Judgment reserved on : 08.02.2022

Judgment delivered on: 13.07.2022

In Chamber

Case :- GOVERNMENT APPEAL No. - 2995 of 1985

Appellant :- State of U.P.
Respondent :- Laxmi And Others
Counsel for Appellant :- A.G.A.
Counsel for Respondent :- A.K.Singh,Kameshwar Singh

Hon'ble Vivek Kumar Birla,J.
Hon'ble Mohd. Aslam,J.

(Delivered by Hon'ble Mohd. Aslam, J.)

1. Heard Shri Ajit Ray, Learned A.G.A. for the State-appellant and Shri Kameshwar Singh, learned counsel for the respondent.

2. The instant appeal has been filed by the State against the impugned judgment and order dated 30.07.1985 passed by Sessions Judge, Banda by which accused-respondents Lakshmi, Ram Swaroop and Deoraj have been acquitted from the charge of offence punishable under Sections 302/34 I.P.C. in Sessions Trial No. 291 of 1985 (State vs. Lakshmi and others), arising out of Case Crime No. 58 of 1985, under Section 302 I.P.C., Police Station- Bisanda, District- Banda.

3. Brief facts of the case are that first information report was lodged by the PW1 Chandra Bhushan, father of the deceased, on 28.02.1985 at 20:30 P.M. at Police Station Bisanda, District- Banda on the basis of written complaint (Ext.Ka.1) alleging therein that about 8-10 days' before his son Kuldeep Chandra had gone to see his field Chak no. 86 where he found that wife of accused Laxmi was uprooting gram crop in his field, thereupon, his son scolded her. Thereafter, the wife of accused Laxmi told at her house that Kuldeep Chandra insulted her. Then the accused Laxmi and others came to the informant and told him that his son has insulted his wife. On 28.02.1985 the informant was returning from Banda after getting her wife Asha Devi (PW4) treated and was going from village Murwal to his village Milathu by bullock cart which was being driven by his son Kuldeep Chandra and his wife was lying in the bullock cart. Informant Chandra Bhushan, Sukhdev son of Ram

Sewak (not examined) and Arimardan (PW3) son of Sadhu were following the bullock cart. When his bullock cart covered a distance of 1 km from village Palhri and reached near Lalwa Devra towards Milathu at about 4:30 PM, then the assailants namely Laxmi, armed with single barrel gun, Ram Swaroop armed with double barrel gun and Deoraj armed with 12 bore gun ambushed in the field stopped the bullock cart and all the accused persons opened fire upon his son who sustained injury and fell down on the ground from the bullock cart and pellets injury was also sustained by the bullocks. On being challenged the accused persons fled from the place of occurrence towards the North after committing murder of his son Kuldeep Chandra. The villagers of village Palhri and Milathu also reached at the place of occurrence.

4. PW5 the then Constable Moharrir Ram Singh ascribed the Chik report (Ext.Ka.3) on 28.02.1985 at 20:30 P.M. and by making necessary entry in GD vide report no. 17 at 20:30 PM on 28.02.1985 (Ext.Ka.4) has registered Case Crime No. 58 of 1985, under Section 302 I.P.C. against accused Laxmi, Ram Swaroop and Deoraj. The investigation of the case was undertaken by the then SO Bisanda S.I. Shyam Pal Singh (PW6). The first information report was lodged at police station in his presence. He recorded the statement of informant Chandra Bhushan (PW1) and proceeded to the place of occurrence at 9:30 PM. Due to insufficiency of arrangement of light inquest of dead body of deceased was conducted and completed on next day i.e. 01.03.1985 at 08:45 AM. Ram Kishan, Devraj, Rameshwar, Sunder Lal and Harish Chandra were appointed as panch of inquest. Panch have opined that deceased has died due to injuries sustained by the deceased. SI Shyam Pal Singh (PW6) prepared the panchayatnama (Ext.Ka.7), Challan Nash (Ext.Ka.8), Photo Nash (Ext.Ka.9), Letter to Medical Officer Civil Hospital, Banda (Ext.Ka.10), Letter to CMO, Banda (Ext.Ka.11). He sealed the dead body and handed over it to Home Guard Devi Deen (PW8) and village Chowkidar Sundar Lal for carrying the dead body for postmortem.

5. The autopsy of the dead body of deceased was conducted by Dr.

MC Mittal (PW2) and he prepared postmortem report (Ext.Ka.2) in his own handwriting. He found following ante-mortem injuries on the person of the deceased:-

> *(i) Gulter shaped gunshot wound 14 cm x 6 cm x oval cavity deep on the left side of lower face starting just below the left ear to the mid of mandible middle, left side mandible badly fractured. Slight blackening was seen on the wound. 1/3 part margins are inverted and abraded.*
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> *(ii) gunshot wound of entry 4 cm x 2 cm x clavical cavity deep back side of skull 2.5 cm behind the right ear. Blackening and tattooing were present. Margin inverted abraded collar, on opening right side of parietal and occipital bones were fractured and 25 metallic small size pellets were recovered.*
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> *(iii) gunshot wound of entry 5 cm x 4 cm x cavity deep on the left side of chest 9 cm below the armpit on the back line. Blackening, tattooing and charring were not present. Margins of the wound were found inverted abraded collar and on dissection 6th and 7th rips were found fractured. Lower part of the lung was badly lacerated and blood was coming out of the wound. Diaphragm was also found lacerated. Left part of the liver was found lacerated. Stomach perforated and lacerated. Twenty metallic pellets were found inside the lungs and liver along with these injury abrasion 2 cm x 1.5 cm was found on the outer part of the back.*
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> *(iv) gunshot wound of entry 4 cm x 3 cm on the back of right side chest 3 cm away from the mid line and 4 cm below from top of the chest. Blackening, charring and tattooing were found around the wound, margin of wound was inverted, abraded collar. On dissection 2nd and 3rd rips of posterior aspect were found fractured. In WAD one piece and 40 metallic pellets were recovered from the diaphragm and right part of liver was perforated and lacerated.*
>
> *(v) gunshot wound 1.5 cm x 1.5 cm x bone deep on the tip of right thumb lacerated and fractured. Margins of wound were inverted, abraded collar.*
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> *On internal examination stomach was found empty and perforated. Digested food and gases were found in small intestine. Fecal matter and gases were found in the large intestine. The gallbladder was found full and urine bladder was also found full.*
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> *The doctor has opined that deceased has died one day before as a result of hemorrhage/shock due to ante-mortem gunshot injury.*

6. SI Shyam Pal Singh (PW6) inspected the place of occurrence along with informant on 01.03.1985 and prepared site-plan (Ext.Ka.14). He has taken bloodstained and plain earth from the place of occurrence and sealed in separate container and prepared Ext.Ka.15. He also saw the bullock and bullock cart at the place of occurrence and found four

injuries on the right buttock of one bullock. He also sent the bullock to LDO, Bisanda for medical examination. The bullock was medically examined by Dr. H.S. Saraswat, LDO, Bisanda on 01.03.1985. He prepared injury report of bullock (Ext.Ka.17) in his own handwriting.

The following injuries were found:

(i) lacerated wound 1 cm x 3 cm

(ii) lacerated wound 1 cm x 2.5 cm

(iii) lacerated wound 1 cm x 2 cm

(iv) lacerated wound 1cm x 3cm

All these injuries were on the right side of hip just below tail of bullock with direction from downward to upward. All injuries were caused by hard object. Doctor opined that all the injuries could be cured by treatment.

7. PW6 also recorded the statement of PW4 Asha Devi, Sukhdev, Arimardan (PW3), Sundar Lal and other witnesses and after investigation submitted charge-sheet (Ext.Ka.16) against accused Laxmi, Ram Swaroop and Deoraj. Cognizance on the charge-sheet was taken by the Magistrate and after complying the procedure of Section 207 Cr.P.C the case was committed by the then Chief Judicial Magistrate, Banda on 29.05.1985 for trial by the court of sessions. The charges were framed under Section 302 read with Section 34 I.P.C by the then Sessions Judge, Banda on 12.06.1985. Accused-respondents had not pleaded guilty and claimed to be tried.

