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Judgment reserved on: 04.07.2024
Judgment delivered on: 29.07.2024

Neutral Citation No. - 2024:AHC:116388-DB

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 3087 of 1986

Appellant :- State of U.P.

Respondent :- Rajdeo Singh And Others

Counsel for Appellant :- A.G.A., G.D. Mekavi

Counsel for Respondent :- Uttar Kumar Goswami, Pulak Ganguly, Ravi Bhushan Singh, Sharda Chauhan, Praveen Kumar Singh

Hon'ble Rajiv Gupta, J.

Hon'ble Surendra Singh-I, J.

(Delivered by Hon'ble Rajiv Gupta, J.)

1. Heard Shri Jitendra Kumar Jaiswal, learned AGA assisted by Shri Virendra Kumar Shukla, learned counsel for the State/ appellant, Shri Pulak Ganguly, learned counsel assisted by Shri Ravi Bhushan Singh, learned counsel for the accused-respondents and perused the record.

2. This government appeal has been preferred against the judgment and order dated 18.08.1986 passed by Sessions Judge, Ghazipur in Sessions Trial No. 175 of 1986 (State of U.P. Vs. Raj Deo Singh and 4 Others), arising out of Case Crime No. 79 of 1985, under Sections 147, 148, 149, 395, 436, 323, 325, 506 IPC, Police Station Sadat, District Ghazipur, by which, the accused-respondents have been acquitted of all the charges framed against them.

3. During the pendency of the said government appeal, accused-respondent nos. 3 and 4 Raj Narain Singh and Ram Ashrey Singh has already passed away and as such, the instant government appeal qua accused-respondent nos. 3 and 4 Raj Narain Singh and Ram Ashrey Singh has been abated vide order dated 19.04.2018 and now, it survives only for accused-respondent nos. 1, 2 and 5, Raj Deo Singh, Vikrama Singh and Radhey Shyam Singh.

4. The prosecution story as unfurled in the FIR is that on the day of incident at about 9:30 AM, Buddhi Ram, father of the first informant was going towards Ghazipur and when, he reached near the Bawli, accused persons Raj Deo, Vikrama, Raj Narain, Ram Ashrey and Radhey Shyam suddenly emerged from the willow. Witnessing them, Buddhi Ram went into the field of Shiv Pujan, Raj Deo then caught hold of him and immediately thereafter, Vikrama, Raj Narain, Ram Ashrey and Radhey Shyam also reached there. Radhey Shyam and Ram Ashrey fired a shot.

5. The accused persons thereafter started assaulting Buddhi Ram with lathi-danda and twisted his hands and legs causing fracture injuries. Vikrama and Raj Narain gave 50 blows on the knees of Buddhi Ram and twisted his legs whereas Radhey Shyam assaulted him by kicks and fists. On alarm being raised by Buddhi Ram, first informant and number of other villagers from *Harijan Basti* reached at the place of incident. The accused persons chased them armed with guns. After assaulting Buddhi Ram, accused Vikrama snatched his two passbooks and a wrist watch.

6. It is further alleged that accused persons reached at the house of Buddhi Ram and snatched the ornaments of inmates of

house and thereafter, set his house on fire. Consequent to which, several articles of his house were burnt. Thereafter, the inmates of the house ran away from there. The accused persons are alleged to have chased Deo Nath, elder son of Buddhi Ram and one Lacchan, with their guns, however, they made their escape good.

7. According to the prosecution own case, it is further stated that PW-1 Shiv Prasad, after witnessing the incident of assault on his father in the field of Shiv Pujan, straight away went to the Police Outpost Bahariyabad, where he met two police Constable and one Head Constable and brought them to his home, where he was informed by his sister-in-law that his father has been taken away to the Police Station, as such, he alone left for the Police Station, however, on the way near the temple, met his father lying on a cot, who told him that when he reached in the field of Shiv Pujan, then the assailants emerged from the willow and started assaulting him.

8. It is further stated that PW-1 scribed the first information report near the temple and thereafter, injured Buddhi Ram is said to have been taken to the Police Station Sadat, where written report (Exhibit Ka-1) was handed over to the *Moharrir* by Shiv Prasad (PW-1), on the basis of which, chik first information report (Exhibit Ka-2) was registered at Police Station Sadat vide Case Crime No. 79 of 1985, under Sections 147, 148, 149, 395, 436, 323, 325, 506 IPC, the corresponding G.D. Entry of which was also drawn vide G.D. Report No. 17 at 11:45 hours, which has been proved and marked as Exhibit Ka-3.

9. After registration of the FIR, the victim was sent to the Primary Heath Centre (P.H.C.), Sadat for medical examination and

the investigation of the said case was taken over by PW-9 S.I. Brij Mohan Singh.

10. On 11.09.1985 at 1:00 PM, injured Buddhi Ram was medically examined by Dr. Virendra Pal Singh at P.H.C., Sadat, who noted following injuries on his person :-

(i) Contusion 1 x 1/2 cm x 1 cm over the right elbow joint posterior aspect surrounded by diffuse swelling around right elbow. Direction oblique, colour red, Kept under observation, advised X-Ray right elbow with its lower part and upper part of right fore-arm.

(ii) Abrasion with contusion 4 cm x 1 cm over right knee joint lateral aspect direction oblique, colour red, surrounded by diffuse swelling. Kept under observation. Advised X-Ray right knee joint.

(iii) Abrasion 1 x 1/2 cm x 1 cm over root of right toe on anterior aspect. No scab seen.

(iv) Contusion with abrasion 9 cm x 2 cm over lateral aspect of left knee joint extending upwards 6 x 1/2 cm above the left knee joint, surrounded by diffuse swelling. Kept under observation. Direction vertical, advised X-Ray lower part of left thigh including left knee joint.

(v) Contusion 3 x 1/2 cm x 2 cm over anterolateral aspect of left leg 6 cm below left knee joint surrounded by diffuse swelling colour red, direction oblique. Kept under observation, advised X-Ray left leg upper part.

(vi) Traumatic swelling 4 cm x 2 x 1/2 cm on the lower part of left leg 7 cm above the lateral malleolus on lateral aspect. Kept under observation, advised X-Ray lower part of left leg.

(vii) He kept injuries nos. 1, 2 and 4 to 6 under observation and advised X-Ray. In his opinion, injury no. 3 was simple and that all the injuries were fresh at the time of medical examination.

11. After medical examination, Doctor advised the victim to be taken to the District Hospital, Ghazipur for higher treatment and further management. The victim was accordingly brought to the District Hospital, Ghazipur and admitted there, however, he succumbed to his injuries on 12.09.1985 at 3:50 AM. The information about his death was accordingly sent to the Police Station Kotwali, District Ghazipur.

12. On the basis of the said information, Hari Shankar Verma (PW-7) reached the District Hospital and conducted the inquest on the person of the deceased and prepared the inquest report (Exhibit Ka-8). The relevant documents, namely, challan nash, photo nash, letter to C.M.O., etc. were also prepared by PW-7, which has been proved and marked as Exhibit Ka-10 to Exhibit Ka-12.

13. After the inquest, the dead body was sealed in a cotton cloth by preparing the sample seal and handed over to the constable for taking it to the mortuary for post-mortem examination.

14. The Medical Officer (PW-7) Dr. Maan Bahadur Mal, thereafter, conducted an autopsy on the person of the deceased on 12.09.1985 at 4:00 PM and has found following injuries on his person :-

(i) Abrasion 3 cm x 1cm above right eye ball.

