



REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(S). 116 OF 2012

KANNAIYA

....APPELLANT(S)

VERSUS

**STATE OF MADHYA
PRADESH**

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.
2. The accused-appellant herein has approached this Court for assailing the judgment dated 9th April, 2009, passed by the Division Bench of the High Court of Madhya Pradesh at Indore¹ in Criminal Appeal No. 1487 of 1999 whereby, the High Court dismissed the appeal preferred by the accused-appellant and three

¹ Hereinafter, referred to as the 'High Court'.

co-accused persons under Section 374(2) of the Code of Criminal Procedure, 1973.²

3. By way of the aforesaid appeal, the four convicts including the accused-appellant herein had assailed the judgment and order dated 22nd October, 1999 passed by the First Additional Sessions Judge, Mhow, District Indore, Madhya Pradesh³ in Sessions Case No. 524 of 1990, convicting the accused-appellant and three others namely Govardhan, Raja Ram and Bhima for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860⁴ and Section 302 of the IPC and sentencing each of them to imprisonment for life and fine of Rs.1,000/- with default stipulation.

4. It needs to be noted that only the accused-appellant has approached this Court to assail the judgment of the High Court, whereas, the remaining three accused seem not to have availed this remedy.

Brief Facts: -

5. Succinctly stated, facts relevant and essential for disposal of the appeal are noted hereinbelow.

² For short, "CrPC".

³ Hereinafter, referred to as the "trial Court".

⁴ For short, "IPC".

6. Shri Gobariya (PW-2) lodged an FIR at the Police Station, Manpur, alleging *inter alia* that on 28th September, 1990 an incident took place at about 09:00 pm in his village Chak. The accused-appellant and nine others namely Babu Lal, Gyan Singh, Bhima, Birjo, Raja Ram, Ram Swaroop, Govardhan, Keshar Singh and Asha Ram were damaging the *Tapra* (temporary hutment) of Jagya (PW-3). Ramesh, son of the informant (PW-2) intervened and tried to pacify the accused persons and requested them to desist from damaging the hut whereupon, the assailants diverted their attention towards Ramesh and started assaulting him indiscriminately.

7. Govardhan was armed with a sword, Kannaiya (accused-appellant) was armed with an axe, Keshar Singh, Asha Ram, Bhima and Gyan Singh were armed with sticks, whereas, Raja Ram, Ram Swaroop, Birjo and Babu Lal were unarmed. These unarmed assailants used their fists and kicks to beat Ramesh whereas, the armed assailants caused injuries to him using their respective weapons.

8. The informant (PW-2) further alleged that his son, Ramesh, started bleeding profusely because of the injuries caused to him by sharp weapons and

sticks, and fell down unconscious. On hearing the outcry, Madho Singh (PW-5), Ramchander (PW-4), and other villagers came there and saw the incident. The informant (PW-2) and Madho Singh (PW-5) picked up Ramesh in injured condition. It was alleged that the assailants were having a political rivalry with the complainant party and that was the cause of the assault.

9. The oral statement of the informant (PW-2) recorded at the Police Station, Manpur, on 29th September, 1990 at about 8.00 am, was treated to be a complaint and based thereupon, a formal FIR bearing Case No. 212 of 1990 was registered for offences punishable under Sections 307, 147 and 148 read with Section 149 of the IPC and Sections 25 and 27 of the Arms Act, 1959. However, it is noteworthy that the said formal FIR was not proved by the prosecution at the trial.

10. Ramesh was taken to the Primary Health Centre, Manpur, for treatment, where he was examined by Dr. M.S. Pathak (PW-17) who issued the medico legal certificate (Exh.P-22).⁵ From there, he

⁵ For short, "MLC".

was referred for better management and treatment to the M.Y. Hospital, Indore where he expired on 5th October, 1990 while undergoing treatment. The Chief Medical Officer of M.Y. Hospital sent an intimation regarding death of Ramesh to the Sanyogitaganj Police Station, Indore, whereupon offence punishable under Section 302 of the IPC was added to the case.

11. The Investigating Officer (PW-13) conducted inquest on the dead body of Ramesh and sent the same for postmortem examination.

