

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 30TH DAY OF NOVEMBER, 2023**

CRIMINAL APPEAL No. 455 of 2000

BETWEEN:-

**BAJESINGH S/O BALUSINGH
AGED ABOUT 22 YEARS, OCCUPATION : AGRICULTURIST
R/O JANOIKHEDI
DISTRICT DEWAS (MADHYA PRADESH)**

.....APPELLANT

(SHRI BHASHKAR AGRAWAL, ADVOCATE)

AND

**THE STATE OF M.P.
STATION HOUSE OFFICER
THROUGH POLICE STATION BANK NOTE PRESS
DISTRICT DEWAS (MADHYA PRADESH)**

.....RESPONDENT/STATE

(SHRI VINOD THAKUR, GOVERNMENT ADVOCATE)

Reserved on : 22.11.2023

Pronounced on : 30.11.2023

This appeal having been heard and reserved for judgement, coming on for pronouncement this day, Hon'ble Shri Prakash Chandra Gupta pronounced the following:

J U D G E M E N T

This appeal has been filed by the appellant/accused person u/S 374 of the Code Of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), being aggrieved by the judgement of conviction and order of sentence dated 04.04.2000 passed by the 1st Additional Sessions Judge, Dewas, in S.T. No.20/1996, whereby learned Trial Court has convicted the appellant u/S 307 of IPC and sentenced him to undergo RI for 05 years and fine of Rs.5,000/- with default stipulation of RI for 05 months.

2. It is an admitted fact that Siddhu Singh (PW/5) is well known to the appellant Baje Singh and both of them are resident of the same village. It is also admitted fact that the appellant is son of Balu Singh and injured Ishwar Singh (PW/7) is also known to the appellant. The appellant also further admitted that S.I. Brajesh Shrivastava (PW/10) had arrested him on 05.08.1995 vide arrest memo (Ex.P/2). It is also admitted that there was an old dispute between Siddhu Singh (PW/5) and co-accused Balu Singh regarding usage of a way.

3. Facts of the prosecution case in brief are that Ishwar Singh (PW/7), being a relative of Siddhu Singh (PW/5), is resident of village Sulya, Tehsil Ghatiya, District Ujjain. On 03.08.1995, Ishwar Singh (PW/7) came to the house of Siddhu Singh (PW/5) situated at village Janoikhedi, District Dewas. On the same day at around 04:30 PM, Siddhu Singh (PW/5) and Ishwar Singh (PW/7) were going towards farmland of Siddhu Singh (PW/5). In the way, appellant Baje Singh and his father/co-accused

Balu Singh met them. Baje Singh and Balu Singh took out their knife, looking to which Siddhu Singh (PW/5) fled away. Thereafter, both the accused persons stabbed Ishwar Singh (PW/7) with an intent to kill him. Ishwar Singh (PW/7) sustained injuries on his stomach due to which his intestine started to come out and on left side of chest. Due to the injuries, Ishwar Singh (PW/7) fell on the ground. Siddhu Singh (PW/5) raised alarm. Then *Chowkidar* Duli Chand (PW/2) and Chain Singh (PW/1) came to the spot. Both the accused persons fled away as they saw Duli Chand (PW/2) and Chain Singh (PW/1) coming. Siddhu Singh (PW/5) and co-accused persons Kalu Singh and Baje Singh had a dispute regarding way, because of which the incident took place. Siddhu Singh (PW/5) took Ishwar Singh (PW/7) to police station BNP, Dewas and the matter was reported by Siddhu Singh (PW/5). Head Constable Bahadur Singh (PW/9) lodged an FIR (Ex.P/10) against the appellant and co-accused.

4. Head Constable Bahadur Singh (PW/9) sent Ishwar Singh (PW/7) for medical examination alongwith requisition letter (Ex.P/11). Dr. R.K. Sharma (PW/6) on 03.08.1995 at 05:30 PM examined Ishwar Singh and gave MLC report (Ex.P/12). Ishwar Singh (PW/7) was in critical situation, therefore, he was admitted in the hospital for treatment at Government Mahatma Gandhi Hospital, Dewas. Executive Magistrate S.S. Khare had recorded dying declaration (Ex.P/16) of Ishwar Singh (PW/7) in the hospital. Later on, he was referred to M.Y. Hospital, Indore.