(ii) Abrasion 1 cm x 0.5 cm, 4 cm above left eye ball.

(iii) Abrasion 15 cm x 1 cm right elbow with multiple fracture underlying bone.

(iv) Abrasion 7 cm x 4 cm right knee.

(v) Abrasion 8 cm x 5 cm left knee with fracture.

(vi) Abrasion 1.5 cm x 0.5 cm left elbow joint.

(vii) Abrasion 3 cm x 2 cm, 4 cm below left nipple.

(viii) Abrasion 10 cm X 2 cm left lower abdomen.

(ix) Abraded contusion 2 cm x 1.5 cm, 11 cm below right knee.

(x) In the opinion of the Doctor, death was caused due to shock and haemorrhage as a result of anti-mortem injuries mentioned above.

15. After lodging of the first information report, the Investigating Officer (PW-9) reached the place of incident and tried to trace out the accused persons, however, they were not traceable. The Investigating Officer thereafter recorded the statement of the witnesses Deo Nath and Smt. Sharda and inspected the place of incident and prepared the site plan, which has been proved and marked as Exhibit Ka-13.

16. From the place of incident, the Investigating Officer had also found a live cartridge, which was taken in his possession and its *fard* recovery memo was prepared, which has been proved and marked as Exhibit Ka-14. He also collected the ashes of burnt *Chhappar* and kept it in a container and prepared its *fard* recovery memo, which has been proved and marked as Exhibit Ka-14-A.

17. After inspecting the place of incident, the Investigating Officer (PW-9) reached the Primary Health Centre (P.H.C.), Sadat, where he was informed that victim Buddhi Ram has already been sent to the District Hospital, Ghazipur for further treatment. Further on 12.09.1985, he reached the place of incident, where he was informed by Deo Nath that Buddhi Ram had already passed away on 12.09.1985. On the said date, he had shown to have arrested the accused Raj Narain and recorded his statement and then, reached the Mortuary, where he recorded the statement of first

informant Shiv Prasad and his mother Budhiya and examined the other relevant witnesses.

18. Thereafter, on the basis of the post-mortem report, converted the case under Section 302 IPC and accordingly, the necessary G.D. Entry was made vide G.D. Entry No. 22 on 13.09.1985. He is said to have recorded the statement of Lacchan and thereafter, initiated the proceedings under Sections 82/83 CrPC against the absconding accused persons and after being informed of their surrender in District Jail, reached there and recorded their statements on 17.09.1985 and after concluding the investigation, submitted the charge-sheet, which has been proved and marked as Exhibit Ka-29 on 18.09.1985.

19. On the basis of the said charge-sheet, learned Magistrate had taken cognizance, however, since the case was triable by the court of Sessions, committed the same to the court of Sessions for trial, where it was numbered as Sessions Trial No. 175 of 1985 (State of U.P. Vs. Raj Deo Singh and 4 Others). The trial court thereafter framed charges against the accused-respondents vide order dated 24.01.1986, which was read out and explained to them, who abjured the charges, did not plead guilty and claimed to be tried.

20. In order to prove the guilt against the accused persons, the prosecution has examined as many as 9 witnesses. Shiv Prasad (PW-1), son of the deceased as well as first informant of the incident and Lachhan Ram (PW-2) has been examined as witnesses of fact. Head Constable Girja Shankar Tripathi, who has drawn the first information report and proved the G.D. Entries, has been examined as PW-3. Constable Surendra Kumar Singh is the

police personnel, who took the dead body to the Mortuary for post-mortem examination. PW-5 Dr. Virendra Pal Singh is the Medical Officer, who examined the injuries of the victim. PW-6 Dr. Maan Bahadur Mal is also the Medical Officer, who conducted an autopsy on the person of the deceased and proved the post-mortem report. PW-7 S.I. Hari Shankar Verma, who conducted the inquest on the person of the deceased and proved the same. PW-8 Constable Ajay Kumar Singh, who had taken the victim to the P.H.C., Sadat for medical examination. PW-9 S.I. Brij Mohan Singh is the Investigating Officer, who investigated the case and submitted charge-sheet against the accused persons, on the basis of which, they were put to trial.

21. After recording of the entire evidence, the statement of the accused persons were recorded under Section 313 CrPC. The accused persons did not produce any oral evidence in their defence but they filed some documents, marked as Exhibit Kha -1 to Kha-8, thereafter, the trial court vide impugned judgment and order dated 20.03.1984, has acquitted all the accused persons of all the charges framed against them, against which, 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.

22. In order to appreciate the controversy, in question, involved in the present government appeal, it would be apt to discuss the statements of the witnesses, in brief, recorded during the course of trial.

23. PW-1 Shiv Prasad is the son of the deceased as well as first informant of the incident. He, in his statement, has stated that

his father Buddhi Ram (deceased) was a teacher in Basic Primary Pathshala and at the relevant time, he was discharging his duties as a teacher. He further stated that Prabhu Nath Singh is the Pradhan of the Village, who are five brothers, namely, Deo Nath Singh, Bihari Singh, Gauri Shankar Singh and Sadhu Singh. Accused Raj Deo and Vikrama are the real brothers and sons of Jamadar Singh. Accused Ram Ashrey and Raj Narain are also real brothers and Deo Nath and Prabhu Nath are their uncles. Deo Nath's wife Indrawati and Jamadar Singh's wife Chandri are real sisters. It is thus stated that Vikrama, Ram Ashrey, Raj Narain, Raj Deo are related to each other.

24. It is further stated that Pradhan Prabhu Nath Singh had given plot nos. 29 and 36 of Village *Hartara* to Buddhi Ram on lease, however, he could not get possession over the said land. It is further stated that a complaint under Section 420 IPC was instituted by Pradhan Prabhu Nath Singh against Buddhi Ram and his sons, Deo Nath and Shiv Prasad alleging therein that they had obtained lease of the said plots by fraud and cheating, as such, a case under Section 420 IPC was instituted against them, in which, accused Radhey Shyam was a witness, however, they were acquitted in the said case.

25. It is further stated that *Sehan* of the house of Buddhi Ram fell in the plot no. 29 and they were in possession over that land. It is also stated that on plot no. 36, Jamadar Singh, father of the accused Raj Deo and Vikrama, had installed a Pumping Set, for which, a civil suit was also filed, in which, they had succeeded. A case under Section 145 CrPC was also instituted between Jamadar Singh and Buddhi Ram etc. regarding plot no. 36.

26. It is further stated that about 4-5 years back, accused Raj Deo, Vikrama and Naresh had beaten Smt. Budhiya, wife of Buddhi Ram and mother of the first informant Shiv Prasad, for which, they were prosecuted and convicted.

