Tikaram And Others Vs State Of Madhya Pradesh

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: July 19, 2024

Acts Referred: Indian Penal Code 1908 â€" Section 34, 148, 149, 302, 300, 452
Code of Criminal Procedure 1973 â€" Section 374

Hon'ble Judges: Vivek Rusia, J, Rajendra Kumar Vani, J

Bench: Division Bench

Advocate: Atul Gupta, Rajesh Shukla

Final Decision: Dismissed

Judgement

Vivek Rusia, J & Rajendra Kumar Vani, J

Feeling aggrieved by the judgment of conviction and order of sentence dated 13.6.2001 passed by the 12th Additional Sessions Judge, Gwalior, in

Sessions Trial No.312/1991 convicting the appellants under Sections 302/34 & 452 of IPC and sentencing them to suffer life imprisonment with fine of

Rs.2,000/- and rigorous imprisonment of two years with fine of Rs.1,000/-respectively with default stipulations, appellants have preferred this appeal

under Section 374 of Cr.P.C.

2. Prosecution case in brief is that on 3.3.1991 at 1.10 pm Pooranlal along with injured Nandkishore came to police Chowki Hazira and lodged a report

that he is residing at Old Resham Mill Line in his house along with his brother Jagdish. On 26.2.1991 his younger brother Nandkishore had come from

the village to celebrate festival of Holi. Yesterday i.e. 2.3.1991 in the night when complainant Pooranlal along with his family was in his house, his

neighbourer Preetam Koli and his friend Lakhan Dhobi came to his house and demanded liquor. When Pooranlal replied that he has no liquor, then

accused Preetam asked him to bring liquor. When Pooranlal refused, Preetam pointed Katta and caught hold of complainant Pooranlal and Lakhan

gave 4-5 blows of latha. The persons of the locality intervened in the matter and asked him not to report this matter as it is an inter se dispute, and

therefore, complainant did not lodge any report at that time of the incident. Thereafter on 3.3.1991 Lakhan and Preetam told his brother Balli that they

will take revenge from Pooranlal. When Balli informed about this to complainant Pooranlal, then Pooranlal along with his brother Balli went to police

Chowki Hazira & lodged the report.

3. After lodging the report complainant Pooranlal was returning to his house then near Pragati Nagar Bakery Rakesh and Bhanu met him and they

informed that accused Preetam has fired gunshot on his brother Nandu and accused Preetam, Lakhan, Jagdish and Teekaram pelted Khande (large

piece of stones) on him and he was lying in injured condition in front of house of Laxman Kori. On this, complainant went in front of house of Laxman

Kori and found that his brother Nandu was lying in injured condition and blood was oozing out from his head. Raju present on the spot informed him at

the spot that Preetam, Lakhan, Jagdish and Teekaram trespassed in the house and were beating Nandu and when Nandu tried to run away to save

him, they chased him, fired gunshot and pelted Khande (large piece of stones) on him. Thereafter with the help of Raju and Ramesh he took injured

Nandu to police Chowki Hazira by scooter. The incident was witnessed by his neighbourers and persons of the locality. On the basis of the report of

the complainant, crime No.59/1991 was registered at police Chowki, Hazira for the offence under Sections 307/34 and 542 of IPC. Thereafter matter

was forwarded to police Station Gwalior where crime No.123/1991 was registered for the aforesaid offences. The injured Nandkishore afterwards

succumbed to the injuries sustained by him.

4. On 16.3.1991 complainant Pooranlal submitted an application to CSP, Gwalior, to the effect that Roshan was also involved in beating of his brother

Nandu, however, due to anxiety he could not mention his name at the time of lodging of the report. After investigation, Roshan was also made an

accused in the case. During investigation, accused persons were arrested, pellets and empty cartridge, plain and blood stained soil and a shirt from

accused Roshan Nai were seized. After investigation, charge-sheet was filed in the concerned Court, who committed the case to the Court of

Sessions.

5. Accused persons except accused Preetam were charged under Sections 147 of IPC and accused Preetam was charged under Section 148 of IPC

and all the accused persons were further charged under Sections 302/149 or 302/34 and 452 of IPC which they denied submitting that they are

innocent and have been falsely implicated in the case and requested for trial.

6. In order to bring home the charge, prosecution examined as many as eleven witnesses and placed documents Ex.P/1 to Ex.P/20 on record. The

accused in their defence examined three witnesses.

