Nathu Vs State of U.P.

Court: Allahabad High Court

Date of Decision: Nov. 27, 2012

Acts Referred: Penal Code, 1860 (IPC) â€" Section 307, 307, 308, 309, 310

Citation: (2013) 1 ACR 958

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Advocate: Ishtiyaq Ali, Brijesh Sahai and Keshav Sahai, for the Appellant;

Final Decision: Allowed

Judgement

Rajes Kumar, J.
This criminal appeal has been preferred by the appellant against the judgment and order dated 1.7.1.1981 of the IIIrd

Additional District and Sessions Judge, Budaun in Sessions Trial No. 399 of 1979, holding the appellant guilty of offence u/s 307, I.P.C. and

sentencing him of three years'' rigorous imprisonment. The prosecution case is that about four or five days before the occurrence of the incident

Subedar Singh and the accused-appellant Nathoo and Chander Pal along with some other villagers went to the market of Ujhani. In the market a

Police Sub-Inspector of Police Station Ujhani sent for Subedar Singh and some other and took them to the Police Station. He made certain

enquiries from Subedar Singh about accused-appellant Nathu. On knowing this, the accused-appellant, Nathoo and Chander Pal suspected that

Subedar Singh had named them in some case. They, therefore, started harbouring ill-will against Subedar Singh. On the date of incident. Subedar

Singh went to the field of Randhir Singh of his village for cutting Bajra for fodder for his buffalo. After cutting the fodder, he loaded the fodder in a

Bullock-cart and came to his village on a bicycle. While reaching at the residence of Doongar of his village, he found Doongar and Lal Singh were

sitting. They asked him also to sit and to smoke Biri. Subedar Singh also sat there and started smoking Biri alongwith Doonger and Lal Singh and

kept his bicycle there. When he was smoking Biri there, at about 1: 00 p.m., accused-appellant, Nathoo, possessing a country made Pistol

(Tamancha) in his right hand and co-accused Chander Pal possessing a Lathi in his right hand arrived there from western side. Chander Pal

instigated accused-appellant Nathoo to finish Subedar Singh as according to him Subedar Singh had acted as informer of the Police against them.

Subedar Singh stated that he had not said any thing against them to the Police. On hearing the noise of the conversation, Smt. Devki Devi, wife of

Doongar also came out of her house. Accused-appellant, thereafter challenging and asking Subedar Singh to face the consequences of Mukhbiri

shot fire by his country made pistol (Tamancha) on Subedar Singh aiming to kill him. Subedar Singh sustained injuries at his right hand and right

chest. One pellet of the fire also hit the eye brow of Smt. Devki Devi, who was at that time standing near the door of her house. Lal Singh,

Doongar and other villagers who arrived on the spot, challenged the accused-appellant, Nathoo and co-accused, Chander Pal upon which they

went back. Sultan Singh, brother of Subedar Singh and Doonger took Subedar Singh and Smt. Devki Devi in a Bullock-cart. Thereafter, Subedar

Singh lodged a first information report of this occurrence at 3:30 p.m. on 26.10.1978. the date of occurrence.

2. The first information report has been lodged by the victim, Subedar Singh, with the allegations that four-five days prior to the date of incident, he

alongwith Nathoo and his brother-in-law Chander Pal and some other villagers went to Ujhani Bazar where the Sub-Inspector of the local Police

Station called him and enquired about Nathoo of his village due to which Nathoo and Chanderpal suspected that in respect of some case. I have

told their names to the Police and, therefore, they started keeping enmity with me. On the date of incident, I went to take fodder from the field of

Randhir Singh of my Village and after cutting the fodder I loaded the same in the Bullock-cart and coming back to village by my bicycle. While

reaching the village I saw Doonger and Lal Singh sitting in front of the house of Doonger. They stopped me to sit with them and smoke Biri. I

stopped there and kept my bicycle standing there. While I was smoking Biri with them, accused, Nathoo, possessing country made pistol

(Tamancha) in his right hand alongwith co-accused Chanderpal, possessing Lathi in his right hand came there. Chander Pal instigated, accused-

Nathoo, that Subedar Singh had done mukhbiri to the Police against them, therefore, finish him today itself. I stated that I have nothing told the

Police about them, but they did not relent. On hearing the noise, Smt. Devki, wife of Doongar, came out of her house and was watching the

altercation. Nathoo shouted that you will have to face the consequences of mukhbiri and shot bullet fire by the country made pistol aiming at me

with the intention to kill me. As a result of gun shot, I sustained injuries at my right hand and right chest. One pellet of the fire also hit the eye brow

of Smt. Devki Devi, who was at that time standing near the door of her house, Lal Singh. Doongar and other villagers who arrived on the spot and

challenged the accused-appellant, Nathoo and co-accused, Chander Pal upon which they went back.

