Judgment reserved on 30.05.2022

Judgment delivered on 02.11.2022

Case :- CRIMINAL APPEAL No. - 4041 of 2018
Appellant :- Vakeel Quraishi and 2 Ors.
Respondent :- State of U.P.
Counsel for Appellant :- Imran Mabood Khan,Sanjay Kumar Dwivedi,Umesh Pal Singh
Counsel for Respondent :- G.A.,Murlidhar Misra

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Rajendra Kumar-IV,J.

[Delivered by Hon'ble Rajendra Kumat-IV, J. for the Bench under Chapter VII Rule 1 (2) of the Allahabad High Court Rules, 1952]

1. We have heard Shri Umesh Pal Singh, learned counsel for the appellants and Shri G.P. Singh, learned A.G.A. for the State.

2. Present criminal appeal has been preferred assailing the validity of the judgment and order dated 11.06.2018 passed by learned Additional District & Sessions Judge, Court No.5, Moradabad, convicting the appellants under Sections 302/34 and 506 IPC in S.T. No.897 of 2014, arising out of Case Crime No.277 of 2014 (State v. Vakeel Quraishi & Ors.) and sentenced them to undergo imprisonment for life under Section 302/34 IPC and to pay a fine of Rs.20,000/- each and in default of payment of fine to further undergo one year imprisonment. They have been further sentenced two years rigorous imprisonment under Section 506 IPC and to pay a fine of Rs.2000/- each, in default of payment of fine, further 15 days imprisonment was awarded.

3. The prosecution allegations against the appellants, as were contained in the written report dated 30.05.2014, were that the informant namely Naeem, son of Mustkeem submitted a written report (Tehrir) on 30.05.2014 at Police Station Kotwali, District Sambhal, alleging therein that Vakeel and his family members of the same locality had enmity with him. The marriage of the informant was solemnized two days' ago in which his brother Mukim had not invited Vakeel and his family members, on account of which they became annoyed. On 30.5.2014 at about 10 o'clock in the night, when the

informant and his brother Mukim were sitting alongwith Karam Ilahi and Zahid in front of the house of his uncle (Mamu) Karam Ilahi and were talking with them, at that time, Vakeel Kuraishi son of Allan along with his son Uvais and nephew Aarfeen, son of Khalil Kuraishi and brother in relation namely Iliyas son of Mustak, suddenly came there and told his brother Mukim that since he had insulted them in the community by not inviting them in the marriage of his brother (informant), he would be finished today. They had attacked on his brother Mukim with knives with an intention to kill him. Once the informant rushed to save him, then they fled away from the spot by threatening to kill him. The informant took his brother to the Government Hospital Sambhal, wherein the doctor declared him as dead. The body of the deceased was kept in the Hospital. On the basis of written report, FIR was registered as Case Crime No.277 of 2014 under Sections 302, 506 at P.S. Sambhal against the accused Vakeel Kuraishi, Uvais, Aarfeen and Iliyas on 30.5.2014 at 23.15 PM.

4. The Investigating Officer took the body of the deceased Mukim on 31.5.2014. Panchnama of the dead body was conducted after completing formalities and the dead body was sent to the District Hospital for postmortem. On the basis of investigation and evidence available on record, the Investigating Officer found that the accused persons were involved in the commission of the offence. Consequently, the investigating officer forwarded the charge sheet against the accused persons in the Court of Chief Judicial Magistrate, Moradabad for trial under Sections 302, 506 IPC. After taking cognizance on the charge sheet, the case was committed to the Court of Sessions Judge, Moradabad. Thereafter, the matter was transferred to the Additional District and Sessions Judge, Court No.5, Moradabad and he had charged all the accused namely Vakil Quraishi, Uvaish, Aarfeen and Iliyas, firstly on the charge that on 30.5.2014 at 10.00 PM in Mohalla Nala, P.S. Sambhal, District Sambhal, in furtherance of their common intention, they committed the murder of Mukeem aged 25 years (brother of the complainant) by stabbing knife (Chhuri) intentionally

causing his death and thereby, committed an offence punishable under Section 302/34 IPC and within the cognizance of the Court of Sessions. Secondly, they were charged that on the said date, time and place, they committed criminal intimidation by threatening the complainant and others to kill and they thereby committed an offence punishable under Section 506 IPC and within the cognizance of the Court of Sessions. The accused persons pleaded not guilty and claimed for a trial.

