
(2013) 01 SHI CK 0053
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 398 of 2012

Shri Chand Ram Alias Khem Chand	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 428

Citation : (2013) CriLJ 1415 : (2013) 1 ShimLC 411

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : S.R. Chauhan, for the Appellant; P.K. Sharma, Additional Advocate General with Mr. R.P. Singh, Assistant Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—These four appeals are being disposed of by this judgment as they arise out of the same judgment and order of conviction against all the four accused. The learned trial Court has convicted them to undergo sentence for offences as committed by them as under:-

All the sentences were directed to run concurrently and benefit of Section 428 of the Code of Criminal Procedure (hereinafter "Cr. P.C.") was granted to all the accused.

2. The case of the prosecution in brief is that on 24.8.2008 at about 9.15 PM, complainant H.C. Hem Raj PW 1 along with HHC Kanshi Ram PW 2 was on patrolling duty. They noticed a pickup van with registration No. HP-64-0340 parked on the road side. The complainant went towards the vehicle to see as to why it was parked there. He noticed that accused Hamender and Chand Ram were on the front seat whereas Prem Singh and Neter Singh were sitting in the back portion of the vehicle. The complainant questioned them as to why the vehicle was parked unauthorizedly on the road side. This did not go down well with the accused; they pounced upon him, beat him and pulled him inside the

van. Thereafter they drove the van towards Kanda road where they beat him up mercilessly by kicking and punching him. The complainant shouted for help at which PW 4 Sant Ram, PW 3 Bal Krishan, Liaq Ram, Sher Singh and Ashok Kumar reached the spot and rescued him from the clutches of the accused. His shirt was torn by the accused who threatened to kill him. The complainant sustained injuries on his nose and mouth. His statement Ext. PW 1/A u/s 154 of Cr. P.C. was recorded by the police party headed by PW 17 Baldev Thakur, Additional SHO. The complainant was referred for medical examination to CHC Dharampur, where he was examined and his X-ray revealed fracture of his nasal bone. PW 14 Dr. Amit Aggarwal proved MLC Ext. PW 14/B, radiologically examined by PW 5 Dr. Sandeep Jain. PW 5/A was the X-ray film revealing the fracture of the nasal bone of the complainant, Ext. PW 5/B, which is the final opinion of the doctor, records that the nasal bone of the complainant was fractured. FIR No. 107/08 (Ext. PW 11/A) was registered at Police Station Dharampur. The vehicle was impounded and investigation followed thereafter.

3. PW 16 Additional Superintendent of Police Mr. Ramesh Chand Pathania also investigated the case. PW 5 Dr. Sandeep Jain and PW 14 Dr. Amit Aggarwal proved the injuries of the complainant. The prosecution examined 17 witnesses in all. Two witnesses were examined in defence. On the evidence recorded, the learned trial Court convicted all the accused for offences as noted supra.

4. The appellants have challenged this judgment on a number of grounds which inter alia include that PW 3 Bal Krishan had stated that when he inquired from the complainant as to how he sustained injuries, he stated that he had fallen down from a scooter. PW 6 Chain Singh stated that he had heard PW 1 Hem Raj screaming after he had fallen from the scooter. PW 4 Sant Ram is the brother of the complainant and he was doing the business of selling illicit liquor in a Khokha and all the villagers including Neter Singh had made a complaint against him and later on his khokha(s) was demolished. PW 17 Baldev Thakur had stated that the relations between the accused and the injured persons were strained because a complaint had been made by Neter Singh against Sant Ram PW 4, brother-in-law of the complainant for encroaching on government land on which he was carrying on the business of selling the illicit liquor. (I find that this suggestion has been denied by him in cross examination.) It was also urged that witnesses are related to the injured being his close relatives and that the other witnesses produced are the police personnel who cannot be relied upon. The area where the incident took place was populated but no independent witness was associated.

5. According to the learned counsel appearing for the appellants, these major contradictions coupled with the fact that the witnesses are partisan are sufficient to establish that the incident did not take place at all and that it was the outcome of enmity with the accused.