27. It is further stated that on account of said litigations between the parties, accused persons had become inimical with Buddhi Ram. Buddhi Ram had given applications to the higher authorities for the protection of his life and property. It is further stated that on the date and time of the incident, he was present at his house alongwith Lacchan (PW-2). At about 9:30 AM on 11.09.1985, his father left the house for his school. After some time, he heard a noise of firearm and cries of his father, consequent to which, he reached near the Bawli alongwith Lacchan, where he saw Raj Deo, Vikrama, Raj Narain, Ram Ashrey and Radhey Shyam assaulting his father by lathi. On their raising alarm, villagers also reached there and then, Ram Ashrey and Radhey Shyam are said to have fired and when, he reached in the field of Shyam Singh, he saw the assailants assaulting his father and started breaking his hands and legs. Seeing the incident, he left for Police Outpost Bahariyabad. On reaching there, he met two police Constables and a Head Constable and brought them to the place of incident, where he was told by his sister-in-law that his father had already been taken to the Police Station, thereafter, he proceeded towards the Police Station but on the way near the temple, met his father, who disclosed him that when he reached in the field of Shiv Pujan, then the assailants emerged from the willow and Raj Deo caught hold of him, thereafter, other assailants forcibly threw him on the ground and assaulted him. He was also informed by his father that they had snatched a wrist watch and two passbooks. On the basis of the information given by his father and

the incident witnessed by he himself, he lodged the first information report, which has been marked as Exhibit Ka-1. Thereafter, his father has been brought to the P.H.C., Sadat, where his injuries were examined and thereafter, he was referred to the District Hospital, Ghazipur for further treatment. He was then brought at District Hospital and admitted there, where during treatment, he succumbed to his injuries on 12.09.1985.

28. During cross-examination, PW-1 stated that the field of Shiv Pujan is in the north side of the Bawli. He further stated that first information report of the said incident was scribed by him near the temple, which is a distance of about 200 meters from his house. He further stated that whatever he had seen and what was narrated to him by his father, was scribed in the first information report, however, he has not stated in the first information report that being attracted by the cries of his father and noise of guns, he had reached the place of incident. Even the factum of visiting the Police Outpost Bahariyabad is not mentioned in the first information report and on being confronted, he stated that due to shortage of time, he could not mention it, though, the factum of visiting the Police Outpost Bahariyabad was in his knowledge. He further stated that after being attracted by cries of his father and noise of guns, he had reached the place of incident alongwith Lacchan and had witnessed the incident.

29. On being specifically confronted as to which of the assailants were having guns in their hands at the time of incident, he categorically stated that at the time of assault, none of the assailants had gun in their hands, rather, it was kept on the ground. The guns were with the assailants Radhey Shyam and Ram

Ashrey, who also chased the witnesses, however, the said factum was not mentioned in the first information report.

30. It is further stated that he did not make any attempt to save his father. He stayed in the field of Shyam Singh for a minute and thereafter, left for Police Outpost Bahariyabad on foot and thereafter, on a bicycle. At the Bahariyabad Police Outpost, he met two Police Constables and Head Constable, however, he does not know their names. The said police personnels were on bicycle and they first reached his house, however, at the relevant time, neither his brother Deo Nath nor his father was present in the house and thereafter, he reached near the temple and scribed the report. When he saw his father near the temple, he was badly injured and lying on a cot and was in a serious condition but could understand the conversation. On the basis of the disclosure made by his father, he scribed the first information report, however, in his first information report, he did not mention the fact that on the information given by his father, he had scribed the first information report.

31. PW-1 further stated that prior to his statement in the court, he had not disclosed the factum of assailants setting his house on fire and committing loot of jewelleries, however, it is wrong to state that since he suspected the truthfulness of the said fact, as such, earlier he did not disclose the said fact. He also did not question his mother and sister-in-law as to the ornaments snatched in the dacoity. He further stated that he did not think it fit to first take his father to the hospital, as such, he reached the Police Station and thereafter, went to the hospital for treatment. He stayed with his father at P.H.C., Sadat for half an hour and thereafter, he was referred to the District Hospital, Ghazipur for

further treatment. He further stated that while taking his father from P.H.C., Sadat to District Hospital, Ghazipur, no further injury was caused to him.

32. He further denied the suggestion that incident has not taken place at the time and in the manner as stated. He further denied the suggestion that his father was of loose character. He further denied the suggestion that on the day of the incident in the morning, there has been a quarrel in his house. He further denied the suggestion that in the morning, his brother Deo Nath had assaulted his father because of his loose character and on the date of the incident, Deo Nath's wife also suffered injuries. He further denied the suggestion that just to conceal the actual incident of fight between his family members, he had set his house on fire and lodged the false report against the assailants. He further denied the suggestion that on account of inimical terms with the assailants, he had lodged the false report.

33. PW-2 Lacchan Ram is another eye-witness of the incident and is next door neighbour of PW-1. He, in his examination-in-chief, stated that on the date of the incident, the goats of Buddhi Ram, had damaged his crops, as such, to reproach him, he had reached the house of Buddhi Ram, who was leaving for the School. At the relevant time, Shiv Prasad, son of Buddhi Ram was also present there, while he was conversing with Shiv Prasad, he heard cries of Buddhi Ram and noise of gun shots, consequent thereto, he alongwith Shiv Prasad reached the Bawli and saw the assailants assaulting Buddhi Ram. P.W.-1 Shiv Prasad thereafter ran away, however, they went near the injured Buddhi Ram, where his son Deo Nath and wife had also reached. They

then brought Buddhi Ram at his house, where they saw his hamlet being set on fire.

34. During cross-examination, he stated that though he was not having visiting terms with the family of Buddhi Ram but had gone there only to complain about the damage caused to him by the goats of Buddhi Ram. He was interrogated by the Investigating Officer and had disclosed him that in order to complain about the damage caused to him by the goats of Buddhi Ram, he had gone to reproach him at his house, however, if the said factum has not been recorded by the Investigating Officer in his statement under Section 161 CrPC, then he can not assign any reason as to why the Investigating Officer has not recorded the said factum in his statement.

35. He further stated that no appreciable damage was caused to his crops by the goats of Buddhi Ram. He further stated that he is *Harijan* by caste and Buddhi Ram was also *Harijan* and both of them are *Chamar* by caste. He further stated that he never attended the marriage of sons of Buddhi Ram nor Buddhi Ram was ever invited by him in their marriages. After Buddhi Ram had left for his school, he remained in conversation with Shiv Prasad and on hearing the noise of guns, he had reached the place of incident and witnessed the same alongwith Shiv Prasad. He further stated that the incident took place in the field of Shiv Pujan, which lasted for 5-6 minutes and Deo Nath, son of the deceased, had also reached there alongwith other villagers and had witnessed the incident.

36. He further stated that after the incident, he had taken the injured to the doorstep of his house on a cot and thereafter, he

went to his house and remained there. He further denied the suggestion that since he is next door neighbour of Buddhi Ram and as such, he is falsely deposing in the case. He further denied the suggestion that on account of enmity with co-accused Vikrama regarding fixing of pegs, he is falsely deposing. He further denied the suggestion that one day prior to the incident, he had gone to visit his relatives.

37. PW-3 Girja Shankar Tripathi is the Head Moharrir and had drawn the chik FIR, on the basis of the written report given by the first informant, which has been marked as Exhibit Ka-2. Its corresponding G.D. Entry has also been drawn vide G.D. Report No. 17 at 18:45 hours on 11.09.1985, which has been marked as Exhibit Ka-3. The Investigating Officer on 12.09.1985 had converted the said case under Section 302 IPC vide G.D. Report No. 22 on 12.09.1985, which has been marked as Exhibit Ka-4. He stated that Buddhi Ram (deceased) was brought at the Police Station and his *chitthi majroobi* was prepared by Constable Harvansh Mishra, which has been proved and marked as Exhibit Ka-5.

