before, the point is really concluded by decisions of the highest tribunal, decisions which correctly lay down the law. The result therefore is that these petitions are devoid of all merit and must be dismissed.

*Petitions dismissed.*

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## NISAR ALI
*v.*
## THE STATE OF UTTAR PRADESH



(BHAGWATI, B. P. SINHA *and* J. L. KAPUR

*First information report—Report made by accused—Use of—Burden of proof in criminal cases—Witness disbelieved as to part of his testimony—Whether should be rejected in toto.*

A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under s. 157 of the Evidence Act or to contradict it under s. 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses.

It is a cardinal principle of criminal jurisprudence that the innocence of an accused person is presumed till otherwise proved. It is the duty of the prosecution to prove the guilt of the accused subject to any statutory exception.

The maxim *falsus in uno, falsus in omnibus* has not received general acceptance in different jurisdictions in India, nor has it come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances but it is not a mandatory rule of evidence.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 150 of 1956.

Appeal by special leave from the Judgment and order dated October 18, 1955, of the Allahabad High Court in Government Appeal No. 60 of 1953 arising out of the judgment and order dated July 8, 1952, of the Court of Sessions Judge at Bareilly in Criminal Sessions Trial No. 27 of 1952.

*Daulat Ram Prem* and *P. C. Agarwala,* for the appellant.

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*Gyan Chand Mathur* and *C. P. Lal*, for the respondent.

1957. February 14. The Judgment of the Court was delivered by

KAPUR J.—The appellant along with one Qudrat Ullah was tried for the murder on one Sabir. The latter was tried under s. 302 read with s. 114 of the Indian Penal Code for abetment, and the former under s. 302 I.P.C. Both the accused were acquitted by the learned Sessions Judge of Bareilly. But the State took an appeal to the Allahabad High Court against the appellant only and the judgment of acquittal in his case was reversed and he was convicted under s. 302 I.P.C. and sentenced to 'transportation for life'. Against the judgment of the High Court the appellant has brought this appeal by Special Leave.

The facts which have given rise to the appeal are that Sabir was murdered on the 11th May, 1951, at about 6-30 p.m. The First Information Report was made by Qudrat Ullah the other accused at 6-45 p.m. the same day, *i.e.*, within about 15 minutes of the occurrence. The prosecution case was that there was an exchange of abuses between the deceased and the appellant near the shop of the First Informant, Qudrat Ullah. The cause of the quarrel was that on the evening of the occurrence while Qudrat Ullah was sitting in his shop and the deceased was sitting just below the shop, the appellant came out of his house and on seeing him, the deceased asked him as to why he was in such a "dishevelled condition", which annoyed the appellant and gave rise to an exchange of abuses. On hearing this noise, the prosecution witnesses arrived at the spot and saw the appellant and the deceased grappling with each other. The appellant is stated to have asked Qudrat Ullah to hand over a knife to him which Qudrat Ullah did; this knife is Ex. 'II', with which the appellant stabbed the deceased and then fled away. As a result of the injuries the deceased fell down in front of Qudrat Ullah's shop; some witnesses have stated that he fell on the wooden plank in front of the shop. Qudrat Ullah picked up the knife which had been

dropped by the appellant, put the deceased in a rickshaw and took him to the hospital from where he went to the Police Station and made the First Information Report. An objection has been taken to the admissibility of this report as it was made by a person who was a co-accused. A First Information Report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under s. 157 of the Evidence Act or to contradict it under s. 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence.

The Sub-Inspector went to the spot, started investigation and arrested the appellant the same evening at his house. The post-mortem examination of the deceased showed injuries on the person of the deceased and, according to the doctor, death was due to shock and haemorrhage on account of the punctured wound in the chest, causing injuries to the lungs and these injuries could be caused with a sharp-edged weapon.

The appellant and the deceased both belong to a sect of Jogis. Evidence discloses that the deceased and the appellant were quite friendly with each other, and so were the deceased and Qudrat Ullah, who is a butcher and had a shop which is a part of his house. Adjacent to the shop is the house of the appellant. Eye witnesses of the occurrence were Yad Ali, P.W. 1, Banne, P.W. 2 and Mohd. Ahmed, P.W. 3. Having been told by the sister of the deceased as to the occurrence, Ashraft, P.W. 4 came to the spot later and found the deceased lying unconscious. Shakir, P.W. 5, younger brother of the deceased, on arriving near the shop of Qudrat Ullah heard the appellant and the deceased exchanging abuses, but was not a witness of the assault as just at that time he had gone, at the request of Qudrat Ullah, to fill his Chillum for the hookka and when he came back he found the deceased lying unconscious and the appellant running away towards his house.

The evidence of Yad Ali, P. W. 1, is that he heard an exchange of abuses between the deceased and the appellant and when he moved about 4 or 5 paces he

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saw them grappling with each other. The appellant had the deceased "in his grip", he asked Qudrat Ullah to hand over a knife to him which the latter did and with it the appellant stabbed the deceased and then went away to his house. The statement of Banne is similar and so is the statement of Mohd. Ahmed, P. W. 3. This evidence was not accepted by the learned Sessions Judge and he acquitted both the accused. The State took an appeal only against the appellant which was allowed by the High Court. It held

"We may concede that the eye-witnesses have falsely implicated Qudrat Ullah by deposing that he handed over his knife to the respondent on his demand. There was no enmity between him and Sabir and he had no motive to get him killed by the respondent. It does not at all appear probable that after abetting the murder of Sabir he at once took him on a rickshaw to the hospital and from there went at once to the police station and lodged a report against the respondent. This conduct of Qudrat Ullah is so inconsistent with the part said to have been played by him in the occurrence that we have little hesitation in rejecting the evidence about the part played by him."