5. During investigation, S.I. Brajesh Shrivastava (PW/10) on 04.08.1995 visited the spot and prepared a spot map (Ex.P/3) at the

instance of Duli Chand (PW/2). Halka Patwari Ratanlal Malviya (PW/8) had also visited the spot and prepared spot map (Ex.P/16A). On 05.08.1995, S.I. Brajesh Shrivastava (PW/10) seized blood stained *Kurta* and *Pajama* from Ishwar Singh (PW/7) at M.Y. Hospital, Indore vide seizure memo (Ex.P/15). On 05.08.1995, he arrested the accused persons Balu Singh and Baje Singh vide arrest memo (Ex.P/1 & P/2). On 06.08.1995, he recorded disclosure statement of accused persons Balu Singh and Baje Singh vide memorandum (Ex.P/4 & P/5). On the same day, at the instance of Baje Singh and Balu Singh, he recovered knives from each accused person and prepared seizure memo (Ex.P/6 & P/7 respectively). S.I. Brajesh Shrivastava (PW/10) sent seized knives and clothes of the injured Ishwar Singh (PW/7) to Dr. R.K. Sharma (PW/6) for examination and opinion. Dr. R.K. Sharma (PW/6) had examined both the knives and clothes of injured and had given his report (Ex.P/14). S.I. Brajesh Shrivastava (PW/10) got documents of the injured related to treatment from M.Y. Hospital, Indore. As per admission ticket (Ex.P/17), Ishwar Singh was admitted in the M. Y. Hospital, Indore from 03.08.1995 to 12.08.1995. Statement of witnesses u/S 161 of Cr.P.C. was recorded by S.I. Brajesh Shrivastava (PW/10). After completion of investigation, charge-sheet was filed.

6. Learned Trial Court had framed charge against the accused persons. The accused persons abjured their guilt and claimed to be tried. In turn to prove its case, the prosecution examined 11 witnesses. After completion of prosecution evidence, the accused persons were examined u/S 313 of

Cr.P.C. The accused persons had taken defence that they are innocent and have been falsely implicated. They have examined Dhan Singh (DW/1) and Chaganlal (DW/2) in their defence.

7. After hearing both the parties, learned Trial Court has acquitted co-accused Balu Singh from the alleged offence but convicted the appellant/accused Baje Singh as discussed above.

8. Learned counsel for the appellant submits that the appellant has not committed the offence and he has falsely been implicated in the case due to old dispute. He has further submitted that the appellant had no intention to attempt murder of injured Ishwar Singh (PW/7). Furthermore, the essential elements of the offence u/s 307 of IPC are not fulfilled. There are material contradictions and omissions in the statement of Siddhu Singh and Ishwar Singh. As per prosecution case, appellant and co-accused both stabbed Ishwar Singh (PW/7) but in the deposition, Siddhu Singh and Ishwar Singh stated that only appellant had stabbed the injured, therefore, prosecution story is doubtful. Statement of aforementioned witnesses is not supported by medical evidence. Injured Ishwar Singh (PW/7) did not know the appellant before the incident, and no test identification parade was conducted to identify the appellant. Learned counsel has placed reliance on the case of *Hari Singh V Sukhbir Singh and Ors. [(1988) 4 SCC 551]*, *Parsuram Pandey and Ors. V State of Bihar [(2004) 13 SCC 189]*, *Jai Narain Mishra and Ors. V State of Bihar [1971 (3) SCC 762]*, *Ram Narain Singh V State of Punjab [(1975) 4 SCC 497]*, *Sunil Kumar*

V State Govt. of NCT of Delhi [(2003) 11 SCC 367], Syed Ibrahim V State of A.P. [(2006) 10 SCC 601], Khema alias Khem Chandra etc. V State of Uttar Pradesh [2022 SCC OnLine SC 991], Krishnegowda and Ors. V State of Karnataka by Arkalgud Police [(2017) 13 SCC 98], Kapildeo Mandal and Ors. V State of Bihar [(2008) 16 SCC 99], Amar Singh and Ors. V State of Punjab [(1987) 1 SCC 679], Amrik Singh V State of Punjab [(2022) 9 SCC 402] and Kamal V State (NCT of Delhi) [2023 SCC OnLine SC 933].

