2022 INSC 148

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 339-340 OF 2014

RAJESH YADAV & ANR. ETC. **…APPELLANTS**

VERSUS

STATE OF U.P. **…RESPONDENTS**

J U D G M E N T

M.M. SUNDRESH, J.

1. These two appeals arise out of the judgment rendered by the High Court convicting the appellants for life, while acquitting all of them for the offence charged under Section 307 of the Indian Penal Code (IPC), with the confirmation of conviction and sentence under Section 25 of the Arms Act except one. Of the five accused, the High Court thought it fit to remit the matter on the adequacy of charge for one. This accused was once again convicted and resultantly his appeal is pending under consideration before the High Court.

BRIEF FACTS:

2. Two persons were done to death on 17.09.2004 at about 08.15 a.m. The death was caused by multiple bullet injuries. An FIR was lodged within an hour's time by PW-1, who is none other than the nephew of one of the deceased.

3. The motive for the occurrence appears to be a prolonged election dispute between two groups. On the fateful day, two of the eye-witnesses were having tea. The deceased, passing the road on a two-wheeler were waylaid by the accused also travelling in two two-wheelers. Both the deceased died on the spot. The postmortem was done by PW-4 on the very same date. The First Information Report (FIR) was registered by PW-7. PW-13, 8 and 14 were the Investigating Officers. PW-13 did the substantial part of the investigation and on his transfer, the final report was filed by PW-8. Pertaining to the charge under Section 25 of the Arms Act, it was PW-14 who filed the subsequent final report.

4. Recoveries have been made from all the accused before us. In so far as Accused No.3 is concerned, on his statement the recovery was made from the custody of his wife from his house.

5. The seized articles were sent to the Forensic Science Laboratory (FSL) and a report was received. PW-10, the police constable was the one who took the arms to the laboratory.

6. On behalf of the prosecution, 14 witness have been examined while marking 47 documents including the FSL report. The accused persons let in only one witness and that too to support Accused No. 5 who is not before us.

7. PW-1 is the *de facto* complainant. He along with PWs-2 & 3 form the eye-witnesses to the case. PW-2 is the brother of one of the deceased. PW-3, who is an independent witness, turned hostile after his deposition in chief in favour of the prosecution. PW-4 is the doctor who conducted the postmortem and gave his opinion. The other witnesses are the official witnesses including the three investigating officers. Of these witnesses, PW-13 who was the one to undertake the investigation. After elaborate chief examination followed by another detailed cross-examination, despite efforts made by the courts including the issuance of non-bailable warrant, he did not turn up to depose further. One witness, by name Om Prakash, stated to be an injured witness, has not been examined by the prosecution on the premise that he could not be secured. Taking note of the above, the High Court rightly acquitted the appellants for the offence punishable under Section 307 IPC.

8. During the questioning by the Court under Section 313 of the Criminal Procedure Code (CrPC), all the accused made a simple denial, though incrementing materials- both oral and documentary, were brought to their notice. The conviction and sentence rendered by the trial court was modified by the High Court as aforesaid resulting in imposition of life sentence. The High Court went

into all the aspects and rendered a well-considered decision which is sought to be impugned before us.

SUBMISSIONS:

Submissions of the Appellants:

9. The learned counsel appearing for the appellants submitted that for inexplicable reasons the independent injured eye-witness, Om Prakash was screened by the prosecution. The other two eye-witnesses being related and chance witnesses are obviously interested in getting convection. The evidence of PW-13 ought not to have been accepted as he was not put to cross examination fully. If the deceased were running and the injuries were caused by chasing them, the cartridges could not have been found at a particular place near their bodies instead of spreading them over. There is a considerable delay in receiving the FSL report. There is an unrelated cartridge recovered which creates serious suspicion on the version of the prosecution. Reliance has been made on the following decisions in support of the aforesaid contentions:

- Gopal Saran v. Satyanarayana, (1989) 3 SCC 56
- State of Orissa v. Prasanna Kumar Mohanty, (2009) 7 SCC 412
- Santa Singh v. State of Punjab, AIR 1956 SC 526
- Anter Singh v. State of Rajasthan, (2004) 10 SCC 657
- Jagir Singh v. State (Delhi Administration), 1975 Crl LJ 1009

Submissions of the State:

10. Learned counsel appearing for the State submitted that the trial court and the High Court made adequate assessment of the materials for coming to the conclusion. Merely because PWs-1 & 2 are the relatives of the deceased, their testimonies cannot be disbelieved. The courts rightly took into consideration the evidence PW-3 though turned hostile along with that of PW-13. The other witnesses also speak about the investigation.