12. Dr. Ravindra Chaudhary (PW-18) conducted postmortem examination upon the dead body of Ramesh and issued the postmortem report (Exh. P-23), taking note of the following injuries: -

- 1) A stitched wound on the right forehead measuring 4 cms having five stitches. A dark black colored scab was seen on the wound.
- 2) Right eye had gone black.
- 3) A grey colored diagonal bruised injury on the right cheek, 3 cms below the eye, measuring 3 cms x 1 cm.
- 4) A 3 cms long wound on the right side of the face, near the chin, having three stitches and was looking dark-grey colored.

5) A dark-grey colored contused abrasion on the left side of the face measuring 2 cms x 1 cm.

6) A dislocated fracture was found on the lower jaw and the lower teeth of the front side were broken with bleeding.

7) A stitched diagonal wound on the left frontoparietal region of the head measuring 5 cms in length, having five stitches and was having grey colored clotted blood.

8) There was a rod patterned contusion about two and half cms away from the right middle line on the stomach measuring 10 cms x 1 cm and was of grey color.

9) A stitched wound on the left ankle measuring 8 cms in length having 7 stitches. The wound was black-grey colored.

10) A stitched wound on the left thigh towards back side measuring 5 cms in length and was having 4 stitches on it. Dark grey colored ecchymosis was present around the wound.

13. The Investigating Officer (PW-13) proceeded to arrest all ten assailants named in the FIR, and, sharp weapons used in the incident were seized pursuant

to the disclosures under Section 27 of the Indian Evidence Act, 1872 made by the accused-appellant, Babu Lal, Gyan Singh, Bhima, Birjo, Raja Ram, Ram Swaroop, Govardhan, Keshar Singh, and Asha Ram. The seized weapons, *i.e.*, sword and axe were forwarded to the concerned medical officer for opinion regarding the possibility of the injuries being caused by these two weapons. Dr. M.S. Pathak (PW-17) examined the weapons and gave his opinion (Exh. P-18). The seized articles were forwarded to the Forensic Science Laboratory⁶ from where an analysis report (Exh. P-19) was received. After concluding investigation, chargesheet was filed against the ten accused persons named in the FIR. Since the offence punishable under Section 302 of the IPC was exclusively sessions triable, the case was committed and transferred to the Court of First Additional Sessions Judge, Mhow, District Indore, Madhya Pradesh for trial.

14. The trial Court framed charges against all the ten accused for the offences set out in the chargesheet. The accused persons pleaded not guilty

⁶ For Short "FSL".

and claimed trial. The prosecution examined as many as 18 witnesses and exhibited 24 documents to prove its case. The trial Court questioned the accused persons under Section 313 of the CrPC and confronted them with the circumstances as appearing in the prosecution's case. The accused denied the same and claimed to be innocent. However, no evidence was led in defence. At the conclusion of trial, the trial Court proceeded to acquit six accused persons, namely Babu Lal, Gyan Singh, Birjo, Ram Swaroop, Keshar Singh, and Asha Ram, and at the same time, convicted the accused-appellant alongside Govardhan, Raja Ram and Bhima for the offences punishable under Section 302 read with Section 34 of the IPC and Section 302 of the IPC and sentenced them as above⁷ *vide* Judgment and order dated 22nd October, 1999.

15. Being aggrieved, all four convicted accused persons, preferred an appeal before the High Court which stands rejected by the judgment dated 9th April, 2009, which is subject matter of challenge in

⁷ *Supra*, para 3.

this appeal by special leave at the instance of the appellant-Kannaiya.

Submissions on behalf of the accused-appellant: -

16. Learned counsel representing the accused-appellant urged that the entire prosecution case is false and fabricated. The father of deceased Ramesh being the informant of the present case, namely, Gobariya (PW-2) did not support the prosecution case and was declared hostile.

17. Jagya (PW-3), in whose hut, the incident purportedly started also did not support the prosecution case and was declared hostile. Puniya (PW-12), son of Jagya (PW-3) changed the genesis as well as place of the occurrence and alleged that the fight took place in the field of Gopya where he allegedly saw accused-appellant alongside Govardhan, Raja Ram and Bhima assaulting Ramesh. Learned counsel pointed out that this witness (PW-12) did not name anyone else in the assault made on Ramesh but rather alleged that the other accused persons came to the place of incident later, which is totally contrary to what was stated in the FIR.