9. On the other hand, learned counsel for the respondent/State has opposed the submissions made by learned counsel for the appellant by submitting that the prosecution succeeded to prove its case beyond reasonable doubt therefore, the appeal is liable to be dismissed.

10. I have heard learned counsel for the parties and perused the records.

11. First point for consideration is whether the injured Ishwar Singh (PW/7) sustained injuries in the alleged incident and what was the nature of the injuries?

12. Dr. R.K. Sharma (PW/6) stated that on 03.08.1995 at 05:30 PM, he examined Ishwar Singh (PW/7) and following injuries were found on his body:-

(1) Incised wound sized 2.5 x 0.5 x cavity deep on left side of umbilicus, omentum protrude out.

(2) *Incised wound sized 0.5cm x 0.25cm x cavity deep on left 5th rib and mid auxiliary line.*

13. The witness opined that both the injuries are caused by hard and sharp object within 06 hours and were fatal to life. The witness also stated that at the time of examination, injured Ishwar Singh (PW/7) was in serious condition and was referred to M.Y. Hospital, Indore for further treatment. MLC report of the injured is Ex.P/12 and referral letter is Ex.P/13. In paragraph-8 of cross-examination, the witness admitted that he did not measure the depth of injury by inserting probe, but the witness stated that heart and lungs are sensitive organs which cannot be tested by probe. In paragraph-10 of cross-examination, the witness also admitted that no specific reason has been mentioned in the report regarding the opinion of injuries being fatal to life, but the witness stated that he had given opinion on the basis of the injury and its nature. The witness further stated that from injury No.1, omentum protrude was out. Injury No.2 was close to heart and lungs, and both the injuries were inflicted upon vital parts, therefore, he opined that the nature of injuries were fatal to life. Therefore, statement of this witness is reliable and it appears that injuries received by the injured Ishwar Singh (PW/7) were fatal to life. As per statement of witness, it also appears that the injuries were inflicted to Ishwar Singh (PW/7) within 06 hours of examination.

14. Ishwar Singh (PW/7) stated that at the time of the incident, he received knife injuries. His statement is also supported by Siddhu Singh

(PW/5). There is nothing in their cross-examination to disbelieve their aforementioned statement. Therefore, their statement is reliable and it appears that Ishwar Singh (PW/7) had sustained knife injuries in the incident.

15. Hence, it is proved that Ishwar Singh (PW/7) had sustained injuries in the alleged incident and the injuries were fatal to his life.

16. The next point for consideration is that whether the appellant had intentionally inflicted injury upon the injured Ishwar Singh (PW/7) with intent to kill him?

17. Learned Trial Court has relied on the statement of Ishwar Singh (PW/7) and Siddhu Singh (PW/5). Their statement is partly supported by Duli Chand (PW/2) and Vikram (PW/4).

18. Ishwar Singh (PW/7) stated that on the date of incident, he went to the house of Siddhu Singh (PW/5) at Village Janoikhedi. Thereafter, he went to the agricultural land of Siddhu Singh (PW/5) alongwith him, then on the way, accused persons Balu Singh and Baje Singh had met him. There was some altercation between the witness and the accused persons, then accused Balu Singh had caught hold him and accused Baje Singh stabbed on his stomach near navel. Due to the injury the witness felt down. Then both the accused persons fled away from the spot. The witness further stated that accused Baje Singh also stabbed him on left side of his ribs and lower side of abdomen. In paragraph-10 of cross-examination, the

witness admitted that initially the accused persons abused Siddhu Singh (PW/5) and when this witness came to intervene, and asked them not to abuse, then both the accused persons took out knife from their pocket and were about to stab Siddhu Singh (PW/5), reacting on which, Siddhu Singh (PW/5) had fled away. In this paragraph, the witness also stated that Balu Singh had not stabbed him but further stated that accused Balu Singh had stabbed him on his left side of ribs. Therefore, as per statement of this witness, the accused Baje Singh stabbed him on abdomen near navel.