8. In order to prove its case, prosecution has examined PW1 informant Chandra Bhushan, father of the deceased, as eye-witness who proved the tehrir report (Ext.Ka.1). Witness Arimardan Singh was examined as PW3 and step mother of the deceased Smt. Asha Devi was examined as PW4 as eye-witness. Learned Public Prosecutor has also examined Dr. M.C. Mittal as PW2 to prove the postmortem report (Ext.Ka.2), one WAD piece (Material-Ext.1) and 65 metallic pellets (Material-Ext-2) which were found in the body of the deceased at the time of postmortem. Prosecution has also examined Head Constable Ram Singh (PW5) as formal witness to prove chik report (Ext.Ka.3) and GD registering the case (Ext.Ka.4). Investigating Officer SI Shyam Pal Singh was examined as PW6 to prove inquest report (Ext.Ka.7), Challan

Nash (Ext.Ka.8), Photo Nash (Ext.Ka.9), Chitthi to Medical Officer Civil Hospital (Ext.Ka.10) and Chitthi to CMO, Banda (Ext.Ka.11). He also recovered bloodstained scarf from the dead body and prepared memo (Ext.Ka.12) in presence of witnesses and also found two empty cartridges and three *ticklies* from the place of occurrence and prepared memo (Ext.Ka.13) in presence of witnesses. He visited the place of occurrence along with informant and inspected the place of occurrence and prepared site-plan (Ext.Ka.14). He took bloodstained and plain earth from the place of occurrence and prepared memo Ext.Ka.15 in this regard. He also sent the bullock for medical examination and proved the charge-sheet (Ext.Ka.16). Prosecution has also examined Dr. H.S. Saraswat as PW7 to prove injury report of bullock (Ext.Ka.17). Devi Deen was also examined to prove that he along with village Chowkidar Sundar Lal had taken the dead body in sealed cover along with relevant papers for postmortem. Thereafter, the prosecution has closed his evidence.

9. Statements of accused persons under Section 313 Cr.P.C. were recorded by the lower court wherein the accused admitted that they are real brothers and are sons of Ram Kumar. They stated that PW4 Asha Devi was not ill. They denied the prosecution case and stated that prosecution witnesses are falsely deposing against them and Investigating Officer without conducting fair and proper investigation submitted the charge-sheet against them. They further stated that a banyan tree was allotted in their Chak during consolidation ownership of which was claimed by the informant. They also stated that they supported one Jageshwar in the election of Village Pradhan against the informant, therefore, due to aforesaid facts there was enmity between them and they were falsely implicated in this case. It is further stated that uprooting of gram crop by the wife of Laxmi is incorrect and false, whereas, the wife of Laxmi had given birth to a child 10-12 days before the occurrence. In defence, the accused-respondents have examined witness DW1 Harpal Singh, Head Master of Para Bihari Primary School to prove *alibi* of accused Ram Swaroop who filed copy of attendance register of month February, 1985 (Ext.Kha.1) regarding presence of

accused Ram Swaroop in primary school and also examined Bhagwan Das, A.J.A./Clerk Collectorate, Banda as DW2 to prove that special report of police regarding Crime No. 58 of 1985 was not received in his office. They also filed documentary evidence like sijra map of village Milathu (Ext.Kha.3), Jot Chakbandi Akar Patra 2 (Ext.Kha.4), Amended Jot Chakbandi Akar Patra 23 part 9 pertaining to village Milathu (Ext.Kha.5&6), certificate issued by DW2 Harpal Singh, Principal, Primary School Para Bihari dated 11.03.1985 regarding presence of accused Ram Swaroop in the school from 09:30 A.M. to 04:30 P.M. on 28.02.1985 (Ext.Kha.7), copy of Pariwar Register (Ext.Kha.8), copy of Khatauni for the Fasli year 1382 to Fasli 1387 (Ext.Kha.9) pertaining to witness Arimardan, order of Consolidation Officer dated 27.04.1984 (Ext.Kha.10), copy of chik F.I.R./Crime No. 57 of 1955, under Section 302 I.P.C., Police Station Bisanda (Ext.Kha.11), copy of charge-sheet of Crime No. 57 of 1955, under Sections 148, 323, 302 I.P.C. (Ext.Kha.12) and closed the evidence.

10. Learned court below heard the argument of learned Additional Public Prosecutor and learned counsel for the accused-respondents and held that motive of the crime was not proved. It was also held that presence of witness PW1 Chandra Bhushan, PW3 Arimardan and PW4 Smt. Asha Devi was not proved beyond reasonable doubt. Lower court has further held that PW4 Asha Devi was not ill, therefore, there was no occasion for her to be taken to Banda for treatment, therefore, the story of the prosecution that while she was returning in the bullock cart the occurrence has taken place is not liable to be believed. It is further held that no bloodstained was found on the yokes and the entire story put forward by the prosecution is unbelievable. It is further held that witness PW3 Arimardan is relative witness and witnesses PW1 and PW4 are father and step mother of the deceased and they are interested witness. Learned lower court on the ground and reasons as stated above disbelieved the prosecution case and acquitted the accused-respondents vide impugned judgment and order dated 30.07.1985 from the charge of offence punishable under Sections 302/34 I.P.C.

11. Feeling aggrieved by the impugned judgment and order, State has preferred this appeal along with application for leave to appeal which was granted by this Court vide order dated 12.05.1985.

12. During pendency of the appeal, **accused-respondent no.1 Laxmi has died and vide order dated 11.09.2014 the case against him was abated**.

13. It is submitted by learned A.G.A. that occurrence has taken place on 28.02.1985 at 04:30 P.M. and the first information report was lodged at 08:30 P.M. on the same day. From the testimony of PW1, it is proved beyond reasonable doubt that first information report was lodged promptly, therefore, it rules out any sort of concoctions and deliberations. Lower court has wrongly held that motive of the case was not proved. Bullocks and bullock cart were found near the place of occurrence when PW6 Investigating Officer inspected the place of occurrence. PW6 has proved the panchayatnama and other related papers and after sealing the dead body prepared sample seal and handed it over to Home Guard Devi Deen (PW8) and village Chowkidar Sundar Lal to carry it for postmortem. It is further submitted that lower court has given too much emphasis on the evidence of PW7 Dr. H.S. Saraswat who has proved four injuries on the right buttock of bullock just below the tail and has opined that these injuries were caused by blunt object and all injuries can be cured by treatment. But in cross-examination he has clarified that he used the word 'hard object' assuming that these injuries were caused by pellets. It is further stated that prosecution has proved beyond reasonable doubt the presence of witness PW1 Chandra Bhushan, father of the deceased, PW3 Arimardan, PW4 Asha Devi at the place of occurrence in the manner as stated in the first information report and their statements are fully supported by medical evidence. Medical evidence also supports the manner in which deceased and one bullock have sustained injuries. He has further submitted that the presence of bullock and bullock cart at the place of occurrence is proved by the Investigating Officer SI Shyam Pal Singh (PW6). The presence of bullock cart and bullock near the place of occurrence has not been

challenged by the accused-respondents in cross-examination, therefore, it cannot be said that the prosecution story is as a result of concoctions and deliberations. Presence of bullock and bullock cart near the place of occurrence is also proved by the witnesses PW1 Chandra Bhushan, PW3 Arimardan and PW4 Asha Devi. It is further submitted that on a bullock cart the driver of the bullock cart sits on the wood i.e. on the projection of body of the bullock cart. Only on the ground of absence of blood on the driving seat of bullock cart, the prosecution case cannot be doubted. PW1 Chandra Bhushan during examination-in-chief has explained that he took his wife to Dr. Arvind Mathur who attended her and also prepared prescription and he has also filed the prescription at the time of his examination-in-chief. In cross-examination he has stated that Investigating Officer has not asked regarding prescription of his wife so he could not tell him regarding it. He has purchased medicine of about Rs. 250-300 on the basis of said prescription and kept it in his bag. He has further clarified that he reached to Dr. Arvind Mathur at about 11-11:15 A.M. and remained there for about two and a half hours and the doctor had also given an injection to his wife. This witness has denied the suggestion that he has got the prescription prepared later. Learned A.G.A. has submitted that medicine and injection find supports from the prescription filed by PW1 at the time of his examination-in-chief and there is nothing immaterial in his cross-examination which will cast any doubt regarding the illness and treatment of his wife and also the fact that bullock cart was being driven by his son. It is also proved by the testimony of witnesses that deceased took his step mother on bullock cart up to Murwal where he stopped and from Murwal father of the deceased PW1 Chandra Bhushan and step mother of the deceased PW4 Asha Devi proceeded to Banda by bus. The deceased was driving the bullock cart and PW4 Asha Devi was lying in the bullock cart and his father PW1 Chandra Bhushan was behind the bullock cart on foot. The testimony of the witnesses is consistent. The prosecution case is proved beyond reasonable doubt against the accused-respondents. Lower court ignoring the principles of appreciation of evidence has wrongly disbelieved the prosecution witnesses in perverse manner and the finding

given by the lower court is perverse which resulted in miscarriage of justice to the prosecution, therefore, the impugned judgment of lower court acquitting the accused-respondents is liable to be set-aside and the surviving accused Deoraj and Ram Swaroop are liable to be convicted.

