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Court No. - 47

Case :- GOVERNMENT APPEAL No. - 1851 of 1983

Appellant :- State of U.P.

Respondent :- Raja Ram And Others

Counsel for Appellant :- Aga/Kamal Krishna

Counsel for Respondent :- S.P.S.Raghav

Hon'ble Rajiv Gupta,J.

Hon'ble Surendra Singh-I,J.

(Delivered by Hon. Rajiv Gupta,J)

1. Heard Sri Jitendra Kumar Jaiswal, learned AGA for the State, Sri Pankaj Kumar Tyagi assisted by Sri Akash Tyagi, learned counsel for the accused-respondents and perused the record.
2. Learned AGA has informed this Court that in the instant Government Appeal, Raja Ram, Bhagwan Singh and Sagar Singh son of Mukhtiar Singh has already passed away and the instant appeal on their behalf has already been abated vide order dated 15.5.2024 and now the appeal survives only qua appellant No. 3- Shri Chand.
3. The present Government Appeal has been filed against the judgment and order dated 3.5.1983 passed by Special Judge, Bulandshahr in Sessions Trial No. 230 of

1980 (State Vs. Raja Ram and others), P.S. Gulaoti, District- Bulandshahr, by which the accused-respondents have been acquitted of all the charges framed against them.

4. The prosecution case as unraveled in the first information report lodged at the instance of P.W.-6 Surajveer is that the first informant is the permanent resident of village-Bhadaula, P.S. Modinagar, District-Ghaziabad, however for the last eight years they have been living at the house of one Badley, their maternal uncle resident of village-Barmadpur, P.S. Gulaoti, District- Bulandshahr, who was running a Wheat Flour Mill (Aata-Chakki). It is alleged that said Wheat Grinding Mill was run by Har Lal brother of the first informant. On 19.6.1978 at about 5 p.m., elder daughter of Shyami Gurjar reached at Wheat Grinding Mill for collecting her wheat flour. At the relevant time, Har Lal was present at the Wheat Grinding Mill and incidently, his shoulder rubbed against the shoulder of the girl, consequent to which, she felt bad and the girl after hurling abuses left for her house.

5. It is further alleged that the said factum was disclosed by his brother to Pyare Lal and Bachan Singh. At about 7.30 p.m. when his brother after taking his meal was sitting at the Wheat Grinding Mill, Bhagwan Singh, Rajaram and Sagar Singh reached there and started hurling abuses for the

aforesaid conduct of Har Lal. On his refusal for the same, they took him away for clarifying the said incident of the matter. He alongwith his maternal uncle started following them, however they were stopped stating that he will return very soon after clarifying the matter, as such they did not accompany him.

6. It is further alleged that when his brother Har Lal did not return back at his Wheat Grinding Mill till 9.30 P.M., then he alongwith his maternal uncle Badley set out to know his whereabouts and searched for him towards village- Ustara, where near the canal contributory they saw Rajaram, Bhagwan Singh, Sagar Singh. Shri Chand son of Shyami alongwith 2-3 unknown persons coming from the field of Jalla. It is further alleged that they were carrying his brother in a hanging position towards the Wheat Grinding Mill Ustara. On their interception they started assaulting his maternal uncle Badley by lathi and also rushed towards him, however he alongwith his maternal uncle made his escape good. On account of fear they stayed the whole night in the Jungle and on the next morning reached the police station to lodge the report, however, found that all the accused assailants were present there, as such they dared not to enter the police station and on making query, it was revealed that they had killed his brother and had lodged a

false report of loot.

7. It is further alleged that on that very day at about 6 p.m. he had sent a telegram addressed to S.P, Bulandshahr from Hapur. On the basis of said written report, a first information report is shown to have been registered on 22.6.1978 at 12.15 p.m., vide Case Crime No. 144A, under Sections 147, 323, 504, 302 IPC, P.S. Gulaoti, District- Bulandshahr in respect of an incident alleged to have taken place on 19.6.1978 at 7.30 p.m.

8. Perusal of the record of the instant case shows that prior to lodging of the aforesaid first information report another FIR had already been lodged by Mukhtiar Singh father of accused Sagar Singh at the same police station of District- Bulandshahr, which is registered vide Case Crime No. 144 of 1978, under Section 394 IPC alleging therein that near village- Ustara they are having their fields having a tubewell and a Wheat Grinding Mill, where his son Sagar Singh alongwith his servant Rajendra Singh were sleeping and a bulb was lighting at the tube-well. At about 11.30 in the night, some miscreants came at his tube-well and looted his son and servant and assaulted them. On raising alarm, his younger brother Parmal Singh alongwith some other villagers reached there, consequent thereto, the miscreants

left the place looting his wrist watch, however one of the miscreant, who was having a country made pistol alongwith cartridges was apprehended by Rajendra and Sagar Singh alongwith villagers. In the said attempt to apprehend him, he suffered injuries on his head. While the miscreant was being carried in a buggi, he died in the intervening night at about 2.30 A.M. Leaving him in the buggi, he has come to lodge the report. On the basis of a written report a first information report has been registered at P.S. Gulaoti, Bulandshahr on 20.6.1978 at 2.45 A.M. After registration of the said information, its corresponding G.D. Entry was prepared at the police station and thereafter S.I. Dinesh Lal Sharma (P.W.-12), who was posted there at the relevant time, proceeded to village- Ustara for conducting the inquest on the person of the deceased and when he reached near old Dharamshala, he found a corpse lying in a buggi and large number of persons had collected there. P.W.-12 Dinesh Lal Sharma conducted the inquest of the deceased and prepared the inquest report and also prepared the other relevant documents namely Challan nash, Photo nash, Letter to R.I., letter to C.M.O. and thereafter sealed the corpse in a cloth and after preparing its sample seal handed over the same to the police constable for carrying to the mortuary for conducting of an

autopsy on the person of the deceased.

9. On 20.6.1978 at 4.45 p.m. Dr. V.P. Mittal had conducted an autopsy on the person of the deceased Har Lal and has noted the following injuries :-

1. *Lacerated wound 2 ¼" x ⅓" bone deep right Side head 4" above right ear.*
2. *Lacerated wound ¾" x ¼" muscle deep tip of nose.*
3. *Contusion 4" x 4" right shoulder.*
4. *Contusion 7" x 3" outer aspect to arm middle.*
5. *Contusion 11" x 3 ½" outer and back of right forearm.*
6. *Stab wound 1" x ½" right lateral chest cavity deep right side chest 5" below right nipple at 8 o'clock upward and obliquely directed.*
7. *Abrasion 3" x ¼" right side chest 2" above injury no. 6.*
8. *Multiple abraded contusions are of 14 ½" x 12 ½" on the back scapular region.*
9. *Traumatic swelling 7" x 3 ½" front of right leg middle fracture tibia right.*
10. *Contusion 3" x 1 ½" left shoulder.*
11. *Contusion 6" x 3 ½" front of left thigh lower 1/3rd.*

The cause of death has been noted to be as a result of injuries.

10. After the autopsy on the person of the deceased, his corpse was handed over to his brother Surajveer and Badley, who had taken the dead body to Hapur in a truck. Enroute to Hapur it is stated that at about 8.35 p.m. in the night on 20.6.1978 a telegram addressed to S.P. Bulandshahr, was sent by P.W.-6 Surajveer, wherein it is stated that his brother Har Lal, who was taken away by

Rajaram, Bhagwan Singh and Sagar, has been done to death at the Wheat Grinding Mill of Sagar Singh in village-Ustara and when he went to lodge the report, the police detained him till 3 p.m. but did not lodge his report and is in collusion with the accused persons. The said telegram has been proved and marked as Exhibit Ka – 2.

11. Perusal of the record further shows that on 22.6.1978 P.W.-6 Surajveer reached at P.S. Gulaoti and handed over a written report to the Head Moharrir at Police Station-Gulaoti, District- Bulandshahr, on the basis of which, a cross case was registered vide Case Crime No. 144A, under Sections 147, 323, 504, 302 IPC against four accused respondents in presence of Surajveer. After registration of the aforesaid first information report, the investigation of the said case was handed over to P.W.-12 Dinesh Lal Sharma, Ist Investigating Officer, who recorded the statement of first informant Surajveer and then proceeded to village- Barmadpur, where he recorded the statement of Badley, Ratiram, Ramphal, Jeet Singh and other witnesses and thereafter inspected the place of incident on way to Wheat Grinding Mill and prepared the site plan proved and marked as Exhibit Ka-17 & 18. On the way to Wheat Grinding Mill of accused Sagar Singh found blood at three places at the boundary marks of Ramphal

and Vedpal and from the field of Khoob under the mulberry tree. He collected the blood stained earth and plain earth from the said places, which was kept in a container and sealed and its fard recovery memo was prepared. The aforesaid recovery memo has been proved and marked as Exbts. Ka-19, 20 & 21. On 22.6.1978, the Investigating Officer is said to have collected a Register maintained at the Wheat Grinding Mill of the Surajveer containing the name of one Kalicharan, who had given wheat for grinding on 16.6.1978. On the basis of which, a recovery memo has been prepared by the Investigating Officer, which has been proved and marked as Exhibit Ka-16. The Investigating Officer thereafter recorded the statement of Pyare Lal and Bachan Singh and thereafter the Investigation is said to have been transferred to P.W.-10- Shashi Pal Singh Tomar, 2nd Investigating Officer, who after concluding the investigation submitted the charge sheet against the accused-respondents on 28.11.1978.