7. During trial co-accused Lakhan died. After trial, the learned trial Court has convicted & sentenced the appellants as aforesaid and acquitted co-

accused Roshan from the charges levelled against him.

8. It is submitted by learned counsel for the appellants that the trial Court has erred in relying on highly interested and partisan witnesses. No

independent witness of the locality has been examined. Evidence of so called three eye-witnesses is totally belied by medical evidence as it is not

proved that Teekaram and Preetam had Farsa with them and they caused injuries by means of Farsa to the deceased because there is no injury on the

body of the deceased caused by Farsa. Likewise, firearm injury is also not found on the body of the deceased. On this point also, the evidence of eye-

witnesses is not believable. According to the prosecution witnesses, deceased was taking meal at the time of the incident or had just taken meal

before the incident while medical evidence shows that semi-digested food was found in the stomach of the deceased which clearly shows that incident

took place after three hours of his taking meal. The evidence of eye-witnesses is full of contradictions, variations and omissions on material particulars

which renders their statements doubtful. It is also urged by learned counsel for the appellants that without prejudice it could never be a case of Section

302 of IPC. As per the story of prosecution, accused persons were armed with firearm and two sharp cutting weapons, but they did not use them in

lethal way, their common intention/object was not found to be proved of committing murder of the deceased. The incident did not take place inside the

house of Pooranlal as alleged. Defence witnesses established the defence of the appellants. Therefore, it is prayed that appellants be acquitted by

allowing this appeal.

9. Per contra, learned counsel for the State by supporting the impugned judgment submits that the learned trial Court after appreciating the evidence in

proper perspective has rightly convicted and sentenced the appellants and no interference is warranted in the impugned judgment.

10. Heard learned counsel for the parties and perused the record.

11. Dr. Vijay Kumar Diwan (PW-1) has stated that on 3.3.1991 he was posted as Medico-Legal Officer at Jayarogya Hospital, Gwalior. At 2 pm on

the same day the dead-body of Nandkishore was brought for postmortem. He performed postmortem and found following injuries on his body:-

Ã¢â‚¬Å“1. Abrasion over right side of forehead of size 2 cm x 1 cm.

2. Lacerated wound over left side of head of size 5cm x 0.5 cm x bone deep.

3. Lacerated wound 2 cm above injury No.2 over left parietal region of size 3 cm x 0.5 cm x bone deep.

(4) Lacerated wound over occipital region transversely placed of size 4.5 cm x 1 cm x bone deep.

(5) Abrasion over right side of cheek of size 1.5 cm x 1 cm.

(6) Swelling with contusion over both lips, of size 2.5 cm x 1 cm over upper lips and 3 cm x 1 cm over lower lips.

(7) Umpteen abrasions over right hand back side and finger of size 0.5 cm x 0.5 cm.

(8) Abrasion over left arm upper part of size 2 cm x 0.5 cm.

(9) Abrasion over left shoulder of size 3 cm x 1 cm, over finger of left hand of size 1.5 cm x 0.2 cm, over chin of size 1 x 0.5 cm and over back of size

18 cm x 4 cm.

(10) Lacerated wound over left side of head of size 7.5x 0.5 x bone deep.

(11) Lacerated wound over right side of head of size 2 cm x 0.5 cm x bone deep.

(12) Contusion over left side of head of size 10 cm x 6 c m.Ã¢â‚¬â€‹

The doctor also clarified that except injuries on head, remaining injuries are simple in nature. Parietal and occipital bones of the deceased were

fractured and his brain was damaged.

12. Rekha (PW-3), Parwati (PW-5) and Rani (PW-6) are the eye-witnesses of the incident. Pooranlal (PW-7) reached on the spot immediately after

the incident. Shrilal Jain (PW-2) has prepared spot map (Ex.P/2). Sunil Shrivastava (PW-4) being Sub-Inspector has prepared Lash Panchayatnama

(Ex.P/3) and application (Ex.P/4) for conducting postmortem of the deceased. Ramashankar (PW-8) has lodged FIR as Ex.P/7 on the basis of Dehati

Nalishi (Ex.P/5) and seized the clothes of the deceased vide seizure memo (Ex.P/8). Prakash Singh (PW-11) has written the FIR (Ex.P/5). This

witness and Lalmani Sharma (PW-9) are the investigating officers. Bhanu Pratap Singh (PW-10) is the witness of seizure memo (Ex.P/11) and arrest

memo (Ex.P/12).

