Leela Ram (D) Through Duli Chand vs State Of Haryana And Anr on 6 October, 1999

CASE NO.:
Appeal (crl.) 297 of 1992

PETITIONER:
LEELA RAM (D) THROUGH DULI CHAND

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT: 06/10/1999

BENCH:
K.T. THOMAS U.C. BANERJEE

JUDGMENT:

JUDGMENT 1999 Supp(3) SCR 435 The Judgment of the Court was delivered by BANERJEE, J. This appeal by special leave is directed against an order of acquittal passed by the Punjab & Haryana High Court at Chandigarh, reversing the order of conviction and sentence of life imprisonment passed by the learned Sessions Judge under Section 302 IPC and Section 27 of the Arms Act.

The occurrence dates back to 16th July, 1983 at about 12.00 noon in a village called Alipur Barota. The prosecution case as made out, depicts that the accused wanted to dig a khal forcibly through the field of one Maman Ram, which was objected to and the local Sarpanch was also informed accordingly. At a meeting, called by the Sarpanch, it was decided that the matter ought to be resolved amicably and by reason therefor the Panchayat consisting of Kurra Ram (PW2), Leela Ram (PW1), Ram Kumar Panch and Blum Sen (PW4) alongwith deceased Maman Ram and a few other persons proceeded towards the field of the accused. The Maman Ram, the deceased, was few paces ahead of the other members. When however the deceased Maman Ram, was near the field of Kundan Singh, the accused came out of the field with a double barrel gun and on seeing Maman Ram, raised a Lalkara to the effect "pani na dene ka maza chakhata hun". The accused thereafter fired a shot from his gun, striking on the chest of the deceased Maman Ram. The other members of the group on hearing the gun shot, stopped there and immediately thereafter the second shot was fired by the accused and who then left the place running with his gun towards village Aharwan. The Sarpanch arrived there a little later and he and Kurra Ram remained at the place whereas Leela Ram (son of the deceased) went to the Police Station, Fatehabad and gave the first information statement being recorded as Exh. PA before the trial court. Upon compliance with the formalities, Sub-Inspector Devi Dutt along with Leela Ram went to the place of occurrence and prepared the inquest report (Ex. PG) and despatched the dead body to Civil Hospital, Fatehabad for post-mortem examination. Blood stained earth and two empty cartridges were also taken into custody. All these recoveries were effected in the presence of Kurra Ram and Bhim Sen.

The post-mortem examination on the body of Maman Ram was conducted by Dr. A.S. Chaudhary (PW3) at Fatehabad on 16th July, 1983 at 6.00 p.m. and he had found the following ante-mortem injuries on the body;

1. "There was a lacerated wound 1-1/2" diametre with inverted margins showing blackening at edges, situated at front of lower and of sternum over ziphi-sternum. On further exploration of wound, it led towards the left side obliquely upward and laterally, causing laceration of the heart, the left lung had passed through another wound with averted margins on lateral side of left chest wall just below left arm-pit measuring 2-1/2" x 2-1/2"

shown in the diagram."

2. A lacerated wound with inverted margins measuring 6 x 2" on the medial and upper and of left upper arm. On dissection, there were laceration of muscles, vessel, nerves and humerus bone was badly, fractured in pieces. The wound passed on lateral side of upper left arm, with averted margins, resulting in injury no, 4 measuring T x 2-1/2". There was skin tag hanging between injuries nos. 3 and 4 in front, there were corresponding holes in the left sleeve of the shirt.

3. There were four bulges and four lacerated wounds situated on the back between and of scapula in mid-line in an area of about 6"in diametre. Wounds were of averted margins of size about +" x +" in oval shape, on dissection of the bulges, four pellets and 3 pieces of card board with marking "Tiger" were recovered and sealed in a bottle. On further exploration of ribs nos. 3, 4, 5 and 6 at their junction with the vertabrae were fractured in pieces on left side. There were holes in the body of the vertabrae nos. 2, 5 and 6 left side with fracture of traneverse processes and laceration of the spinal cord corresponding to the hole in the verterbrae. There were corresponding holes in the shirt on the back side.

