SADHU SARAN SINGH

v.

STATE OF U.P. AND ORS.

(Criminal Appeal Nos. 1467-1468 of 2005)

FEBRUARY 26, 2016

[DIPAK MISRA AND N.V. RAMANA, JJ.]

Penal Code, 1860 – ss.147, 148, 149, 302, 307 and 504 – Prosecution under – Death of three persons and injury of eye-witness – Caused by five accused – Trial court convicted all the accused and sentenced three of the accused to life imprisonment and two of the accused to death sentence for the offence of murder – High Court acquitted all the accused of all the charges – On appeal, held: The reasons given by High Court acquitting the accused are flimsy, untenable and bordering on perverse appreciation of evidence – Prosecution case was fully supported by the ocular evidence of two eye-witnesses – Non-examination of injured witness would not be fatal to the prosecution case, in the facts of the case – The prosecution case cannot be detailed on the ground of absence of independent witness as long as the evidence of the eye-witnesses is trustworthy – All the accused are liable to be convicted – However, the death sentence of the two accused awarded by the trial court is converted to life imprisonment and all the accused are sentenced to life imprisonment.

Appeal – Against acquittal – Power of appellate court – Scope of – Held: Court has the power to review and relook the entire evidence – Appellate Court can interfere with the acquittal order if it is based on erroneous views and against settled position of law.

Judgment – Reason is the heartbeat of every conclusion in a judgment – Without proper reason, the conclusion becomes lifeless.

Allowing the appeals, the Court

HELD: 1. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced,

A **the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. While dealing with an appeal against acquittal, the appellate court has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate Court, on scrutiny, finds that the decision of the Court below is based on erroneous views and against settled position of law, then the interference of the appellate Court with such an order is imperative. [Paras 18 and 19][923-E-F; 924-B]**

Sambasivan and Others v. State of Kerala **(1998) 5 SCC 412: 1998 (3) SCR 280;** *Chandrappa v. State of Karnataka* **(2007) 4 SCC 415: 2007 (2) SCR 630 – relied on.**

2.1 Reason is the heartbeat of every conclusion, without proper reason the conclusion becomes lifeless. The judgment of the High Court deserves to be set aside on the ground of lack of reasoning. The reasons given by the High Court to reverse the conviction and sentence of the accused are flimsy, untenable and bordering on perverse appreciation of evidence. [Para 21] [925-D; 929-E]

2.2 The evidence of PW 1, who is an eyewitness who lost three sons in the fateful incident was consistent and there was no major deviations or discrepancies and if at all any minor discrepancies that occurred in the evidence of PW1 might have been due to the long gap between the date of incident and the long delay in examination, more so, those discrepancies are not material in bringing home the guilt of the accused. The statements of PW 1 are fairly corroborated by the statements of PW 2. [Para 21][926-B-C]

2.3 There is no reason whatsoever to disbelieve the evidence of PW2 , another key eyewitness present at the time of incident. Nothing has come out in his examination-in-chief or in cross-examination which creates a doubt on the veracity of his

statement. Moreover, he has been consistent in his version and fully supported the prosecution story. [Para 21][926-E-F] A

2.4 The High Court for acquitting the respondents, had mainly relied upon the medical evidence in a very inappropriate manner. When the doctor (PW 7) in his examination-in-chief had categorically stated that the incident could have occurred at 8.00 a.m. which corroborated the case of the informant, there was no reason to disbelieve this fact to hold that the incident occurred between 2.00 to 4.00 a.m. merely basing on a vague statement made by the Doctor in the cross-examination. Merely for the reason that no blunt injuries were present on the deceased, the whole evidence of PW 1 cannot be discarded as primacy has to be given to the ocular evidence particularly in the case of minor discrepancies. [Para 21][926-H; 927-A-B] B C

Darbara Singh v. State of Punjab, (2012) 10 SCC 476: 2012 (7) SCR 541 – relied on.

