A CHAUDHARI RAMJIBHAI NARASANGBHAI

v.

STATE OF GUJARAT AND ORS.

NOVEMBER 10, 2003.

B [DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Penal Code, 1860—Sections 304 Part II, 325 and 447—Conviction under—Acquittal by trial court—Conviction by High Court—Correctness of—
C *Held: Order of High Court does not suffer from any patent error of law or perversity of approach and total lack of evidence to warrant interference.*

Evidence Act, 1872—Section 145—Applicability of—Held: Applicable when same person makes two contradictory statements—When there is alleged contradictions between one prosecution witness **vis-a-vis** *statement of other*
D *witness no adverse inference can be drawn.*

Criminal Trial :

Witnesses—Testimony—Evidentiary value of—Held : When particular facts established by testimony of trustworthy and reliable witnesses, it need
E *not be further proved through other witnesses as it would amount to multiplicity.*

Related witness—Evidentiary value—Held : Related witnesses evidence is not discarded if it is reliable—Cautious and careful approach is required—Also the Court is to appreciate evidence in light of other evidence on record.

F **According to the prosecution, complainant's uncle's son-appellant and respondent No.2 and 3 armed with weapons entered the field of the complainant and attacked his father, brothers and caused them injuries. The motive of the incident was enmity between the parties. At the time of the incident complainant was near the place of occurrence and he witnessed the incident, and lodged an FIR. Injured persons were taken to**
G **the hospital. Complainant's father succumbed to his injuries. Complainant, his mother, his brothers were examined. Defence version was to the effect that the incident did not take place in the field but the complainant's side had gone to the narrow road leading to the field and obstructed the cart and in the scuffle complainant's father fell down and bullock cart ran over**

H

him. Trial Court held that their testimony is not trustworthy and reliable as there was material contradictions between the evidence of different witnesses and acquitted the accused. High Court set aside the acquittal and convicted the appellant and respondents 2 and 3. Respondents 2 and 3 were granted benefit of probation. Hence the present appeal.

Appellant contended that the prosecution has suppressed the genesis of the dispute and its version lacks credibility; that though the witnesses have stated the weapon of assault to be a 'kudal', there is no mention in the evidence of the complainant about the said weapon which was allegedly used; that the post mortem report and the medical evidence completely rule out the oral evidence about the use of 'kudal'; that the prosecution had a duty to obtain clarification regarding the side of weapon used; that the contradictions highlighted by trial Court related to the ocular evidence and the medical evidence and not contradictions between the evidence of different witnesses; that when the benefits of probation were extended to the two co-accused persons there was no plausible reason to adopt a different standard with regard to the appellant.

Respondent-State contended that the trial Court had acted on impermissible premises without keeping in view the correct position in law; that the factual position was also not properly analysed; that though the co-accused persons have been granted benefit of probation, and no appeal has been filed challenging that part of the High Court's judgment; and that the appellant cannot take advantage of grant of probation as his definite role in the crime was established and he was the main brain behind the crime.

Dismissing the appeal, the Court

HELD : 1. High Court has applied the correct principles in law while directing conviction of appellant by reversing judgment of acquittal passed by the trial Court. The conclusions arrived at are not shown to suffer from any patent error of law or perversity of approach and total lack of evidence to warrant interference. [399-E]

2.1. High Court found that the trial Court's approach was erroneous. It was of the view that if a particular fact stands established by the evidence of trustworthy and reliable witnesses, the record is not to be burdened by examining other witnesses for proving the same fact as it would amount to multiplicity only. Even if a witness is related to the

A deceased there is no reason to discard his evidence if he is reliable and trustworthy. The cautious and careful approach is required in appreciating the evidence because a part of the evidence might be tainted owing to the relationship and the witnesses might be exaggerating the facts. In such an event, the Court is to appreciate the evidence in the light of other evidence on record which may be either oral or documentary. In the B instant case, the presence of the informant was not challenged in the cross examination. The incident was admitted by the accused persons and their presence at the time and place of occurrence was also not under dispute. The presence of the deceased and the injured was also not disputed. The informant was examined at length and the High Court noticed that nothing C infirm was brought out by such cross-examination. The evidence of informant's mother was also held to have corroborated the evidence of the complainant and the blind witness. [395-G-H; 396-A-C]