Stomach contained semi digested food material. Semen discharged at urithral end".

In his opinion Dr. Chaudhary recorded that the cause of death was shock and haemorrhage and the injuries were sufficient to cause death in the ordinary course of nature.

Without much of a factual detail, be it noted that on 18th July, 1983, the accused was arrested and from his possession one DBBL gun along with 3 live cartridges of 12 bore and a licence in his name were recovered. The empty cartridges along with the gun were sent to the Ballistic expert on 21st July, 1983 and who in no uncertain recorded that empty cartridges has been fired from the gun belonging to the accused. The prosecution examined nine witnesses in all, and in the statement under Section 313 of the Code of Criminal Procedure, the accused alleged false implication in the case at the instance of Bhim Sen Sarpanch by reason of his brother Ramji Lal having contested an election against Bhim Sen.

The reason recorded by the High Court in the support of acquittal is that the eye witnesses' account regarding the number of shots fired by the appellant on the deceased stand contradicted by medical evidence. In this context the High Court observed :

> "The positive case of the prosecution as set up by Leela Ram and Ram Kumar, eye-witnesses is that two shots were fired by Om Prakash, appellant at Maman (deceased). They do not seem to be clear about the site of the first injury. In examination-in-chief they stated that the first gunshot had hit on the left side of the chest of Maman, but during cross-examination both of them stated consis-tently that it was on the left upper arm. According to Leela Ram, it has hit on the left shoulder and Kurra Ram's position was that it had hit the left upper arm, near the arm pit. The injury had been described by the doctor as injury No. 3. The injury was on the medial and upper end of left upper arm and its exit was on the lateral side. To describe in a more simple language, the wound of entry was on the inner side of the left arm. The exit wound was just opposite, that is outer side of the arm. The injury was from 12 bore gun. We cannot imagine any situation in which the appellant could cause injury No. 3 to Maman from any angle. We asked the learned State counsel to caricature any position in which a man can strike such an injury with a 12 bore gun, as was injury No. 3 Maman, without causing injury on another part of the body. This injury is simply impossible and cannot be caused from any angle. The circumstances of the case suggest that all the injuries were the result of the gunshot, noted as injury No. 1. PW 1 Dr. A.S. Chaudhary, during cross-examination, had also to agree to this position. The shot which was from a close range had entered the chest of Maman (deceased) at the point of strike, after encountering the bony resistence, it appears, the pellets got scattered into two groups; one group which was forcing the overshot cardboard the point which was noted as injury No. 5 by Dr. Chaudhary. The other group, after bony resistence, split from the main charge and traveled to the left side. After puncturing the heart, it went out at point No. 2 and re-entered the left arm under the arm-pit to make an exit on the lateral side of the left arm. The route of the scattered pellets is almost in line from the point of entry till the point of exit on the lateral side of the left arm. We are, therefore, satisfied that these injuries on the dead body of Maman were the result of one gunshot and not of two shots, as stated by the eye- witnesses."

This longish quotation probably could have been avoided but we thought it fit to reproduce it verbatim so as to assess the situation in the proper perspective, more so when there is an order of acquittal by the High Court in reversal of the conviction and sentence for life imprisonment passed by the trial Court. Apart from the comment on the method of investigation, the High Court mainly proceeded on two counts. On the first, the learned Judges commented that the discrepancies and contradictions between the witnesses do not inspire confidence and on the second count they noted that there was fabrication of evidence by the investigating agency.

Before however, proceeding with the matter on two counts as above, it would be convenient to note another aspect of the matter, namely, the observations pertaining to the investigation by the Investigating Agency. It is now a well settled principle that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case and we need not dilate on the issue excepting referring a decision of this Court (vide State of Rajasthan v. Kishore, AIR (1996) SC 3035).

Be it noted that the High Court is within its jurisdiction being the first appellate court to re-appraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eye witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in the State of U.P. v. M.K. Anthony, AIR (1985) SC 48. In paragraph 10 of the report, this Court observed :

> "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, hypertechnical 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."