6. Adverting to the statements of witnesses, PW 1 complainant Hem Raj states that he was posted as Head Constable at police station Dharampur. On 24.8.2008 he along with PW 2 HHC Kanshi Ram were on patrolling duty at around 8.45 PM

in Sukhi Johri at Dharampur bazaar. PW 2 HHC Kanshi Ram was walking 15-20 steps ahead of him. One pickup van No. HP-64-0340 was parked at Sukhi Johri and he went near the vehicle where he found that driver of the vehicle/accused Hamender and one Chand Ram were sitting in the front while Prem Singh and Neter in the back portion of the pickup van. He asked them as to why they had parked the vehicle there, whereupon they pounced upon him, pushed him into the vehicle and drove towards Kanda road. After reaching there, they stopped the vehicle and started beating him up by kicking and punching him. When he raised alarm PW 4 Sant Ram, Liaq Ram, PW 3 Bal Krishan PW 15 Sher Singh and one Ashok Kumar came there on a scooter of one Mukesh. They rescued him from the clutches of the accused. In the thrashing which he received, his uniform shirt and vest were torn. He was abused and threatened by the accused that he would be killed. He received injuries on his nose and mouth and blood started oozing from his nose. The police visited the spot and his statement u/s 154 of Cr. P.C. was recorded. He was rushed to CHC Dharampur where he was medically examined, was subjected to X-ray examination. He then states that Neter Singh and Prem Singh pushed him into the vehicle and Chand Ram caught hold him from his arm and pushed him into the vehicle and closed the window. Prem Singh and Neter Singh boarded the vehicle from the rear side. At Kanda, when pickup van was stopped, Prem Singh caught hold him from the back and pinned his arm while Neter Singh punched him on his nose, resulting in grievous injuries. His supplementary statement was recorded on 18th November, 2008 when he stated that when he was posted at Pangri, his father had constructed a house in village Kanda (udan) where at that time, Neter Singh had threatened his father that in case he unloads the construction material, he would be dealt with appropriately. There was an altercation between Neter Singh and Chand Ram and his parents when he told that they would not allow his parents to raise any construction. In cross examination, he states that his family is residing in Kanda since 2006 which is at the distance of about 5 K.M. from Dharampur. Sant Ram PW 4 and Sher Singh PW 15 are related to him as his brothers-in-law. He denies that scooter PB-35-G-0921 which is blue in colour belongs to him and that he was using this scooter for travelling from his house to the police station and back. He also denies that the scooter is parked in front of his house and on the fateful day, he was travelling on the scooter from Sukhi Johri to Kanda and since the lights of his scooter were not working, he was following the scooter of one Mukesh. He also denies that it is because of this, he lost his control and fell down from the scooter near the house of Chain Singh and that he was lifted by Mukesh and due to this reason, he received the injuries. He denies that he was drunk on that day and that he was beaten up by Ashok. Ashok's brother Dalip was posted in police station Dharampur, in those days. He denies any personal grudge with Ashok. He denies any violent quarrel between his father and mother and Neter Singh and Chain Singh, but states that there was a verbal altercation between them. He also denies that he had financed Sant Ram to run a shop inside the Khokha or that it was built on the government land or Sant Ram was carrying on the business of selling the illicit liquor. He admits that Dhain Singh is also his

relative.

7. PW 2 HHC Kanshi Ram states that he was on patrolling duty on the fateful day. The complainant was 15-20 steps behind him and was checking pickup van No. HP-64-0340, which was parked on the side of the road. Some persons were sitting in the vehicle. He says that he noticed that some people pulled the complainant into the vehicle and drove it towards Kanda. He tried to chase it but accused fled from the spot. On this, he intimated the police station on telephone about the incident. PW 17 S.I. Baldev Thakur, PW 9 C. Kamal Kumar and HHC Rajesh Kumar rushed to Sukhi Johri and then towards Kanda where the complainant made a statement Ext. PW 1/A u/s 154 Cr. P.C. in his presence. He corroborated the incident as to what happened to the complainant. In cross examination, he states that he telephoned the police station from his mobile No. 94180-60832 on phone No. 264032. He admits that there are residential houses at Sukhi Johri and the vehicle was parked just short off of the shops at Sukhi Johri. He denied that complainant Hem Raj was having a blue coloured scooter. It was lonely place and some people had gathered there but he could not state their names. He says that it was dark.

