

Neutral Citation No. - 2025:AHC-LKO:4125-DB

Judgement Reserved on 21.11.2024

Judgement Delivered on 22.01.2025

Court No. - 9

Case :- GOVERNMENT APPEAL No. - 206 of 2001

Appellant :- State of U.P.

Respondent :- Ram Naresh And 5 Ors.

Counsel for Appellant :- Govt. Advocate,

Counsel for Respondent :- G.C.Verma, Manjusha Kapil

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Mohd. Faiz Alam Khan, J.

(1) Heard Sri P. K. Mishra, learned A.G.A. for the State Appellant as well as Ms. Manjusha Kapil, learned counsel for the respondents and perused the record.

(2) The instant appeal has been filed by the State under Section 378 of the Cr.P.C. challenging the impugned judgement and order of date 18.12.2000 passed by the Additional District & Session Judge, Kheri Court No.6 in Sessions Trial No. 314 of 1997 pertaining to Case Crime No. 155 of 1995 under Sections 147, 148, 149 and 302 of the I.P.C. whereby all the 6 accused persons were acquitted by the Trial Court of all the charges framed against them.

(3) The leave to appeal has already been granted and Appeal has been admitted vide order dated 16.03.2001 passed by the Coordinate Bench of this Court.

(4) Necessary facts required for the disposal of the instant appeal are in-terms that an F.I.R. was lodged by the informant, Sri Nand Ram at

12:35 P.M. on 31.08.1995 at reporting Outpost Khamariya, Police Station Isha Nagar, District Kheri by moving a written application alleging that on 31.08.1995, his brother, namely, Vijay Kumar was returning to his home after collecting fodder from his/ agricultural field and his cousin Rajesh was also coming behind him and when they both arrived in front of the house of one Ambika the accused persons Ram Naresh Verma, Ambika, Rajendra @ Manney, Sadhey Pasi, Sobaran and Mauji, who were sitting in the house of Ambika started assaulting his brother, Vijay with 'ballam, Banka and country-made pistol. It is further alleged that on an alarm raised by Rajesh (informant), Ram Khilawan arrived at the scene and found that accused Ram Naresh was firing from the country-made pistol and Ambika was assaulting with ballam while Sadhey Pasi, Soberan and Mauji were assaulting his brother (Vijay) with 'banka' and accused Rajendra was firing with a country-made pistol and after seeing them the accused persons fled away towards the house of Ambika, firing gunshots in the air. His brother (Vijay) is lying in a pool of blood at the scene of crime and also that the incident is of about 11:00 A.M.

(5) On the basis of aforesaid information an F.I.R. under Section 147, 148, 149 and 302 of the I.P.C. at Case Crime No. 155 of 1995 was registered at reporting outpost Khamaria, Police Station – Isha Nagar, District – Kheri.

(6) The Investigating Officer of the case Sub-Inspector, Harivansh Lal Bharti took charge of investigation and at once proceeded to the place of incident and when he arrived at the scene of Crime he found the dead body of the victim and the inquest report of the deceased was prepared under his direction. Sri Harivansh Lal Bharti after preparation of necessary papers sent the body to the mortuary situated at Lakhimpur Kheri for the purpose of post-mortem. The Investigating Officer, thereafter, prepared the site plan on the pointing of the informant, collected sample soil as well as blood stained soil from the spot and also prepared memo of the same.

(7) The postmortem of the deceased (Vijay Kumar) was conducted by Dr. A. K. Arya and he found the age of the deceased as about 35 years and also that the deceased was a person of average built. The '*rigor mortis*' has passed from the upper limbs and was going towards the lower limbs. Postmortem staining was present on the back of the dead body and had become greenish in colour. Dried blood was also found all over the body and there was a lacerated wound on the right eye of the deceased.

(8) The Doctor has found following injuries on the body of the deceased:-

- i. Incised wound 8cm x 2cm x bone deep at the upper part of the head 10 cm above right ear.
- ii. Incised wound 7 cm x 2 cm x cavity deep at the right side of the head 4 cm above the right eyebrow, the frontal bone beneath this injury was also found cut.
- iii. Incised wound 11 cm x 3 cm x bone deep at the right side of the scalp 1 cm above the right ear.
- iv. Incised wound 6 cm x 2 cm x bone deep at the right back side of the head 2 cm below the injury no.3.
- v. Incised wound 9 cm x 0.5 cm x muscle deep on the right side of the face.
- vi. Firearm wound of entry 5cm x 3cm x cranial cavity deep blackening and tattooing was found around the wound and the bone beneath this injury was also found fractured as well as the base of the scalp on the left side of temporal and occipital bone was also found fractured and membranes were also found lacerated. The direction of this injury was from the front side to the back side of the body.
- vii. Incised wound 3cm x 1cm x bone deep on the left eyebrow.

- viii. Incised wound 7cm x 1cm x bone deep on the left side of the face.
- ix. Incised wound 6cm x 2cm x bone deep at the lower part of the mandible and the mandible bone was also found cut.
- x. Incised wound 2cm x 1cm x muscle deep on the right arm.
- xi. Multiple abrasions on an area of 25cm x 8cm on right arm and forearm. The biggest abrasion was measured as 5cm x 0.5cm, while the smallest abrasion was of the size of 3cm x 0.3cm.
- xii. Incised wound 8cm x 2cm into bone cut on the right forearm 9cm below the elbow joint and the bone beneath was also found cut.
- xiii. Incised wound 6cm x 2cm x bone cut deep on the back side of the right palm and the ulna bone was also found cut.
- xiv. Incised wound 2cm x 1cm x muscle deep on the left scapula.
- xv. Incised wound 1cm x 0.5cm x bone deep on the index finger of left hand.
- xvi. Incised wound 2.5cm x 5cm x muscle deep on the left side of the chest, 6cm above left nipple.
- xvii. Punctured wound 1cm x 1cm x chest cavity deep on the left side of the chest, below left nipple.
- xviii. Punctured wound 2cm x 1cm x chest cavity deep at the left side of the chest, 10cm below of the left armpit.
- xix. Punctured wound 1cm x 1cm x chest cavity deep on the left side of the chest 3cm away from the mid line, 15cm below from the seventh cervical spine.
- xx. Punctured wound 2cm x 1cm into chest cavity deep on the left side of the chest, 4cm away from the injury no. 19.

xxi. Incised wound 2cm x 2.5cm x muscle deep or at superior iliac spine.

(9) On internal examination the stomach of the deceased was found containing 200 gm pasty food and the chest cavity was found having 1.5 litre of fluid and clotted blood. The heart was also found perforated at two places and membranes were found lacerated, while the left lung was also found lacerated. In the opinion of the doctor the death of the deceased was caused due to shock and hemorrhage due to ante-mortem injuries.

(10) The Investigating Officer also recorded the statement of prosecution witnesses and on 02.09.1995 arrested accused persons Ram Naresh, Sadhey Pasi, Mauji and Rajendra and also recorded their statements and also made attempts to recover the weapons of assault as it was informed by the accused persons that they have thrown the weapons of assault in the Sharda river but despite efforts, because of the heavy flow of the river the weapons could not be recovered. The Investigating Officer on 05.09.1995 arrested the accused persons Ambica and Soberan. They also confessed their guilt and stated to have thrown weapons in the Sharda river which could not be recovered for the reasons as aforesaid, and thereafter, the Investigating Officer finding sufficient material/evidence submitted charge sheet against all of them.

(11) On the case being committed, the Trial Court framed the charges against the accused persons under Section 148, 302/149 of the I.P.C. to which all the accused persons denied and claimed trial. The prosecution in order to prove its case presented before the Trial Court in oral evidence. P.W.-1 Nandram, P.W.-2 Rajesh Kumar, P.W.-3 Dr. A. K. Arya, P.W.-4 Head Constable Ram Vachan Prasad, P.W.-5 Station House officer- Nand Lal Yadav (Investigating Officer).

