PETITIONER:
RANBIR AND ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT26/04/1973

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
MATHEW, KUTTYIL KURIEN

CITATION:
1973 AIR 1409 1974 SCR (1) 102
1973 SCC (2) 444

ACT:
Evidence-Appraisal in cases of party factions.

HEADNOTE:
The appellants were convicted under Ss. 148 and 325/149 I.P.C. Dismissing the appeal to this Court by special leave,
HELD : ((1) In cases of party factions, there is generally speaking a tendency on the part of the prosecution witnesses to implicate some innocent persons along with the guilty ones, but normally where the general substratum of the occurrence cannot be held to arouse any reasonable doubt or suspicion about its having taken lace, then the prosecution witnesses, provided they are held to have witnessed the occurrence and to be in a position to identify the assailants, are not ordinarily to be assumed to have left out the actual offenders or the guilty persons. Although the witnesses for the prosecution are, in such circumstances, prone to exaggerate the culpability of the actual assailants as also to extend the participation in the occurrence to some possible innocent members of the opposite party as well, the court has to sift the evidence and after a close scrutiny with anxious care and caution to try to come to a judicial conclusion as to who out of the accused persons can be safely considered to have taken part in the assault. [105E-G]
(2)The maxim falsus in uno falsus in omnibus is not a sound rule to apply in the conditions in this country and, therefore, it is the duty of the court in cases where a witness has been found to have given unreliable evidence in regard to certain. particulars to scrutinise the rest of his evidence with care and caution. If the remaining evidence is trustworthy and the substratum of the prosecution case remains intact then the court should uphold the prosecution case to the extent it is considered safe and trustworthy. [105G-H; 106A]
Deep Chand v. State of Haryana, [1959] 3 S.C.C. 890, followed.
(3) The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case: it' is, therefore,

essential that the Investigating Officer should be asked specifically about the, delay and the reasons therefore. [106 B-C]

(4) This Court does not, normally speaking, undertake the appraisal of evidence in an appeal under Ar. 136 of the Constitution. [107B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal 5 of 1970

Appeal by special leave from the judgment and order dated July 22, 19166 of the Punjab and Haryana High Court in Criminal Appeal No. 836 of 1964.

N. N. Goswamy and S. N. Mukherjee, for the, appellants.

H. S. Marwah and R. N. Sachthey for the respondent.

The Judgment of the Court. was delivered by

DUA, J.-In this appeal by special leave, five appellants have challenged their conviction under ss. 148 and 325/149, I.P.C. and sentence of rigorous imprisonment for two Years on each count with additional fine of Rs. 200/- each under ss. 325/149, I.P.C. and in default of payment of fine further rigorous imprisonment for six months, up-

103

held by a learned Single Judge of the Punjab and Haryana High Court on appeal from the judgment and order of the Sessions Judge, Ferozepur.

Originally, 13 persons including the five appellants were tried by the Sessions Judge, Ferozepur under ss. 148, 307/149 and 364, I.P.C. According to the broad features of the prosecution story, on August 11, 1963, Dharamvir P.W.9 started from his village Ramsara for his land in the area of Azamgarh some time between 7 and 8.00 a.m. He was driving a bullock cart and with him were his wife Nathi, P.W.5, his brother's wife Ankori, P.W.6, and a small girl Guddi as also one Chandu, in the said cart. Walking behind the cart was his brother Jaidev, P.W.4. When they had covered a distance of about 1 1/2 miles from the village Ramsara and were near the land of Ranbir appellant three jeeps overtook their cart from behind. One jeep stood in front of the cart and obstructed its passage : another jeep stood by the side of the cart towards the east and the third one was behind it. All the 13 accused persons armed with various weapons emerged from the three jeeps. We are not concerned with the other accused persons who are not before us. Ranbir appellant was stated to be carrying a spiked dang known as sela. Laxmi appellant was stated to be armed with a kuthari Hanuman appellant was armed with a gun and the remaining appellants with lathis. Some of the accused persons pulled down Dharamvir from the cart. All of them started be labouring him with their respective weapons. Jaidev, brother of Dharamvir, intervened in order to save his brother, but he was also be laboured by Ranbir and Laxmi appellants along with another accused person, with their respective weapons. Shrimati Ankori, wife of Jaidev and Shrimati Nathi, wife, of Dharamvir, who tried to protect their respective husbands against further injuries, were also be laboured by some of the accused persons. Tota Ram P.W.7 and Hardwari P.W.8 of Ramsara village also witnessed the occurrence. After causing injuries both to Dharamvir and Jaidev, the accused persons are stated to have lifted them both and put into one of the jeeps which was driven away towards the east. In the field of Ranbir, Jaswant appellant is stated to have wrapped a gunny bag round the knees, of Dharamvir and Laxmi appellant to have placed a five seer iron weight under the