8. PW 3 Bal Krishan states that he is resident of Kanda. On 24.8.2008 he heard some noise at about 8 p.m. and when he came out of his house, he saw Hem Raj with blood oozing from his nose. He inquired as to how this had happened, he (the complainant) stated that he had fallen from the scooter and sustained these injuries. He was declared hostile and cross examined. He identified the scooter bearing registration No. PB-35-G-0921 and stated that he had not seen Hem Raj wearing any uniform.

9. PW 4 Sant Ram states that he is resident of village Kanda. On 24.8.2008 at around 9.30 PM he was in his house with his cousin Sher Singh and they were sitting in the kitchen when they heard some noise/shouting. Both of them came out and ran towards the road and saw that the accused were beating up complainant Hem Raj, who were kicking and punching him. Laiq Ram, Bal Krishan PW 3 and Sher Singh PW 15 intervened and rescued the complainant from the clutches of the accused. After some time, Mukesh DW 1 and Ashok Kumar intervened and tried to save the complainant. Blood was oozing out from the nose of the complainant. His uniform i.e. his shirt and vest were torn by the accused. Before leaving the spot, the accused threatened him that they would kill him. He denies that he was selling illicit liquor along with some other articles from his Khokha and due to this reason, drunkards used to create a scene thereby shouting and yelling. He denied that any complaint was made against him. He admits that khokha adjoining the rain shelter was on the government land. He also denies that Neter Singh accused had made a complaint against him, pursuant to which eviction proceedings were initiated against him and later on the khokha was demolished. He says that he removed the khokha himself and constructed another khokha adjoining the land of Dhian Singh. He also denies that he filed a complaint against Chand Ram and Neter Singh with regard to the

theft from his khokha and stated that in his presence Ashok Kumar did not beat the complainant. Neter Singh had punched the complainant on his nose.

10. PW 6 Chain Singh states that around one year back (from the date his statement was recorded), he was carrying on construction work of his house and he engaged Neter Singh as a contractor. At around 8.30 PM he saw one vehicle owned by accused Hamender generally used for transportation of vegetables near the rain shelter at Anji Kanda. After hearing the commotion when he reached the spot he saw only Sher Singh and Raju (uncle of Sher Singh) and one policeman. When he reached the spot, he saw that the persons, who were quarrelling at the spot, had already left. He had heard from Hem Raj complainant that he had sustained injuries due to falling of from the scooter. He was declared hostile and cross examined at length.

11. PW 15 Sher Singh states that on the fateful day, he was present in the house of his uncle (Taya) at Kanda. At around 9/9.15 PM he heard a commotion. He along with Sant Ram PW 4 went to the road and found the accused beating up Hem Raj. The accused were kicking and punching the complainant, who was in police uniform. He tried to save him from the accused and in the scuffle, the shirt of the complainant was torn and blood was oozing from his nostrils. Ashok and Mukesh came to the spot on the scooter and tried to save the complainant. The accused persons while leaving the spot threatened the complainant to do away with his life. In cross examination, he states that it was a dark night and it was not possible to clearly identify the accused, but they could be identified by their voices on the spot. He did not notice the blood oozing from the nasal of the complainant immediately, but later on observed that blood was oozing from the nose of the complainant and was spreading on his face.