12. On the basis of said charge sheet, learned Magistrate had taken cognizance and since the case was exclusively triable by the court of Sessions, as such the same was made over to the court of Sessions for trial, where it was registered as Session Trial No. 230 of 1980 (State vs. Rajaram and others). The trial court framed the charges

against the accused-respondents, which was read over and explained to them, who abjured the charges, did not plead guilty and claimed to be tried.

13. During the course of trial, the prosecution in order to prove the guilt against the accused respondents have produced as many as twelve witnesses. Badley (P.W.-2), Ratiram (P.W.-3), Ramphal Singh (P.W.-4), Jeet Singh (P.W.-5), Surajveer (P.W.-6) and Pyare Lal (P.W.-11) are the witnesses of fact whereas Dr. V.P. Mittal (P.W.-1) is the medical officer, who conducted an autopsy on the person of the deceased and prepared the post-mortem examination report, Dr. Anees Ahmad (P.W.-7) is the medical officer, who had examined the injuries of P.W.-2- Badley, Khoob Chand (P.W.-8) is the constable, who had taken the dead body to the mortuary for autopsy, Santpal Singh (P.W.-9) is the Head Moharrir, who had proved the chick first information report lodged by Surajveer (P.W.-6), Shashi Pal Singh Tomar (P.W.-10) is the second I.O., who concluded the investigation and submitted the charge sheet and Dinesh Lal Sharma (P.W.-12) is the Investigating Officer of the instant case. After recording the entire evidence, the statement of the accused persons were recoded under Section 313 Cr.P.C. and thereafter statement of one Dr. M.P. Singh, who was produced as defence witness, was

recorded and thereafter the trial court vide impugned judgment and order dated 3.5.1983 has acquitted all the accused persons. Against which, the present Government Appeal has been preferred with the prayer to reverse the acquittal of the accused-respondents and to convict them for the offence charged with.

14. In order to appreciate the controversy in question and to determine the correctness of the conclusions recorded by the trial court, it would be apt to discuss the evidence in brief adduced by the witnesses examined by the prosecution as well as defence.

15. Dr. V.P. Mittal (P.W.-1) is the medical officer, who had conducted an autopsy on the person of the deceased and has noted the ante-mortem injuries found on the person of the deceased. The said injuries have already been discussed in the earlier part of the judgment. As per the opinion of the doctor, the deceased could have died on 19.6.1978 at 8.30 p.m. and the injury no. 6 could be caused by a knife, which itself was sufficient to cause death, the other injuries could be caused by lathi.

16. Badley (P.W.-2) is the maternal uncle of the deceased. He, in his testimony, has stated that Har Lal was his nephew, he alongwith Surajveer were living with him for

the last eight years and used to run his thresher and Wheat Grinding Mill. Accused Bhagwan Singh and Shri Chand are the nephews of Rajaram and accused Sagar Singh is the friend of Shri Chand, resident of village-Ustara. He further stated that about four years back, Har Lal was done to death. On the day of incident, Sheela daughter of Kalicharan had reached at the Wheat Grinding Mill of Har Lal for taking flour. At the time of her leaving, Har Lal's shoulder incidently brushed the shoulder of Sheela, consequent thereto she felt bad about it and started hurling abuses to Har Lal, however thereafter she left. Badley further stated that on the same day in the evening at about 7 p.m. he alongwith Surajveer and Har Lal were sitting at the Wheat Grinding Mill alongwith Pyare Lal and Bachan, who are the employees of Har Lal. At the relevant time Rajaram, Bhagwan Singh and Sagar reached there and Rajaram and Bhagwan asked Har Lal as to why he pushed the girl and started hurling abuses. Har Lal stated that he can clarify the said issue and with an intention to clarify things, set out with them. They also tried to follow him, however Har Lal stopped them stating that he would return back after making clarification.

17. It is further stated that they waited there till 9 p.m. however, Har Lal did not return back at the Wheat Grinding

Mill and as such he alongwith Surajveer set out to search him out and went upto the house of Kalicharan but could not find him there, then they returned back and proceeded towards village-Ustara for searching Har Lal and when they reached at the bridge of the canal contributory near the field of Jalla, they saw all four accused persons alongwith three unknown persons, who were having a bundle (hereinafter referred to as gathri) from which cries of some person could be heard. On questioning the accused assailants as to where they left Har Lal they kept the gathri down and Bhagwan Singh and Shri Chand assaulted him with lathi, consequent to which he fell down, however Surajveer made his escape good and thereafter the accused persons after assaulting him left the place taking away the gathri. It was a moon lit night. After the accused persons left, he slowly proceeded towards his village and on the way found Surajveer sitting on the boundary marks of the field of Kalicharan. He also sat with him and remained sitting there the whole night due to fear and on the next day when it dawned morning they left for Gulaoti and reached at the police station Gulaoti and asked the police to lodge their report however, the police personnel asked them to sit down, but despite assurance did not lodge their report.

18. It is further alleged that inside the police station they

saw all four accused persons alongwith one Mukhtiar, father of Sagar standing, however the police did not lodge their report and continued to converse with the accused persons. He further categorically stated that he had seen the dead body of Har Lal lying inside police station. At about 10-11 a.m., the police tied the corpse of Har Lal on a tonga and asked him to take the corpse to Bulandshahr. He sat alongwith the corpse on the tonga and reached Bulandshahr. Surajveer also reached separately at the hospital in Bulandshahr. At the hospital his injuries were examined. After the autopsy on the person of deceased Har Lal, he returned back to his house and corpse of Har Lal was taken away by Surajveer to his village.

19. During cross examination he stated that Har Lal is the resident of Bhadaula, District- Ghaziabad and one P.W.-11 Pyare Lal is also of the same village, however, the village of Bachan Singh another witness is not known. Surajveer brought Pyare Lal and Bachan at his Wheat Grinding Mill for training. The distance between village- Barmadpur and Ustara is two miles.

20. Further, he stated that about 6-7 years back, elections for the office of Pradhan were held in his village, which was contested by Bhuley and Ramphal. He supported the

candidature of Ramphal however, Bhuley was supported by accused Bhagwan Singh, Rajaram and his family members, and since then there has been parti-bandi in the village.

21. He further stated that house of Shri Chand, Bhagwan Singh and Rajaram is situate at a distance of 25 paces from his house. He further stated that in his village there are four persons in the name of Shri Chand, however accused Shri Chand is the son of Kalicharan. After about 3-4 days of the incident, the Investigating Officer had recorded his statement. He further stated that the incident of brushing of shoulder of Har Lal with Sheela resulting in hurling of abuses by Sheela did not occur in his presence but was disclosed to him by Har Lal, which fact he had disclosed to the Investigating Officer. However, if the said factum has not been recorded by the I.O. in his statement, then he cannot explain the reason for the same. He further stated that in the evening he was sitting at his Wheat Grinding Mill when the accused persons reached there. Pyare Lal (P.W.-11) and Bachan were also sitting there. He further stated that as soon as the accused persons reached there, they started hurling abuses, which lasted for 2-3 minutes, however then he did not suspect that the accused persons will commit such an incident. He did not restrain Har Lal not to accompany the accused alone in the night hours. The

accused took him away to give clarification before the girl. There was no reason to follow them. It is wrong to state that the accused persons did not come at his Wheat Grinding Mill and Har Lal did not accompany them. At the time of setting out to search Har Lal he did not ask Pyarelal and Bachan to accompany him. He further stated that on the day of incident when he alongwith Surajveer reached at the canal contributory, in search of Har Lal no persons were present there. When for the first time he had seen the 'gathri', he was 5-6 paces away from it. The said place was pointed out by him to the Investigating Officer, however he cannot explain as to why Investigating Officer has not shown the said place in the site-plan.