38. During cross-examination, he stated that after registration of the said case, the Investigating Officer had proceeded for its investigation. He further stated that *chitthi majroobi* are usually prepared in the prescribed form being Form No. 33 but the *chitthi majroobi* of the instant case is not prepared in the prescribed form. He further denied the suggestion that Buddhi Ram was admitted in the Sadat Hospital as a 'private case' and as such, on the *chitthi majroobi*, 'private case' has been scribed. He further stated that since prescribed form of *chitthi majroobi* is not available, as such, it was prepared on a plain paper.

39. PW-4 Constable Surendra Kumar Singh, at the relevant time, was posted at the Police Station Kotwali, District Ghazipur. He stated that on 12.09.1985 at about 8:30 hours, the Investigating Officer, after conducting the inquest, had handed over the corpse alongwith relevant papers for taking it to the Mortuary for post-mortem, which was taken to the Mortuary and handed over to the doctor for post-mortem.

40. PW-5 Dr. Virendra Pal Singh is the Medical Officer, who conducted the medical examination and noted the injuries of injured Buddhi Ram on 12.09.1985 at about 1:00 PM and prepared the injury report mentioning therein that seven injuries have been found on the person of the victim. He further stated that injury no.3 was simple, whereas injury nos. 1, 2, 4, 5 and 6 were kept under observation and advised for X-Ray. The said injuries could have been caused on 11.09.1985 at about 9:30 AM. He further stated that for further treatment and X-Ray, the victim was referred to the Sadat Hospital. The said injuries have been proved and marked as Exhibit Ka-6.

41. During cross-examination, he stated that there is an Injury Register maintained at his hospital, in which, both police case as well as private case are registered. In case of private examination, private case is mentioned, whereas in police cases, police case is mentioned. In the injury report, proved as Exhibit Ka-6, he has written private case, which is correct. When Buddhi Ram reached the hospital, he was given some medical treatment for about half an hour and administered injection. The medical examination of Buddhi Ram, being a private case, has been prepared on a plain paper, however, further stated that while conducting the medical examination, when he had already written a line of the injury report,

a police constable reached there and informed that instant case is a police case and as such, his name was written in the second line. He further stated that he found only seven injuries on the person of the injured Buddhi Ram. He further stated that injuries of Buddhi Ram could also be caused in between 4:00 - 5:00 AM on 11.09.1985. He further stated that none of the injuries of the victim were smeared with mud. He further denied the suggestion that under the influence of the police and the first informant, he has manipulated the injury report.

42. PW-6 Dr. Maan Bahadur Mal is the Medical Officer, who conducted an autopsy on the person of the deceased on 12.09.1985 at 3:50 AM and has noted nine injuries on his person, which has already been discussed above. In internal examination, scalp has been found to be congested and extra dural haematoma was found to be present. The said post-mortem report has been proved and marked as Exhibit Ka-7.

43. During cross-examination, he stated that he can not state the duration of the injuries, noted in the post-mortem report. At the time of post-mortem, he had noted nine injuries on the person of the deceased. Injury nos. 1 and 2 were on the face of the deceased and above the left eye. He further stated that by the assault of lathi, injuries may be either be a lacerated wound or contusion or an abraded contusion. He further stated that by the assault of lathi, only abrasion could not be caused. He further stated that if the head of the person is forcibly dashed against the wooden part of the cot, then injury nos. 1 and 2 could be caused. The extra dural haematoma was only due to injury nos. 1 and 2. He has not found any dislocation in the feet or arm of the deceased. The injuries could at most be caused by 15 blows and not as a

result of 50 blows as stated. There was no gun shot injury on the person of deceased. He further stated that injury nos. 1 and 2, noted in the postmortem, have not been mentioned in the injury report (Exhibit Ka-6). He can not state if, at the time of medical examination, these injuries were there or not. The injuries, caused on the head, could be fatal because of blood clotting haematoma would result and the victim may lose his consciousness. Haematoma caused by injury nos. 1 & 2 was on the front of head. The head injury may paralyse its corresponding area.

44. PW-7 S.I. Hari Shankar Verma, at the relevant time, was posted as Sub-Inspector at the Police Station Kotwali, District Ghazipur and had conducted the inquest on the person of the deceased on 12.09.1985 at 7:30 AM on the basis of death memo sent by the District Hospital and prepared the inquest memo, which has been proved and marked as Exhibit Ka-8. He also prepared the challan nash, photo nash and other relevant documents, which has been proved and marked as Exhibit Ka-9, Ka-10 and Ka-17. After conducting the inquest, the corpse was wrapped in a plain cloth and after preparing the sealed sample, it was handed over to the constable for taking it to the Mortuary for an autopsy.

45. During cross-examination, he stated that said case was not registered at his Police Station, however, on the basis of death memo sent by the District Hospital, he had gone to conduct the inquest. At the time of inquest, Shiv Prasad and Deo Nath, both sons of the deceased Buddhi Ram, were present and witnessed the inquest.

46. PW-8 Ajay Kumar Singh is the Constable, who had taken Buddhi Ram to the Sadat Hospital for medical examination, who

was in a conscious state and was medically examined by the doctor.

47. During cross-examination, he stated that because of lapse of time, he does not remember if he had handed over the medical examination report at the Police Station. He further denied the suggestion that he did not went to the hospital alongwith Buddhi Ram and is falsely deposing.

48. PW-9 S.H.O. Brij Mohan Singh is the Investigating Officer of the instant case. He stated that on the day of incident, he was posted as S.H.O, at the Police Station Sadat, District Ghazipur. On the day of the incident i.e. 11.09.1985, first information report of the instant case was registered in his presence and on the basis of which, chik first information report has been prepared, which has been marked as Exhibit Ka-2 and the corresponding G.D. Entry was also prepared, which has been marked as Exhibit Ka-3. He further stated that injuries of Buddhi Ram was noted in the General Diary and thereafter, he was sent through Constable Ajay Kumar Singh to P.H.C., Sadat for medical examination, however, he did not record the statement of the first informant or his brother at the Police Station as they had gone to the hospital alongwith his father. He reached the place of incident on that very day but the accused persons could not be traced. He recorded the statement of Deo Nath and Smt. Sharda and thereafter, he inspected the place of incident and prepared the site plan, which has been proved and marked as Exhibit Ka-13. From the place of incident, a live cartridge was found, which was taken in his possession and its *fard* recovery memo has been prepared, which has been proved and marked as Exhibit Ka-14. At the place of incident, *chhappar* was found in a burnt state and its ashes were taken in his possession

and its *fard* recovery memo was prepared, which has been marked as Material Exhibit Ka-1. Thereafter, he reached the P.H.C., Sadat, where he was informed that injured Buddhi Ram had already been referred to the District Hospital, Ghazipur. On 12.09.1985, he reached the place of incident, where he was informed that injured Buddhi Ram has already passed away and thereafter, he converted the case under Section 302 IPC. On 13.09.1985, he recorded the statement of PW-2 Lacchan Ram. He initiated the proceedings under Sections 82/83 CrPC against the accused persons and thereafter, accused-assailants surrendered before the court. On 18.09.1985, the Investigating Officer concluded the investigation and submitted charge-sheet against the accused persons.