12. PW 17 Inspector Baldev Thakur, SHO was posted as SI/SHO, P.S. Dharampur in the year 2008. He states that on 24.8.2008 a telephonic information was received from PW 2 HHC Kanshi Ram that the complainant was taken away in vehicle No. HP-15-0340, towards Kanda. On this, he along with H.C. Rajesh Kumar and C. Kamal went to Kanda where Hem Raj was bleeding from his nose and his statement Ext. PW 1/A was recorded u/s 154 Cr. P.C. He thereafter investigated the case. The complainant was referred for medical examination etc. In cross examination, he states that when he reached Kanda, he saw the complainant in a torn shirt and vest. He did not take into possession the shirt and vest immediately, but they were taken into possession on the next day.

13. DW 1 Mukesh states that he was having a saw mill in Sukhi Johri, Dharampur. On 24.8.2008 it was Janmashatami and at around 7.30 PM when he was going to his residence on his scooter, Hem Raj met him at Sukhi Johri and asked him to drive in front of the complainant who was driving scooter No. PB-35G-0921 and asked this witness to show him the light of his scooter as there were no lights on the scooter of the complainant, who was drunk at that time. When they reached near the pond at Kanda, Hem Raj fell from his scooter and suffered injuries as the distance between his scooter and that of the complainant

had increased. He lifted him and found that blood was oozing from his nose. On this the complainant became infuriated and began shouting, abusing and saying that as to why light was not properly shown to him (complainant). Ashok Kumar was his pillion rider. When the complainant raised a hue and cry, Chain Singh, Neter Singh, Bal Krishan and Laiq Ram rushed to the spot and when Hem Raj did not stop abusing, Ashok Kumar administered 2/3 slaps to Hem Raj due to which more blood started oozing from his nose. The other accused except Neter Singh were settling their accounts of sale of vegetables which they had sold at Chandigarh at a place which was slightly further from the place of occurrence. They asked the complainant as to why he was abusing them. Thereafter all of them left for their residences. He denies the presence of PW 4 Sant Ram and PW 15 Sher Singh etc. He says that Hem Raj was inimical with the accused because his brother-in-law (wife's brother) Sant Ram had constructed a khokha on the government land about which they had complained to the Tehsildar and the khokha was removed. He also says that Sant Ram used to sell illicit liquor and all the villagers including the accused had objected to these activities. He says that the scooter of Hem Raj complainant bearing No. PB-35G-0921 was parked in the house of Hem Raj and mark D-1 and Mark D-2 are its photographs. In cross examination, he says that he came to the Court by bus. He does not know who is the owner of this scooter, but he had seen the complainant riding it. The complainant was drunk at the time of the incident. He states that he has no record regarding the complaints made by them to the Tehsildar or any other official with respect to illicit sale of liquor by Sant Ram.

14. DW 2 Neter Singh says that he is contractor. He clicked photographs Ext. DW 2/A and Ext. DW 2/B in which the scooter was shown parked inside the house of the complainant. In cross examination, he says that he did not make any complaint either in writing or oral after the registration of the First Information Report. He does not know about the name of the owner of the scooter.

15. At this juncture, it would be fruitful to consider the evidence of PW 5 Dr. Sandeep Jain who states that on 29.8.2008 when he was posted as Radiologist at Regional Hospital, Solan he conducted the radiological examination of PW 1 complainant Hem Raj and he observed the fracture of nasal bone. He proved on record X-ray film Ext. PW 5/A and his opinion Ext. PW 5/B and states that these injuries can be possible by kicking and punching. He admits that if somebody falls down in that event also, such injuries can be possible, but then there must be corresponding injuries on the other parts of the body. He also says that there are over writings on the X-ray slip.

16. PW 14 Dr. Amit Aggarwal states that he was posted as Medical Officer at CHC Dharampur. On 25.8.2008 at the request of the police made vide Ext. PW 14/A he examined Hem Raj and found fresh bleeding present from both nostrils and tenderness on bridge of nose. He advised X-ray and rendered his opinion, on the report Ext. PW 5/B, that the probable duration of the injuries is 0 to 6 hours with a blunt weapon. He proved Ext. PW 14/B which is the MLC issued by him. This is

the entirety of the evidence by leading other evidence of investigation on record which requires consideration.