22. He further stated that "मैंने दरोगा को यह ब्यान दिया था "हमने मुलजिमान से पूछा कि तुमने हरलाल को कहाँ छोड़ा इतने में उन्होंने गठरी रख दी। भगवान सिंह व श्री चन्द ने मुझे लाठी मारी।" यह बात दरोगाजी ने क्यों नहीं लिखी कारण नहीं बता सकता।

मेरी चोटों से खून नहीं निकला। मैंने दरोगाजी को बता दिया था कि जब मैं गिर गया तो मुलजिमान ने और लाठी मारी यह बात ब्यान में नहीं लिखी, कारण नहीं बता सकता।

मुलजिमान के जाने के बाद मैं उठ कर अपने गांव की तरफ चल दिया। मैं 40, 50 गज बरमदपुर की तरफ चला तो मुझे सूरजवीर मेंड पर बैठा मिला। मैंने

दरोगाजी को ब्यान दिया था कि " मैं मुलजिमान के चले जाने के बाद धीरे धीरे उठ कर गाँव कीर तरफ चला और मेरा भाँजा सूरजवीर मेंड पर बैठा मिला मैं उसके साथ बैठ गया और रात भर वहीं बैठा रहा " मैं कारण नहीं बता सकता मेरे ब्यान में क्यों नहीं लिखा।

हम थाने के भीतर नहीं गये हमें थाने के फाटक पर ही बिठा दिया था। मुझे फाटक पर पुलिस के सिपाही मिले थे कहा था यही बैठना। मैंने उस सिपाही से कहा था कि हमे अन्दर जाने दो रपट करानी है तो सिपाही ने कह दिया यही बैठे रहे। हरलाल की लाश घोड़ा तांगे में रखी थाने के फाटक पर ही आ गई ताँगे में मैं बैठा एक चोकीदार बैठा। लाश बाहर आ जाने के बाद मैंने थाने में घुसने का प्रयास नहीं किया क्योंकि डर गया।

जब हम अस्पताल से लाश लेकर चले तो रात हो गई थी। मैंने या सूरजवीर ने थाना कोतवाली में कोई रपट नहीं लिखाई। मैं और सूरजवीर चीरघर से लाश लेकर ठेले से गुलावटी आठ बजे आ गये। गुलावटी पहुँचकर मैं ठेले से उतर गया और सूरजवीर लाश लेकर अपने घर चला गया।

मैंने दरोगाजी को यह ब्यान दिया था " हमने कहा कि हमारी रिपोर्ट लिख दो थाने वालो ने कहा की बैठ जाओ हम तुम्हारी रिपोर्ट लिख देगे। थाने वालो ने हमारी रिपोर्ट नहीं लिखी" मेरे ब्यान मे दरोगा ने यह बात नहीं लिखी कारण नहीं बता सकता।"

23. He further stated that it is wrong to state that no such incident has taken place and on account of parti-bandi and enmity, he is falsely deposing. He further denied the suggestion that on 19.6.1978 accused Sagar Singh and his

servant were sleeping at the tube-well and at about 11.30 p.m. Har Lal and 2-3 other miscreants went at the tube-well and assaulted him and looted him. He further denied the suggestion that Mukhtiar and Sagar Singh were taking away the dead body at Gulaoti on a buggy, where he died. He further denied the suggestion that in order to save himself from the incident reported by Mukhtiar Singh, he is falsely deposing.

24. Rati Ram (P.W.-3) is an another witness of the incident, who alleges to have seen Sri Rajaram, Bhagwan Sahai and Sagar taking away Har Lal towards Ustara. In his oral testimony he states that about four years back at about 8 p.m. he had gone to ease and while he was returning back home, he met 6-7 persons but identified Sri Rajaram, Bhagwan Singh and Sagar. Har Lal was also there, Sagar and Shri had held Har Lal by his shoulders, Rajaram gagged his mouth and Bhagwan Singh was pushing him towards village-Ustara. They were armed with lathies. On being questioned they asked him to leave and stated that it is none of his concern. On the next day, he came to know that Har Lal was done to death.

25. During cross examination, he stated that after three days of the incident, he was interrogated by the

Investigating Officer. He in his statement recorded u/s 161 Cr.P.C. had disclosed the fathers name of accused persons however, if it is not there he cannot assign any reason for the same. Since last one year, there is no dispute between him and accused Bhagwan Singh. He had gone to ease near the pond, however except the accused persons no one was met him there. He had pointed out the said place to the Investigating Officer, however, he does not finds the said place, shown in the site-plan for which he cannot state anything. He saw the accused persons for a minutes who thereafter proceeded towards vilalge-Ustara and he returned back home and remained there till his statement was recorded by the Investigating Officer. He further stated that he did not disclose the aforesaid fact to any other person except the Investigating Officer. He further stated that there are two persons by the name of Kalicharan, one is father of Shri Chand and other Kalicharan is the son of Girdhari. He further denied the suggestion that because of inimical terms and parti-bandi and on the instigation of Surajveer and Badley he is falsely deposing.

26. Ramphal Singh (P.W.-4) is another eye witness, who claims to have seen the accused persons assaulting the deceased. He stated that about four and a half years back at about 8.30 p.m. he was easing in his millet field. When

he saw 6-7 persons taking away Har Lal from village Barmadpur to village- Ustara. He identified Sagar, Bhagwan Singh, Rajaram and Shri Chand amongst them but not the three others. Sagar and Bhagwan Singh were holding him by his arms and rest were pushing him. Rajaram held him by his mouth. When Rajaram hands slipped from the mouth of Har Lal then he had bitten Sagarmal, consequent to which, Sagar asked Shri Chand to stab him by a knife. Shri Chand then assaulted Har Lal by a knife while others assaulted him by lathies. Thereafter they wrapped him in a bed sheet, hanged him on a lathi and proceeded towards village-Ustara. He further categorically stated that he did not reacted at all and returned back to his home. Next day he came to know that Har Lal had been killed by the accused persons. At the time of incident, there was moon light.

27. During cross examination, he stated that in number of cases, he had been a police witness and had deposed before the Court. He further stated that he had pointed out to the Investigating Officer the place, where he had gone to ease, however the said place has not been shown in the site-plan. He further stated that he had seen the accused persons from a distance of 4-5 paces but did not question them, when accused persons had taken Har Lal towards village-Ustara then he returned back to his house. After 3-4

days of the incident, the Investigating Officer has recorded his statement. He further stated that on the next day the factum of accused taking away Har Lal was disclosed by him to the villagers, however, he did not consider it necessary to lodge any report of the incident.

28. During cross examination he stated that he saw the accused persons and their men dragging away Har Lal towards Ustara but no mark of dragging was seen by him. He further denied the suggestion that on account of enmity and parti-bandi and under the influence of police he is falsely deposing.

29. Jeet Singh (P.W.-5) is the another witness of the incident and he stated that about four years back at about 10 p.m. he alongwith one Charan Singh was returning from village-Ustara to his village and when he reached near the mulberry tree in the field of Vedu, he saw 5-7 persons present, out of which Rajaram, Sagar, Shri and Bhagwan Singh could be identified however, the other three persons standing under the mulberry could not be identified. They were armed with lathies and a bundle (gathri) was lying there. He tried to question them, however he was snubbed. Thereafter on the next day he came to know that Har Lal has been killed. He further denied the suggestion that there

is some dispute between him and Rajaram over irrigation of their fields by rotation.

30. He further stated that on the relevant day of incident, he had gone alongwith Charan Singh to purchase a buffalo, however, could not buy it. He further stated that he did not disclose to the Investigating Officer that he had gone to Sherpur to buy a buffalo rather had stated to him that after completing his job he was returning back from Ustara which was correct. He further stated that he had pointed out the place to the Investigating Officer, from where he had seen the accused persons but it has not been shown in the site plan. He had disclosed the said incident to the some villagers and then went to sleep and on the next day he came to know about the murder of Har Lal however, he did not lodge the report nor asked anyone else to lodge the report. He further stated that he is related to Badley. He further denied the suggestion that on account of being the relative of Badley and being an inimical terms and under the pressure of the police, he is falsely deposing.

31. Surajveer (P.W-6) is the first informant of the incident and brother of the deceased. He further stated that since last eight years, he has been staying in village- Barmadpur alongwith his brother Har Lal at the house of his maternal

uncle, where he runs a Wheat Grinding Mill and a thresher machine. About four years back at about 5 p.m. Sheela daughter of Kalicharan had come at his Wheat Grinding Mill for grinding of wheat, however, while she was leaving, her shoulder brushed with the shoulder of Har Lal, consequent to which, she hurled abuses and left. On the same day at about 7 p.m. When he alongwith his brother Har Lal, maternal uncle Badley, servants Bachan Singh and Pyare Lal were present at the Wheat Grinding Mill, Bhagwan Singh, Rajaram and Sagar came at the Wheat Grinding Mill armed with lathies and started hurling abuses and asked Har Lal to explain his conduct of brushing his shoulder with that of the girl. He alongwith Har Lal tried to clarify the issue however, they restrained him there and took away Har Lal stating that he will come back after clarifying the issue. When Har Lal did not return back even after 9 p.m. then he alongwith Badley set out to find out his whereabouts and went towards the house of Kalicharan but did not find him there then they proceeded towards canal contributory to search Har Lal and when they reached on the bridge of the canal near the field of Jalla then they heard some faint noise and were 4-5 metres away then saw Rajaram, Lakhan Singh, Sagar and Shri Chand alongwith 2-3 unknown persons holding a gathri proceeding towards village-Ustara.

The said gathri was hanging on a lathi. On questioning them about Har Lal they kept down the gathri and started assaulting them. He did not receive any injury and ran away, however, his maternal uncle received injuries. He thereafter hid himself in the field of Rajaram. After 5 minutes Badley also reached there and on account of fear they stayed there the whole night and in the morning at about 5 a.m. reached police station- Gulaoti to lodge the report. On reaching there they found the accused persons present in the police station- Gulaoti, however, the police personal asked them to sit outside the police station and detained them there till 11 a.m. On questioning the police personnels, he was informed that accused persons had lodged a false report of dacoity and had killed Har Lal. At about 11 a.m. the police personnels sent the corpse of Har Lal for post-mortem by a tonga, on which his maternal uncle also sat and subsequently, he also reached at the mortuary in Bulandshahr. At about 5 p.m. after the post-mortem the corpse of Har Lal was handed over to him, who brought corpse on a truck to Hapur and thereafter at about 8 p.m. he sent a telegram addressed to S.P. Bulandhahr, a copy of which is proved and marked as Exbt. Ka-2 and thereafter he took the corpse to his village- Bhadaula. On the next day he came to Bulandshahr and met the S.P. who took a

written report, which has been proved and marked as Exbt. Ka-3 signed by him and scribed by one Dilawar Singh. The accounts of Wheat Grinding Mill was maintained by his brother Har Lal in a register marked as Material Exhibit- 1, which contains an entry dated 16.06.1978 in the name of Kalicharan, which has been marked as Exhibit- 4.