19. Siddhu Singh (PW/5) stated that on the date of the incident, Ishwar Singh (PW/7) had come to his house and both of them had went to the agricultural land of this witness situated in forest. At the time of the incident, the accused persons Balu Singh and Baje Singh had met them and started to abuse this witness in filthy language. When he objected to abuse, then accused Baje Singh took out knife from his pocket, then this witness fled away from there, but just a while later, he heard cry of Ishwar Singh (PW/7) then he saw that Baje Singh stabbed Ishwar Singh near his navel. Due to the injury, Ishwar Singh (PW/7) had fell down and Baje Singh again stabbed on his left side of ribs. The witness started to cry for help. The witness further stated that after the incident, he took Ishwar Singh (PW/7) to police station BNP, Dewas.

20. Duli Chand (PW/2) stated that at the time of the incident, he was going from his one farmland to his another farmland, where he heard, 'Maro-Marro' and 'Bachao-Bachao' and he saw Siddhu Singh (PW/5)

fleeing away alongwith 2-3 more persons who could not be recognized by him. This witness has not supported the case of the prosecution. The prosecution has declared him hostile and cross-examined him. Thereafter, in paragraph-10 of cross-examination, he denied that the accused persons Balu Singh and Baje Singh had stabbed Ishwar Singh (PW/7).

21. Vikram (PW/4) stated that on the date of incident, he went to the farmland of accused Balu Singh for labour work. At around 04:00 PM, he heard scream of accused Balu Singh saying “*Maro-Marro*” and accused Baje Singh was accompanying Balu Singh. At that time, a guest of Siddhu Singh (PW/5) was with him. He further stated that he has not seen anyone fighting. The prosecution also declared this witness hostile and cross-examined him. In paragraph-4 of cross-examination, the witness denied the suggestion of the prosecution that accused persons Balu Singh and Baje Singh stabbed Ishwar Singh (PW/7).

22. Though Duli Chand (PW/2) and Vikram (PW/4) have not supported the case of prosecution but as per statement of Duli Chand (PW/2), at the time of the incident he had heard ‘*Maro-Marro*’ and ‘*Bachao-Bachao*’ near the place of incident, and had seen Siddhu Singh (PW/5) fleeing away. As per statement of Vikram (PW-4), it also appears that at the time of the incident, Siddhu Singh (PW/5) alongwith his guest and accused persons Balu Singh and Baje Singh were present at the spot. Aforementioned statement of both the witnesses has not been disputed in their cross-examination by the appellant, therefore, aforementioned statement of the

witnesses cannot be discarded.

23. Head Constable Bahadur Singh (PW/9) stated that on 03.08.1995, he recorded an FIR (Ex.P/10) at the instance of Siddhu Singh (PW/5). Statement of this witness is also supported by Siddhu Singh (PW/5). As per the FIR (Ex.P/10), the incident had taken place at 04:30 PM on 03.08.1995 and it was recorded at 05:10 PM on the same day, therefore, it appears that the FIR was lodged by Siddhu Singh (PW/5) within 40 minutes of the incident.

24. S.I. Brajesh Shrivastava (PW/10) stated that he inspected the place of incident and prepared spot map (Ex.P/3). Duli Chand (PW/2) also stated that he informed the place of incident to the police and police prepared spot map (Ex.P/3) in presence of this witness. Therefore, statement of S.I. Brajesh Shrivastava (PW/10) is reliable.

25. S.I. Brajesh Shrivastava (PW/10) stated that he recorded case diary statement (Ex.D/1) of Ishwar Singh (PW/7) on 03.08.1995. On the same day, he also recorded case diary statement (Ex.D/2) of Siddhu Singh (PW/5). The witness also stated that Naib Tehsildar S.S. Khare had recorded a dying declaration (Ex.P/16) of Ishwar Singh (PW/7).

