bus Stop, Budhana, Muzaffarnagar and a country made pistol 315 bore along with a live cartridge of 315 bore were recovered. The said arms and ammunition were sent to the ballistic expert to match them with the empty cartridges recovered from the spot of firing. The Ballistic report is negative. According to the Investigating Officer the names of rest of the accused Abdul Rehman son of Afsar, Shamsad son of Khursheed, Shamsad son of Farzanda, Fateh Mohammad alias Photu son of Abbas, Jabir son of Islam and Tausif son of Noora were brought to light during the course of investigation through the statement of Rajveer informant P.W. 1, his brother Rajpal P.W.2 and their father Laxman Singh P.W. 3 while the naming of accused Neetu appellant was found false. Hence charge sheet was not filed

against Neetu while it was filed against the rest of the accused Satendra, Abdul Rehman son of Afsar, Shamsad son of Khursheed, Shamsad son of Farzanda, Fateh Mohammad alias Photu son of Abbas, Jabir son of Islam and Tausif son of Noora under sections 452, 398 and 302 I.P.C. Apart from it a separate charge sheet under section 25 of Arms Act was filed against Satendra.

11. Initially charges were framed on 2.5.2005 under sections 307/149, 302/149, 398, 449/149 I.P.C. against Satendra, Abdul Rehman son of Afsar, Shamsad son of Khursheed, Shamsad son of Farzanda, Fateh Mohammad alias Photu son of Abbas, Jabir son of Islam and Tausif son of Noora. Separate charge was framed under section 25 Arms Act against Satendra. They denied the charge and claimed their trial. Informant Rajveer Singh P.W. 1 was examined in chief on 6.3.2006 wherein the complicity of accused Neetu was disclosed. Then on an application being made under section 319 Cr.P.C. accused Neetu was summoned and accordingly the charges were amended on 28.3.2007 and charges under section 148, 450/149, 323/149, 307/149, 302/149 I.P.C. were framed afresh against all the aforesaid accused including Neetu. They denied the charges and claimed their trial.

12. In order to prove its case prosecution examined 8 witnesses in all.

13. Rajveer Singh P.W. 1 is the informant, Raj Pal Singh P.W. 2 is his brother, Laxman Singh P.W. 3 is their father. All these aforesaid three witnesses P.W. 1 to P.W. 3 are witnesses of fact and they have deposed the same. Rest witnesses are formal in nature.

14. Rajveer Singh P.W. 1 is the informant of the case and he has deposed that a dacoity had taken place in his house in between the night of 30/31.1.2004 at about 12.30 hours. In all they were five brothers. After dinner all of them had gone to sleep in their own separate rooms in the house. His father Laxman Singh (P.W.3) was sleeping in the gallery of the house near the main gate. Two miscreants climbed over the roof of the house and they stepped down through the stair case and they opened the main gate. Thereupon 2, 3, 4 miscreants entered in the house through the gate. His father awoke and raised a hue and cry whereupon the miscreants indulged into Marpeet with him. The noise attracted the informant lit his

gas lantern in his room. He and all his brothers came out of the rooms with lathi, Danda and torches and they rushed towards their father. Whereupon the miscreants fired with their country made pistols at them with an intention to commit their murder. However, none of the witnesses sustained any fire arm injuries. All of them attacked the miscreants. Dharampal the younger brother of the informant chased the miscreants who were trying to decamp. Accused appellant Satendra son of Bishambhar resident of the same village fired with his country made pistol at Dharampal. As a result of which Dharampal succumbed to his injury. In the light of torch the informant identified Satendra and Neetu son of Jagdish of his village. Several arms licensees of his village started firing with their respective weapons from their own houses but the dacoits succeeded in their escape towards the jungle. The dead body of Dharampal was lying in the gallery. The informant claimed that he could identify the rest of the miscreants if they are brought before him. He further deposed that his parents Laxman Singh and Smt. Chameli Devi had sustained injuries in the incident. After dictating a report to his son he got the written report, paper no.5, prepared and lodged it at the police station. He has proved written report Ext. Ka.1.