(12) Apart from relying upon the above stated oral evidence the prosecution has also relied on documentary evidence e.g. written F.I.R. exhibit Ka-1, Postmortem Report exhibit Ka-2, Chick F.I.R. exhibit Ka-

3, Copy of the General Diary of the Police Station exhibit Ka-4, Inquest Report exhibit Ka-5, necessary papers prepared for sending the body of the deceased for postmortem exhibit Ka-6 to exhibit Ka-9, and exhibit Ka-12 & Ka-13, Site Plan exhibit Ka-10, Memo of collection simple and blood stained soil exhibit Ka-11, Charge Sheet exhibit Ka-14.

(13) After conclusion of the evidence of the prosecution the statement of the accused persons/respondents were recorded under Section 313 of the Cr.P.C. wherein they denied all the evidence produced by the prosecution and also that they have been involved in this case on the basis of enmity. It is also stated that the two witnesses of fact are real brothers of the deceased and they have given false evidence on the basis of enmity. It is also stated that the deceased (Vijay Kumar) was a person of bad character and was involved in many criminal cases of murder and rape and he might have been done to death in night by some unknown persons and due to enmity this blind murder has been attributed to them. The accused Soberan has further stated that one Balbhadra was an accused with regard to a criminal case instituted pertaining to the theft that had occurred in the house of the deceased (Vijay Kumar) and Balbhadra had also gone to jail in that case and Soberan had stood his (Balbhadra) surety and on account of this the deceased (Vijay Kumar) was inimical with Soberan and thereafter Balbhadra was done to death and deceased (Vijay Kumar) was named in his murder and Soberan was doing *pairvi* of the said case and on this score he has been falsely implicated. A copy of the F.I.R. of date 29.04.1993 was produced in defence which has been exhibited Kha-1.

(14) The Trial Court after appreciating the evidence on record found that the prosecution has failed to prove its case beyond reasonable doubt and has acquitted accused persons Ram Naresh, Ambika, Rajendra @ Manney, Sadhey Pasi, Soberan and Mauji of all the charges framed against them.

(15) The State feeling aggrieved by the impugned order has presented this appeal.

(16) Learned A.G.A. while challenging the impugned judgement and order submits that the Trial Court has committed manifest illegality in appreciating the evidence available on record and has passed a judgement based on surmises and conjectures.

(17) It is further submitted that the Trial Court has given much importance and weightage to minor contradictions emerging in the testimony of two witnesses of fact, namely, P.W.-1 (Nand Ram) and P.W.-2 (Rajesh Kumar), who were the natural witnesses of the crime.

(18) It is also submitted that the F.I.R. of the incident has been lodged with utmost promptness and since the evidence of the prosecution witnesses was recorded after passage of some time minor, insignificant contradictions are bound to occur in their evidence which fortifies that these witnesses are giving natural and truthful account of the incident.

(19) It is further submitted that the Trial Court in its zeal to acquit the accused persons has also noted some illegalities/irregularities committed by the Investigating Officer in not collecting the fodder bundles which the deceased and witness Rajesh were carrying and even if this finding is believed for the sake of argument, the same may not be sufficient enough to extend the benefit of doubt as even if any illegality has been committed by the Investigating Officer the victims should not suffer for the same.

(20) It is also submitted the Trial Court has also taken into consideration that one prosecution witness namely, Ram Khilawan, who according to the Trial Court was an independent witness, has not been produced by the prosecution and the Trial Court fell into an error in **reading** this circumstance against the prosecution as it has come in the evidence of the informant that this witness namely, Ram Khilawan has been won over by the accused/ persons and this fact has not been noticed nor even discussed by the Trial Court.

(21) It is also submitted that no prosecution witnesses is required to give a parrot like video graphic account of the incident. Thus, some minor contradictions are bound to occur here and there, but if the core of the prosecution story remains intact then the accused persons may not be entitled for benefit of any doubt.

(22) It is further submitted that the Trial Court has also observed that the witnesses have not made any attempt to save the deceased and also that the informant and witness (Rajesh) have not sustained any injury. **It has been emphatically argued that some** circumstances could be taken against the prosecution when it has come in the evidence that the accused persons were six in number and they were possessing dangerous weapons including firearms, therefore, it was natural conduct of the witnesses not to have gathered courage to intercept and save the deceased and they have also stated so before the Trial Court, but the Trial Court has not discussed such evidence and similar is the situation pertaining to non-taking of licensed gun by the informant to the place of occurrence which has been properly explained by the witnesses and thus there was no occasion for the Trial Court to have **read** this circumstance against the prosecution.

(23) It is vehemently submitted that the judgement of the Trial Court is patently perverse and against the evidence available on record and may not sustain the scrutiny of this Court and hence is liable to be set aside and the accused persons /respondents be convicted under Sections 148 and 302 read with Section 149 of the I.P.C.

(24) Ms. Manjusha Kapil, learned counsel for the respondents vehemently submits that every under trial who is an accused of an alleged crime is having a presumption of innocence in his favour and when he has been acquitted by the Trial Court that presumption of innocence is further fortified, and therefore, very cogent and strong reasons are required to set aside the judgement of acquittal.

(25) It is further submitted that if two reasonable views are emerging from the evidence of the prosecution presented before the Trial Court and the Trial Court has adopted a possible view, the same by itself may not be sufficient to set aside the judgement of acquittal when it is otherwise based on cogent reasons and findings.

(26) It is further submitted that deceased was a known criminal, he was having enemies and it appears that he has been done to death in the night by some unknown persons and only on the basis of prior enmity this blind murder has been attributed to the accused persons.

(27) It is further submitted that the evidence of the two prosecution eye-witnesses, namely, P.W.-1 Nandram and P.W.-2 Rajesh is highly contradictory to each other on material points and by any stretch of imagination these witnesses could not be taken to be the eye-witnesses of the incident, having regarding to the material contradictions emerging in their testimony and it was evident before the Trial Court that these witnesses have not seen any occurrence and the fact that the informant is having a licensed gun and he admitted that at the relevant point of time also, the gun was in his house and even after hearing alarm he did not take his licensed gun with him which, if the incident is true, could save the life of the deceased and also that neither informant nor witness (Rajesh) has sustained any injury, evidently shows that the case is false. It is hard to believe that when the brother of the witnesses was being done to death in front of their eyes the accused persons would spare the informant and witness (Rajesh), thus, the prosecution have miserably failed to prove his case before the Trial Court and the Trial Court has rightly recorded a finding of acquittal which is based on the evidence available on record and could not be said to be perverse.

(28) Having heard learned counsel for the parties and having perused the record, it is in the interest of justice to **recollect** the law pertaining to the manner in which an appeal preferred against the acquittal is to be dealt with by the Appellate Court and the same is now no more *res*

integra, keeping in view the various pronouncements of the Hon'ble Supreme Court, some of which are being given herein below:-

In the case of *Ajmer Singh v. State of Punjab*, **MANU/SC/0042/1952 : 1953 SCR 418** wherein the accused was acquitted by the trial Court but was convicted by the High Court in an appeal against acquittal filed by the State, the aggrieved accused approached Apex Court. It was contended by him that there were 'no compelling reasons' for setting aside the order of acquittal and due and proper weight had not been given by the High Court to the opinion of the trial Court as regards the credibility of witnesses seen and examined by him. It was also contended that the High Court committed an error of law and the Hon'ble Supreme Court found substance in the argument that when a strong 'prima facie' case is made out against an accused person it is his duty to explain the circumstances appearing in evidence against him and he cannot take shelter behind the presumption of innocence and cannot state that the law entitles him to keep his lips sealed. It was further held that in an appeal, the High Court had full power to review the evidence upon which the order of acquittal was founded.