26. As per statement of Ishwar Singh (PW/7), it appears that he did not know the appellant before the incident. Ishwar Singh (PW/7) in paragraph-22 of cross-examination stated that after 10 days of the incident, at M.Y. Hospital, Siddhu Singh (PW/5) told this witness the names of the accused

persons, then he got to know the names of the accused persons. Siddhu Singh (PW/5) in paragraph-27 of cross-examination stated that he told the name of assailants to Ishwar Singh (PW/7). Therefore, it is clear that before the incident, the injured Ishwar Singh (PW/7) did not know the appellant and co-accused.

27. In the case of ***Amrik Singh (Supra)*** the Apex Court held in paragraph-18 as under:-

“18. From the aforesaid it can be seen that as such there are some contradictions in the first statement of the complainant recorded in the form of FIR and in the deposition before the Court. In the deposition before the Court, he has tried to improve the case by deposing that he had seen the accused in the city on one or two occasions. The aforesaid was not disclosed in the FIR. Even in the cross-examination as admitted by PW1 he did not disclose any description of the accused. At this stage it is to be noted that PW1 has specifically and categorically admitted in the cross examination that it is incorrect that the accused were known earlier. He disclosed only the age of the accused. In that view of the matter conducting of TIP was necessitated and, therefore in the facts and circumstances of the case, it is not safe to convict the accused solely on their identification by PW1 for the first time in the Court.”

28. In the case of ***Kamal (Supra)***, the Apex Court observed that if the accused is already shown to the witnesses in the police station, then the sanctity of TIP before the court is doubtful.

29. Though in the instant case, before the incident the injured Ishwar Singh (PW/7) did not know the appellant and TIP was not conducted by

the prosecution, but this case does not depend solely on the statement of Ishwar Singh (PW/7) but based upon statement of eye-witness Siddhu Singh (PW/5). Presence of the appellant is also shown by statement of Vikram (PW/4) and presence of Siddhu Singh (PW/5) at the spot is shown by Duli Chand (PW/2). Therefore, aforementioned case laws being based on different facts and circumstances are not applicable in the instant case.

30. In the case of *Kapildeo Mandal and Others (Supra)*, the Apex Court has held in paragraphs- 23 and 25 as under:-

“23. It is now well settled by series of decisions of this Court that while appreciating variance between medical evidence and ocular evidence, oral evidence of eye-witness has to get primacy as medical evidence is basically opinionative. [See Mange V. State of Haryana (1979) 4 SCC 349 (conviction based on sole testimony of eye-witness); State of U. P. V. Krishna Gopal and Anr. (1988) 4 SCC 302 (in para 24); and Ramanand Yadav V. Prabhu Nath Jha and Ors. (2003) 12 SCC 606 (in para 17)]. But when the court finds inconsistency in the evidence given by the eye-witnesses which is totally inconsistent to that given by the medical experts, then evidence is appreciated in different perspective by the courts.”

“25. In Mani Ram V. State of U.P., (1994 Supp(2) SCC 289) (in para 9), this Court held:

“9. It is well settled by long series of decisions of this Court that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a

most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case."

31. Similar observation is given by the Apex court in the case of **Ram Narain Singh (Supra)**.

32. In the case of **Amar Singh and Ors. (Supra)** the Apex court observed that testimony of prosecution witness is totally inconsistent with the medical evidence, no injuries confirming to the alleged weapon used found on the dead body, inconsistency not explained, the accused is entitled to benefit of doubt.

33. In the instant case, S.I. Brajesh Shrivastava (PW/10) stated that he arrested the appellant on 05.08.1995 vide arrest memo (Ex.P/2). He recorded disclosure statement (Ex.P/5) of the appellant and the appellant presented a knife which he brought from his house from the bed-box and seized the same vide seizure memo (Ex.P/6). Chain Singh (PW-1) and Duli Chand (PW/2) have not supported the case of prosecution but Dhuli Chand (PW-2) admitted his signature on the arrest memo (Ex.P/2), memorandum statement of appellant Baje Singh (Ex.P/5) and seizure memo (Ex.P/6). Hari Singh (PW/11) stated that accused Baje Singh disclosed to the police that he has hidden a knife in a bed-box at his house. Therefore, it appears that the witnesses Chain Singh (PW-1) and Duli Chand (PW-2) have not supported the statement of S.I. Brajesh Shrivastava (PW/10) and Hari Singh (PW-11) partly supported statement of S.I. Brajesh Shrivastava

(PW/10) but there is nothing to show in cross-examination of S.I. Brajesh Shrivastava (PW/10) that he is interested to falsely implicate the appellant. There is nothing adverse in his cross-examination to discard his statement. Therefore, his statement is reliable and it appears that he seized a knife at the instance of the appellant.

