PETITIONER:
RAMMI ALIAS RAMESHWAR

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 21/09/1999

BENCH:
K.T.Thomas, A.P.Misra

JUDGMENT:

THOMAS, J.

A manslaughter in an automobile in locomotion is the subject matter of this case. The slaughtered man was a Home Guard personnel, by name Sardar Singh Thakur. When he boarded the bus destined to Naseerabad on the evening of 20.7.1985, he had no foreboding that it was his last journey alive. Before the bus could reach its terminus he was finished by armed assailants inside the vehicle while it was in motion. Appellants (Rammi alias Rameshwar and Bhura alias Sajjan Kumar) were two of the three persons arraigned before the Sessions Court. Though the Sessions Judge acquitted all of them a Division Bench of the High Court of Madhya Pradesh convicted the two appellants under Section 302 read with Section 34 of the IPC and sentenced them to imprisonment for life. The third accused (Suresh alias Chhigga) died before the appeal was decided by the High Court. These appeals were filed by the two convicted persons as of right under Section 379 of the Code of Criminal Procedure (for short the Code) and under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

The story of the prosecution, as revealed through evidence, can be summarised like this: One Channa Babu (brother of appellant Rammi and late Chhigga) was murdered for which the police charge-sheeted Sardar Singh Thakur (the deceased in this case) and his brother Shyam Singh (PW-3 in this case) and a few others. From then on these accused were thirsting for revenge for the murder of Channa Babu. They were prowling for an opportune opportunity to strike back. In such a background accused came to know that Sardar Singh Thakur was travelling in a bus. Accused wanted to avail themselves of that opportunity and boarded the bus on the way. After the vehicle moved for some distance the assailants mounted the attack on the deceased with chopper and knives.

The assailants inflicted as many as 12 incised injuries on Sardar Singh Thakur. Those who tried to intervene were told by the assailants to mind their own business as the attack was intended for a revenge. After accomplishing the object all the assailants alighted from the vehicle and escaped from the scene. The passengers of the bus became frightened and most of them jumped out of the vehicle and ran helter-skelter.

The stage carriage was then driven towards the police station by its driver (PW-12 Jabbar Khan). Ext. P-12 - First Information Statement was lodged at the police station by the conductor of the vehicle (PW-8 Ramashray). The accused were arrested and after interrogation the weapons used for the murder were recovered by PW-13 Investigating Officer from hidden places on the basis of informations elicited from the accused.

There is no doubt that deceased Sardar Singh Thakur was murdered inside the said bus at about 5 P.M. while the bus was in motion. In fact that part of the case is not controverted by the appellants. The dispute now centers round the identity of the assailants. PW-8 Ramashray and PW-12 Jabbar Khan supported the case of the prosecution regarding the identity of the assailants, besides one of the passengers of the bus (PW-9 Ram Dulare). But the trial court was not impressed by their evidence. Nor did the trial court place any reliance on the evidence relating to the recovery of weapons which the prosecution adduced as per Section 27 of the Evidence Act. But the Division Bench of the High Court made complete reversal of the findings of the trial judge and made a scathing observation in the penultimate paragraph of the judgment under appeal, as under: Before parting with this appeal, we cannot resist from observing that the perverse reasoning and conclusions given by the trial judge in appreciating the evidence in the instant case cannot be supported. Such unrealistic approach in appreciating evidence in a criminal case shakes the confidence of the society in the legal system itself and our interference, therefore, is urgently called for.

Shri Uday Umesh Lalit, learned counsel for the appellants contended that the reasoning of the trial judge regarding different items of incriminating evidence did not warrant interference in an appeal against acquittal as the views expressed by the trial judge were not unreasonable. Learned counsel dealt with the evidence almost threadbare in his endeavour to show that the sessions judge was not altogether wrong in acquitting the appellants.

PW-9 Ram Dulare (a passenger in the bus) in his evidence said that he saw the appellants attacking the deceased with chopper and knives. The trial court pointed out that he did not inform the members of the family of the deceased nor did he bring this matter to the notice of the police. The Sessions Judge regarded the above as a conduct incompatible with the normal behaviour of a person witnessing such a crime.

Such a remark on the conduct of a person who witnessed the murderous attack is least justified in the realm of appreciation of evidence. This Court has said time and again that the post event conduct of a witness varies from person to person. It cannot be a cast-iron reaction to be followed as a model by everyone witnessing such event. Different persons would react differently on seeing any violence and their behaviour and conduct would, therefore, be different. We have not noticed anything which can be regarded as an abnormal conduct of PW-9 Ram Dulare.

Nonetheless, there are two broad circumstances which would bridle the court from placing full reliance on the evidence of PW-9. First is, though his name appeared in the

First Information Statement its author PW-8 (the conductor of the bus) said in his evidence that Ram Dulare was not a person known to him. Second is, PW-9 has said in cross-examination that he did not mention anything about the incident to anybody else at all until he was questioned by the police.

