
V. Suri

Before S.S. Saron, S.P. Bangarh, JJ.

KASHMIR SINGH & OTHERS—Appellants

versus

STATE OF PUNJAB—Respondent

CRA No. 242-DB of 2005

July 04, 2012

Indian Penal Code, 1860 - Ss.302 & 506 - Murder - Appellants, who are brothers convicted of offences u/s 302 and 506 IPC, for murder of wife of appellant No.1, whose fidelity was suspect - In appeal, allegations qua appellant No.2 were held improbable and were disbelieved, given benefit of the doubt leading to his acquittal -

Argument contention that if allegations against appellant No.2 were disbelieved, a doubt is created with respect to the entire prosecution case - Contention repelled - Doctrine of "falsus in uno, falsus in omnibus" not applicable in India - Grain has to be separated from chaff - The above doctrine is merely a rule of caution - The entire testimony cannot be rejected because a part of it cannot be believed.

Held, that Now the question arises as to whether the evidence of PW7 and PW8 can be repelled in its totality or not. The answer shall be no in view of Syed Ibrahim v. State of A.P (2006) 10 SCC 601, wherein it was held that the maxim "Falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s) and this maxim has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases, testimony may be disregarded, and not that it must be disregarded. It was held that even if major portion of evidence found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. It was also held that in a given case, it is always open to the court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons. It was further held that doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop.

(Para 45)

Further held, that in Santosh v. State of Maharashtra (2007) 13 SCC 457, also it was held that 'Falsus in uno falsus in omnibus' has no applicability in India.

(Para 46)

Further held, that PW7 and PW8 have tried to implicate appellant no.2 falsely, but their credibility qua appellant no.1 remains un-impeached. In view of aforementioned maxim, it is always open for the Court to partly reject and partly accept the evidence of witnesses. Simply on the ground that evidence of PW7 and PW8 has been partly rejected, their entire evidence need not be rejected due to this reason. Even, if it is found by the Court that appellant no.2 was falsely implicated, that does not mean that appellant no.1 was also falsely implicated.

(Para 47)

S.P.Soi, Advocate, and S.S.Rana, Advocate, *for the appellants*.

U.S. Dhaliwal, Addl. A. G. Punjab for respondent.

S.P.BANGARH, J.

(1) Challenge, herein, appeal is to the legality and propriety of the judgment and resultant order of sentence dated 20.12.2004, whereby, appellants were convicted for commission of offences punishable under Sections 302 and 506 of the Indian Penal Code (hereinafter, referred to as "IPC") and sentenced to undergo imprisonment for life each and to pay fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month each for commission of offence punishable under Section 302 IPC and to undergo rigorous imprisonment for a period of one month each under Section 506 IPC.

(2) The case of the prosecution is that Kinder Kaur, deceased, daughter of Balwinder Kaur, complainant was married to Kashmir Singh, appellant no.1, about two and half years ago before 27.03.2004. The relationship between Kinder Kaur and Kashmir Singh became strained. Due to this reason, on 26.03.2004 Balwinder Kaur, complainant and her husband came to the matrimonial house of Kinder Kaur to advise Kashmir Singh, appellant no.1. On 26.03.2004, at night, after taking meals, Kinder Kaur and Kashmir Singh slept in a room, while Balwinder Kaur and her husband Resham Singh slept on cots in the courtyard of her house. On 27.03.2004 at about 5:00 am, they heard a noise from the room where Kinder Kaur and Kashmir Singh were sleeping and in that room, an electric bulb was blowing and Balwinder Kaur, complainant and her husband got up and saw through the hole on the door where Jagir Singh, appellant no.2, who is the

elder brother of appellant no. 1, had held Kinder Kaur by her arms, while appellant no. 1 Kashmir Singh thrust naked sword in her chest. Both Balwinder Kaur and her husband raised an alarm, thereupon, both the appellants after opening the door, ran away from the spot. While fleeing, they also threatened to kill Balwinder Kaur and Resham Singh, if they narrated this incident to someone.