The Supreme Court observed in para 6 as under;

"We think this criticism is well-founded. After an order of acquittal has been made, the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and compelling reasons."

In the case of *Sanwat Singh and others v. State of Rajasthan*, **MANU/SC/0078/1960 : AIR 1961 SC 715** after placing the reliance on the judgment given by Privy Council in *Sheo Swarup and others vs. The King Emperor* **MANU/PR/0043/1934 : AIR 1934 PC 227**

(2) and many other authorities Hon'ble the Apex Court on the point in issue held as under:-

"Para 16-The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified".

It would also be relevant to refer to the general principles culled out by the Supreme Court in *Chandrappa and Ors. v. State of Karnataka MANU/SC/7108/2007, (2007) 4 SCC 415*, regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the Accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the Accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

Hon'ble the Apex Court in the case of ***Sadhu Saran Singh Vs. State of Uttar Pradesh and Others*** reported in ***MANU/SC/0236/2016 : 2016 CrIj 1908*** has considered this difference and has observed as under:

"18 Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from

*the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in **Sambasiva V. State of Kerala 1998 SCC (Cri) 1320** has held:*

"The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

19 . This Court, in several cases, has taken the consistent view that the appellate court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate court, on scrutiny, finds that the decision of the court below is based on erroneous views and against settled position of law, then the interference of the appellate court with such an order is imperative."

We may also usefully refer to the exposition of law in **Sanjeev v. State of H.P. MANU/SC/0301/2022 : (2022) 6 SCC 294**, wherein this Court summarized the position in this regard and observed as follows:

"7. It is well settled that:

*7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the Accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see **Vijay Mohan Singh v. State of Karnataka MANU/SC/0512/2019 : 2019:INSC:509 : (2019) 5***

SCC 436, Anwar Ali v. State of H.P. MANU/SC/0723/2020 : 2020:INSC:563 : (2020) 10 SCC 166)

7.2. *With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see Atley v. State of U.P. MANU/SC/0102/1955 : AIR 1955 SC 807)*

7.3. *If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see Sambasivan v. State of Kerala MANU/SC/0356/1998 : 1998:INSC:225 : (1998) 5 SCC 412)."*

Hon'ble Supreme Court in ***Thakore Umedsing Nathusing Vs. State of Gujarat*** reported in **MANU/SC/0195/2024** on the point in issue held as under:-

"24. The principles that govern the scope of interference by the High Court in exercise of appellate jurisdiction while dealing with an appeal against acquittal Under Section 378(1)(b) Code of Criminal Procedure were reiterated by this Court recently in the case of H.D. Sundara and Ors. v. State of Karnataka, MANU/SC/1058/2023 : 2023:INSC:858 : (2023) 9 SCC 581 as follows:

(a) The acquittal of the Accused further strengthens the presumption of innocence;

(b) The appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

(c) The appellate Court, while deciding an appeal against acquittal, after re- appreciating the evidence, is required to consider whether the view taken by the Trial Court is a possible view which could have been taken on the basis of the evidence on record;

(d) If the view taken is a possible view, the appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and

(e) The appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the Accused was proved beyond a reasonable doubt and no other conclusion was possible."

In ***P. Ramesh vs. State (09.07.2019- SC) : MANU/SC/0956/2019***
Hon'ble Supreme Court held as under :-

"17. We are mindful of the fact that the decision of the High Court was in an appeal preferred by the Accused. In such a situation it is necessary to discuss the scope of the High Court's powers in an appeal filed against conviction. Section 374 of the Code of Criminal Procedure provides for appeals against convictions and allows any person convicted by a Sessions Judge or an Additional Sessions Judge to appeal before the High Court. Section 386 of the Code of Criminal Procedure defines the powers of the Appellate Court while disposing of an appeal against an order of conviction or acquittal. The power under this Section is not unlimited. The provision is to be taken as giving the power to do only that which the lower court could and should have done in a criminal case.

*18. A three judge Bench decision of this Court in **Mohd. Hussain v. State (Govt. of NCT of Delhi) MANU/SC/0700/2012 : (2012) 9 SCC 408** while dealing with the powers of the Appellate Court to order a retrial Under Section 386(b) of the Code of Criminal Procedure, held thus:*

41. The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the Accused Under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the Accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always

be demand of justice. Obviously, the exercise of power of retrial Under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an Accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked.”

In *Central Bureau of Investigation and Ors. vs. Mohd. Parvez Abdul Kayuum and Ors.* (05.07.2019 - SC) : MANU/SC/0883/2019 the Supreme Court has observed:-

“ in State of Rajasthan v. Islam & Ors., MANU/SC/0665/2011 : (2011) 6 SCC 343, in which this Court observed:

16. The principle to be followed by the appellate court considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons to do so. Thus, in such cases, this Court would usually not interfere unless:

(i) The finding is vitiated by some glaring infirmity in the appraisal of evidence. (State of U.P. v. Sahai, MANU/SC/0258/1981 : (1982) 1 SCC 352 at SCC paras 20-22: AIR paras 19-21.)

(ii) The finding is perverse. (State of M.P. v. Bacchudas, MANU/SC/7015/2007 : (2007) 9 SCC 135 at SCC para 10 and State of Punjab v. Parveen Kumar, MANU/SC/1017/2004 : (2005) 9 SCC 769 at SCC para 9.)

(iii) The order suffers from substantial errors of law and fact. (Rajesh Kumar v. Dharamvir, MANU/SC/0935/1997 : (1997) 4 SCC 496 at SCC para 5.)

(iv) The order is based on misconception of law or erroneous appreciation of evidence. (State of U.P. v. Abdul, MANU/SC/0646/1997 : (1997) 10 SCC 135; State of U.P. v. Premi, MANU/SC/0140/2003 : (2003) 9 SCC 12 at SCC para 15.)

(v) The High Court has adopted an erroneous approach resulting in miscarriage of justice. (State of T.N. v. Suresh, MANU/SC/0939/1998 :

(1998) 2 SCC 372 at SCC paras 31 and 32; State of M.P. v. Paltan Mallah, MANU/SC/0050/2005 : (2005) 3 SCC 169 at SCC para 8.)

(vi) Acquittal is based on irrelevant grounds. (Arunachalam v. P.S.R. Sadhanantham, MANU/SC/0073/1979 : (1979) 2 SCC 297 at SCC para 4.)

(vii) The High Court has completely misdirected itself in reversing the order of conviction by the trial court. (Gauri Shanker Sharma v. State of U.P., MANU/SC/0132/1990 : (1990) Supp. SCC 656)

(viii) The judgment is tainted with serious legal infirmities. (State of Maharashtra v. Narsingrao Gangaram Pimple, MANU/SC/0158/1983 : (1984) 1 SCC 446 at SCC para 45: AIR para 45.)

17. In reversing an acquittal, this Court keeps in mind that presumption of innocence in favour of the Accused is fortified by an order of acquittal and if the view of the High Court is reasonable and founded on materials on record, this Court should not interfere. However, if this Court is of the opinion that the acquittal is not based on a reasonable view, then it may review the entire material and there will be no limitation on this Court's jurisdiction Under Article 136 to come to a just decision quashing the acquittal. [See State (Delhi Admn.) v. Laxman Kumar, MANU/SC/0109/1985 : (1985) 4 SCC 476 at SCC para 45 and Dharma v. Nirmal Singh, MANU/SC/0304/1996 : (1996) 7 SCC 471 at SCC para 4.]”

(29) Thus, the appreciation of the evidence of the prosecution as well as the defence is to be done vis-a-vis, the charges framed against the accused persons in the background of the aforesaid well settled principles. There is no doubt that the Appellate Court is having all the powers which have been provided under Section 386 of the Cr.P.C, but these powers could only be exercised in view of the settled principles.

