HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

SINGLE BENCH:

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

Criminal Revision No.156/2009

.....Applicants: **Sardar Singh & Ors.**

Versus

.....Respondent : **State of M.P.**

Shri Rajiv Jain, Counsel for the applicants.
Shri BPS Chauhan, Public Prosecutor for the respondent/State.

Date of hearing : 21/06/2018
Date of Judgment : 25/06/2018
Whether approved for reporting : Yes

O R D E R

(25/06/2018)

This criminal revision under Section 397, 401 of Cr.P.C. has been filed against the judgment and sentence dated 24.2.2009 passed by 3rd ASJ, Vidisha in Criminal Appeal No.249/2008 thereby affirming the judgment and sentence dated 12.11.2008 passed by JMFC, Kurwai, District Vidisha in Criminal Case No.7/2005 by which the applicants have been convicted under Sections 148, 325/149 (2 counts), 323/149 (5 counts) and have been sentenced to six months RI and a fine of Rs.300/- with default imprisonment, one year RI and a fine of Rs.500/- with default imprisonment and three months RI and a fine of Rs.200/- with default imprisonment respectively. All the sentences have been directed to run concurrently.

2. The applicant No.1 Sardar Singh has expired during the pendency of this appeal and accordingly, the appeal filed by

Sardar Singh was dismissed as having abated by order dated 20.4.2011 and the name of applicant No.1 Sardar Singh was deleted from the array of cause title.

3. The necessary facts for the disposal of the present revision in short are that the complainant lodged a report against the applicants as well as 17 other persons alleging that on 27.11.2004 at about 10:00 AM when they had gone to a village in order to lift the engine of a tractor and while they were coming back, then 15 to 20 persons in furtherance of their common knowledge came there along with lathi and Farsa and started abusing them and assaulted the injured Bachna by lathi and Farsa, as a result of which he fell down from the tractor. Krishna, Kale, Radhey and Madho Singh were assaulted by lathi and Farsa. Mahendra Singh, Roop Singh, Khilan Singh son of Halkai, Bhujbal and 10 to 12 more persons were involved in the assault which are not known to the first informant. On the basis of information given by the first informant, the police registered the offence. The injured persons were sent for medical examination. The police after recording the statements of the witnesses and completing all other formalities, filed the charge sheet for offence under Sections 148, 294, 341/149, 325/149 (2 counts), 323/149 (4 counts), 324/149, 427/149 of IPC.

4. The Trial Court by order dated 5.4.2007 framed the charges under Sections 148, 294, 341/149, 325/149 (2 counts), 323/149 (4 counts), 324/149, 427/149 of IPC.

5. The applicants and other co-accused persons abjured their guilt and pleaded not guilty.

6. The prosecution in order to prove its case, examined Dr. A.K. Shrivastava (PW-1), Kale @ Karan Singh (PW-2), Bachan Lal (PW-3), Krishna (PW-4), Chandrabhan (PW-5), Pappu (PW-6), Madho Singh (PW-7), Rana (PW-8), Ashok (PW-9), Shyamacharan (PW-10), Onkar Singh Chandel (PW-11) and

Ram Swaroop (PW-12).

7. The applicants did not examine any witness in their defence.

8. The Trial Court after considering the evidence which had come on record, acquitted 17 accused persons and convicted the applicants and the deceased applicant Sardar Singh for the following offences:-

Sections	Injured	Imprisonment	Detail of fine/if deposited	Imprisonment in lieu of fine
148 IPC	Chandrabhan	6 months RI	Rs. 300/	1 month RI
325/149 IPC	Chandrabhan	1 Year RI	Rs.500/-	2 months RI
325/149 IPC	Rana	1 Year RI	Rs.500/-	2 months RI
323/149 IPC	Bachanlal	3 months RI	Rs.200/-	1 month RI
323/149 IPC	Kale	3 months RI	Rs.200/-	1 month RI
323/149 IPC	Pappu	3 months RI	Rs.200/-	1 month RI
323/149 IPC	Madho	3 months RI	Rs.200/-	1 month RI
323/149 IPC	Krishna	3 months RI	Rs.200/-	1 month RI