49. During cross-examination, he stated that on 11.09.1985 in the morning, he was present at the Police Station, when injured Buddhi Ram reached there, he was brought by the first informant and his brother, who had taken him to the hospital, however, Buddhi Ram was not interrogated at the Police Station as he was crying with pain. On 11.09.1985, he recorded the statement of Deo Nath and Smt. Sharda. The statement of the first informant Shiv Prasad was recorded on 12.09.1985. The site plan was prepared by him, wherein the incident of assault is said to have been seen by Shiv Prasad and Lacchan from the distance of 60 paces and further, from the distance of 100 paces. The place of incident, where assault had taken place, is at a distance of 120 paces from the house of Buddhi Ram and the place of incident is not visible from the house of Buddhi Ram. He further stated that he recorded the statement of Lacchan Ram on 13.09.1985 at 8:00 AM. He further categorically stated that Lacchan Ram had not informed him of going to the doorstep of Buddhi Ram for complaining about the

loss being caused by the goats of Buddhi Ram. He further did not disclose to him that Buddhi Ram had told him that it is time for his school and therefore, he is leaving. PW-2 Lacchan Ram also did not inform him that accused persons assaulted Buddhi Ram and broke his arms and legs and thereafter, he reached at the doorstep of Buddhi Ram. To be precise the exact statement of the Investigating Officer, recorded during trial, is being quoted herein below :-

"गवाह लछन का ब्यान मैंने 13.09.85 को करीब 8 बजे सुबह ग्राम हरवरा में लिया था। गवाह लछन ने मुझे बुधिराम के दरवाजे पर जाने के बावत नहीं बताया था कि बकरी के विषय में ओलहना देने गया था। उसने यह भी नहीं बताया था कि बुधिराम की बकरी ने मेरा नुकसान किया था। मुझे यह भी नहीं बताया था कि बुधिराम मास्टर ने उससे बताया था कि मेरा स्कूल का समय हो रहा है और मैं स्कूल जा रहा हूँ। लछन गवाह ने मुझे यह ब्यान दिया था कि "मुल्जिमान मास्टर का हाथ पैर बुरी तरह तोड़ दिये और उत्तर पूरब की तरफ भाग गये।" लछन गवाह ने मुझे यह नहीं बताया था कि "मुल्जिमान बुधिराम को मारे और हाथ पैर तोड़ दिये इसके बाद जय बोलते हुये बुधिराम के दरवाजे पहुँचे।"

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

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

52. Learned AGA for the State/ appellant has submitted that evidence of P.W.-1 Shiv Prasad and P.W.-2 Lacchan Ram 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.

53. Learned AGA has further 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 object 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.

54. Learned AGA has further submitted that present incident had occurred in broad day light and a prompt first information report has been lodged. Date, time and place of the incident has been established. He further submitted that both the eye-witnesses, PW-1 Shiv Prasad and PW-2 Lacchan Ram, are reliable witnesses, however, the trial court, on the basis of surmises and conjectures, has rejected their testimony and has illegally recorded the finding of acquittal against the accused-respondents, which is bad in law and is liable to be set aside.

55. 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. He has further submitted that from the entire evidence adduced during the course of trial, PW-2 Lacchan Ram is a wholly unreliable witness and his presence on the date and time of the incident is highly doubtful and as such, he can not be said to be an eye-witness of the incident. His

testimony therefore is liable to be discarded. The finding, given by the trial court that P.W.-2 Lacchan Ram is a got up witness, is just, proper and legal and do not call for any interference by this Hon'ble Court.

56. Learned counsel for the accused-respondents has further submitted that PW-1 Shiv Prasad is the son of the deceased Buddhi Ram and is highly inimical and interested witness. If we critically analyse the evidence adduced by PW-1 Shiv Prasad, he can not said to be a wholly reliable witness. His presence at the time of the incident, being an eye witness, is also not clearly and cogently established by the prosecution. He is said to have lodged the first information report primarily on the information given to him by his father, however, the said factum has not been stated in the first information report and the same is completely missing, which renders the prosecution story highly doubtful.

57. Learned counsel for the accused-respondents has next submitted that on analysing the evidence adduced by PW-2 Lacchan Ram, he can not be said to be a reliable witness at all but is, in fact, a got up witness as rightly held by the trial court. He has next submitted that prosecution case solely rests on the testimony of PW-1 Shiv Prasad, however, by no stretch of imagination, he too can be said to be a wholly reliable witness and therefore, only on the basis of his testimony, the order of acquittal recorded by the trial court can not be reversed.

58. Learned counsel for the accused-respondents has further submitted that conduct of the first informant in the instant case also creates serious dent in the prosecution story and therefore, he can not held to be a wholly reliable witness. Moreover, his testimony

can not said to be of a sterling quality and therefore, the finding of acquittal recorded by the trial court can not be said to be perverse, illegal or impossible as held by the Hon'ble Apex Court in several of its decisions.

59. Learned counsel for the accused-respondents has further submitted that even according to the prosecution own case, there has been daggers drawn enmity between the family of the deceased and the accused persons. Both civil as well as criminal litigations have been pending between them and in the backdrop of the said circumstances, false implication of the accused-respondents can not be ruled out and as such, the impugned judgment and order passed by the trial court is just, proper and legal and do not call for any interference by this Court and as such, the instant appeal is liable to be dismissed.

60. Having considered the rival submissions made by learned counsel for the parties and having gone through the record, we find that the instant case is a result of a dispute between the two parties and number of civil and criminal litigations were pending between them and both of them were on highly inimical terms.

61. According to the prosecution own case, at the time of the incident, Buddhi Ram was going to his School, when he was attacked by the accused-respondents, who are alleged to have assaulted him. The said incident is said to have witnessed by his son PW-1 Shiv Prasad and PW-2 Lacchan Ram.

62. As per the prosecution story, the said witnesses are said to be attracted on hearing the cries of victim and noise of gun-shots, which is alleged to be used by the accused-assailants before the actual incident of assault.

63. When we go through the testimonies of the witnesses adduced during the course of trial, we find that though the accused persons are said to have fired shot from the gun but none of the injuries, found on the person of the deceased, could be caused by the firearm.

64. As per the prosecution own case, use of gun has been alleged to be made only for the purposes of attracting the witnesses and two shots are said to have been fired by the gun, which has been assigned to the accused-respondents Ram Ashrey and Radhey Shyam, however, no injury whatsoever has been caused by the said gun-shots to the deceased as all the injuries on the person of the deceased are lathi injuries.

65. If we critically examine the trustfulness of this part of the incident from testimonies of PW-1 and PW-2, we find that at the relevant time, when the incident is said to have taken place, both the witnesses PW-1 Shiv Prasad and PW-2 Lacchan Ram are said to be present at their house, which is pointed out to be at a distance of 125 paces from the place of incident. It is admitted case of prosecution that place of the incident was not visible from the house of the deceased Buddhi Ram, where both the witnesses are said to be present. It is quite possible that only on hearing of cries of the victim at the time of incident, the witnesses could not have been reasonably attracted to reach the place of incident and to facilitate their reaching at the place of incident, firing by gun has been introduced just to justify the prosecution story that the witnesses were attracted after hearing the noise of gun-shots, however, in our opinion, use of gun in the present incident does not inspire much confidence, particularly, for obvious reasons (i) that no gun-shot injury has been found on the person of the deceased

and (ii) No spent cartridge has been recovered by the Investigating Officer from the place of incident, though, a live cartridge is said to be recovered, furthermore, none of the two guns, which are said to be used in the incident, has been recovered by the Investigating Officer during investigation, which makes the prosecution story highly doubtful as regards the presence of the witnesses at the time of the incident being attracted on hearing the noise of gunshots. This particular circumstance, in our opinion, creates serious doubt in the prosecution story and makes the presence of witnesses at the place of incident highly doubtful.