On the above report, the case was registered against the accused and was investigated. The charge-sheet against the accused was submitted on

19.12.1978 and the case was committed to the Court of Sessions.

3. In order to prove the prosecution case and to prove the charges leveled against the accused, the prosecution has examined eight witnesses as

P.W. 1 to P.W. 8 and produced and proved 10 documents marked as Exts. Ka-1 to Ka-10, in addition to material Exts. 1 to 4.

P.W. 1 Subedar Singh, the injured and also the complainant of the case, stated about the motive of the occurrence as mentioned above and

proved the report Ext. Ka-1 lodged by him about the occurrence on the date of incident itself.

P.W. 2, Doongar, is the person in front of whose house the occurrence had taken place. He is also an eyewitness of the incident. He is husband of

Smt. Devki Devi, who also sustained injury in the incident. He stated about the factum of the occurrence but named the accused-appellant, Nathoo

alone as having committed the offence and has not stated about the presence of co-accused.

P.W. 5. Smt. Devki Devi, who also sustained injury in the incident and P.W. 7, Lal Singh, the other eyewitness of the occurrence, have also stated

about the factum of the incident. They have also stated that the accused-appellant, Nathoo has committed the offence, however, they have also not

disclosed presence of co-accused, Chander Pal.

P.W. 3, Dr. S.C. Naugaraiya conducted the medical examination of the injuries of Subedar Singh and Smt. Devki Devi on 26.10.1978 and

prepared the injury report. He found gun shot injuries as mentioned in Ext. ka-2 on the person of Subedar Singh and one abrasion possibly caused

by pellet on the left eye brow of Smt. Devki Devi as mentioned in Ext. ka-3, sustained by them at about 1.00 p.m. on 26.10.1979. The witnesses

kept injury No. 1 of Subedar Singh under observation. Other injuries of Subedar Singh were found by him as simple. On the basis of the X-ray

plates Mat. Exts. 1 and 2 and X-ray report Mat. Ext. 3 he has found the presence of pellets under the injuries of Subedar Singh in the right hand

and right chest. According to him above injury of Subedar Singh could prove fatal if the pellets had entered in the heart and lungs.

P.W. 4 S.I. Krishna Pal Singh was Head Moharrir at police station Ujhani at relevant time. He recorded the chick report Ext. Ka-1 at the police

station on 26.10.1978 at 3.30 p.m. when lodged by the complainant Subedar Singh and registered the case and made entries in G.D., copy of

which is Ext. Ka-4. He took the blood stained shirt Material Ext. 4 of Subedar Singh in police custody, put it in sealed bundle and prepared Fard

Ext. Ka-5. He inspected the injuries of Subedar Singh and Smt. Devki and noted them in the general diary Ext. Ka-4. Clerk constable Surendra

Singh prepared chitthi mazroobi Ext. Ka-6 and Ka-7 for Subedar Singh and Smt. Devki Devi. Both these persons were sent for their medical

examination with the above chitthi mazroobi. The investigation of this case was entrusted to S.I. V.N. Dwivedi. The witness has stated about the

above facts and has proved Exts. Ka-1, Ka-4 to Ka-7 and Material Ext. 4.

P.W. 6 Dr. I.P. Gupta is a private medical practitioner. He prepared X-ray plates for the chest and right hand of Subedar Singh and gave his

report in the matter. Material Exts. 1 and 2 are the X-ray plates prepared by him, and Ext. Ka-8 earlier marked as Mat. Ext. 3 is his X-ray report

in the matter. The witness has proved above documents and has stated that the pellets were present in the chest and right hand of Subedar Singh.