17. Ext. PW 14/B is the MLC of the complainant. According to it, he was brought on 25.8.2008 at mid night with alleged history of assault and he was having fresh bleeding from both nostrils, tenderness on bridge of nose and the final opinion would be given only after receiving the radiological report.

18. In C. Muniappan and Others Vs. State of Tamil Nadu, holding:-

71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (vide Sohrab and Another Vs. The State of Madhya Pradesh, ; State of U.P. Vs. M.K. Anthony, ; Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, ; State of Rajasthan Vs. Om Prakash, ; Prithu @ Prithi Chand and Another Vs. State of H.P., ; and State rep. by Inspector of Police Vs. Saravanan and Another,

In Paramjeet Singh @ Pamma Vs. State of Uttarakhand, the Supreme Court holds:-

Standard of proof

10. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjectures. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the

evidence more closely, lest the shocking nature of the crime induces an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide *Kashmira Singh Vs. State of Madhya Pradesh*, ; *The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh*, , *Shankarlal Gyarasilal Dixit Vs. State of Maharashtra*, , *Mousam Singha Roy and Others Vs. State of West Bengal*, and *Aloke Nath Dutta and Others Vs. State of West Bengal*, .

.....

20. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

(at pp. 445, 446, & 449)

It is in the light of these decisions, the judgment of the learned trial Court is to be considered.

19. The sequence of the narration of facts of the prosecution witnesses is that (i) the complainant and HHC Kanshi Ram were on patrolling duty. PW 2 HHC Kanshi Ram was walking ahead of the complainant PW 1 H.C. Hem Raj, who found the accused sitting in the pickup van and when he inquired from them as to what they were doing there, they pounced upon him, dragged him in the vehicle and drove it to Kanda, where they kicked and punched him whereupon PW 3 Bal Krishan, PW 4 Sant Ram, PW 6 Chain Singh, PW 15 Sher Singh rushed to the spot on hearing his cries and rescued him; (ii) It is also the case of prosecution that DW 1 Mukesh also reached the spot; (iii) PW 2 HHC Kanshi Ram immediately informed the police station by his mobile phone whereupon the party consisting of PW 17 Inspector Baldev Thakur rushed to the spot, recorded the statement of PW 1 complainant Hem Raj and then took him to the police station. He was immediately examined by PW 14 Dr. Amit Aggarwal, who found injuries on his nose and he referred him for radiological examination which was conducted by PW 5 Dr. Sandeep Jain and found that the complainant had sustained nasal bone fracture.

20. In opposition to this, the case of the defence is that (i) the complainant was riding scooter No. PB-35G-0921. He had asked DW 1 Mukesh to guide him by the light of his scooter as the scooter of the complainant did not have the lights; (ii) he was drunk at that time and because of the distance between the two scooters, the complainant lost control and fell down; (iii) thereupon he became infuriated, started shouting, abusing and yelling. According to DW 1 Mukesh, he (the complainant) was slapped by one Ashok Kumar his pillion rider which aggravated the injured; (iv) this case was outcome of the complaint having been made by the accused against PW 4 Sant Ram, who was brother-in-law of the complainant and pursuant to this complaint, the khokha (temporary stall) of PW 4 Sant Ram was removed from the government land; (v) Sant Ram was carrying on the business of selling the illicit liquor and all the drunkards used to congregate and

create the problems for all and sundries.

21. On the evidence of hostile witnesses, the Supreme Court C. Maniappan's case (supra) holds:

69. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (vide Bhagwan Singh Vs. The State of Haryana, ; Shri Rabindra Kumar Dey Vs. State of Orissa, ; Syad Akbar Vs. State of Karnataka, and Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh,).

