

SHEESH RAM AND ORS.  
v.  
THE STATE OF RAJASTHAN  
(Criminal Appeal No. 191 of 2004)

JANUARY 29, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND RANJANA  
PRAKASH DESAI, JJ.]

*Penal Code, 1860: s.302 r/w s.34 - Murder - Brutal murder and serious injury to one - Conviction by courts below - On appeal, held: The injured witness narrated the incident and defence could not point out any dent in his evidence - The prosecution witnesses corroborated the evidence of injured witnesses - There was strong motive to commit murder as there was previous enmity between the complainant party and the accused persons - Evidence of eye witnesses was not discrepant on the material aspect of the prosecution case and therefore reliance rightly placed on them by courts below - No interference called for with the conviction.*

*Witness: Related/Interested witness - Evidentiary value of - Held: Evidence of interested witness is not always a suspect - It has to be scrutinized with caution and can be accepted if it is found reliable.*

*Evidence: Exaggeration in - Held: If the exaggeration does not change the prosecution story or convert it into an altogether new story, allowance can be made for it - If evidence of a witness is to be disbelieved merely because he has made some improvement in his evidence, there would hardly be any witness on whom reliance can be placed by the courts.*

*Maxim: 'falsus in uno falsus in omnibus' - Held: Has no application in India - It is merely a rule of caution.*

- A The prosecution case was that appellant and complainant party were on inimical terms due to land disputes and an earlier murder case. On fateful day, complainant was standing with his sons on road side. At that time the offenders were going on a tractor. Seeing the complainant party, they stopped the tractor and got down and attacked them. The complainant and one of his son ran towards the village. The accused gravely assaulted the elder son of the complainant and killed him. They then ran after the other son of the complainant PW-5 and inflicted injuries on him and considering him dead all the accused left the place. The trial court found all the accused guilty and convicted them under Sections 148, 302 r/w Section 149 and Section 307 r/w section 149 IPC. On appeal, the High Court acquitted four accused of all the offences. The High Court further acquitted appellant-SR of offence Sections 148, 302, 307 IPC and instead convicted him under Section 302 r/w Section 34 IPC and Section 307 r/w section 149 IPC; acquitted appellant-RM of the charges under Sections 148, 307 and 302 r/w Section 149, IPC and instead, convicted him under Section 302 r/w Section 34 and Section 307 r/w Section 34 of the IPC; and acquitted Appellant-R of charges under Sections 148, 302 and 307 r/w Section 149 of the IPC and instead, convicted him under Section 302 r/w Section 34 and Section 307 r/w Section 34 of the IPC. The instant appeal was filed against the order of the High Court.

Dismissing the appeal, the Court

HELD: 1. The deceased was most brutally murdered. According to the doctor PW-12, the cause of death was haemorrhage and shock due to head injury leading to injury to brain and injury to carotid artery in neck. PW-5 was also brutally attacked. He received four incised wounds. He suffered a fracture of left parietal bone. Being an injured witness, he was the most important witness

in the case. He described the incident in question. The defence could not find any dent in his evidence. In fact, in the cross-examination, he gave more details about the incident in question, which were consistent with what he had stated in the examination-in-chief. He stated that Accused-B was armed with an axe, appellant-R with an axe, appellant-SR with a sword, appellant-RM with a dhariya and others were having lathis. They encircled PW-5, his father and brothers. His father and brother ran towards the village. Accused-R caught hold of his deceased-brother and dealt an axe blow on his head. The deceased fell down. Appellant-SR dealt an axe blow on the deceased when he had fallen down. Accused-RM dealt a blow with a dhariya on the right hand of the deceased. According to PW-5, thereafter, appellant-SR caught hold of him and appellant-RM hit on his left temple with a dhariya. Appellant-SR dealt an axe blow behind his ear. Accused-H dealt a lathi blow on his face. Thereafter, he became unconscious. PW-2, PW-3 and PW-4 had corroborated this witness. Even assuming that these witnesses were related to each other and, therefore, interested witnesses, it is well settled that the evidence of interested witnesses is not always suspect. It has to be scrutinized with caution and can be accepted if it is found reliable. [Paras 6, 7] [163-C-H; 164-A-D]

