Prabhu Dayal vs The State Of Rajasthan on 4 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3199, 2018 (8) SCC 127, AIR 2018 SC(CRI) 931, (2019) 2 MH LJ (CRI) 39, (2018) 3 CRILR(RAJ) 683, (2018) 3 RECCRIR 700, (2019) 1 RAJ LW 6, (2018) 72 OCR 356, (2018) 72 OCR 284, (2018) 8 SCALE 520, (2018) 3 CRIMES 95, (2018) 104 ALLCRIC 630, (2018) 3 CURCRIR 123, (2018) 3 ALLCRILR 802, (2018) 188 ALLINDCAS 1 (SC), (2019) 1 ALD(CRL) 722, 2018 (4) KCCR SN 432 (SC)

Author: Mohan M. Shantanagoudar

Bench: Mohan M. Shantanagoudar, L. Nageswara Rao

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2324 OF 2014

Prabhu Dayal ...Appellant

Versus

The State of Rajasthan ...Respondent

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

The judgment and order of conviction dated 17.09.2013 passed by the High Court of Judicature at Rajasthan, Bench at Jaipur in D.B. Criminal Appeal No. 659 of 2003, insofar as it relates to the conviction of the appellant, is the subject matter of this appeal. By the impugned judgment, the High Court has affirmed the judgment of conviction passed by the Additional Sessions Judge (Fast Track) Court No. 2, Bharatpur, Rajasthan in Sessions Case No. 53/2001.

2. The case of the prosecution in brief is that on the night of 01.05.1997, the informant Vikram Singh, who was sleeping at a distance of 15 to 20 yards from his brother Gopal in his house, heard the sound of a fired gun shot and got up at 1:00 a.m. in the intervening night between 01.05.1997

and 02.05.1997; he saw Prabhu (the appellant herein), Indal, Rajveer, Gyan, and Shiv Singh armed with weapons and standing near the cot on which his brother Gopal was lying, shouting that Prabhu (the appellant herein) fired on his chest; then Prabhu told Shiv Singh to kill his bhabhi Smt. Devi; thereupon, Shiv Singh opened fire and injured her; Prabhu, Rajveer, Indal and Shiv Singh were having kattas (country made pistol) in their hands and Gyan was armed with farsa (axe); 4 to 5 other persons were also standing outside the compound but he could not identify them because of the darkness; the appellant-Prabhu was shouting that they have killed Gopal on that day and they will see who dares to oppose them in the future; the informant raised a hue and cry and at that point of time, Surjan, Ramesh, Subhash, Pappu and other neighbours reached on the spot. Based on these allegations, the first information came to be lodged by Vikram Singh as per Exhibit P14 on 02.05.1997.

Totally, ten accused were tried, including the appellant herein, for the offences punishable under Sections 147, 148, 307, 302, 459, 460, 120B, 118, and 176 read with Section 149 of the Indian Penal Code, and Sections 3/25 of the Arms Act.

3. The Trial Court acquitted accused nos. 7 to 10 and convicted accused nos. 1 to 5, viz., Gyan Singh, Shiv Singh, Indal, Rajveer and Prabhu Dayal (the appellant herein) (Accused No.6 – Babu expired during investigation). Gyan Singh was convicted under S. 302, IPC simpliciter, and was sentenced to life imprisonment with a fine of Rs. 1,000/-. Shiv Singh was convicted under Section 307, IPC, and sentenced to simple imprisonment of 4 years with fine. The rest of the accused, including Indal, Rajveer, and Prabhu Dayal, were convicted under Ss. 302/149, IPC and given the same sentence as Gyan Singh. During the pendency of the appeal before the High Court, one of the accused – Indal expired. Thus, the appeal was heard by the High Court against four accused, namely, Gyan Singh, Shiv Singh, Rajveer and Prabhu Dayal. The High Court on hearing, while acquitting the accused – Rajveer, has confirmed the judgment of conviction passed by the trial Court in respect of Gyan Singh, Shiv Singh and Prabhu Dayal.