13. Having considered the statements of these witnesses, it is explicit that deceased died due to various injuries sustained by him, out of which, as

many as 7 injuries were on vital part head and that was the cause of death which is homicidal in nature. Now it is to be determined as to whether such

homicidal death of the deceased has been caused by accused/appellants in pursuance of their common intention and for this purpose whether they

have committed house trespass after preparation for assault or hurt to the deceased.

14. The prosecution case hinges mainly on the testimony of eye-witnesses Rekha (PW-3), Parwati (PW-5) and Rani (PW-6). All the three eye-

witnesses substantially deposed before the Court that on the fateful date at 12-1 pm in broad day light when the deceased was going to take rest after

taking meal, accused persons Lakhan, Preetam, Teekaram, Jagdish and Roshan Nai came there and caused beating with the deceased. When the

deceased after freeing his hand fled from the house, then accused Lakhan and Preetam fired on him, but that did not hit the deceased, however, due

to panic he fell down, then all the accused pelted khande (large piece of stone) on him and thereafter the accused persons fled away. The deceased

in injured condition was taken to hospital, but later on deceased died.

15. Pooranlal (PW-7) is the complainant and he reached the place of incident immediately after the incident while returning from police station after

lodging the FIR of the incident of a day before in which Lakhan and Preetam caused beating with him.

16. The statements of Rekha (PW-3), Parwati (PW-5) and Rani (PW-6) as well as of complainant Pooranlal (PW-7) are containing variations and

omissions as regards various particulars. What is to be analysed is that whether such variations/omissions reveal from the statements of these related

witnesses are on material particulars and render their testimony doubtful ?

17. It is revealed from the statements of the witnesses that the incident took place at 12-1 pm in broad day light and there were houses of local

residents also, but no independent witness has supported the prosecution story. One Bhanu Pratap Singh (PW-10) has been examined as independent

eye-witness to the incident, but he has not supported the prosecution story, Ex.P/11 and Ex.P/12, seizure memo & arrest memo. He turned hostile

before the trial Court. As per the story of prosecution Rakesh & Raju also saw the incident and narrated the story to Pooranlal, but they have not

been examined on behalf of the prosecution. Raju has been examined as defence witness (DW-2). Meaning thereby no independent witness supports

the story of prosecution and these three witnesses namely Rekha (PW-3), Parwati (PW-5) and Rani (PW-6), who are related witnesses, are only

eye-witnesses of the incident. However, it is settled law that a witness cannot be disbelieved merely on being relative of the deceased or injured

though his/her evidence is to be scrutinized with circumspection.

18. In the case of State of U.P. Vs. Shobhanath, (2009) 6 SCC 600 the Hon'ble Apex Court has laid down that

Ã¢â‚¬Å“.....close relatives of the deceased would not try to rope in someone else as the murderers of their near relation and give up the actual accused. It

is against the human conduct. In a case of murder the near relations would make all endeavour to see that the actual culprits are punished.Ã¢â‚¬â€‹ (para

30).

19. Similarly, in the case of Dalip Singh v. State of Punjab, (1953) 2 SCC 36 the Hon'ble Apex Court has held that

Ã¢â‚¬Å“....ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high

and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the

guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of

truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts....Ã¢â‚¬â€‹ (Para 24).

20. In the case of Seeman v. State, (2005) 11 SCC 142 the Hon'ble Apex Court has held that it is now well settled that the evidence of witness

cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness

could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the court to be more careful in

the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole

witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by

the court while scrutinising the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been

named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution

case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place

credence on the statement.

21. In the case of Hari Ram v. State of U.P., (2004) 8 SCC 146 the Hon'ble Apex Court has held that

Ã¢â‚¬Å“...when any incident happens in a dwelling house or nearby the most natural witnesses would be the inmates of that house. It would be

unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything....Ã¢â‚¬â€‹ (para 4).