9. It is not out of place to mention that the acquittal of the co-accused persons is not under challenge.

10. Challenging the findings given by the courts below, it is submitted by the counsel for the applicants that Kale @ Karan Singh (PW-2) has stated that he was beaten by the applicants and he had sustained injury because of fall of trolley as well as the parts of the engine. It is submitted that the applicant No.2 Mahendra Singh was elected as a Sarpanch and since the complainant party had encroached upon the Government land and as it was objected by the applicant No.2, therefore, the applicants have been falsely implicated. It is further submitted

that the witnesses in their Court evidence had completely changed their prosecution story and there is no allegation of specific overt act against the applicant No.2 Mahendra Singh. It is further submitted that once the Trial Court had found that the evidence of these witnesses in respect of 17 co-accused persons is not worth acceptance and accordingly, has acquitted 17 co-accused persons, then it is clear that the evidence of these witnesses is not reliable in respect of the applicants, also. There was an enmity between the parties on the question of encroachment of Government land and accordingly, the applicants have been falsely implicated.

11. Per contra, it is submitted by the counsel for the respondent/State that the FIR was lodged promptly within one hour of the incident and it is specifically stated that while they were coming back after loading the engine pipe, they were waylaid by the accused persons and they started assaulting the son of the first informant and as a result of which he fell down from the tractor and the other injured persons were also assaulted by lathi and farsa and applicant No.2 Mahendra Singh, applicant No.3 Khilan Singh son of Halkai, Roop Singh, Bhujbal along with 10 to 12 persons who were armed with lathi and axe etc. had assaulted the injured. It is further submitted by the counsel for the State that although it is submitted by the counsel for the applicant that there are certain improvements in the evidence of the witnesses but none of the witnesses were confronted with their case diary statements and under these circumstances, in the light of Section 145 of the Evidence Act, it cannot be said that there was any contradiction or omission. It is further submitted that multiple injuries were sustained by the injured persons and it cannot be said that those injuries were sustained by them because of fall from the tractor/trolley.

12. Heard the learned counsel for the parties.

13. Dr. A.K. Shrivastava (PW-1) has found the following injuries:-

Injured Chandrabhan Singh:

1. A lacerated wound red clotted blood 8cmx1cmx1cm in the left parietal region of head.

2. Contusion 8cmx6cm in the left hand and arm.

3. Contusion 6cmx2cm in the right forearm.

Injured Bachanlal:

1. A lacerated wound red clotted blood 6cmx1cmx1cm in the occipital region.

2. Multiple contusions 4cmx2cm each in both upper limbs.

3. multiple contusions 4cmx2cm each in both arms and forearm.

4. Multiple contusions 6cmx2cm each both in lower limbs.

Injured Kale @ Karan Singh:

1. A lacerated wound 4cmx1cmx1cm in left parietal region of head.

2. contusions 6cmx2cm each in back and both thighs.

Injured Krishna:

1. Incised wound 5cmx1cmx1cm in the left parietal region of head.

2. Contusion 6cmx4cm in the left side of face.

3. Contusion 4cmx4cm Umbilical region of abdomen .

Injured Pappu:

1. A lacerated wound 3cmx1cmx1cm in the left parietal region.

2. Multiple contusions 10cmx2cm on the back.

3. Contusion 10cmx2cm in the left side of chest anterior.

4. Contusion 8cmx6cm in the left shoulder.

Injured Madho Singh:

1. A lacerated wound 4cmx1cmx1cm in the left parietal region of head.

2. Contusion 18cmx16cm in the l..... region back.

3. Contusion 13cmx10cm in the left shoulder.
4. A.C.W. 1Cmx1cmx0.5cm in the left wrist.

Injured Rana:

1. Contusion 12cmx5cm in the left hand.
2. 3 Contusion 8cmx4cm each in the left forearm.
3. Contusion 8cmx4cm in the left shoulder.
4. Contusion 8cmx4cm in the right hand.
5. Multiple contusions 10cmx2cm each in the back.
6. Multiple contusions 8cmx3cm in the both calves.