The accused – Gyan Singh has served the sentence of imprisonment and he has not filed an appeal in this Court. The accused – Shiv Singh did not choose to file an appeal and consequently has accepted the judgment of conviction and sentence passed against him. Hence, the accused – Prabhu Dayal is the only person who is before this Court in this appeal, questioning the judgment and order of conviction passed against him.

4. Shri Nagendra Rai, learned Senior Advocate, took us to the material on record and submitted that the High Court is not justified in affirming the judgment of conviction passed by the Trial Court. The names of the accused, including the appellant, were not disclosed by the alleged eye witnesses when they went to the police station immediately after the incident, i.e., at 2:00 a.m. on 02.05.1997, and hence it is clear that the so-called eye witnesses are not actually the eye witnesses of the incident; the prosecution witnesses had been changing the story of the prosecution stage by stage inasmuch as the first information report, Exhibit P14, named the appellant as the only assailant who fired at the deceased Gopal; during the course of evidence, such story of the prosecution is improved upon by deposing that Prabhu Dayal and Gyan Singh together fired at Gopal; at some point of time, the eye witnesses have deposed that it is only Gyan Singh who fired on the deceased; the post mortem

report discloses that the deceased has sustained only an entry wound and an exit wound, meaning thereby that only one bullet was shot by one of the firers, and two persons were not involved in firing on the deceased. He further submitted that the FIR, Exhibit P14, is hit by Section 162 of the Code of Criminal Procedure, inasmuch as the first information was lodged at 2:00 a.m. on 02.05.1997 itself when Vikram Singh, Lakshmi Karan and one more person came to the police station on the motor cycle and went away after saying that some miscreants have come in the village Ikran and started open firing. As the information was entered by the police in the Rozanama at No. 29 and in view of such entry in the Rozanama in the police station, the so called first information report, Exhibit P14, cannot be treated as the first information; it can be treated as only second information and is therefore hit by the provisions of Section 162 of the Code of Criminal Procedure. He further submitted that the place of occurrence is not proved, inasmuch as no blood stain material was seized from the scene of occurrence; and the place of incident was washed by the witnesses even prior to the police visiting the spot and the said fact is clear from the evidence of the investigating officer. On these, among other things, he prayed for allowing the appeal. Per contra, Shri Jayant Bhatt, learned advocate appearing on behalf of the State of Rajasthan, argued in support of the judgments of the courts below.

5. PW30, the Station House Officer of the concerned police station has admitted in the cross-examination that at 2:00 a.m. on 02.05.1997, Vikram Singh, Lakshmi Karan and one more person came on a motor cycle to the police station at Chiksana and went away after saying that some miscreants have come in village Ikran and started open firing. Such information was entered in the Rozanama of the case diary at no. 29. At that point of time, none of the afore-mentioned three persons had given the name of any person who had opened firing. Based on such information, the appellant contends that the afore-mentioned information would be the first information, and as such information does not contain any of the names of the assailants, it can be said that none of the eye witnesses knew the names of the assailants at 2:00 a.m. i.e., immediately after the incident. Since the accused and the witnesses are near relatives, they should have given the names in the police station at 2:00 a.m. itself when they visited the police station immediately after the incident. Though, such submission on behalf of the defence seems to be attractive at the first instance, the same cannot be accepted in the facts and circumstances of the case. The witnesses, namely, Vikram Singh, Lakshmi Karan and Ramesh who had come to police station at 2:00 a.m., being the close relatives of the deceased and injured Devi, are expected to first give treatment to the injured than to complete the formalities of lodging the complaint in detail. It is not in dispute that the afore-mentioned three witnesses did not stop at the police station at 2:00 a.m., on the other hand, they hurriedly came on a motor cycle and informed the police while staying on the motor cycle itself and went away immediately disclosing that the incident has taken place. Immediately thereafter, PW30 – Station House Officer went to the village in a jeep. By the time he reached the water tank, Vikram Singh, Lakshmi Karan and others were bringing the wounded Gopal and his wife Devi, who had sustained grievous injuries, in the tractor; both the injured were shifted from the tractor to a jeep and were taken to the hospital by PW30. By the time they reached the hospital, it was 3:00 a.m. on 02.05.1997. After giving first aid to the injured, the written report as per Exhibit P14 was given at 5:35 a.m. in the hospital. Thus, virtually, there is no delay on the part of the witnesses who lodged the first information about the incident. The first information, Exhibit P14, in our considered opinion, is not hit by Section 162 of the Code of Criminal Procedure, inasmuch as it is a detailed