18. Learned counsel pointed out that Puniya (PW-12) did not mention about the presence of Madho Singh (PW-5) at the spot when the incident was taking place. Rather, he alleged that he conveyed about the incident to Gobariya (PW-2), father of Ramesh and, thereafter, Madho Singh (PW-5) went to lift Ramesh. He further urged that Madho Singh (PW-5) in his deposition, did not acknowledge the presence of Puniya (PW-12) at the time of the incident, thus, both the witnesses contradict each other on the vital aspect of their presence at the crime scene and hence, their evidence is unworthy of credence. Not only this, Madho Singh (PW-5), in his deposition, gave a totally contrary version alleging that the accused persons had come to the house of Narsingh which is located nearby to his house. At that time, Ramesh was present in his house. Madho Singh (PW-5) and Ramesh tried to convince Bhima not to start a fight whereupon the accused persons namely Kannaiya (accused-appellant), Babu Lal, Gyan Singh, Bhima, Birjo, Raja Ram, Ram Swaroop, Govardhan, Keshar Singh and Asha Ram started assaulting Ramesh who received multiple injuries on his legs, head, etc. However, in the later part of the

deposition, the witness (PW-5) alleged that the entire fight had taken place in the agricultural field of Bholiya.

19. It was submitted that there is no reference to any field of Bholiya in the site inspection plan (Exh. P-6). Thus, there is grave contradiction in the versions of Madho Singh (PW-5) and Puniya (PW-12) regarding the place as well as the genesis of the incident. Furthermore, the version of Madho Singh (PW-5) when he claimed that Ramesh was present in his house before the incident started, is in stark contradiction to the sequence set out in the FIR and in the evidence of Puniya (PW-12).

20. Learned counsel also urged that Madho Singh (PW-5), admitted in cross-examination that when Ramesh was being assaulted, nobody other than the witness (PW-5) himself was present at the spot. This admission of the witness (PW-5) completely demolishes the claim of Puniya (PW-12) regarding he having witnessed the incident. Not only this, other than a bald reference to political rivalry, there is no reference in the evidence of any of the prosecution witnesses as to the reason for which the accused persons were either demolishing the hut of Jagya

(PW-3) or were indulging in some offensive activity in the field of Gopya/Bholiya which compelled Ramesh to interfere. Thus, there is a complete vacuum in the prosecution story regarding the genesis of the occurrence.

21. Since the witnesses have failed to point out the reason behind the incident, and as there are grave discrepancies in the statements of the two so called eyewitnesses, *i.e.*, Madho Singh (PW-5) and Puniya (PW-12), it would be totally unsafe to affirm the conviction of the accused-appellant on the basis of such flimsy and contradictory evidence.

22. It was further argued that six other accused persons against whom also the similar evidence existed on record, namely, Babu Lal, Gyan Singh, Birjo, Ram Swaroop, Keshar Singh and Asha Ram stand acquitted by the trial Court and thus, the accused-appellant is also entitled to acquittal on parity.

Submissions on behalf of the respondent-State: -

23. *Per contra*, learned counsel representing the respondent-State, vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that the case of the prosecution is

based on unimpeachable testimony of the independent eye witnesses Madho Singh (PW-5) and Puniya (PW-12), who had no reason or motive to falsely implicate the accused-appellant in this case. Both have made truthful deposition at the trial and could not be shaken from their stance despite extensive cross-examination. As per their testimony, the accused-appellant as well as the three co-convicts were armed with sharp weapons and large number of sharp weapon injuries were found on the body of deceased Ramesh as per the medical evidence. Thus, evidence of eyewitnesses is fully corroborated by medical evidence, further strengthening the case of the prosecution. He urged that the name of Madho Singh (PW-5) is mentioned in the FIR as an eye witness and the mere omission by the first informant, Gobariya (PW-2), to mention about the presence of Puniya (PW-12) as an eye witness in the FIR, would not discredit the evidentiary worth of the eye witness because the incident took place when the accused persons were trying to dismantle and destroy the hut of Jagya (PW-3), father of Puniya (PW-12). Hence, the presence of Puniya (PW-12) at the hut of his father was natural.