14. Similarly, Dr. A.K. Shrivastava (PW-1) found that Chandrabhan (PW-5) had suffered fracture of index finger and Rana (PW-8) had suffered fracture of little right finger. The x-ray report of Chandrabhan (PW-5) is Ex.P/13 and the x-ray plate of Chandrabhan (PW-5) is Ex.P/14 and the x-ray report of Rana (PW-8) is Ex.P/15 and the x-ray plate of Rana (PW-8) is Ex.P/16.

15. By referring to the evidence of Kale @ Karan Singh (PW-2), it is submitted by the counsel for the applicants that in paragraph 6 of his cross-examination, Kale @ Karan Singh has stated that he was not assaulted by the applicants but he had sustained injuries because of fall of the spare parts of engine as well as the trolley. Thus, it is submitted that in fact none of the witnesses were beaten and all the witnesses had sustained injuries because of the fall of the spare parts of the engine as well as the trolley. It is further submitted that Kale @ Karan Singh (PW-2) has admitted that he along with Chandrabhan (PW-5) has encroached upon the Government land and there is a dispute between them and the villagers, on the question of public road. it is submitted that since the applicant No.2 Mahendra was elected as a Sarpanch and he was objecting to the encroachment made by Kale @ Karan Singh (PW-2) and Chandrabhan (PW-5), therefore, he has been falsely implicated.

16. Bachan Lal (PW-3), Krishna (PW-4), Chandrabhan (PW-5),

Pappu (PW-6), Madho Singh (PW-7) and Rana (PW-8) are the injured witnesses. Though they have specifically stated that while they were coming back after loading the engine on the tractor and trolley, they were waylaid by Sardar Singh, Mahendra, Pooran, Khilan, Pappu, Sillu etc. along with the other villagers and all of them assaulted the injured witnesses. Rana (PW-8) has also stated that a palm of his right hand is permanently damaged.

17. Ashok (PW-9) is an independent eyewitness who was working in his field situated nearby the place of incident. He has specifically stated that Bachan Lal (PW-3), Krishna (PW-4), Kale @ Karan Singh (PW-2), Rana (PW-8) and Madho Singh (PW-7) Pappu (PW-6) were coming back and they were waylaid by the applicants and other co-accused persons and they were beaten.

18. Shyamacharan (PW-10) has stated that the police had seized lathi and other articles from applicant No.2 Mahendra and applicant No.3 Khilan and other co-accused persons vide seizure memo Ex.P/21 to P/30. In cross-examination, he stated that the lathi which was seized from the possession of Mahendra, was fixed with iron.

19. Onkar Singh Chandel (PW-11) was the Investigating Officer, he has stated that he had sent the injured witnesses to the Hospital for medical examination and Chandrabhan (PW-5) had lodged the FIR in Crime No.307/2004 Ex.P/21. It is further submitted that at the instance of Ashok Pardi, a spot map (Ex.P/31) was prepared on 28.11.2004. Lathies were seized from the possession of applicant No.2 Mahendra, applicant No.3 Khilan and other co-accused persons vide seizure memo Ex.P/21 to P/30 which bears his signatures. The applicant No.2 Mahendra, applicant No.3 Khilan and other co-accused persons were arrested vide arrest memo Ex.P/30. A loss Panchnama of the loss/damage sustained by the tractor was prepared which

is Ex.P/33 and a loss to the extent of Rs.5000/- was caused.

20. Ram Swaroop (PW-12) has stated that the loss panchnama Ex.P/33 was prepared in his presence and it bears his signatures. The prosecution witnesses, who had sustained injuries, had admitted that there is an enmity between the parties. It is submitted by the counsel for the applicants that the applicants have been falsely implicated because of the enmity which has been admitted by the prosecution witnesses.

21. It was one of the contentions of the counsel for the applicants that there are material improvements in the evidence of the prosecution witnesses which makes the case of the prosecution unreliable.

22. I have gone through the evidence of the prosecution witnesses. Unfortunately, none of the prosecution witnesses was confronted with their previous statements as required under Section 145 of the Evidence Act. It is well established principle of law that if a witness is not confronted with his previous statement, then the improvement or omission and the previous statement cannot be taken into consideration in the light of Section 145 of the Evidence Act.