34. S.I. Brajesh Shrivastava (PW/10) further stated that he seized a Kurta and a Pajama from Ishwar Singh (PW/7) vide seizure memo (Ex.P/15). His statement is supported by Bane Singh (PW/3) and Ishwar Singh (PW/7). Therefore, his statement is reliable. S.I. Brajesh Shrivastava (PW/10) stated that he had sent knives and clothes of Ishwar Singh (PW/7) towards concerned doctor for examination and opinion.

35. Dr. R.K. Shrivastava (PW/6) stated that he received sealed packets of 2 knives and a kurta and pajama for examination. He examined them on 23.09.1995 and opined that the injuries sustained by Ishwar Singh (PW/7) could have been caused by both the knives (Article A & B). He further stated that Kurta and Pajama (Article C & D) of Ishwar Singh (PW/7) had no cut mark or blood stain. After examination, he gave report (Ex.P/14). In paragraph-13 of cross-examination, the witness admitted that he could not say, which injury was caused by which knife. In paragraph-15, the witness stated that the kurta was torn at the place of injury No.(1), but the cut mark should have come at the place of injury No.(2) as well. As per the statement of injured Ishwar Singh (PW/7) and Siddhu Singh (PW/5), due to the injuries, the blood was oozing out from the wounds of injured but as

per statement of doctor, he did not find blood stain and cut mark in the kurta corresponding to the injury No.(2). Therefore, seizure of the clothes worn by the injured during the incident becomes doubtful. Therefore, learned Trial Court has rightly observed in paragraphs-49 and 50 of the impugned judgement and doubted that the blood stained clothes which were seized from the injured, were not sent to the doctor.

36. In the case of *Khema alias Khem Chandra etc. (Supra)*, the following was held by the Apex Court in paragraph-21:-

“21. This Court, in the celebrated case of Vadivelu Thevar V. State of Madras, [1957] SCR 981, has observed thus:

“.....Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.....”

37. In the case of **Syed Ibrahim (Supra)**, the following was held by the Apex Court in paragraph-10:-

“10. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW1 to a large extent to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be note wholly credible. Falsity of 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 witness or witnesses cannot be branded as liar(s). 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 Alli v. The State of Uttar Pradesh [AIR 1957 SC 366]. In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurucharan Singh and Anr. v. State of Punjab [AIR 1956 SC 460]. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because 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 respect as well. The evidence has to be shifted 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 exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh [1972 (3) SCC 751] and Ugar Ahir and Ors. v. The State of Bihar [AIR 1965 SC 277]. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate 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 Madhya Pradesh [AIR 1954 SC 15] and Balaka Singh and Ors. v. The State of Punjab [1975 (4) SCC 511]. As observed by this Court in State of Rajasthan v. Smt Kalki and Anr. [1981 (2) SCC 752], normal discrepancies in 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 in [Krishna Mochi and Ors. v. State of Bihar](#) etc. [2002 (6) SCC 81] and in [Sucha Singh v. State of Punjab](#) [2003 (7) SCC 643]. It was further illuminated in the [Zahira H. Sheikh v. State of Gujarat](#) [2004 (4) SCC 158], [Ram Udgar Singh v. State of Bihar](#) [2004(10) SCC 443], [Gorle S. Naidu v. State of Andhra Pradesh](#) [2003 (12) SCC 449] and in [Gubbala Venugopalswamy v. State of Andhra Pradesh](#) [2004 (10) SCC 120].”

