

## 1980 Supp Supreme Court Cases 489 : 1981 Supreme Court Cases (Cri) 428

(BEFORE R.S. SARKARIA AND O. CHINNAPPA REDDY, JJ.)

STATE OF U.P. . . Appellant;

*Versus*

SHANKER . . Respondent.

Criminal Appeal No. 105 of 1974, decided on October 24, 1980

**Criminal trial — Facts and situation — It cannot be laid down as a hard and fast rule that in villages rural people do answer call of nature before sunrise — It depends on habit of the witness, his condition of health, the season etc.**

(Para 18)

**Criminal trial — Appreciation of evidence — It is unfair to condemn any omission by Investigating Officer if no opportunity was given to him at the trial to explain it — CrPC, 1973, Sections 156, 157, 172 and 173**

(Para 26)

**Criminal trial — Appreciation of evidence — Medical evidence regarding weapon used cannot be impeached if no weapon has been discovered**

(Paras 30 and 31)

**Criminal trial — Falsus in uno falsus in omnibus — It is usual that evidence though true in the main would have an embroidery of untruth — Duty of court to separate the truth from the untruth — Testimony to be rejected only if this is not possible and the truth and falsehood are inextricably intertwined**

(Para 32)

**Criminal trial — Witnesses — Reliability — Testimony of a witness, if on the whole truthful, cannot be discarded merely because he has not revealed the truth in respect of a trivial matter or has expressed ignorance in respect of certain collateral facts**

(Paras 32 and 38)

**Criminal trial — Time of death — Margin of one hour either way should be allowed when village rustic-witnesses depose about the time, as they do not have precise sense of time — No generalisation possible that in villages rural people usually go to answer call of nature before sunrise and, therefore, the mere fact that when the murder took place the villagers were returning after attending to the call of nature, does not show that the time was before sunrise — It depends upon the individual; the state of his health, particularly of the digestive system; weather etc.—Rustic-witness — Medical Jurisprudence**

(Paras 18 to 20)

Appeal allowed

R-M/5057/SSR

The Judgment of the Court was delivered by

**R.S. SARKARIA, J.**— This appeal by special leave is directed against a judgment, dated May 16, 1973, of the High Court of Allahabad. It arises out of these facts.



**2.** The respondent Shanker (hereinafter referred to as "the accused") is a resident of Village Gauri, Police Station, Hamirpur. He had deserted his wife about 5 years before the occurrence in question. Ever since, his wife was living with her parents. The accused had an evil eye on Panchania, deceased, wife of Manbodhan (PW 2). About a year before her murder, the accused had attempted to ravish her in a field. On

returning to the village, she complained about her molestation, to her husband, Manbodhan. Manbodhan approached the village headman, Raghunath who convened a Panchayat to consider Panchania's complaint. The Panchas called the accused, and reprimanded and warned him to behave in future. Manbodhan did not report the matter to the police to avoid defamation of his wife which is generally a concomitant consequence of initiation of a police investigation and prosecution. In spite of this stern admonishment administered by the Panchayat, the accused did not give up his evil designs to force Panchania to quench his sexual lust.

**3.** On February 16, 1972 in the afternoon, the accused again made overtures to the deceased and cut indecent jokes with her. She spurned the same and retaliated with a shower of abuses.