(3) Appellants were suspecting the character of Kinder Kaur and due to this reason, they committed her murder. Before the day break, Resham Singh went to his relatives in village Chaunta, District Ludhiana, to inform about the occurrence and he came to the spot alongwith relatives. Balwinder Kaur after leaving her husband and relatives to guard the corpse of Kinder Kaur, accompanied by Baldev Singh and her other son-in-law went to the police for lodging the report about the murder and when they reached at Bus Stand, Lakhana Kalan, Balbir Singh SI/SHO of Police Station Sadar, Kapurthala met them, before whom, Balwinder Kaur made statement Ex.PF (supra), which was read-over and explained to her, who after admitting the same to be correct, thumb marked the same.

(4) Later Balbir Singh SI/SHO put his endorsement (Ex.PF/1) on the statement ibid of Balwinder Kaur and sent the same to the Police Station for registration of FIR through Balwinder Singh Constable where, on the basis, thereof, FIR (Ex.PB) was registered.

(5) Later Special Report (Ex.PB/1) was delivered to the Illaqa Magistrate. Thereafter, Balbir Singh, SI alongwith other members of the police party, complainant and Baldev Singh went to the place of occurrence, where in the room of the house, corpse of Kinder Kaur was lying which was identified by Baldev Singh and Manjeet Kaur.

(6) After preparing inquest report (Ex.PR) on the corpse of Kinder Kaur, the same was sent to mortuary for autopsy through Gajjan Singh and Balbir Singh Constables. Site plan (Ex.PA) was prepared, bed sheet (dari in the local parlance), which was stained with blood was lifted from the bed, whereon, corpse of Kinder Kaur was lying and it was converted into parcel, which was sealed by Balbir Singh SI/SHO with his seal bearing impression "BS" and this dari parcel was seized vide memo (Ex.PH), blood was also lifted from the spot and put into a tin, which was sealed into a parcel and was seized vide memo (Ex.PJ).

(7) On 31.03.2007, Kashmir Singh, appellant no.1 was arrested vide memo (Ex.PO) and information vide memo (Ex.PO/1) was given to Jaswinder Singh regarding his arrest. On 02.04.2007, Kashmir Singh, appellant no.1 was interrogated and during interrogation, he suffered a disclosure statement (Ex.PL) and pursuant, thereto, he got recovered sword from the fields of Hazara Singh near his residential house in the area of village Lakhana Khurd, whose rough sketch (Ex.PM) was prepared and later on was converted into parcel, which was also sealed with seal (supra), which was seized vide memo (Ex.PN). Siteplan (Ex.PT) of the place of recovery of the sword was also prepared and the case property was deposited with the MHC of Police Station with seals intact.

(8) On 04.06.2004, Jagir Singh, appellant no.2 was also arrested vide memo (Ex.PP) and information vide memo (Ex.PP/1) regarding his arrest was given to his brother Balbir Singh.

(9) After completion of the investigation, Station House Officer, Police Station, Kapurthala instituted police report under Section 173 of the Code of Criminal Procedure (hereinafter, referred to as "Cr.P.C") before the Illaqa Magistrate to the effect that it appears that the appellants have committed offences punishable under Sections 302 and 506 IPC.

(10) On receipt of police report, copies of documents were supplied to the appellants by the learned Illaqa Magistrate, who later on committed this case to the Court of Session at Kapurthala.

(11) On receipt of Session case, the learned Sessions Judge, Kapurthala, framed charge against the appellants for the commission of offences punishable under sections 302 and 506 IPC, whereon, the latter pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

(12) In order to substantiate its allegations, the prosecution examined following eleven witnesses, who testified as under:-

(13) PW1 Jagat Singh, Draftsman on 20.04.2004 inspected the place of occurrence and prepared scaled map (Ex.PA.)

(14) PW2 Balkar Singh, Constable testified that he delivered Special report to the Illaqa Magistrate on 27.03.2004 (Ex.PB/1), whereon, he identified the signatures of Balwinder Singh ASI.