11. The report submitted by the experts would clearly indicate that weapons recovered from the appellants were indeed used for committing the offence. There is no need to examine all the witnesses. PW-13 has clearly stated the reason for his inability to produce the injured witness, Om Prakash. In any case, the High Court has set aside the conviction under Section 307 IPC. Hence, there is absolutely no ground made out for interference by this Court.

PRINCIPLES OF LAW:

Section 3 of the Evidence Act, 1872:

> **"3. Interpretation-clause**.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context: —
>
> xxx xxx xxx
>
> **"Evidence".** —"Evidence" means and includes —
>
> (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry,
>
> such statements are called oral evidence;
>
> (2) [all documents including electronic records produced for the inspection of the Court],
>
> such documents are called documentary evidence.
>
> **"Proved".** — A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so

probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved". — A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

12. Section 3 of the Evidence Act defines "evidence", broadly divided into oral and documentary. "Evidence" under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an "Adjective Law" highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.

13. The definition of the word "proved" though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the "matters before it". The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.

14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be "matters" but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the

truth. Thus, the definition of “matters” is exhaustive, and therefore, much wider than that of “evidence”. However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.

15. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

16. In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word “matter”, and for that purpose, the definition of the expression of the words “means and includes”, meant to be applied for evidence, has to be imported to that of a “matter” as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.

17. What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to

such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.

18. The word “prudent” has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a judge. It is only after undertaking the said exercise can he resume his role as a judge to proceed further in the case.

19. The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is

a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court's domain.

Appreciation of Evidence:

20. We have already indicated different classification of evidence. While appreciating the evidence as aforesaid along with the matters attached to it, evidence can be divided into three categories broadly namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable *qua* an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters. The aforesaid principle of law has been enunciated in the celebrated decision of this Court in **Vadivelu Thevar v. State of Madras, 1957 SCR 981**:

> "In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s.134 quoted above. The section enshrines the well-recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has

given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the

> first witness, which is the only reliable evidence in support of the prosecution."

Hostile Witness:

21. The expression "hostile witness" does not find a place in the Indian Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate *qua* a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.

22. On the law laid down in dealing with the testimony of a witness over an issue, we would like to place reliance on the decision of this Court in **C. Muniappan v. State of T.N., (2010) 9 SCC 567**:

> "81. It is settled legal proposition that:
>
> > "6. … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."
>
> (Vide *Bhagwan Singh* v. *State of Haryana*, (1976) 1 SCC 389, *Rabindra Kumar Dey* v. *State of Orissa*, (1976) 4 SCC 233, *Syad Akbar* v. *State of Karnataka*, (1980) 1 SCC 30 and *Khujji* v. *State of M.P.*, (1991) 3 SCC 627, SCC p. 635, para 6.)
>
> 82. In *State of U.P.* v. *Ramesh Prasad Misra* [(1996) 10 SCC 360: 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde* v. *State of Maharashtra* [(2002) 7 SCC 543: 2003 SCC (Cri) 112], *Gagan Kanojia* v. *State of Punjab* [(2006) 13 SCC 516: (2008) 1 SCC (Cri) 109], *Radha Mohan Singh* v. *State of U.P.* [(2006) 2 SCC 450: (2006) 1 SCC (Cri) 661], *Sarvesh Narain Shukla* v. *Daroga Singh* [(2007) 13 SCC 360: (2009) 1 SCC (Cri) 188] and *Subbu Singh* v. *State* [(2009) 6 SCC 462: (2009) 2 SCC (Cri) 1106].
>
> 83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.
>
> 84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.
>
> 85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the

> evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses."
>
> *Vide Sohrab* v. *State of M.P.*, [(1972] 3 SCC 751 : (1972) SCC (Cri) 819 : AIR 1972 SC 2020], *State of U.P.* v. *M.K. Anthony*, [(1985) 1 SCC 505 : 1985 SCC (Cri) 105], *Bharwada Bhoginbhai Hirjibhai* v. *Sate of Gujrat*, [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], *State of Rajasthan* v. *Om Prakash*, [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411], *Prithu* v. *State of H.P.*, [(2009) 11 SCC 585 : (2009) 3 SCC (Cri) 1502], *State of U.P.* v. *Santosh Kumar*, [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and *State* v. *Saravanan*, [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580].

23. This Court in **Vinod Kumar v. State of Punjab**, **(2015) 3 SCC 220** had already dealt with a situation where a witness after rendering testimony in line with the prosecution's version, completely abandoned it, in view of the long adjournments given permitting an act of manoeuvring. While taking note of such situations occurring with regularity, it expressed its anguish and observed that:

> "51. It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.
>
> 52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had

not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the re-examination.

xxx xxx xxx

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the

trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."

Section 33 of the Indian Evidence Act:

"**33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.—**Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided— that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

> *Explanation*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

24. Section 33 is an exception to the general rule which mandates adequate facility for cross examining a witness. However, in a case where a witness after the completion of the chief examination and while subjecting him to a substantial and rigorous cross examination, did not choose to get into the witness box on purpose, it is for the court to utilize the said evidence appropriately. The issues over which the evidence is completed could be treated as such by the court and then proceed. Resultantly, the issues for which the cross examination is not over would make the entire examination as inadmissible. Ultimately, it is for the court to decide the aforesaid aspect.

Evidentiary Value of a Final Report:

25. Section 173(2) of the CrPC calls upon the investigating officer to file his final report before the court. It being a report, is nothing but a piece of evidence. It forms a mere opinion of the investigating officer on the materials collected by him. He takes note of the offence and thereafter, conducts an investigation to identify the offender, the truth of which can only be decided by the court. The aforesaid conclusion would lead to the position that the evidence of the investigating officer is not indispensable. The evidence is required for corroboration and contradiction of the other material witnesses as he is the one who links and presents them before the court. Even assuming that the investigating officer has not deposed before the court or has not cooperated sufficiently, an accused is not entitled for acquittal solely on that basis, when

there are other incriminating evidence available on record. In **Lahu Kamlakar Patil v. State of Maharashtra, (2013) 6 SCC 417**, this Court held:

> "18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the FIR but has given the excuse that it was taken on a blank paper. The same could have been clarified by the investigating officer, but for some reason, the investigating officer has not been examined by the prosecution. It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case. In *Behari Prasad* v. *State of Bihar* [(1996) 2 SCC 317: 1996 SCC (Cri) 271], this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In *Bahadur Naik* v. *State of Bihar* [(2000) 9 SCC 153: 2000 SCC (Cri) 1186] , it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh* v. *State of Bihar,* [(2001) 6 SCC 407: 2001 SCC (Cri) 1148], *Rattanlal* v. *State of J&K* [(2007) 13 SCC 18: (2009) 2 SCC (Cri) 349] and *Ravishwar Manjhi* v. *State of Jharkhand* [(2008) 16 SCC 561: (2010) 4 SCC (Cri) 50], has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of the prosecution."

Chance Witness:

26. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed

though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in **State of A.P. v. K. Srinivasulu Reddy, (2003) 12 SCC 660:**

> "12. Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained as to how they happened to be at the spot of occurrence and the trial court and the High Court have accepted the same.
>
> 13. Coming to the plea of the accused that PWs 4 and 9 were "chance witnesses" who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial by describing the independent witnesses as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence."