5. In order to prove its case, prosecution had examined seven witnesses, namely PW-1 Naim, PW-2 Karam Ilahi, PW-3 Dilshad, PW-4 Zarif, PW-5 Dr. Manoj Kumar Singh, PW-6 R.K. Singh Chauhan (Investigating Officer) and PW-7 Sub Inspector Vishal Tyagi. After the prosecution evidence was led, the statements of the accused persons were also recorded under Section 313 of Cr.PC in which they have denied the entire prosecution case and have specifically stated that there was previous enmity between the parties and due to that reason present FIR was also lodged on the basis of false facts. The witnesses have falsely deposed against them. The entire proceeding, which has been drawn/initiated against them, is concocted. After hearing the parties, the Trial Court vide the judgment and order impugned dated 11.6.2018, convicted the accused appellants with aforequoted sentences against which the present appeal has been filed.

6. Before we proceed to notice the rival submissions in order to have a clear understanding of the context in which those submissions have been made, it would be apposite to notice the testimony of the prosecution witnesses. The testimony of the prosecution witnesses is as follows:-

7. Naim (PW-1/complainant) stated in his testimony that the occurrence took place in the night of 30.5.2014 around 10 o'clock. On the said day, the complainant and his brother Mukeem were sitting. Zahid and Karam Ilahi were also sitting and they were accounting the expenses of the marriage. At that time, all the four accused persons came there and shouted that since Mukeem (deceased) did not invite us

in the marriage, therefore, they would kill him. Thereafter, the accused assaulted Muqeem with knives in which he sustained serious injuries. The complainant took him to the Government hospital by motorcycle where the doctor declared him as dead. The place of occurrence is around 1 ½ KM away from the hospital. PW-1 stated that the motorcycle was driven by his younger brother Nadeem. The deceased was sitting in the middle and he was sitting on the pillion seat and holding the deceased. The deceased received injuries on back and front of the body. The cloths of Nadeem and the complainant got blood-stained.

8. During the cross-examination, the PW-1 stated that he got married on 26.5.2014. The Barat went to Sarai Tareen and came back in the evening. After four days, his wife went to her parental house on 30.5.2014. The marriage of his elder brother Muqeem was solemnized two years' ago. They had past enmity with the accused Wakeel Qureshi but they were in the talking terms and they did not visit to each other. The PW-1 has four brothers. Karam Ilahi (PW2) is his real maternal uncle and Shahid is son-in-law of his uncle. Nadeem is his real brother and he is not a witness in this case. Shareeful is real brother of his father and he is also not a witness. The house of the accused Wakeel Qureshi is 3-4 houses away in west direction from the house of Karam Ilahi (PW2). The gate of the house of Karam Ilahi opens in the west. There is a road in front of Karam Ilahi's house in north direction. The place of occurrence is around 2-3 steps away from the house of Karam Ilahi. The witness was present at the place of occurrence. They were sitting there on chairs and cot. They had taken their dinner around one hour before the time of occurrence. They were discussing regarding expenses/account of the marriage. At the time of occurrence, they were sitting together and the deceased was sitting on a chair. The witness saw the accused very closely. They assaulted the deceased with knives and ran away within 2-3 minutes. The deceased fell down from the chair and he was completely soaked in blood. The deceased Muqeem died in the night of 30.5.2014.

9. PW-2 Karam Ilahi in the examination-in-chief stated that the marriage was solemnized in his house. In that marriage, some resentment took place between Muqeem and Vakeel, Iliyas, Uwais and Aarfeen. The occurrence took place in the night of 30th May, 2014 at 10.00 o'clock. They (four persons) were sitting on the four chairs at the gate and discussing about the expenses of the marriage. Zahid was sitting on the chair and Karam Ilahi, Naim and Mukim were also sitting on chairs. At that point of time, the accused appellants having knives in their hands came there and told the deceased Mukim that he insulted them in the community by not inviting them in the marriage and consequently, they assaulted Mukim by knives. He fell down and his body was bloodstained. He was brought to Government hospital by Naim.