24. It was further argued that the trial Court and the High Court have undertaken extensive appreciation and re-appreciation of evidence to conclude that the case of the accused-appellant and the co-convicts was distinguishable from that of the acquitted accused persons who were either carrying blunt weapons or were unarmed. It was contended that the judgment under challenge does not require interference by this Court.

Findings and Conclusion: -

25. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment. We have threadbare re-appreciated the evidence available on record.

26. The learned counsel for the accused-appellant did not dispute the fact that the death of Ramesh was homicidal, preceded by large number of sharp and blunt weapon injuries, which fact has been proved by Dr. M.S. Pathak (PW-17), who issued the MLC (Exh. P-22) and by Dr. Ravindra Chaudhary (PW-18), who issued the post mortem report (Exh. P-23).

27. At the outset, we may take note of the fact that the factum of the complainant party and the accused

party belonging to rival political factions is not in dispute. It is in this background that we will have to test the veracity of evidence of the prosecution witnesses with greater care and circumspection.

28. This Court in *Vadivelu Thevar v. State of Madras*⁸, laid down certain guiding principles classifying witnesses into three distinct categories and elucidated the approach to be adopted in assessing their credibility, which are reproduced hereinbelow: -

“11.....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:

⁸ AIR 1957 SC 614.

- (1) Wholly reliable.**
- (2) Wholly unreliable.**
- (3) Neither wholly reliable nor wholly unreliable.**

12. 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.....”

(Emphasis Supplied)

29. The FIR of the incident came to be lodged on the basis of the oral statement of Gobariya (PW-2) being the father of deceased Ramesh. However, he did not support the prosecution case and was declared hostile. In the FIR, there is no reference to the presence of Puniya (PW-12), the so-called eye witness at the crime scene. The prosecution came out with a pertinent case in the FIR that the incident started with the ten accused persons named in the FIR trying to destroy the hut of Jagya (PW-3).

30. Jagya himself was examined by the prosecution as PW-3 and in his evidence, he alleged that the

incident took place at about 11:00 pm. His *Tapra* (temporary hutment) was being damaged. He heard the voice of Bhima who was hurling abuses. Ignoring the commotion, he continued to sleep inside the hut. He failed to identify any of the assailants during his deposition and was declared hostile.

31. What is significant to mention here is that the witness (PW-3) did not mention about the presence of his son, Puniya (PW-12), at the place of the incident.

32. Puniya (PW-12) alleged that he was at his house at about 9:00 pm when he heard the sounds of commotion and thus, he ran towards the field of Gopya where the incident was happening. He claims to have seen Govardhan armed with a sword, Kannaiya (accused-appellant) armed with an axe, Bhima armed with a *Falia* and Raja Ram armed with a *Farsa* (spade), assaulting Ramesh. On seeing the assault, he ran back and told Gobariya (PW-2), father of Ramesh, about the assault. Thereafter, Madho Singh (PW-5) came and lifted Ramesh who was later taken to the hospital. After the initial assault had happened, the remaining accused persons also came there. On seeing the condition of Ramesh, the

accused persons commented that he had died and then went away.

33. In cross-examination, the witness (PW-12) stated that his house was at a distance of about one furlong from the house of Ramesh. There was a gap of about 100 meters between his house and the field of Gopya where the incident took place. He feigned ignorance regarding the political leanings of the accused persons and claimed that he did not know which political party they belonged to. He also feigned ignorance as to the reason due to which the incident happened. He stated that when he saw Ramesh being attacked, he ran towards him.

34. The witness (PW-12) further stated in his cross-examination that after the accused persons had left, he reached the place of incident after a gap of about one hour, whereupon he found Ramesh lying at the spot. The witness (PW-12) admitted that he did not pick up Ramesh, and that it was Madho Singh (PW-5) who picked up and carried Ramesh to the hospital.