22. Recently the Hon'ble Apex Court in the case of Gulab v. State of U.P., (2022) 12 SCC 677 in para 18 has held as under:

Ã¢â‚¬Å“18.It is well-settled in law that the mere fact that relatives of the deceased are the only witnesses is not sufficient to discredit their cogent

testimonies. Recently, a two-Judge Bench of this Court in Mohd. Rojali Ali v. State of Assam [Mohd. Rojali Ali v. State of Assam, (2019) 19 SCC

567 : (2020) 3 SCC (Cri) 736] reiterated the distinction between Ã¢â‚¬Å“interestedÃ¢â‚¬ and Ã¢â‚¬Å“relatedÃ¢â‚¬ witnesses. It was held that the mere fact that the

witnesses are related to the deceased does not impugn the credibility of their evidence if it is otherwise credible and cogent....Ã¢â‚¬â€‹

23. Having regard to the law laid down by the Hon'ble Apex Court in the aforesaid cases, the testimony of eye-witnesses Rekha (PW-3), Parwati

(PW-5) and Rani (PW-6) cannot be disbelieved merely on the ground of their relations with the deceased. Though, certainly, their testimony are to be

scrutinized with care and circumspection.

24. Rekha (PW-3) and Parwati (PW-5) have admitted in their cross-examination that their husband Pooranlal solemnized two marriages one with

Rekha and second with Parwati while Rani is the sister of the deceased and Pooranlal (PW-7), and therefore, the presence of all these witnesses at

their home is quite natural where the incident started.

25. Rekha (PW-3) and Rani (PW-6) though admitted in their cross-examination that the place of incident, which was in front of house of Laxman, is

not visible from their house, however, Rani (PW-6) in her chief examination has categorically stated that she followed Nandkihosre and accused

persons. She denied the suggestion given by the defence that she did not saw the incident and she was not present at the place of incident.

26. Rekha (PW-3) has also stated in her statement para 22 that she followed Nandkishore and accused from her house. She reiterated this fact in

para 24. Similarly, Parwati (PW-5) also clarified this fact in para 10 of her statement that she came out from her home and followed the deceased and

accused persons and from the distance of 20-25 steps she saw the incident. Therefore, the fact that the place of incident is not visible from the house

of eye-witnesses does not dent the story of prosecution or statements of these witnesses because they have seen the incident on reaching nearby the

spot after following the deceased and accused persons.

27. As far as the arguments of learned counsel that semi-digested food was found in the stomach of the deceased during postmortem, and therefore,

he must have taken food 3 hours before the incident, while eye-witnesses deposed that he was taking food at the time of starting of the incident and

that Rekha (PW-3) has stated in para 17 of her statement that she mentioned at the time of recording of her police statement that Teekaram and

Preetam had Farsa and they inflicted Farsa blows, but this fact is not mentioned in her police statement and further that she also stated that Lakhan

fired gunshot and also that Rani (PW-6) in her statement has stated that Lakhan fired a gunshot which hit on the leg of Nandkishore and he fell down,

but no such injury was found on the leg, are concerned, keeping in view the socio-economic status of these witnesses such variations or exaggerations

cannot be said to be material and does not render their testimony doubtful in the facts and circumstances of the case. When a witness is examined

after considerable period of the incident such types of variations, omissions and exaggerations may come in his/her testimony naturally and they should

not be given undue weightage unless such variations or exaggerations are with regard to material particulars and render the whole case of the

prosecution doubtful. Likewise the exaggerations per se do not render the evidence fragile. The entire evidence is to be examined on the touchstone of

credibility. Even if a major portion of evidence is found to be deficient, if residue is sufficient to prove guilt of an accused, then such part may be

resorted to base the conviction. It is the duty of the court to separate the grain from the chaff. If it is not possible, then only benefit can be given to the

accused persons. Falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars.

28. The Hon'ble Apex Court in the case of Mohar v. State of U.P., (2002) 7 SCC 606 in para 11 has held as under :

Ã¢â‚¬Å“11. Ã¢â‚¬Â¦.Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy which does not affect the prosecution

case materially cannot create any infirmity. ...Ã¢â‚¬â€‹

29. The Hon'ble Apex Court in the case of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 has assigned following

reasons in para 5 due to which much importance cannot be attached to minor discrepancies:

Ã¢â‚¬Å“(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video

tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an

element of surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image

on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall

the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the

moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on

the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span.