32. During cross examination he stated that he was an Army personnel and remained in Army Services for five years however, he was tried and convicted in a case. He used to visit his nanihal since childhood and the house of the accused persons is at a distance of 100-150 meters from his chakk. He has further stated that although he was aware of the parentage of accused Rajaram, Bhagwan Singh and Sagar but did not mention it in the FIR. He further stated that he had not mentioned the name of Shri Chand in his telegram as he was in a hurry and had nominated only three persons in the telegram as only these three persons came to call his brother. After three days of the incident, the Investigating Officer had recorded his statement. He further stated that in the FIR he had stated that Sheela daughter of Kalicharan had come for grinding of her wheat at his Wheat Grinding Mill, however if the said fact is not written there, he cannot assign any reason for the same. He further stated that when he reached at his Wheat

Grinding Mill at 6.30 P.M., the incident with Sheela had already been over.

33. He further stated that when accused persons came at his Wheat Grinding Mill in the evening he was sitting however, no one else was sitting with him. Though he saw the accused persons were armed with lathi but he did not suspect anything otherwise. On drawing his attention to the register marked as Material Exhibit-1, he pointed out that name of the person, who comes for grinding of wheat, is entered in the register however, in the said register name of Sheela is not mentioned. He further stated that he is not aware of the fact that there are two persons in the name of Kalicharan in his village.

34. He further stated that "मैंने अपनी रपट में यह बातें लिखाई थी कि " मुल्जिमान के हाथों में लाठियाँ थी। इन लोगों ने हम लोगों को गालियाँ दी और मेरे हरलाल से लड़की के साथ कन्धा छूने वाली बात की सफाई के लिये कहा" रपट में यह बात अगर नहीं है तो इसकी कोई वजह नहीं बता सकता। वैसे यह बात मैंने दरोगाजी को बता दी थी। मुल्जिमान के गाली देने और हाथ में लाठी लिये होने पर हमें उन पर कोई शक नहीं हुआ। हरलाल से नही कहा कि रात हो रही है इन लोगो के साथ मत जाओ। मैंने उनसे यह नहीं कहा कि जो हो गया उसको छोड़ो अब सफाई की क्या जरूरत है। चूँकि मुल्जिमान हरलाल को लड़की के पास ले जा रहे थे। मैंने नही पूछा कि कहाँ ले जा रहे हो। मैं व मेरे मामा बदले हरलाल के जाने के बाद वही चक्की पर बैठे रहे। 2 घन्टे तक बैठे रहे। इस बीच में किसी को हरलाल

को देखने के लिये नहीं भेजा।"

35. He further denied the suggestion that no incident had taken place with Sheela and no one has come to take away Har Lal. To quote :- "मैंने अपने रपट में लिखा दिया था कि राजा राम के खेत में छिपे थे और दरोगाजी को भी बता दिया था यदि हमारे ब्यान में राजाराम के खेत नहीं लिखा तो इसकी कोई वजह नहीं बता सकता और रिपोर्ट में भी नहीं लिखा तो इसकी वजह नहीं बता सकता। बदले की चोटों से कोई खून नहीं निकला था। मेरे ब्यान 161 व F.I.R. में यह बात कि उन्होंने गठरी रख दी क्यों नहीं लिखी गई इसका कारण नहीं बता सकता। हमने पूछा कि हर लाल कहा है यह बात रपट में लिखाई क्यों नहीं लिखा, कारण नहीं बता सकता। मैंने दरोगाजी को स्थान नहीं दिखाया जहाँ मुल्जिमान ने गठरी रख दी थी।"

36. He further stated that he alongwith his uncle reached at the police station- Gulaoti at 5 p.m. where a constable was standing at the gate, however, he did not went inside the police station as accused persons were present inside the police station nor asked the police personnels to lodge his report and remained sitting there till 11 a.m. He asked the police personnels to record his statement but they did not paid any heed. He further denied the suggestion that they remained sitting at the police station till 3 p.m., however he further stated that the factum of sitting at the police station till 3 p.m. has inadvertently been mentioned by him in the telegram in a hurry and the police personnels

made them sit outside the police station only till 11 a.m. It is wrong to state that he did not went to police station to lodge the report.

37. He further stated that when he reached the police station, the corpse of Har Lal was seen lying in the police station, which he could not identify to be that of Har Lal. Alongwith the corpse one police personnel went on a tonga, however, he did not ask him to lodge his report. He did not state in his report or in his statement recorded under Section 161 Cr.P.C. that the police personnels sent the corpse of Har Lal for post-mortem examination on a tonga at 11 a.m. nor stated that his maternal uncle sat on the tonga with the corpse, for which he cannot give any explanation. He stayed in mortuary for two hours and thereafter reached Bhadaula alongwith corpse at about 8 p.m., however, he did not lodge any report at the police station- Gulaoti. On 22.6.1978 he had lodged the report, which is marked as Exbt. Ka-3. Between the said period he remained in village- Bhadaula. In the first information report, name of witnesses Ratiram and Jeet Singh has not been mentioned.

38. He further denied the suggestion that the information about the death of Har Lal was received on 30.6.1978 and

false telegram was sent. It is wrong to state that just in order to save himself from the report of Mukhtiar Singh father of accused Sagar, the instant case has been falsely cooked up and concocted on account of enmity and parti-bandi and no such incident had taken place.

39. Dr. Anees Ahmad (P.W.-7) is the medical officer, who had examined injuries of Badley (P.W.-2) and has noted the following injuries:-

- (i). Contusion 7 c.m. x 2 c.m. on right side back.
- (ii). Contusion 8 c.m. x 3 c.m. on right scapula.
- (iii). Contusion 11 c.m. x 2½ c.m. on middle of right side back.
- (iv). Contusion 4½ c.m. x 2 c.m. on left scapular region.

The said injuries have been proved and marked as Exbt. Ka-5. He further stated all the injuries are simple in nature and could be caused by lathi on the date and time of incident. During cross examination, he has stated that all the injuries are on approachable part and none of the injuries are on vital part of the body and could be manipulated.

40. Khoob Chand (P.W.-8) is the constable, who had accompanied S.I. D.L. Sharma (P.W.-12) for conducting the inquest. He further stated that on 20.6.1978, he was posted as a constable at police station- Gulaoti and on the said date had gone with S.I. D.L. Sharma for conducting the

inquest. He further stated that after conducting the inquest, the corpse was sealed and after preparing relevant documents was handed over to him alongwith constable Bheem Singh, who had taken the corpse to the mortuary and handed over the same to the doctor.

41. After conducting the post-mortem, the doctor handed over them certain documents, which they brought at the police station and handed them over to the concerned Moharrir. During cross examination, the said witness clearly stated that from the place of incident he straight-way to Bulandshahr and had not gone to police station- Gulaoti. He reached Bulandshahr after 12' o clock. To quote :- "मौके से लाश लेकर मैं सीधा बुलन्दशहर आया था थाना गुलावटी नहीं गया था मैं बुलन्दशहर 12 बजे पहुँचा था।"

42. Sant Pal Singh (P.W.-9) is the Head Moharrir and on 22.6.1978, he had drawn FIR on the basis of written report given by Surajveer (P.W.-6), which has been proved and marked as Exbt. Ka-3, on which, there was an order by the C.O. to register the first information report. On the basis of which, the chick FIR has been drawn, which has been proved and marked as Exbt. Ka-7 and its corresponding G.D. vide G.D. Report No. 21 has been drawn, which has been proved and marked as Exbt. Ka-8. He further stated that on 20.6.1978 at 8.45 p.m. constable Bheem Singh and Phool Chand returned back at the police station alongwith

the relevant documents and handed over to him, on the basis of which, G.D. Report No. 25 has been drawn.

43. During cross examination, he stated that carbon copy of the chick report of Case Crime No. 144, under Section 394 IPC at the instance of Mukhtiar Singh was drawn by him on the basis of allegation made therein. The carbon copy is proved and marked as Exbt. Kha-1 vide G.D. Report No. 3, which has been proved and marked as Exbt. Kha-2. He further stated that through constable C.P. 903 Suresh Pal he had sent accused Sagar for medical examination. He further stated that whenever a cognizable or non cognizable offence is reported, it is immediately registered. He categorically stated that neither on 19th nor on 20th June, 1978 Badley or Suraj did not visit the police station to lodge the report. To quote:- "जब थाने पर किसी Congnizable या non cognizable offence की इतला होती है उसकी रिपोर्ट तुरन्त दर्ज की जाती है। 19 या 20 जून सन् 78 को बदले या सूरज की हमारे थाने पर कोई रिपोर्ट दर्ज कराने के लिये नहीं आये।"

44. Shashi Pal Singh Tomar (P.W.-10) is the second Investigation Officer, who stated that in the year 1978 he was posted at the police station- Gulaoti and on 24.6.1978

the investigation of the said case was handed over to him by S.I. D.L Sharma, which was concluded by him and charge sheet was submitted against the accused persons on 28.11.1978, which has been proved and marked as Exbt. Kha-11.

