GARIB SINGH & ORS.

v.

STATE OF PUNJAB

March 22, 1972

[A. N. GROVER AND M. H. BEG, JJ.]

Appreciation of Evidence—Principles—Reversal of judgment of acquittal by High Court when justified—Indian Penal Code, s. 34, applicability of.

Five persons including the three appellants were jointly charged and tried for rioting and offences committed in the course of it. The Sessions Judge acquitted all the accused because he found the prosecution story to be artificial. He also took into account the delay in lodging the first information report and the fact that there were no blood marks found where the injured persons were alleged to have fallen down. The High Court in appeal filed by the State re-assessed the evidence and reversed the judgment of acquittal in respect of the three appellants. The appellants had been charged in respect of vicarious offences under s. 149 of the Indian Penal Code, but the High Court, in view of the acquittal of two of the five accused, convicted the appellants in respect of those offences under s. 34 of the Code. In appeal by special leave this Court had to consider (i) whether the reversal of the judgment of the trial court by the High Court was justified with reference to principles of appreciation of evidence and the decisions of the Court; (ii) whether the conviction of the appellants by recourse to s. 34 was justified on the facts of the case.

HELD: (i) Perhaps there is no uniform method of arriving at correct or at least satisfactory conclusions upon veracity of versions placed before the Court which can be applied to all cases. It may be possible to decide many cases by determining the main or crucial point on which the decision of the case one way or the other may turn. In other cases, where many disputable points are involved, none of which is conclusive, a more elaborate and comprehensive treatment of the various points involved in the whole case may be necessary. Courts have, however, to attempt to separate the "chaff from the grain" in every case. They cannot abandon this attempt on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot be reasonably carried out. [983 H-984 B]

Chet Ram v. *State*, [1971] 1 S.L.J. 153, referred to.

(ii) In judging the credibility of a version the Court must apply the standards of a reasonable and prudent man. [983 F]

(iii) In the present case the High Court had undoubtedly corrected the erroneous approach of the learned Sessions Judge by pointing out obvious answers to the points which the Sessions Judge seemed to regard as riddles incapable of solution. For example, the delay in lodging the First Information Report, although suspicious, could certainly be satisfactorily explained by the fact that the stab wound in the stomach of one of the victims was so serious that his statement could not be taken for several days afterwards. The absence of blood at the place of occurrence

A was given undue importance by the trial court inasmuch as the blood might have got soaked in the clothes of the victims. Secondly, after the occurrence, a number of persons must have passed to and fro over the path, where the occurrence took place, before the arrival of the police next day. The principles laid down by this Court were applied by the High Court in dealing with the case and interference by this Court in respect of the appraisal of evidence by the High Court would not be
B justified. [984 F-G; 986 A-B]

Khedu Mohton & Ors. v. *State of Bihar*, [1971] 1 S.C.R. 839 and *Laxman Kalu Nikalje* v. *The State of Maharashtra*, [1968] 3 S.C.R. 685, referred to.

(iv) The High Court however erred in applying s. 34 I.P.C. to the facts of the present case. Taking the totality of circumstances, particularly the nature of the injuries, the Diwali night, and the place of
C occurrence on a public thoroughfare into account, the pattern of the case was not that of a pre-planned attack. Mere carrying of spears which was not unusual for Sikhs would not establish pre-planning. The conviction of the appellants with reference to s. 34 must therefore be set aside. [987 D-G; 989 G-H]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 165 of 1969.

Appeal by special leave from the judgment and order dated April 15, 1969 of the Punjab and Haryana High Court in Criminal Appeal No. 876 of 1966.

E *Nur-ud-din Ahmed* and *J. P. Aggarwal*, for the appellants.