14. Learned counsel for the accused-respondents has submitted that informant had inimical terms with the family of accused-respondents. In fact, informant was contesting election of village Pradhan against Jageshwar in which the accused-respondents had supported Jageshwar. On account of this fact, the accused-respondents have been falsely implicated in this case. It is further stated that ten days before the occurrence the wife of accused Laxmi had given birth to a child namely Ram Naresh on 17.02.1985 which is proved by the Pariwar Register (Ext.Kha.8) and she was confined to the house due to maternity condition and there was no occasion for her to go and uproot gram crop, and therefore, the motive alleged by the prosecution is not proved by the prosecution and the lower court has rightly held that motive of the case is not proved. In above circumstances, non-proof of motive, presence of witnesses at the place of occurrence was concocted by the prosecution and lower court has rightly held that presence of PW1 Chandra Bhusan, PW3 Arimardan and PW4 Asha Devi is not proved and has disbelieved the prosecution witnesses of the fact. It is further submitted that Dr. H.S. Saraswat (PW7) has found four injuries on the hip of bullock just below the tail and has opined that those injuries were caused by hard object which also belied the prosecution case that bullock also sustained injury on its right hip at the time of occurrence. The presence of eye-witnesses at the place of occurrence is not established and the order of acquittal of the accused-respondents is not liable to be interfered and reliance has been placed on the law laid down by this Court in ***State of UP vs. Kalim Ullah and others [****reported in* ***2021 (115) ACC 613]*** in paras 45 & 47.

15. It is submitted that from the perusal of above law as pronounced by the Hon’ble Apex Court, it is clear that in an appeal against acquittal in absence of perversity in the judgment and order interference is not warranted. From the evidence on record, it transpires that there is no

perversity in the judgment, therefore, judgment of the lower court cannot be interfered in this appeal and is liable to be sustained and reliance has been placed on para 24 of the judgment of Hon'ble Apex Court in ***State of Rajasthan vs. Darshan Singh @ Darshan Lal [****reported in* ***2012 (78) ACC 539]****.*

16. It is submitted by learned counsel for the accused-respondents that the judgment of lower court is not perverse and lower court by appraisal of evidence has held that the case against accused-respondents is not made out, therefore, the order of acquittal cannot be interfered and the appeal is liable to be set-aside. It is further stated that lower court has rightly disbelieved the testimony of the witnesses of the fact on the ground that their presence at the place of occurrence is not proved. It is also submitted that receipt of Special Report is not proved in the Collector office as stated by DW2 Bhagwan Das, AJA/Clerk Collectorate, Banda, therefore, such circumstances cast doubt on the prosecution story and the prosecution story cannot be relied on. Reliance has also been placed on the law laid down by Hon'ble Apex Court in ***Gopal Singh and others vs. State of M.P.*** *(Criminal Appeal No. 1297 of 2008 decided on 12.05.2010)*.

17. We have carefully considered the arguments advanced by learned A.G.A. as well as learned counsel for the accused-respondents and have gone through the record including the lower court record.

18. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C. the appellate court has to consider whether the trial court's view be deemed as possible one, particularly when evidence on record has been analyzed. The Hon'ble Supreme Court in ***Jafruddin and others vs. State of Kerala 2022 SCC Online SC 495*** in para 25 has held that *"while dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened.*

Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

19. Hon'ble Supreme Court in ***Mohan @ Srinivas @ Seena @ Tailor Seena vs. State of Karnataka, [2021 SCC OnLine SC 1233]*** has observed as herein-under:-

> *"20. Section 378 Cr.P.C. enables the State to prefer an appeal against an order of acquittal. Section 384 Cr.P.C. speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.*
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> *21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.*
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> *22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.*

> *23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 Cr.P.C. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in* ***Anwar Ali vs. State of Himanchal Pradesh, (2020) 10 SCC 166:***
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> *14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under :* ***(Babu case [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179])*** *"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635 : 1985 SCC (L&S) 131], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [Triveni Rubber & Plastics v. CCE, 1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501], Aruvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372]).*
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> *It has been further observed, after following the decision of this Court in* ***Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429]****, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."*

20. Reference may be made to para 41 of the judgment of this Court passed in **Government Appeal No. 2239 of 2009 decided on 27.05.2022** which is quoted below:-

> *"**41**. In* ***Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1****, the Hon'ble Supreme Court formulated the following principles to be kept in mind by the appellate Court while dealing with appeals against acquittal: -*

*"**27**. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:*

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

(ii) The appellate court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed."

*2. In **Khekh Ram v. State of H.P., (2018) 1 SCC 202** the Hon'ble Supreme Court held that: -*

*"**25**. The elaboration of the facts in the decisions cited at the Bar has been to underline the factual setting in which reversal of the orders of acquittal had been interfered with by this Court. Though it is no longer res integra that an order of acquittal, if appealed against, ought not to be lightly interfered with, it is trite as well that the appellate court is fully empowered to review, reappreciate and reconsider the evidence on record and to reach its own conclusions both on questions of fact and on law. As a corollary, the appellate court would be within its jurisdiction and authority to*

dislodge an acquittal on sound, cogent and persuasive reasons based on the recorded facts and the law applicable. If only when the view taken by the trial court in ordering acquittal is an equally plausible and reasonable one that the appellate court would not readily substitute the same by another view available to it, on its independent appraisal of the materials on record. This legally acknowledged restraint on the power of the appellate court would get attracted only if the two views are equally plausible and reasonable and not otherwise. ***If the view taken by the trial court is a possible but not a reasonable one when tested on the evidence on record and the legal principles applied, unquestionably it can and ought to be displaced by a plausible and reasonable view by the appellate court in furtherance of the ultimate cause of justice. Though no innocent ought to be punished, it is equally imperative that a guilty ought not to be let off casually lest justice is a casualty."***

(Emphasis supplied)

3. ***State of M.P. v. Chhaakki Lal, (2019) 12 SCC 326****, the Hon'ble Supreme Court held that: -*

*"**36**. We are conscious that in an appeal against acquittal, the appellate court would not ordinarily interfere with the order of acquittal. But where the approach of the High Court suffers from serious infirmity, this Court can reappreciate the evidence and reasonings upon which the order of acquittal is based. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of the innocent. Upon reappreciation of the evidence and the reasonings of the trial court and the High Court, in our considered view, the judgment of the High Court suffers from serious infirmity. The High Court erred in doubting the version of PW 1, the sole eyewitness whose evidence is corroborated by the medical evidence and the evidence of the ballistic expert. The High Court did not appreciate the evidence of PW 1 in proper perspective and erred in disbelieving her version on the contradictions which are not material. The High Court erred in rejecting the credible evidence of Kesar Bai (PW 1), which in our considered view resulted in serious miscarriage of justice, where four persons were murdered."*

(Emphasis supplied)

4. In ***Achhar Singh v. State of H.P., (2021) 5 SCC 543****, the Hon'ble Supreme Court explained the scope of powers of the High Court in appeals against acquittal in the following manner: -*

*"**16**. It is thus a well-crystalized principle that if two views are possible, the High Court ought not to interfere with the trial court's judgment. However, such a precautionary principle*

cannot be overstretched to portray that the "contours of appeal" against acquittal under Section 378 Cr.P.C. are limited to seeing whether or not the trial court's view was impossible. It is equally well settled that there is no bar on the High Court's power to re-appreciate evidence in an appeal against acquittal. This Court has held in a catena of decisions (including Chandrappa v. State of Karnataka, State of A.P. v. M. Madhusudhan Rao and Raveen Kumar v. State of H.P.) that the Cr.P.C. does not differentiate in the power, scope, jurisdiction or limitation between appeals against judgments of conviction or acquittal and that the appellate court is free to consider on both fact and law, despite the self-restraint that has been ingrained into practice while dealing with orders of acquittal where there is a double presumption of innocence of the accused."