35. The witness (PW-12) emphatically stated that the incident took place in the field of Gopya, and that he alone had gone to the spot, unaccompanied by anyone else. As soon as he reached the place of

incident, a hue and cry broke out and the assault started and then he (PW-12) immediately rushed back to his home.

36. It can clearly be elicited from the evidence of Puniya (PW-12), that the incident did not take place at the hut of Jagya (PW-3) as is alleged in the FIR and rather happened in the field of Gopya. This is a very significant contradiction which has a direct bearing on the very foundation of the prosecution case, because the genesis of the occurrence and so also the place of the incident as set out in the FIR have both been materially altered in the version of Puniya (PW-12), whose testimony was heavily relied upon by the trial Court as well as the High Court in arriving at the finding of guilt against the accused persons. The witness (PW-12) did not acknowledge the presence of Madho Singh (PW-5) at the place of incident when the actual assault was taking place. Rather, he emphatically stated in response to the suggestion given in the cross-examination that only he (PW-12) had reached at the place of incident after hearing the hue and cry and no one else was present there.

37. Ramesh was a cousin brother of Puniya (PW-12). The conduct of Puniya (PW-12) in failing to make

any effort to protect Ramesh from the assault being made by the assailants and the rank apathy shown by him in not assisting Ramesh after he had been belaboured and had fallen down, creates a grave doubt regarding the witness's (PW-12) presence at the crime scene and his claim of having seen the accused persons assaulting Ramesh. The discrepancy in the FIR and the version of the witness (PW-12) regarding the number of the accused persons who were armed with sharp weapons is also crucial. The omission of the name of Puniya (PW-12) in the FIR lodged by Gobariya (PW-2) is also a fact which impinges upon the *bona fides* of the prosecution story which claims that Puniya (PW-12) had also seen the accused persons assaulting Ramesh.

38. The incident took place in a small village where everyone is known to each other. Puniya (PW-12) was closely related to Ramesh. Thus, had he actually seen the incident, this fact was bound to crop up in the discussion among the family members and in that event, the name of Puniya (PW-12) as an eye witness to the alleged assault would definitely have reflected in the FIR. It is true that the reason for the said

material omission could not be elicited because the first informant, Gobariya (PW-2), turned hostile. However, the fact that the name of a family member who claims to have seen the assault, was not mentioned in the FIR is undoubtedly a very vital omission which would have a bearing on the veracity of the prosecution case.

39. We may hasten to add here that Puniya (PW-12) is not the scribe of the FIR, but the omission of his name in the FIR gains significance considering the fact that the incident started with the accused persons trying to damage the hut of Jagya (PW-3), father of Puniya (PW-12). In this background, the omission of his name in the FIR is a material one.

40. Thus, we have no hesitation in concluding that Puniya (PW-12), falls within the category of a “*wholly unreliable witness*”.

41. Now, we shall proceed to discuss the evidence of Madho Singh (PW-5), the other eye witness of the prosecution, whose testimony has been believed by the trial Court as well as the High Court.

42. The witness (PW-5) stated that it was night time, and he was at his house. The accused-appellant and nine co-accused persons namely Babu Lal, Gyan

Singh, Bhima, Birjo, Raja Ram, Ram Swaroop, Govardhan, Keshar Singh and Asha Ram had come to the house of Narsingh, which the witness (PW-5) claims to be adjacent to his house. However, it may be noted that the site inspection plan (Exh. P-6) does not record the house of Narsingh near the house of Madho Singh (PW-5). He alleged that Bhima was having a *Faliya*, Govardhan had a sword, Kannaiya (accused-appellant) was having an axe, Gyan Singh and all others were having sticks in their hands. Ramesh had come to his house and they were smoking *Bidis*. The witness (PW-5) and Ramesh tried to placate the accused persons and requested them to refrain from violence but, the accused Bhima along with the other co-accused persons launched an assault on Ramesh.

43. The assailants belaboured Ramesh and then ran away. The witness (PW-5) claimed that while Ramesh was being beaten by the assailants, he kept on standing at a distance of about 2 steps. He feigned ignorance as to the reason why the assailants had caused injuries to Ramesh. The next day, police came to the spot and inspected the site and collected soil and other materials from the place of incident.