V. C. Mahajan and *R. N. Sachthey*, for the respondents.

The Judgment of the Court was delivered by

F **Beg, J.** Garib Singh, aged 36 years, Mohinder Singh, aged 15 years, Bhagat Singh, aged 25 years, Ram Singh, aged 65 years, Gurdial Singh, aged 66 years, were jointly charged and tried by the Additional Sessions Judge of Patiala for rioting and offences committed in the course of it. Garib Singh was charged separately under Sections 148 and 307 Indian Penal Code for an injury he was alleged to have given in the abdomen of Sarwan Singh (P.W. 7) with a Barchha, and for offences punishable under
G Sections 324 and 323 Indian Penal Code with the aid of Section 149 Indian Penal Code. Mohinder Singh was separately charged under Sections 148 and 324 Indian Penal Code for inflicting an incised wound on Chanan Singh (P.W. 8) with a spear, and, under Sections 307 and 323 read with Section 149 Indian Penal Code. Bhagat Singh was separately charged under Sections 147
H and 323 Indian Penal Code for causing simple injuries with a lathi on Gurdev Singh (P.W. 9) and Ralla Singh (P.W. 10) and with the aid of Section 149 Indian Penal Code for offences punishable under Sections 307 and 324 Indian Penal Code. Ram Singh

and Gurdial Singh, who were also said to have been members of an unlawful assembly which caused injuries to the party of the complainant Sarwan Singh at about sunset on 24-10-1965, the date on which the festival of Diwali fell, were alleged to have only instigated their companions by giving lalkaras and saying that Sarwan Singh should not be spared. They were, therefore, charged separately only under Section 147 Indian Penal Code and for offences under Sections 323, 324, and 307 Indian Penal Code with the help of Section 149 Indian Penal Code. None of the accused persons was, however, charged with any offence with the aid of Section 34 Indian Penal Code.

The learned Sessions' Judge who tried the accused persons had, after elaborately examining the prosecution and defence versions, found the prosecution case to be "shroded in mystery as to how all the accused got together, armed variously in the house of Ram Singh and assaulted him (*i.e.* Sarwan Singh) all of a sudden by darting out of the house of Ram Singh". The picture thus painted by the learned Sessions' Judge to convince himself of the melodramatic artificiality of the prosecution version did not really accord with prosecution evidence which was that, when Sarwan Singh was passing in front of the house of Ram Singh, the accused came out and surrounded him, and that Sarwan Singh thereupon raised an alarm which brought the other injured witnesses, who had tried to save him, to the scene. It was only when Ram Singh and Gurdial Singh gave, 'lalkaras' or instigated the others to attack and not to spare Sarwan Singh that the assault was alleged to have begun. It is not unlikely that even this version did not bring out the whole truth.

The defence version, put forward through Kartar Singh (D.W. 2), was that, on the Diwali night of 24-10-1965, at about 8 p.m., one Gurdev Singh (P.W. 12) son of Mangal Singh, had come with Chanan Singh (P.W. 8) the injured and Ralla Singh (P.W. 10) and Gurdev Singh Harijan and had a quarrel with Sarwan Singh (P.W. 7) injured, and with one Gurbux Singh (parentage not given) over the ownership of a tractor which was parked nearby. It was stated by Kartar Singh that both sides were drunk and that Gurdev Singh son of Mangal Singh had given a barchha blow to Sarwan Singh and Gurbux Singh had given a barchha blow to Chanan Singh. It was sought to be proved by the defence, through other witnesses, that, after this incident, there was a compromise between the two sides so that Gurdev Singh son of Mangal Singh, at the instance of Sarwan Singh, agreed to forego the unpaid price of the tractor, amounting to Rs. 5.000/-, and to patch up the quarrel. It was not even attempted to be explained by the defence version how an agreement could emerge so suddenly not

A only to patch up a quarrel in which a very serious injury was sustained by Sarwan Singh but also to involve accused persons in place of the actual assailants of Sarwan Singh and others. The suggestion, however, was that the prosecution case, according to which there was litigation between Ram Singh and Bhagat Singh accused on one side and Sarwan Singh (P.W. 7) on the other, B and the intervention of Chanan Singh (P.W. 8), who had his own scores to settle with Garib Singh, explained the implication of all the accused persons. The learned Sessions' Judge was, we find, more mystified by certain features in the prosecution case than impressed by the very unnatural and incredible defence version. He had, therefore, acquitted all the accused persons for what he C considered to be the weaknesses of the prosecution case, but he had also mentioned the defence version as though it could conceivably contain some truth.