2.2. Regarding the actual place of occurrence, the High Court has analysed the factual position and with reference to the evidence of the D informant noticed that there were hedges all round the field on four sides which improbabilises the defence version, though it had found favour with the trial Judge. The consistent evidence of the prosecution witnesses is that the deceased was sweeping under the peepal tree. They did not say that he was near the tree, which seems to be the defence stand. [397-B-D]

E 2.3. With regard to the injuries found on the deceased, they were not in the middle of the body but on the side. From the evidence, it is clear that those were possible if assaults were made when the deceased was moving. [397-D]

F *Hallu and Ors.* v. *State of Madhya Pradesh,* [1974] 4 SCC 300; *Balaka Singh and Ors.* v. *The State of Punjab,* [1975] 4 SCC 511 and *Gurmej Singh and Ors.* v. *State of Punjab,* [1991] Supp. (2) 75, referred to.

2.4. The plea that it was the duty of the prosecution witnesses to clarify the side of the weapon used cannot be accepted, when the direct G evidence sufficiently establishes the assaults. In any event, the brother injured during the incident has stated that the blunt side of the weapon was used. [398-G-H]

2.5. The plea that the contradictions noticed by the trial Court were ocular *vis-a-vis* the medical evidence cannot be accepted. Section 145 of H the Evidence Act, 1872 applies when same person makes two contradictory

statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness *vis-a-vis* statement of other witnesses. It is not open to Court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witnesses can only be contradicted in terms of Section 145 of the Evidence Act by his own previous statement and not with the statement of any other witness. [399-A-B]

Mohanlal Gangaram Gehani **v.** *State of Maharashtra,* **AIR (1982) SC 839, relied on.**

2.6. Regarding non-examination of alleged independent witnesses, the eye-witnesses have categorically stated that no other person was present on the field to witness the incident. [399-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 183 of 1997.

From the Judgment and Order dated 10.10.96 of the Gujarat High Court in Crl. A. No. 1234 of 1984.

Sushil Kumar, George Paulose and Adolf Mathew for Ms. Meenakshi Arora for the Appellant.

Maullick Nanavati and Ms. Sadhana Sandhu for Ms. Hemantika Wahi for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Appellant questions correctness of the judgment rendered by a Division Bench of the Gujarat High Court setting aside the judgment of acquittal passed by the trial Court and convicting the appellant for an offence punishable under Sections 304 Part II, 325 and 447 of the Indian Penal Code, 1860 (in short the 'IPC') and sentencing him to undergo rigorous imprisonment for a period of 5 years, 3 years and 2 years respectively with a direction that the sentences to run concurrently. Two other persons who are respondents 2 and 3 in this appeal had also faced trial with the appellant. They were acquitted by the Trial Court, but convicted by the High Court. They were, however, ordered to be released on probation of good conduct and behaviour for a period of 3 years instead of sentencing them at once.

A Prosecution version as unfolded during trial is as follows:

The complainant Madhevbhai Veljibhai (PW-4), one of the injured witnesses filed the first information report stating that on 28.4.1983 a.m. his father Veljibhai Bhavsang (hereinafter referred to as the 'deceased') along with his elder brother Cheljibhai (PW-6) and younger brother Kanjibhai (PW-
B 7) were working on their Vadvalo agricultural field situated in the outskirts of Magroda village. At about 10.00 a.m. the complainant went on to a well to take bath. After taking bath and washing clothes, he was trying to dry his clothes. At that time his father the deceased was sweeping leaves under a Peepal tree and his brother Chelji (PW-6) was sitting near the well whereas
C his younger brother Kanji (PW-7) was bathing cows at the place where they were grazing. At about 11.00 a.m. his cousin brothers (uncle's son) Chaudhari Ramji Narsang (A-1 (Appellant no.1) armed with hoe, Chaudhari Bababhai Narsang (A-2) (Respondent no. 2) armed with stick and Chaudhari Bai Suraj (A-3) (Respondent No. 3) armed with log entered the field and started assaulting his father. It was alleged that accused-appellant Chaudhari Ramji
D Narsang gave two blows with hoe on the head of his father as a result of which he raised some cries. As a result of injury, he was having profused bleeding. On hearing cry, his brother Chelji (PW-6) and Kanji (PW-7) ran towards the scene of offence. On seeing them, Chaudhari Bababhai Narsang (A-2) gave stick blow on the forehead of Chelji, whereas Suraj (A-3) assaulted
E Chelji with log. As a result of such assaults Chelji also received injuries. On seeing this, he (PW-4) also proceeded towards that place. One Velji Kuber and Chaudhari Madhevbahi Velji also appeared, but in the meanwhile all the accused had run away. As his father Velji and brother Chelji were injured, both were taken to village in bullock cart and from there they were removed in a tractor for treatment to Visnagar Hospital. In FIR it was also stated about
F the motive of this incident. It was stated that on account of partition of agricultural properties belonging to his aunt Sakiben, one field had come to the share of his father and, therefore, the accused nurtured grudge and enmity against them and with a view to do away with life of his father and brothers, all the three accused armed with weapons had entered the field and attacked
G and caused injuries. It was further stated that owing to the attack by accused, his father Velji had become unconscious and was unconscious till the time FIR was lodged. Injured Veljibhai who was admitted in the Civil Hospital, Ahmedabad died on 8.5.1983 due to the injuries sustained by him and therefore, the charge under Section 302 was added, though initially Section 307 was indicated. On completion of investigation, charge sheet was filed.
H Prosecution's version mainly rested on the evidence of eyewitnesses. Accused

persons pleaded innocence and false implication. It is to be noted that additionally the defence version was to the effect that the incident did not take place in the agricultural field as stated by the prosecution witnesses. The prosecution witnesses were the aggressors and in the scuffle the deceased fell down and the bullock cart ran over him.

The informant was examined as PW-4. His mother Hetiben was examined as PW-5. Cheljibhai brother of the deceased and son of the deceased was examined as PW-6. This witness is blind having lost eyesight since long. However, he has stated that he can identify his relatives, near and dear ones by their voice and that he used to visit the agricultural field with his family members. While narrating the incident, he stated that on the fateful day, time and place, he heard the cries of his father saying that he is being killed. At that time, his father was beneath the peepal tree. He also went there whereupon accused nos.2 and 3 started assaulting him. He narrated this fact as was told by the informant and other brother. He stated thereafter that he was dragged to the Neliya (a narrow road to agricultural field) and thereafter the accused ran away from there. Since Kanjibhai (PW-7) son of the deceased had also given similar narration, the trial Court held that the testimony is not trustworthy and reliable because there were material contradictions between the evidence of different witnesses and extended benefit of doubt. It was also noticed that the medical evidence did not fit in with the eyewitness's version. It was, *inter alia*, observed that there was no sufficient and reliable circumstance which would show that there was any reason for the accused persons to go to the field of the complainant side and assault the deceased and his sons. The defence version that the complainants had gone to the Neliya and had obstructed the cart and assaulted the accused appears to be more probable. The absence of the name of one Shantaben in the FIR or in the police statement was also considered to be a suspicious circumstance. It was also observed that some independent witnesses whose presence was established were not examined.