15. Rajpal Singh P.W. 2 is the real brother of the informant. He has deposed that at about 12.30 hours in the mid night of 30/31.1.2004 two miscreants stepped down in his house through the stair-case and they unbolted the main door of the house. Thereafter 2-3 miscreants came inside the house through the door. His parents raised a hue and cry, whereupon the miscreants started beating them. Hearing the shouting his brother Rajveer awoke. He too was awakened. His brother Rajveer lit the lantern and hanged it in the Neem tree situated in the Sehan land at a distance of 10 to 15 paces from the gallery. The witness Rajpal claims to have come out from his house along with lathi and torch. Rest of his brothers too came out from their rooms and proceeded towards the miscreants whereupon with an intention to commit their murders the miscreants fired at them but none of them sustained any injury. When he flashed his torch, he noticed that accused appellant Neetu was assaulting his parents in the gallery, but noticing his arrival the miscreants went out of the gallery. Prosecution witnesses followed them upto 10 to 12 ft. Accused appellant Satendra fired his country made pistol at his brother Dharampal outside the gallery which hit in the chest of Dharampal causing through

and through injury connecting it towards the wound of exit at his back. Rajveer (P.W.1) lifted Dharampal and carried him upto gallery where he succumbed to his injuries within two minutes. The miscreants took to their heels meanwhile. The witness has claimed to have identified the accused appellants Neetu and Satendra in the light of torch. He further claimed to have identified the rest of the miscreants, but he did not know their names. After the miscreants had decamped, the villagers reached there at the house of the witness.

16. Laxman Singh P.W.3 has deposed that he had 7 sons. The elder son is Rajveer Singh P.W. 1. All his sons are employed in private jobs. The incident took place in between the night of 30/31.1.2004 at about 12.30 hours. He along with his wife Smt. Chameli Devi was sleeping in his gallery. His two sons Dharampal (deceased) and Jai Pal were sleeping in the rooms constructed on the first floor. Rest of his sons were sleeping in their other rooms. Two dacoits came in the gallery through stair case situated towards south. They opened the bolt of the main gate of the house whereby three other dacoits entered the house and they started assaulting him and his wife. On his shriek and cries his elder son Rajveer came with torch. That torch was of a tube light connected with a battery. Thereafter his other sons reached there. Rajpal had a three cell torch. His remaining sons were wielding lathi, Bhala and Ballam. His sons grappled with the dacoits. Dacoits were armed with country made pistol. They fired their weapons. The scuffle with the dacoits took place in the gallery and thereafter dacoits ran away out of the house. The sons chased them. Accused Satendra fired at Dharampal who sustained injuries. He was carried in the gallery where he died. The witness has claimed to have identified accused Neetu as one of the dacoits and deposed that he could not identify any other dacoits, but if they are brought before him he may identify them. The witness claimed to have identified accused Neetu by removing his Dhata from his face and insisted that all the dacoits had covered up their faces with their Dhatas.

17. All the aforesaid three witnesses of fact have clearly and categorically deposed that none of the accused persons except appellants Satendra and Neetu facing trial had participated in the alleged crime and the police had wrongly implicated them in this case. They further went to the extent of saying that they had never

disclosed their names in their statements recorded under section 161 Cr.P.C. Likewise they deposed that they have never exonerated accused Neetu from the crime alleged in their statements given to the Investigating Officer. They have levelled charges against the Investigating Officer for false investigation, wrong involvement of number of accused who have been acquitted by the trial court and imputed that the Investigating Officer had been bribed by the father of accused Neetu for getting him exonerated from his involvement and that is why, according to them the Investigating Officer did not submit charge sheet against accused Neetu in this case.

18. Dr. Sudhir Kumar, P.W. 4 entered in the witness box and he proved the post mortem examination report Ext.3 prepared by him and opined that deceased Dharampal might have died in the mid night of 30/31.1.2004 on account of antimortem fire arm injuries. Constable Sheesh Kanwar P.W. 5 has proved chik F.I.R. (Ext. Ka.4) and G.D. entry (Ext. Ka.5) regarding the registration of case of murder. He has further proved chik report and G.D. entry regarding the registration of the case under section 25 Arms Act registered against accused Satendra on the basis of recovery memo. Dr. Ashwani Kumar P.W. 6 has deposed that he has examined injured Smt. Chameli Devi and Lalxman Singh and prepared the injury reports (Ext. Ka.8) and (Ext. Ka.9) respectively.