5. The Hon'ble Supreme Court further held that ***"homicidal deaths cannot be left to judicium dei. The court in its quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the court, despite its best efforts, fails to reach a firm conclusion that the benefit of doubt is extended."***

6. The principles which emerge from the aforesaid decisions are that the scope of appeal against acquittal under Section 378 Cr.P.C is not limited to scrutinize whether or not the trial court's view is a possible view. The High Court has to appreciate the evidence in an appeal against acquittal in the same manner as it would do in an appeal against conviction. However, while adjudicating an appeal against acquittal, the High Court has to keep into consideration that the accused having been acquitted in trial, there is a double presumption of innocence of the accused.

Manner of Scrutiny of Evidence

7. Before proceeding to examine the evidence in the case in order to ascertain as to whether the judgment and order of the learned Court below needs any interference, it would be appropriate to refer to the law on the subject as propounded by the Hon'ble Supreme Court by certain judgments on the issue. While deciding an appeal against an order of acquittal passed by the High Court, the Hon'ble Supreme Court has held in ***State of U.P. v. M.K. Anthony, (1985) 1 SCC 505****, that: -*

> ***"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth.*** *Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is*

shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and ***unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer.…."***

(Emphasis supplied)

8. In ***State of U.P. v. Krishna Master, (2010) 12 SCC 324,*** *the Hon'ble Supreme Court explained the manner in which the Court should examine the statement of witnesses, in the following words:-*

*"**15**. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.*

***16.** If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of*

variations or infirmities in the matter of trivial details. Minor omissions in the Police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. ***The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.***

17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. *It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case."*

(Emphasis supplied)

9. In ***Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537****, the Hon'ble Supreme Court held that: -*

*"**18**. It is accepted principle of criminal jurisprudence that the burden of proof is always on the prosecution and the accused is presumed to be innocent unless proved guilty.* ***The prosecution has to prove its case beyond reasonable doubt and the accused is entitled to the benefit of the reasonable doubt. The reasonable doubt is one which occurs to a prudent and reasonable man.*** *Section 3 of the Evidence Act refers to two conditions--(i) when a person feels absolutely certain of a fact--"believes it to exist", and (ii) when he is not absolutely certain and thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence.* ***The doubt which the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to "separate the chaff***

from the grain". The degree of proof need not reach certainty but must carry a high degree of probability *(Vijayee Singh versus State of U.P., (1990) 3 SCC 190).*

19. *While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction.* ***It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted*** *[Leela Ram versus State of Haryana, (1999) 9 SCC 525]. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan" or "interested" witness may lead to failure of justice. It is well known that principle "falsus in uno, falsus in omnibus" has no general acceptability [Gangadhar Behera versus State of Orissa (2002) 8 SCC 381 On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.*

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing

justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape *[Gangadhar Behera (2002) 8 SCC 381]."*

(Emphasis supplied)

10. The principles which emerge from the aforesaid decisions are that there are always some discrepancies in the statements of witnesses, but while examining the evidence, the Court should consider that whether the evidence, taken as a whole, appears to have a ring of truth. The Court must examine whether those discrepancies go to the root of the matter or not. In the former case, the Appellate Court may have to uphold the order of acquittal passed by the trial Court. In the latter case, the appellate court is competent to reverse the decision of the trial court depending on the materials placed the Court. The prosecution has to prove its case beyond reasonable doubt and the accused is entitled to the benefit of the reasonable doubt, but a reasonable doubt is one which occurs to a prudent and reasonable man. The doubt which the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to "separate the chaff from the grain". The degree of proof need not reach certainty but must carry a high degree of probability. Exaggerated stress upon the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. Though no innocent ought to be punished, it is equally imperative that a guilty ought not to be let off casually lest justice is a casualty. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of the innocent. If the view taken by the trial court is a possible but not a reasonable one when tested on the evidence on record and the legal principles applied, unquestionably it can and ought to be displaced by a plausible and reasonable view by the appellate court in furtherance of the ultimate cause of justice.

11. In the light of these principles, this Court will have to determine whether the evidence of the witnesses examined in this case proves the prosecution case."

21. In this case the occurrence has taken place on 28.02.1985 at about 16:30 P.M. and first information report was lodged by PW1 Chandra Bhushan, father of the deceased at 20:30 P.M. PW1 Chandra Bhushan, PW3 Arimardan Singh and PW4 Smt. Asha Devi, step mother of the deceased, are said to be eye-witnesses of the incident. PW1 Chandra Bhushan in his examination-in-chief has stated that he is the resident of village Milathu. Before 8-10 days of the incident, his son Kuldeep Chandra had gone to his Chak No.86 and he found there wife of accused-appellant Laxmi uprooting the standing gram crop from his field. Thereupon, he scolded her and she informed at her house that Kuldeep Chandra insulted her. Then accused-appellant Laxmi and others approached to him and told that his son insulted his wife which is not a good thing. Thereupon, he asked the accused-appellants that they may insult him in return. He has further deposed that on 28.02.1985 he was returning from village Murwal to his village Milathu after getting treatment of his wife PW4 Smt. Asha Devi at Banda by bullock cart which was being driven by his son Kuldeep and his wife was lying in the bullock cart. He along with Arimardan and Sukhdev were following the bullock cart. When they reached near Lalwa Dera Ghar after covering a distance of 1 km from Palhari at about 16.30 P.M., the assailants namely Laxmi armed with SBBL gun, Ram Sewak armed with DBBL gun and Deoraj armed with SBBL gun, who were hiding in the South side of Khanti suddenly came out and stopped the bullock cart and all the three accused persons opened fire upon his son who sustained injuries and fell down on the ground from bullock cart and one bullock also sustained pellets injury. On being challenged, the assailants ran away towards North after committing murder of his son. Thereafter, the residents of village Palhari and Milathu reached on the spot. He entrusted the dead body to them and went to police station Bisanda along with village Chawkidar for lodging the first information report. He proved the written complaint (Ext.Ka.1) and stated that it was written in his handwriting and under his signature. He further stated that after lodging the first information report he obtained the copy of F.I.R., thereafter, Investigating Officer met him and recorded his statement. Thereafter, he

returned to the place of occurrence along with Daroga Ji. He in his examination-in-chief clarified that he had gone to Banda for treatment of his wife by Dr. Arvind Mathur who after seeing the patient prepared prescription which was filed by him in the court during examination-in-chief. In cross-examination, he admitted that accused Ram Swaroop was a Teacher since before the occurrence. On the day of occurrence, he was employed as Teacher in Primary School village Para Bihari which is about 4 km away from his village Milathu. If anyone go to Para Bihari by cycle, he will have to go via village Palhari and if anyone go to Para Bihari on foot, he will have to go via village Kawai. He further clarified that Kawai is less than 1 km away from his village Milathu and is 3-3 ¼ km away from village Palhari. The village Palhari is about 4-4 ¼ km from his village Milathu and is 3 km away from village Para Bihari. He further admitted that accused-respondent Ram Swaroop used to go to Para Bihari to teach children and used to come to his village from Para Bihari daily. He denied the suggestion that all the accused-respondents were living and doing farming separately at the time of occurrence. He further admitted that the elder son of accused Ram Swaroop is aged about 7-8 years, who is alive. The son of accused Laxmi is aged about 5-6 years and his elder daughter has died. He further admitted that there was no dispute between him and accused-respondents before the incident of uprooting of gram crop by the wife of accused Laxmi. He further admitted that the wife of Laxmi had not uprooted the gram crop in his presence. At first accused told him about the aforesaid incident, then after half hour his son told him about the uprooting of gram crop. He had not gone to the field to see the uprooted crop. He had also not shown the field to Daroga Ji where the gram crop was uprooted because he had not asked him to show. He further admitted that he cannot tell as to how many neighbours and who were present at the time of reprimanding by accused Laxmi but 2-4 persons were present. Accused Laxmi and Deoraj had come to his house to reprimand him. He further deposed that it is wrong to say that the son of accused Laxmi had born 8-10 days before the incident. The youngest child of accused Laxmi is about 7-8 months old. He denied the suggestion that the incident of uprooting of gram crop

is untrue. He also denied that the crop was being harvested 10-15 days before the incident. In Chak No. 86, he had sown gram and wheat crops which were not harvested before the day of incident.