23. The Supreme Court in the case of **Karan Singh Vs. State of M.P.** Reported in **(2003) 12 SCC 587** has held as under :

> **5.** When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement it does not amount to any admission and if it is proved that he had given such a statement the attention of the witness must be drawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining the discrepancy or inconsistency and to clear up the particular point of ambiguity or dispute. In the instant case, Ext. D-4 statement as such was not put to the witness nor was the

> witness given an opportunity to explain it. Therefore, Ext. D-4 statement, even if it is assumed to be a statement of PW 1 Hari Singh, that is of no assistance to the appellants to prove their case of private defence.

24. The Supreme Court in the case of **Rajender Singh Vs. State of Bihar** reported in **(2000) 4 SCC 298** has held as under :

> **6.** So far as the second contention of Mr Mishra is concerned, it is no doubt true that on 4-7-1977 Satyanarain who has been examined as PW 8 in the course of trial had been examined by a Magistrate as he had been seriously injured and that statement has been exhibited as Exhibit B and in fact the Magistrate who had recorded the statement has been examined by the defence as DW 1. This statement of Satyanarain recorded by the Magistrate may be a former statement by Satyanarain relating to the same fact at about a time when the fight took place and when the said Satyanarain was examined as PW 8 during trial it would be open for a party to make use of the former statement for such purpose as the law provides. But if the witness during trial is intended to be contradicted by his former statement then his attention has to be drawn to those parts of the statement which are required to be used for the purpose of contradicting him before the said statement in question can be proved as provided under Section 145 of the Evidence Act. Mr Mishra, learned Senior Counsel appearing for the appellant relying upon the decision of this Court in *Bhagwan Singh* v. *State of Punjab* contended before us that if there has been substantial compliance with Section 145 of the Evidence Act and if the necessary particulars of the former statement has been put to the witness in cross-examination then notwithstanding the fact that the provisions of Section 145 of the Evidence Act is not complied with in letter i.e.

by not drawing the attention of the witness to that part of the former statement yet the statement could be utilised and the veracity of the witness could be impeached. According to Mr Mishra the former statement of PW 8 which has been exhibited as Exhibit B was to the effect that Kameshwar was assaulted with a bhala by Rajender and Surender and he did not see whether any other person had been assaulted or not, whereas in the course of trial the substantive evidence of the witness is that it is Rajender and Triloki who assaulted the deceased and, therefore, it belies the entire prosecution case. The question of contradicting evidence and the requirements of compliance with Section 145 of the Evidence Act has been considered by this Court in the Constitution Bench decision in the case of *Tahsildar Singh* v. *State of U.P.* The Court in the aforesaid case was examining the question as to when an omission in the former statement can be held to be a contradiction and it has also been indicated as to how a witness can be contradicted in respect of his former statement by drawing particular attention to that portion of the former statement. This question has been recently considered in the case of *Binay Kumar Singh* v. *State of Bihar* and the Court has taken note of the earlier decision in *Bhagwan Singh* and explained away the same with the observation that on the facts of that case there cannot be a dispute with the proposition laid down therein. But in elaborating the second limb of Section 145 of the Evidence Act it was held that if it is intended to contradict him by the writing his attention must be called to those parts of it which are to be used for the purpose for contradicting him. It has been further held that if the witness disowns to have made any statement which is inconsistent with his present stand, his testimony in court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of Section 145 of the Evidence Act.....

25. The Supreme Court in the case of **Bhagwan Singh Vs. State of Punjab** reported in **1952 SCR 812** has held as under:

> **22.** A witness is called and he says in chief, "I saw the accused shoot X". In cross-examination he resiles and says "I did not see it at all." He is then asked "but didn't you tell A, B & C on the spot that you had seen it?" He replies "yes, I did." We have, of set purpose, chosen as an illustration a statement which was not reduced to writing and which was not made either to the police or to a Magistrate. Now, the former statement could not be used as substantive evidence. It could only be used as corroboration of the evidence in chief under Section 157 of the Evidence Act or to shake the witness's credit or test his veracity under Section 146. Section 145 is not called into play at all in such a case. Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing,* then Section 145 requires that his attention must be drawn to those parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made.