38. In the case of ***Sunil Kumar (Supra)***, the following was held by the Apex Court in paragraph-10:-

“10. Evidence of PW5 has been analysed with great care and caution by the Trial Court as well as the High Court. The so-called improvements do not, in any way, introduce a new facet of the case. Every omission is not a contradiction. Minor details which are not indicated in the first information report are later on elaborated in court do not justify a criticism that the case originally presented has been abandoned to be substituted by another one. PW's 5 evidence appears to be clear, cogent and trustworthy. Nothing substantial has been brought on record to disregard the testimony of this witness. Though PW3 changed his version, yet his evidence does not get totally wiped out. A part of it which is reliable can be taken note of by the court and has, in fact, been taken note of. The evidence of this witness notwithstanding his making a different version provides some corroboration, though as noted above, the evidence of PW5 alone was sufficient to fix the guilt of the accused persons. Merely because of the fact that there were some minor omissions, which are but natural, considering the fact that the examination in court took place years after the occurrence the evidence does not become suspect. Necessarily there cannot be exact and precise reproduction in any mathematical manner. What needs to be seen is whether the version presented in the court was substantially similar to

what was stated during investigation. It is only when exaggerations fundamentally change the nature of the case, the court has to consider whether the witness was telling the truth or not. As has been held by the Trial Court as well as the High Court, the evidence of PW5 was truthful evidence. He has graphically described the assaults on the deceased. Accused-Dharamvir gave several blows on the person of deceased while accused- Sunil caught told of him to facilitate the assailants. Section 34 of the Act is clearly attracted. This is not a case where anything substantial has been brought on record to disregard the evidence of PW5.”

39. From the foregoing analysis, it is apparent that in case of contradictions and omissions, it has to be checked that whether the evidence is cogent and credible. Slight contradiction and omission in the statement does not cast shadow on the story of the prosecution.

40. In the present case as discussed above that Ishwar Singh (PW/7) stated in examination-in-chief that all injuries sustained by him were caused by the appellant but in paragraph-10 of cross-examination, the witness clearly stated that co-accused Balu Singh stabbed on left side of his ribs and the present appellant stabbed him on the abdomen. His statement is supported by case diary statement (Ex.D/1) and Siddhu Singh (PW/5). Aforementioned statement of witness is supported by medical evidence. Therefore, statement of the witness is reliable and it appears that the appellant had stabbed on abdomen of Ishwar Singh (PW/7). Though there are many contradictions, omissions and exaggeration, in statement of Siddhu Singh (PW/5) and Ishwar Singh (PW/7). Learned Trial Court has considered elaborately in paragraph Nos.22 to 26, 34, 36, 39 and 40 of the

impugned judgement and found that the aforementioned contradictions, omissions and exaggeration are immaterial. It also appears that there is no contradiction in respect of the fact that appellant has stabbed in the abdomen of Ishwar Singh (PW/7). Therefore, on the basis of minor and trivial omission, contradiction and exaggeration, statement of injured and eye-witnesses cannot be discarded. Case laws relied upon by the appellant in this aspect are not helpful to him.

41. Accused persons examined Dhan Singh (DW/1) and Chaganlal (DW/2) in their defence. Dhan Singh (DW/1) stated that Siddhu Singh (PW/5) alongwith his guest had come to his farmland and a dispute took place. Thereafter Siddhu Singh (PW/5) assaulted his guest and fled away from the place of incident. Chaganlal (DW-2) stated that at the time of the incident, he was present at his farmland and accused persons were present at their farmland. Both the accused persons had not left the farmland throughout the day. On the next day, witnesses came to know that police has arrested the accused persons. But Siddhu Singh (PW/5) in paragraph-27 has denied the suggestion of accused persons that there was some dispute between the witness and Ishwar Singh (PW/7) and this witness assaulted Ishwar Singh (PW/7) by means of knife. Therefore, the statement of defence witnesses is not reliable. Apart from that Ishwar Singh (PW/7) was guest of Siddhu Singh (PW/5), there is no reason which shows why Siddhu Singh (PW/5) would assault Ishwar Singh (PW/7). Therefore, defence taken by the appellant that Siddhu Singh (PW/5) assaulted Ishwar Singh (PW/7) appears to be unnatural.