Though the aforesaid two incongruities came on record during cross-examination no attempt whatsoever was made by the Additional Public Prosecutor to secure any explanation regarding such aspects.

Regarding the recovery of weapons, the prosecution could utilize statements attributed to the accused on the basis of which recovery of certain weapons was effected. Section 27 of the Evidence Act permits so much of information which lead to the discovery of a fact to be admitted in evidence. Here the fact discovered by the police was that the accused had hidden the blood-stained weapons. In that sphere what could have been admitted in evidence is only that part of the information which accused had furnished to the police officer and which led to the recovery of the weapons.

True, such information is admissible in evidence under Section 27 of the Evidence Act, but admissibility alone would not render the evidence, pertaining to the above information, reliable. While testing the reliability of such evidence the court has to see whether it was voluntarily stated by the accused.

PW-13 Investigating Officer has said in his evidence that the accused were arrested on the succeeding day of the occurrence from a different place and they were interrogated by him. But PW-12 (the driver of the bus) has said in his evidence that after he reached the police station on the same evening he saw the three accused inside the police station. We do not know whether it was an error which PW-12 committed during cross-examination. No doubt the Public Prosecutor who conducted the prosecution did not choose to put any question to PW-12 also in re- examination.

As it is, there is material discrepancy regarding the time when police took the accused in custody. If PW-13 is correct the accused would have been arrested only on the succeeding day of occurrence. But if PW-12 is correct the accused should have been interrogated on the very day of occurrence in which case the accused would have had no occasion to conceal the weapons.

With the above scrutiny we are unable to place any reliance on the evidence of PW-13 regarding recovery of the weapons at the instance of the accused. In this context we are tempted to observe that the Additional Public Prosecutor who conducted prosecution has not discharged his responsibility as he avoided putting any question to those witnesses when an opportunity for re-examination was provided to him.

The very purpose of re-examination is to explain matters which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. It reads thus: Direction of re-examination.- The re- examination shall be directed to the explanation of matters referred to in cross-examination;

and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.

Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the Court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions.

A Public Prosecutor who is attentive during cross-examination cannot but be sensitive to discern which answer in cross-examination requires explanation. An efficient Public Prosecutor would gather up such answers falling from the mouth of a witness during cross-examination and formulate necessary questions to be put in re-examination. There is no warrant that re-examination should be limited to one or two questions. If the exigency requires any number of questions can be asked in re-examination.

But in this case the Additional Public Prosecutor in the trial court seemed oblivious of such a right. It is rather amazing that he did not avail himself of that right in respect of a single witness. The defence counsel would have had a free day as he was left totally undisturbed by the Public Prosecutor. Be that as it may, side-stepping above items of evidence is hardly sufficient to end the woes of the appellant because the prosecution examined two of the most important witnesses to the occurrence, PW-8 Ramashray - the conductor, and PW-12 Jabbar Khan - the driver.

PW-8 had given three former statements regarding the occurrence (Ext.P-12 the First Information Statement, and then what the Investigating Officer recorded under Section 161 of the Code, and another statement which the magistrate recorded under Section 164 of the Code). The defence counsel used all those three statements to ferret out one or two omissions therefrom for confronting PW-8. The trial court on the strength of such answers castigated PW-8. This was what the Sessions Judge said about their evidence: Ramshray (PW-8) stood contradicted on material and vital points from the first information report Ex.P.11, case diary statement ex.D-1. Those contradictions relate to the material and vital points. These details go to show that

Ramshray (PW-8) is not a truthful or reliable witness. He was made to modulate his version but to suit the prosecution case and it is not safe to place implicit reliance on his testimony. The evidence of this witness appears artificial, unnatural and improbable and suffers from intrinsic infirmities. In the circumstances, his testimony cannot be accepted on its face value.

Shri Uday Umesah Lalit, learned counsel for the appellant tried to support the said reasoning of the trial court. We feel that the approach made by the trial court in groping for discrepancies in the testimony of such important witnesses had resulted in the unmerited acquittal.

When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

It is a common practice in trial courts to make out contradictions from previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of inconsistent former statement. But a reading of the Section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the Section is extracted below: 155. Impeaching credit of witness.- The credit of a witness maybe impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be contradicted would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to contradict the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose, i.e. to contradict the witness.

To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the

former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness, (vide Tahsildar Singh and anr. vs. State of U.P., AIR 1959 SC 1012).

In this case the evidence of the conductor and the driver of the bus evinces credibility. As pointed out earlier they are the most natural witnesses for the murder which took place inside the bus. The minor variations which the defence counsel discovered from their former statements did not amount to discredit the core of their evidence. The strained reasoning of the Sessions Judge for side-stepping their evidence is too fragile for judicial countenance. The Division Bench of the High Court has rightly reversed the finding regarding the credibility of their evidence.

For the aforesaid reasons we agree with the High Court that appellants are liable to be convicted under Section 302 of the IPC. We, therefore, dismiss this appeal.