P.W. 8 C Baboo Singh has been produced to prove the site-plan Ext. Ka-9 and the charge-sheet Ext. Ka-10 in the hand writing of S.I.

Vishwanath Dwivedi who has not attended the court despite various processes issued for him and letters sent to S.P., Budaun to get him produced

in the court. This witness has proved the site-plan Ext. Ka-9 and the charge-sheet Ext. Ka. 10 in the hand writing and under the signatures of S.I.

Vishwanath Dwivedi the Investigating Officer of the case. He has also proved the case diary of this case in the hand writing of the above

Investigating Officer.

4. Learned counsel for the appellant submitted that the occurrence and the involvement of the accused-appellant in the incident is not in dispute. It

is also not in dispute that the appellant has shot fire by country made pistol (Tamancha). His only contention is that the bullet was shot from the

distance of about 12 ft. and the nature of injuries are such which were not fatal in nature and could not have caused death. Doctor in his medical

report also stated that the injury was simple. He submitted that the intention was only to cause hurt and not the death. Thus, the offence would not

fall u/s 307, but it would be a case of offence u/s 324, I.P.C. He further submitted that more than thirty years have already passed and the

appellant has already been subjected to jail for two months. He submitted that having regard to the facts and circumstances of the case, the

punishment may be converted from the offence committed under Sections 307 to 324, I.P.C. Reliance is placed on the decisions of this Court in

the case of Atar Singh v. State of Uttar Pradesh, 2012 (76) ACC 979: 2012 (2) ACR 1472; Ram Kumar and others Vs. State of U.P., and Smt.

Kamla Vs. State of U.P., .

5. Learned A.G.A. submitted that the first information report reveals that the accused suspected that since the injured has. done mukhbiri, let he

may be liquidated. Further, the accused shot fire above the diaphragm, causing injury on the chest near nipple and it was 25 centi-metres deep.

Fortunately, it could not pierce little more. If the injury would have been caused a little more inside it would have affected heart, lungs or liver which

are vital parts of the body and would have proved fatal. This clearly shows that the intention of the accused was to cause death and not only cause

hurt to the injured. If the intention would have been only to cause hurt, the shot would have been fired below the diaphragm, somewhere in the leg

etc. He submitted that it is a clear cut case of attempt to murder and not attempt to hurt.

6. I have considered arguments of learned counsel for the parties and perused the materials on record.

7. To appreciate the issue, it would be appropriate to refer Sections 307 and 324, I.P.C., which are reproduced below:

307. Attempt to murder. -- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused

death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall

also be liable to fine: and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such

punishment as is hereinbefore mentioned.

324. Voluntarily causing hurt by dangerous weapons or means.--Whoever, except in the case provided for by Section 334, voluntarily causes hurt

by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by

means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by

means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal,

shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

8. In the injury report, following injuries have been found on the person of injured, Subedar Singh.

M.I. Black mole on right infraclavicular region 2.5 cm. below coller bone.

Inj. (1) Three gun shot wound of entrance of size 0.25 cm. x 0.25 cm. in an area of 8 cm/4 cm. on front of chest right side around nipple. Adv. for

X-ray.

(2) One gun shot wound of entrance of size 0.25 x 0.25 cm. in an area of 26 cm. x 7 cm. on front of right shoulder 7 cm. below left coller bone.

(3) Multiple gun shot wound of entrance of size 0.25 cm. x 0.25 cm. in an area of 26 cm. x 7 cm. in front of right upper and fore arm.

Inj. No. (1) Adv. For X-ray AP and Lat

No. 2 and (3) simple, duration fresh, caused by fire arm.

9. It would be useful to refer statements of injured, eye-witnesses-P.W. 2, P.W. 5 and P.W. 7, which are as under:

10. Firing of bullet shots by the accused is not in dispute. The only question for consideration is whether he fired bullet shot with the intent to hurt

or to cause death to the injured.