19. Inspector Jagdish Singh the then Officer Incharge, Police Station Budhana, Muzaffarnagar P.W. 7 appeared in the witness box and he has proved the investigation and the charge sheet (Ext. Ka.16) of the murder case.

20. S.I.Raj Pal Singh Raghav P.W. 8 is the Investigating Officer of the offence punishable under section 25 Arms Act who had proved the investigation and site plan (Ext. Ka.22) and charge sheet (Ext. Ka.23).

21. All the three witnesses of fact Rajveer Singh, Rajpal Singh and Laxman Singh corroborated the prosecution story as embedded in the F.I.R. and deposed that they had identified accused Satendra and Neetu residents of their own village. But they denied the complicity of accused Abdul Rehman son of Afsar, Shamsad son of Khursheed, Shamsad son of Farzanda (his case was abated on account of death during trial), Fateh Mohammad alias Photu son of Abbas, Jabir son of Islam

and Tausif son of Noora in the dacoity committed in their house. They denied to have named them as dacoits in their statements given to Investigating Officer under section 161 Cr.P.C. They further insisted in their deposition that they never exonerated accused Neetu still for the reasons best known to the Investigating Officer, he did not submit charge sheet against accused Neetu and falsely implicated the aforesaid 5 accused in this case.

22. Having heard the learned counsel for the appellants and learned counsel for the defence, and on appraisal of evidence on record, learned trial court found accused appellants Satendra and Neetu guilty while he recorded a finding of acquittal regarding the rest of the accused. He has also acquitted accused Satendra under section 25 Arms Act.

23. Feeling aggrieved, these two separate criminal appeals have been preferred by both the convicted appellants on the ground that the impugned judgment and order is against the law and facts of the case and it is not borne out by the evidence on record.

24. Learned counsel for the appellants has argued before this appellate court that F.I.R. is anti timed; there was no sufficient source of light at the spot to enable the witnesses to recognise and identify the culprits; admittedly Satendra and Neetu are the residents of the same village of the first informant and other witnesses of fact and even according to the prosecution there was no enmity with the family of the informant, therefore their participation in the alleged incident is improbable; the evidence of the three witnesses examined on facts are inconsistent on the point of covering of faces of the bandits during commission of the dacoity and there is a strong reason for the false implication of the convicted accused appellants on the behest of Jai Prakash, Pradhan Pati of the village; lastly he submitted that in any case all the witnesses of fact are wholly unreliable witnesses and learned trial court while recording the finding of conviction has overlooked the fact that in criminal jurisprudence not only the probability of evidence being true is to be seen, rather prosecution is bound under the law to prove its case against the accused beyond all reasonable doubts and he has based the finding of conviction on conjectures, surmises and speculation and on the fact that all the three witnesses

of facts have given the evidence in support of the prosecution story as embedded in the F.I.R.

25. Per contra, learned A.G.A. has argued that there is nothing on record to suggest that the F.I.R. is anti-timed. The presence of the witnesses including the injured witness Laxman Singh P.W. 3 is natural and probable in view of the fact that the scene of incident is their house. Their evidence is consistent, there is no improvement in their evidence, medical report fully supports their testimony; there was ample source of light viz. Gas lantern and torches with the witnesses which was sufficient to identify the culprits, evidence has come up in the testimony of these witness of facts that it was accused Satendra who had committed the murder of Dharam Pal out of the boundary of the house of the informant and during course of scuffle the dhata of accused Neetu was opened and thereafter he was identified by the witnesses. He has further argued that rest of the bandits whose names came in to light during the course of the investigation have already been acquitted by the trial court and only these two accused Satendra and Neetu whose names figured in the prompt F.I.R. have been found guilty. There is no reason to falsely implicate them specially when they belonged to the same village. According to him there is no legal flaw or weakness in the evidence of the witnesses examined by the prosecution and therefore appeal lacks merit and deserves to be dismissed.

26. The homicidal death of Dharampal, the deceased of the case is not challenged by the appellants, but the date, time and place of the incident and the evidence of prosecution witnesses on fact has been vehemently challenged by them.