addendum to the earlier information given at 2:00 a.m. Exhibit P14 is not inconsistent with the information recorded at 2:00 a.m. in the Rozanama of the police station. As mentioned supra, the first priority of the witnesses was to save the lives of the injured. Hence, the Trial Court as well as the High Court is justified in concluding that there is no delay in lodging the first information report, Exhibit P14, and that it cannot be discarded on the ground that it is hit by Section 162 of the Code of Criminal Procedure.

6. In the first information, it is clearly mentioned that the appellant fired on the deceased. However, the first informant (PW13), namely Vikram Singh, has deposed that immediately after hearing the sounds of fire he came to the spot and saw the appellant – Prabhu Dayal, Gyan Singh, Shiv Singh, Indal and Rajveer, and at that point of time the injured Gopal was crying that Prabhu and Gyan Singh had fired at him. At that point of time, Prabhu said to Shiv Singh that the wife of Gopal is also crying and that she should also be fired at. Immediately thereafter, Shiv Singh fired at Devi while running away. Thus, there is a slight improvement in the evidence of the informant to the effect that Gyan Singh and Prabhu together fired on the deceased Gopal, and Shiv Singh fired on Devi.

7. PW11, injured Devi, whose evidence is important because her presence on the spot is not doubted, and who has also sustained gunshot injuries, has deposed about the incident in a most natural way that it had happened during night till early hours of the day. She has deposed that on the previous night, Gyan Singh and the deceased Gopal had drinks together and then had dinner; Devi (PW11) was having fever; when she was sleeping along with her husband, the accused Prabhu, Gyan Singh, Shiv Singh, Indal and Rajveer came at 1:00 a.m. and they all were armed with weapons; Gyan Singh had a pistol and an axe and the others were armed with pistols; at the first instance, the appellant fired with a pistol on the deceased but no one got injured, inasmuch as it was misfired. At that point of time, Gyan Singh fired a gunshot from a country made pistol which entered from the back of the deceased and went out of the stomach of the deceased. Immediately thereafter, the appellant – Prabhu shouted and told Shiv Singh that Devi should also be killed, and consequently Shiv Singh fired a gunshot at Devi also.

8. Though, it appears that the evidence of these witnesses, as mentioned supra, has improved the case of the prosecution to a certain extent from the first information, the fact remains that all the five accused including the appellant were very much present on the scene of the occurrence. Four of them were having country made pistols and one was having an axe; the appellant as well as Gyan Singh fired on the deceased Gopal and Shiv Singh fired at Devi; all of them collectively came to the house of the deceased with the common object of committing murder of Gopal. Merely because the gunshot fired by the appellant did not enter the body of the deceased or was misfired, the accused – Prabhu cannot be said to be innocent, and it will not be possible for the witnesses to meticulously specify the overt acts of each of the accused, particularly when the incident had taken place at 1:00 a.m. Devi opened her eyes immediately after hearing the sound of a gunshot, and therefore she will naturally not be in a position to identify who was the first assailant or the second assailant. However, the evidence clarifies that the appellant was having a country made pistol and he also fired, consequent to which Gopal lost his life.