11. The first information report lodged by the victim, Subedar Singh, reveals that Chanderpal instigated the accused Natthu that the victim had

done mukhbiri against them, therefore, finish him today itself. P.W. 2. Doongar and P.W. 5, Smt. Nanki Devi. who were eye-witness, have

confirmed factum of the occurrence and firing by Natthu. Injury report reveals that the injuries are mainly on the Chest where the vital parts of the

body are located. There were three gun shots wound of entrance of size 0.25 cm. x 0.25 cm. in an area of 8 cm. x 4 cm. on front of chest right

side around nipple. One gun shot wound of entrance of size 0.25 x 0.25 cm. in an area of 26 cm. x 7 cm. on front of right shoulder 7 cm. below

left coller bone. Multiple gun shot wound of entrance of size 0.25 cm. x 0.25 cm. in an area of 26 cm. x 7 cm. in front of right upper and fore arm.

If any of the bullet would have gone a little more inside the body, it would have been proved fatal and the victim would have died. Fortunately, it

could not gone more deeper in the body and. therefore, the victim survived. If the intent would have been to hurt, the gun shot would have been

fired by the accused on the lower portion of the body and not on the portion of the body where vital parts of the body are located. Therefore, I do

not find any error in the view taken by the trial court in punishing the appellant u/s 307, I.P.C.

The Apex Court and the High Courts have laid down principles about re-appreciation of the evidences on record.

12. The Apex Court in the case of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, at Page 222 has held as follows:

Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established: (1) that the finding is based on no

evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face

value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or

substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked,

disregarded, or wrongly discarded.

The Apex Court in the case of State of U.P. Vs. Naresh and Others, , held as follows:

Page 35. The instant case is required to be examined in the totality of the circumstances and in the light of the aforesaid legal propositions. The

Court has to strike a balance in the interest of all the parties concerned. Thus, there is an obligation on the court neither to give a long latitude to the

prosecution, nor construe the law in favour of the accused.

The Apex Court in the case of Lallu Manjhi and Another Vs. State of Jharkhand, , has observed in paragraph 10 as under:

The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the

testimony of a single witness, the Court may classify the oral testimony into three categories, namely: (i) wholly reliable, (ii) wholly unreliable, and

(iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the

single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material

particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. (See Vadivelu Thevar Vs. The State of

Madras,).

The Apex Court in the case of Himmat Sukhadeo Wahurwagh and Others Vs. State of Maharashtra, has observed as follows:-

We are also aware of the fact that the evidence in most of these cases is recorded after some delay and that in any case if every witness were to

give an identical and parrot like statement, it would smack of tutoring and would lose credibility. Some inconsistencies are thus bound to arise

particularly where a large number of victims, witnesses and accused are involved and the incident itself is spread out over a distance and period of

time, as in the present case.

The Apex Court in paragraphs 5 and 6 in the case of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, , has held as follows:-

We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor

discrepancies painstakingly highlighted by learned counsel for the appellant. Over much importance cannot be attached to minor discrepancies. The

reasons are obvious:

(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 surprise. 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, i.e., 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 take 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-Perhaps it is a sort of a psychological defence mechanism activated on the spur of

the moment.

(8). 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 ""probabilities-factor"" echoes in favour of the version narrated by the witnesses.

The Apex Court in the case of Himmat Sukhadeo Wahurwagh and Others Vs. State of Maharashtra, , quoted below, held as follows:

21. Before we embark on an appreciation of the evidence some thoughts come to mind. The criminal justice system as we understand it as of

today in our country, is beset with major issues, sometimes unrelated to what happens in court, particularly in cases involving more than one

accused. Fudged and dishonest first information reports, tardy and misdirected investigations and witnesses committing perjury with not the

slightest qualm or a quibble make the decision of even the most diligent and focused of Judges particularly galling and difficult. Several other factors

inhibit the proper conduct of proceedings in a trial.

22. As per ""Crimes in India - 1998"" a total of 5,42,345 cases under the Indian Penal Code including those carried over from the previous years,

and another 6,37,345 criminal cases under Special and Local Laws making a backlog of 11,79,690 cases were pending investigation. It has also

been found that the delay in the investigation and disposal of a criminal case makes the possibility of acquittal that much higher as witnesses tend to

turn hostile.