In a very recent decision in Criminal Appeal No. 61 of 1999 (Rammi alias Rameshwar v. State of Madhya Pradesh) with Criminal Appeal No. 33 of 1999 (Bhura Alias Sajjan Kumar v. State of Madhya Pradesh) this Court observed :

> "When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two state- ments of the same

witness) is an unrealistic approach for judicial scrutiny".

This Court further observed :

> "It is a common practice in trial courts to make out contradictions from previous statement of a witness for confronting him during cross- examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of inconsistent former statement. But a reading of the Section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the Section is extracted below :
>
> " 155. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him.....
>
> (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted"would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose, i.e. to "contradict" the witness.

To contradict a witness, therefore, must be to discredit the par-ticular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness, (vide Tahsildar Singh and Anr. v. State of U.P., AIR (1959) SC 1012)".

The court shall have to bear in mind that different witnesses react differently under different situations : whereas some become speechless, some start wailing some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

It is indeed necessary to note that hardly one conies across a witness whose evidence does not contain some exaggeration or embellishments - sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give slightly exaggerated account. The Court can sift the chaff from the corn 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, they ought to inspire confidence in the mind of the Court to accept the stated evidence though not however in the absence of the same.

In this context, reference may be made to the decision of this Court in the case of Appabhai and Another v. State of Gujarat, AIR (1988) SC 696 wherein this Court in paragraph 11 of the report observed :

> "Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner."

In paragraph 13 of the report this Court further observed :

> "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 nowadays 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."

The basic reason for non-acceptance of prosecution case so far as the High Court is concerned is the contradiction said to have effected by not being clear about the side of the first injury on the body of the deceased Maman in so far as the evidence of Leela Ram (PW 1) is concerned. Be it noted, Leela

Ram is the son of deceased Maman. In his examination in Chief he stated :

> "My father was 7/8 paces ahead of me. When my father reached the field of Kundan Singh, then the accused came out from the field of Kundan Singh, he was having a double barrel gun. The field of Kundan Singh was having charri crop. The accused uttered the words `Pani Na Dene Ka Maza Chakhata Hun.' The accused fired a gun shot at my father which struck him on the upper part of the chest to the left side. On receiving this shot, my father fell down on the ground. The second gun shot fired by the accused struck my father on his chest. After this, myself, Kurra Ram and Ram Kumar, Member Panchayat ran back. In the meanwhile, the Panchayat had reached the canal bridge. I told the Sarpanch that Om Prakash accused had fired at my father, who was running towards village Aharwan with his weapon."

In cross-examination however, the evidence records as below :

> "I was at a distance of 5 karams when the accused fired the first shot at my father. The accused had fired first shot on my father from the left side hitting him on the chest on the left side. Again said on the left shoulder. My father fell down on receipt of that shot. He fell down with his face towards the sky. The head of my father was towards the bridge. The second shot was fired by the accused while standing towards the side of his feet, I cannot tell the distance between the feet of my father and the accused, where he was standing. He was at a distance of a few feet from the feet my father, when he fired the second shot -I remained at the place where I was when the first shot was fired. When the second shot was fired then I ran backward by two paces. Kurda also went backwards by 2/3 paces. After the firing of two shots, I ran towards the Panchayat. I had raised noise when the two fires were shot at my father. When I was retreating backwards, then the second shot was fired."

It is the above evidence which has prompted the High Court to ask the learned Advocate appearing for the prosecution "to caricature any position in which a man can strike such an injury with a .12 bore gun....."