10. PW-3 Dilshad stated in his examination-in-chief that in the night of 30.5.2014 around 10 PM, his cousin brother Mukeem was killed ruthlessly by Vakeel Kuraishi, his son Uwais, his nephew Aarfeen and his cousin brother Iliyas. He went to see his dead body at District Hospital. The police had filled up the inquest report of the deceased on 31.5.2014 at 1.20 a.m. at night. He was appointed as a Panch in the inquest report. He also expressed his opinion about the deceased and recommended for postmortem. The inquest report is present in the file as Paper No.5/2 to 5/3. He stated that one knife (Chhuri) was recovered from Arfeen on 27.7.2014. He had also attested his signatures on the Panchnama. He had also confirmed his signatures in the Fard of recovery of knife (Exhibit Ka-3). He has also stated that the Inspector had interrogated him and took his statement. PW-3 stated that occurrence took place on 30.5.2014 and Zahid is the eye-witness of the said murder. He was not at home on the date of occurrence.

11. PW-4 Zareef has stated in his examination-in-chief that on 31.5.2014 some police personnel in his presence collected plain earth, blood-stained earth from the place of occurrence and kept them in separate boxes and sealed and stamped them. After the arrest of accused Owais and Wakeel, the PW-4 went to the Police Station on 04.6.2014.

His father and Mustqeem (father of the complainant) are real brothers. The father of Karam Ilahi is his uncle. He received the information of murder at night. The police reached the place of occurrence after 5-10 minutes. He also reached the place of occurrence after the murder. The chairs were lying at the place of occurrence. The blood was splashed on the chair. The body was not sealed and stamped in his presence. The blood and earth were collected from the place of occurrence. He had also confirmed his signature on Fard (Exhibit Ka-2). The witness had also confirmed his signature on Fard (Exhibit Ka-4) of the recovery of knife. The witness had also attested his signature on Fard Exhibit A-4.

12. Dr. Manoj Kumar Singh (PW-5) stated in his statement that on 31.5.2014 he was posted as Medical Officer at Community Health Centre, Narauli. On that date, he was deputed as Medical Officer, Post Mortem House in District Sambhal. The body of Mukeem (deceased) was brought for postmortem by Constables Deewan Singh and Anil Sharma. He perused all the documents brought with the dead body and started the proceeding of postmortem on 31.5.2014 at 10 AM and completed the proceeding on 31.5.2014 at 10.30 AM. He prepared the postmortem report No.458/14 and at the time of postmortem, its video recording was done. Rigor mortis was present in the entire body and bandage was wrapped around the chest of the deceased. There were blood-stains on the body of the deceased. His eyes were open and mouth was closed. Following ante mortem injuries were found on his body:-

> **"Ante-mortem injuries:-**
>
> 1. The cut wound (incised wound) 3 cm x 2 cm to the depth of muscle and it is 3 cm below from the axillary line on the left side of the chest.
>
> 2. Three deep wounds (stab wound) 12 cm x 6cm inside the chest.
>
> 3. Deep wound 6 cm x 3 cm (muscle deep) on the back side of the elbow.
>
> 4. Deep wound 3 cm x 1 cm (muscle deep) on the left side of the back, 22 cm below the scapula bone.
>
> 5. Incised wound 2.5 cm x 2 cm, left side on the back of chest, 8 cm. below from upper (side) wound.

6. Left lung was punctured.

7. The heart and its upper membranes were ruptured.

The membranes of left chest were ruptured and two litre blood was present in the lungs. 200 grams semi-digested food was present in the stomach of the deceased. Liver was yellow. Gall bladder was half empty. Both kidneys were yellow. Since the blood had come out from the body, therefore, these body parts had turned as yellow. Approximate time of death may have been around 12 hours before. The cause of death was shock and hemorrhage due to excessive bleeding on account of ante mortem injuries.

8. Scratches 4 cm x 2 cm on the left toe, due to dragging of body after the death. These injuries were probable to have been inflicted by dagger or knife on 30.5.2014 at 10.00 p.m. The witness had proved the post mortem report (Exhibit A-5) prepared by himself."