26. The Supreme Court in the case of **Major Som Nath Vs. Union of India** reported in **(1971) 2 SCC 387** has held as under :

> **24.** ..... The learned advocate for the respondent also tried to support the stand taken by the High Court. It is true that when a witness has admitted having signed his previous statements that is enough to prove that some statement of his was recorded and he had appended his signature thereto. The only question is, what use can be made of

> such statements even where the witness admits having signed the statements made before the Military Authorities. They can at best be used to contradict in the cross-examination of such a witness when he gives evidence at the trial court of the accused in the manner provided under Section 145 of the Evidence Act. If it is intended to contradict the witness by the writing, the attention of the witness should be called before the writing can be proved to those parts of it which are to be used for the purpose of contradicting him. If this is not done, the evidence of the witnesses cannot be assailed in respect of those statements by merely proving that the witness had signed the document. Then the witnesses are contradicted by their previous statements in the manner aforesaid, then that part of the statements which has been put to the witness will be considered along with the evidence to assess the worth of the witness in determining his veracity. The whole of the previous statement however cannot be treated as substantive evidence.

27. The Supreme Court in the case of **V.K. Mishra Vs. State of Uttarakhand** reported in **(2015) 9 SCC 588** has held as under :

> **19.** Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while

> appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

28. It was next contended by the counsel for the applicants that as the Trial Court itself has found that the witnesses are not reliable in respect of 17 co-accused persons out of 20, therefore, the evidence of these witnesses in respect of the present applicants be also discarded. The submissions made by the counsel for the applicants cannot be accepted.

29. The Supreme Court in the case of **Shakila Abdul Gafar Khan (Smt.) vs. Vasant Raghunath Dhoble & Anr.** reported in **(2003) 7 SCC 749** has observed as under:

> **"25.** It is the duty of the court to separate the grain from the chaff. Falsity of a particular material witness or a material particular would not ruin it from the beginning to end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The maxim "*falsus in uno falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is that in such

cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See *Nisar Ali* v. *State of U.P.*)

26. The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate an exaggeration, embroideries or embellishment. (See *Sohrab* v. *State of M.P.* and *Ugar Ahir* v. *State of Bihar*) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel* v. *State of M.P.* and *Balaka Singh* v. *State of Punjab*.) As observed by this Court in *State of Rajasthan* v. *Kalki* normal discrepancies in the evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are

> always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi* v. *State of Bihar*, *Gangadhar Behera* v. *State of Orissa* and *Rizan* v. *State of Chhattisgarh*."

30. The Supreme Court in the case of **Yogendra Alias Yogesh & Ors. vs. State of Rajasthan** reported in **(2013) 12 SCC 399** has observed as under:

> "13. The argument advanced by Shri Altaf Hussain, learned counsel for the appellants, stating that the evidence which has been disbelieved in respect of certain accused, cannot be enough to convict the present appellants, has no force. This Court, in *Ranjit Singh* v. *State of M.P.* has dealt with a similar issue. The Court herein, considered its earlier judgments in *Balaka Singh* v. *State of Punjab*, *Ugar Ahir* v. *State of Bihar* and *Nathu Singh Yadav* v. *State of M.P.* and has referred to the doctrine *falsus in uno, falsus in omnibus* and held, that the same has no application in India. The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire evidence of such a witness must be discarded."

31. The Supreme Court in the case of **Bhagwan Jagannath Markad & Ors. vs. State of Maharashtra** reported in **(2016) 10 SCC 537** has observed as under:

> **"19.** While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness.

Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan" or "interested" witness may lead to failure of justice. It is well known that principle "*falsus in uno, falsus in omnibus*" has no general acceptability. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of

occurrence and as such the normal discrepancy does not affect the credibility of a witness."