70. In State of U.P. Vs. Ramesh Prasad Misra and another, , this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde Vs. State of Maharashtra, ; Gagan Kanojia and Another Vs. State of Punjab, ; Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P., ; Sarvesh Narain Shukla Vs. Daroga Singh and Others, ; and Subbu Singh Vs. State by Public Prosecutor, .

Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

In the instant case, some of the material witnesses i.e. B. Kamal (PW. 86); and R. Maruthu (PW. 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law.

Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

(at p. 3736)

22. Adverting to the proved facts on record I find that (a) there is no written complaint or evidence of any oral complaint having been made against PW 4 Sant Ram by any of the accused; (b) there is no order of any authority or evidence about any pending proceedings with respect to (i) the illegal construction/encroachment by Sant Ram; (ii) any complaint or proof of any complaint/case pending against Sant Ram with respect to the sale of illicit liquor; (c) there is no proof that scooter No. PB-35G-0921 is owned by the complainant.

23. It is after excluding these facts that the other evidence on record has to be considered, though as urged falsity of the defence set up, would not per se establish the guilt of the accused.

24. Adverting to the case of the prosecution, I find that there is no major contradiction in evidence of the witnesses. To reach this conclusion, I find that evidence of the prosecution witnesses corroborates each other on material facts. Minor contradictions qua the incident or assault do not disprove the case of the prosecution. It is urged that since the prosecution witnesses are partisan and related to each other their evidence cannot be relied upon. This submission cannot be accepted in its generality. The rule to be applied is one of careful scrutiny and not of rejection outright. The sequence after the forcible abduction of PW 1 complainant Hem Raj is that he was pushed into the pickup van, driven to Kanda and then kicked and thrashed there. Thereafter, PW 2 HHC Kanshi Ram immediately telephoned the police station, PW 17 Inspector Baldev Thakur immediately rushed to the spot to ascertain what was going on, he immediately took the complainant to the hospital where he was examined by PW 14 Dr. Amit Aggarwal and then on the next day by PW 5 Dr. Sandeep Jain, who conducted the radiological examination revealing grievous injuries in the nasal bones of the complainant. I also note that when he was taken for medical examination, there is nothing in MLC of the complainant Ext. PW 14/B to indicate that he was drunk. There is no question to PW 14 Dr. Amit Aggarwal that the complainant was in fact drunk. The First Information Report has been lodged with promptness and his medical examination has also been conducted immediately (though urged wrongly that it was conducted the day after), as the record shows that it was 12.30 AM in the mid night of the same day. This lends credence to the version of the complainant. On the question that the witnesses are partisan, it is but usual that the persons who know each other/related to the complainant are usually the first who rush to his aid. True that PW 3 Bal Krishan has turned hostile when he states that on asking the complainant that how the blood was oozing out from his nose, he (the complainant) told him that he had fallen from his scooter and sustained the injuries. PW 6 Chain Singh also stated that when he reached the spot, he did not see any quarrel. DW 1 Mukesh is categorical when he says that the complainant was drunk and fell down from the scooter. But evidence of DW 1 Mukesh cannot be accepted for the reason that ownership of the scooter which the complainant was supposed to be riding has not been established, neither the factum of accident nor the fact that the complainant was in fact driving or riding any scooter.

25. On the question of probability of defence, I need not reiterate the principles that evidence of the defence witnesses requires equal treatment. In *Dudh Nath Pandey Vs. State of Uttar Pradesh*, the Supreme Court holds:

19....Defence witnesses are entitled to equal treatment with those of the prosecution. And Courts ought to overcome their traditional instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses...

(at p. 916)

In *Sanjiv Kumar and another Vs. State of Punjab*, the Supreme Court holds:-

23. It has been observed that defence witnesses are often untruthful, but that is not to say that in all cases defence witnesses must be held to be untruthful, merely because they support the case of the accused. The right given to the appellant to explain the incriminating circumstances appearing against him serves a purpose and cannot be ignored outright. In every case the court has to see whether the defence set up by the accused is probable, having regard to the totality of the facts and circumstances of the case. If the defence appears to be probable, the court may accept such defence. This is primarily a matter of appreciation of evidence on record and no straitjacket formula can be enunciated in this regard.