13. In the cross-examination, the PW-5 stated that lung and heart of the deceased were ruptured. The postmortem injuries are caused after the death and ante-mortem injuries are caused before the death. The deceased may have died around 12.00 o'clock at night on 30.5.2014. The semi-digested food was found in the stomach of the deceased. The digestive system starts working immediately after taking the food. Rigor mortis was present in the entire body of the deceased. The blood must have been flowed from the injuries of the deceased.

14. PW-6 R.K. Singh Chauhan, retired Inspector/Investigating Officer has stated in his statement that he was posted as Incharge Inspector, Police Station Kotwali, Sambhal on 30.5.2014. The aforesaid Case Crime No.277/14 under Sections 302, 506 IPC was registered on the written report of the informant namely Naim against the accused persons. He was appointed as Investigating Officer of the case and after receiving the copy of the documents related to the case, he started investigation of the case. He had confirmed the Fard (Exhibit Ka-2), presence of plain & blood-filled soil recovered from the place of occurrence and map of place of incident (Ex.Ka-6) in his writing and signature. He had also confirmed the map of recovery (Ex.Ka-7), Fard of recovery of knife from accused Aarfeen (Ex.Ka-3), recovery of knives from accused Vakil Kuraishi and Uwais (Ex.Ka-4), map of recovery of knives from accused Vakil Kuraishi and Uvais (Ex.Ka-7), map of recovery of knife from accused Aarfeen (Ex.Ka-8) and also confirmed the chargesheet against the accused (Ex.Ka-9) in his writings

and signatures. The witness had also proved the goods and cloth (Ex.1 to 9).

15. PW-7 Sub Inspector Vishal Tyagi in his examination-in-chief has stated that on 30.5.2014 he was posted as Sub Inspector, P.S. Kotwali, District Sambhal. On the said date, after registration of Case Crime No.277 of 2014 under Sections 302, 506 IPC and after receiving instructions, he along with Constables Diwan Singh and Anil Sharma, went on the spot and started the proceeding of panchnama of deceased Mukim. He had also prepared papers for postmortem. The witness has also proved his signature on the papers of post mortem (Ex.Ka-10 to Ka 14). The witness has also proved the arrest forms (Ex.Ka-15 and Ka-16), statement of accused Iliyas under Section 164 Cr.PC, arrest forms of accused Vakeel and Uwais (Ex.Ka-18), accused police custody remand application (Ex.Ka 19), GD of Panchnama (Ex.Ka 20). The witness had also proved Fard of recovery of knives (Ex.Ka-20), G.D. Entry of accused Iliyas (Ex.Ka-21), G.D. Entry of accused Vakeel Kuraishi (Ex.Ka-23) and G.D. Entry of accused Aarfin (Ex.Ka-24). He has also proved knife object recovered from accused Aarfin (Ex.9) and sealed cloth object (Ex.10).

16. After appreciating the evidence available on record the trial court came to the conclusion that the prosecution has successfully proved the charges under Section 302/34, 506 IPC against the accused-appellants Vakeel Quraishi, Uwais and Aarfeen beyond reasonable doubt. The trial court found that the appellants together killed the deceased Muqeem with knifes by repeatedly causing grievous hurt. They have also threatened to kill the informant and Karam Ilahi, who came there to save the deceased, and thus, the trial court convicted and sentenced them for the said offences by the impugned judgment and order. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned trial Court, the appellants herein-accused preferred the instant appeal before this Court.