**4.** On February 17, 1972 at about 9 a.m., the deceased was returning home from Mahabiran Ka Talab where she had gone to prepare cow-dung cakes. She was carrying in her lap her 3-4 year old daughter, Jaidevi. She had hardly covered a distance of 20 to 25 steps from the Talab when the accused armed with a *pharsa* approached and assaulted her from behind. The accused inflicted severe *pharsa* blows on her in quick succession. Before she could shout for help she dropped dead to the ground in a pool of blood. Some of the blows struck by accused, caused injuries to the child, also, who was in her lap and had fallen to the ground with the mother. At this juncture, her husband, Manbodhan, PW 2, was coming with his cattle from the village habitation towards the Talab. Manbodhan was closely followed by Chhotu (PW 7) and Chhotey Lal (not examined). Laxminarain (PW 5) and Girdhari (PW 6) were also coming from the Talab side towards the habitation of the village after attending to the call of nature. All these persons saw the accused inflicting *pharsa* blows on the deceased. They challenged the accused, who, after committing the crime, entered the neighbouring *arhar* field of Laxminarain, and ran away carrying the bloodstained *pharsa* with him. While so running away, the accused was seen by Surya Kumar (PW 8) who, was there easing himself in that *arhar* field. After a fruitless chase of the accused, Manbodhan returned to the scene of offence and found that life was extinct in his wife. He picked up his injured child, Jaidevi. When he was contemplating to go the Police Station, Sumerpur for making a report, he was told by Sabha Jeet Chaukidar that the Station House Officer of Sumerpur was present and investigating a dacoity case in the neighbouring village, Atrahiya. Manbodhan thereupon got the report, Ex. Ka-1, written to his dictation by Dwarka Prasad (PW 1), and carried it to Village Atrahiya which is one mile from Village Gauri. On reaching Atrahiya PW 2 did not find the Police Sub-Inspector there. He met some constables there who told him that the Sub-Inspector had gone to the *har* (fields?). A constable then went to *har* to find out the Sub-Inspector. After waiting for some time then, PW 2 returned to Village Gauri with a constable and found that the Sub-Inspector had also reached there. PW 2 then handed over the written report to the Sub-Inspector. After making his endorsement on the report (Ex. Ka-1), the Sub-Inspector returned the same to PW 2 and directed the witness to carry the same to the police station for registration of the case.



PW 2 then accompanied by a constable went to the Police Station, Sumerpur, 6 miles away, and handed over the written report (Ex. Ka-1) in the police station at 2.30 p.m. The injured child was also lent by the Sub-Inspector with the constable for medical examination. After registering the case on the basis of Ex. Ka-1, the police station staff sent the inquest register to Village Gauri where it was received by PW 12, at 4 p.m. The inquest was held by PW 12 between 4 to 5.30 p.m. Thereafter, the dead body was

despatched to Hamirpur for post-mortem examination.

**5.** Dr Bhuneshwar Prasad (PW 3) examined the child Jaidevi, on February 17, 1972, at 4.30 p.m., and found three incised wounds on her forehead. The injuries were simple and in the opinion of the doctor, had been caused with some sharp-edged weapon.

**6.** Dr Vimal Kumar Tandon (PW 4) held autopsy on the dead body of Smt Panchania on February 18, 1972 at 11 a.m. and found these injuries:

1. Abrasion 3 cm × 2 cm over left knee in lower part.

2. Horizontal incised wound with contused margins 10 cm × 1 cm × 8.5 cm left back in the left inter-scapular region with tailing on outer side reaching up to the left supra spinture region.

3. Horizontal incised wound with contused margins, 15 cm × 5 cm × 8 cm, starting from the left cheek cutting the left lobula of ear completing and going up to midline on occipital region of neck cutting the muscles, great vessels, vertical ramus of left mandible, 1st cervical vertebra and spinal cord underneath.

4. Oblique incised wound with contused margins, 19 cm × 4 cm × 8 cm, on the back of middle of neck starting from outer border of left sterno-mastoid muscle and going up to the middle of right ear cutting it completely except a tag of skin by which the right ear was hanging.

On internal examination the doctor found that the first, second cervical, the spinal cord and great vessels of the neck had been cut under Injuries 3 and 4. The stomach was found empty. The lower intestines were full of gases and large intestines were full of faecal matter and gases. The death was due to shock and haemorrhage as a result of Injuries 3 and 4. In the opinion of the doctor the deceased could have met her death on February 17, 1972 at 9 a.m. and the injuries found on her dead body could have been caused with any *pharsa* or a heavy sharp-edged weapon. The injuries were sufficient to cause death in the ordinary course.

**7.** The plea of the accused was one of plain denial of the prosecution case. He alleged that he had been falsely implicated by the prosecution witnesses on account of grudge, and further stated: "I live with my maternal uncle Sheo Dayal. Dwarka Pradhan, Shiv Gopal and others jointly set fire and constructed Gandhi Chabutra on the land of my maternal uncle. They were convicted. They are influential persons. The witnesses are under the influence of the Mukhia. For these reasons I have been falsely implicated."

**8.** In defence, the accused examined Lakhan (DW 1), resident of Village Chhirka. He claims to be a collateral of the father of deceased. His evidence was to the effect that Panchania was of loose character, and a Panchayat was held about two years ago in the month of Magh or Pus (1970). Manbodhan attended that Panchayat and said that Panchania used to go away from the house in the night and should be brought there and reprimanded, otherwise he would kill her. Thereupon, Murari brother of Panchania went to Village Gauri to advise her.