22. Learned court below has found that story of uprooting of gram crop by the wife of accused Laxmi 8-10 days before the incident is not proved and also found that wife of Laxmi had not gone to uproot the gram crop from Chak No. 86. Learned lower court has also held that the motive of the crime is not proved. Before us it is vehemently argued by learned counsel for the respondents that at the time of incident the wife of accused Laxmi was in Sowari (postpartum) in this respect he has relied on Ext.Kha.8, the extract of Pariwar Register issued by Gram Panchayat Officer, Badagaon on 17.07.1985. The date of birth of son of Laxmi is recorded as 17.02.1985. In this case the occurrence has taken place on 28.02.1985 while the copy of Pariwar register was obtained on 17.07.1985. The date of birth recorded in the Pariwar register is not conclusive proof of date of birth. The accused has not produced the extract of Birth and Death Register which is maintained under the statute. From the evidence on record, it is abundantly clear that the copy of birth of son of Laxmi was issued on 17.07.1985. It is suggested by learned counsel for the accused to witness PW1 Chandra Bhushan that 8-10 days before the incident a child born from the wife of Laxmi which was denied by this witness. For the sake of argument, if it is presumed that the date of birth of the son of accused Laxmi entered in the Pariwar register is correct, then it also falsifies because he was born eleven days before the occurrence. Moreover, in cross-examination PW1 Chandra Bhushan has deposed that on the day of his cross-examination the age of the youngest child of Laxmi was 7-8 months which was not challenged by the accused in his cross-examination. His cross-examination on this point was conducted on 15.07.1985. If the lowest figure seven months is deducted from the date of cross-examination of PW1, the son of Laxmi would have been born in the month of December, 1984. The incident of uprooting of gram crop took place in the mid of February, 1985, meaning thereby she was not confined in home due to delivery of her

child. Normally, ladies are confined at home for upto 40 days after giving birth to a child. This statement was not challenged by learned counsel for the respondents, therefore, it will be presumed that this fact is admitted to the accused-respondents that the son of Laxmi born in the Month of December, 1984. It also indicates that the date of birth of the son of Laxmi is entered as 17.02.1985 in the Pariwar register to create defence by the accused-respondents. It is also deposed by PW1 Chandra Bhushan that after the incident of uprooting of gram crop accused Laxmi and Deoraj had complained to him that deceased has insulted the wife of Laxmi. Thereafter, he asked them to insult him and after complaint by the accused persons his son had also told him about the incident of uprooting the gram crop. The aforesaid version of this witness was also not challenged in the cross-examination, therefore, it will be presumed that the deposition on above point is trustworthy and admitted to the accused-respondents. Therefore, unchallenged testimony of PW1 that after half an hour of complaint made by accused his son told him about the incident of uprooting of gram crop by the wife of Laxmi also comes within the purview of circumstances in which his death was caused and the same will be treated as dying declaration of the deceased.

23. Section 32 (1) of Evidence Act reads as follows:-

> ***"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc ., is relevant.***
>
> *Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—*
>
> *"32 (1).* ***when it relates to cause of death.****— When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the*

> *person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."*

24. The circumstances must have some proximate relation to the actual occurrence. Hon'ble Bombay High Court in ***Ajjan Munshi vs. State, AIR 1960 Bombay 290*** has held that when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question is relevant under Section 32(1) of Evidence Act and also held to be relevant under Section 8 of Evidence Act as showing the motive of the crime. In above circumstances, learned lower court has not appreciated the evidence of PW1 Chandra Bhushan regarding motive in right perspective and has appreciated in perverse way, therefore, the finding of lower court that the motive of the crime is not proved is perverse and is against the evidence on record. The second count on which learned lower court held that the witnesses PW1 Chandra Bhushan, PW3 Arimardan Singh and PW4 Smt. Asha Devi were not present at the place of occurrence is also perverse because learned lower court has held that PW4 Smt. Asha Devi was not taken to Banda for treatment and was not carrying on the day of occurrence by bullock cart which was being driven by the deceased.

25. In this regard, deposition of PW1 Chandra Bhushan is very convincing who deposed that her wife was ill and on the day of occurrence he had taken his wife to Banda for treatment by Dr. Arvind Mathur who saw her and draw prescription. He has also filed the prescription, although, it is not proved by the doctor but it might have been prepared by doctor in his presence. The prescription dated 28.02.1985 of Dr. Arvind Mathur is available on the file as paper no. 14Ka wherein it is mentioned that Smt. Asha Devi, wife of Chandra Bhushan, is diagnosed as "बेहोश होना दौरा" and was given intervenous injection of 5% dextose and three other intervenous injections and also prescribed her Disprin, capsule and other medicines. From the perusal of prescription, it appears that PW4 Asha Devi was suffering from disease

like epilepsy. In cross-examination, he has deposed that he filed the prescription of his wife in the court at the time of his examination-in-chief. It has further been deposed that Daroga Ji had not asked from him about prescription so he did tell him about the prescription. He has further deposed that he had taken medicine for Rs.250-300 from the hospital of Dr. Arvind Mathur. It is further deposed that medicines were given for one week. He had not shown the medicine to Daroga Ji. He has further stated that thereafter he has not visited to Dr. Arvind Mathur along with his wife again. From the prescription 14Ka, it appears that medicine was prescribed for eight days which also gets corroboration from the statement of PW1 Chandra Bhushan. He has given vivid description of the conveyance used by him under Section 161 Cr.P.C. by which he had visited the doctor. He has stated that he has visited the doctor for treatment of his wife on the day of occurrence at about 11-11:15 A.M. and remained there for about two and a half hours. He has also told the name of Mohalla where the clinic of Dr. Arvind Mathur is situated. He has further stated that Dr. Arvind Mathur was known to him. The doctor has given four intervenous injections to his wife, therefore, his statement appears very natural and convincing that he remained in the dispensary of Dr. Arvind Mathur for about two and a half hours. Therefore the evidence of this witness that on the day of occurrence he had gone to Dr. Arvind Mathur for treatment of his wife inspires confidence and there is no discrepancy in his statement which make his statement unreliable in this regard. Therefore, his statement regarding visiting to Dr. Arvind Mathur for treatment of his wife for ailment like epilepsy is proved beyond doubt and learned lower court has not appreciated the evidence in right perspective and has ignored the evidence and has given perverse finding in this regard. PW1 in his deposition has deposed that he had gone to meet doctor by bullock cart from his village Milathu to village Murwal and the bullock cart was being driven by his son Kuldeep. He had left the bullock cart at Murwal and from there he had gone to Banda by bus and meanwhile his son Kuldeep remained sitting at the bus stand. Learned counsel for the accused-respondents has not challenged the above testimony of witness

PW1 Chandra Bhushan that he had gone by bullock cart from village Milathu to village Murwal and his son remained sitting at the bus stand and from there he had gone to Banda to meet Dr. Arvind Mathur for treatment of his wife and the occurrence has taken place when he was returning from Murwal to his village by bullock cart which was being driven by the deceased Kuldeep. In cross-examination he has stated that at the time of occurrence his bullock cart was going from West to East. He has further stated that accused were hiding in the West of field of Ghutku Ahir in Khanti and as soon as the bullock cart reached there, the accused-respondents suddenly came out from Khanti and stood in front of bullock cart. They were not firing while standing in front of bullock cart and after that the accused Laxmi had gone towards North side of bullock cart and Ram Swaroop and Dev Raj gone to the South side of bullock cart. All the three accused-respondents opened fire. It is further deposed by this witness that he could not see as to which accused first opened fire. The accused fired 5-6 shots. After the incident, 10-20 men came to the place of occurrence in which Rameshwar, Brij Bhushan, Saurabh, Kureel and others were of his village.