45. During cross examination he stated that the case, which was registered at the police station for assaulting Sagar, there has also been a version of the witnesses of the said case. He further denied the suggestion that he in collusion with the first informant of the instant case he had filed a final report.

46. Pyare Lal (P.W.-11) is another prosecution witness, who is said to be an employee of Har Lal on its Wheat Grinding Mill. He, in his testimony, stated that about four years back he used to work as an employee in the Wheat Grinding Mill of Surajveer and Badley. At about 5 p.m. when Sheela daughter of Kalicharan came to Wheat Grinding Mill to take flour, Har Lal and Bachan Singh were also present with him, however, on account of sudden noise made by Wheat Grinding Mill, Har Lal rushed towards it. Meanwhile Sheela was coming out from the gate and his shoulder brushed with the shoulder of the girl, who started hurling abuses and stated that she will inform the inmates of her

house regarding the said incident.

47. During cross examination he stated that three days after the incident, the Investigating Officer has recorded his statement and he has disclosed that he was working as an employee in the Wheat Grinding Mill of Surajveer at Barmadpur, however if the said fact has not been stated in any statement then he cannot explain its absence. He further stated that he did not remember if he has disclosed the name of Sheela in his statement recorded under Section 161 Cr.P.C. however, on his attention been drawn to his statement recorded under Section 161 Cr.P.C. he stated that if it does not contain the name of Sheela, he cannot give any explanation. He further stated that he forgot to disclose the factum of Har Lal rushing towards his chakki while the girl was coming out from the gate. He further denied the suggestion that he was not employed in Wheat Grinding Mill and under influence of Surajveer and Badley is falsely deposing in the instant case and that he had not actually seen the incident.

48. Dinesh Lal Sharma (P.W-12) is the first Investigating Officer of the instant case and on 20.6.1978 he was posted as S.I. at the police station- Gulaoti. He further stated that the cross case of the incident was handed over to him for

investigation. He further stated that he conducted the inquest on the person of the deceased Har Lal, which has been proved and marked as Exbt. Ka-12. He also stated that other relevant documents including the photo-nash, challan-nash, chitthi C.M.O. and chitthi R.I. were prepared by him, which has proved and marked as Exbt. Ka-13 to Ka-15. After sealing the dead body, sealed sample was prepared by him and the dead body was handed over to constables Khoob Chand and Bheem Singh for carrying it the mortuary for post-mortem. On 22.6.1978 the instant case was instituted at the police station and investigation of which was also taken over by him. He thereafter recorded the statement of Surajveer and then reached Barmadpur and recorded the statement of Badley, Ratiram, Ramphal, Charan Singh and other witnesses and inspected the site-plan i.e. Wheat Grinding Mill and prepared its map, which has been proved and marked as Exbt. Ka-17 and Ka-18. On the way at three places, he found blood at the boundary marks of Ramphal and Vedram and also under the mulberry tree. He collected the blood stained earth and plain earth from the other places and sealed the same in a container and prepared fard recovery memo, which is exhibited as Exbt. Ka-19 to Ka-21. On 23.6.1978 he recorded the statement of Bachan Singh. On 24.6.1978 the investigation

of the said case was handed over to S.O. Shashi Pal Singh Tomor.

49. During cross examination he stated that on 20.6.1978 Mukhtayar father of accused Sagar had lodged the report under Section 394 IPC, which was registered vide Case Crime No. 144 at police station- Gulaoti, which was registered in his presence, on the basis of which, he proceeded for conducting the inquest. He further stated that he cannot recollect if he had recorded the statement of Mukhtayar and Sagar and had sent Sagar for medical examination on the report lodged by Mukhtiyar he had submitted a final report. On the basis of Case No. 144, under Section 394 IPC he had visited village-Ustara and after crossing village- Ustara a dead body was found kept in a buggi near old Dharamshala, where number of persons had collected. He took the dead body in his possession and conducted its inquest at about 3- 3.30 a.m. which concluded at 6 a.m. While preparing the inquest, the name of the deceased was disclosed to him by accused Rajaram son of Bhikki. After preparing the inquest he sealed the dead body and handed it over to the police constable, to be taken to the mortuary and thereafter he returned back to the police station. During inquest he was informed that the deceased died in an attempt to apprehend him.

50. He further stated that no evidence was given till 21.6.1978 as to who killed the deceased. He, for the first time, reached village-Barmadpur on 22.6.1978 at about 1.30 p.m. He prepared the site-plan on the pointing out of Badley, Ratiram, Ramphal at about 3 p.m. In the site-plan, the presence of the witnesses have not been shown. Even the place where the gathri is said to have been kept has not been shown. He had not shown in the site-plan where Ramphal had sat to ease. He did not find any dragging mark also at the place of incident. Witness Surajveer had not pointed out any field of Rajaram to him. He further denied the suggestion that Exbt. Ka-19 to Ka-21 has been fictitiously prepared and no blood was taken from the place of incident.

51. During cross examination, he further categorically stated that "गवाह बदले ने मुझे नहीं बताया था कि श्री चन्द और राजाराम मुल्जिमान के पिता का नाम था। यह भी नहीं बताया था कि यह घटना मुझे हरलाल ने बताई थी। यह भी नहीं बताया था कि जब मुल्जिमान आये तो प्यारे और वचन सिंह चक्की पर बैठे थे। यह भी नहीं बताया कि राजाराम और लाखन सिंह ने हरलाल से कहा था कि तुमने लड़की को धक्का मारा। इसने यह भी नहीं बताया कि हरलाल ने कह दिया था कि साथ चलने की जरूरत नहीं है इसने यह भी नहीं बताया कि कालीचरन के घर तक गये कोई नहीं मिला इसने यह भी नहीं बताया कि गाँव के कालीचरन के मकान तक गये थे। इसने मुझे यह भी नहीं बताया कि हमने

मुल्जिमान से पूछ कि हरलाल को कहा छोडा इतने में उन्होंने गठरी रख दी। इतने में भगवान सिंह और श्री चन्द ने मुझे लाठी मारी यह भी नहीं बताया कि जब मैं गिर गया तो मुल्जिमान ने लाठी मारी। यह भी नहीं बताया कि मुल्जिमान गठरी लेकर उस्तरा की तरफ भाग गये। यह भी नहीं बताया कि मैं मुल्जिमान के चले जाने के बाद धीरे धीरे उठकर गाँव की तरफ चला गया और मेरा भान्जा सूरजवीर मेड पर बैठा मिला मैं उसके साथ बैठ गया और रात भर वहीं बैठा रहा और यह भी नहीं बताया था कि चांदनी की रोशनी थी। इस गवाह ने यह भी नहीं बताया था कि हमारी रिपोर्ट लिख दो थाने वालों ने कहा कि बैठ जाओ तुम्हारी लिख देंगे थाने वालों ने हमारी रिपोर्ट नहीं लिखी।

गवाह रतीराम ने मुल्जिमान के पिता के नाम नहीं बताये थे। गवाह रामफल मे मुझे यह नहीं बताया था कि चांदनी रात थी। यह भी नहीं बताया कि लाठी में लटका कर ले गये यह भी नहीं बताया था कि मुल्जिमान की वलदियत और सकूनत किया था। गवाह जीत सिंह ने मुल्जिमान की वलदियत नहीं बताई। इस गवाह ने मुझे यह भी नहीं बताया था कि चांदनी रात थी और पूर्ण मासी का दिन था और चन्द्रमा का दिन था।

गवाह सूरजवीर ने मुझे राजाराम की वलदियत नहीं बताई थी यह भी नहीं बताया कि चक्की का हिसाब मेरा भाई हरलाल करता था इसने मुझे यह भी नहीं बताया कि मुल्जिमानों के हाथों में लाठी थी। इन लोगों ने हम लोगों को गोलियां दी और मैंने हरलाल से लड़की के साथ कन्धा छूने वाली बात के लिये सफाई के लिये कहा। यह भी नहीं बताया कि कालीचरन के मकान की तरफ गये कोई नहीं मिला उसने यह भी नहीं बताया था कि हमें गुनगुनाहट सुनाई दी इसने यह भी नहीं बताया कि 4-5 मीटर से मुल्जिमान को देखा। इसने यह भी नहीं बताया था कि राजाराम

के खेत में छिपे थे यह भी नहीं बताया कि गठरी रख दी इसने यह भी नहीं बताया कि पुलिस वालों ने हमें थाने के बाहर 11 बजे तक बिठाये रखा। इसने मुझे यह भी नहीं बताया था कि 11 बजे पुलिस वालों ने हरलाल की लाश को पोस्टमार्टम के लिये भेजा तो मेरा मामा उसी तांगे में बैठ कर जिसमें लाश भेजी जा रही थी बैठ गया।

गवाह प्यारे ने यह नहीं बताया था कि मैं बरमदपुर में सूरजवीर की चक्की पर काम किया करता था। उसने यह भी नहीं बताया था कि चक्की सूरजवीर की थी शीला लड़की का नाम भी नहीं बताया था। उसने यह भी नहीं बताया था कि शीला ने कहा था कि मैं अपने घर पर भी यह बताऊंगी।"

52. After recording the statement of the said witnesses, statements of accused-respondents were recorded, in which surviving accused Shri Chand has clearly denied the prosecution story against him and has stated that instant case was instituted against him on account of enmity and parti-bandi.