17. The judgment of the trial Court has been assailed before us by Sri Umesh Pal Singh, learned counsel for the appellants, who contended that testimonies of the witnesses, being full of material contradictions, are far from reliable. He submitted that convict-appellants were falsely implicated in the case due to previous enmity. PW-1 Naim and PW-2 Karam Ilahi in their statements admitted that there was previous enmity with accused-appellants before the incident. The incident was occurred on 30.5.2014 at 10 PM in the dark night and some unknown persons caused injuries to the deceased. No one had recognized the real assailants and later on, four accused persons including the appellants were falsely implicated in the present case. One of the accused Iliyas has been acquitted on the basis of the same evidence. There was no motive for the appellants to commit the crime in question. Moreover, two eye-witnesses namely Naeem (PW-1) and Karam Ilahi (PW-2) are close relatives being maternal-uncle (Mama) and nephew (Bhanja) of the deceased, therefore, their evidence was not reliable. The recovery of knife at the pointing out of the appellants is false one and no blood stain was found on the said knife. The allegations are not reliable and the prosecution story is highly doubtful. There was no forensic report. The Court below has wrongly believed the prosecution evidence and therefore, conviction and sentence of appellants is bad in law and liable to be set aside. There are contradictions in the statements of witnesses, which have not been appreciated by Court below and therefore, judgment is liable to be set aside. Alternatively, he submitted that the appellants are languishing in jail since 04.6.2014 and they have already undergone more than 09 years of sentence with remission. The appellant no.1 Vakeel Quarishi is aged about 71 years' old and he is seriously ill in District Jail, Moradabad. In case conviction of the appellants is upheld, sentence be reduced to the period already undergone and while taking lenient view in the matter, the Court should release the appellants on the sentence already undergone.

18. Per contra, Shri G.P. Singh, learned AGA submitted that all the three appellants were involved in the present case and the co-accused

Iliyas had no motive to commit the crime in question. So far as appellants are concerned, they had motive to commit the crime in question. The incident was witnessed by the informant (PW-1), who is the brother of the deceased, as well as by the eye-witness P.W.2 Karam Ilahi. The weapon of assault i.e. knifes were recovered at the pointing out of the appellants. He has drawn attention of the Court towards the statement of P.W.4 and P.W.7, wherein it is stated that the said knife was washed by the appellants and hence, there was no possibility of blood to be found on the said knife. Further other knife recovered was stained with the mud. The testimony corroborates the medical examination report of the deceased. The deceased received as many as seven injuries on his body which also includes incised wound. There is no evidence on record which remotely indicates that the accused-appellants were falsely implicated. The appellants have killed the deceased and this Court may not take a lenient view on the quantum of sentence.

19. We have carefully perused all the evidence on record and found that in the aforesaid Sessions Trial No.897 of 2016, arising out of Case Crime No.277 of 2014, the appellants have been convicted under Section 302/34 IPC and sentenced to imprisonment for life for having committed the murder of one Mukim. According to the prosecution, the accused Vakeel Quraishi, Uvaish, and Aarfeen had murdered the deceased Mukim for not inviting them in the marriage of his brother Naeem (informant), which furnished the motive for the murder of Mukim. The story of the prosecution is that on 30th May, 2014 at about 10.00 p.m. while Mukim was sitting in front of the house of Karam Ilahi and talking with Karam Ilahi and Zahid, the appellants suddenly came there and attacked Mukim with knives, wherein he sustained serious injuries and finally succumbed to the injuries at the Hospital. The F.I.R. was lodged on the same date at Police Station Sambhal. The police visited the spot and after usual investigation, submitted charge-sheet against the accused persons. The defence was that the incident was occurred on 30.5.2014 at 10 PM in the dark night and some

unknown persons caused injuries to the deceased. No one recognized the real assailants. The appellants have been falsely implicated in the aforesaid case. One of the accused Iliyas has been acquitted on the basis of the same evidence. No evidence has been given by the defence in support of their plea. On the other hand, the trial court has rightly appreciated and placed reliance on the testimony of eye witnesses and found that the prosecution case, as alleged, has been proved beyond reasonable doubt. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellants as aforementioned. Moreover, the prosecution had also substantially proved the previous enmity between the parties. Perusal of the judgment as well as the record reveals that the trial court has scrutinized the entire prosecution evidence with care and caution.

20. Close scrutiny of the evidence makes it clear that on account of there being previous enmity between the appellants and the deceased, in the night of 30th May, 2014 at about 10 PM while Mukim (deceased) was sitting in front of the house of his uncle (Mamu) and talking with Karam Ilahi and Zahid, all of sudden the appellants came there and told the deceased that by not inviting them in the marriage of his brother, he had insulted them in the community and thereafter, they assaulted the deceased with knives in which he sustained serious injuries and died. The aforesaid incident was witnessed by PW-1 Naim and PW-2 Karam Elahi. They have supported the prosecution case and their credibility as eyewitnesses to the incident remains intact in their cross-examination. The defence has also failed to establish as to why they would falsely implicate the appellants. Merely on account of these witnesses being interested witnesses, their testimony, which is otherwise cogent and reliable and finds due corroboration from other evidence, medical, cannot be disbelieved. The evidence appears to be consistent so far as the assault by the appellants on the deceased is concerned.