42. It appears from the statement of Siddhu Singh (PW/5) that there was old animosity between Siddhu Singh (PW/5) and accused persons. Chaganlal (DW/2) also admitted in paragraph-3 of cross-examination that there was dispute of way. At the time of the incident, when Siddhu Singh (PW/5) and Ishwar Singh (PW/7) met them, there were some altercations. The appellant started to abuse Siddhu Singh (PW/5) and when Siddhu Singh (PW/5) and Ishwar Singh (PW/7) intervened, the appellant stabbed on abdomen of Ishwar Singh (PW/7). As per statement of Dr. R.K. Sharma (PW/6), it is clear that omentum protrude was out and the injuries were grievous in nature and fatal to life. Therefore, it appears that the appellant stabbed Ishwar Singh (PW/7) with an intent to kill him.

43. In the case of *Hari Singh (Supra)*, the Apex Court had held that in order to determine the intention of accused, all the circumstances including the nature of weapon used, manner in which it was used, motive of the crime, severity of the blow, the part of the body where the injury is inflicted and other factors, as the case may be, must be seen rather than mere consequence.

44. In the case of *Parsuram Pandey and Ors. (Supra)*, the Apex Court has discussed the essential of Section 307 of IPC in paragraph-15 as under:-

“15. To constitute an offence under Section 307 two ingredients of the offence must be present:-

(a) an intention of or knowledge relating to commission of

murder ; and

(b) the doing of an act towards it.

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. Section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence 'of attempt to murder'. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. On the evidence on record, where the prosecution has been able to prove only that the villagers have sustained injuries by indiscriminate firing and it was an open area with none of the injured nearby there is a complete lack of evidence of intention to cause such injuries for which the accused persons Parshuram and Bishram could have been convicted under Section 302 of the IPC. Nature of the injuries sustained by the villagers is simple. None of the witnesses have stated that the fire arm causing injuries was being used by any particular accused for causing injuries to them. In fact the injured have not seen any of the accused persons using fire arms. There is no evidence about the distance from which the said two accused fired. The only evidence led by the prosecution is indiscriminate firing by Parshuram and Bishram which has caused simple injuries to the villagers. Amongst the injured villagers, only PW1 and DW-1 were examined. Thus this evidence does not constitute the intention or knowledge of the accused persons for committing the

murder or doing of an act towards it. The evidence only shows that the villagers have sustained simple injuries. In the circumstances, we acquit Parshuram and Bishram under Section 307 of IPC.”

45. The appellant used a knife and had chosen vital part of the body i.e. stomach to stab. Hence, it is clear that the appellant had intention to kill the injured Ishwar Singh (PW/7).

46. On the basis of foregoing analysis, it appears that at the time of the incident, the appellant stabbed Ishwar Singh (PW/7) on his abdomen with intent to kill him, though seizure of clothes of Ishwar Singh (PW/7) is not proved beyond reasonable doubt but on the basis of aforementioned statement of injured witness and eye-witness, the same cannot be discarded. Statement of injured Ishwar Singh (PW/7) and Siddhu Singh (PW/5) is partly supported by Duli Chand (PW/2) and Vikram (PW/4), further supported by medical evidence. The FIR was lodged within 40 minutes without any delay by Siddhu Singh (PW/5). There is no material contradictions and omissions in the statement of injured and eye-witnesses. Therefore, learned Trial Court has rightly relied on the statement of aforementioned witnesses and has convicted and sentenced the appellant u/S 307 of IPC. The case laws relied upon by the learned counsel for the appellant are on different footing, thus, are not helpful.

47. Consequently, the appeal is hereby **dismissed**. Conviction and sentence passed by the learned Trial Court is affirmed.

48. Appellant is on bail. He is directed to surrender forthwith before the

learned Trial Court to undergo his remaining jail sentence, failing which the Trial Court shall be at liberty to take necessary steps against the appellant. After his surrender before the Trial Court, his bail bonds shall be discharged.

49. Copy of this judgement alongwith records of the Trial Court be sent back to the Trial Court for necessary compliance. A copy of this judgement also be supplied to the appellant through his counsel immediately.

50. Accordingly, present appeal stands disposed of.

Certified copy, as per Rules.

(PRAKASH CHANDRA GUPTA)
JUDGE

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