44. The witness (PW-5) stated in cross-examination that his house and the house of Ramesh are at a significant distance from each other. He further stated that the houses of the accused persons were also located quite far from his residence. Ramesh had come to his house to smoke a '*bidi*', and while they were sitting inside, the accused persons were hurling abuses from the pathway passing in front of his house. When Ramesh went to stop the accused persons, they launched an assault on him. The accused persons neither caused injury nor did they try to damage any hut belonging the witness (PW-5). When Ramesh was being assaulted, no one other than the witness (PW-5) was present at the spot. His father was not present there. He was alone in his hut and his wife had gone to her house.

45. In reply to a pertinent question put to the witness (PW-5), in cross-examination, he admitted that while the incident continued and a hue and cry was being raised, no one from the village came to the place of incident. He did not raise his voice to call anyone for help. He admitted that he was associated with the Congress party whereas, the accused persons were affiliated to the Bhartiya Janta Party.

46. He also admitted that there was a feud going on between the accused persons and the complainant party, because of party politics and they were not on speaking terms.

47. Following important facts can be discerned from the evidence of witness: -

- i. PW-5 totally denied the fact that the accused persons were damaging some hut when the incident started. This version is totally contrary to the story set out in the FIR.
- ii. The witness (PW-5) emphatically denied the presence of anyone else at the crime scene while the incident was happening. This admission creates a doubt on the presence of Puniya (PW-12) at the crime scene thereby damaging the case of prosecution.
- iii. The witness (PW-5) admitted political rivalry between the accused persons and the complainant party.
- iv. The witness (PW-5) claimed that Ramesh had randomly come to his house for smoking *Bidi*.
- v. The witness (PW-5) did not allege that the incident took place in the field of Gopya.

vi. The witness (PW-5) claims that he was standing at a distance of two steps while Ramesh was being indiscriminately assaulted by no less than ten assailants armed with sharp and blunt weapons. In spite thereof, PW-5 escaped unscathed without receiving even a single injury which creates a grave doubt on his very presence at the crime scene at the time of the incident.

48. Clearly thus, the very substratum of the prosecution case regarding the genesis of the incident and the place of occurrence has been materially altered in the testimony of the witness (PW-5).

49. Madho Singh (PW-5) was an attesting witness to the site inspection plan (Exh. P-6) wherein, the fact regarding the incident having taken place in the field of Gopya is recorded. His version that the incident started when the assailants started acting aggressively in front of the house of Narsingh is contradicted by the fact that there is no reference to any such house in the site inspection plan (Exh. P-6) to which Madho Singh (PW-5) himself was an attesting witness.

50. It may be noted here that the name of the father of the witness (PW-5) is also Narsingh. However, the witness (PW-5) did not state that the accused persons came to his house and started acting aggressively.

51. The witness Madho Singh (PW-5) also stated that there is a field of Bholiya in front of his house. However, the site inspection plan (Exh. P-6) to which he was an attesting witness, does not mention about the existence of field of Bholiya within the vicinity of the house of Madho Singh (PW-5). On the contrary, the site inspection plan records (Exh. P-6) that the incident took place in the field of Gopya.

52. In stark contravention to the version as deposed by the witness (PW-5), the FIR records the fact that the incident started when the accused persons were trying to destroy the hut of Jagya (PW-3) and Ramesh tried to intervene on which, the accused persons beat him up. The theory put forth by the witness (PW-5) that Ramesh was casually sitting at his house smoking *Bidi* when the incident took place is materially different from the initial version of the prosecution as set out in the FIR.

53. Therefore, the entire case of the prosecution which is based on the testimony of Madho Singh (PW-

5) and Puniya (PW-12) becomes doubtful. Both these witnesses have given highly contradictory versions regarding the manner in which the incident started (genesis of the occurrence) and the place where Ramesh was assaulted. Each denies the presence of the other at the crime scene in their depositions.

54. At the cost of repetition, we may reiterate that contrary to the version of Madho Singh (PW-5) that he alone lifted Ramesh and took him to the house, the FIR records that the first informant, Gobariya (PW-2) and, Madho Singh (PW-5), together picked up Ramesh and brought him home.