21. As per prosecution version and the statements of the PW-1 and PW-2 it is consistent case that there was old enmity between the

appellants and the deceased. The PW-1 in his testimony had categorically stated that causes of enmity between the deceased and the accused were there and prosecution witnesses had explained the manner of occurrence in which the deceased sustained fatal injuries and ultimately died. The manner of occurrence narrated by PW-1 also stands corroborated by the testimony of other witnesses of fact namely PW-2. The accused appellants have not come out with their version of occurrence. In their statement under Section 313 Cr.P.C. they simply denied the suggestion put to them. While scrutinizing the testimony of PW-1 and PW-2 we do not find any contradiction exaggeration or embellishment in their testimony. All the witnesses of fact were remained consistent regarding the manner in which the occurrence took place.

22. In **Rameshwar Vs. The State of Rajasthan**[1], the Supreme Court has opined that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has such as enmity against the accused, to wish to implicate him falsely.

23. In **Hari Obula Reddi and others v. The State of Andhra Pradesh**[2], a three-Judge Bench of Supreme Court has held:-

> "Evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon." (emphasis added)

24. As regards to the argument of the appellants, that the evidence of the eyewitnesses (PW-1 and PW-2) being interested witnesses cannot be relied upon, it is well settled principle of law that the evidence of an

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1. AIR 1952 SC 54 at page 59

2. AIR 1981 SC 82

interested witness should not be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of such witness should be scrutinized with a little care. It has to be realized that related and interested witness would be the last persons to screen the real culprits and falsely substitute innocent ones in their places. Indeed there may be circumstances where only interested witnesses may be available. When an occurrence takes place at midnight in front of the house and the only witnesses, who could see the occurrence, may be the family members. In such cases, it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. But once such witness was scrutinized with a little care and the Court was satisfied that the evidence of the interested witness have a ring of truth, such evidence could be relied upon even without corroboration. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should be relied upon. (See **Anil Rai Vs. State of Bihar**[3]; **State of U.P. Vs. Jagdeo Singh**[4]; **Bhagalool Lodh & Anr. Vs. State of U.P**.[5]; **Dahari & Ors. Vs. State of U. P.**[6]; **Raju @ Balachandran & Ors. Vs. State of Tamil Nadu**[7]; **Gangabhavani Vs. Rayapati Venkat Reddy & Ors**.[8]; **Jodhan Vs. State of M.P.**[9].

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3. (2001) 7 SCC 318

4. (2003) 1 SCC 456

5. (2011) 13 SCC 206

6. (2012) 10 SCC 256

7. (2012) 12 SCC 701

8. (2013) 15 SCC 298

9. (2015) 11 SCC 52)

25. The eye witnesses themselves found that the accused had committed the assault in the circumstances related by them. In view of these circumstances, therefore, the prosecution has undoubtedly proved that the appellants have assaulted the deceased and this is proved by Naim (eye-witness/PW-1) and Karam Ilahi (eye-witness/ PW-2). Much emphasis had been placed by learned counsel for the appellants that there were some discrepancies in the manner in which the PW-1 and PW-2 had explained the facts but considering the evidence on record, we do not find any material discrepancy so as to discredit the otherwise creditworthy evidence of P.W.1 and PW-2.

26. Minor discrepancies, one or two, here and there, are not sufficient to discredit the otherwise trustworthy witnesses. We have gone through the entire evidence very carefully, and find no material contradiction, so as to disbelieve the prosecution case or the individual witness. Minor contradictions are bound to occur but the same will not be fatal as prosecution has otherwise produced trustworthy witness to prove the guilt of accused.

27. In **Sampath Kumar v. Inspector of Police, Krishnagiri**[10], the Supreme Court has held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person to person.