23. The Fourth Report of the National Police Commission (1980) Chapter XXVIII gives some alarming statistics inasmuch that a sample study of

Sessions cases in a crime infested district revealed that out of 320 cases disposed of in the concerned Sessions Court during the 8 months working

period in a year, only 29 ended in conviction while 291 ended in acquittal. In conclusion, the Commission observed:

As many as 130 cases, which included 21 murders, 58 attempts at murder, 17 dacoities and 9 robberies, took more than 3 years for disposal,

reckoning the time from the date of registration of first information report. It was also noticed that the longer a case took for disposal the more

were the chances of its acquittal. Protracted proceedings in courts followed by acquittal in such heinous crimes tend to generate a feeling of

confidence among the hardened criminals that they can continue to commit crimes with impunity and ultimately get away with it all at the end of

leisurely and long drawn legal battles in courts which they can allow their defence counsel to take care of. Such a situation is hardly assuring to the

law abiding citizens and needs to be immediately corrected by appropriate measures even if they should appear drastic and radical.

24. We hasten to add that these alarming figures are not universally applicable to all districts, but they are undoubtedly indicative of the malaise that

afflicts our criminal justice system and paint a grim picture. The Commission also found that one of the primary reasons for the failure of the

prosecution was the propensity of prosecution witnesses to turn hostile and several reasons for this trend have been spelt out.

25. The Commission also quoted with approval from a letter of a senior Sessions Judge in which he wrote that:

A prisoner suffers for some act or omission but a witness suffers for no fault of his own. All his troubles arise because he is unfortunate enough to

be on the spot when the crime is being committed and at the same time ""foolish"" enough to remain there till the arrival of the police. It is for these

reasons that people do not take the victim of a road accident to hospital or come to the help of a lady whose purse or gold chain is being snatched

in front of her eyes. If some person offers help in such cases he is to appear as a witness in a court and has to suffer not only indignities and

inconveniences but also has to spend time and money for doing so. Some time the witnesses incur the wrath of hardened criminals and are

deprived of their lives or limbs.

26. In this pernicious state of affairs, the Judge, gravely handicapped, has to apply his knowledge of the law and his assessment of normal human

behaviour to the facts of the case, his sixth sense based on his vast experience as to what must have happened, and then trust to God and good

luck that he strikes home to come to a right conclusion. To our mind the last two are undoubtedly imponderables but they do come into play in

negotiating the judicial minefield. This is an undeniable fact whether we admit it or not.

In the case of Appabhai and Another Vs. State of Gujarat, , the Apex Court held as follows:

On the second contention, the learned counsel highlighted many of the contradictions in the evidence of Devji (P.W. 4) as against his previous

statement; one recorded by the Executive Magistrate (Exh. 66) and another by the police during the investigation. We have, however, also

examined the relevant evidence. It is true that there are many contradictions in the evidence of Devji. He has not attributed overt acts to individual

accused in his statement before the police whereas he has attributed such overt acts in his evidence before the court. But that is no ground to reject

his entire testimony. It must not be forgotten that he was a victim of the assault. Fortunately he has survived. He must, therefore, be considered as

the best eye-witness. The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies

which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception

or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its

vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any

witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the

root of the matter so as to demolish the entire prosecution story. The witnesses now-a-days go on adding embellishments to their version perhaps

for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if

they are otherwise trustworthy, Jagamohan Reddy, J., speaking for this Court in Sohrab and Another Vs. The State of Madhya Pradesh, .

observed:

This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence

does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about

details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident

which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be

considered.

The same view has been further explained in the judgment of the Apex Court in the case of State of U.P. Vs. Anil Singh, in Paragraphs 15 to 17 in

the following words:

15. Of late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is

rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some

cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude

of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not

correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject

the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood

stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to

back up a good case by false or exaggerated version. The Privy Council had an occasion to observe this. In Bankim Chander v. Matangini, 24

CWN 626 (PC). the Privy Council had this to say (at 628):

That in Indian litigation it is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly

untrue, since there is, on some occasions, a tendency amongst litigants to back up a good case by false or exaggerated evidence.

16. In Abdul Gani and Others Vs. State of Madhya Pradesh, , Mahajan, J., speaking for this Court deprecated the tendency of courts to take an

easy course of holding the evidence discrepant and discarding the whole case as untrue. The learned Judge said that the Court should make an

effort to disengage the truth from falsehood and to sift the grain from the chaff.

17. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is

no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of

the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as

utterly to destroy confidence in the witnesses. It is necessary to remember 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 Mani @ Udattu Man and Others Vs. State rep. by Inspector of Police, , the Apex Court held as follows:

The stand taken before the High Court was reiterated. The present appeal is by A-1, A-3, A-4 and A-7. Learned counsel for the respondent

supported the judgment of the trial court and the High Court.

10....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 not 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 Ali Vs. The State of Uttar Pradesh, . 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 Gurcharan

Singh and Another Vs. State of Punjab, . 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 sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence

does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab and Another Vs. The State of Madhya

Pradesh, and Ugar Ahir and Others Vs. The State of Bihar, . 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 Vs. State of Madhya Pradesh, and Balaka Singh and Others Vs. The State of Punjab, . As observed by

this Court in State of Rajasthan Vs. Smt. Kalki and Another, , 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 Others Vs. State of Bihar, and in

Sucha Singh and Another Vs. State of Punjab, . It was further illuminated in the Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and

Others, : Ram Udgar Singh Vs. State of Bihar, : Gorle S. Naidu Vs. State of A.P. and Others, ; Gubbala Venugopalaswamy and Others Vs. State

of Andhra Pradesh, and in Syed Ibahim v. State of A.P.

13. An injured eye-witness has not to be discarded as easily as at times urged by the defence. The Apex Court in the case of Dinesh Kumar Vs.

State of Rajasthan, , while emphasising the aforesaid aspects has explained particularly with regard to the statement of an injured witness in

paragraph 12 thereof which is quoted here in under:

In law testimony of an injured witness is given importance. When the eye-witnesses are stated to be interested and inimically deposed towards the

accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or

otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those

witnesses who are inimically deposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the

witness appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence.

The said aspect has been explained in a detailed manner by a Division Bench of the Gujarat High Court in the case of State of Gujarat Vs.

Bharwad Jakshibhai Nagribhai and Others, which is extracted here in under:

28. In our view, the approach of the learned Judge in appreciating the evidence of injured witnesses is on the face of it illegal and erroneous. For

appreciating the evidence of the injured witnesses the Court should bear in mind that:

(1) Their presence at the time and place of the occurrence cannot be doubted.

(2) They do not have any reason to omit the real culprits and implicate falsely the accused persons.

(3) The evidence of the injured witnesses is of great value to the prosecution and it cannot be doubted merely on some supposed natural conduct

of a person during the incident or after the incident because it is difficult to imagine how a witness would act or react to a particular incident. His

action depends upon number of imponderable aspects.

(4) If there is any exaggeration in their evidence, then the exaggeration is to be discarded and not their entire evidence.

(5) While appreciating their evidence the Court must not attach undue importance to minor discrepancies, but must consider broad spectrum of the

prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or

stereo-type investigation.

(6) It should be remembered that there is a tendency amongst the truthful witnesses also to back up a good case by false or exaggerated version.

In this type of situation the best course for the Court would be to discard exaggerated version or falsehood but not to discard entire version.

Further, when a doubt arises in respect of certain facts stated by such witness, the proper course is to ignore that fact only unless it goes into the

root of the matter so as to demolish the entire prosecution story.

The aforesaid judgment has been affirmed by the Apex Court in Bharwad Jakshibhai Nagjibhai and others Vs. State of Gujarat, .

14. An eye-witness who is also described as an interested witness should not be ordinarily discarded as held by the Apex Court in the case of

Himmat Sukhadeo Wahurwagh and Others Vs. State of Maharashtra, . Paragraph 41 quoted here in under:

The learned counsel for the State has also brought to our notice some observations in the judgment of this Court in Dinesh Kumar Vs. State of

Rajasthan, with respect to the evaluation of the evidence of an interested or relation witnesses. They are:

12....When the eyewitnesses are stated to be Interested and inimically deposed towards the accused, it has to be noted that it would not be proper

to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed

pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically deposed towards

the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear. cogent and credible,

there is no reason to discard the same. Conviction can be made on the basis of such evidence.