53. Thereafter, statement of medical officer Dr. M.P. Singh, who had examined the injuries of accused Sagar on 20.6.1978 at 9.20 a.m. was recorded. He has pointed out the following injuries on his person of Sagar and has drawn the said injury report:-

(i) *Abraded contusion 6 ½ c.m. x 4 ½ c.m. on right side forehead reddish in colour.*

(ii) *Abrasion 1 c.m. x 1 c.m. on right side reddish in color.*

(iii) *Abraded contusion 1 c.m. x ½ c.m. on the upper lip left*

side with lacerated wound $\frac{1}{4}$ c.m. x $\frac{1}{4}$ c.m. inner side of upper lip left side reddish in color.

(iv) Abraded contusion 5 c.m.x 5 c.m. on the right deltoid region of right arm reddish in color.

(v) Abraded contusion 5 c.m. x 5 c.m. on inner side of left arm middle part ? reddish in colour.

(vi) Contusion 7 c.m. x 3 c.m. on left axilla reddish in colour.

(vii) Lacerated wound $1\frac{1}{2}$ c.m. x $\frac{1}{2}$ c.m. x muscle deep on front side of left little finger middle part.

(viii) Lacerated wound $\frac{1}{2}$ c.m. x $\frac{1}{2}$ c.m. x skin deep on back of left little finger middle part.

(ix) Contusion 5 c.m. x 3 c.m. on lateral side of left knee joint reddish in color.

The said injuries have been marked as Exbt. Kha-3.

He further stated that said injuries could be caused on 19.6.1978 at about 11.30 p.m. and duration is half day old. During cross examination, he stated that injury No. 1 is on vital part of the forehead and out of the said marked injuries, only injury No. 2 and 8 could be superficial.

54. The trial court, on the above evidence led by the prosecution and the defence version given by the accused, has come to the conclusion that the prosecution has miserably failed to prove its case and has thus acquitted accused-respondents of all the charges framed against them.

55. Being aggrieved and dissatisfied by the said judgment and order, the present government appeal has been preferred by the State.

56. Learned Addl. Government Advocate for the State-appellants has submitted that evidence of Badley (P.W.-2), Ratiram (P.W.-3), Ramphal (P.W.-4), Jeet Singh (P.W.-5) and Surajveer (P.W.-6) coupled with medical evidence would show that the prosecution has proved its case beyond all reasonable doubt, yet the trial court, on the basis of surmises and conjectures, has illegally recorded the finding of acquittal against the accused-respondents, which is bad in law and is liable to be reversed.

57. Learned AGA has next submitted that from the evidence adduced during the course of trial, it is proved beyond all reasonable doubt that the accused-respondents in furtherance of their common intention with all the accused persons, had committed the instant offence and therefore, they are liable to be convicted for the offence charged with, however, the trial court completely misjudged the evidence and material available on record and has illegally recorded the finding of acquittal against the accused-respondents, which is bad in law and is liable to be reversed.

58. Learned AGA has further submitted that Ramphal (P.W.-4) has given eye witness account of the incident and has proved the prosecution story beyond all reasonable

doubt, however, the trial court has illegally rejected his testimony and recorded the finding of acquittal against the accused-respondents, which is bad in law and is liable to be set aside.

59. Learned AGA has further submitted that even if the testimony of Ramphal (P.W.-4) is not relied upon by the trial court, yet from the attending facts and circumstances of the case as adduced by other prosecution witnesses, the chain of evidence led by the prosecution is complete and clearly establishes the guilt of the accused-respondents, however, the trial court has illegally brushed aside the said circumstances and has illegally recorded the finding of acquittal against the accused-respondents, which is bad in law and is liable to be set aside.

60. Per contra, learned counsel for the accused-respondents has submitted that trial court has appreciated the material and evidence available on record in right perspective and by a well reasoned and detailed order and judgment has recorded the finding of acquittal against the accused-respondents, which by no stretch of imagination can be said to be perverse, illegal and impossible, therefore, the impugned order and judgment passed by the trial court is just, proper and legal and cannot be reversed.

61. Learned counsel for the accused-respondents has next submitted that the vital delay in lodging the first information report after the cross case has already been registered on behalf of the accused-respondents, creates a serious dent in the prosecution story, which is based on completely cooked up and concocted story as an after thought and as such, the trial court has rightly held that on the basis of evidence adduced against him in the cross case, it cannot be said that the prosecution has been able to prove its case beyond all reasonable doubt against the accused-respondents and as such, the trial court has rightly repelled the said testimony and recorded the finding of acquittal against the accused-respondents, which is just, proper and legal and do not call for any interference by this Court.

62. Learned counsel for the accused-respondents has next submitted that taking the entire evidence adduced during the course of trial and the case put forward by the defence, their case appears to be more probable and, therefore, the trial court taking a holistic view, has rightly recorded the finding of acquittal against the accused-respondent, which Judgment and Order does not suffer from any illegality or impropriety and cannot be reversed in view of well settled principle of law laid down by the Hon'ble

Apex Court that an appeal against acquittal, where presumption in favour of the accused-respondents has further been reinforced, the appellate Court cannot interfere with the order of acquittal, unless it is pointed out that the finding recorded by the trial court is perverse, illegal and impossible and in the instant case, no perversity and illegality could be pointed out by the State, as such, the impugned order and judgment passed by the trial court is liable to be affirmed by dismissing the government appeal.

63. Having considered the rival submission made by the learned counsel for the parties and having gone through the record of this case, we find that there are two versions of the incident in question, one is as stated by the prosecution, in which, accused-respondents has been tried and the other by the defence on the basis of report lodged by Mukhtiar Singh father of co-accused Sagar. The prosecution story as stated in the instant case, is to be tested in the backdrop of the entire facts and circumstances of the case led during the course of trial.

64. When we go through the entire evidence adduced, we find that the instant case is primarily based on circumstantial evidence as most of the witnesses produced during the course of trial particularly Badley (P.W.-2),

Ratiram (P.W.-3), Jeet Singh (P.W.-5), Surajveer (P.W.-6) and Pyare Lal (P.W.-11) are not the eye witnesses of the incident and their testimony is primarily based on circumstantial evidence. Only Ramphal Singh (P.W.-4) is alleged to be the eye witness and is stated to have given an eye witness account of the incident, therefore, it would be apt to first test the reliability of the evidence adduced by P.W.-4-Ramphal Singh being an eye witness account. Ramphal Singh (P.W.-4), in his testimony, has stated that on the date of incident i.e. 19.6.1978 while he was easing in his field, he saw 6-7 persons forcibly taking away Har Lal towards village-Ustara. He further stated that Har Lal had bitten Sagarmal, consequent to which, Sagarmal asked Shri Chand to assault him, who is said to have assaulted him by a knife while other accused-respondents are said to have assaulted him by lathi and thereafter they wrapped Har Lal in a bed-sheet and took him away towards village-Ustara by hanging him on a lathi. In his testimony, the said witness states to have witnessed the entire evidence as narrated above but neither made any attempt to rescue the deceased nor even raised alarm to rescue him and simply after witnessing the incident went to his house. He further states that on the next day he came to know about the factum of killing of Har Lal by the accused persons,

however, despite knowledge of the said fact he did not reveal his eye witness account to any of the family members of the deceased and remained silent, he not even tried to lodge any report of the incident and the said conduct of the P.W.-4 raises a big question mark about the truthfulness of his eye witness account, which renders him to be a highly doubtful witness not worth credence, more particularly in the circumstances that during his cross examination, he has admitted to have appeared as a prosecution witness in many of the police report cases and therefore, he can very well be said to be a pocket witness of the police. In the backdrop of the said facts and circumstances, we are of the opinion that it would not be very safe to rely upon the uncorroborated testimony of P.W.-4 stating himself to be an eye witness of the incident as also held by the trial court, which finding by no stretch of imagination can be said to be illegal, perverse or impossible and as such, is also reiterated by us.

65. Now, if the eye witness account of the P.W.-4 as adduced during the course of evidence is disbelieved, then in our opinion the instant case would primarily be a case based on circumstantial evidence as argued by the counsel for the accused-respondents.

66. Before we proceed further it would be relevant to note here that the law with regard to conviction on circumstantial evidence has very well been crystalized in the judgment of this Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra**, wherein this Court held thus: “152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is **Hanumant v. State of Madhya Pradesh [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]**. This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of **Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55]** and **Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]**. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be

consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783]**, where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

67. It is also settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

68. Learned counsel further relied upon a case reported in **(2010) 8 SCC 593 G. Parshwanath Vs. State of Karnataka**, wherein it has been held as under :

“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of

benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

69. Now, if we examine the instant case in light of the settled law laid down by the Hon'ble Apex Court in the case of circumstantial evidence, we find that in the instant case prosecution has relied upon the following circumstances. The prosecution story begins with the incident of Sheela,

who is shown to be present at 5 p.m. on 19.6.1978 at the Wheat Grinding Mill of Har Lal for taking the flour, where he is said to have been pushed by Har Lal, consequent to which, Sheela hurled abuses to him and has left the place stating that she will inform his family members about the said incident. Consequent to the said incident, it is alleged by the prosecution that at about 7 p.m. Surajveer, Har Lal and Badley were sitting alongwith Pyare Lal and Bachan Singh, where accused-respondents Rajaram. Bhagwan Singh and Sagar armed with lathies came and questioned as to why he had pushed Sheela and started hurling abuses and on denial of the said incident by Har Lal, they took him away for giving clarification of the earlier incident.