28. In **Sachin Kumar Singhraha v. State of Madhya Pradesh**[11], Supreme Court has observed that Court will have to evaluate evidence before it keeping in mind the rustic nature of depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature, which do not go to the root of the matter, do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of

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10. (2012) 4 SCC 124

11. Criminal Appeal Nos. 473-474 of 2019, decided on 12.03.2019

witness testimony and the consistency of the prosecution version as a whole.

29. When such incidents take place, one cannot expect a scripted version from witnesses to show as to what actually happened and in what manner it had happened. Such minor details normally are neither noticed nor remembered by people since they are in fury of incident and apprehensive of what may happen in future. A witness is not expected to recreate a scene as if it was shot after with a scripted version but what material thing has happened that alone is noticed or remembered by people and that is stated in evidence. The Court has to see whether in broad narration given by witnesses, whether there is any material contradiction so as to render evidence so self contradictory as to make it unworthy of trust. Minor variation or such omissions, which do not otherwise affect trustworthiness of evidence, which is broadly consistent in statement of witnesses, is of no legal consequence and cannot defeat prosecution.

30. The issue as to the nature of the doubt, which an accused can take benefit of has been settled in our criminal jurisprudence by adhering to the age old principle that the benefit can be denied if the prosecution is able to prove its version with proof beyond reasonable doubt. To illustrate the aforesaid principle we may safely refer to the decision of the Apex Court in the case of **State of U.P. Vs. Pussu**[12]. Relevant part of the said judgment is extracted hereinafter:-

> "The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr should not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned author Glanville Williams in "Proof of Guilt" has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent

12. 1983 (3) SCC 502

> acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. It is true to say, with viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic."

31. Hon'ble Apex Court in the case of **State of Madhya Pradesh Vs. Dharkole**[13] has also opined as follows:-

> "Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case."

32. In such circumstances, so far as the question, as to what caution should be taken while applying the aforesaid principle of the rule of benefit of doubt and in order to ascertain as to whether the prosecution has proved the case beyond a reasonable doubt or not, is concerned, it would be apt to extract the following paragraphs of the judgment of the Apex Court in the case of **Gangadhar Behera and others Vs. State of Orissa**[14]:-

> “17. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. [See: Gurbachan Singh v. Satpal Singh and Others [AIR 1990 SC 209]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. v. Ashok Kumar Srivastava [AIR 1992 SC 840]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Anr. v. State (Delhi Admn.) (AIR 1978 SC 1091)]. Vague hunches cannot take place of judicial evaluation.
>
> "[A] judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does

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13. 2004 (13) SCC 308

14. 2002 (8) SCC 381 (paragraphs no. 17 to 19)

not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U.P. v. Anil Singh (AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

18. In matters such as this, it is appropriate to recall the observations of this Court in Shivaji Sahebrao Bobade v. State of Maharashtra [1974 (1) SCR 489 (492-493)]:

".....The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.....The evil of acquitting a guilty person light-heartedly as a learned author Glanville Williams in 'Proof of Guilt' has sapiently observed, goes much beyond the simple fact that, just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltness.... 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.....' "

19. The position was again illuminatingly highlighted in State of U.P. v. Krishna Gopal (AIR 1988 SC 2154).”

33. In the aforesaid facts, we have also occasion to peruse the judgment of the trial court, which has discussed the entire evidence in detail and we have already recorded our reasons hereinabove for not accepting the stand taken on behalf of the appellants. We clearly find that the date, the time, the place and the topography of the occurrence stood established by the prosecution testimony which had been discussed hereinabove in detail. Learned counsel for the accused/appellants had attempted a chance of dislodging the prosecution version but we do not find any good reason to dislodge the prosecution version. The recovery of the weapons, the utilization thereof and the manner of assault by the appellants all stood corroborated with each other and fortified by the post-mortem report. The inquest proceedings also do not admit of any doubt in the matter. The same has also been considered and recorded by the trial court as well as by us hereinabove. The defence on behalf of the appellants has

not been able to create any reasonable doubt so as to extend any such benefit to the appellants applying the principles.