On an appeal filed by the State of Punjab, a Division Bench of the High Court listed and then examined each of the features D of the evidence in the case which had baffled the learned Sessions Judge. It then re-assessed the whole prosecution evidence itself. It came to the conclusion that the injured eye witnesses, namely, Sarwan Singh (P.W. 7), Chanan Singh (P.W. 8), Gurdev Singh son of Sadda Ram (P.W. 9), Ralla Singh (P.W. 10) must be believed, at any rate with regard to the three accused persons, E namely, Garib Singh, Mohinder Singh, and Bhagat Singh who were alleged to have actually caused injuries to them. It, therefore, convicted the three appellants before us by special leave by applying Section 34 I.P.C. Garib Singh was convicted under Section 307 I.P.C. separately, for the injury caused to Sarwan Singh (P.W. 7) and sentenced to five years' rigorous imprisonment and he was also convicted and sentenced to one year's rigorous imprisonment under F Section 324/34 and to three months' rigorous imprisonment under Section 323/34 I.P.C. Mohinder Singh was convicted separately and sentenced to one year's rigorous imprisonment under Section 324 I.P.C., to three years' rigorous imprisonment under Section 307/34 Indian Penal Code, and to three months' rigorous imprisonment under Section 323/34 I.P.C. Bhagat Singh was convict- G ed separately and sentenced to three months' rigorous imprisonment under Section 323 I.P.C., to five years' rigorous imprisonment under Section 307/34 I.P.C., and to one year's rigorous imprisonment under Section 323/34 I.P.C. All the sentences were directed to run concurrently.

H The High Court had sustained the acquittal of Ram Singh and Gurdial Singh for two reasons : firstly, because the delay, in the making of the First Information Report, which was shown to have been lodged on the next day *i.e.* to say 25-10-1965 at 11.30 a.m.

at Police Station Ghanaur in District Patiala at a distance of only 1¼ miles from Village Burki where the occurrence was shown to have taken place; and, secondly, because both Ram Singh and Gurdial Singh "are said to have been empty handed at the time of the occurrence and to neither of whom any injuries are attributed". It may be recalled here that these two accused persons were only said to have participated by giving lalkaras and saying that Sarwan Singh should not be spared. The High Court thought that this evidence of instigation was not enough to establish beyond reasonable doubt the participation of Ram Singh and Gurdial Singh in the assault which took place upon the injured persons. Such allegations of participation by giving lalkaras are sometimes made only to show additional overt acts so as to take in at least five persons and make out the ingredients of an offence under Section 147 against all of them. When delayed lodging of the First Information Report indicated that deliberation and consultation for implication of some innocent persons with guilty ones was possible, this distinction made by the High Court could not be said to be unreasonable.

The High Court had, after examining the evidence of each of the defence witnesses, emphatically rejected the unnatural defence version as utterly unworthy of credence. It had rejected the testimony of Kartar Singh (D.W. 2), the only alleged eye witness of the defence version, on the ground that he stated that he had not, before he appeared to give evidence in the witness box on 7-4-1966, disclosed anything about the incident to anyone. It considered this statement of the witness to be wholly unnatural. On examining the evidence of this witness, we find that he had also stated that he was not examined by the Police, and, presumably to explain this allegation, he had even stated that the Police had not come to the village. Furthermore, he had stated that Gurbux Singh (whose identity is uncertain, as there are more than one Gurbux Singh mentioned in the evidence on record, and, for all we know, there may be others with this name) had given a barchha blow to Chanan Singh on his umblicus which is quite absurd as there was no injury at all on the umblicus of Chanan Singh. The witness stated that, although Sarwan Singh, Chanan Singh, Ralla Singh, Gurdev Singh, were all armed with lathis no blow with lathis were given by them. His evidence does not explain the lathi injuries of any of the injured persons at all. His statement could not, therefore, be characterised as even an attempt to satisfactorily explain injuries. We have no doubt, after examining his evidence, that he could not be an eye witness of the occurrence at all. The remaining defence witnesses, Gurbux Singh (D.W. 1) Babu Singh (D.W 3), and Vishnu Saroo (D.W. 4), either made statements based on hear-say or attempted to prove the highly unnatural alleged agreement or compromise between