A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of

nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-

conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a

truthful and honest account of the occurrence witnessed by him Ã¢â‚¬" Perhaps it is a sort of a psychological defence mechanism activated on the spur

of the moment.Ã¢â‚¬â€‹

In para 6 the Hon'ble Apex Court has further held that Ã¢â‚¬Å“Discrepancies which do not go to the root of the matter and shake the basic version of the

witnesses therefore cannot be annexed with undue importance. More so when the all important Ã¢â‚¬Å“probabilities factorÃ¢â‚¬ echoes in favour of the

version narrated by the witnesses.Ã¢â‚¬â€‹

30. The Hon'ble Apex Court in the case of State of U.P. v. Naresh, (2011) 4 SCC 324 in para 30 has held as under :-

Ã¢â‚¬Å“In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors

of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a

contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the

court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters

which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has

to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.Ã¢â‚¬â€‹

Ã, Ã¢â‚¬Å“9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when

the entire evidence is put in a crucible for being tested on the touchstone of credibility.Ã¢â‚¬â€‹

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the

statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially

affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide State v. Saravanan [(2008) 17

SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] A, rumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130 : AIR 200 9SC 331] ,

Mahendra Pratap Singh v. State of U.P. [(2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352] andS unil Kumar Sambhudayal Gupta (Dr.) v. State of

Maharashtra [(2010) 13 SCC 657 : JT (2010) 12 SC 287] .]

31. The Hon'ble Apex Court in the case of Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457 has held as under in

para 42:

Ã¢â‚¬Å“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission

in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is

different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor

contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from

person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in

the testimony of PW

2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such

witness....Ã¢â‚¬â€‹

32. The Apex Court in the case of Krishna Mochi v. State of Bihar, (2002) 6 SCC 81 has held in paras 32 and 51 as under :

Ã¢â‚¬Å“32.Thus, in a criminal trial a Prosecutor is faced with so many odds. The court while appreciating the evidence should not lose sight of these

realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an

accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to

achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does

not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same

are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the

society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim Ã¢â‚¬Å“let hundred guilty persons

be acquitted, but not a single innocent be convictedÃ¢â‚¬â€¹ is, in practice, changing the world over and courts have been compelled to accept that

Ã¢â‚¬Å“society suffers by wrong convictions and it equally suffers by wrong acquittalsÃ¢â‚¬â€¹. I find that this Court in recent times has conscientiously taken

notice of these facts from time to time. In the case Inder Singh v.State (Delhi Admn.) [(1978) 4 SCC 161 Krishna Iyer, J. laid down that : (SCC p.

162, para 2) Ã¢â‚¬Å“Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity

when projected through human processes.Ã¢â‚¬â€¹ In the case of State of U.P. v. Anil Singh [1988 Supp SCC 686] it was held that 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 not escape. One is as

important as the other. Both are public duties which the Judge has to perform. In the case of State of W.B.v.Orilal Jaiswal [(1994) 1 SCC 73] it was

held that 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. In the case of Mohan Singh v. State of M.P.[(1999) 2 SCC 428] it was held that the courts have been removing

chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud

and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely

conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit to find out the truth. It

means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot-

free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused. Ã¢â‚¬Å“

51.....Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of

a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the

chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be

deficient to prove the guilt of other accused persons. Falsity of particular material witness or 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 (false in one thing, false in everything) 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 Ã¢â‚¬Å“a mandatory rule of evidenceÃ¢â‚¬. (See Nisar Ali v. State of U.P.[AIR 1957 SC 366 : 1957 Cri LJ 550]) Merely because some of the

accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary

corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted

from those who were convicted. (See Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827]...Ã¢â‚¬â€‹

33. By applying the aforesaid ratio, as laid down by the Hon'ble Apex Court, coupled with examination of testimony of eye-witnesses, we do not find

that variations, omissions and exaggeration revealed from the statements of eye-witnesses Rekha (PW-3), Parwati (PW-5) and Rani (PW-6) are on

material particulars, instead they are natural and trust worthy. The variations/omissions and exaggerations sought to be projected are of trivial nature

and cannot be the basis to brush aside the evidence.

34. It revealed from the testimony of eye-witnesses that incident started inside the house of Pooranlal where accused persons entered and caused

beating with the deceased and thereafter in front of house of Laxman all accused persons pelted Khande (large stones) on the deceased repeatedly.