Where there was one shot or two shots, can it not be termed to be immaterial in the matter of assessing the culpability of the accused. The son who saw his father has been shot at and thereafter fell dead - total stunning effect on the son and it is on this score that mere hair splitting on the available evidence ought not to be undertaken and instead the totality of the situation ought to have been reviewed. The empty cartridges were found and the ballistic expert's report that the cartridges match with the injury. The High Court ascribes this to be an immaterial piece of evidence. We, however, do not think so. Ballistic expert's evidence cannot be brushed aside since that is in the normal course of events, a valuable material vis-a-vis the use of the gun and the injury. The High Court went on to record the contradiction from the medical evidence but unfortunately the same does not find support from the evidence on record. Dr. A.S. Chaud- hary having done the post-mortem examination on the deceased Maman, has stated in his evidence that : "Injuries Nos. 2, 4 and 5 are the exit wounds. Injuries Nos. 1 and 3 are the entry wounds". Dr. Chaudhary further said

that "Injury No. 1 is an entry wound of point blank range". The doctor has been subjected to cross examination and he at the end of it all said that : "It can be said that the injuries on the person of the deceased were the result of one shot". It is on this count, High Court recorded that Dr. Chaudhary "had also to agree to this position" (emphasis supplied). Needless to say that the Doctor probably has not been able to match the cross-examining lawyer and there was thus an unequal duel between the medical man and a refined lawyer. Can it be said; that by reason of the evidence of Dr. Chaudhary the contradictions are galore in nature, so far as the evidence of Leela Ram is concerned - the High Court upon consideration of the factum of such a contradiction answers the same on a positive note. This however; is not acceptable to this Court the discrepancy does not seem to be of such a nature so as to effect the creditworthiness or the trustworthiness of the witness. As as matter of fact it does not so do by reason of the fact that Maman fell a victim of gun shot injuries and died; it is immaterial as to whether one or two gun shots were fired - the contradiction at its highest cannot but be stated to be in regard to a minor incident and does not travel to the root of the nature of the offence. The other piece of evidence is that the Sarpanch and the members of the village panchayat saw the accused running away towards the village Aharwan just after firing with his gun.

Incidentally, the Sarpanch also stated that there were two gun shots sounds which he heard. Then there is ballistic expert report as noticed above- these pieces of evidence as available on record cannot be ascribed to be untrustworthy neither can be that they do not inspire confidence. There is thus no discrepancy about the totality of the situation and witnesses without any major contradiction deposed before the Court of Session with an unbiased mind and in a manner which in our view unmistakably point to the guilt of the accused and the appreciation of evidence by the High Court, in our view is wholly unwarranted, improper and unimaginative in the contextual facts.

Admittedly, there was some dispute pertaining to digging of a water course though the land of the deceased Maman. There is such an evidence that the Sarpanch of the village was going to resolve the dispute between the parties and it was at this juncture this gruesome murder took place: motive therefore, cannot be ruled out. The High Court has proceeded on the basis that two eye witnesses being the son and brother-in-law of the deceased are interested witnesses, and hence their evidence ought not to be relied upon, we are unable to concur therewith. The ocular account though may have been given by the son and the brother-in-law does not by itself loses its efficacy or its evidentiary value unless some other factor is brought on record to discredit the creditworthiness of the witnesses: On the facts of the matter under consideration, the presence of Leela Ram being the son of the deceased appears to be quite natural by reason of the fact that the father had a land dispute with someone else and the son in the normal way could be interested in settlement of the dispute. As such his presence during parley cannot be termed unnatural. Similar was the situation as regards the presence of Kurra Ram, brother-in-law of the deceased, who has lodged a complaint to the Panchayat. If Kurra Ram, also accompanied the Panchayat members for the amicable settlement of the dispute, in our view there is nothing unnatural about it. Evidence of both the eye-witnesses stand fully corroborated by the Sarpanch who is an independent witness. The High Court has doubted the veracity of his evidence only on the ground that the brother of the accused once lost election against the witness. We consider that as too feeble a ground to doubt the evidence of the Sarpanch. The core of his testimony remains reliable and no good reason can be traced out to reject it.

In our view the High Court relying upon some minor contradictions fell into a clear error in passing the order of the acquittal of the accused. According to us the learned Sessions Judge has reached the conclusion correctly and such a well merited conviction should not have been so lightly interfered with.

We therefore, allow this appeal and set aside the judgment of the High Court. The conviction and sentence passed by the Session Judge shall stand restored. The accused is hereby directed to surrender before the trial court. We direct the Sessions Judge concerned to take prompt steps to put the accused back in jail to undergo the sentence imposed on him.