**9.** The Sessions Judge convicted the accused under Section 302 of the Penal Code, 1860 and sentenced him to death. He further found the accused guilty under Section 324 IPC in respect of the injuries caused to the child, Jaidevi. On appeal, the High Court set aside the conviction and acquitted the accused-respondent. Hence this



appeal by the State.

**10.** The mainstay of the prosecution case was the evidence of the 4 eyewitnesses viz. Manbodhan (PW 2), Laxminarain (PW 5) Girdhari (PW 6) and Chhotu (PW 7). The evidence of Surya Kumar (PW 8) which was to the effect that he had seen the accused running away from the scene of occurrence with bloodstained clothings and carrying a bloodstained *pharsa* through the *arhar* field of Laxminarain (PW 5), was also relied upon as supporting evidence. PW 9 was the headman of the village. He was examined to prove that one year before her murder, a complaint was made to the Panchayat by Manbodhan that the accused had molested his wife, and thereupon the Panchayat reprimanded the accused.

**11.** The trial Judge found that Laxminarain (PW 5) and Girdhari Lal (PW 6) had "no reason to perjure". He found that their evidence coupled with that of the headman (PW 9) was sufficient to hold that about one year before the occurrence in question, on the complaint of Manbodhan, the accused was called and reprimanded for outraging the modesty of Panchania, deceased. The trial Judge also observed that Laxminarain and Girdhari are Brahmins, while Manbodhan and Shanker are Ahirs; and these two Brahmins had no reason to espouse the cause of Manbodhan against the accused, that they had no motive or deep-seated rancour to implicate Shanker in this heinous crime. He further noted that the lentil field of Laxminarain was situated towards the west at a distance of 100 yards from the scene of occurrence, and as such, his presence on the spot could not be regarded as improbable; that this witness had given the reason as to what brought him to the scene of occurrence; that PW 5 had given the minutest details about the occurrence and he remained unshaken in cross-examination.

**12.** Similarly, according to the trial Judge Girdhari (PW 6) "has absolutely no ill will against the accused"; and he stood the test of cross-examination. The trial Judge found him also a reliable witness.

**13.** As regards PW 7, the trial Judge said that his statement has to be taken with a grain of salt.

**14.** The trial court further found that PW 8 was an educated, independent and wholly reliable witness.

**15.** The trial Judge also accepted the evidence of PW 1, PW 2 and PW 12 about the circumstances in which, and the time at which the report (Ex. Ka-1) was written. He rejected the contention of the defence that the occurrence took place early in the morning. He accepted the evidence of the Investigating Officer that the inquest reports were completed by 5.30 p.m., and rejected the stray statement of Chandra Pal (PW 10) in cross-examination that the dead body was despatched from the spot at 11.30 a.m. with the observation that it was a slip of tongue etc. on the part of this illiterate rustic. He firmly recorded the finding that the occurrence had taken place at about 9 a.m. He also accepted the evidence of PW 2, Manbodhan. He rejected the evidence of DW 1 as "simply a tissue of lies". In the result, he convicted the accused as aforesaid.



**16.** The High Court rejected the evidence of the prosecution witnesses; for reasons which may be summed up as below:

(i) The eyewitnesses have deposed that the murder was committed near about 9 a.m. PWs 5 and 6 happened to see the murder being committed because they were returning after attending to call of nature, while PW 8 was actually in the process of

easing himself inside Laxminarain's field when he saw the accused running away after committing the murder. For these witnesses to go to ease themselves at about 9 a.m. would be quite abnormal and extraordinary because it is a matter of common experience that people in the rural areas usually go to answer the call of nature quite early before sunrise. The very circumstance that these persons were coming back after answering the call of nature indicates that the murder was committed quite early before sunrise when it was dark.

(ii) The stomach of the deceased was empty, her large intestines were full of gases and faecal matter. This would lead to the inference that perhaps she had not eased herself. The emptiness of the stomach, and the presence of gases and faecal matter in the intestines is also consistent with the inference that the murder was committed possibly before sunrise and not as late as 9 a.m.