(15) PW3 Dr. Gurbachan Singh testified that on 28.03.2004, he alongwith Dr. Sumit Dhillon, on the basis of application (Ex.PC) conducted autopsy on the corpse of Kinder Kaur and found the following injuries thereon:-

1. Incised wound 2.5 cm x 1 cm spindle shaped, present epigastriam 1 cm below the xiphistem in midline.
2. Incised wound 2 cm x 0.8 cm on the right lumber region (back) 5 cm from mid line, 6 cm from lower rib.

He also testified that lateron, he handed over corpse to the police alongwith a box bearing 16 seals and containing 5 jars with two intact seals, envelop B bearing six seals containing carbon copy of autopsy and box C bearing 16 seals intact containing uterus and adnexa. He further testified that if the deceased was lying and kirpan is thrust in her abdoman, then injuries nos. 1 and 2 could be caused. He also proved photocopy of the post mortem report (Ex.PD) and pictorial diagram (Ex.PD/1) showing the seat of injuries. He also testified that in report from the Chemical Examiner (Ex.PE), no poison was detected in any of the contents and, therefore, the cause of death in this case is due to injuries described in the autopsy report ibid. He also proved (Ex.PE/1), which is an opinion of Dr. Sumit Dhillon.

(16) At the time of his deposition, parcel of dari (Ex.P2) was opened and there was a cut therein, kamiz (shirt) (Ex.P3), salwar (Ex.P4), bra (Ex.P5), one set of bangles (Ex.P6), one pair of ear rings (Ex.P7) and one finger ring (Ex.P8) were also produced during the deposition of this witness, which were removed from the corpse of Kinder Kaur, at the time of her autopsy.

(17) PW4 Harjit Singh, Constable deposed that on 26.04.2004 Jasbir Singh MHC handed over to him, one parcel of dari, one parcel containing sword and one parcel containing blood stained earth, which were sealed with seal bearing impression "BS" for deposit, thereof, in the office of Forensic Science Laboratory, Chandigarh and he deposited those in the laboratory (supra) and handed over receipt to Jasbir Singh MHC. He also deposed that, so long as, these parcels remained in his custody, no one tampered, therewith, and his statement was recorded.

(18) PW5 Bhupinder Singh ASI deposed that on 27.03.2004, ruqa was sent by Balbir Singh SI/SHO through Dalbir Singh Constable and on the basis, thereof, he recorded FIR (Ex.PB), which bears his signature. He also proved special report (Ex.PB/1).

(19) PW6 Gajjan Singh Constable testified that on 28.03.2004, he accompanied Balbir Singh SI/SHO and other police officials and they went to farm house of Kashmir Singh, appellant no. 1, located in the area of village Lakhan Khurd and saw corpse of Kinder Kaur lying there, which was handed over to him for getting conducting autopsy thereon, from Civil Hospital Kapurthala, vide request (Ex.PC) and after autopsy on the corpse of Kinder Kaur, the doctor handed over him salwar, kamij, bra, 13 bangles, one pair of ear rings and one finger ring and he handed over those to Balbir Singh, SI, who prepared parcel, thereof, and sealed the parcel with his own seal and seized the parcel vide memo (Ex.PG). These clothes were produced during the deposition of this witness and were exhibited as Ex.P3 to Ex.P8 respectively.

(20) PW7 Balwinder Kaur, complainant testified that Kinder Kaur, her deceased daughter was married to Kashmir Singh, appellant about two and half years before her death and Jagir Singh, appellant is the brother of Kashmir Singh, appellant. She further testified that about two years after the marriage, relations between her daughter Kinder Kaur and Kashmir Singh, appellant remained cordial, but later became strained, as latter used to say that former is not a good lady, as she used to go outside the house and about five and half months ago, her daughter rang her up and informed that both the appellants were beating her and on receipt of a telephonic message, she alongwith her husband Resham Singh (PW8) came to the house of Buta Singh, father of appellants at village Lakhan Khurd and they prevailed upon Kashmir Singh appellant and Kinder Kaur and stayed in the house of Buta Singh, father of appellants for night.