9. It is settled law that the FIR need not contain an exhaustive account of the incident. This Court in Om Prakash v. State of Uttaranchal, (2003) 1 SCC 648, observed as follows:

> "10. ...It is axiomatic that the FIR need not contain an exhaustive account of the incident. It is to be noted that the report was given to the police within one-and-a-half hours after the incident. PW 8, a known person, had drafted the report that she dictated. She had given all essential and relevant details of the incident naming the accused as culprit. We cannot expect a person injured and overtaken by grief to give better particulars. The possibility of PW 1 inventing a story at that juncture trying to implicate the accused is absolutely ruled out. The contents of the FIR, broadly and in material particulars, conform to the version given by PW 1 in her deposition..." A FIR is not an encyclopaedia of the case. This Court in Surjit Singh v. State of Punjab, 1993 Supp (1) SCC 208, observed as follows:
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> "8. ...In this situation the aforesaid misdescriptions/omissions in the FIR about the number of shots fired and the absence of Taljit Singh's injuries or the appellant being not described as a military man become of lesser importance. First Information Report is not an encyclopaedia of the entire case and is even not a substantive piece of evidence. It has value, no doubt, but only for the purpose of corroborating or contradicting the maker. Here the maker was a young woman who had lost her husband before her very eyes. The omission or misdescription of these details in the FIR which was recorded most promptly, within three hours of the occurrence, would not tell on the prosecution case or the statements of the eyewitnesses with regard to the participation of the appellant in the crime. He had taken a leading and prominent part in spearheading and committing it. For these reasons, we are of the view that the High Court was right in convicting the appellant on giving cogent reasons to demolish the reasoning of the Trial Judge and adding thereto reasons of its own." (emphasis supplied) A witness' testimony need not be disbelieved only because it did not find mention in the FIR. In State of M.P. v. Dhirendra Kumar, (1997) 1 SCC 93, this Court discussed and applied the principle as follows:
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> "11. It was very emphatically contended by Shri Gambhir that as in the first information report (FIR) there is no mention about the dying declaration, we should discard the evidence of PW 1 and PW 2 regarding dying declaration, because of what has been pointed out by this Court in Ram Kumar Pandey v. State of M.P. [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026] We do not, however, agree with Shri Gambhir, for the reason that what was observed in Ram Kumar case [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026] after noting the broad facts, was that material omission in the FIR would cast doubt on the veracity of the prosecution case, despite the general law being that statements made in the FIR can be used to corroborate or contradict its maker. This view owes its origin to the thinking that if there be material departure in the prosecution case as unfolded in the FIR, which would be so if material facts not mentioned in the FIR are deposed to by prosecution witnesses in the court, the same would cause dent to the edifice on which the

prosecution case is built, as the substratum of the prosecution case then gets altered. It is apparent that prosecution cannot project two entirely different versions of a case. This is entirely different from thinking that some omission in the FIR would require disbelieving of the witnesses who depose about the fact not mentioned in the FIR. Evidence of witnesses has to be tested on its own strength or weakness. While doing so, if the fact deposed be a material part of prosecution case, about which, however, no mention was made in the FIR, the same would be borne in mind while deciding about the credibility of the evidence given by the witness in question." (emphasis supplied) Recently, in Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1, this Court observed as follows:

"57. As far as the argument that the FIR does not contain the names of all the accused persons is concerned, it has to be kept in mind that it is settled law that FIR is not an encyclopaedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopaedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful."

10. It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows:

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible." (emphasis supplied) In State of U.P. v. Anil Singh, 1988 Supp SCC 686, this Court observed that:

"17. ...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." The Court can separate the truth from the false statements in the witnesses' testimony. In Leela Ram v. State of Haryana, (1999) 9 SCC 525, this Court held as follows:

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same." Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381:

"15. To the same effect is the decision in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and Lehna v. State of Haryana [(2002) 3 SCC 76 : 2002 SCC (Cri) 526] .

Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of "falsus in uno, falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to

convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno, falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim "falsus in uno, falsus in omnibus" 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."