(iii) The third circumstance which indicates to the same conclusion is that according to PW 10, Chandra Pal, a witness to the inquest, the dead body was despatched from the spot at 11.30 a.m. This witness was not declared hostile and was not cross-examined by the Public Prosecutor when he made that damaging statement. The statement of PW 10 with regard to the time of despatch of the dead body from the village cannot be reconciled with the statement of the Investigating Officer (PW 12), that the dead body was sent to the mortuary after the completion of the inquest at about 5.30 p.m.

(iv) The police station is 6 miles from Village Gauri but the investigating officer was available at a distance of one mile at village Atrahiya where he was staying for a day earlier. It was not even the plea that someone went to the investigating officer in Village Atrahiya and thereupon the investigating officer, leaving the investigation of the dacoity case behind, immediately came to Village Gauri, recorded statement of the witness (PW 2) and held an inquest and despatched the dead body. The record of the proceedings taken by the investigating officer at the spot runs into pages and pages. It is not difficult to surmise in the circumstances that he must have taken a good four hours or so to finish up these things. This will fit in with the statement of the independent witness, Chandra Pal, that the dead body had been packed and sealed and sent at 11.30 a.m. The statement of PW 10 on this point is reliable while that of investigating officer, Shukla is not, as he attempted to forge four documents, also.

(v)(a) In the inquest report there is no mention that Panchania's hands were found smeared with cow dung but in the copy of the inquest report in the case diary there is a mention that the hands of the deceased had been found smeared with cow dung. (b) In the post-mortem examination report, the medical officer noted that the hands of the deceased were soiled with the cow dung. (c) Fraudulent insertion of this fact was made in the copy of the inquest report by the investigating officer with a view to strengthen the prosecution story that the deceased was returning after preparing cow-dung cakes at the Mahabiran Ka Talab. (d) There was no mention in the FIR



that she was returning after preparing cow-dung cakes. (e) The hands of the deceased might have been got plastered with cow dung by the investigating officer. (f) A large number of witnesses have been examined by the prosecution but none of them has deposed that Panchania's hands were smeared with cow dung. The investigating officer has not deposed about it. (g) "It is quite true that we cannot come to conclusion in a categorical manner on the basis of the evidence before us, but if the



investigating officer did so, it could be well within the realm of possibility, looking to his dishonest conduct, if we may say so, during the course of investigation.”

(vi)(a) According to the autopsy report, the injuries found on the deceased were incised wounds with contused margins. The second injury was an incised wound, 1 cm × 5 cm × 8 cm, starting from the left cheek, cutting the lobule of the left ear completely and going up to the midline of the occipital region of the neck, cutting all muscles, the greater vessels, the left mandible, the first cervical vertebra and the spinal cord underneath. Such an injury could have been caused by a weapon which is archlike or circular and not by a straight weapon like a *pharsa*. (b) The prosecution has not established from the evidence of the medical officer that this injury could be the result of two blows.

(vii) The four witnesses have evaded to tell the truth on two aspects of the matter: (a) The witnesses admitted the fact that Chhotey and Chhotu (PW 7) are the sons of deceased's mother's sister. (b) The witnesses suppressed the fact that one Sheo Dayal is the real maternal uncle of the accused. This Sheo Dayal had prosecuted Raghunath (PW 9) for arson. PW 9 admitted that he was prosecuted and convicted for arson but was acquitted in appeal.

(viii) PW 8 was unreliable because— (a) on reaching the scene of murder, he did not tell the informant Manbodhan, that he had seen the accused running away with bloodstained *pharsa* and bloodstained clothings through the *arhar* field of Laxminarain. (b) In the FIR, lodged by Manbodhan, PW 8 has not been mentioned as a witness of any post-occurrence fact.

**17.** None of these arguments, in our opinion, was sound enough to discard wholesale the evidence of the eyewitnesses. We propose to deal with them *ad seriatim*.