(21) PW7 further testified that after taking meals, she and her husband slept in the courtyard of the house; her daughter Kinder Kaur and Kashmir Singh, her son-in-law slept inside the room of the house and Jagir Singh appellant was also sleeping in a separate room in the house and about 4:00 am, they heard noise from the house where Kinder Kaur and Kashmir Singh were sleeping and they both went towards the room where they saw

from the hole of the door that Jagir Singh, appellant had held Kinder Kaur by her arm, while Kashmir Singh gave kirpan blow thrust in her abdomen. Sword (Ex.P1) was shown to her during her deposition. She further testified that she and her husband raised alarm and both accused ran away after giving threat to them and thereafter, she went inside the room and saw Kinder Kaur having already died and after leaving her to guard the corpse of Kinder Kaur, her husband left to inform about her murder to his relations, Baldev Singh, her son-in-law and husband of Manjit Kaur and latter came there and then Manjit Kaur was left to guard the corpse of Kinder Kaur and she and Baldev Singh went to the police for lodging the report and statement (Ex.PC) was suffered by her before the police, which was thumb marked by her and she further testified that blood had fallen on the clothes and dari was drenched with blood and clothes of Kinder Kaur, deceased were also drenched with blood. During her deposition, dari (Ex.P2), shirt (Ex.P3), salwar (Ex.P4), bra (Ex.P5), one set of bangles (Ex.P6), one pair of ear rings (Ex.P7) and one finger ring (Ex.P8) were produced and she also testified that dari had been spread on the cot on which the murder of her daughter was committed and aforementioned clothes were worn by her at the time of her murder.

(22) PW8 Resham Singh, who is an eye witness, also corroborated the testimony of PW7 by testifying likewise.

(23) PW9 Jasbir Singh, MHC testified that on 27.03.2004, he was posted as MHC at Police Station Sadar, Kapurthala, on which date, Balbir Singh SI/SHO deposited with him one parcel containing dari, one parcel of tin containing blood which was sealed with seal bearing impression "BS" and one parcel containing clothes of the deceased Kinder Kaur sealed with the seal bearing impression BS and on 2.4.2004, one parcel containing sword duly sealed with seal bearing impression "BS" was also deposited with him by Balbir Singh SI/SHO and on 26.04.2004, one parcel containing sword, one parcel containing dari and one parcel of tin box containing blood were handed over by him to Harjit Singh, Constable for deposit, thereof, in the Forensic Science Laboratory, Chandigarh and the latter after deposit of these articles, handed over the receipt to him.

(24) PW9 Jasbir Singh, MHC further testified that one parcel, which was sealed with seal bearing impression "GS" and one envelop were received from Civil Hospital, Kapurthala by him on 28.03.2004 and on 31.03.2004, he sent these to the office of Chemical Examiner at Patiala through Gajjan Singh, Constable, who after deposit, thereof, in the office *ibid*, handed over the receipt to him. He further testified that on 03.04.2004, he sent one parcel and one envelop sealed with the seal bearing impression GS, which were received by him from Civil Hospital, Kapurthala, to Medical College, Amritsar through Gajjan Singh, Constable, who after deposit thereof, handed over receipt to him and he further deposed that, so long as, these parcels remained with him, no-one tampered, therewith.

(25) PW10 Parminder Singh ASI also testified that on 02.04.2004, he was posted as ASI at Police Station Sadar, Kapurthala, on which date, Balbir Singh SI/SHO of Police Station Sadar, Kapurthala interrogated Kashmir Singh, appellant in his presence as also, in the presence of Naunihal Singh, Member Panchayat and during interrogation, Kashmir Singh, appellant suffered disclosure statement (Ex.PL) to the effect that he has kept concealed sword in the field of fodder of Hazara Singh, near his residential house and he could get the same recovered and later he led the police party to the place disclosed in the disclosure statement (Ex.PL) and got recovered sword (Ex.P1), whose rough sketch (Ex.PM) was prepared and later this sword was sealed into parcel with the seal bearing impression "BS" and that parcel was seized vide memo (Ex.PN). He further testified that the disclosure statement (Ex.PL), rough sketch (Ex.PM) and recovery memo (Ex.PN) were attested by him and Naunihal Singh. Sword (Ex.PL) was produced in the Court, during his deposition. He further testified that on 31.03.2004, Kashmir Singh, appellant was arrested by Balbir Singh, SI/SHO vide memo (Ex.PO) and on 04.06.2004, Balbir Singh SI/SHO arrested Jagir Singh, appellant vide memo Ex.PP.