(30) From the order-sheet of the Appeal is evident that out of six respondents/accused persons, three accused persons, namely, Respondent No.1/Ram Naresh has died on 03.06.2014, while Respondent No. 6 has died on 01.10.2018 and this appeal has abated with regard to them vide order dated 13.03.2024 of this Court. The

appeal with regard to the respondent no.5, namely, Sobaran who has also died and whose name was wrongly mentioned in the order dated 15.10.2024 as Mauji (which has been corrected vide order dated 06.11.2024), has also been abated vide order dated 15.10.2024 and 06.11.2024 and thus the appeal is now surviving only with regard to Respondent No.2, namely, Ambika, Respondent No. 3, namely, Rajendra @ Manney and Respondent No.4, namely, Sadhey Pasi, respectively.

(31) A Perusal of the judgement of the Trial Court would reveal that the Trial Court has recorded the finding of acquittal while considering following points:-

(i) the motive for the crime is not available and which has been suggested by the prosecution is very weak as opposing a person in B.D.C. election may not provide sufficient motive to cause his death.

(ii) A person sitting at the house of Nand Ram (P.W.-1) may not be able to see any person sitting in the house of Ambika.

(iii) Nand Ram(P.W.1) and P.W.-2(Rajesh) have deviated from their statements recorded under Section 161 of the Cr.P.C. and there are material contradictions in their statements recorded before the Trial Court and they have given contradictory statements pertaining to the place from where they have seen the occurrence, which is also in contradiction with the site plan prepared by the Investigating Officer, and thus, their testimony could not be believed.

(iv) No empty cartridge has been collected from the spot.

(v) The fodder bundles which were admittedly lying on the spot were not noticed by the Investigating Officer and no memo with regard to their seizure was prepared.

(vi) Nand Ram (P.W.-1) is having a licensed gun, but has arrived at the scene of the crime without the same.

(vii) Nand Ram(P.W.1) and P.W.-2(Rajesh) did not make any attempt to save the life of the deceased and nor they have sustained any injury and thus their presence is doubtful at the spot.

(viii) The oral evidence is in direct contrast with the medical evidence as blackening has been found around the fire arm wound, which is not commensurate with the ocular version of the incident.

(ix) Independent witness, namely, Ram Khilawan has not been produced before the Trial Court.

(32) Before proceeding further, we must record that we are conscious of the fact that we are dealing with an Appeal against acquittal and keeping in view the law discussed herein above, the judgment of the Trial Court pertaining to the acquittal of the accused persons could only be reversed or set aside if the same is patently perverse and is based on the faulty appreciation of the evidence adduced before the Trial Court by the parties and when the Trial Court has not appreciated the evidence presented before it in right perspective keeping in view the salient principles of appreciation of evidence as highlighted by the Hon'ble Supreme Court in various pronouncements.

(33) We are also conscious of the fact that the surviving respondents after being acquitted by the Trial Court have a fortified presumption of innocence in their favour and the same could only be disturbed if there is patent perversity in the judgement of the Trial Court.

(34) We have also noticed the grounds which have found favour with the Trial Court in order to acquit the accused persons/ respondents.

(35) A perusal of the record would reveal that the First Information Report has been lodged with promptness as the incident is shown to have occurred at 11:00 am at 31.08.1995 and the F.I.R. of the same has been lodged on the same day at 12:35 p.m. while the distance of the Police Station from the spot is about 8 kms.

(36) It is alleged in the First Information Report that the deceased Vijay was returning with his brother Rajesh after collecting fodder and both of these persons were carrying bundles of fodder, and when they arrived near the house of the accused Ambika, all the accused persons, namely, Ram Naresh Verma, Ambika Verma, Rajendra @ Manney, Soberan, Sadhey Pasi, who were sitting in the house of Ambika surrounded the deceased and started assaulting him with *Ballam*, *Baanka* and country made pistol. Ram Naresh was carrying a pistol while Ambika was having a Ballam and other accused persons, namely, Sadhey, Sobaran and Mauji, were carrying Banka, and other accused person, namely, Rajendra, was firing with country made pistol.

(37) After seeing the informant and the other witness Ram Khilawan, the accused persons fled away towards the house of accused Ambika after firing in the air. The incident is shown to have occurred on 31.08.1995 at 11:00 am. Though no motive of commission of the crime has been stated in the F.I.R., however, it was on a query being made by the Head Moharrir of the Police Station pertaining to any enmity that the informant Ram Naresh replied that they did not vote for Ram Naresh in the BDC Election and it is on this score, the accused persons were inimical towards them. The Postmortem report of the deceased reveals that he has sustained as many as 15 incised wounds of various dimensions at various parts of his body, apart from one firearm wound entry on right eye and various punctured wounds on his chest of various dimensions. According to the Doctor, who has also been produced before the Trial Court as P.W.-3 the death of the deceased has occurred due to shock and hemorrhage as a result of these ante-mortem injuries. Hence, there is no doubt in the proposition that the deceased has died on account of the injuries sustained by him.

(38) One of the grounds for the acquittal of the accused persons which has been taken by the Trial Court to acquit the accused persons is that the motive of not voting for the accused Ram Naresh in BDC Election

is not sufficient and the same may not provide any reason for the accused persons to have committed the murder of the deceased.

(39) The law with regard to the importance and significance of motive in cases based on direct evidence is now no more *res integra* and the same has been set at rest by Hon'ble Supreme Court in various pronouncements.

In ***Arjun Marik v. State of Bihar*** reported in ***MANU/SC/1037/1994 : 1994 Supp (2) SCC 372***, Hon'ble Supreme Court explained that:

"...mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused."

It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest on circumstantial evidence. In the cases of ***Sukhram v. State of Maharashtra*** ***MANU/SC/3346/2007 : (2007) 7 SCC 502***, ***Sunil Clifford Daniel (Dr.) v. State of Punjab*** ***MANU/SC/0740/2012 : (2012) 8 SCALE 670***, ***Pannayar v. State of Tamil Nadu by Inspector of Police*** ***MANU/SC/1462/2009 : (2009) 9 SCC 152***, this principle has been highlighted.

(40) The aforesaid Law Reports would clearly reveal that when the case is based on direct evidence of the eye witnesses, the motive recedes in the background and, thus, the prosecution is not obliged to prove the motive. Moreover, it has come in the evidence of the prosecution

witnesses, which in our opinion, appears to be reliable, that the accused persons and the informant side were inimical towards each other from **long** before the incident. Thus, the ground that the motive suggested by the prosecution is weak in a case based on the direct evidence of two eye witnesses, in our considered opinion, may not be sufficient for recording acquittal and the fate of the Trial in such cases should be left on the quality of the evidence of the eye witness recorded before the Trial Court. Hence, in our considered opinion, Trial Court has committed an illegality in giving much importance to motive in a case based on direct evidence.

(41) The Trial Court has also doubted the evidence of two eye witnesses, namely, P.W.1- Nandram and P.W.2- Rajesh, on the score that they have given contradictory statements pertaining to the place from where they have witnessed the occurrence/ incident.

(42) A Perusal of the judgement of the Trial Court would reveal that the Trial Court had discussed the evidence of these two eye witnesses and found some minor contradictions in their testimony with regard to the place from where they have witnessed the incident and on this score has recorded that the evidence of these two witnesses is doubtful. Thus, finding of the Trial Court is evident from perusal of internal page 11 of the impugned judgment.

In ***Appabhai and Ors. vs. State of Gujarat, MANU/SC/0028/1988***
Hon'ble Supreme Court held as under :-

“Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties.

The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused."