70. The third part of the incident is that the aforesaid accused persons, namely, Rajaram, Bhagwan Singh and Sagar Singh had taken away Har Lal to the house of Kalicharan brother of Rajaram and thereafter being taken to village-Ustara kept in a bundle hanging on a lathi by the prosecution witnesses and as per the Investigating Officer, the discovery of blood from three different places on way from village-Barmadpur to village-Ustara.

71. Discussing the aforesaid circumstances, it would be apt to first analyse the truthfulness of the factum of Sheela

visiting Wheat Grinding Mill of Har Lal, where she is said to have been pushed by him resulting in hurling of abuses and consequent incident.

72. It is admitted case of the prosecution that P.W.-2-Badley, who is maternal uncle of Surajveer and Har Lal, was running a Wheat Grinding Mill in village-Barmadpur, which was being run by deceased Har Lal and Surajveer. To prove the factum of taking away the flour from the Wheat Grinding Mill of Badley (P.W.-2), Surajveer (P.W.-6) had pointed out to an entry made in the register on 16.6.1978 relating to one Kalicharan, who is said to be the father of Sheela and brother of co-accused Rajaram. On the basis of said entry, it is tried to prove by the prosecution that Sheela had come to take the flour, which was given for grinding on 16.6.1978, however we analyse the said entry and on the basis of testimony of the witnesses, we find that even according to the prosecution own case, there are two Kalicharan's in the village Barmadpur, which has been admitted by P.W-3- Ratiram in his cross examination on the basis of which it cannot be certainly said that the entry made in the name of Kalicharan as pointed out in the register pertains to father of Sheela or the other Kalicharan stated to be son of Girdhari. Admittedly, there is no signature of Kalicharan found on the said register against

the entry made therein. Further, the factum that the wheat was given for grinding on 16.6.1978, which is said to be being taken away on 19.6.1978 i.e. after about three days of its delivery, the three days gap in collecting the flour further creates some doubt in the veracity of the prosecution story as narrated. The factum of Sheela pushed at the Wheat Grinding Mill, has also not admittedly been witnessed by P-W.-2- Badley and P.W.-6-Surajveer, who even according to the prosecution own case, were present at the relevant time and were not simply told about the said factum by Har Lal, however, the said circumstance further become doubtful from the circumstance that P.W.-2 Badley did not state this fact to the Investigating Officer in his statement recorded under Section 161 Cr.P.C. Further it is germane to point out here that if we carefully go through the contents of the FIR, we find that Sheela is shown to be the daughter of Shyami Gujar, which in his testimony has been changed to Kalicharan so as to corroborate entry shown to be made in the register.

73. Thus, only witness, who states about the visiting of Sheela at the Wheat Grinding Mill on the day of incident is Pyare Lal. The said Pyare Lal is admittedly the servant of deceased Har Lal and was brought by Surajveer, as such, he is highly partisan and interested witness.

74. It is further germane to point out here that Pyare Lal has not been mentioned as a witness in the FIR lodged by Surajveer on 22.6.1978. When we go through the testimony of Pyare Lal, we find that therein he has stated that apart from him, number of other villagers were also present at the Wheat Grinding Mill when the said incident is said to have taken place, however, no such person even Bachan Singh has not been examined by the prosecution to prove the said factum.

75. Furthermore, when we look into the testimony of P.W.-11- Pyare Lal, we find that although he was employed as a servant at the chakki but he is not witness of second part of the incident when the accused persons are said to have visited the Wheat Grinding Mill and there was some altercation between them and Har Lal, who is said to have been taken away by the accused persons though as per the testimony of P.W.2 Badley and P.W.-6 Surajveer he was shown to be present at the time of second incident, which further becomes doubtful from the circumstances that he does not accompany Surajveer and Badley to find out of his whereabouts when he did not return back till 9.30 p.m. In the backdrop of the said circumstance, we are of the opinion that testimony of Pyare Lal (P.W.-11) did not inspire much confidence as held by the trial court, which finding is

just, proper and legal and do not call for any interference by this Court.

76. Thus, from the said facts and circumstances, the motive as pleaded by the prosecution has not been cogently and clearly established, which creates a serious dent in the prosecution story and makes it unreliable particularly in a case of circumstantial evidence.

77. Now, we may analyse the testimony of the witnesses to the extent of victim Har Lal being taken away by the accused-respondents from his chakki on the day of occurrence i.e. 19.6.1978, the witness of the said incident admittedly are Badley (P.W.-2) and Surajveer (P.W.-6). If we go through the testimony as stated by Surajveer and Badley that while he was sitting at the Wheat Grinding Mill at about 7 p.m., the accused persons, namely, Rajaram, Bhagwan Singh and Sagar armed with lathies reached at the chakki and started hurling abuses and questioned Har Lal about the earlier incident with Sheela and thereafter took away Har Lal for clarification, consequent thereto, he was done to death.

78. Admittedly, even according to the prosecution own case, three accused persons at the relevant time of taking away Har Lal were having lathies and on reaching there

they started hurling abuses and questioned, rather rebuked, and chastised Har Lal for his indecent behaviour with Sheela then in such circumstance, the prosecution story that Har Lal was taken away by the three accused persons without being followed by Badley and Surajveer so as to rescue him from any untoward incident, does not inspire our confidence and makes the prosecution story further doubtful. Apart from this, it is germane to point out here that even according to the prosecution own case, at the time of taking away Har Lal from the Wheat Grinding Mill, sole surviving accused-respondent Shri Chand was not present and, therefore, he cannot be saddled with the responsibility of taking away Har Lal from the place of incident and this aspect of the matter also makes the prosecution story doubtful qua accused-respondent Shri Chand.

79. The next question required to be examined is the factum of going of Har Lal in the company of accused-respondents on the way leading from village-Barmadpur to village-Ustara. In order to prove this fact, the prosecution has relied upon the testimony of Ratiram (P.W.-3), Ramphal (P.W.-4), Jeet Singh (P.W.-5), Badley (P.W.-2), Surajveer (P.W.-6), out of them, P.W.-2- Badley and Surajveer (P.W.-6) in their testimony have stated that while making the search of Har Lal when they reached near the canal contributory

(Rajbaha) away from the village- Barmadpur they saw four accused-respondents proceeding towards village-Ustara with a bundle hanging on a lathi, however, even according to the prosecution own case they had not seen as to what the accused-respondents were carrying in the bundle. Contrary to this Ratiram (P.W.-3) stated that while he was returning back to his house after easing, he saw 6-7 persons taking away Har Lal by pushing him, who were armed with lathies and on questioning them he was asked to mind his own business and on the next day he came to know that Har Lal has been done to death, however, when we test veracity of the statement of the said witness, we find that he is not at all a reliable witness. Had he witnessed the fact as narrated by him and on the very next day came to know about the murder of Har Lal, he would have certainly disclosed this fact to the family members of Har Lal, however as per his own statement he neither intervened at all to rescue Har Lal nor disclosed this fact to anyone except the Investigating Officer that too after three days of the incident, though admittedly he remained in the village during this period, which further creates a serious question mark about the reliability of the said witness as held by the trial court, which finding in our opinion is just, proper and legal and cannot be interfered with.

80. He further stated that there are two persons by the name of Kalicharan son of Girdhari and the other is the father of co-accused Shri Chand. This circumstance also creates doubt about the entry made in the register in the name of Kalicharan and as per his statement, it cannot be said with certainty that name of Kalicharan mentioned in the register is that Kalicharan father of Shri Chand. This circumstance further creates a serious doubt in the prosecution story and makes it unreliable.

81. So far as P.W.-4- Ramphal Singh is concerned, his testimony has already been discussed earlier and we are of the opinion that he is not a reliable witness at all. So far as P.W.-5- Jeet Singh is concerned, he appears to be a purely chance witness, who is said to have been returning back at the relevant time alongwith one Charan Singh from village-Sherpur, where he had gone to purchase a buffalo. He is said to have been seen the accused standing under the mulberry tree, however, the contents of the said gathri has not been seen by the said witness nor he has seen deceased Har Lal in their company. He is said to have been witnessed the incident at about 10 p.m. in the night and no source of light has been mentioned. He further stated that the factum of witnessing the incident in moon light was disclosed to the Investigating Officer, however, if the

Investigating Officer has not recorded it in his statement recorded under Section 161 Cr.P.C. then he cannot assign any reason for the same. He further stated that he is a relative of Badley and, therefore, obviously is an interested and partisan witness. He further states that on the very next day he came to know about the murder of Har Lal but he did not disclose this fact to anyone and went to sleep in his house, but did not lodge any report. Moreover so called Charan Singh, who is said to have been accompanying him witnessing the incident have not been produced at all so as to corroborate his testimony, in the absence of which we are of the opinion that it would not be vary safe to rely upon the uncorroborated testimony of P.W.-5, who is purely a chance witness.