The statements of these eye-witnesses are supported by FIR and medical evidence on record. Though the names of eye-witnesses have not been

mentioned in the FIR, but FIR is not an encyclopedia. Police has recorded statements of said eye-witnesses in which they categorically stated that

they have seen the entire incident. Moreso FIR is lodged by Pooranlal, who is no tan eye-witness, therefore, it is not expected from him to specify the

names of eye-witnesses in the FIR. Admittedly, the incident started within the house of Pooranlal in which his wives and daughter were naturally

present and as stated above they have seen the incident after following the deceased. Their statement is found to be reliable and trustworthy on

careful scrutiny. That apart, Lalmani (PW-9) has seized pellets of the bullet and lower part of bullet having sign of firing which also corroborates the

story of prosecution on that point. Spot map is also in corroboration of the statements of these witnesses. Lalmani (PW-9) clarified that he did not take

the statement of Laxman because he was not there.

35. Police statements of Pooranlal and Rani have been recorded on the date of incident i.e. 3.3.1991 and statement of Parwati has been taken on

16.3.1991 and that of Rekha has been been taken on 26.3.1991. Prakash Singh (PW-11) has stated in cross-examination para 7 that since Parwati

was under sorrow and depression because of murder of her Devar (brother-in-law), therefore, he has taken her statement at later stage which seems

to be satisfactory. Moreover, since the police statements are required to be recorded by the police official and if the police official has recorded the

police statements of witnesses belatedly, that is being a lapse on the part of I.O which cannot be a ground per se to discard the testimony of those

witnesses.

36. So far as defence witnesses are concerned, Keshav (DW-1) has stated that accused Teekaram was doing cleaning in his shop, he used to work in

the shop from 10 am to 8 pm, but he admits that if required he used to let Teekaram go out of the shop. He also stated that they were paying Rs.800/-

to Teekaram after making entry in this regard in the cash book, but such cash book or other documents have not been produced. Similarly, Raju (DW-

2) (though listed as eye-witness in the Challan, but he denied the story of prosecution) stated that he has seen the incident wherein Nandkishore was

beaten by unknown outsiders, but statement of this witness is also not believable in the light of the statements of eye-witnesses of the prosecution

whose testimony is corroborated by FIR and medical evidence. Yaduram (DW-3) deposed regarding previous enmity of Pooranlal with accused

Preetam, but no document has been filed on behalf of the defence as regards the complaint etc. made by Preetam and other neighbourers against

Pooranlal, hence, testimony of this witness is also not worth reliance vis a vis the testimony of eye-witnesses of prosecution Rekha (PW-3), Parwati

(PW-5) and Rani (PW-6), which is found trustworthy on careful scrutiny of their statements.

37. So far as the the argument of defence that intention of the accused persons was not to commit murder of the deceased is concerned, though it

revealed from the story of prosecution that Lakhan was armed with a gun from which he fired on deceased Nandkishore but that was not used when

Nandkishore fell down and became helpless, but we are not impressed with the argument as the accused persons pelted large stones on head and

other body parts of the deceased repeatedly resulting into his death. When it was found by them that the deceased remained in helpless condition, they

started beating the deceased by pelting large stones available at the place of occurrence. In these circumstances, not using the firearm by Lakhan at

that time, does not show that intention of the accused persons was not to kill or murder of the deceased. As per the evidence of Dr. Vijay Kumar

Diwan (PW-1) as many as seven injuries have been found on the head and face of the deceased which shows that repeatedly large stone was pelted

on the head and face of the deceased. It is not a case where only one injury has been caused to the deceased. The case of the prosecution squarely

falls under the definition of murder under Section 300 of IPC and does not fall under any of the exception of said Section. Therefore, the offence of

present appellants is found to be proved beyond reasonable doubt.

38. Learned trial Court has appreciated the statements of prosecution witnesses as well as defence witnesses appropriately in right perspective and

rightly held the appellants guilty of offences under Sections 452 and 302/34 of IPC on being found the ingredients of these offences proved in light of

reliable evidence of witnesses of prosecution and passed the appropriate sentence. The prosecution has proved its case beyond all reasonable doubt.

39. In the backdrop of aforesaid discussion, this appeal fails and is hereby dismissed. Appellants are on bail, their bail bonds are cancelled and they are

directed to surrender before the trial Court on or before 8th August, 2024 to serve the remaining jail sentence, failing which the trial Court would be

at liberty to issue arrest warrants against them. Order of the trial Court as regards disposal of seized property is hereby confirmed.