knee. Ranbir appellant and Sahi Ram accused are then stated to have struck hammer blows on Dharamvir's knee. Thereafter, Jaidev was removed to a distance of about 20 karams from his brother Dharamvir and given similar injuries on his knee by Ranbir, Jaswant, Laxmi appellant and Sahi Ram accused. After causing them these injuries, Dharamvir and Jaidev Were again put in one jeep with the object of cutting them into pieces and throwing them in the pucca canal. The three jeeps are then stated to have been driven away towards Abohar. It is said that the pucca canal lay ahead of Abohar towards Fazilka. On the way when the jeeps reach a katcha canal at a distance of about 11 miles from Abobar towards Ramsara, one of the jeeps returned to Ramsara, whereas the remaining two jeeps went ahead towards Abohar. When the jeeps containing Dharamvir and Jaidev reached near the, police station Abohar, the two injured person$ raised alarm. The occupants of the jeep thereupon dropped Dhiaramvir and Jaidev on the road side

104

at a short distance from the police station and themselves drove back. Within a few minutes, A.S.I., Bhagat Singh and some other police men arrived from the police station. A.S.I., Bhagat Singh, recorded Jaidev's statement which was sent to the police station and on the basis of that statement F.I.R. Exh. P.G./2 was recorded. Jaidev and Dharamvir were removed to the civil hospital, Abohar. A short while thereafter, Smt. Ankori and Smt. Nathi along with Guddi also reached the Civil Hospital, Abohar. The doctor in charge was, however, not available but the compounder gave first aid to the four injured persons, Who were then taken to Fazilka Hospital where Dr. Parkash Kaur of the Civil Hospital advised Dharamvir's immediate removal to the Civil Hospital, Ferozepur. Smt. Ankori, Smt. Nathi and Jaidev stayed on in the Civil Hospital, Fazilka, but Dharamvir was removed to Ferozepur.

The Sessions Judge on appraisal of the evidence led-in the case and after examining all the relevant circumstances noticed the non-inclusion of the name of Moman accused in the F.I.R. and concluded that it was- doubtful if Jaidev had merely forgotten to mention his name at that stage because, (i) Tota Ram P.W.7 had also not supported the prosecution version with respect to Moman's participation, (ii) Hardwari Lal P.W.8, Smt. Nathi P.W. 5 and Smt. Ankori P.W.6 had also failed to identify Moman as one of the culprits, and (iii) Jaidev P.W.4 and Dharamvir, P.W.9 had also not ascribed any particular injury to this accused. Moman was accordingly given benefit of doubt and acquitted of all the charges. The remaining 12 accused persons were, however, held guilty of the offences charged and convicted as already noticed.

On appeal the Punjab High Court Went into the relevant facts to which the attention of the learned Single Judge hearing the appeal was invited. It was argued in the High Court that the testimony of the eye witnesses was not worthy. of acceptance because of the admitted enmity between the parties and of the various discrepancies in their depositions. It was contended that in view of the highly strained relations between the parties there was a danger of false implication and if the Court could not separate truth from false hood, all the appellants were entitled to the benefit of doubt and to be acquitted. The learned Judge then went into the evidence and came to the conclusion that the testimony of the eye witness was consistent With regard to the participation of Ranbir, Hanuman, Jaswant and Laxmi appellants in the occurrence in question and excepting

Hardwari P.W. 8, all the eye witnesses had deposed to the participation of Hari Ram appellant as well. In spite of the fact that all the eye witnesses ha I supported the prosecution allegation that the five appellants were accompanied by 8 other persons, Hardwari P.W.8, Smt. Nathi, P.W.5 and Smt. Ankori P.W.6 were not in a position to swear if the other accused persons who had appealed to the High Court were the associates of the aforementioned five accused persons. In face of this state of the evidence when admittedly there was considerable bad blood between the two parties, the High Court considered it extremely unsafe to hold anyone other than the five appellants to be guilty of participation in the assault, particularly when three out of the six eye witnesses bad not identified them

105

at the trial. The medical evidence, according to the High Court, was consistent with the prosecution case against the appellants and the F.I.R. was of considerable corroborative value.

It was contended in the High Court on behalf of the accused persons that the statement of Jaidev on the basis of which F.I.R. was recorded had not been taken down on the spot, but had been recorded later in the hospital where Jaidev had been removed. Even accepting' this contention, the High Court found it difficult to believe that within such a short time Jaidev who had been badly injured would be able to fabricate such a detailed and complicated version of the incident. Accepting the substratum of the prosecution case, the learned Single Judge after scrutiny of the testimony of the eye witnesses gave benefit ,of doubt to the other appellants before him except the five appellants Who have appealed to this Court. As observed earlier, the appeal of the present five appellants was dismissed by the High Court, but that of their other co-appellants was allowed.