Sarwan Singh whose condition, disclosed by medical evidence, was such that he could not be in a position to say much about anything for several days let alone enter into negotiations and compromise. We have, therefore, no doubt in our minds that the High Court was quite right in completely rejecting the defence version which could not even pass muster as a possible explanation, for whatever it may be worth, as the learned Sessions Judge wrongly seemed to think that it could.

We have only disposed of the defence version first because the learned Counsel for the appellants placed it in the forefront and tried to convince us that it was not as incredible as the High Court thought it to be. Learned Counsel for the appellants asserted that truth is stranger than fiction. We think that, at any rate in appraising evidence led in law Courts, such an assumption would be extremely hazardous one to adopt. If it were adopted it would introduce an illegal criterion for appraising evidence. Section 3 of the Indian Evidence Act enables a Court to employ only the standards of a prudent man in judging what is to be deemed to be proved according to law. And, Section 114 of the Evidence Act enables Courts to presume only that which accords with the ordinary course of events and human nature and not what would be an aberration from such a course. Indeed, if such a principle was to be applied in judging some of the features of the prosecution case before us, which are assailed by the learned Counsel for the appellants, these features will appear to be more and not less credible. The degree which proof must reach before a Court trying a criminal case will convict is no doubt that which a prudent man will employ in reaching a conclusion beyond reasonable doubt whereas an accused need not prove his case to the same extent in order to succeed. But, the standards employed in judging each version are those of a reasonable and prudent man. Such a man can only adopt what is natural to expect and what accords with common sense and ordinary experience but not what is extraordinary and unexpected as a reliable test of credibility of witnesses.

The approach of the learned Sessions Judge to the whole case seems to us to have been affected by an over-emphasis of minor points emerging from evidence in the case which were magnified into major defects of the prosecution case. Perhaps there is no uniform method of arriving at correct or at least satisfactory conclusions upon veracity of versions placed before the Court which can be applied to all cases. It may be possible to decide many cases by determining the main or crucial point on which the decision of the case one way or the other may turn. In other cases, where many disputable points are involved, none of which is conclusive, a more elaborate and comprehensive treatment of the

various points involved in the whole case may became necessary. Courts have, however to attempt to separate the "chaff from the grain" in every case. They cannot abandon this attempt on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot be reasonably carried out. The method to be employed in making this attempt was stated as follows by one of us (Beg, J.) in *Chet Ram* v. *State*(1);

> "Courts, in search of the core of truth, have to beware of being misled by half truths or individually defective pieces of evidence. Firstly, undeniable facts and circumstances should be examined. Secondly, the pattern of the case thus revealed, in the context of a whole sequence of proved facts, must be scrutinized to determine whether a natural, or probable and, therefore, a credible course of events is disclosed. Thirdly, the minutias of evidence, including established discrepancies, should be put in the crucible of the whole context of an alleged crime or occurrence and tested, particularly with reference to the proved circumstances which generally provide a more reliable indication of truth than the faulty human testimony, so that the process of separating the grain from the chaff may take place. Fourthly, in arriving at an assessment of credibility of individual witnesses, regard must be had to the possible motives for either deliberate mendacity or subconscious bias. Lastly, the demeanour and bearing of a witness in Court should be carefully noticed and an appellate Court should remember that a trial Court has had, in this respect, an advantage which it does not possess".