27. We have given our anxious thought and applied our judicial mind to the facts and circumstances of the case and evidence available on record. Admittedly both the appellants Satendra and Neetu belonged to the village of the informant. In the F.I.R. there is no mention that either of the accused had muffled their faces during commission of dacoity. In the same fashion Rajveer Singh P.W. 1 and Rajpal Singh P.W. 2 have deposed in the court that none of the bandits had covered up their faces during the commission of dacoity. But their evidence have been completely belied by the firm evidence of their father Laxman Singh (P.W. 3) who

has deposed at several places in his evidence that all the bandits including Satendra and Neetu appellants had muffled their faces and during the scuffle, P.W.3 saw the face of Neetu when he hauled and pulled the sheet covering appellant Neetu's face. Not only this the witness has gone to the extent of saying that he handed over the said Chadar to Investigating Officer who threw it into the river. Be it known that Laxman Singh P.W. 3 who was sleeping in the gallery of his house was the first witness of the incident along with his wife and later his sons Rajveer (P.W.1) and Rajpal (P.W.2) and others came out of their rooms. He said, as stated above, that all the bandits had covered up their faces. Now the question arises as to why this important and material fact was deliberately concealed by P.W.1, informant of the case and his brother Raj Pal P.W. 2. The reason seems obvious. Had they disclosed the fact that dacoits had covered up their faces, they could not have claimed to identify Satendra amongst the dacoits. They could not foresee that their father Laxman Singh (P.W.3), would tell the truth, on the point of dhata, in the Court.

28. It is highly improbable and unnatural that Satendra and Neetu appellants who are the residents of the same village and are well known to the prosecution witnesses would go to commit dacoity in their own village without covering their faces or without taking any precaution to conceal their identity. There appears substance in the contention of learned counsel for the appellants that since the faces of all the dacoits were covered up, therefore, none of the P.Ws. had any opportunity to recognise and identify the appellants. Learned trial court appears not to have appreciated this important aspect of the matter in a case of dacoity. He has given more weight to the fact that all the three witnesses P.W. 1,2 and 3 deposed one and the same thing and have given the parrot like statement without deviating from the stand taken in the F.I.R. which was the sole outcome of Rajveer Singh P.W. 1 as he has stated that he did not consult his parents and brother before dictating the written report to his son who scribed the same which was handed over to police station. His conduct appears to be highly improbable and unnatural. He has been cross examined on this point but he could not give the convincing reason for not consulting his family members. There was every likelihood that the family members including his parents could have disclosed the names of other bandits specially when it is a clear stand of Laxman Singh P.W. 3

that number of dacoits were 5 only and all of them belonged to his own village and none of the bandits of another village had his perpetration into the crime. Laxman Singh has further deposed that it was his daring stand that he named Satendra and Neetu of his village as accused and no one earlier to him could dare to name them or other participants of his village in the crime. It creates doubt about the veracity of the prosecution story in view of the aforesaid deposition of Laxman Singh P.W. 3.

29. Accused Satendra and Neetu both are the residents of the same village in which dacoity took place. From the evidence of Laxman Singh P.W. 3 it is clear that they had covered their faces. It means that they had entered into the house of informant Rajveer Singh for the purpose of committing dacoity after taking precautions to conceal their identity. Accused Neetu could not be recognised till his Dhata opened and according to the witnesses his Dhata was opened when the witnesses grappled with him. Above witnesses themselves connote that appellants Neetu and Satendra and all other participants/miscreants had country made pistols while none of the witnesses were wielding fire arms weapons, therefore, grappling of these witnesses with accused Neetu appears to be improbable because within all human probabilities they would not think it proper to grapple with the dacoits armed with fire arms as they must have had every apprehension of their lives. In case the appellants had concealed their identity by covering their faces as they were known to the inmates of the house in which dacoits had gone to commit dacoity, they would have taken precaution to conceal their identity by putting dhata in a manner that it remains intact. The evidence of Rajveer P.W.1 and Rajpal P.W. 2 that appellants had not concealed their faces during commission of dacoity suffers from inherent improbabilities and it is difficult to accept that the appellants went to commit dacoity in their neighbourhood and in the house of a known person without covering their faces because they would have every apprehension of being recognised, identified and being prosecuted. The prosecution witnesses were not uniform and consistent on the point of concealment of faces by the dacoits. Rajveer and Rajpal deposed that none of the dacoits had concealed their faces while Laxman Singh had stated that all the dacoits had concealed their faces and accused Neetu got identified for the simple reason that his dhata was opened during scuffle with his sons with him. It appears

to be a planned venture as it appears and it is not out of place to mention here that there is nothing on record to indicate that appellants were desperate criminals or of hazardous character so much so that they could commit dacoity in the same village without taking precaution to conceal their identity. Therefore the evidence of all the three prosecution witnesses on facts cannot be relied on.