2. The presence of PW-5 at the scene of offence cannot be disputed since he was an injured witness. His evidence strengthened the prosecution case. The evidence of PWs-3, 4 and 5 also inspired confidence. So far as the acquitted accused were concerned, the evidence of these witnesses qua them was found to be exaggerated. But, on account of that, their entire evidence cannot be discarded. All these witnesses stated that the acquitted accused had lathis and they dealt lathi blows on PW-5. This part of their evidence was disbelieved. It is true that these witnesses have improved

- A the prosecution story to some extent. But, that improvement or that exaggerated version can be safely separated from the main case of the prosecution. So far as the main prosecution case was concerned, all the witnesses were consistent. This is not a case where truth and falsehood are inextricably mixed up. Witnesses tend to exaggerate the prosecution story. If the exaggeration does not change the prosecution story or convert it into an altogether new story, allowance can be made for it. If evidence of a witness is to be disbelieved merely because he has made some improvement in his evidence, there would hardly be any witness on whom reliance can be placed by the courts. It is trite that the maxim 'falsus in uno falsus in omnibus' has no application in India. It is merely a rule of caution. It does not have the status of rule of law. In *Balaka Singh* case, this Court has said that where it is not feasible to separate truth from falsehood, because the grain and the chaff are inextricably mixed up, and in the process of separation, an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, the Court cannot make an attempt to separate truth from falsehood. But, this is not a case where the grain and chaff are inextricably mixed up. The evidence of eye-witnesses was not discrepant on the material aspect of the prosecution case. Reliance can, therefore, be placed on them. [para 7] [164-D-H; 165-A-C]

3. The appellants examined the defence witnesses. Testimony of defence witnesses was not believed by the trial court as well as the High Court. There is no reason to take a contrary view. The complainant and some of the witnesses were facing trial for murder of the brother of the appellants. There was, therefore, strong motive to kill the deceased. The evidence of eye-witnesses, particularly the evidence of PW-5, the injured eye-witness, was

trustworthy. Therefore, the argument that on account of previous enmity, the appellants have been falsely implicated in this case is rejected. The impugned judgment is not interfered with taking an overall view of the matter and examined in light of *\*Balaka Singh and \*\*Rizan*. [para 8] [166-B-E]

*\*Balaka Singh v. State of Punjab* (1975) 4 SCC 511: 1975 (0) Suppl. SCR 129; *\*\*Rizan & Anr. v. State of Chhattisgarh* (2003) 2 SCC 661: 2003 (1) SCR 457 - relied on.

**Case Law Reference:**

1975 (0) Suppl. SCR 129      relied on      Paras 7, 8

2003 (1) SCR 457              relied on      Paras 5, 7, 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 191 of 2004.

From the Judgment and Order dated 29.05.2003 of the High Court of Judicature for Rajasthan at Jaipur Bench Jaipur in D.B. Criminal Appeal No. 322 of 1998.

P.C. Agarwala, Ambuj Agarwal, Chander Shekhar Ashri for the Appellants.

S.S. Shamshery, AAG. Milind Kumar for the Respondent.

The Judgment of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. The appellants are original Accused Nos.1, 2 and 4 respectively in S.T. No.12 of 1993. The appellants were convicted, inter alia, under Section 302 of the IPC for the murder of one Balram and sentenced to life imprisonment. They have challenged judgment and order dated 29/5/2003 passed in Criminal Appeal No.322 of 1998 by the Rajasthan High Court, confirming their conviction and sentence.