27. The principle was reiterated by this court in **Jarnail Singh v. State of Punjab, (2009) 9 SCC 719**:

> "21. In *Sachchey Lal Tiwari* v. *State of U.P.* [(2004) 11 SCC 410: 2004 SCC (Cri) Supp 105] this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and a passerby had deposed that he had witnessed the incident, observed as under:
>
> > If the offence is committed in a street only a passerby will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

> The Court further explained that the expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.
>
> 22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir* v. *Surat Singh* [(1997) 4 SCC 192: 1997 SCC (Cri) 538], *Harjinder Singh* v. *State of Punjab* [(2004) 11 SCC 253: 2004 SCC (Cri) Supp 28], *Acharaparambath Pradeepan* v. *State of Kerala* [(2006) 13 SCC 643: (2008) 1 SCC (Cri) 241] and *Sarvesh Narain Shukla* v. *Daroga Singh* [(2007) 13 SCC 360: (2009) 1 SCC (Cri) 188]). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide *Shankarlal* v. *State of Rajasthan* [(2004) 10 SCC 632: 2005 SCC (Cri) 579]).
>
> 23. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident (vide *Thangaiya* v. *State of T.N.* [(2005) 9 SCC 650: 2005 SCC (Cri) 1284]). Gurcharan Singh (PW 18) met the informant Darshan Singh (PW 4) before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW 18) and Darshan Singh (PW 4). The fact of conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned."

Related and Interested Witness:

28. A related witness cannot be termed as an interested witness *per se*. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstood the rigor of cross examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only

when he is desirous of implicating the accused in rendering a conviction, on purpose.

29. When the court is convinced with the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to make reliance upon it in proving a fact. The aforesaid position of law has been well laid down in **Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591:**

> "32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of related witness. In *Dalip Singh* v. *State of Punjab*, 1954 SCR 145: AIR 1953 SC 364: 1953 Cri LJ 1465], Vivian Bose, J. for the Bench observed the law as under: (AIR p. 366, para 26)
>
> > "26. 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 cause, such as enmity against the accused, to wish to implicate him falsely. 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. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."
>
> 33. In *Masalti* v. *State of U.P.,* (1964) 8 SCR 133 : AIR 1965 SC 202 : (1965) 1 Cri LJ 226] , a five-Judge Bench of this Court has categorically observed as under: (AIR pp. 209-210, para 14)
>
> > *"14. … There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine;*

> *whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.* No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.*"*

34. In *Darya Singh* v. *State of Punjab* [(1964) 3 SCR 397 : AIR 1965 SC 328 : (1965) 1 Cri LJ 350] , this Court held that evidence of an eyewitness who is a near relative of the victim, should be closely scrutinised but no corroboration is necessary for acceptance of his evidence. In *Harbans Kaur* v. *State of Haryana* [(2005) 9 SCC 195 : 2005 SCC (Cri) 1213 : 2005 Cri LJ 2199] , this Court observed that: (SCC p. 227, para 6)

> "6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the *contrary*, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused."

35. The last case we need to concern ourselves is *Namdeo* v. *State of Maharashtra* [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773] , wherein this Court after observing previous precedents has summarised the law in the following manner: : (SCC p. 164, para 38)

> "38. … it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, *inherently* probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule which remains the bulwark of this system, and which determines the value of evidence

> derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner, when it involves his interest. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour. These are most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case."

30. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect as no mathematical calculation or straightjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself which extends the maximum discretion to the court.

Non-examination of witness:

31. A mere non-examination of the witness *per se* will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been

produced deliberately to prove it. The aforesaid settled principle of law has been laid down in **Sarwan Singh v. State of Punjab, (1976) 4 SCC 369**:

> "13. Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the 'pakodewalla', hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion the comments of the Additional Sessions Judge are based on serious misconception of the correct legal position. The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is nothing to show that at the time when the deceased was assaulted a large crowd had gathered and some of the members of the crowd had actually seen the occurrence and were cited as witnesses for the prosecution and then withheld. We must not forget that in our country there is a general tendency amongst the witnesses in mofussil to shun giving evidence in courts because of the cumbersome and dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore nobody wants to be a witness in a murder or in any serious offence if he can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, yet there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village homes…"
>
> (Emphasis supplied)

32. This Court has reiterated the aforesaid principle in **Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401:**

> **"**19. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. (Vide *Vadivelu Thevar* v. *State of Madras* [AIR 1957 SC 614: 1957 Cri LJ 1000] , *Kunju* v. *State of T.N.* [(2008) 2 SCC 151: (2008) 1 SCC (Cri) 331] , *Bipin Kumar Mondal* v. *State of W.B.* [(2010) 12 SCC 91: (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638] , *Mahesh* v. *State of M.P.* [(2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783], *Prithipal Singh* v. *State of Punjab* [(2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and *Kishan Chand* v. *State of Haryana* [(2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807: JT (2013) 1 SC 222].)"