It seems to us that the High Court had undoubtedly corrected the erroneous approach of the learned Sessions Judge by pointing out obvious answers to the points which the learned Sessions Judge seemed to regard as riddles incapable of solution. For example, the delay in lodging the First Information Report, although suspicious, could certainly be satisfactorily explained by the fact that the stab wound in Sarwan Singh's stomach was so serious that his statement could not be taken for several days afterwards. Dr. Prem Nath (P.W. 1), who examined him at 5.25 a.m. on 25-10-1965 found that a small portion of the omentum was protruding from the wound, 5 c.m. × 3.5. c.m., and the injured was found in severe pain. The only other injury on his body was an abrasion 1 c.m. × ½ c.m. on the margin of the right elbow joint. Dr. H. M. Nahar (P.W. 2), stated that the injured remained under the effect of morphine sulphate upto 26-10-1965,

(1) [1971] (1) Simla Law Journal p. 153 @ p. 157.

A after which his condition improved. The abdominal injury was considered by the Doctor to be dangerous to life. Another injured person Chanan Singh (P.W. 8), whose brother was said to have filed a Civil suit against Nand Singh, the father of Garib Singh appellant, and Jaimal Singh, brother of Gurdial accused, was not shown to be connected with Sarwan Singh. Indeed, as
B already mentioned above, the suggestion of the defence was that he had come to the scene with persons opposed to Sarwan Singh. He had an oblique incised penetrating wound $1\frac{1}{2}'' \times \frac{3}{4}'' \times 4''$ on the right side of his chest and a swelling on the left elbow. Just as Sarwan Singh was taken in a cart to Patiala after the occurrence, he had been taken to Rajpura alongwith Ralla Singh (P.W. 10)
C who had received three simple injuries with a blunt weapon. Gurdev Singh (P.W. 9), who had received two contusion and a faint contusion with blunt weapons had also gone with Chanan Singh and Ralla Singh to Rajpura, where they were all medically examined. It, therefore, appears that the injured were, quite naturally, more concerned with getting their injuries attended to than with lodging a report immediately at the nearest Police
D Station. The High Court had in these circumstances, not given undue importance to the delay in the lodging of a First Information Report on 25-10-1965 signed by Chanan Singh.

The learned Sessions Judge had used another fact against the prosecution without looking at the obviously good answer to it
E found in the evidence. This fact was that, on 25-10-1965 at 8.30 a.m. Head Constable Kartar Singh (P.W. 14) had been given the injury reports and the First Information Report signed by Chanan Singh, when Gurdev Singh met him but did not tell him that he had himself witnessed the occurrence. Kartar Singh (P.W. 14), had said that he had waited to ascertain facts from
F Chanan Singh himself, who was lying injured in a hospital at Rajpura, before sending the First Information Report to the Police Station so that the case may be registered. In these circumstances, we think that the High Court was quite right in not using some delay in the lodging of the First Information Report, in the same way as the learned Sessions Judge had done it. The High Court used it, no doubt, as one of the grounds for finding allegations
G against the alleged instigators as possible exaggerations but it had not doubted the *bona fides* of the whole prosecution case on this ground.

Another fact which had impressed the trial court very much was the failure of the Police to find any marks of blood on the
H path in front of the house of Ram Singh where the occurrence was shown to have taken place. It had to be remembered that there were only two injuries, one on the body of Sarwan Singh and another on the body of Chanan Singh, which could bleed and that

the blood would first get soaked in the clothes of the injured. Moreover, by the time the police had come to the spot next day quite a number of people and vehicles may have passed to and fro over the path. After the occurrence, even during the preceding night, which was that of Diwali, a number of persons must have passed over the path. Hence the failure of the police to find any blood in front of the house of Ram Singh was also not so inexplicable as the learned Sessions Judge seems to have thought it to be.