A 2. One Heera son of Surajmal lodged a complaint (Ex. P-  
7) at Jagal Tan, Village Lapawali on 04/02/1991 at around 3.50  
p.m., stating that on 04/02/1991 at 8.00 a.m., he and his son  
Rameshwar accompanied his other sons Balram and Bhagwan  
B Singh who were going to Hindaun School to see them off. They  
were standing on the road near the turn between Lapawali and  
Dhara. While they were waiting for the bus, Rajdhar of village  
Lapawali, along with others, arrived there in a tractor. Accused-  
1 Sheesh Ram, Accused-2 Radhey, Accused-3 Battu, Accused-  
4 Rameshwar (in S.T. No.12 of 1993), Accused-Ram Kunwar,  
C Accused-Hansey and Accused-Har Sahai (in S.T. No.350 of  
1992) stopped the tractor. Accused-3 Battu exhorted "do not  
let this opportunity slip off". All the persons jumped from the  
tractor. Complainant Heera and his son Rameshwar saved their  
life by fleeing towards the village. His elder son Balram fled  
D towards the south from the road. The accused followed them.  
Accused-2 Radhey caught hold of Balram and assaulted him  
with a Kulhari. Balram fell down. Later on, Accused-3 Battu dealt  
an axe blow on his throat. Others too continued assaulting  
Balram. Balram was badly injured. He succumbed to the  
injuries. Accused-1 Sheesh Ram followed Bhagwan Singh,  
E caught hold of him and inflicted injuries on him. Other accused  
also inflicted injuries on him. Under the impression that  
Bhagwan Singh had died, all the accused left the place.  
Bhagwan Singh was admitted in the hospital at Karauli. On the  
basis of this report, a case under Sections 147, 148, 324, 326,  
F 302, 307 read with Section 149 and Section 341 of the IPC  
was registered. Accused Ram Kunwar was arrested on 23/6/  
1991. On completion of investigation, charge-sheet was laid  
against Ram Kunwar. Another charge-sheet was laid against  
accused Hanse, Har Sahai and Rajdhar. The case was  
G committed to the Sessions Court and numbered as S.T.  
No.356 of 1992. Against the appellants, charge-sheet was laid  
on 3/2/1993. After committal of the said case to the Sessions  
Court, it was numbered as S.T. No. 12 of 1993. Both the cases  
were tried together as they arose out of the same FIR.

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3. In support of its case, the prosecution examined 20 witnesses out of which, four are eye-witnesses. The eye-witnesses are PW-2 Khushiram, PW-3 Rameshwar, PW-4 Yadram and PW-5 Bhagwan Singh, who is an injured witness. The accused pleaded not guilty to the charge and examined seven witnesses in their defence. The trial court convicted all the accused under Sections 148, 302 read with Section 149 and Section 307 read with Section 149 of the IPC. On appeal, the High Court acquitted Hansey, Har Sahai, Rajdhar and Ram Kunwar. The High Court acquitted Accused Battu of the charges under Sections 148 and 307 of the IPC. His conviction and sentence under Section 302 of the IPC was confirmed. He has not appealed against the order convicting and sentencing him. Appellant-Sheesh Ram was acquitted of the charges under Sections 148, 302 and 307 of the IPC. Instead, he was convicted under Section 302 read with Section 34 of the IPC and Section 307 read with Section 34 of the IPC. He was sentenced to suffer imprisonment for life and a fine of Rs.1,000/-, in default, to further suffer six months rigorous imprisonment and to suffer rigorous imprisonment for five years and fine of Rs.2,000/-, in default, to further suffer simple imprisonment for three months, respectively. Appellant-Rameshwar was acquitted of the charges under Sections 148, 307 and 302 read with Section 149 of the IPC. Instead, he was convicted under Section 302 read with Section 34 and Section 307 read with Section 34 of the IPC. He was sentenced to suffer imprisonment for life and a fine of Rs.1,000/-, in default, to suffer further six months rigorous imprisonment and to suffer rigorous imprisonment for five years and a fine of Rs.2,000/-, in default, to further suffer simple imprisonment for three months, respectively. Appellant-Radhey was acquitted of charges under Sections 148, 302 and 307 read with Section 149 of the IPC. Instead, he was convicted under Section 302 read with Section 34 and Section 307 read with Section 34 of the IPC. He was sentenced to suffer imprisonment for life and a fine of Rs.1,000/-, in default, to suffer six months rigorous imprisonment and to