66. Now, to test the reliability of two prosecution witnesses, who are said to be eye-witnesses of the incident, it would be pertinent to discuss the evidence adduced by them.

67. First, we would like to discuss the testimony of PW-2 Lacchan Ram, who has been held to be a got up witness by the trial court. According to the statement of P.W.-2 Lacchan, he is alleged to have reached at the house of Buddhi Ram to lodge a complaint and to reproach him for the damage caused to him by his goats, where he is alleged to have met P.W.-1 Shiv Prasad and was conversing with him, when the incident is said to have taken place. On hearing the cries of Buddhi Ram and the noise of gunshots, he along with Shiv Prasad is said to have been attracted to the place of incident, where it is alleged that the accused-respondents were seen assaulting the deceased by the *lathies* and on reaching there, they are said to have been chased away by Shamsher Singh and Radhey Shyam, however admittedly, even according to the prosecution own case, none of the two witnesses have suffered any injuries. Moreover, even as per the statement of

P.W.-2 Lacchan Ram, he was not on visiting terms with the deceased family.

68. However, it is germane to note here that while recording the statement of PW-2 Lacchan Ram by the Investigating Officer under Section 161 Cr.P.C., factum of P.W.2 Lacchan Ram reaching at the house of Buddhi Ram for complaining about the damage caused to him by his goats, has not at all been mentioned and only for the first time in the court, the said factum finds place in the testimony of P.W.2 Lacchan Ram.

69. On being cross-examined on the said aspect, P.W.2 Lacchan Ram in his statement categorically stated that "बुधिराम मास्टर के परिवार से मेरा उठना बैठना नहीं है। अगर ओलहना न देना होता तो मैं उनके दरवाजे पर नहीं जाता। मुकदमे में दरोगा जी ने मुझसे पूछताछ किया था। मैंने दरोगा जी को यह बतला दिया था कि बकरी के विषय में मैं ओलहना देने गया था। मैं नहीं कह सकता कि बकरी के बारे में ओलहना देने वाली बात दरोगा जी ने मेरे बयान में क्यों नहीं लिखा। (Statement U/S 161 Cr.P.C. Read over) बुधिराम की बकरी ने मेरा नुकसान किया था यह भी बात मैंने दरोगा जी को बतलाया था। मैं इस बात की कोई वजह नहीं बता सकता कि दरोगा जी ने मेरे बयान में यह बात क्यों नहीं लिखी।"

70. It is further germane to point out here that when the said factum was put to the Investigating Officer while recording his testimony, he has categorically stated that "गवाह लछन का बयान मैंने 13.09.1985 को करीब 8 बजे सुबह ग्राम हरबरा में लिया था। गवाह लछन ने मुझे बुधिराम के दरवाजे पर जाने के वाक्य नहीं बताया था कि बकरी के विषय में ओलहना देने गया था। उसने यह भी नहीं बताया था कि बुधिराम की बकरी ने मेरा नुकसान किया था। मुझे यह भी नहीं बताया था कि बुधिराम मास्टर ने उससे यह भी बताया था कि मेरा स्कूल का समय हो रहा है और मैं स्कूल जा रहा हूँ। लछन गवाह ने मुझे यह नहीं बताया था कि "मुलजिमान

बुधिराम को मारे और हाथ पैर तोड़ दिये इसके बाद जय बोलते हुये बुधिराम के दरवाजे पहुंचे।"

71. Thus, from the said testimony of P.W.-2 Lacchan Ram, it is clear that factum of P.W.-2 Lacchan Ram reaching at the house of the deceased Buddhi Ram, from where, he is said to have reached the place of incident alongwith P.W.-1 Shiv Prasad becomes highly doubtful and is, in fact, an improvement made by P.W.-2 Lacchan Ram just in order to show himself to be an eye-witness of the incident, which, in the instant circumstance, appears to be highly doubtful.

72. It is well settled principle of law that if a particular fact, which goes to the root of the case, has been mentioned in the testimony of the accused but does not find place in his previous statement, his subsequent statement before the court can not be relied upon.

73. The Hon'ble Apex Court in a recent decision reported in **(2024) 3 SCC 164 (Darshan Singh Vs. State of Punjab)** has held that if the prosecution witnesses fail to mention in their statement under Section 161 Cr.P.C. about the involvement of an accused, their subsequent statement before the court during trial, regarding involvement of that particular accused can not be relied upon and similarly, prosecution cannot seek to prove a fact during trial through eye-witness, which such witness had not stated to police during investigation and thus, evidence of that witness regarding the said improved fact is of no significance as held by the Hon'ble Apex Court in the cases reported in **(2012) 6 SCC 589 (Rohtash Vs. State of Haryana)**, **(2010) 13 SCC 657 (Sunil Kumar Shambhudayal Gupta and Others Vs. State of Maharashtra)**,

(2004) 7 SCC 422 (Rudrappa Ramappa Jainpur and Others Vs. State of Karnataka), (2003) 3 SCC 175 (Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. And Another).

74. Thus, from the said testimony of P.W.-2 Lacchan Ram, his presence at the house of the deceased Buddhi Ram becomes highly doubtful. Further, his subsequent testimony to the extent that from the house of Buddhi Ram, he reached the place of incident alongwith PW-1 Shiv Prasad becomes highly doubtful. In the backdrop of the said circumstances, we are also of the opinion that presence of P.W.-2 Lachhan Ram at the place of incident in the given circumstance becomes highly doubtful and he is, in fact, a got up witness as held by the trial court, which finding can not be said to be perverse or illegal in any manner and is, therefore, reiterated.

75. Now, when we test the reliability of testimony of P.W.-1 Shiv Prasad, we find that even his testimony can not be said to be of a sterling quality being the sole reliable eye-witness of the incident. Admittedly, from the evidence of P.W.-1 Shiv Prasad adduced during the course of trial, it is evident that he is son of the deceased and is highly inimical with the accused-respondents. From his testimony, it is evident that number of civil and criminal litigations have been contested between the parties. In an earlier case, accused-respondents Raj Deo and Vikrama had assaulted Budhiya, mother of P.W.1 Shiv Prasad, in which, both of them were convicted. Further, in a case under Section 420 IPC, lodged by Prabhu Nath, accused-respondent Radhey Shayam was a witness. Another criminal case of assaulting Deo Nath (brother of P.W.1 Shiv Prasad) by accused-respondents Raj Deo and Vikrama was also pending between the parties prior to the instant case.

76. Thus, we find that on account of pending civil and criminal litigations, there was daggers drawn enmity between the accused-respondents, on one hand and the family of the first informant including Buddhi Ram (deceased), on the other. Thus, it is evident that P.W.-1 Shiv Prasad is a highly inimical and interested witness in the backdrop of which, chances of false implication of the accused-respondents in the instant case can not be ruled out.

77. It is well settled principle of law that testimony of inimical and interested witness is to be examined with great care and circumspection. The enmity between the parties is a double edged sword and it is quite possible that on account of enmity, he may falsely implicate the accused-respondents. It has further been held that the evidence of inimical witness can not be accepted without corroboration. The witnesses, found to be interested and inimical, are likely to falsely implicate one or the other accused and therefore, it is essential to seek independent corroboration regarding each one of the accused.

78. Now, if we analyse the testimony of P.W.-1 Shiv Prasad in the backdrop of the said settled principle of law, we find that P.W.-1 Shiv Prasad also does not appears to be a wholly reliable witness and therefore, on the basis of his uncorroborated testimony, the accused-respondents can not be convicted by reversing the finding of the trial court.