(at p. 337)

26. To similar effect is the judgment of the Supreme Court in *State of Haryana Vs. Ram Singh*, , in which it is held:

19....Incidentally, be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one-the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution...

(at p. 362)

The Supreme Court aptly summed up this principle in *State of U.P. Vs. Babu Ram*, . This follows the fundamental postulate of criminal jurisprudence as laid down by the Supreme Court in *Aher Raja Khima Vs. The State of Saurashtra*, holding:-

9. Now it may be possible to take two views of this statement but there are two important factors in every criminal trial that weight heavily in favour of an accused person: one is that the accused is entitled to the benefit of every reasonable doubt and the other, an off-shoot of the same principle, that when an accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false...

(at p. 221)

At this juncture, in *Aher Raja Khima*'s case the Supreme Court also holds that merely because the witnesses are police personnel, it does not attach any taint to their evidence. Lastly in *C. Magesh and Others etc. Vs. State of Karnataka*, the Supreme Court lays down the fundamental principles for appreciation of evidence and holds:-

45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasize, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled *Suraj Singh Vs. State of*

U.P., has held:

14. 21.....The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy;.....the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation..." 46. In a criminal trial, evidence of the eyewitness requires a careful assessment and must be evaluated for its credibility. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses.

(at p. 655)

27. At this juncture, I advert to the defence taken by the accused that the injury was in fact caused to the complainant by falling from the scooter and was not inflicted on him which is the case of prosecution based on tainted evidence.

28. In Ruli Ram and Another Vs. State of Haryana, the Supreme Court holds:

7. So far as the acceptability of evidence is concerned, the trial court and the High Court analysed the evidence in detail and have held it to be plausible and acceptable, and that it suffers from no infirmity. It has been noted that in a faction-ridden village, independent witnesses, as submitted by the learned counsel for the accused-appellant, are difficult to get. Enmity is a double-edged sword. While it can be a basis for false implication, it can also be a basis for the crime. The court has to weigh the evidence carefully and it after doing so, holds the evidence to be acceptable, the accused cannot take the plea that it should not be acted upon. When a plea of false implication is advanced by the accused, foundation for the same has to be established. We do not find any reason to differ from the courts below on the factual aspects.

(at p. 698)

29. In Sucha Singh and Another Vs. State of Punjab, the Court holds:

13. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make a legations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

(at p. 650)

Relying upon the decision in Dalip Singh and Others Vs. State of Punjab, , Guli

Chand and Others Vs. State of Rajasthan, , the Court then proceeds:

16....We may also observe that the ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh Case in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses...

(at pp. 650-651)

The Court thereafter holds that this principle has been reiterated in Masalti Vs. State of U.P., holding that plea as urged is one of falsus in uno falsus in omnibus which does not apply to criminal trial in India. It is merely a rule of caution. All that it requires is that in such cases testimony may be disregarded and not that it must be disregarded. It is not a mandatory rule of evidence for its rejection as a whole. The Court then holds that material discrepancies are those which are not normal and not expected of a normal person. In case of normal discrepancies they do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi and Others Vs. State of Bihar, . The Court then proceeds:-

20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See: Gurbachan Singh Vs. Satpal Singh and others,]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. Vs. Ashok Kumar Srivastava,]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Another Vs. The State (Delhi Administration),]. Vague hunches cannot take place of judicial evaluation.

A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in *Stirland v. Director of Public Prosecution* (1944 AC (PC) 315) quoted in *State of U.P. Vs. Anil Singh*, .

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

21. In matters such as this, it is appropriate to recall the observations of this Court in *Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra*,

.... The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt..... The evil of acquitting a guilty person light-heartedly as a learned author (Glanville Williams in "Proof of Guilt") has sapiently observed, goes much beyond the simple fact that, just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless....." "..... a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....