11. In our considered opinion, the Trial Court as well as the High Court is also justified in concluding that the appellant is liable to be convicted under Section 149 of the IPC, inasmuch as he is one of the members of the unlawful assembly who had come to the scene of occurrence with the common object of committing the murder of Gopal.

In Masalti v. State of U.P., AIR 1965 SC 202, it was observed that any member of the unlawful assembly can be prosecuted for the criminal act; it need not to be proved that he had committed an overt act:

> "17. ...what has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified in Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin [Baladin v. State of U.P., AIR 1956 SC 181 :
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> 1956 Cri LJ 345] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always

proceed on the basis that the offence has been actually committed by every member of the unlawful assembly." This Court in Lalji v. State of U.P., (1989) 1 SCC 437, observed as follows:

"9. Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section

149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge." These cases were followed in many subsequent cases, including Shamshul Kanwar v. State of U.P., (1995) 4 SCC

430.

12. The reports of the Forensic Science Laboratory as well as those of the Ballistic Experts have been perused by us. The Forensic Science Laboratory report discloses that the samples collected from the scene of the offence had bloodstains of human origin. However, since the bloodstains were disintegrated by the time the bloodstains were examined by the Forensic Science Laboratory, the blood group could not be determined. For the same, the accused cannot be unpunished, more particularly when the bloodstains were found of human origin. In State of Rajasthan v. Teja Ram, (1999) 3 SCC 507, this Court concluded that even when the origin of the blood cannot be determined, it does not necessarily prove fatal to the case of the prosecution. In that case, the murder weapons had been recovered with blood on them, and the origin of the blood on one of the

weapons could not be determined. Therein, the Court held as follows:

> "25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.
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> 26. Learned counsel for the accused made an effort to sustain the rejection of the abovesaid evidence for which he cited the decisions in Prabhu Babaji Navle v. State of Bombay [AIR 1956 SC 51 : 1956 Cri LJ 147] and Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74 : (1963) 1 Cri LJ 70] In the former, Vivian Bose, J. has observed that the chemical examiner's duty is to indicate the number of bloodstains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships felt that "blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the judgment". In the latter decision, this Court observed regarding the certificate of a chemical examiner that inasmuch as the bloodstain is not proved to be of human origin the circumstance has no evidentiary value "in the circumstances" connecting the accused with the murder. The further part of the circumstance in that case showed that a shirt was seized from a drycleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for drycleaning, it was not bloodstained.
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> 27. We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility. The observations in the aforesaid cases were made on the fact situation existing therein. They cannot be imported to a case where the facts are materially different."

13. The misfired cartridge, the fired cartridge, and the country made pistols were subjected to the examination of the Forensic Science Laboratory. It was clearly stated in the Forensic Laboratory's Reports that the country made pistol contained in packet 'H' was in working order. However, it has a tendency to mis-fire the ammunition. It is also stated that the cartridge found in the very packet was fireworthy ammunition. The report of the Ballistic Expert further makes it clear that based on stereo and comparison microscopic examination, the 12-bore cartridge case from packet 'G' could have been fired from a 12-bore country made pistol. Hence, it is clear that out of the two pistols seized,

one pistol had got a tendency to mis-fire and the other had fireworthy ammunition. Thus, the reports of the Forensic Science Laboratory fully support the case of the prosecution, inasmuch as it is the evidence of the witnesses including Devi that Gopal was fired at by Gyan Singh as well as the appellant herein. Among the shots fired, one of the gunshots was mis-fired. Be that as it may, the fact remains, as mentioned supra, that all the five members including the appellant were members of the unlawful assembly which had the common object of committing the murder of the deceased. Hence, in our considered opinion, the trial Court and the High Court are justified in convicting the accused having regard to the evidence on record.

14. Accordingly, the appeal stands dismissed and the sentence of life imprisonment imposed upon the appellant stands confirmed.

……J. (L. Nageswara Rao) ……J. (Mohan M. Shantanagoudar) New Delhi, Dated: July 04, 2018