34. We also find that the ante-mortem injury found upon the body of the deceased was caused by a sharp edged weapon, which appears to have been used with lethal force as is apparent from the nature of the ante-mortem incised injury detailed in the post-mortem report. Therefore, considering the medical evidence, which has been brought on record, we do not incline to take a different view in the matter and the same has also been fortified by PW-5 Dr. Manoj Kumar Singh.

35. While dealing with the issue as to whether the medical opinion given by the doctor is to be believed ipso facto or the Court can look into the nature of the report and make its own assessment, the Apex Court in the case of **Gangabhavani Vs. Rayapati Venkat Reddy & Others**[15] has considered the said aspect of the matter in detail and given the following caution in paragraph 7 as follows:-

> "7 . It is a settled legal proposition that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless it is reasonably explained may discredit the entire case of the prosecution. However, the opinion given by a medical witness need not be the last word on the subject. Such an opinion is required to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all an opinion is what is formed in the mind of a person regarding a particular fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent or probable, the court has no liability to go by that opinion merely because it is given by the doctor. "It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant' ". Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent Assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility."

36. So far as the argument of learned counsel for the appellants for release of the appellants on medical ground on the sentence already undergone is concerned, it is well settled principle of law that once an

15. 2013 (15) SCC 298

accused is held to be guilty for the offence punishable under Section 302 IPC, the minimum sentence, which is imposable would be the imprisonment for life and, therefore, any punishment/sentence less than the imprisonment for life shall be contrary to Section 302 of the IPC. Recently, Hon'ble Supreme Court has proceeded to allow Criminal Appeal No.1356 of 2022 (**The State of Madhya Pradesh vs. Nandu @ Nandua)** on September 02, 2022[16], with following observations:-

> "5. Having heard the learned counsel appearing on behalf of the State and considering the impugned judgment and order passed by the High Court by which though the High Court has maintained the conviction of the respondent - accused for the offence under Section 302 IPC, but the High Court has reduced the sentence to already undergone, i.e., seven years and ten months, we are of the firm view that the same is impermissible and unsustainable. The punishment for murder under Section 302 IPC shall be death or imprisonment for life and fine. Therefore, the minimum sentence provided for the offence punishable under Section 302 IPC would be imprisonment for life and fine. There cannot be any sentence/punishment less than imprisonment for life, if an accused is convicted for the offence punishable under Section 302 IPC. Any punishment less than the imprisonment for life for the offence punishable under Section 302 would be contrary to Section 302 IPC. By the impugned judgment and order though the High Court has specifically maintained the conviction of the accused for the offence under Sections 147, 148, 323 and 302/34 of the IPC, but the High Court has reduced the sentence to sentence already undergone which is less than imprisonment for life, which shall be contrary to Section 302 IPC and is unsustainable.
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> 6. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court reducing the sentence of the respondent – accused to the sentence already undergone while maintaining the conviction of the respondent – accused for the offence under Sections 147, 148, 323 and 302/34 of the IPC is hereby quashed and set aside. The judgment and order passed by the learned Trial Court imposing the life imprisonment is hereby restored. Now, the respondent – accused to be arrested and to undergo life imprisonment for which we give eight weeks' time to the accused to surrender before the concerned Court/Jail Authority."

37. In the present case, the appellants have caused fatal injuries by knives to the deceased, as a result of which he sustained grievous injuries and died. The prosecution has successfully proved guilt of the appellants beyond all reasonable doubt on the basis of evidence, and medical, adduced by it and after appreciating the evidence available on record, the trial Court has rightly convicted and sentenced the appellants as aforementioned.

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16. 2022 LivLaw (SC) 732

38. Keeping in view of the facts of present case and on close scrutiny of the evidence, we do not find any reason to hold that the Court below has not correctly appreciated the evidence. In our view the appellants have rightly been held guilty of committing the offence alleged accordingly. There is no illegality or infirmity in judgment of conviction and order of sentence. We decline to reverse the judgment of the trial court, which is hereby confirmed.

39. Consequently, for all the reasons given above, the criminal appeal, being devoid of merit, is liable to be dismissed and is hereby dismissed. The appellants are reported to be in jail, therefore, no order regarding their arrest etc. is required to be passed.

Order Date :- 02.11.2022
RKP/