22. The position was again illuminatingly highlighted in State of U.P. Vs. Krishna Gopal and Another, . Similar view was also expressed in Gangadhar Behera and Others Vs. State of Orissa, .

(at pp 653-654)

30. In Vidyadharan Vs. State of Kerala, the Court holds:

8....When a plea is taken of false implication, courts have a duty to make deeper scrutiny of the evidence and decide the acceptability or otherwise of the accusations...

(at p. 220)

In Arjun Mahto Vs. State of Bihar, the Court holds:

13. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make a legations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

6. In Dalip Singh and Others Vs. State of Punjab, it has been laid down as under:

26.A witness is normally to be considered independent unless he or she springs

from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

The above decision has since been followed in *Guli Chand and Others Vs. State of Rajasthan*, in which *Vadivelu Thevar Vs. The State of Madras*, was also relied upon.

13. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh* case in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366 para 25)

25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar Vs. The State of Rajasthan*, . We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.

14. Again in *Masalti Vs. State of U.P.*, this Court observed: (AIR pp. 209-10, para 14)

14....But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

15. To the same effect are the decisions in *The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh*, , *Lehna vs. State of Haryana* (2002)3 SCC 76, and

Gangadhar Behera and Others Vs. State of Orissa, .

The above position was also highlighted in Babulal Bhagwan Khandare and Another Vs. State of Maharashtra, and in Salim Sahab Vs. State of Madhya Pradesh, .

(at pp 607-608)

In Suresh Vs. State of Haryana, the Court holds that the plea of false implication must have a foundation and further holds:

14. In view of the cogent and credible evidence of the injured witnesses there is no scope for interference in these appeals. Though false implication was pleaded, the same is without any foundation. Clearly, all the persons who have suffered injuries would not shield the actual culprit and implicate an innocent person when false implication is pleaded. The foundation has to be laid on the same. In the instant case that has not been done.

(at p. 542)

31. I must also notice the decision in Sajjan Sharma Vs. State of Bihar, holding:

22. In this country, when while correctly naming the accused in cases of serious offences, it is endemic that some other innocent persons or even such of the members of the family of the accused who might not be present at the time of commission of offence are also roped in and falsely implicated...

(at p. 211)

32. I need not multiply the precedent any further. It is the rule of caution which this Court has to follow/apply in considering the entirety of the evidence. No doubt as urged merely falsity of defence, if established on record, would not constitute a ground for conviction but at the same time there must be some plausible evidence if not conclusive evidence regarding false implication. The motive set out for false implication is the enmity with the brother-in-law (Sant Ram) of the complainant who was dealing in selling illicit liquor and was an encroacher of the government land. The complaints have been made against him and because of this fact the complainant and the witnesses harboured a grudge against the accused. Accepting this to be true, there must some shred of proof/evidence, if again not conclusive, to prove on record any complaint oral or in writing against Sant Ram or any order passed by the competent authority evicting him from the land or initiating any action for selling the illicit liquor. I find none proved on the record.

33. Now adverting to the second aspect as to whether the injury had been caused to the complainant by falling from the scooter. Again what I find is that only the number of scooter has been mentioned and no attempt has been made whatsoever to establish on record that this scooter was owned by the complainant or had been loaned to him by any acquaintance or family member for use and travelling or that he was actually riding it. These facts were not

difficult to prove. In these circumstances, it becomes difficult to accept the defence which though having been urged is not established by an iota of evidence on record. The promptness with which the FIR was lodged (which factor is again urged against the prosecution since the complainant was a police official), the medical examination conducted immediately and the injuries lend credence and acceptability to the evidence of the prosecution. On the question that the complainant was drunk and because of this he fell from the scooter, all that I need say is that the doctor PW 14 Dr. Amit Aggarwal has stated nothing. In this eventuality, I find no merit in these appeals, which are accordingly dismissed. Before proceeding further, I deem it fit and proper that report of the Probation Officer be called for.