30. Be it known that sufficient light and opportunity to identify the culprits by the witnesses are two other important factors in a case of dacoity like the present one committed during night hours.

31. Laxman Singh P.W.3 does not claim to have left the gallery at any point of time during the incident. He is verbose in expressing his ignorance concerning the scuffle between his sons and the miscreants and also regarding the place of scuffle as outside the gallery or out of the main gate of his house. The case of prosecution is that deceased Dharampal was fired from out of the main gate of the house. Therefore, it is held that Laxman Singh (P.W.3) had no opportunity to see and recognise the assailant of Dharampal who was fired at out of the boundary where he never went during the incident. As regards the claim of Rajbir Singh P.W. 1 and Rajpal Singh P.W.2 to have seen accused Satendra firing at Dharampal from about 10 to 12 Ft. out of the main gate , it is apparently relevant that they did not claim that there was any gas lantern light outside the gate. As regards the torches, be it known, as already discussed above that Rajbir Singh P.W. (1) does not appear to have any torch in his hand during the incident. In his F.I.R. there is no specific mention that he had a torch with him. He has admitted not to have stated to the Investigating Officer that he had a torch with him during the incident. The Investigating Officer has deposed that Rajbir Singh had not told him that he had a torch with him during the incident. The aforesaid facts are further falsified by his own evidence that he lit the lantern gas and then came out of the door at the risk of absurdity. He deposed that first of all he came out of the door with torch and thereafter he re-entered in the room and lit the lantern. Both the aforesaid situation does not appear to be worthy of credence. He stated that he had purchased the torch 4 months back and since then he was using the same. His torch was made of China; it was two cell torch, but contradicting his version Laxman Singh P.W. 3 has deposed that the torch of Rajbir Singh was made of

Tube light connected with the Battery. Assuming to be correct that he has a torch with him, there is evidence of Rajpal Singh P.W. 2 that there were only two torches with them during the course of dacoity one belonged to Rajbir Singh and the other three cell torch was with Rajpal Singh and there was no torch with either of his brothers. He further stated that when they came out from their rooms with lathi, Danda and torch dacoits started firing. During the course of firing, they did not identify either of the dacoits. Subsequently he stated that there had been a scuffle in between the dacoits and his brothers including him. During the course of scuffle he and his brother Rajbir put the torch on the ground and did not pick it up even upto the time of chasing of the dacoits. The position of torch being so, by no stretch of imagination, it can be said that either of the brothers of informant had any torch or any source of light outside the gate of the house in question where Dharampal was fired at. At the risk of absurdity Rajveer Singh P.W. 1 deposed that during the commission of dacoity he had hanged the gas lantern in the Neem tree situated in his sehan at a distance of 17-18 Ft. from the gallery. It is highly improbable that the bandits would have allowed him to take out the gas lantern from inside the room and travel upto the Neem tree for hanging the same therein specially when it has come in the evidence of P.W. 1, 2 and 3 that when they came out of the rooms with lathi and torches dacoits started firing at them and it was but natural because none of the dacoit would like the witnesses to create light to identify them. It would not be out of place to mention here that the aforesaid torches and gas lantern were not seized by the police nor produced before the Court during the trial, therefore, no reliance can be placed on the evidence of availability of said torch and gas lantern at the spot. It has further come in the evidence of Rajpal and Laxman Singh the prosecution witnesses that it was a complete dark night at that hour and the whole incident took place in the darkness of the night therefore, it cannot be said that there was any source of light to identify the assailants of Dharampal. Rajbir Singh P.W. 1 has deposed that the gas lantern hanging in the Neem tree remained there as it is till the arrival of the police at the spot. After their arrival it was brought in the gallery near the dead body of Dharam Pal. It is unbelievable that the witnesses would have been waiting for the police to bring the gas lantern from the Neem tree to the gallery and till then the dead body was allowed to remain in the darkness of the night. Another important aspect of