(26) PW11 Balbir Singh SI conducted investigation of this case and deposed on these lines.

(27) Thereafter, the evidence was closed by prosecution before the learned trial Court after tendering report of the Forensic Science Laboratory, Chandigarh (Ex.PU).

(28) After the closure of prosecution evidence, Kashmir Singh, appellant no.1 was examined under Section 313, Cr. P.C, wherein, he denied the allegations of prosecution, pleaded innocence and false implication in the case. He had given his own version that on 27.03.2004, he had gone to the house of Kapura, Lamberdar for personal work and came back to his house at 12:00 a.m and Kapura, Lamberdar had come to drop him at his house on scooter and he found that his wife Kinder Kaur was lying dead and he went to inform police about this, and was falsely implicated in this case. He further stated that his brother Jagir Singh is living separately and was not present at place where the corpse of Kinder Kaur was lying.

(29) Jagir Singh, appellant no.2 was also examined under Section 313, Cr.P.C, wherein, he denied the allegations of prosecution, pleaded innocence and false implication in this case. He also gave his own version that he has been falsely involved in the case and that he has been living separately from his brother Kashmir Singh and he has a separate ration card. He further stated that SHO Balbir Singh, ASI Navdeep Singh and other police officials threatened his family members that if they do not pay Rs.50,000/- to them, then they will involve him in the murder case of Kinder Kaur and when his wife and other relatives told them that they will arrange Rs.50,000/- and give it to them, he would be released, but when this amount could not be arranged by 28.05.2004, he was falsely implicated in this case and then his relatives including his wife Kashmir Kaur, Swaran Kaur wife of Buta Singh moved an application to the Chairman, Human Rights Commission, on 09.06.2004, regarding his false implication and on 26.03.2004, Jaswinder Singh and his wife Amrik Kaur, resident of village Saicha, Police Station Sultanpur Lodhi, had come to Hamira in the house of Gurdit Singh and at 7:00 pm, they brought a VCR from village Dialpur to see the movie of marriage and a VCR was brought from Lakhu and he watched movie regarding the marriage of Lakhu with them and remained there entire night and he left that house on the next day at 8:00 am in the morning and he was with Jaswinder Singh and Amrik Singh.

(30) Both the appellants examined DW1 Jaswinder Singh, who testified that he knows Jagir Singh, appellant no.2 and on 26.03.2004, he and his wife Amrik Kaur had gone to Hamira to meet his in-laws; Lakhu son of Bantu Singh, his relative from in-laws had brought a VCR for seeing

movie of the marriage and Jagir Singh, appellant no.2 came there for seeing that movie and remained there throughout the night and he left that house at 8:00 am on the next morning.

(31) After hearing both the sides, learned trial Court convicted and sentenced both the appellants as described in the first paragraph of this judgment, vide impugned judgment and order of sentence.

(32) Aggrieved, therefrom, both the appellants, who were accused before the learned trial Court have come up in this appeal with prayer for acceptance, thereof, and for their acquittal of the charge framed against them.

(33) Learned counsel for the appellants and learned Additional Advocate General, Punjab have been heard and record of the learned trial Court perused with their assistance.

(34) Learned counsel for the appellants contended that the impugned judgment is solely based on evidence of PW7 and PW8, who are the parents of deceased and their presence at the place of occurrence is highly unnatural, as no prudent man will commit the murder of his wife at a time when his parents-in-law are sleeping in the courtyard of his house. He also contended that both the appellants were not present in the house at the time of alleged occurrence and, therefore, appellants cannot be said to have committed the murder of Kinder Kaur. He also contended that PW7 allegedly remained present at the place of occurrence from the very beginning and she testified that after committing the murder, appellants abandoned the sword at the place of occurrence and fled away, while on the contrary, it is the case of the prosecution that the sword was recovered from the field of Hazara Singh, pursuant to the disclosure statement of Kashmir Singh, appellant.