Another feature on which considerable emphasis was placed, in the course of arguments before us, was that Garib Singh appellant was alleged to have inflicted the most serious injury of all in this case, on the abdomen of Sarwan Singh, when this accused was an important witness of the case of Sarwan Singh against Ram Singh and Bhagat Singh who had challenged the adoption of Sarwan Singh. Garib Singh was said to be a witness of the adoption deed put forward by Sarwan Singh. It was, therefore, contended that Sarwan Singh would not have liked to displease Garib Singh. It was also urged that there was no reason why Garib Singh should take it into his head to suddenly attack Sarwan Singh, whose alleged adoption deed had been witnessed by him. This may appear to be a somewhat peculiar feature in the case. But we have no evidence before us to show what Garib Singh was doing in the company of Ram Singh and Bhagat Singh. It is not inconceivable that either these two told him something to put him up against Sarwan Singh, or, Sarwan Singh, finding him in the company of his adversaries, had said something. Garib Singh, who denied participation in the occurrence, could not be expected to say what had incensed him. We think that the High Court had taken a correct and reasonable view in holding that, unless Garib Singh had actually caused the injury to Sarwan Singh, it would be most unnatural for Sarwan Singh, situated as he was in his litigation with Ram Singh and Bhagat Singh, to make such an allegation against Garib Singh. This inference was far more natural and reasonable than that Garib Singh was falsely implicated by all the witnesses simply to oblige Chanan Singh.

An overall consideration of all the facts and circumstances in the case, the important features of which have been noticed by us, and a reading of the Judgments of the Sessions Judge as well as of the High Court have led us to the conclusion that, whatever error there was in the approach of the learned Sessions Judge in appraising the worth of the prosecution and defence versions, was rectified by the High Court. We are of opinion that those features of the case to which the learned Sessions Judge had attached disproportionate importance were put in their proper perspective by the High Court. We, therefore, do not think that this is a fit case for

A interference by this Court in this appeal by special leave with the view of the High Court about the substantial truthfulness of the prosecution case and the utter incredibility of the defence version.

There is, however, one essential aspect of the case which seems to have escaped the attention of the High Court. It is that the B whole pattern of the case indicates that there was very little likelihood of any pre-concert. The High Court had itself rejected the version that Ram Singh and Gurdial Singh had instigated and said that Sarwan Singh should not be spared. If this instigation was there and had been acted upon Sarwan Singh would have received many more injuries. The nature of the injuries, proved C by the medical evidence, indicated unmistakably that the occurrence was a short and sudden affair. Such a short and sudden occurrence could take place on the evening of Diwali at a chance meeting when Sarwan Singh found Garib Singh in the company of his adversaries, Ram Singh and Bhagat Singh. It is possible that something was said to Garib Singh either by Sarwan Singh D when he found him in the company of his adversaries, or, before that, by Ram Singh and Bhagat Singh which impelled Garib Singh to attack Sarwan Singh. These, however, are matters of pure conjecture. Nevertheless, taking the totality of facts and circumstances particularly the nature of injuries, the Diwali night, and the place of occurrence on a public thoroughfare, into account, we E are inclined to believe that the pattern of the case was not that of a pre-planned attack.

There was some force in the submission, which was noticed by the Sessions Judge, that a pre-planned attack was more likely to have taken place elsewhere and not on a public thoroughfare in front of the house of Ram Singh. The learned Counsel for the F appellant also submitted that Ram Singh and his associates were not likely to know the time at which Sarwan Singh would pass Ram Singh's house that evening. The prosecution evidence is that Sarwan Singh was going to untie his cattle. It is possible that it was known in the village that Sarwan Singh passed the house of Ram Singh at that time every evening, but there was no evi- G dence led to show that this was so and that, therefore, the accused were waiting for him to come. Mere carrying of spears, which is not unusual for Sikhs, would not establish pre-planning.

A consideration of the above mentioned aspect, which was not discussed by the High Court, leads us to the conclusion that this H was not a case in which Section 34 Indian Penal Code, for which there was not even a charge framed against the appellants, could be applied so unhesitatingly as the High Court had done. It would have been possible to apply it even though no charge was

framed for it if the evidence establishing it had been clear and free from doubt.

We may also mention the two cases cited before us to contend that the High Court should not have interfered at all with the appraisal of evidence by the trial Court. These were : *Khedu Mohton & Ors.* v. *State of Bihar*(1), and *Laxman Kalu Nikalje* v. *The State of Maharashtra*(2).