the matter is there which does not permit us to hold that witnesses had any opportunity to identify and recognise the Bandits. The prosecution case is that all the dacoits had fire arms with them and the prosecution witnesses grappled with them. Had this been the position, the dacoits must have fired at them either in the gallery or outside the gallery within the precinct of the house in question to make themselves safe from coming into the grip of the prosecution witnesses. This part of the evidence of grappling of the prosecution witness with all the dacoits is wholly unnatural, improbable, unbelievable to which no credence can be attached. The prosecution has insisted mainly on the point that the Dhata of Neetu appellant was opened during the grappling with him. According to Rajbir Singh P.W. 1 it was Laxman Singh who grappled with Neetu, but he himself has admitted that when the scuffle in between Laxman and four miscreants was going on, there was no source of light in the gallery. Informant P.W. 1 has not claimed that when he came out of his room, he flashed the torch allegedly lying with him. He has further admitted that he could not identify either of the miscreants during the firing made by them in his gallery and outside the gallery. He has further gone to the extent of saying that the two miscreants who opened the main door could not be identified by him and his brothers. When they reached in the gallery, intermittent gun fire were made by the miscreants. Under this scenario of facts no opportunity appears to be available to them to identify and recognise the faces of dacoits which were altogether covered up by Dhatas. Undisputedly, no dacoity was committed in the house and therefore, the duration of stay of dacoits in the house of the informant would have been very short which minimises the opportunity of the P.Ws. to see and recognise the bandits. Still the claims of the witnesses that they have identified accused Satendra and Neetu are not believable specially when none of these prosecution witnesses could give any description of the unknown dacoits whom they have alleged to identify in the dacoity nor they have given any identification marks such as the stature, complexion, height of the accused. Further under the stress and strain of such a serious incident as the present one, it would not have been possible for the witnesses to identify the culprits specially when the culprits were under mask as held in the case law Tahir Mohd. Vs. State of U.P. [1993 supp. (2) SCC 697].

32. As regards the false implication of the accused appellants it has come in the evidence of the prosecution witness of fact that at each and every important occasion Pradhan Pati Jai Prakash who was on inimical terms with the appellants as suggested by defence during cross examination of P.Ws., was there with the Investigating Officer. Even at the time of alleged arrest of Satendra accused on 7.2.2004 at about 8.00 a.m. in his own village at bus stop Jai Prakash according to the Investigating Officer was not there but the site plan was prepared at his instance by the Investigating Officer and the names of the persons of locality were inquired from the same Pradhan Pati. Moreover, it is very difficult for the accused to assign a reason for his false implication in any case. Coming to the learned A.G.A's contention that there was no plausible reason for the witnesses to falsely implicate the accused, we can do no better than to quote the observations of the Apex Court in a decision Shankarlal Gyarisilal Dixit v. State of Maharashtra in para 33, Chief Justice Chandrachud, as he then was, spoke :-

“Our judgment will raise a legitimate query. If the appellant was not present in the house at the material time, why then did so many people conspire to involve him falsely The answer to such question is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing when faced with brutal crimes, to spin stories out of strong suspicions.”

We respectfully agree with the aforesaid observations made by Chief Justice Chandrachud. In the context, of the aforesaid argument of learned A.G.A., we would also like to refer to a Division Bench decision of the Orissa High Court reported in 1986 Cri LJ 433. In para 8, Their Lordships of the Orissa High Court observed thus :-

“The evidence of a witness to the occurrence in a criminal case is not to be accepted merely because, the defence has not been able to say as to why the accused has been involved or as to why a witness has come forward to depose against him or because the witness is a disinterested person. Disinterested evidence is not necessarily true and interested evidence is not necessarily false. In a criminal trial, a person accused of commission of an offence is not to answer the

question : If not he, who ?”

In view of the ratio laid down in the aforesaid two decisions, there is no merit in learned A.G.A. argument that simply because the witnesses were independent and there is no reason for them to falsely implicate the appellants, their testimony should be mechanically believed.

At any rate, we are afraid that norms of appreciation of evidence do not warrant that the evidence of a witness who is independent and has no reason to falsely implicate the accused persons, should be mechanically accepted as gospel truth. Even the testimony of witnesses who fall in the aforesaid category can only be accepted after it is established that they are truthful witnesses and their evidence is in consonance with probabilities.