In appeal the High Court found that the trial Court's approach was erroneous. It was of the view that if a particular fact stands established by the evidence of trustworthy and reliable witnesses, the record is not to be burdened by examining other witnesses for proving the same fact as it would amount to multiplicity only. If the witness is otherwise reliable and trustworthy, the fact which is sought to be proved by that witness need not be further proved through other witnesses. Even if a witness is related to the deceased there is no reason to discard his evidence if he is reliable and trustworthy. What is

A required is the cautious and careful approach in appreciating the evidence because a part of the evidence might be tainted owing to the relationship and the witnesses might be exaggerating the facts. In such an event, the Court is to appreciate the evidence in the light of other evidence on record which may be either oral or documentary. It was noticed that the presence of the informant was not challenged in the cross examination and this was considered significant B by the High Court. The incident was admitted by the accused persons and their presence at the time and place of occurrence was also not under dispute. The presence of the deceased and the injured (PW-7) was also not disputed as is clear from the tenor of cross-examination as well as the stand taken by the accused. The informant was examined at length and the High Court C noticed that nothing infirm was brought out by such cross-examination. The evidence of PW-5 i.e. his mother was also held to have corroborated the evidence of PW-4 and PW-6, the blind witness.

In support of the appeal, Mr. Sushil Kumar learned senior counsel submitted that without compelling reasons judgment of the trial Court has D been set aside. The prosecution has suppressed the genesis of the dispute and its version lacks of credibility. The doctor had found that the injuries sustained were lacerated and not incised. Though the witnesses have stated the weapon of assault to be a 'kudal', there is no mention in the evidence of PW-4 about the side of the weapon which was allegedly used. The post mortem report and the medical evidence completely rule out the oral evidence about the use E of 'kudal'. Strong reliance was placed on decisions of this Court in *Hallu and Ors.* v. *State of Madhya Pradesh,* [1974] 4 SCC 300 and *Balaka Singh and Ors.* v. *The State of Punjab,* [1975] 4 SCC 511 importing specific statement about the side of weapon of assault. It is submitted that prosecution had a duty to obtain clarification. Significantly, the blood-stained clothes were sent F for medical examination and not blood stained weapons. The contradictions highlighted by the trial Court related to the ocular evidence and the medical evidence and not contradictions between the evidence of different witnesses. Therefore, the High Court committed an error in holding that the trial Court's judgment was vulnerable.

G Residually, it is submitted that when the benefits of probation were extended to the two co-accused persons there was no plausible reason to adopt a different standard so far as the present appellant is concerned as he stands on the same footing.

H Learned counsel appearing for the respondent-State on the other hand

submitted that the Trial Court had acted on impermissible premises without keeping in view the correct position in law. The factual position was also not properly analysed. Therefore, the High Court was justified in setting aside the acquittal. Though the co-accused persons have been granted benefit of probation, and no appeal has been filed challenging that part of the High Court's judgment, the appellant cannot take advantage of that as his definite role in the crime was established and he was the main brain behind the crime.

Coming to the appellant's plea regarding the actual place of occurrence, the High court has analysed the factual position and with reference to the evidence of PW-4 noticed that there were hedges all round the field on four sides which improbabilises the defence version, though it had found favour with the learned trail Judge. The consistent evidence of PWs 4, 5, 6 and 7 is to the effect that the deceased was sweeping under the Peepal tree. They did not say that he was near the tree, which seems to be the defence stand.

So far as the injuries found on the deceased and the side of the weapon used, it is to be noted that injuries were not in the middle of the body but on the side. From the evidence, it is clear that those were possible if assaults were made when the deceased was moving. So far as the decisions of this Court in *Hallu's* case (supra) and *Balaka Singh's* case (supra) are concerned, the position was succinctly stated in *Gurmej Singh and Ors.* v. *State of Punjab,* (1991) Supp. 2 SCC 75. It was observed in paragraph 8 as follows:

> "Counsel for the appellants next submitted that according to the prosecution appellant Gian Singh was armed with a gandasi and he is alleged to have given a blow therewith on the chest of the deceased. Ordinarily a gandasi blow would cause an incised would whereas the deceased had an abrasion 5" * 1" on the chest caused by a hard and blunt substance. According to counsel normally when a witness deposes to the use of a particular weapon there is no warrant for supposing that the blunt side of the weapon was used by the assailant. In support of this contention counsel invited our attention to two decisions, namely, *Hallu* v., *State of M.P.,* [1974] 4 SCC 300 and *Nachhattar Singh* v. *State of Punjab,* [1976] 1 SCC 750. In his submissions, therefore the injury found on the chest could not be attributed to Gian Singh, who is stated to have used the gandasi. We see no merit in this contention for the simple reason that the prosecution witnesses have categorically stated that Gian Singh used the blunt side of the gandasi. If the prosecution witnesses were silent

A in this behalf of the submission of counsel would have carried weight. But where the prosecution witnesses categorically state that the blunt side of the weapon was used there is no room for believing that the sharp side of the weapon which would be normally used had in fact been used. The observations in the aforesaid two judgments do not lay down to the contrary. In fact in the first mentioned case it is B clearly stated that if the prosecution witnesses have clarified the position, their evidence would prevail and not the normal inference. Counsel, however, made a grievance that the prosecution had not tried to elicit the opinion of PW-1 Dr. Malhotra on the question whether such an abrasion was possible by a gandasi blow. According C to him, as held by this Court in *Kartarey* v. *State of U.P.* (1976) 1 SCC 172 and *Ishwar Singh* v. *State of U.P.*, [1976] 4 SCC 355. It was the duty of the prosecution to elicit the opinion of the medical man in this behalf. PW-1 clearly stated in the course of his examination-in chief that injuries 2,3 and 4 were caused by a blunt weapon. *It is* D *true that he was not specifically asked if the chest injury could have been caused by the blunt side of the gandasi. It cannot be gainsaid that the prosecution must endeavour to elicit the opinion of the medical man whether a particular injury is possible by the weapon with which it is alleged to have been caused by showing the weapon to the witness. In fact the Presiding officer should himself have elicited the* E *opinion. However, in this case it should not make much difference because of evidence of PWs 2 and 3 is acceptable and is corroborated by the first information report as well as PW-4. If the medical evidence had also so opined it would have lent further corroboration. But the omission to elicit his opinion cannot render the direct testimony of PWs 2 and 3 doubtful or weak. We, therefore, do not see any merit* F *in this submission.* In fact if we turn to the cross-examination of PW-1 we find that the defence case was that these three injuries were caused by the rubbing of the body against a hard surface, a version which has to be stated to be rejected".

(Underlined for emphasis)

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Above being the position, the plea of learned counsel for the appellant that it was the duty of the prosecution witnesses to clarify as to which side of the weapon was used is without substance when the direct evidence sufficiently establishes the assaults. In any event, PW-6 has stated that the H blunt side of the weapon was used.

Coming to the plea that the contradictions noticed by the trial Court were ocular *vis-a-vis* the medical evidence, we find on reading of the judgment it is not to be so, Section 145 of the Indian Evidence Act, 1872 (in short the "Evidence Act") applies when same person makes two contradictory statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness *vis-a-vis* statement of other witnesses. It is not open to Court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witnesses can only be contradicted in terms of Section 145 of the Evidence Act by his own previous statement and not with the statement of any other witness. *See Mohanlal Gangaram Gehani* v. *State of Maharashtra,* AIR (1982) SC 839. As was held in the said case, Section 145 applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement under Section 145 of the Evidence Act only. Section 145 has no application where a witness is sought to be contradicted not by his own statement but by the statement of another witness.

Much emphasis was made on the non-examination of alleged independent witnesses. The eyewitnesses have categorically stated that no other person was present on the field to witness the incident.

We find that the High Court has applied the correct principles in law while directing conviction of appellant by reversing judgment of acquittal passed by the trial Court. The conclusions arrived at therefor are not shown to suffer any patent error of law or perversity of approach and total lack of evidence to warrant interference. There are no reasons whatsoever to take a different view. The appeal stands dismissed.

N.J. Appeal dismissed.