*Regarding No. (i)*

**18.** In the opinion of the High Court, the occurrence took place much before sunrise when it was dark and not at 9 a.m. The first reason given in support of this conclusion is that in villages rural people usually go to answer the call of nature before sunrise. In our opinion, no such generalization is possible. It all depends on the habit of the individual, the state of his health, particularly of his digestive system, weather and so many other factors. There was thus nothing abnormal in the version of PWs 5 and 6, that at about 9 a.m. they were returning to the habitation of the village after attending to the call of nature. Moreover, these witnesses were not pointedly asked about the time when they had come to the fields, and as to whether, apart from answering the call of nature, they did anything else, which fields they had visited, how far from the village did they go and how long they remained out in the fields. It is in evidence that the *arhar* field of Laxminarain (PW) is at a distance of only 100 yards from the place of murder. The village habitation is another 100 yards from the scene of offence. This indicates that PW 5 had probably gone to a distance of more



than 200 yards from the habitation of the village. He was returning after easing himself. It will therefore not be wrong to say that he must have come out of the village at about 8 or 8.30 a.m. In any case, when these village rustics say that it was 9 a.m., there could be a margin of one hour either way. PW 5 stated in cross-examination that “the sun had risen a little at the time of occurrence; some persons had got engaged in work and some persons had already returned after attending the call of nature”. That what these witnesses say was 9 a.m. might be 8 a.m. or so. But

the point of substance was whether the occurrence took place after sunrise when there was light, or before daybreak when it was dark. The eyewitnesses are all unanimous on the point that the occurrence took place after sunrise.

*Regarding No. (ii)*

**19.** The second reason given by the High Court for holding that the occurrence took place in the early morning when it was dark, is that there were gases and faecal matter in the large intestines of the deceased "which indicated that perhaps she had not eased herself". This circumstance, in our opinion, was not determinative of the time of her death. It cannot be isolated from two other tell-tale circumstances, namely, that at the time of her murder the deceased was carrying in her lap a 3-year old infant, and that her hands were found by the doctor, who conducted the autopsy, smeared with cow dung. Ordinarily, no mother would carry her 3-year old baby out into the fields before daybreak when it was dark. If the cow dung on her hands had not been fabricated — and we shall presently discuss there is no reasonable ground to hold that it had been fabricated — this would also be a firm pointer to the conclusion that the deceased, shortly before the fatal assault on her, was preparing cow-dung cakes. No person would prepare cow-dung cakes in darkness.

*Regarding No. (iii)*

**20.** This whole argument has been built on a sentence appearing at the end of the deposition of PW 10, that "the dead body had been despatched from the spot at 11.30 a.m." It is true that no attempt was made by the Public Prosecutor in re-examination or by cross-examining the witness with the permission of the court, to show that this time given by the witness was due to an inadvertent mistake. Even so, the fact remains that PW 10 was an illiterate rustic who could not be supposed to have a precise sense of time. The opinion of the trial court, which had the opportunity of seeing the demeanour of PW 10 in the witness box, to the effect, that this time about the despatch of the dead body could not be accepted at its face value because it was the result of a slip of tongue etc. on the part of the simple illiterate rustic, could not be lightly brushed aside.

**21.** The investigating officer (PW 12) stated in clear term that at village Gauri, Constable Mewa Lal informed him at 11 o'clock that a murder had taken place in Village Atrahiya. The witness thereupon reached the place of occurrence at about 11.20 a.m. when PW 2 met him and handed over the written report (Ex. Ka-1) to him there. After making an endorsement on Ex. Ka-1, he sent it per PW 2, escorted by a constable to the police station.

**22.** The witness then prepared the site plan. At about 4 p.m., Constable Mewa Lal etc. came and brought the inquest register. The witness then held the inquest and prepared the inquest between 4 and 5.30 p.m., and despatched the dead body from the village to the District mortuary under the escort of Constable Mithai Lal and Chowkidar Sabhajit.



**23.** Chowkidar Sabhajit was examined on affidavit. He stated that he had escorted the dead body from the village to the mortuary. No question was put to him in cross-examination to show that the dead body was despatched from the village at 11.30 a.m. and not at 5.30 p.m., although he was a better informed person than PW 10 about this fact.



**24.** The surrounding circumstances also lend assurance to the version of PW 12 about the time of the despatch of the dead body. The first of these circumstances is that the post-mortem examination was performed on February 18, 1972 at 11 a.m. Had the dead body been despatched at 11.30 a.m., it should have in the ordinary course reached the District mortuary at Hamirpur well before sunset. In that case, the autopsy would have been conducted during daytime on February 17, 1972, there being no good reason to postpone it to the following day till 11.00 a.m. In all probability, the dead body reached the mortuary sometime after night had fallen.