79. It is further germane to point out here that if we test the reliability of testimony adduced by P.W.-1 Shiv Prasad, we find that it suffers from various inconsistencies, embellishments and exaggerations. In the instant case, the first information report has been lodged by P.W.-1 Shiv Prasad himself, however, when we go

through the contents of the first information report, we find that from the narration made therein, it is borne out that the manner of the incident, as mentioned in the first information report, has been disclosed on the basis of what he has seen at the place of incident, however subsequently, in his testimony, he improved his version and stated that he had narrated the version in the first information report not only on the basis of his own perception of the incident but primarily on the basis of what had been disclosed to him by his father after the incident. The factum of lodging the first information report on the disclosure made by his father has not at all been mentioned in the first information report.

80. It is further germane to point out here that from the narration of the incident made by PW-1 Shiv Prasad, admittedly the initial part of the incident of coming out of the accused persons from the willow chasing his father and the factum of Rajdeo catching hold of his father and initial assault could not have been witnessed by him, which clearly establishes the fact that said witness, in order to lend credence to the prosecution case, started making improvements in his version and stated that on the basis of disclosure made by his father, he had lodged the first information report, though, the said facts do not find place in the first information report and thus, makes his testimony doubtful and raises a big question mark over the truthfulness of the testimony of the said witness.

81. Further, when we go through the narration of PW-1 Shiv Prasad made in the first information report, we find that even second part of the incident of loot of the jewelleries and setting his house on fire has been narrated in the first information report on the basis of his eye-witness account, however subsequently, he

has resiled from the said testimony and has stated that factum of making loot of the jewelleryes and setting his house on fire was mentioned in the first information report on the basis of the information given to him by his mother and sister-in-law as well as disclosure made by his father, which clearly establishes the fact that P.W.-1 Shiv Prasad has been making marked improvement in his testimony from time to time, which further makes his testimony doubtful.

82. It is further germane to point out here that from the testimony of P.W.-1 Shiv Prasad, it is evident that he is said to have been attracted at the place of incident after hearing cries of his father and the noise of gun-shots made at the place of incident. Admittedly, P.W.-1 Shiv Prasad is said to have firstly witnessed the incident from a distance of 60 paces and then, from a distance of 100 paces. However, even according to the prosecution own case, after the incident of assault had taken place, accused-respondents proceeded to his house, where the incident of loot and setting his house on fire is said to have been alleged. P.W.-1 Shiv Prasad, even as per his own testimony, had not followed the accused-respondents to his house, however, it is surprising to note that even after the accused-respondents had left the initial place of incident, he not even went near his father to enquire about the injuries suffered by him, rather, from the said place, left for Police Outpost Bahariyabad, which was at a distance of about 3 Kms. from the place of incident and on reaching there, he is said to have met two Police Constables and one Head Constable, who are said to have accompanied P.W.-1 Shiv Prasad to his house, where he was informed by his sister-in-law that his injured father has been taken to the Police Station Sadat, whereupon he left his house and

reached near the temple, where he is said to have written the first information report.

83. Subsequently, in the entire testimony of P.W.-1 Shiv Prasad, factum of bringing the police constables at his house and the action taken by the three police personnels on reaching his house, has not at all been explained by him and even, none of the said police constables has been examined during the course of trial to corroborate this version of the incident, which clearly shows that P.W.-1 Shiv Prasad is not coming out with true narration of the incident and trying to suppress the actual genesis of the prosecution case.

84. The exaggerated version given by P.W.-1 Shiv Prasad is also evident from the fact that in the first information report, he has categorically stated that assailants after assaulting his father, proceeded to his house and thereafter, they looted jewellerys of the womenfolk and set his house on fire. Subsequently, in his statement before the trial court, he has stated that this part of the incident, discussed above, was not personally viewed by him but was narrated to him by his sister-in-law, mother and father, which fact has not at all been mentioned in the first information report.

85. Even, during the course of the investigation, factum of loot of the jewellerys and setting his house on fire has not been stated by him in his statement recorded under Section 161 Cr.P.C. and during his cross-examination, he has categorically stated that "आज के पहले मैंने मुलजिमान द्वारा आग लगाने वाली बात व डकैती डालने वाली बात मैंने अपने बयान मे नहीं कहा था। चूकि मुझसे यह बाते पूछी नहीं गई इसलिए नहीं कहा।"

86. Thus, it is evident that said part of the prosecution story has not been narrated in his statement recorded under Section 161

Cr.P.C. and thus, it is a clear improvement during the course of trial, which further creates a serious dent in the veracity of testimony of the said witness and makes him a doubtful witness and therefore, the trial court, doubting the veracity of his statement, has rightly acquitted all the accused-respondents, which finding, by no stretch of imagination, can be said to be perverse, illegal or impossible and as such, the finding of acquittal recorded by the trial court can not be reversed as submitted by learned AGA for the State/ appellant.

87. Apart from the said factum, there are more circumstances, which makes the prosecution story further doubtful. We further find that the post-mortem report also does not corroborate the prosecution story in its material particulars.

88. It is further germane to point out here that at the time of medical examination of the victim Buddhi Ram at Sadat Hospital, only seven injuries have been found on his person and all of which are either on the legs or on the arms. However, while conducting the post-mortem on the person of the deceased, P.W.-6 Dr. Man Bahadur Mal, had found two other injuries on his person. The nature of which has been noted to be (i) Abrasion 3 c.m. x 1 c.m. above right eye-ball (ii) Abrasion 1 c.m. x 0.5 c.m., 4 c.m. above left eye-ball.

89. During cross-examination, P.W.-6 Dr. Man Bahadur Mal, who conducted an autopsy on the person of the deceased, has categorically stated that the said two injuries has not been mentioned in the injury report and he can not state as to whether at the time of his medical examination, the said injuries were present or not. It appears that the said injuries are, in fact, responsible for

the death of the deceased. He has further stated that "चोट नं0 1 व 2 जो पोस्टमार्टम मे लिखी है यह दोनो चोटे मृतक के चेहरे पर सामने की ओर दाहनी व बाई आंख के ऊपर थी। लाठी से मारने पर जो चोट आती है। वह ऊपर से देखने मे या तो फटा हुआ घाव दूसरा कन्ट्रूजन तथा तीसरे प्रकार की चोट एब्रेडेड कन्ट्रूजन हो सकती है। सिर्फ लाठी से मारने पर केवल एब्रेजन नहीं आयेगा। चारपाई के पाटी पर अगर बहुत जोर से सर को पटक दिया जाय तो उससे चोट नं0 1 व 2 आ सकती है।"

90. However, the witnesses, nowhere in the prosecution story, had stated that head of the victim was dashed against the wooden part of the cot and therefore, noting of the said injuries in the post-mortem report further creates a serious dent in the prosecution story and makes it doubtful.

91. It is further germane to point out here that even according to the prosecution own case, Deo Nath, other son of the deceased Buddhi Ram, was present at the house at the time of the incident and also, at the scene of the incident and further, at his house, when incident of loot of the jewelleryes and setting his house on fire is alleged to have been committed, however, despite him being an eye-witness of the incident, he has not been produced to adduce his evidence, which further creates a doubt in our mind that the prosecution is not coming out with true version of the incident and is suppressing the incident, which further makes the prosecution story doubtful.