(35) Learned counsel for the appellants also contended that if a person has to kill his wife with the help of his brother, he will not choose such a time, when his parents-in-law are staying and sleeping in the courtyard of his house where murder of Kinder Kaur was allegedly committed by the appellants.

(36) Learned counsel for the appellants also contended that PW7 and PW8 allegedly deposed that they saw the appellants committing the murder of Kinder Kaur deceased through the hole in the door which was bolted from inside, but no photograph of the alleged hole were taken and this omission would prove that there was no hole in the door of the room, wherein, murder was allegedly committed and the testimony of PW7 and PW8 becomes highly unbelievable. He also contended that there is an unexplained delay in lodging the FIR and had Resham Singh (PW9) been present at the time of the occurrence along with his wife Balwinder Kaur (PW7), he would have rushed to the police station to lodge the FIR instead of going to his relations in a village in Ludhiana District and this delay indicates that the prosecution version has been distorted and PW7 and PW8 were not present at the time of alleged occurrence. He also contended that PW7 and PW8 being parents of the deceased were highly interested witnesses and they could go to any extent in order to get them falsely implicated in the case as their daughter was killed by someone whose character was doubtful.

(37) So, learned counsel for the appellants further contended that there is no evidence on record to connect the appellants with the alleged offences, as also the presence of Jagir Singh, appellant no.2 is highly doubtful as he happened to be present in village Hamira on the alleged night of occurrence, as can be seen from the testimony of DW1 which could not be shattered during cross examination. He also contended that even there was no occasion for Jagir Singh, appellant no.2 to be present in the bed room of his brother Kashmir Singh, appellant no.1, who was sleeping with his deceased wife at 5 am, as also, it is not the case of the prosecution that both had hatched a conspiracy to kill the deceased. So, he contended that the impugned judgment and order are required to be reversed and the appellants be acquitted of the charge framed against them by according them benefit of doubt.

(38) Learned Additional Advocate General, Punjab for the respondent, on the other hand, contended that the evidence of PW7 and PW8, who unanimously testified that both the appellants killed Kinder Kaur inspires confidence and the same having been corroborated by medical evidence was rightly relied upon by the learned trial Court for convicting and sentencing the appellants vide impugned judgment and order of sentence, which are required to be upheld and affirm.

(39) First of all the case of Jagir Singh, appellant no.2 shall be taken up.

(40) It is the case of the prosecution that PW7 and PW8 unanimously testified that both the appellants committed the murder of Kinder Kaur and they witnessed the occurrence through the hole in the door. Learned counsel for the appellants rightly contended that there is a tendency in this area to rope in innocent persons when some occurrence like occurrence in question takes place and the same seems to have happened in this case. Indubitably, it is not the case of the respondent that both the appellants had hatched a conspiracy to commit the murder of Kinder Kaur. Kashmir Singh, appellant no.1 is the husband of Kinder Kaur deceased who doubted her fidelity and due to this annoyance, he had a motive to eliminate her but no motive can be ascribed to Jagir Singh, appellant no.2 to kill the deceased.

(41) Even the occurrence had taken place at about 5:00 am and it is highly improbable that appellant no.2 shall enter the bed room of deceased who was sleeping with her husband Kashmir Singh, appellant no.1 unless there would have been a case of the respondent that they had conspired to kill her. According to PW7 and PW8, appellant no.2 Jagir Singh had caught hold Kinder Kaur by her arms, while appellant no.1 thrust naked sword into her chest. If this would have been a position, then there would have been no cut on the thick bed cover (dari) which was spread on the cot, where Kinder Kaur was lying. The evidence of Dr.Gurbachan Singh (PW3) indicates that there were two injuries on the abdomen of the deceased and the sword was thrust and it went through and through up to the back and he also found cut on the thick bed cover (dari), where Kinder Kaur was lying.