82. Thus, from the testimony of P.W-5 also the prosecution story cannot be said to be proved beyond reasonable doubt as held by the trial court, which finding is just, proper and legal and do not call for any interference.

82. The next question is regarding recovery of blood stained earth by the Investigating Officer from three places, which is said to have been sent for chemical examination, however if we carefully go through the chemical examination report, we find that the blood found on the shirt

and the blood stained earth marked as Exbts. Ka-1, 5, 8 and 9, no human blood is found and thus, this circumstance, also do not lead to any concrete link evidence to connect accused-respondents with the instant case. There is one more circumstance as stated by the Investigating Officer in his cross examination that a first information report was also lodged by Mukhtiar Singh father of Sagar in the intervening night between 19/20.6.1978 registered vide Case Crime No. 144, under Section 394 IPC and on the basis of said FIR, he had gone to village-Ustara, where he found the dead body near Dharamshala lying on a buggy and he had conducted inquest on the person of the deceased, however, no blood was found there and after conducting the inquest, he had handed over the corpse to the constable Khoob Chand and Bheem Singh for carrying it to the mortuary for the post-mortem.

83. Constable Khoob Chand has been examined as P.W.-8. Who, in his cross examination, has categorically stated that after the inquest when the corpse of Har Lal was handed over to him then he had straightway taken the body to the mortuary and did not brought it police station- Gulaoti, however when we go through the statement of P.W.-2-Badley and P.W-6- Surajveer, we find that they had stated that when they had gone at the police station to lodge the

FIR, they had seen the corpse of Har Lal lying in the police station and tried to lodge the report but his report was not lodged and thereafter from the police station Gulaoti on a tonga dead body of Har Lal was sent for post-mortem, on which he also sat and went to the mortuary. This part of the prosecution story as stated in the statement of P.W.-2- Badley and P.W.-6- Surajveer cannot be relied upon at all as according to the testimony of P.W.-8- constable Khoob Chand, it is evident that the dead body of Har Lal was not brought to the police station- Gulaoti at all, as such, the testimony of P.W.-2- Badley and P.W.-6- Surajveer that they saw the dead body of Har Lal lying inside police station- Gulaoti is nothing but there a pure imagination and as such, their testimony in this respect become highly doubtful and creates a serious dent in the prosecution story and makes both these witnesses wholly unreliable and not worth credence at all.

84. It is further germane to point out here that from the testimony of P.W.-2- Badley and P.W.-6- Surajveer, it is pointed out that they tried to lodge the report at the police station- Gulaoti on 20.6.1978 but their report was not lodged by the police personnels despite their repeated requests and, as such, Surajveer on way to Hapur had sent a telegram addressed to S.P. Bulandshahr clearly stating

therein the name of the accused persons, however, if we carefully go through this telegram, we find that the name of accused-respondent Shri Chand has not been mentioned. Even in his telegram there is no allegation that on 19.6.1978 Shri Chand had visited his Wheat Grinding Mill alongwith accused-respondents Rajaram, Bhagwan and Sagar and had taken him away.

85. Thus, from the prosecution story itself it is evident that there is no allegation against accused-respondent Shri Chand of taking away the deceased Har Lal from his house. This circumstance also creates a serious doubt regarding the participation of the accused-respondent Shri Chand in causing the death of deceased Har Lal and this important missing link in the chain of circumstance rules out the participation of accused-respondent Shri Chand in the instant case.

86. It is further germane to point out here that the prosecution story also become doubtful from the circumstance that the first information report in the instant case has been lodged on 22.6.1978 i.e. after a delay of three days of the incident. When we go through his testimony we find that it is specific case of the P.W.-9- Head Constable Santpal Singh that neither on 19.6.1978 nor on

20.6.1978 Badley (P.W.-2) or Surajveer (P.W.-6) reached police station to lodge the report. He categorically stated that "जब थाने पर किसी Cognizable या non cognizable offence की इतला होती है उसकी रिपोर्ट तुरन्त दर्ज की जाती है। 19 या 20 जून सन् 78 को बदले या सूरज की हमारे थाने पर कोई रिपोर्ट दर्ज कराने के लिये नहीं आये।"

This circumstance further creates a serious doubt about the truthfulness and veracity of the testimony of P.W.-2 Badley and P.W.-6 Surajveer and makes them highly doubtful witnesses. However, if we go through the testimony of P.W.-2 Badley and P.W.-6 Surajveer in this regard we find that they have tried to explain this delay by stating that on during night hours they had seen the accused-respondent carrying away something in a bundle (gathri) hanging on a lathi and when they questioned them about the whereabouts of Har Lal then they assaulted Badley by lathi and also made an attempt to assault Surajveer, however he ran away and thereafter both the said witnesses hid themselves the whole night on the boundary marks in the field of Rajaram on account of fear of the accused persons though the accused persons are said to have proceeded towards village-Ustara. The said factum of P.W.-2 Badley and P.W.-6 Surajveer hiding themselves the whole night in the field of Rajaram on account of fear, in our opinion is too far fetched

story, which in our opinion is hard to believe in the circumstance of the instant case and creates a serious dent about the truthfulness and veracity of their testimony. Moreover, the cosmetic manner in which P.W.-2 Badley and P.W.-6 Surajveer has tried to explain the delay in lodging the FIR is totally inconsistent with the testimony of P.W.-8 Khoob Chand, who categorically stated that after the inquest on the person of deceased Har Lal he had taken the dead body straightway to the mortuary for the post-mortem and did not bring it at all P.S. Gulaoti, which makes the otherwise testimony of P.W.-2 and P.W.-6 that he had seen the dead body of Har Lal inside the police station on 20.6.1978 and thereafter sent on a tonga to the mortuary for post-mortem at 11 a.m. on which P.W.-2 Badley is also said to have sat so as to reach the mortuary is nothing but a figment of imagination of P.W.-2 and P.W.-6 and makes them totally unreliable witnesses, which theory infact has been adopted just to explain the delay in lodging the FIR, which in our opinion has no legs to stand and difficult to believe by a man of ordinary prudence.

87. The testimony of P.W.-2 Badley and P.W.-6 Surajveer is further falsified by the statement of P.W.-9 Santpal Singh, who was the Head Moharrir at P.S. Gulaoti at the relevant time.

88. From the said facts and circumstances of the case, it is evident that the FIR has been lodged on 22.6.1978 and the delay in lodging the FIR has not been explained at all, which creates a serious dent to the prosecution story and makes it unreliable.

89. Thus, we find that number of circumstances alleged against accused-respondents has not been proved satisfactorily. The direct evidence of murder in the form of statement of Ramphal (P.W.-4) is not reliable at all. Motive has not been satisfactorily proved. The testimony of Badley and Surajveer is not at all reliable on material particulars and false story appears to have been cooked up by them in order to lend credence to the prosecution story. A vital delay in lodging the first information report has not been satisfactorily proved and by no stretch of imagination, the chain of circumstance can be said to be complete so as to record the finding of conviction against accused-respondent by reversing the finding of acquittal recorded by the trial court, which finding in our opinion do not suffer from any illegality, perversity or impossibility.

90. It is well settled principle of law that there is a presumption of innocence in favour of the accused-respondent Shri Chand, which further has been concretised

by recording the finding of acquittal against the accused-respondents.

91. The law with regard to interference by the appellate court is very well crystalized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments, which are as reproduced below:-

“(i). In the case of **Sadhu Saran Singh Vs. State of U.P. (2016) 4 SCC 397**, the Hon'ble Apex Court has held that:-

"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. Appellate Court, while enunciating the principles with regard to the scope of powers of the appellate Court in 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."

(ii). Similarly, in the case of **Harljan Bhala Teja Vs. State of Gujarat (2016) 12 SCC 665**, the Hon'ble Apex Court has held that:-

"No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is

perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence if the charge is proved beyond reasonable doubt on record, and convict the accused."

92. The Hon'ble Apex Court in ***Criminal Appeal No. 111113 of 2015 (Rajesh Prasad v. State of Bihar and Another)*** has encapsulated the legal position covering the field after considering various earlier judgments and held as under:-

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:-

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

(ii) The Criminal Procedure Code, 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.

(iii) 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 emphasise 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.

(iv) 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.

(v) 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."

93. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(i). That the judgment of acquittal suffers from patent perversity;

(ii). That the same is based on a misreading/omission to consider material evidence on record;

(iii). That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

94. The appellate Court, in order to interfere with the judgment of acquittal, would have to record pertinent findings on the above factors, if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

95. In our opinion, the trial court has passed a well reasoned and detailed order, which, in view of settled principle of law regarding reversal of acquittal, needs no interference by this Court. The view taken by the trial court cannot be said to be perverse, impossible and illegal and, as such, present Government Appeal filed by the State has no force and is accordingly **dismissed**.

96. Trial court's record be remitted back forthwith.

97. Let a copy of this judgment and order be forwarded to the court concerned alongwith the trial court record for the information and necessary compliance.

Order Date :- 05.08.2024

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