33. The recovered arms and ammunition from the possession of accused Satendra along with the recovered cartridges from the spot were sent to a ballistic expert. After analysis the ballistic report received shows that the empty cartridges 315 bore recovered from the spot had not been fired with the country made pistol 315 bore allegedly recovered from the possession of accused appellant Satendra and the factum of his arrest and recovery of country made pistol and cartridge from his possession on the alleged date and place of arrest have already been disbelieved by the trial court and the accused Satendra has been acquitted from the charge under section 25 Arms Act. This aspect of the matter further goes against the prosecution specially when no criminal appeal has been preferred against the order of acquittal.

34. Likewise five accused persons who had admittedly no hand in the crime were falsely challaned in this case and ultimately they secured their acquittal and no appeal against that order of acquittal has been filed. All these facts go against the prosecution case and its reliability is shaken.

35. No blood has been recovered from the place where Dharampal is said to have been fired at. This creates doubt on prosecution case that he was shot at out side of the gate. Hence the place of incident of murder appears to be doubtful. The evidence of informant Rajveer that he carried the deceased from out side gate

upto Gallery and even then his own cloth had no blood stains does not inspire confidence. Rajveer's explanation is that deceased had not sustained any fire-arm injury at his front side of the body is belied by post mortem examination report which shows that deceased has sustained through and through fire-arm wound of entry at his right side chest having corresponding wound of exit at the back of the chest. It further belies the presence of Rajveer P.W. at the spot.

36. Laxman Singh P.W.3 has deposed that soon after the incident the villagers came at his door and inquired as to how it happened and who were the culprits, he and all his sons answered the same thing that the number of dacoits were 5 and they did not disclose the names of appellants as the perpetrators in the crime. Investigating Officer has challaned 8 accused persons in this case and all of them except the two appellants were found not guilty. About the remaining accused the prosecution witnesses too had deposed that they had no perpetration into the crime. The non disclosure of the names of the appellants to the villagers soon after the incident when the dacoits had decamped is a very serious matter and which knocks the bottom of the prosecution case. It speaks heavily against the prosecution and leans in favour of appellants.

37. The trial court's finding is based merely on the fact that all the prosecution witnesses P.W. 1, 2 and 3 have given a consistent evidence as to how dacoity took place. The aforesaid observation of the trial court besides being perverse is baseless. After going through their evidence we do find that there is some count of consistency in their evidence but mere congruity or consistency is not the sole basis of truth. Learned counsel for the appellant has relied upon the observations made by Hon'ble Apex Court in Luxman Prasad Versus State of Bihar 1981 SCC (Cri) 642 that in a criminal trial while judging the reliability of the evidence of witnesses congruity or consistency in the testimony of the witnesses is not the sole test of truth because sometimes even falsehood is given an adroit appearance of truth, so that truth disappears and falsehood comes on the surface. In the present case also it appears that all the witnesses of fact belonging to the family of complainant have tried to give consistent statement to the effect that they had recognised accused Satendra and Neetu. But their evidence being tested on the anvil of settled principles of appreciation of evidence put them in the category of

wholly unreliable witnesses and, therefore, it is not safe to base conviction of appellants on their unreliable evidence.

38. We, therefore, hold that the prosecution has failed in establishing the guilt of the accused convincingly and satisfactorily beyond reasonable doubt. Since the judgment of the trial court is based on misappreciation of evidence and is somewhat perfunctory it cannot sustain in the eyes of law and deserves to be set aside.

39. Both the criminal appeals are, therefore, allowed and the conviction of the accused appellants Satendra and Neetu recorded by the trial court under sections 148, 450/149, 323/149, 307/149 and 302/149 I.P.C. and sentences awarded to them thereunder are set aside. The accused appellants Satendra and Neetu are acquitted of the charges levelled against them. Accused Neetu is on bail, his bail bonds are cancelled and sureties stand discharged. He need not surrender. Accused Satendra is in jail, let him be released from jail forthwith unless detained in any other case.

40. Office to send a copy of the judgment and record of the case to the court below immediately for necessary compliance under intimation to this court within two months from today.

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