32. The Supreme Court in the case of **Raja Alias Rajinder vs. State of Haryana** reported in **(2015) 11 SCC 43** has observed as under:

> **"20.** Another circumstance which needs to be noted is that Sukha PW 7, a taxi driver, has deposed that on 18-1-2003 about 11.00 p.m. while he was going to Fatehabad for taking passengers, he saw a bullock cart parked in front of the house of the accused and certain persons were tying a bundle in a "palli". On query being made by him, the accused persons told him that they are carrying manure to the fields. Though, this witness has given an exaggerated version and stated differently about the time of arrest, yet his testimony to the effect that he had seen the accused with a bundle in "palli" at a particular place cannot be disbelieved. The maxim *falsus in uno, falsus in omnibus*, is not applicable in India. In *Krishna Mochi* v. *State of Bihar*, it has been held thus: (SCC pp. 113-14, para 51)
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> > "*51*. … The maxim *falsus in uno, falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be disregarded."
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> **21.** In *Yogendra* v. *State of Rajasthan*, it has been ruled that: (SCC p. 404, para 13)
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> > "*13*. … The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire

> evidence of such a witness must be discarded.”
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> Thus viewed, the version of PW 7 to the extent that has been stated hereinabove is totally acceptable and credible."

33. It is well established principle of law that "*falsus in Uno falsus in omnibus*" has no application and the Court must try to separate the grain from the chaff. The Trial Court after appreciating the evidence led by the prosecution witnesses very minutely had acquitted 17 co-accused persons out of 20. The allegations against the applicants were consistent right from the FIR.

34. It is well established principle of law that this Court while exercising the powers under Section 397, 401 of Cr.P.C. cannot re-appreciate the findings of fact unless and until the same are found to be perverse. No perversity could be pointed out by the counsel for the applicants. Accordingly, the applicants are held guilty for committing the following offences:-

> "Sections 148, 325/149, 325/149 (2 counts) and 323/149 (5 counts)."

35. Thus, this Court is of the considered opinion that the Trial Court and Appellate Court did not commit any mistake in holding the applicants guilty and accordingly, the applicants are held guilty for committing the following offences:-

> "Sections 148, 325/149, 325/149 (2 counts) and 323/149 (5 counts)."

36. It is next contended by the counsel for the applicants that the incident took place in the year 2004 and near about 14 years have passed and, therefore, the applicants may be sentenced to the period already undergone by enhancing the fine amount.

37. In order to consider the submissions made by the counsel for the applicants, it would be essential to consider the number of injuries which were caused by the applicants to the injured

witnesses. As already pointed out by this Court that in the previous paragraph, Chandrabhan (PW-5) had sustained three injuries out of one lacerated wound, Bachan Lal (PW-3) had sustained one lacerated wound and multiple contusions on both upper limbs, multiple contusions on both arms and forearm and multiple contusions on lower leg. Krishna (PW-4) had sustained an incised wound on his parietal region and two contusions. Pappu (PW-6) had sustained a lacerated wound on parietal region, multiple contusions on back and two contusions. Madho Singh (PW-7) had sustained a lacerated wound on parietal region and three other injures. Rana (PW-8) had sustained four contusions on hand, forearm, shoulder, left hand, right hand and multiple contusions on back and multiple contusions on both calves and apart from that, Rana (PW-8) and Chandrabhan (PW-5) had sustained fracture of little and index fingers of right hand. Thus, it is clear that the injured persons were mercilessly beaten by the applicants, as a result of which they had sustained multiple injuries on the part of the bodies and also on the vital part of the bodies. Deterrence is one of the important factor of sentencing policy.

38. By awarding the jail sentence of rigorous imprisonment of six months, one year and three months respectively by the Trial Court, in the considered opinion of this Court, a very lenient view has been adopted by the Trial Court and, therefore, the jail sentence awarded by the Trial Court and confirmed by Appellate Court does not call for any interference.

39. Accordingly, the judgment and sentence dated 12.11.2008 passed by CJM, Kurwai, District Vidisha in Criminal Case No.7/2005 and judgment dated 24.2.2009 passed by 3rd ASJ, Vidisha in Criminal Appeal No.249/2008 are hereby affirmed.

40. The applicants are on bail. Their bail bonds and surety bonds are hereby cancelled. The applicants are directed to

immediately surrender before the Trial Court for undergoing the jail sentence.

41. Accordingly, the revision is hereby **dismissed**.

(G.S. AHLUWALIA)
Judge
25/06/2018

(alok)