In *Sucha Singh and Ors. vs. State of Punjab*, MANU/SC/0527/2003
Hon'ble Supreme Court has observed as follows :-

"15. In Dalip Singh and Ors. v. The State of Punjab MANU/SC/0031/1953 : [1954]1SCR145 it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely, Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

16. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan MANU/SC/0107/1973 : 1974CriLJ331 in which Vadivelu Thevar v. State of Madras MANU/SC/0039/1957 : 1957CriLJ1000 was also relied upon.

17. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness. should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. It the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan MANU/SC/0036/1951 : 1952CriLJ547 . we find, however, that it unfortunately still persists, it not in the judgements of the Courts, at any rate in the arguments of counsel."

18. Again in Masalti and Ors. v. State of U.P. MANU/SC/0074/1964 : [1964]8SCR133 this Court observed: (p, 209-210 para 14):

"but it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses

The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

20. As observed by this Court in State of Rajasthan v. Teja Ram and Ors. MANU/SC/0189/1999 : 1999CriLJ2588 the over-insistence on witnesses having no relating with the victims often results in criminal justice going away. When any incident happens in a dwelling house or nearby the most natural witnesses would be the inmates of that house. It would be unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the

locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also.”

In *Bhagaloo Lodh and Ors. vs. State of U.P.* reported in MANU/SC/0700/2011 it was held as under :-

*“14. Evidence of a close relation can be relied upon provided it is trustworthy. Such evidence is required to be carefully scrutinised and appreciated before resting of conclusion to convict the accused in a given case. But where the Sessions Court properly appreciated evidence and meticulously analysed the same and the High Court re-appreciated the said evidence properly to reach the same conclusion, it is difficult for the superior court to take a view contrary to the same, unless there are reasons to disbelieve such witnesses. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are inter-related to each other or to the deceased. (Vide: *M.C. Ali and Anr. v. State of Kerala* MANU/SC/0247/2010 : AIR 2010 SC 1639; *Myladimmal Surendran and Ors. v. State of Kerala* MANU/SC/0670/2010 : AIR 2010 SC 3281; *Shyam v. State of Madhya Pradesh* MANU/SC/7112/2007 : (2009) 16 SCC 531; *Prithi v. State of Haryana* MANU/SC/0532/2010 : (2010) 8 SCC 536; *Surendra Pal and Ors. v. State of U.P. and Anr.* MANU/SC/0713/2010 : (2010) 9 SCC 399; and *Himanshu @ Chintu v. State (NCT of Delhi)* MANU/SC/0006/2011 : (2011) 2 SCC 36).*

In view of the law laid hereinabove, no fault can be found with the evidence recorded by the courts below accepting the evidence of closely related witnesses.”

It is therefore settled that merely because witnesses are closed relatives of victim, their testimonies cannot be discarded. Relationship with the deceased is not a factor that affects credibility of a witness, more so, a relative would not conceal the actual culprit and make allegation against an innocent person. However, in such a case Court has to adopt a careful approach and analyse the evidence to find out, whether it is cogent and credible evidence.

In ***Ramkant Rai v. Madan Rai and Ors. as reported in MANU/SC/0780/2003 : 2004CriLJ36***, the Apex Court has observed in Para No. 22 as under:

“22. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

There can not be any doubt that while appreciating the evidence on record the court is required to exercise due diligence though the standard of such exercise would be of a prudent person. The Court must bear in mind the facts and circumstances where in the crime has been committed, the quality of evidence, nature of the witnesses, their level of understanding and power of perception and reproduction. The quest must be to find out the truth from the evidence on record. At the same time, it must remain in the mind that there cannot be a prosecution case with a cast iron perfection. Nevertheless, obligation lies on the court to analyze, sift and assess the evidence on record, with reference to trustworthiness and truthfulness of the prosecution witnesses, by a process of sincere judicial scrutiny adopting the yard stick of settled principles of appreciation of the evidence. What is to be insisted upon is proof beyond reasonable doubt. The contradictions, infirmities which might have been pointed out in prosecution case, must be assessed at the yardstick of probability. Unless, infirmities and contradictions are of

such a nature so as to undermine the root of the evidence and which goes to the core of the prosecution case, over-emphasis may not be applied to such minor contradictions and infirmities. To judge the credibility of the evidence of a witness, one has to look into his evidence, and if any discrepancies is found in the ocular account of the witnesses not affecting the root of the case, the witness may not be labeled as not credit worthy. Even honest and truthful witnesses may differ in some details, which may not be related to the core of the prosecution case and their evidence therefore must be appreciated keeping in mind the power of observation, retention and reproduction as well as the human conduct and occurring incidents in ordinary course of nature.

In ***Krishna Mochi and Ors. vs. State of Bihar, MANU/SC/0327/2002***, Hon'ble Supreme Court has held as under :-

“As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. MANU/SC/0254/1981 : 1981CriLJ1012 , normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. Accusations have been established against accused-appellants in the case at hand.”

In ***Gangabhavani vs. Rayapati Venkat Reddy and Ors. Reported in MANU/SC/0897/2013*** held as under:-

“In State of U.P. v. Naresh MANU/SC/0228/2011 : (2011) 4 SCC 324, this Court after considering a large number of its earlier judgments held: In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the

time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

A similar view has been reiterated by this Court in Tehsildar Singh and Anr. v. State of U.P. MANU/SC/0053/1959 : AIR 1959 SC 1012; Pudhu Raja and Anr. v. State, Rep. by Inspector of Police MANU/SC/0761/2012 : JT 2012 (9) SC 252; and Lal Bahadur v. State (NCT of Delhi) MANU/SC/0333/2013 : (2013) 4 SCC 557).

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.”

Honble Apex Court many years ago had made several observations in the matter of ***Bharwada Bhoginbhai Hirjibhai v State of Gujarat*** as

reported in AIR 1983, 753, MANU/SC/0090/1983 and has held that *“The principles for appreciation of evidence in the said case came to be settled by the Apex Court in trial against the accused in a rape case but the principles apply as well to all trials. In para-5, the Apex Court observed and settled following principles for appreciation of evidence without entering into re-appraisal or re-appreciation of the evidence in the context of minor discrepancies. The principles laid down are as under:*

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill

up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

The appreciation of the evidence of the prosecution witnesses is required to be done in the background of the law propounded by the Supreme Court in the precedents placed above.

(43) A Perusal of the record would reveal that incident in question has taken place on 31.08.1995. The evidence of P.W.1 was recorded from 07.11.1998 and the statement of P.W.2 Rajesh was recorded thereafter, thus, the evidence of both these witnesses has been recorded after about three years of the occurrence. When these witnesses are being examined before the Trial Court after a gap of three years and they are apparently rustic villagers, minor contradictions are bound to occur in their statements/ evidence.

(44) In order to satisfy ourselves, as to whether any illegality has been done by the Trial Court in appreciating the evidence of these witnesses rendering the finding of acquittal recorded by trial court as perverse, we perused the evidence of these two witnesses pertaining to the place from where they are claiming to have seen the occurrence. The place of occurrence in the F.I.R. as well as in the statement of these two witnesses, namely, P.W.1 Nandram and P.W.2 Rajesh, is stated to be in front of the house of accused Ambika. It is also fortified by the site plan prepared by the Investigating officer. P.W.1 Nand Ram and P.W.2 Rajesh in their statement recorded before the Trial Court has further fortified this that the incident had occurred in front of the house of accused Ambika. In the cross-examination of these two witnesses, it is stated by the P.W. 1 Nandram that he had seen the occurrence from the distance of 10-12 paces as he has heard a noise when he was sitting in his house and he thought that some verbal altercation is going on of someone with deceased Vijay and it is with this presumption he had

gone to the place of occurrence. It is also stated by him that he and Rajesh had also seen the incident from a distance of 10-12 paces and they were standing at a distance of 1-2 pace from each other. He also stated that if the Investigating Officer had shown one place from where both of them have seen the incident he may not put forth any explanation with regard to the same.