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A suffer rigorous imprisonment for five years and a fine of Rs.2,000/-, in default, to further suffer simple imprisonment for three months, respectively. This judgment is challenged in the instant appeal.

B 4. Mr. P.C. Agarwala, learned senior counsel appearing for the appellants submitted that out of the eight accused, the High Court acquitted four accused. The High Court has, in fact, observed that the four acquitted accused have been falsely implicated. Counsel submitted that it is, therefore, risky to rely on the evidence of the prosecution witnesses to convict the appellants. These witnesses exaggerated the prosecution story and involved the acquitted accused. It is possible that even so far as the appellants are concerned, they have not come out with the truth. This is a case where truth and falsehood are inextricably mixed and truth cannot be separated from falsehood. The doctrine of 'falsus in uno falsus in omnibus', is clearly attracted to this case. Counsel pointed out that the eye-witnesses appear to be tutored. They are related to each other and, hence, are interested witnesses. Their evidence will have to be read cautiously. Moreover, complainant Heera has not been examined. Admittedly, there is enmity between the two sides. There is a land dispute between complainant Heera and accused Rajdhar. Ram Kunwar's son Kamal was murdered and, in that connection, complainant Heera and others, are facing trial. During the pendency of this trial, complainant Heera's son Balram was murdered. False involvement on account of long standing enmity cannot be ruled out. The conviction of the appellants, therefore, deserves to be set aside.

G 5. Mr. S.S. Shamsbery, learned Addl. Advocate General appearing for the State, on the other hand, submitted that the evidence of four eye-witnesses is consistent. PW-2 Khushiram and PW-4 Yadram are independent witnesses. There is no reason to cast any doubt on their testimony. Counsel submitted that in a catena of judgments, this Court has held that the

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doctrine 'falsus in uno falsus in omnibus' is not applicable in India. Even if some portion of the evidence of a witness is found to be deficient, the remaining portion can be relied upon, if it is sufficient to establish prosecution case. In this connection, he relied on *Rizan & Anr. v. State of Chhattisgarh*<sup>1</sup>. Counsel submitted that there is enough credible evidence on record which bears out the prosecution case. The appeal, be therefore, dismissed.

6. Deceased Balram was most brutally murdered. According to PW-12 Dr. Meena, the cause of death was haemorrhage and shock due to head injury leading to injury to brain and injury to carotid artery in neck. PW-5 Bhagwan Singh was also brutally attacked. He received four incised wounds. He suffered a fracture of left parietal bone. Being an injured witness, he is the most important witness in this case. He has described the incident in question. The defence has not made any dent in his evidence by cross-examining him. In fact, in the cross-examination, he has given more details about the incident in question, which are consistent with what he has stated in the examination-in-chief. He has stated that he, deceased Balram, his father Heera and his other brother Rameshwar were standing near the road near the boundaries of village Dehra and Lapawali. At that time, a tractor driven by Rajdhar came from village Lapawali side. Rajdhar halted the tractor near them. The appellants, who were sitting in the tractor, got down. Accused Battu was armed with an axe. Appellant Radhey was also armed with an axe. Appellant Sheesh Ram was armed with a sword. Appellant Rameshwar was armed with a dhariya and others were having lathis. They encircled PW-5 Bhagwan Singh, his father and brothers. His father and brother Rameshwar ran towards the village. Balram also ran towards the village. He ran towards Katara village. Accused Radhey caught hold of the collar of Balram and dealt an axe blow on Balram's head. Balram fell down. Appellant Sheesh Ram dealt an axe blow on Balram when he had fallen down. Accused Rameshwar dealt a blow with a dhariya on the right hand of Balram. According

- A to PW-5 Bhagwan Singh, thereafter, appellant Sheesh Ram caught hold of him (Bhagwan Singh). Appellant Rameshwar hit on his left temple with a dhariya. He fell down. Appellant Sheesh Ram dealt an axe blow behind his ear when he had fallen down. Accused Hanse dealt a lathi blow on his face. Thereafter, he became unconscious.