ON FACTS:

33. There are three eye-witnesses examined by the prosecution. We find PWs-1 & 2 have not contradicted between themselves being the eye-witnesses. Merely because they are related witnesses, in the absence of any material to hold that they are interested, their testimonies cannot be rejected. There is also no delay in the registration of the FIR. PW-3 though turned hostile, spoke about the incident in his chief examination. Strangely, in the cross examination he turned turtle, while disputing the very factum of his chief examination made before the court. We do not wish to say anything on the credibility of the said witness in view of

the evidence of PWs -1 & 2. The view of the courts on this witness also deserves to be accepted.

34. The High Court has rightly set aside the conviction rendered by the trial court for the charge under Section 307 IPC. PWs-1 & 2 have not spoken about the presence of the injured witness, Om Prakash. The circumstances under which he could not be produced was explained by the prosecution. Merely because he was not produced, the entire case of the prosecution would not become false.

35. The FSL report was placed on record. Both the courts have considered and relied upon the said report. The entire circumstances under which the material was collected including the cartridges, along with the recoveries made which were sent to the expert, have been explained by the official witnesses. We do not find anything unnatural in the testimony.

36. On a perusal of the evidence available we do not find any delay in either sending the recovered arms to the expert or receiving the FSL report. The circumstances under which they were sent and received were spoken about and explained. The appellants have neither shown any prejudice being caused by the alleged delay, nor have disputed the findings of the said report.

37. The learned counsel appearing for the appellants submitted that the investigating officer could not be cross examined further with respect to the injuries and the recoveries. We find that evidence was also let in to that extent along with the

cross-examination. The High Court has considered this aspect in the correct perspective. It is very unfortunate that the investigating officer could not be produced despite the best efforts made. The reason is obvious. There are three investigating officers. The other two investigating officers have been examined including for the charge under the Arms Act. PW-13, the first investigating officer, has been examined *in extenso* during cross examination. It is only for the further examination he turned turtle. That *per se* would not make the entire case of the prosecution bad is law particularly when the final report itself cannot be termed as a substantive piece of evidence being nothing but a collective opinion of the investigating officer. The trial court as well as the High court considered the evidence threadbare in coming to the right conclusion. Similarly, the contention that there is non-explanation for the existence of some other empty cartridge recovered from the place of occurrence would not facilitate an acquittal for the appellants as there are materials sufficient enough to implicate and prove the offence against them.

38. Thus, on the aforesaid conclusion arrived at, we are in conformity with the well merited judgment of the High court. The appeals stand dismissed.

39. Before we part with this case, we are constrained to record our anguish on the deliberate attempt to derail the quest for justice. Day in and day out, we are witnessing the sorry state of affairs in which the private witnesses turn hostile for obvious reasons. This Court has already expressed its views on the need for a

legislative remedy to curtail such menace. Notwithstanding the above stated directions issued by this court in ***Vinod Kumar (supra)***, we take judicial note of the factual scenario that the trial courts are adjourning the cross examination of the private witnesses after the conclusion of the cross examination without any rhyme or reason, at the drop of a hat. Long adjournments are being given after the completion of the chief examination, which only helps the defense to win them over at times, with the passage of time. Thus, we deem it appropriate to reiterate that the trial courts shall endeavor to complete the examination of the private witnesses both chief and cross on the same day as far as possible. To further curtail this menace, we would expect the trial courts to take up the examination of the private witnesses first, before proceeding with that of the official witnesses. A copy of this judgment shall be circulated to all the trial courts, to be facilitated through the respective High Courts.

…….……J.
(SANJAY KISHAN KAUL)

……J.
(M.M. SUNDRESH)

New Delhi
February 04, 2022