In *Khedu Mohton's* case(1), an appellate court had set aside the conviction of the accused persons on certain grounds including that the four eye witnesses of the alleged occurrence were unreliable because they were interested persons. The High Court had interfered with an acquittal by an appellate Court. This Court had said, with regard to the conclusion reached in that particular case by the acquitting Judge :

> "Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal".

We think that the present case is distinguishable from that case in as much as the approach of the Trial Court, in the case before us, shows that it was misled by attaching undue importance to individual features of the case which had been viewed in their correct perspective by the High Court. The Trial Court had ignored the very important fact that it is contrary to the ordinary course of human nature for injured persons, without showing strong grounds for it, to omit the names of their actual assailants and to substitute wrong persons in their places. Implication of the innocent with guilty ones is more easily credible than a wholesale substitution, out of enmity, of the innocent for the actual assailants. Such quick substitution was not, for the reasons already mentioned, conceivable in the present case. As we have already indicated, the High Court, in the case before us, had corrected an error in the approach and in the reasoning of the Sessions Judge rather than upset the findings of the Sessions' Judge on the credibility of witnessess at the trial. The trial Court had not held that the injured eye witnesses could not be believed. It had not weighed evidence so much as given a catalogue of reasons for suspecting the prosecution case without considering what

(1) [1971] S.C.R. 839 @ 840-841. (2) [1968] (3) S.C.R. 685.

A could be said in answer. Appraisement involves weighing of one set of facts or inferences from them against the opposite one fairly and reasonably.

In *Laxman Kalu Nikalje's* case(1) it was laid down by the Court at page 688 :

B "We may say here that it is now the settled law that the powers of the High Court in an appeal against the acquittal are not different from the powers of the same court in hearing an appeal against a conviction. The High Court in dealing with such an appeal can go into all questions of fact and law and reach its own conclusions on evidence provided it pays due regard to the fact C that the matter had been before the Court of Sessions and the Sessions Judge had the chance and opportunity of seeing the witnesses depose to the facts. Further the High Court in reversing the judgment of the Sessions Judge must pay due regard to all the reasons given by the Sessions Judge for disbelieving a particular witness D and must attempt to dispel those reasons effectively before taking a contrary view of the matter. It may also be pointed out that an accused starts with a presumption of innocence when he is put up for trial and his acquittal in no sense weakens that presumption, and this presumption must also receive adequate consideraion from the E High Court."

We think that the principles laid down above by this Court were applied by the High Court in dealing with the case before us. It had not set aside, as already indicated, the verdict of a Court of trial based upon the special advantage it derives from watching witnesses depose.

F As we have already observed, we think that the High Court had erred in applying Section 34 Indian Penal Code to the facts and circumstances of the case before us. As we are satisfied that the occurrence which led to the prosecution of the appellants must have arisen out of a sudden quarrel over some exchange of words in circumstances which have not been brought out by the G evidence in the case, we are unable to hold the appellants guilty of any offence with the aid of Section 34 Indian Penal Code. We, therefore, set aside the convictions and sentences of Garib Singh under Section 324/34 and 323/34 Indian Penal Code but we maintain his conviction under Section 307, and, in the special circumstances of this case, reduce his sentence to three years H rigorous imprisonment from five years rigorous imprisonment. We also set aside the convictions and sentences of the appellant Bhagat Singh under Section 307/34 and 324/34 Indian Penal

(1) [1968] 2 S. C. R. 685.

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Code, but maintain his conviction under Section 323 Indian Penal Code and sentence of three months rigorous imprisonment for that offence. As regards Mohinder Singh appellant, a youngster who was bound to have been misguided by the example of older people and against whom no previous conviction is disclosed, while setting aside his conviction and sentence under Section 307/34 and 323/34 Indian Penal Code, we maintain his conviction under Section 324, Indian Penal Code, but reduce his sentence under Section 324 India Penal Code to the period already undergone. A B

This appeal is partly allowed to the extent indicated above.

G.C. *Appeal allowed in part.*