7. PW-2 Khushiram, PW-3 Rameshwar and PW-4 Yadram have corroborated this witness. It is submitted that all these witnesses are related and therefore their evidence cannot be drelid upon. Assuming they are related to each other and, hence, interested witnesses, it is well settled that the evidence of interested witnesses is not always suspect. It has to be scrutinized with caution and can be accepted if it is found reliable. Presence of PW-5 Bhagwan Singh at the scene of offence can hardly be disputed since he is an injured witness. His evidence has strengthened the prosecution case. Evidence of PWs-3, 4 and 5 also inspires confidence. So far as the acquitted accused are concerned, the evidence of these witnesses qua them is found to be exaggerated. But, on account of that, their entire evidence cannot be discarded. All these witnesses stated that the acquitted accused had lathis and they dealt lathi blows on PW-5 Bhagwan Singh. This part of their evidence is disbelieved. It is true that these witnesses have improved the prosecution story to some extent. But, that improvement or that exaggerated version can be safely separated from the main case of the prosecution. So far as the main prosecution case is concerned, all the witnesses are consistent. This is not a case where truth and falsehood are inextricably mixed up. Witnesses tend to exaggerate the prosecution story. If the exaggeration does not change the prosecution story or convert it into an altogether new story, allowance can be made for it. If evidence of a witness is to be disbelieved merely because he has made some improvement in his evidence, there would hardly be any witness on whom reliance can be placed by the courts. It is trite that the maxim 'falsus in uno falsus in omnibus' has no application in India. It

is merely a rule of caution. It does not have the status of rule of law. In *Balaka Singh v. State of Punjab*<sup>2</sup>, this Court has said that where it is not feasible to separate truth from falsehood, because the grain and the chaff are inextricably mixed up, and in the process of separation, an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, the Court cannot make an attempt to separate truth from falsehood. But, as we have already noted, this is not a case where the grain and chaff are inextricably mixed up. The evidence of eye-witnesses is not discrepant on the material aspect of the prosecution case. Reliance can, therefore, be placed on them. In this connection, reliance placed by the counsel for the State on *Rizan* is apt. The same principle is reiterated by this Court in *Rizan*. We may quote the relevant paragraph from *Rizan*.

*"Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove 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 a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given*

A        *set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali v. State of U.P AIR 1957 SC 366.)"*

B        8. The appellants examined defence witnesses. Testimony  
of defence witnesses is not believed by the trial court as well  
as the High Court. We find no reason to take a contrary view.  
It is pertinent to note that Kamal, the brother of the appellants  
was murdered and for that murder, complainant Heera and  
some of the witnesses are facing trial. There is, therefore,  
strong motive to kill Balram, son of Heera. It is not possible,  
C        however, to come to a conclusion that because of this enmity,  
the appellants have been falsely implicated. We have already  
discussed the evidence on record. The evidence of eye-  
witnesses, particularly the evidence of PW-5 Bhagwan Singh,  
the injured eye-witness, is trustworthy. Therefore, the argument  
D        that on account of previous enmity, the appellants have been  
involved in this case is rejected. Taking an overall view of the  
matter and examined in light of *Balaka Singh* and *Rizan*, we  
are of the opinion that no interference is necessary with the  
impugned judgment. The appeal is dismissed.

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D.G.

Appeal dismissed.