In this Court, Shri N. N. Goswami again took us through certain passages from the evidence of some of the eye witnesses and also referred us to certain passages from the judgments of the trial court and of the High Court for the purpose of showing that the testimony of the eye witnesses relied upon by the High Court is wholly unacceptable. According to the appellants' submission there is a chance of false implication of all the accused persons with the result that the present appellants should also, have been given the benefit of doubt. The refusal on the part of the trial court and of the High Court to give such benefit of doubt to the appellants, according to the learned counsel, has resulted in grave failure of justice.

No doubt, in cases of party factions, there is generally speaking, a tendency on the part of the prosecution witnesses to implicate some innocent persons also along with the guilty ones, but normally where the general substratum of the occurrence cannot be held to arouse any reasonable doubt or suspicion about its having taken place, then the prosecution witnesses, provided they are held to have witnessed the occurrence and to be in a position to identify the assailants, are ordinarily not to be assumed to have left out the actual offenders or the guilty persons. Although the witnesses for the prosecution are in such circumstances prone to exaggerate the culpability of the actual assailants as also to extend the participation in the occurrence to some possible innocent members of the opposite party as well, the court has to sift the evidence and after a close scrutiny with anxious care and caution to try to come to a judicial conclusion as to who out of the accused persons can be safely considered to have taken part in the

assault. As pointed out in Deep Chand v. State of Haryana(1), the maxim falsus in uno falsus in omnibus is not a sound rule to apply in the conditions in this country and therefore, it is the duty of the Court in cases where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinise the rest of his evidence with care and caution. If the remaining evidence hi trust-worthy and the substratum of the prosecution case remains intact, then the court should

(1) [1969] (3) S.C.C. 890.

106

uphold the prosecution case to the extent it is considered safe and trust-worthy. In our view the evidence believed by both the courts with respect to the five appellants before us is acceptable, and, if accepted, it certainly proves their guilt beyond reasonable doubt. The appellants' counsel also faintly contended that Tota Ram P.W.7 was examined by the police after considerable delay, the suggestion being that his evidence must be looked at with suspicion. We are not impressed by this submission. The fact of delayed examination of Tota Ram should, in our opinion, have been put to- the Investigating Officer so as to enable him to explain the undue delay, if any, in examining Tota Ram. The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the Investigating Officer should be asked specifically about the delay and the reasons therefore. Tota Ram, P.W.7 has stated that it was out of fear of the accused persons that he had hidden himself for four days. He left his house without telling any member of the family about it. The Investigating Officers were not asked any question about the time of examination of Tota Ram. It may be mentioned that Bhagat Singh, Assistant Sub-Inspector, C.I.D. Interrogation Centre, was attached to police station, Abohar in August, 1963 and it was he, who having heard cries like "Mardiya Mardiya" from outside the police station, had rushed to the spot and found Jaidev and Dharam Vir lying injured on the road. On August 12, 1963, Parphul Singh, Inspector, C.I.D. took over investigation from Bhagat Singh. Parphul Singh has appeared ;is P.W.14. Though Bhagat Singh has been cross-examined kit some length, no question has been put to him with respect to the examination of Tota Ram P.W.7. May be that he had nothing to do with it. The cross-examination of Parphul Singh, P.W. 14 is, however, extremely brief and he too has not been questioned about any delay in examining Tota Ram.

A faint suggestion has also been made that although according to the prosecution version, there were three jeeps engaged in the commission of the offence, tracks of only one jeep were traceable, with the result that the prosecution story as a whole must be considered to be untrustworthy. This argument was also raised in the trial court but repelled in the following words

> "The learned counsel forgets that the three jeeps were not supposed to run side by side. If the jeeps were running one behind the other, practically one track of the jeep could be noticed, and no more. Moreover, A.S.I. Bhagat Singh deposed on the point from memory. His site plan does not indicate that the track was of only one jeep, nor he has referred to a note in the case diary, to support his

assertion on the point. Thus there is no discrepancy between the eye witnesses and A.S.I. Bhagat Singh on the point."

This point does not seem to have been pressed in the High Court and indeed even in the grounds of appeal, it does not seem to have been specifically raised.

107

In our opinion, the trial court after very extensively dealing with the entire evidence rightly upheld the substratum of the' prosecution story. No doubt, it held some others also guilty but that does not by itself show that the trial court was not right in convicting the appellants. The High Court went into the points urged before it. We are wholly unable to find any infirmity in its judgment which would justify interference under Article 136 of the Constitution. The conclusions of the High Court on facts after examining and considering the evidence and the material on the record, are final unless some serious defect in its appraisal of evidence or otherwise suggesting failure of justice or grave injustice is pointed out. The arguments raised before us relate to mere appraisal of evidence which, normally speaking, as a practice this Court does not undertake under Article 136 of the Constitution. No special or extraordinary feature has been brought out justifying departure from the normal practice.

The appeal must, therefore, fail and is dismissed.

V.P.S. Appeal dismissed.

108