The High Court, however, accepted the testimony of the eye-witnesses as against the appellant's guilt and observed :

"We are satisfied that the prosecution has fully established the case against the respondent. There is not the slightest doubt about his guilt. The presumption of innocence has been fully rebutted by the prosecution. The case against him does not become doubtful merely because the learned Sessions Judge said that there was a doubt about his guilt."

The learned Judges also came to the conclusion that the view taken by the learned trial Judge was one "which no reasonable person could have taken. It was a wholly erroneous view of the evidence which has resulted in gross miscarriage of justice inasmuch as a murderer escapes punishment". In the circumstances of the case and considering that there was some provocation, the High Court sentenced the appellant to 'transportation for life.'

There is a passage in the Judgment of the High Court which appears to us to be disconsolate and indicative of a wrong approach in deciding the guilt of an accused person. Although the learned Judges recognised the principle that the onus was not on the accused, yet one of the observations is such that it comes perilously near to putting the burden on the accused if it does not actually do so. The High Court has said :

"The respondent himself did not have the courage to say that he did not find them at the spot. If he were innocent, he must have come out of his house immediately on hearing the noise and must have known who was present there and who was not."

This passage is so destructive of the cardinal principle of criminal jurisprudence as to the presumed innocence of an accused person till otherwise proved that it has become necessary to reiterate the rule stated by eminent authorities "....that it is the duty of the prosecution to prove the prisoner's guilt ..... subject to any statutory exception."(1)

It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the Court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim *falsus in uno falsus in omnibus* was relied upon by the appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the Courts below as against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. This maxim has not received general acceptance in different jurisdictions in India ; nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. One American author has stated :

(1) Woolmington *v.* The Director of Public Prosecutions, 1935 A. C. 462.

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"....the maxim is in itself worthless; first in point of validity ..... and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore, it is a superfluous form of words. It is also in practice pernicious ....." (1)

The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances but it is not what may be called "a mandatory rule of evidence".

Counsel for the appellant drew our attention to a passage from an unreported judgment of the Privy Council, *Chaubarja Singh* v. *Bhuneshwari Prasal Pal.*

"The defendants own evidence and that of several of his witnesses is of no use to him. He cannot contend that any court of law can place reliance on the oath of people who have admittedly given false evidence upon the other branches of the case."

This passage is a very slender foundation, if at all, for conferring on the doctrine the status of anything higher than a rule of caution and the Privy Council cannot be said to have given their weighty approval to any such controversial rule which has been termed as "worthless", "absolutely false as a maxim of life" and "in practice pernicious" in works of undoubted authority on the law of evidence(2).

The High Court was not unmindful of what the witnesses stated as to Qudrat Ullah's part in the commission of the offence and having taken that into consideration, it said :

"While the learned Sessions Judge was right in acquitting Qudrat Ullah, he was completely wrong in acquitting the respondent of whose guilt there was not the slightest doubt. The direct evidence made out a clear case against him and there was no sound reason for disregarding it."

After discussing the evidence of the witnesses and the discrepancies pointed out by the appellant the High Court held "there is not the slightest doubt

(1) Wigmore on Evidence Vol. III para 1009.
(2) Wigmore Vol. III para 1009.

It was because of the above two contentions raised by counsel for the appellant and because it was a case of reversal of a judgment of acquittal that we allowed counsel to go into the evidence which he analysed and drew our attention to its salient features and to the discrepancies in the statements of witnesses and the improbabilities of the case; but we are satisfied that the learned Judges were justified in coming to the conclusion they did and the view of the trial judge was rightly displaced. Upon a review of the evidence of the prosecution witnesses we have come to the conclusion that the appellant was rightly convicted.

The appeal is, therefore, dismissed and the judgment of the High Court is affirmed.

*Appeal dismissed.*

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## V. C. K. BUS SERVICE LTD.

*v.*

## THE REGIONAL TRANSPORT AUTHORITY, COIMBATORE.

VENKATARAMA AYYAR. S. K. DAS AND GAJENDRAGADKAR JJ.)

*Road Transport—Permit for stage carriage—Renewal—Whether a continuation of the original permit—Whether subject to implied condition of validity of the original permit—Motor Vehicles Act, 1939 (IV of 1939), ss. 57, 58.*

The appellant was granted a permit for stage carriage by the Regional Transport Authority under the provisions of the Motor Vehicles Act, 1939, but on appeal to the appellate authority, the Central Road Traffic Board, by the unsuccessful applicants the order granting the permit was set aside and the order of the Central Road Traffic Board was approved by the Government in revision. The appellant, thereupon, moved the High Court for a writ of *certiorari* to quash the proceedings of the Central Road Traffic Board and the Government. During the pendency of these proceedings there was a stay of operation of the order setting aside the grant of the permit to the appellant, with the result that he continued to run his buses notwithstanding the cancellation of his permit. Before the expiry of the period fixed in the original