(42) The medical evidence suggests that Kinder Kaur was lying on the thick bed cover (dari) and sword was thrust by appellant no.1 into her chest which pierced through and through and caused cut on the thick bed cover (dari). The cut on the thick bed cover candidly indicates that if she would have been held by arms by appellant no.2, in that event, there would have been no cut in the thick bed cover spread on the cot. It is not the case of PW7 and PW8 that when appellant no.2 had held Kinder Kaur deceased by her arms, the thick bed cover (dari) was on her back and even it would have been on back, the cut of sword would not have been caused on the thick bed cover (dari) after the sword pierced through the body of the deceased.

(43) The presence of appellant no.2, in these circumstances, becomes utterly doubtful. Even appellant no.2 Jagir Singh in his statement gave his version that on 26.03.2004 Jaswinder Singh and his wife Amrik Kaur had gone to Hamira to the house of Gurdit Singh and at 7:00 pm, they brought a VCR from Dialpur and watched movie regarding the marriage of Lakhu and he left that place on the next day at 8:00 am. His version has been supported by DW1 Jaswinder Singh, whose testimony, during cross examination, could not be shattered and, thus, it is safe to place reliance on this version of appellant no.2 which has been corroborated by DW1 who had no motive to depose falsely.

(44) Possibility, in these circumstances, cannot be ruled out that appellant no.2 was not in his house on the day of occurrence and he has been implicated in the instant case being brother of appellant no.1, who had no motive to kill her. There is a tendency in this area to rope in innocent people in such type of cases like appellant no.2 and such type of cases are blown out of proportion. Even, he was not armed with any weapon. The matter could assume serious proportion qua appellant no.2, if he had himself killed the deceased or he had got recovered the sword used in this occurrence. The evidence of PW7 and PW8 to the extent that appellant no.2 had held deceased by her arms when thrust of sword was given in her chest by appellant no.1 cannot be relied upon and on the basis thereof, the impugned conviction and resultant sentence of appellant no.2 cannot be upheld and benefit of doubt is required to be given to him.

(45) Now the question arises as to whether the evidence of PW7 and PW8 can be repelled in its totality or not. The answer shall be no in view of *Syed Ibrahim versus State of A.P. (1)*, wherein it was held that the maxim "Falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s) and this maxim has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases, testimony may be disregarded, and not that it must be disregarded. It was held that even if major portion of evidence found to be deficient, in case residuc is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the Court to separate

grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. It was also held that in a given case, it is always open to the court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons. It was further held that doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop.

(46) In *Santosh versus State of Maharashtra (2)*, also it was held that 'Falsus in uno falsus in omnibus' has no applicability in India.

(47) PW7 and PW8 have tried to implicate appellant no.2 falsely, but their credibility qua appellant no.1 remains un-impeached. In view of aforementioned maxim, it is always open for the Court to partly reject and partly accept the evidence of witnesses. Simply on the ground that evidence of PW7 and PW8 has been partly rejected, their entire evidence need not be rejected due to this reason. Even, if it is found by the Court that appellant no.2 was falsely implicated, that does not mean that appellant no.1 was also falsely implicated.

(48) The evidence of PW7 cannot be rejected on the ground that she stated that the appellants ran away after abandoning sword at the spot. This would have been inadvertently stated by PW7 before the police and before the learned trial Court and even PW11 who recovered sword from appellant no.1 was not suggested that the sword was abandoned at the place of occurrence by appellant no.1 before he fled away from the place of occurrence. So far as the recovery of sword from appellant no.1, pursuant to his disclosure statement (Ex.PU) is concerned, cannot be held to be doubtful. If the sword would have been abandoned at the spot that would have been recovered from that place by the police.

(49) Due to this omission in the testimony of PW7, the same cannot be rejected in its entirety. PW7 and PW8 in candid words testified that they saw appellant no.1 thrusting sword into the chest of the deceased. If the police omitted to take photographs of the hole in the door, through which the occurrence was witnessed by PW7 and PW8 that omission on the part of the respondent cannot result in rejection of the entire case. Appellant no. 1 was doubting the fidelity of Kinder Kaur and therefore, he had a motive to eliminate her. Even the deceased died an unnatural death in her own house and nothing has come during investigation that some intruder intruded in the house of the deceased and committed her murder.