*Regarding No. (iv)*

**25.** This argument was a corollary deduced from No. (iii). It therefore, falls along with the same.

*Regarding No. (v)*

**26.** The High Court suspected that the dried cow dung found by the medical officer (PW 4) on the hands of the corpse, had been "planted" or got plastered on her hands by the investigating officer (PW 12) whose conduct, in the investigation of this case, according to the High Court, was unscrupulous and dishonest. In this connection the High Court has observed that PW 12 had made a fraudulent insertion about the presence of cow dung in the copy of the inquest report retained in the diary of the police station, while no such mention was made in the original inquest report. No question was put to PW 12 in cross-examination, nor was any other opportunity given to him to explain the circumstances in which the fact of the presence of cow dung on the hands of the deceased, came to be mentioned in the *copy* of the inquest report in the diary of the police station, while there was no such mention in the inquest report produced in evidence in this case. It was very unfair to the witness to condemn him without affording him an opportunity of explaining the questioned insertion in the copy of the inquest. It seems that at the time of the inquest the investigating officer simply did not realise the significance of the cow dung on the hands of the dead body. Even in his evidence at the trial he did not mention this fact. In cross-examination also, no question was put to him in regard to this fact. Nor was any suggestion made that he had got the hands of the dead body plastered with cow dung. The eyewitnesses do not mention this fact simply because they were not asked about it. In the FIR (Ex. Ka-1), Manbodhan had clearly stated that the deceased was returning after laying cow-dung cakes. It was obviously due to some error that the High Court has said that in the FIR, Manbodhan did not state so. Manbodhan had repeated the same version on this point in his evidence at the trial. It is significant to note that when in cross-examination, it was suggested to Manbodhan (PW 2), that it was dark at the time of occurrence, the witness sharply refuted this suggestion, adding that in winter season, cow-dung cakes are prepared only after sunrise. The defence did not further suggest to the witness that there was no cow dung on the hands of the deceased and the story that she was shortly before the occurrence laying cow-dung cakes, was false.



**27.** The evidence of PW 2 on this point, receives valuable corroboration from the unimpeachable testimony of the doctor (PW 4) who, at the time of autopsy, found *dry* cow dung on the hands of the dead body. That circumstance, which could not by any stretch of imagination be said to be fabricated, was a definite pointer to the conclusion that the murder took place sometime after sunrise and not when it was dark.

**28.** The opinion of the doctor (PW 4) as to the time of death, does not militate



against this conclusion. In examination-in-chief, the doctor clearly stated that Smt Panchania's death might have occurred at 9 a.m. on February 17, 1972. In cross-examination, he again positively excluded the possibility of the fatal injuries to the deceased having been caused on the night intervening February 16 and 17, 1972 from 2 a.m. to 4 a.m. However, he did not rule out the possibility of these injuries having been caused at 5 a.m. on February 17, 1972.

**29.** Thus, none of the arguments employed by the High Court, or their premises, was of a clinching character to discount the direct ocular account of the eyewitnesses that the murder took place at about 9 a.m.

*Regarding No. (vi)*

**30.** The High Court has opined that the extensive Injury 2 found on the deceased could not have been caused with a weapon like a *pharsa*, but with a weapon having a long-curved blade. Here also, the learned Judges were not on *terra firma*. *Pharsa* is a sharp-edged weapon. We are told its blade resembles a *gandasa* blade or may even be curved like that of a battle-axe. The *pharsa* or the weapon with which the fatal injuries were caused has not been recovered. This argument therefore, rests on imaginary premises. The best person to give an opinion about the nature and shape of the weapon of offence used, was the medical officer (PW 4) who had conducted the autopsy. The doctor (PW 4), as already noticed, testified that the injuries found on Panchania (deceased) could have been caused with a *pharsa* or some other sharp-edged weapon.

**31.** Dr Bhuneshwar Prasad (PW 3) also, who had examined the child, Jaidevi, testified that the injuries found on the child had been caused with "some sharp-edged weapon including a *pharsa*". The High Court was thus clearly in error in substituting its own opinion resting on conjectural premises for that of the medical experts regarding the nature of the inflicting weapon.