26. He had further stated that he, Sukhdev and Arimardan were 25-30 steps behind the bullock cart from where they witnessed the incident. After incident the bullock cart was dragged and parked by the side of road. The bullock cart was lying there till arrival of Daroga Ji. All the shot of fires were made upon his son when he was sitting on the driving part of bullock cart. He had been on the place of occurrence for about half an hour, till then Arimardan and Sukhdev were also present there. He left the aforesaid witnesses on the spot and went to the police station and when he returned the aforesaid two witnesses were not present at the place of occurrence. He had left the police station for place of occurrence at about 08:45 P.M. and would have reached at the place of occurrence at about 09:30 P.M. Daroga Ji had come to the place of occurrence in the night but he did nothing. He further deposed that when the accused opened fire his wife got up and sat in the bullock cart. Prior to this incident his son was shot due to which he remained hospitalized.

He wrote the written complaint at about 05:30 P.M. at his house and no one was present at that time. The village Chawkidar had come to his house himself and he had gone to police station on foot. He had not given the statement to Daroga Ji that "Laxmi had stopped the bullock cart and rest accused opened fire from South side of bullock cart" because Daroga Ji had not asked about it. He had also not told Daroga Ji that "a bullock cart was parked in the West side of the field of Chhotku Ahir." He had denied the suggestion of learned counsel for the accused that he was neither present on the place of occurrence nor he witnesses the incident. He had also denied the suggestion that the occurrence has not taken place in the manner as he had stated.

27. It is submitted by learned counsel for the accused-respondents that the deceased Kuldeep has several enemies and prior to the incident he was shot by the firearm due to which he remain hospitalized. The accused-respondents have been falsely implicated in this case due to enmity and village party-bandi. It is also submitted that there was a banyan tree in his Chak which was allotted to him in chakbandi due to which informant was having enmity with the accused. The argument does not inspire confidence. In this case the son of informant was killed before his eyes, therefore, it cannot be believed that informant will spare the real accused and falsely implicate the accused-respondents.

28. PW3 Arimardan Singh has supported the version of first information report and stated that Kuldeep was know to him and he was murdered about 4-5 months ago. He further deposed that he along with Sukhdev and Chandra Bhushan were coming from Murwal to his village in the evening following the bullock cart which was being driven by the deceased Kuldeep in which Smt. Asha Devi was lying. As soon as they reached near Lalwa Debra Har, the accused Laxmi, Ram Swaroop and Devraj who were hiding themselves in Khanti came out. At that time Ram Swaroop armed with DBBL gun, Devraj and Laxmi armed with SBBL gun came in front of bullock cart and stopped it and opened 5-6 shot of fire upon the deceased Kuldeep who fell down from the bullock cart. Thereafter, he, Chandran Bhushan and Sukhdev raised alarm then

the accused fled from the place of occurrence. They came near Kuldeep and saw that he had died and blood was coming out from the injuries and the clothes of the deceased become bloodstained and blood also fallen on the ground. He remained on the spot and after half an hour PW1 Chandra Bhushan had gone to the police station for lodging the first information report. In the cross-examination, he admitted that he, Sukhdev and the deceased had purchased a land of 77 bigha jointly. He also admitted that he is distant cousin of PW1 Chandra Bhushan. He further deposed that the depth of Khanti was up to the height of waist of a man. He also gave the vivid description of the place of occurrence. There is no discrepancy in his statement which make his presence doubtful. His testimony inspires confidence and is corroborated by the testimony of PW1 Chandra Bhushan. Therefore, his evidence is liable to be relied on.

29. PW4 Smt. Asha Devi has deposed that accused Laxmi, Ram Swaroop and Deoraj are known to her. They are residents of her village Milathu. She further stated that the deceased Kuldeep is her step son and he was murdered about four and a half months ago when she was coming to Milathu from Murwal by bullock cart which was being driven by the deceased Kuldeep and her husband was coming from behind following the bullock cart. They had gone from Milathu to Murwal by bullock cart and from Murwal to Banda by bus for treatment leaving the bullock cart and his son at the bus stand Murwal. She has deposed that as soon as the bullock cart reached near Lalwa Debra Har at link road at about 04:30 P.M., accused Laxmi, Ram Swaroop and Devraj armed with gun suddenly came out from Khanti and stopped the bullock cart and opened fire on her son from the side of bullock cart which hit him who fell down on the ground. Thereupon, her husband, witness Arimardan Singh and Sukhdev raised alarm and the accused fled from the place of occurrence. Her husband Chandra Bhushan, Arimardan Singh and Sukhdev saw that her son was dead. Thereafter, her husband had gone to lodge the first information report. In her cross-examination, she has stated that the bullock cart stood where her son had fallen and it was

moved a little in the side of road. Thereafter, it was taken to nearby field in the South side of the road. Rameshwar etc. of her village had come there. She remained at the place of occurrence for about three hours, thereafter, she had gone to her village from the bullock cart of Bholwa Chamar. She has further stated that she was suffering from fever since 4-5 days ago and she used to become unconscious due to fits but when she was returning after getting treatment she was not unconscious and her health was cured. Her husband had taken her from Murwal to Banda for treatment by bus.

30. Learned lower court has given imaginary importance regarding non-presence of blood on the bullock cart and on the carpet of bullock cart on which witness PW4 Smt. Asha Devi was lying and on this count lower court has disbelieved the testimony of witnesses PW1 Chandra Bhushan, PW3 Arimardan Singh and PW4 Smt. Asha Devi. Lower court has also held that it is not proved that Smt. Asha Devi was ill and she was returning after treatment by the bullock cart which was being driven by the deceased Kuldeep. From the deposition of PW1 Chandra Bhushan, PW3 Arimardan and PW4 Smt. Asha Devi, it is proved that the bullock cart was parked near the place of occurrence after incident. Investigating Officer SI Shyam Pal Singh (PW6) has deposed that when he reached at the place of occurrence he saw the bullocks and the bullock cart and had also seen four marks of injury on the right buttock of one bullock, therefore, he sent the bullock along with Ram Krishna to LDO, Bishanda for medical examination. From the evidence of PW6 SI Shyam Pal Singh, it is proved that he found the bullock cart parked near the place of occurrence and found that one bullock had also sustained four injuries on its right buttock which corroborates the statements of PW1 Chandra Bhushan, PW3 Arimardan and PW4 Smt. Asha Devi that the occurrence has taken place while PW4 Smt. Asha Devi was returning after getting treatment from Murwal to Milathu by bullock cart which was being driven by her step son Kuldeep. The structure of the bullock cart is as such that the driving seat of the bullock cart remains open from three sides and is very small. In above circumstances, it cannot be

assumed that Dari (carpet) which was laid on the bullock cart will also reach to the driving seat, therefore, lower court has given undue emphasis in finding that carpet of bullock cart and the paddy straw of bullock cart was not found bloodstained which belied the prosecution case is perverse and against the record. There is no major contradiction in the statement of witnesses PW1, PW3 and PW4 which make their testimony unreliable and it is the matter of experience and the contradiction if any is of minor nature which does not go to the root of the case. Therefore, their statements are reliable and the lower court has wrongly disbelieved their statements on the imaginary appreciation of evidence which is perverse.

31. From the perusal of Chik report (Ext.Ka.3) it reveals that the distance between the police station and place of occurrence is 9 kms and it is mentioned in the Chik report that first information report was lodged on 28.02.1985 at 20:30 P.M. The scriber of the Chik report has been examined as PW5 who has deposed that the Chik report was scribed by him at 20:30 P.M. on 28.02.1985 in his own handwriting on the basis of written complaint of the informant. He also deposed that he registered the case as Case Crime No. 58 of 1985, under Section 302 I.P.C. by making entry in GD (Ext.Ka.4) vide Rapat No. 17 on 28.02.1985 at 20:30 P.M. He also proved the GD Rapat No.17 that it is in his handwriting and further deposed that the copy of the GD Rapat No. 17 is a carbon copy of original GD which was before him at the time of his deposition. He further stated that Daroga Ji was present at police station at the time of lodging of first information report who undertook the investigation of the case. He sent the special report to superior officers on next day through home-guard because of non-availability of conveyance in late hours of evening. He further deposed that his departure from police station for delivering the special report was entered in the GD in his own handwriting and entry was also made in GD regarding arrival of home-guard after delivery of special report. The copy of the aforesaid is filed as Ext.Ka.5&6. In cross-examination, he stated that home-guard Ram Saran was posted at the police station since

before one month of the incident due to election duty. On the day of occurrence no other cognizable report was lodged at his police station.