(50) Ocular evidence of PW7 and PW8 has been duly corroborated by the medical evidence of PW3 who found two injuries on the corpse of the deceased. During deposition, he also saw the sword (Ex.P1) and deposed that if the deceased was lying and sword (Ex.P1) is thrust in her abdomen, then injuries no. 1 and 2 could be caused and in that situation, the sword (Ex.P1) would pierce through and through. A parcel of thick bed cover (dari) was opened during the deposition of PW3 who testified that there is a cut on the dari (Ex.P2).

(51) So, the ocular evidence of PW7 and PW8 corroborated by testimony of PW3 was rightly relied upon by the learned trial Court for holding appellant no.1 guilty of murder of his own wife Kinder Kaur. Even the sword (Ex.P1) was recovered pursuant to the disclosure statement (Ex.PL) of appellant no.1 and human blood was found, thereon, as can be seen from the report (Ex.PU). Blood stained earth was also lifted from the place of occurrence, which was found to be human blood vide report (Ex.PU). Dari (Ex.P2) was also found to be stained with human blood, vide report (Ex.PU).

(52) The contention of the learned counsel for the appellants that it is not established that blood stained earth, dari and sword contained the blood of deceased is devoid of merit and such type of evidence is not collected in such cases and once it is established that sword, blood stained earth and dari contained human blood, it must follow that these contained blood of Kinder Kaur and none else.

(53) The contents of stomach were also sent to the Chemical Examiner who vide report (Ex.PE) found that there was no poison, therein.

So, cause of death could not be due to poisoning and it could be only through two injuries having been caused to the deceased by appellant no. 1 with sword.

(54) Learned counsel for the appellants placed reliance upon *Ramchandra Sao and another versus State of Bihar (3)*, wherein, it was held that the presence of blood stains on the floor of room of house and blood stained shawl were not sufficient to establish that deceased was killed in room of the house or that blood stains matched with the blood group of the deceased and it was held that links in chain of circumstances are missing and benefit of doubt was extended to the accused and they were ordered to be acquitted.

(55) We fail to understand as to how this ruling applies to the case in hand. The instant case of the prosecution does not solely depend upon the recovery of the blood stain earth and bed sheet from the room where deceased was killed. There is another evidence of PW7 and PW8 that they saw deceased being killed by appellant no. 1.

(56) The evidence of PW7 and PW8 being parents of the deceased cannot be discarded, as they are the natural witnesses who happened to be present in the house of deceased on the date of occurrence and nothing has come on the record that they were present at some other place on the date of occurrence. It is the case of the prosecution that relationship between Kinder Kaur deceased and appellant no. 1 were strained and nothing has come on the record that both had cordial relations. Fidelity of the deceased was being doubted by appellant no. 1 and that gave occasion to him to kill deceased in his bed room when PW7 and PW8 were sleeping in the courtyard of the house. There is nothing improbable that deceased could not be killed by the appellant when PW7 and PW8 were present at the house.

(57) So far as the delay is concerned, that has been properly explained. Instead of going to the Police Station straightway, Resham Singh (PW8) went to his relations to inform them about the occurrence and when he came back at the spot, PW7 went to the police to lodge the FIR vide her statement (Ex.PB).

(58) It is, nodoubt, true that at the time of recovery of sword from appellant no. 1, which was used for murdering Kinder Kaur, Naunihal Singh joined investigation, but he was not examined as he had been won over by the appellants. The case of the prosecution cannot be discarded due to non examination of Naunihal Singh, during trial as the respondent could not be forced to examine this witness. Since Public Prosecutor before the learned trial Court, on the basis of request of the police, came to the conclusion that this witness has been won over by appellants, he pondered it apt to give up this witness. Learned trial Court rightly held that there was no necessity on the part of the Public Prosecutor for the respondent to examine Naunihal Singh, as he knew that his evidence was going to damage his case.

(59) No other point has been raised or arisen.

(60) Resultantly, appeal on behalf of appellant no. 1 being devoid of merit is, hereby, dismissed, while on behalf of appellant no. 2 Jagir Singh is accepted; impugned judgment and resultant order qua him are set aside and he is acquitted of the charge framed against him by according him benefit of doubt. He is ordered to be released from the jail in this case.