*Regarding No. (vii)*

**32.** It is true that Chhotu (PW 7) expressed ignorance as to his relationship with the sister of the mother of the deceased. It is further true that the witness stated that he did not know whether Sheo Dayal was the maternal uncle of Shanker accused. So far as his being related to the deceased is concerned, the witness evidently did not disclose the truth, but the same could not be said about his ignorance of the fact of Sheo Dayal being a relation of the accused. But the mere fact that the witness had not told the truth in regard to a peripheral matter would not justify a wholesale rejection of his evidence. Time and again, this Court has pointed out that in this country it is rare to come across the testimony of a witness which does not have a fringe or an embroidery of untruth although this evidence may be true in the main. It is the function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest. It is



only where the testimony of a witness is tainted to the core, the falsehood and the truth being inextricably intertwined, that the court should discard his evidence in toto.

**33.** Girdhari (PW 6) admitted in cross-examination, that Sheo Dayal was the maternal uncle of Shanker accused, but PW 6 expressed ignorance if Raghunath and others were prosecuted for burning the *bara* of Sheo Dayal.

**34.** Laxminarain (PW 5) also expressed ignorance as to whether the *bara* of Sheo Dayal had been burnt. PW 5 further expressed ignorance about the relationship of Chhotu (PW 7) with the deceased's mother's sister. Merely because these witnesses

had expressed ignorance about the aforesaid relationships or facts, was hardly a ground to throw overboard their testimony which was consistent with regard to the substratum of the prosecution case. Nothing was brought out in cross-examination to show that these witnesses had any hostile animus against the accused or a motive to falsely implicate him.

**35.** It is true that PW 9 Raghunath, as admitted by him in cross-examination, was, along with others, prosecuted on the charge of burning the *bara* of Sheo Dayal about five or six years before his deposition. The witness, however, asserted that the charge was false and he was acquitted in appeal. PW 9 stoutly refuted the suggestion that he got this case fabricated against Shanker accused. There is nothing on the record to show that the eyewitnesses PW 2, PW 5, PW 6 and PW 7 were under the thumb of PW 9. PW 2 and PW 7 and the accused are Ahirs, while PW 9 is a Rajput (Thakur). PW 5 and PW 6, also, do not belong to the caste of PW 2. As already noticed, PW 5 has a field situate at a short distance from the place of occurrence and his presence at or about the time and place of occurrence was probable.

*Regarding No. (viii)*

**36.** The High Court has brushed aside the testimony of PW 8 on two main grounds, namely, (i) that his name does not find mention in the report (Ex. Ka-9) lodged by Manbodhan (PW 2); and (ii) that when he came to the spot after the occurrence and learnt from Manbodhan in the presence of other witnesses that Shanker accused had run away after killing his wife, the witness did not inform Manbodhan that he had seen the accused with a bloodstained *pharsa*, running through the *arhar* field in which the witness was easing himself.

**37.** We have perused the statement of Surya Kumar (PW 8). No question was put to the witness as to whether he had, on reaching the spot, told Manbodhan and others about his having seen the accused running away through the field after the murder. Nor was any question put to PW 2, Manbodhan, about the arrival of PW 8 at the scene of murder soon after the occurrence and as to whether PW 2 had informed PW 8 as to who had murdered the deceased. Surya Kumar after all is not an eyewitness of the murder. There was nothing unusual therefore, if the informant PW 2 did not mention him as a witness of a post-occurrence fact in the FIR. PW 8 was employed as a teacher in some other village. He had come on two days' leave to his Village Gauri. He was an independent and disinterested witness. Nothing was brought out in cross-examination to show that he had any ill will against the accused or was otherwise interested in the prosecution. The trial court, therefore, rightly placed reliance on his testimony.



**38.** To sum up, the mere fact that PW 7 and some other witnesses did not admit or had expressed ignorance about certain collateral facts was hardly a ground to reject their ocular account when there was general agreement among them with regard to the substratum of the prosecution case. In short, all the arguments employed by the High Court in rejecting the evidence of the eyewitnesses and other material witnesses examined by the prosecution were, with respect, clearly unsustainable, whereas those given by the trial court in accepting the evidence of these eyewitnesses were weighty and sound.

**39.** We, therefore, allow this appeal, set aside the impugned order of acquittal passed by the High Court and convict the accused-respondent under Section 302 of the Penal Code for the murder of Panchania deceased and sentence him to



imprisonment for life. We also restore the order of his conviction and sentence passed by the trial court under Section 324 of the Penal Code, for causing hurt to the child, Jaidevi. The accused, if on bail, shall surrender to his bail bonds to serve out the sentence inflicted on him.

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