32. From the perusal of Chik report, it reveals that the Chick report was ascribed by Head Constable Ram Singh (PW5) on 28.02.1985 at 20:30 P.M. The statement of PW1 Chandra Bhushan regarding his departure from police station at 09:00 P.M. after lodging the first information report is not challenged by the counsel of the accused-respondents who has stated that after lodging the first information report he reached at the place of occurrence at about 09:30 P.M. He has further stated that Daroga Ji had not done anything in the night and had also not conducted the panchayatnama in night. The un-controverted testimony of PW1 regarding lodging of first information report and returning at 09:30 P.M. from the police station on the same day rule out that the GD was delayed after occurrence and first information report was lodged ante timed. From the evidence on record, it is clear that the first information report was lodged promptly, therefore, it rules out any sort of concoctions.

33. Hon'ble Supreme Court in ***Motiram Padu Joshi vs. The State of Maharashtra, 2018 SCC OnLine SC 676, decided on 10.07.2018*** has observed in para 14 as under:-

> *"14. ……. In the present case, FIR was registered without delay and prompt registration of FIR itself lends assurance to the prosecution case. The object of the FIR is to set the law in motion……"*

34. Hon'ble Supreme Court in the case of ***Mehraj Singh vs State Of U.P, 1994 SCC (5) 188***, has observed in para 12 as follows:-

> *"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is*

> *alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."*

35. Dr. M.C. Mittal has been examined by the prosecution as PW2 to prove the postmortem report (Ext.Ka.2). He has also proved the injuries found during postmortem as mentioned earlier in the body of judgment. He has also recovered WAD piece (Material-Ext.1) and 65 metallic pellets from the injury no.2 which was proved as Material-Ext.2. He has further deposed that the deceased has died on the spot after sustaining the aforementioned injuries. He has deposed that the deceased might have died on 28.02.1985 at about 04:30 P.M. In cross-examination he has deposed that there is variation in the time of death mentioned in the postmortem report of about 4-5 hours either side. In the case in hand he has also deposed that the deceased would have hardly survived for 10-15 minutes after sustaining the injuries. He has further deposed that it is not possible that the injuries found on the body of the deceased may be caused by one shot. The postmortem report has not been challenged in cross-examination. Normally, there is variation in time of death about six hours either side in 24 hours. The witnesses had given detailed description that one accused was armed with double barrel gun and two accused were armed with single barrel gun and pellets were found in side the injury no.2 which establishes that the manner in which the

occurrence is said to have been taken place is corroborated by the medical evidence.

36. Moreover, from the evidence of witnesses PW1, PW3 and PW4 it is proved that accused came out from a Khanti of road side and stopped the bullock cart and two accused from one side and one accused from another side of the bullock cart encircled the son of the informant and stated indiscriminate firing upon him. In this incident, the bullock which was on the right flung has also sustained injuries. PW6 Shyam Pal Singh Investigating Officer has found the bullock and bullock cart near the place of occurrence and he has also found four injuries on the right buttock of one bullock and send it to LDO, Bisanda for medical examination.

37. Dr. H.S. Saraswat, LDO, Bisanda has been examined as PW7. He has corroborated that he has examined the injury of one bullock on 01.03.1985 at 04:00 P.M. which was sent by S.O., Bisanda. The owner of that bullock was Chandra Bhushan. He has found following injuries during medical examination of the bullock:-

(i) lacerated wound 1 cm x 3 cm
(ii) lacerated wound 1 cm x 2.5 cm
(iii) lacerated wound 1 cm x 2 cm
(iv) lacerated wound 1cm x 3cm

38. He has stated that all injuries were caused by hard object and all the injuries could be cured by treatment. He has proved the aforesaid injuries by injury report (Ext.Ka.7). He has further clarified that all the injuries sustained by the bullock were caused by pellets of the firearm. This witness was cross-examined and he has clarified that the injury was caused by hard object means that injury was caused by firearm. The only suggestion put to this witness was that he was giving evidence on tutoring which was denied by him. In above circumstance, the statement of this witness remained unchallenged and from his deposition it is proved that the bullock has also sustained four firearm pellet injuries on 28.02.1985 at about 04 P.M. which also corroborates the prosecution case because this witness has clarified in his examination-in-chief that he mentioned in the injury report of the bullock that injury caused by hard

object means that injury was caused by pellets of firearm, therefore, it also corroborates the prosecution version.

39. Investigating Officer Shyam Pal Singh has been examined as PW6 who has proved that the Chik report bears his signature. He has further deposed that he has recorded the statement of informant at the police station and thereupon he reached at the place of occurrence in the night at 03:30 A.M. and due to non-arrangement of proper light he could not conduct inquest of the dead body on the same day and on the next day i.e. on 01.03.1985 he has conducted the inquest of the dead body and appointed Panch for that purpose and prepared inquest report (Ext.Ka.6), panchayatnama (Ext.Ka.7), Challan Nash (Ext.Ka.8), Photo Nash (Ext.Ka.9). He has further stated that he has also taken bloodstained and plain soil from the place of occurrence and prepared the memo Ext.Ka.15. He has taken bloodstained scarf of the deceased, sealed it and prepared the memo Ext.Ka.12. Further, he has taken two empty cartridges and three *ticklies* from the place of occurrence and prepared the memo Ext.Ka.13. He has also prepared letter to Medical Officer Civil Hospital, Banda (Ext.Ka.10) and letter to CMO, Banda (Ext.Ka.11) and sent the dead body for postmortem. He has also proved the steps taken in the investigation. He has further stated that he has prepared the site-plan (Ext.Ka.14) and has also indicated the place by letter ‘A’ from where the witnesses had witnessed the incident which is about 05 paces away from the place where dead body was found. He has also shown the place in the site-plan where the accused were ambushing in the Khanti. He has also shown the place by letter ‘X’ from where he has recovered two empty cartridges and three *ticklies*. He has also stated that he has found the bullock cart of the informant near the place of occurrence.

40. In above circumstances, the prosecution case is fully supported by the deposition of Investigating Officer SI Shyam Pal Singh (PW6) and it is also proved that he reached at the place of occurrence at 09:30 P.M. which corroborates that informant also came along with him which rules out any sort of concoction. In above circumstance, the prosecution case is proved beyond reasonable doubt.

41. Learned lower court by wrong appreciation of evidence passed the perverse judgment. In above circumstances, the case against accused-respondents Ram Swaroop and Deoraj is proved beyond reasonable doubt.

42. Now, the question arises that the eye-witnesses are consists of father, step-mother and one relative of the deceased. The witnesses are related witness and how it can be appreciated?

43. In this case, first information report has been lodged promptly citing the witnesses by the informant. The prompt registration of FIR lends credence to the prosecution case which is also strengthened by medical evidence as well as injuries sustained by the bullock on his right buttock. There are three eye-witnesses namely Chandra Bhushan (PW1), Arimardan Singh (PW3) and Smt. Asha Devi (PW4) who have consistently stated that on the day of incident when the deceased was coming from Murwal to Milathu by bullock cart in which PW4 Smt. Asha Devi was lying and his father PW1 Chandra Bhushan and witness PW3 Arimardan were following the bullock cart and as soon as they reached near Lalwa Debra Har, the accused Laxmi (who died during pendency of appeal) and Deoraj armed with single barrel gun and accused Ram Swaroop armed with double barrel gun came out from Khanti and stopped the bullock cart which was being driven by the deceased and started firing from the side of bullock cart in which deceased sustained injuries and fell down and the entire incident was witnessed by them. On the alarm raised by the informant accused-respondents fled from the place of occurrence towards North side. The witnesses have consistently deposed about the overt acts of the accused that all of them had opened fire on the deceased. Their evidence was attacked by the accused-respondents that they are interested/related witness. The relationship of the witnesses PW1, PW3 & PW4 2 with the deceased cannot be the reason for doubting their testimony. It is fairly well-settled that relationship is not a ground affecting the credibility of a witness. Hon'ble Supreme Court in the case of ***Mohabbat vs. State of M.P., (2009) 13 SCC 630***, has held as under:-