Nonetheless an independent witness even though available if not examined has been considered to be a major discrepancy as held by the Apex

Court in the case of Hem Raj and Others Vs. State of Haryana, are quoted here in under:

8. The fact that no independent witness - though available, was examined and not even an explanation was sought to be given for not examining

such witness is a serious infirmity in the prosecution case having regard to the Indisputable facts of this case. Amongst the independent witnesses.

Kapur Singh was one. who was very much in the know of things from the beginning. Kapur Singh is alleged to have been in the company of P.W.

5 at a sweet stall and both of them after hearing the cries joined P.W. 4 at Channi Chowk. He was one of those who kept the deceased on a cot

and took the deceased to hospital. He was there in the hospital by the time the first Investigating Officer-P.W. 9 went to the hospital. The evidence

of the first Investigating Officer reveals that the place of occurrence was pointed out to him by Kapur Singh. His statement was also recorded,

though not immediately but later. The Investigating Officer admitted that Kapur Singh was the eye-witness to the occurrence. In the F.I.R., he is

referred to as the eye-witness alongwith P.W. 5. Kapur Singh was present in the Court on 6.10.1997. The Addl. Public Prosecutor "gave up" the

examination of this witness stating that it was unnecessary. The trial court commented that he was won over by the accused and, therefore, he was

not examined. There is no factual basis for this comment. The approach of the High Court is different. The High Court commented that his

examination would only amount to ''proliferation'' of direct evidence. But, we are unable to endorse this view of the High Court. To put a seal of

approval on the prosecution''s omission to examine a material witness who is unrelated to the deceased and who is supposed to know every detail

of the incident on the ground of ''proliferation'' of direct evidence is not a correct approach. The corroboration of the testimony of the related

witnesses-P.Ws. 4 and 5 by a known independent eye-witness could have strengthened the prosecution case, especially when the incident took

place in a public place.

9. Non-examination of independent witness by itself may not give rise to adverse inference against the prosecution. However. when the evidence

of the alleged eye-witnesses raise serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to

examine the independent witness-Kapur Singh, would assume significance. This Court pointed out in Takhaji Hiraji v. Thakore Kubersing

Chamansing and others, SCC p. 155 para 19.

[I] if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence

already adduced, non-examination of such other witnesses may not be material. In such a case, the court ought to scrutinize the worth of the

evidence adduced. The Court of facts must ask itself # whether in the facts and circumstances of the case, it was necessary to examine such other

witness, and if so, whether such witness was available to be examined and yet was being withheld from the Court. If the answer be positive then

only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their

mouth is unimpeachable the Court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we

find that there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is

not even suggested by the defence that they were not present at the place of the incident and did not participate therein.

15. Considered the decision cited by the learned counsel for the appellant in the case of Atar Singh v. State of Uttar Pradesh (supra). In the said

case, having regard to the facts and circumstances of the case and the nature of the injuries, the Court arrived at the conclusion that those was the

cases u/s 324, I.P.C. and not u/s 307, I.P.C. and also having regard to the age as well as to the fact that there is no criminal background, the

sentence has been reduced to the period of imprisonment already undergone and with fine. This decision is distinguishable on the facts and

circumstances of the present case.

For the aforesaid reasons, 1 do not find any reason for conversion of the case from Section 307, I.P.C. into 324, I.P.C. and to impose fine.

Justice demands that the crime should not go unpunished.

The facts and circumstances of the present case clearly established commission of offence u/s 307, I.P.C., which show that it is a case of attempt

to murder as the intent of the accused was to liquidate the victim. However, on the facts and circumstances of the present case and having regard

to the age of the accused, the sentence awarded is reduced to two years rigorous imprisonment with a fine of Rs. 25.000 (Rupees twenty five

thousand only). which shall be paid to the victim. In case of non-payment of fine, the accused may further be subjected to six months rigorous

imprisonment. The order dated 17.1.1981 passed by the IIIrd Additional District and Sessions Judge. Budaun in Session Trial No. 399 of 1979

convicting and sentencing the appellant, as aforesaid. is modified to this extent only. The appellant is on bail. The Chief Judicial Magistrate, Badaun

is directed to take the appellant into custody and send him to jail for serving out the sentence.

Office is directed to communicate this order to the C.J.M. concerned for compliance within a period of one week.

In the result, the appeal is allowed in part.