55. Six accused persons who were named by Madho Singh (PW-5) in his deposition as having jointly assaulted Ramesh along with the convicted co-accused were acquitted by the trial Court, and their acquittal was never challenged any further. Thus, we find the testimony of Madho Singh (PW-5) to be doubtful and he falls within the category of a “*partially reliable witness*”. To act upon his testimony, the prosecution would be required to provide independent and credible corroborative evidence. However, it can be clearly seen that the prosecution has failed to provide any corroborative

evidence to render the testimony of (PW-5) trustworthy or reliable.

56. The FIR was lodged on the day next to the incident wherein, only two accused namely Govardhan and accused-appellant were alleged to be armed with sharp weapons. Since the fact regarding Madho Singh (PW-5) having assisted in the process of lifting Ramesh and taking him to his house in an injured condition is mentioned in the FIR, it can safely be presumed that the witness (PW-5) must have told the entire details of the incident to the informant (PW-2). In such event, the informant (PW-2) while narrating the incident to the police, would not have missed out on the fact that four assailants namely Bhima, Govardhan, Raja Ram and accused-appellant were holding sharp weapons and used the same to assault Ramesh.

57. The site inspection plan (Exh. P-6) does not record availability of any source of light at the crime scene and hence, it is hard to believe that the alleged eyewitnesses (PW-5 and PW-12) could have accurately identified the particular weapon being used by the accused to assault Ramesh. Both the alleged eyewitnesses (PW-5 and PW-12) have tried to

suppress the genesis of occurrence and also changed the crime scene and hence, their presence at the spot becomes doubtful.

58. In this regard, reference may be made to the decision of this Court in ***Pankaj v. State of Rajasthan***⁹, wherein it was emphasised that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Court held as under: -

“25. It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt.”

(Emphasis Supplied)

59. Similarly, in ***Bhagwan Sahai and Another v. State of Rajasthan***¹⁰, this Court reiterated that

⁹ (2016) 16 SCC 192.

¹⁰ AIR 2016 SC 2714.

once the prosecution is found to have suppressed the origin and genesis of the occurrence, the only proper course is to grant the accused the benefit of doubt.

The Court observed as follows: -

“8. The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-by in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case.”

[Emphasis Supplied]

60. In the present case, the prosecution has failed to establish the genesis of the occurrence and the place of incident with any degree of certainty. The FIR speaks of the demolition of a hut by the accused

persons near the residence of Jagya (PW-3). However, Madho Singh (PW-5) shifted the crime scene to nearby his own house and denied any demolition. Puniya (PW-12) claimed that the assault occurred in the field of Gopya. Both of these witnesses (PW-5 and PW-12) have contradicted each other as well as the documentary evidence, *viz.* the site inspection plan (Exh. P-6). They do not acknowledge each other's presence at the crime scene. Such conflicting versions cannot co-exist within a credible narrative. The suppression of the genesis of occurrence and the shifting of the place of incident demolish the very substratum of the prosecution case.

61. In this background, we are of the firm opinion that it would not be safe to uphold the conviction of the accused-appellant and the three co-accused namely, Govardhan, Raja Ram and Bhima, as the testimony of the so-called eyewitnesses Madho Singh (PW-5) and Puniya (PW-12) is full of contradictions and inherent improbabilities.

62. Since the entire case of the prosecution has fallen, all four convicted accused persons are entitled to be extended the benefit of doubt. Hence, we are inclined to extend the benefit of this judgment, in

exercise of our powers under Article 142 of the Constitution of India, 1950 to the three co-accused, namely, Govardhan, Raja Ram, and Bhima, who have not challenged their conviction before this Court.

63. As a result of the above discussion, we feel persuaded to hold that the conviction of the appellant and the three co-accused, namely, Govardhan, Raja Ram and Bhima as recorded by the trial Court and affirmed by the High Court does not stand to scrutiny. Resultantly, the impugned judgments are set aside.

64. Accordingly, the appellant and the said co-accused are acquitted of the charges. They shall be released from custody forthwith, if not wanted in any other case.

65. The appeal is accordingly, allowed.

66. Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANJAY KAROL)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
OCTOBER 17, 2025.