> *"11. Learned counsel for the respondent State on the other hand supported the judgment of the High Court.*
>
> *"12. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version.*
>
> *13. '5. ... Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.*
>
> *..... To the same effect are the decisions in State of Punjab v. Jagir Singh (1974) 3 SCC 277, Lehna v. State of Haryana (2002) 3 SCC 76 (SCC pp. 81-82, paras 5-9) and Gangadhar Behera v. State of Orissa (2002) 8 SCC 381." The above position was also highlighted in Babulal Bhagwan Khandare v. State of Maharashtra (2005) 10 SCC 404, Salim Sahab v. State of M.P. (2007) 1 SCC 699 and Sonelal v. State of M.P. (2008) 14 SCC 692 (SCC pp. 695-97, paras 12-13)." As held in various decisions, judicial approach has to be cautious in dealing with such evidence. It is unreasonable to contend that evidence given by related witness should be discarded only on the ground that such witness is related."*

44. While appreciating the evidence of witness, approach must be whether the evidence of witness read as a whole appears to have a ring of truth and consistent with the prosecution case or to find out whether it is against the general tenor of the case. Their evidence cannot be doubted merely because they are related witness. All that is required is that their evidence is to be scrutinized with care and caution. We are of the opinion that evidence of PW1 Chandra Bhushan, PW3 Arimardan and PW4 Smt. Asha Devi are consistent and credit worthy and are corroborated by medical evidence. In this case five gunshot injuries were found on the body of the deceased and 65 pellets were taken out from the body of the deceased and 04 pellets were also found on the right buttock of one bullock. The pellets itself indicate that accused were armed with 12 bore gun. Dr. M.C. Mittal has deposed that deceased might have died on the spot on account of that injury or have survived for about 10-15 minutes which again is consistent with the testimony of witnesses PW1, PW3

and PW4. Medical evidence of Dr. M.C. Mittal (PW2) who conducted the postmortem report and Dr. H.S. Saraswat (PW7) lends assurance to the evidence of above mentioned eye-witnesses. In the postmortem report of the deceased (Ext.Ka.2), it also finds mention that blackening and tattooing were also found on entry wound of the deceased which establishes that the fire was shot from a very close range. From the statement of PW7 and injury report of the bullock (Ext.Ka.17), it is also established beyond reasonable doubt that bullock had sustained four pellet injuries on the right side of hip just below the tale. The postmortem report (Ext.Ka.2) and injury report of bullock (Ext.Ka.17) also corroborate the manner in which occurrence has taken place as stated by the prosecution witnesses. The statements of the witnesses PW1 Chandra Bhushan, PW3 Arimardan and PW4 Smt. Asha Devi get assurance from the postmortem report (Ext.Ka.2) and injury report of the bullock (Ext.Ka.17).

45. There are compelling and substantial reasons that this Court can interfere with the order of acquittal in the present case because of the perversity of appreciation of evidence by lower court. From the evidence on record, we find glaring mistake in appreciation of evidence in the impugned judgment of the trial court which resulted into miscarriage of justice, therefore, the judgment of acquittal is liable to be interfered.

46. So far as the law relied on by learned counsel for the accused-respondents in **State of UP vs. Kalim Ullah and others (supra)** is concerned wherein it is held that *"while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse."* In the case in hand, lower court has appreciated the evidence in perverse way and the presence of witnesses is proved and the manner in which accused-respondents have assaulted the deceased is corroborated by the testimony of PW1, PW3 and PW4 and even corroborated by the medical evidence as well as the testimony of Dr. M.C. Mittal (PW2) and Dr. H.S.

Saraswat (PW7). Therefore, the law relied on by learned counsel for the accused-respondents is of no help to the accused-respondents.

47. So far as the law relied on by learned counsel for the accused-respondents in State of ***Rajasthan vs. Darshan Singh @ Darshan Lal (supra)*** wherein it is held that if the judgment of lower court is perverse High Court may set-aside the order of acquittal and reverse the order of acquittal and convict the accused, is concerned it is also of no help to the accused-respondents.

48. So far as the argument of learned counsel for the accused-respondents that special report is not produced and Bhagwan Das, A.J.A./Clerk Collectorate, Banda (DW2) has stated that special report of the case was not received in his office is concerned, in this case it might have been misplaced, therefore, reliance placed in ***Gopal Singh and others vs. State of M.P. (supra)*** is also of no help to the accused-respondents because case against the accused-respondents is proved beyond reasonable doubt.

49. It is fairly well-settled that in an appeal against the order of acquittal, the appellate court would be slow to disturb the findings of the trial court which had the opportunity of seeing and hearing the witnesses. In an appeal against the order of acquittal, there is no embargo for reappreciating the evidence and to take a different view; but there must be strong circumstances to reverse the order of acquittal. In the appeal against order of acquittal, the paramount consideration of the appellate court should be to avoid miscarriage of justice.

50. In view of the above facts and circumstances of the case, we are of the view with the principles as discussed in the body of judgment that the trial court has appreciated the evidence in perverse way and has discarded the testimony of eye-witnesses PW1, PW3 an PW4 on flingy ground by recording perverse finding.

51. In the result, we are satisfied that the conclusion reached by the trial court is erroneous and the order of acquittal recorded by the trial court is liable to be reversed.

52. Therefore, we find that the judgment of the lower court is perverse, illegal and the impugned judgment and order dated 30.07.1985 passed by Sessions Judge, Banda by which accused-respondents Lakshmi, Ram Swaroop and Deoraj have been acquitted from the charge of offence punishable under Sections 302/34 I.P.C. in Sessions Trial No. 291 of 1985 (State vs. Lakshmi and others), arising out of Case Crime No. 58 of 1985, under Section 302 I.P.C., Police Station- Bisanda, District- Banda is liable to be reversed and set-aside and the accused-respondents Ram Swaroop and Deoraj are liable to be held guilty for offence punishable under Section 302 read with Section 34 I.P.C.

Order

53. In view of the aforesaid discussion, the instant appeal stands ***allowed***. The judgment and order dated 30.07.1985 passed by Sessions Judge, Banda by which accused-respondents Lakshmi, Ram Swaroop and Deoraj have been acquitted from the charge of offence punishable under Sections 302/34 I.P.C. in Sessions Trial No. 291 of 1985 (State vs. Lakshmi and others), arising out of Case Crime No. 58 of 1985, under Section 302 I.P.C., Police Station- Bisanda, District- Banda is set-aside and reversed. Since, the accused-respondent no.1 Laxmi has died during pendency of the appeal, the appeal against him has been abated vide order dated 11.09.2014. The remaining accused-respondent no. 2 Ram Swaroop son of Ram Kumar and accused-respondent no.3 Deoraj son of Ram Kumar are hereby held guilty of committing offences punishable under Sections 302/34 I.P.C., Police Station- Bisanda, District- Banda.

54. Keeping in view the fact that the incident occurred on 28.02.1985 and a period of more than 37 years have elapsed since the incident, as also the fact that presently the accused respondent no. 2 Ram Swaroop is aged about 72 years and the accused-respondent no.3 Deoraj is aged about 75 years, they are awarded the following sentences: -

(i) For the offence under Section 302/34 I.P.C., the accused-respondent no. 2 Ram Swaroop son of Ram Kumar, accused-respondent no. 3 Deoraj son of Ram Kumar are sentenced to undergo imprisonment for life and to pay a fine of Rupees Twenty Thousand Only (Rs. 20,000/-) each and if they fail to pay the amount of fine, they shall have to further undergo imprisonment for a period of six months in lieu thereof.

55. The accused-respondent no.2 Ram Swaroop son of Ram Kumar, accused-respondent no.3- Deoraj son of Ram Kumar are directed to surrender before the learned Chief Judicial Magistrate, Banda within a period of 15 days from the date of this order to serve out the sentences awarded to them. In case they do not surrender within the stipulated time, learned Chief Judicial Magistrate, Banda shall get them arrested by issuing warrant of arrest and other appropriate process according to law and commit them to jail to server out the sentences awarded to them.

56. Let a certified copy of this judgment and order be sent to the Court concerned immediately for ensuring its compliance.

Order Date :- 13.07.2022
Vikas

[Mohd. Aslam,J.] **[Vivek Kumar Birla,J.]**