(45) Likewise, P.W. 2 Rajesh had fortified the place of occurrence by stating that occurrence had taken place in front of the house of accused Ambika. However, there is slight difference in his statement with regard to the fact as to whether the accused persons were sitting in the house of Ambika or they were standing outside the house. This, in our considered opinion, is not significant as one of these witnesses namely P.W.1 Nandram has claimed to have arrived at the scene of crime on hearing the alarm raised by deceased Vijay. While P.W.2 Rajesh was accompanying the deceased and the contradiction is with regard as to whether the accused persons were standing or sitting in the house of Ambika. This insignificant contradiction in the background of the fact that the statement of these witnesses are being recorded after a gap of many years of the incident and this contradiction is not with regard to the manner of assault, the same in our considered opinion is not having any importance and may not be a relevant circumstance to doubt the evidence of eye witnesses. P.W.2 Rajesh under cross-examination has given a detailed account of incident and to us this witness P.W.2/Rajesh is the star witness of this case and he has claimed himself to be accompanying the deceased with the bundle of fodder. He stated that he as well as deceased Vijay were raising alarm so that their voice may reach their home as their home was also situated nearby. He also stated that a site plan of the place of incident was prepared by the Investigating Officer and he has shown the I.O. the place from where he has seen the incident and he had seen the incident from the Southern side of the spot. The site plan so prepared by the Investigating Officer would also fortify this fact. He has also stated that, he was standing

about 10-12 paces away from the place, where his brother **was attacked done to death**. It is also stated by him that the blood of the deceased was also found at the place of incident and blood stained soil was also collected by the Investigating Officer.

(46) The Investigating Officer has also stated to have prepared the site plan and also to have collected the plain and blood stained soil from the spot. Thus keeping in view the evidence of these prosecution witnesses, we do not find any material contradiction in the statement of these witnesses pertaining to the place from where the prosecution witnesses have seen the occurrence.

(47) It is also to be recalled that in a case of heinous crime, the witnesses generally do not remember with **absolute**what had exactly happened at other places or where they were standing and their main concentration and focus is on the incident or to say commission of crime and thus, in our considered opinion the Trial Court has not considered this aspect of the matter in the right perspective and has given much importance to this minor and insignificant contradiction.

(48) One of the other grounds which has been taken by the Trial Court and has also been highlighted by learned counsel for the respondents is that the accused persons have not assaulted the witnesses who are the brothers of the deceased Vijay and surprisingly these witnesses have also not made any attempt to save the life of the deceased who was none other than their brother, and therefore, on this score the Trial Court has doubted the evidence of these two prosecution witnesses.

In *Appabhai and Ors. vs. State of Gujarat*, MANU/SC/0028/1988 Hon'ble Supreme Court has held as under :-

“The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the

normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.

*In **Rana Pratap and Ors. v. State of Haryana 1988 (3) S.C.C. 327.** Chinnappa Reddy J. speaking for this Court succinctly set out what might be the behaviour of different persons witnessing the same incident. The learned Judge observed; (at p. 330).*

Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

11. These may be some of the reactions. There may be still more. Even a man of prowess may become pusillanimous by witnessing a serious crime. In this case, the courts below, in our opinion, have taken into consideration of all those respects and rightly did not insist upon the evidence from other independent witnesses. The prosecution case cannot be doubted or discarded for not examining strangers at the bus stand who might have also witnessed the crime. We, therefore, reject the first contention urged for the appellants.”

*In **State of Uttar Pradesh vs. Devendra Singh, MANU/SC/0343/2004** while discussing the issue of behavior of witness commented as under :-*

“Human behavior varies from person to person. Different people behave and react differently in different situations. Human behavior depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may

remain tight-lipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. (See Rana Partap and Ors. v. State of Haryana MANU/SC/0137/1983 : 1983CriLJ1272).”

In ***Sucha Singh and Ors. vs. State of Punjab, MANU/SC/0527/2003***, it was observed that so far as inaction of witnesses in not coming to rescue of deceased is concerned, it has been noted by the trial Court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence.

(49) Coming back to the facts of the instant case, perusal of evidence available on record would reveal that P.W.1 Nand Ram while under cross-examination has stated that when he first saw the deceased he was lying on the ground and the accused persons were assaulting him and also that he had heard the sound of 4-5 gun-shots, which was made from the side of the accused persons. It is also stated that when the accused persons while going away from the spot, they had also fired one gun shot. He has categorically stated that accused persons were firing gunshots so that they could not come near the deceased and these gun-shots were fired to intimidate them. He has further stated that accused Ram Naresh has fired from a distance of 2 paces. Likewise P.W.2 Rajesh has stated, while under cross-examination, that all accused

persons were assaulting the deceased with whatever they were possessing and it was Ram Naresh who had fired on the deceased. It is further stated by him that Ram Naresh had fired two gunshots and the another gun shot was fired in the air, and thus, he had fired three gun shots. He has categorically stated that these gun-shots were fired for the purpose of intimidating them so that they should not come near the deceased and it is on account of this, they were raising the alarm only from the place they were standing.

(50) It is also pertinent to mention that P.W.2 Rajesh, who in our considered opinion, appears to be the star witness of the crime, has stated that on the exhortation given by the accused persons, the deceased Vijay attempted to flee towards the North and he could only go 2-3 paces towards the North when he was surrounded by the accused persons and assaulted. He was cross-examined at length and even after lengthy cross-examination, **the basis narrative revealed the same and** we do not find any reason to doubt the evidence of this witness who appears to be a natural witness of the incident and has given a reliable and trustworthy account of the incident.

(51) It is to be recalled that witnesses of a heinous crime react in different ways. There are some witnesses who became speechless and may not even scream or raise any alarm. There are others who want to stay away from the scene of crime and assailants and there are other witnesses who have courage to intervene and may even be subjected to grievous injuries and they would intervene even if they are having an apprehension of sustaining grievous injuries thus it depends on the nature of witnesses, their psychology and courage which they possess which will determine the manner in which they will behave. If the behavior of a witness is not in accordance with, what has been suggested by the accused persons, the same could never be a sole circumstance to impeach the testimony of such witnesses.

(52) Thus having regard to the fact that the accused persons were having dangerous weapons, also of the nature of fire arm, the conduct of the two eye witnesses of not having courage to intercept in the *marpeet* and not to make any attempt to save the life of the deceased may not be seen with suspicion. As intercepting in the *marpeet* would be putting their lives also on stake. Thus, the Trial Court, in our considered opinion, has not considered this aspect of the matter in right perspective and appears to have doubted the evidence of two eye witnesses without any basis.

(53) One of the circumstance which has been highlighted by the Trial Court in order to record finding of acquittal, is of not using his licensed gun by the P.W.1 Nandram and has therefore doubted the case of the prosecution. In our considered opinion, the Trial Court appears to have not considered the evidence of P.W. 1 Nandram in right perspective. P.W.1 Nandram while under cross-examination has given the explanation as to why he did not take his licensed gun when he had heard alarms raised by his brother (deceased Vijay). He has further stated that when he heard the alarm raised by the deceased Vijay and P.W. 2 Rajesh, he thought that some altercation is going on and in an ordinary altercation nobody taken his gun and it is on this score he had not taken his licensed gun to the spot. At another place in his cross - examination he stated that when he was sitting in his house and heard the noise/ alarm, he thought that there was some verbal altercation of Rajesh and Vijay with some persons. This explanation given by this witness for not carrying his gun after hearing the alarm made by the deceased and P.W. 2 Rajesh, in our considered opinion, is not a circumstance which could have been read against the prosecution as the same is commensurate to the normal human behaviour. In an altercation of simple nature or to say of verbal altercation or a ordinary physical altercation, firearms are not generally taken or used by the licensed gun holders as there are other consequences also of using a licensed weapon. Thus, non using of a licensed gun or not taking the same from

his house after hearing alarm raised by deceased, in our considered opinion, is not a circumstance which may be taken as adverse to the prosecution. Hence, the Trial Court has committed a patent irregularity in taking this circumstances against the prosecution.