92. Another very important circumstance emerges from the fact that as per the prosecution story, victim Buddhi Ram, after receiving the injuries, is said to have been taken straight away to the Police Station for lodging the first information report, however, it has come in the evidence that while going from the place of incident to the Police Station, where the first information report is

said to have been lodged, P.H.C., Sadat falls in the way but he was not medically examined at P.H.C., Sadat, though, he is said to have been in a serious medical condition, which further creates dent in the prosecution story as narrated by the witnesses.

93. Apart from this, if we carefully go through the medical examination report of the victim Buddhi Ram, prepared at P.H.C., Sadat, we find that said medical examination has been done as a “private case”, though, it is a specific case of the prosecution that victim was first taken to the Police Station, Sadat, where the first information report of the incident was lodged and *chitthi majroobi* was prepared, which was handed over to Constable Ajay Singh, who accompanied him to the Sadat Hospital for medical examination, however, when we peruse the injury report of the victim, he is shown to have been examined as a “private case”. Had the Constable Ajay Singh accompanied the victim and been present at the P.H.C., Sadat for medical examination alongwith *chitthi majroobi*, then certainly in the medical examination report, the victim would have been examined as a “police case” and not as a “private case” as mentioned in the injury report, this factum further creates serious dent in the prosecution story and renders it wholly doubtful. The explanation tendered by the doctor in this respect is inconclusive and as an after thought just to explain the ambiguity.

94. There is one more factor, which further creates serious dent in the prosecution story. As per the prosecution story, deceased Buddhi Ram was going to his School, when the incident is said to have been taken place and he is alleged to have been assaulted, however, subsequent to his death, when PW-7 S.I. Hari Shankar Verma conducted the inquest on the person of the

deceased Buddhi Ram, only *Baniyan* and Underwear on his person was found, which has been mentioned in the inquest report. Even, PW-6 Dr. Man Bahadur Mal, while conducting an autopsy on the person of deceased, had found only *Baniyan* and Underwear on his person. There is nothing on record to show that any of his clothes had been taken off from his body, either before the inquest or post-mortem or medical examination by the doctor nor the same was handed over to the constable nor any of the said clothes has been produced during the course of trial, which further creates a serious doubt in the prosecution story that the murder of the victim Buddhi Ram has been committed in the manner as alleged by the prosecution, while he was going to his School.

95. We further find that even place of the incident in the instant case has not been cogently & clearly established. According to the prosecution own story, it is alleged that victim Buddhi Ram was assaulted in the field of Shiv Pujan, which had already been ploughed but no crops were sown. Even, Investigating Officer, while investigating the case, had found that the field of Shiv Pujan had been ploughed, on which, the victim is said to have been repeatedly given innumerable blows by lathis, causing injuries on his person, after throwing him forcibly on the ground, however, at the time of his medical examination by PW-5 Dr. Virendra Pal Singh, no dust or soil was found in any of his injuries. PW-5 Dr. Virendra Pal Singh clearly stated that "बुधिराम के शरीर पर कुल 6 चोटें मिली थी बुधिराम की चोटे 10.09.1985 को सुबह 4-5 बजे के बीच की भी हो सकती है बुधिराम की किसी भी चोट में मुझे मिट्टी नहीं लगी हुई मिली बुधिराम के साथ आये हुए व्यक्तियों से किसी ने यह नहीं बताया कि बुधिराम पढ़े लिखे अध्यापक हैं।"

Thus from the said circumstances, even the place of incident becomes doubtful.

96. Another very important fallacy, which we find in the prosecution case that even according to the prosecution own case, the victim Buddhi Ram is said to be mercilessly beaten by the accused persons and in the first information report itself, it is stated that Vikrama and Raj Narayan gave as many as 50 blows on both of his knees and other parts of his body. Consequent to such merciless beating, the victim, as per the post-mortem report, has also suffered two serious injuries; one over right eye and the other is marked to be 4 cm above the left eye. Consequent to which, the Doctor has noted congestion in the scalp region below injury nos. 1 and 2. His membranes has been noted to be congested and in the brain, extra dural haematoma has been detected. The victim is said to have succumbed to his injuries in the night itself on the day of the incident. He is said to have straight away been taken to the Police Station Sadat, where his first information report has been registered in presence of the Investigating Officer, in an injured state, however, the Investigating Officer neither interrogated him nor recorded his statement as he was in intense pain. P.W.-9 S.I. Brij Mohan Singh in his statement clearly stated that “मुकदमा कायमी के बाद मैंने थाने पर किसी का ब्यान नहीं लिया। बुधिराम मजरूब का ब्यान इसलिए नहीं लिया गया कि उस समय वह पीड़ा से कराह रहा था और उनके लड़को को उन्हें अस्पताल ले जाने की जल्दी थी बुधिराम का इस मुकदमें के सम्बन्ध मे कही ब्यान नहीं लिया गया।”

97. Thus, from the said circumstance, it is evident that after receiving the injuries, particularly on his head, the victim was in a very serious condition and therefore, it is very difficult for us to

believe that on the narration of the incident given by injured Buddhi Ram, the prosecution case has been developed as stated by PW-1 Shiv Prasad. This circumstance again creates a serious dent in the prosecution case and do not inspire our confidence and makes the prosecution story as well as testimony of PW-1 Shiv Prasad further doubtful.

98. There is another important circumstance, which also makes the prosecution story doubtful. It is alleged in the first information report that after the incident of assaulting Buddhi Ram in the field of Shiv Pujan, the accused-respondents reached the house of the first informant and looted the ornaments of the inmates of the house and set the house on fire but even the said factum has not been proved by the prosecution.

99. It is germane to point out that during the course of investigation, no material could be collected to substantiate the said allegations, and such, the Investigating Officer, while concluding the investigation, did not file the charge-sheet in the said offences. Even during the course of trial, though the charge under section 436 IPC was framed but no cogent or clinching evidence could be adduced by the witnesses to establish the said charge. None of the inmates of the house, who are said to have been present at the time of alleged loot and setting the house on fire, has been produced. Neither Deo Nath, brother of PW-1 Shiv Prasad, nor mother of PW-1, nor his sister-in-law has been produced to prove the said part of the incident.

100. It is further germane to point out here that none of the ornaments alleged to have been looted in the incident have been disclosed nor it has been recovered during investigation, which

further creates serious dent in the prosecution story and makes it doubtful.

101. Thus, in the backdrop of the aforesaid facts and circumstances of the case, when we take a holistic view of the evidence adduced during the course of trial and test the veracity of the prosecution story as mentioned by the witnesses, we find that prosecution has miserably failed to prove its case beyond all reasonable doubt against the accused-respondents. The trial court in its impugned judgment and order has vividly discussed each and every aspect of the matter in the light of the evidence adduced during the course of trial, testing the veracity of the statements of the witnesses and has rightly come to the conclusion that prosecution has failed to prove its case beyond all reasonable doubt against the accused-respondents and as such, in our considered opinion, has rightly acquitted all the accused-respondents, which finding can not be said to be perverse, illegal or impossible.

102. The law with regard to interference by the appellate court is very well crystallized. 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 re-look 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."

103. The Hon'ble Apex Court in ***Criminal Appeal No. 111113 of 2015 (Rajesh Prasad Vs. 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, re-appreciate 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."

104. 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.

105. 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.

106. In our considered 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 can not 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.**

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

Order Date:- 29.07.2024.
Nadim