(54) The other circumstance which has been taken against the prosecution by the Trial Court in order to record finding of acquittal is that the memo of the Fodder Bundles being carried by deceased and Rajesh was not prepared by the Investigating Officer. P.W.5 Nand Lal Yadav, who is the Investigating Officer, of this case has stated, under cross-examination, that when he had arrived at the scene of the crime, he found the bundles of fodder on the spot however he did not make any memo of the same. However, he has recorded this fact at the appropriate place in the Case Diary, where he mentioned the presence of these fodder bundles at the spot. Having regard to the fact that the Investigating Officer though had found the fodder bundles on the spot and had recorded the same in the Case Diary, but did not show these fodder bundles in the site plan is only an irregularity which may not affect the otherwise reliable evidence of the two eye witnesses who have given detailed and reliable account of the incident.

(55) Similarly, the circumstance of not finding any empty cartridge at the scene of the crime and the explanation of one of the witnesses that the accused persons were picking and keeping the empty cartridges in their pockets may not be seen with an eye of suspicion. How and in what manner the criminal mind behaves may not be put in any straight-jacket as they behave in different ways.

In ***State of Karnataka vs. K. Yarappa Reddy, MANU/SC/0633/1999***, it was held as under :-

“It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation.

It is well nigh settled that even if the investigation is illegal or even suspicious the rest of evidence must be scrutinized independently of the impact of it. Otherwise criminal trial will plummet to that level of the investigating officers ruling the roost. The Court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers.

Criminal justice should not be made the casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit investigating officer's suspicious role in the case."

In *C. Muniappan v. State of T.N.* [*C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402], the law on this point was explained in the following manner: (SCC p. 589, para 55)

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation."

(56) Thus even if any irregularity has been committed by an Investigating Officer and if it is not demolishing the case of the prosecution as proved by the reliable eye witnesses, the same alone may be not sufficient to demolish the case of the prosecution. The

dependents of the victim of a crime or prosecution should not suffer because of any irregularity or to say even any illegality which has been committed by an Investigating Officer either knowingly or unknowingly. The fate of a criminal case may not be left on the conduct of an Investigating Officer. Thus, a criminal case is to be seen in the background of the evidence of the eye witnesses who are claiming themselves to have witnessed the occurrence.

In the matter of ***Ramkant Rai v. Madan Rai and Ors. as reported in MANU/SC/0780/2003 : 2004CriLJ36*** in respect of what amounts to proof beyond reasonable doubt, the Apex Court observed in paras 22, 23, 24 and 25 as under:

“22..... Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence. Including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts the 'credit' of the witnesses; their performance In the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to proof is an exercise particular to each case. Referring to probability amounts to 'proof' is an exercise the inter-dependence of evidence and the confirmation of one piece of evidence by another a learned author says: (See "The Mathematics of Proof II": Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340(342).

"The simple multiplication rule, does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other".

24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense. It must grow out of the evidence in the case.

*25. The concepts of probability, and the degrees of it cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. This position was illuminatingly stated by Venkatachalia, J (as His Lordship then was) in **State of U.P. v. Krishna Gopal and Anr.** MANU/SC/0506/1988 : 1989CriLJ288 .”*

In ***Sucha Singh v. State of Punjab*** reported in **MANU/SC/0527/2003** the Supreme Court held that reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. In para - 20, the Apex Court observed as under:

*“21. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See: **Gurbachan Singh v. Satpal Singh and Others** MANU/SC/0034/1990 : 1990CriLJ562]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See **State of U.P. v. Ashok Kumar Srivastava** MANU/SC/0161/1992 : [1992]1SCR37]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, may guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.[See **Inder Singh and Anr. v. State (Delhi Admn.)** MANU/SC/0093/1978 : 1978CriLJ766]. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in *Stirland v. Director of Public Prosecution* 1944 AC (PC) 315, quoted in **State of U.P. v. Anil Singh** MANU/SC/0503/1988 : 1989CriLJ88 . Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.*

22. In matters such as this, it is appropriate to recall the observations of this Court in ***Shivaji Sabebrao Bobade v. State of Maharashtra*** MANU/SC/0167/1973 : 1973CriLJ1783 :

"..... The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals

are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt....."

"..... The evil of acquitting a guilty person light-heartedly as a learned author Clanville Williams in 'Proof of Guilt' has saliently observed, goes much beyond the simple fact that, just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law. and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless....."

"..... a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....."

In *Krishna Mochi and Ors. vs. State of Bihar*, MANU/SC/0327/2002, the Supreme Court held as under :-

*"In the case **Inder Singh and Anr. v. state (Delhi Administration)** MANU/SC/0093/1978 : 1978CriLJ766 , Krishna Iyer, J. laid down that "Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes." In the case of **State of U.P. v. Anil Singh** MANU/SC/0503/1988 : 1989CriLJ88 , it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. In the case of **State of West Bengal v. Orilal Jaiswal and Anr.** MANU/SC/0321/1994 : 1994CriLJ2104 , it was held that justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law. In the case of **Mohan Singh and Anr. v. State of M.P.** MANU/SC/0035/1999 : 1999CriLJ1334 , it*

was held that the courts have been removing chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective Layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused.”

(57) If we peruse the judgment of the trial Court in the background of above settled principles we find that another ground which has been taken by the trial court in order to acquit the accused persons is in terms that, there is contradiction between the oral evidence and medical evidence. The trial court in our considered opinion has recorded a patently perverse finding with regard to the alleged contradiction in oral and medical evidence, as it has come in the statement of the prosecution witnesses especially of P.W.-1/Nandram that the gun shot from the firearm was fired from a distance of two paces. In this regard, the evidence of P.W.-1/Nandram as well as of P.W.-2/Rajesh is to be considered and perused in totality and could not be read in piecemeal which has been done by the trial court. P.W.-1/Nandram in his examination-in-chief has stated that all accused persons have surrounded the deceased Vijay Kumar and P.W.-2/Rajesh and started assaulting Vijay Kumar and at that moment accused Ram Naresh had fired gun shot from a country-made pistol which he was possessing and that gun shot had hit the deceased on his eye. In his cross-examination, he had stated that he had seen the incident from the distance of 10-12 paces. He further stated in cross-examination that when he arrived at the scene of the crime, he found the deceased Vijay had fallen to the ground and he was being assaulted with 'ballam and kanta' and it is at this

moment he stated that the accused Ram Naresh had fired on the deceased from a distance of two paces.

Likewise P.W.-2/Rajesh, who in our opinion, is the prime witness of this crime, in his examination-in-chief has stated that the gun shot was fired by Ram Naresh which had hit on the face of the deceased and he had fallen on '*ghoora*'. While under cross-examination, he stated that when his brother had fallen on the ground appellant Ram Naresh had fired gun shot. He further stated under cross-examination that the gun shot was fired when the deceased had fallen on the ground. He also stated that the '*daroga ji*' had collected blood stained soil from the place where the deceased had fallen.

P.W.-3/Dr. A.K. Arya has stated that the firearm injury found on the right eye of the deceased as a wound of entry 05 cm. x 03 cm. into the cranial cavity on the right eye and blackening & tattooing was also present all around the wound and occipital bone of the deceased was found fractured while the base of skull, temporal bone and occipital bone were also found fractured and membranes were lacerated and the trajectory of the wound was from front to back. He had opined that these injuries may be inflicted at 11:00 am. on 31.08.1995 and this wound i.e. injury no.6 may be caused by firearm. Surprisingly this witness has not been cross examined by the accused persons on this aspect of the matter and in cross-examination only one question with regard to this injury has been put to him and he has replied that, this injury may be caused by a country-made pistol and blackening & tattooing may come if the gun shot is fired from distance of one feet.

P.W.-5/Nand Lal Yadav, who is the investigating officer of the case, has stated in his examination-in-chief about the collection of the blood stained soil and plain soil from the place where the dead body of the deceased was found. While under cross-examination, he fortified this statement by stating that he found blood on the '*ghoora*'. In this regard, the forensic lab report, which has been placed on record of date

07.11.1995 is important wherein blood has been found in the blood stained soil collected by the investigating officer, however, the origin of the blood could not be determined due to dis-integration. We fail to find any contradiction in the oral account of the incident, as stated by the two eye witnesses, namely, P.W.-1/Nandram and P.W.-2/Rajesh and medical evidence. They both have stated that the gun shot was fired by the appellant Ram Naresh towards the deceased from a distance of 1-2 paces and the doctor has fortified that blackening and tattooing may come if the gun shot is fired from a close distance like that of 01 pace.

It is to be remembered that when an assault is going on, it is not expected from the eye witnesses to measure the distance in centimeters and inches and, therefore, if the distance from which the gun shot has been fired, is stated to be 1-2 paces and the doctor has stated that blackening and tattooing may come if the gun shot is fired from the distance of one foot, the same may not be termed as contradiction between ocular and medical evidence. Hence, in our considered opinion, the finding of the trial court that there is conflict in ocular and medical evidence is patently perverse and is not substantiated from the evidence available on record.

(58) One more glaring perversity emerging in the judgment of the trial court is that the trial court has taken into cognizance the fact that one witness, namely, Ram Khilawan, who was shown to be present at the time of assault, was not produced before the trial court and in this regard, the trial court has opined at Page No.16 of its judgment that the prosecution has not done a good thing in not producing this witness and even if this witness may turn hostile, the prosecution should have produced him in the witness box. Surprisingly the trial court in the same breath has stated that it has been alleged on behalf of the prosecution that this witness has colluded with the accused persons.

In *Appabhai and Ors. vs. State of Gujarat*, MANU/SC/0028/1988 The Supreme Court held as under :-

“Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties.

The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused.”

We fail to understand as to how this circumstance of not producing Ram Khilawan on the score that he has colluded with the accused persons may be taken against the prosecution when it has been specifically stated before the trial court that this witness has been won over by the accused persons. The trial court to our understanding has assumed the role of a 'referee' while the role of the Trial Judge in criminal cases is not simply of a referee, rather his role is to try to search the truth and if any party has not produced a witness, which in the opinion of the trial court is necessary, in order to arrive at a just conclusion, then it becomes the incumbent duty of the trial court to summon that witness by using powers contained under Section 311 of the Cr.P.C. The trial court has committed a patent illegality in doubting the case of the prosecution on the score that one witness, namely, Ram Khilawan has not been produced in witness box by the prosecution, while it was specifically alleged that he has colluded with the accused persons. This finding of the trial court is also patently absurd.

(59) Another circumstance, which in our considered opinion is patently absurd and has been relied on by the trial court in order to acquit the accused persons is the character of the deceased. At page No. 16 of its

judgment, the trial court has stated that the deceased was involved in various cases of murder and rape. We again fail to understand how this circumstance which to our mind has not been proved before the trial court may be taken against the prosecution. Even if a person is of bad character, he has to be punished in accordance with law and, therefore, nobody could be given a license to cause his death. Therefore, to our understanding the trial court has also committed grave illegality in taking this circumstance against prosecution.

(60) Having considered the record of the trial court as well as the impugned judgment and order of acquittal, we are of the considered view that the occurrence is proved to have been witnessed by the two prosecution witnesses i.e. P.W.-1/Nandram and P.W.-2/Rajesh. P.W.-2/Rajesh who was accompanying the deceased Vijay. Both these witnesses have given trustworthy and reliable account of the incident. The evidence of these witnesses has been recorded after three years of the incident. Therefore, there are certain minor embellishments and contradictions emerging in their testimony but if the evidence of these two witnesses is read as a whole, it becomes evident that they have proved by their trustworthy evidence that such incident had taken place in the manner suggested by the prosecution. The prosecution has also proved motive and even if for the sake of arguments it is taken that it was a weak motive, even then in the cases which are based on the direct evidence of the witnesses the motive recedes in the background and become insignificant. In villages where the voters are divided on political lines, it is the ego which is the main cause of confrontation between the two individuals and groups who are politically divided. Non presence of any empty cartridge and not preparation of memo of 'fodder bundles', which were being carried by the deceased and P.W.-2/Rajesh, to our understanding is not a circumstance which can be taken against the prosecution when the investigating officer in his statement has categorically stated that he has seen these bundles at the place of occurrence but did not prepare any memo of the same. The trustworthy

account of the incident has been further fortified by the medical evidence as has been deposed by P.W.-3/Dr. A.K. Arya who has found about 21 injuries on the person of the deceased. All these injuries may be inflicted by the weapons which were being carried and used by the appellants/accused persons.

(61) It is to be recalled that prosecution is not obliged to answer each and every hypothesis put-forth by the defence/accused persons. Murders are not committed with prior notice to anyone, those who appear to be the natural witnesses may not be labeled as false or planted witnesses and even if they are related to the deceased their testimony should not be brushed aside when the same is reliable, trustworthy and is having a ring of truth in it.

(62) Hence, keeping in view all the evidence available on record, we are of the considered view that the judgment of the trial court suffers from patent perversity, illegality and mis-appreciation of evidence. For us, the prosecution had proved its case beyond all reasonable doubt before the trial court and even after being conscious of the fact that the respondents/accused persons before us are having a fortified presumption of innocence, we consider it our duty to keep the flag of justice high by doing substantial justice between the parties and when the judgment of acquittal is patently perverse and based on glaring mis appreciation of evidence, this Court can not turn its eye away from the injustice done by the trial Court in acquitting the accused persons, and the same cannot be allowed to stand.

The manner in which all the accused persons had participated in the '*marpeet*' and have surrounded the deceased and P.W.-2/Rajesh and the manner of their running away from the scene of crime together, would clearly reveal that they have formed an unlawful assembly and they were fully aware of the common object of such unlawful assembly, which was none other than to cause the death of the deceased Vijay.

Therefore, for the reasons we have recorded herein before, the appeal filed by the State is **allowed** and the surviving respondents no.2, 3 and 4, namely, Ambika, Rajendra @ Manney and Sadhey Pasi are convicted for committing offence under section 302 read with 149 IPC.

(63) Keeping in view the manner in which the offence has been committed and the injuries inflicted, we do not find it a case which may fall in the rarest of the rare cases. Thus, respondents no.2, 3 and 4, namely, Ambika, Rajendra @ Manney and Sadhey Pasi are sentenced to undergo rigorous imprisonment for life along with Rs. 20,000/- each as fine for committing offence under Section 302 I.P.C. read with Section 149 I.P.C. and in default of payment of fine they would further undergo one year simple imprisonment.

64. The period of incarceration already undergone by the respondents/accused persons in this case shall be adjusted in their period of sentence.

65. The respondents no.2, 3 and 4, namely, Ambika, Rajendra @ Manney and Sadhey Pasi appear to be on bail, they shall immediately surrender before the trial court, to say with 15 days from receipt of a copy of this order by the trial court to serve out the sentence as inflicted by this Court.

66. A copy of this order be sent to the Trial Court along with the record of trial Court for compliance.

Order Date : 22.01.2025

Darpan/Rahul/Praveen