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2.5 The place of occurrence is proved beyond doubt in the light of evidences of PW 1, PW 2, PW 3 and PW 4. Apart from this, the investigating officer had recovered blood stained roll of the clay and plain clay from the place of incident (Ext.Ka-8) and also had recovered cartridges from the place of the incident. Even as per the forensic report, human blood was found on the roll of clay (Ext.Ka-37). [Para 21] [927-F-G] E

2.6 Though the prosecution had made an attempt to produce the injured witness, they failed to do so as he was kidnapped at the relevant period. This stands proved by the registration of two FIRs dated 12.09.1997 and 06.10.1997 which establish the fact that the injured witness was threatened and kidnapped. Therefore, non-examination of injured witness could not be fatal to the case of the prosecution and the same cannot be a ground to disregard the evidence of PWs 1 & 2. Thus, no adverse inference can be drawn against the prosecution for not examining the injured witness. [Para 21] [927-H; 928-A-B] F G

Rajan Rai v. State of Bihar 2006 (1) SCC 191: 2005 (5) Suppl. SCR 128 – relied on.

2.7 There is no doubt that the prosecution has not been able to produce any independent witness. But, the prosecution H

A **case cannot be doubted on this ground alone. Civilized people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the Court as they feel it distressing and stressful. Though this kind of human behaviour is indeed**
B **unfortunate, but it is a normal phenomena. This handicap of the investigating agency in discharging their duty cannot be ignored. The entire case cannot be derailed on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy. [Para 21][928-C-E]**

C **2.8 The accused—respondents had enmity with the complainant party over a land dispute and that Ext.Ka-2 and Ka-3, the complaints made prior to the incident, could not be an after-thought as both the exhibits bear signature and dates on which these were received by the police. Thus, in the light of above discussion, it can be safely held that the accused**
D **respondents had strong motive to commit the offence against the complainant party. [Para 21][928-F-H]**

2.9 The High Court, while passing the impugned judgment and order, has failed to consider that the two of the respondents-accused had not succeeded in proving their plea of alibi.
E **[Para 21][929-A]**

3. The trial Court has awarded death sentence to the respondents-accused 'R' and 'K'. The Court is not able to concur with the view taken by the trial Court as the reasoning of the trial Court does not convince this Court that this is the rarest of the
F **rare cases which warrants the penalty of death sentence. The judgment and order passed by the Trial Court is modified by convicting all the accused respondents to life imprisonment under Section 302/149 IPC. [Paras 21 and 22][929-F-H]**

Case Law Reference

G **1998 (3) SCR 280**	**relied on.**	**Para 18**
2007 (2) SCR 630	**relied on.**	**Para 20**
2012 (7) SCR 541	**relied on.**	**Para 21**
2005 (5) Suppl. SCR 128	**relied on.**	**Para 21**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1467-1468 of 2005

From the Judgment and Order dated 07.12.2004 of the High Court of Judicature at Allahabad, in Criminal Appeal No. 2701 of 2003 and Crl. Appeal No. 5802 of 2003

Vishwajit Singh, Ridhima Singh, Pankaj Singh, Gaurav Singh, Gaurav Tripathi for the Appellant.

Ranjit Rao, Pramod Swarup, Prashant Chaudhary, Sushma Verma, Anuvrat Sharma, Alka Sinha for the Respondents.

The Judgment of the Court was delivered by

N.V. RAMANA, J. 1. These appeals are directed against the judgment passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos.2701 and 5802 of 2003, dated 07.12.2004, by which the High Court has allowed the appeals filed by the accused- respondents herein and acquitted them for the offences under Sections 147, 148, 149, 302, 307 and 504 of the Indian Penal Code, 1860 (for short 'the IPC').

2. It is pertinent to mention here that the appellant before us was not a party before the Courts below and the present appeals have been preferred by him with the leave of this Court. The locus of the appellant is that he is the brother of the informant Bhola Singh (PW1) who died during the pendency of the appeal before the High Court and also paternal uncle of the three deceased persons (Sons of informant Bhola Singh-PW1).

3. The facts in brief, as unfolded by the prosecution case are that Bhola Singh (PW1)—the informant is a resident of village Kanso, district Mau and on 4th October, 1994 at about 8 am when his sons namely Sheo Kumar, Avdhesh and Yogendra (all three deceased) were repairing the cattle trough in presence of one Ganga Singh, brother-in-law of the informant and one Baijnath Singh (PW 2), the accused Ramashraya Singh, Satyendra Singh, Brijendra Singh along with their father Ramchandra Singh armed with deadly weapons came to the *Baithka* of the informant-Bhola Singh with the company of Kamla Singh and Ram Saran Singh hurling filthy abuses. While Ramchandra Singh exhorted his sons to eliminate the whole family of the victim, the accused Ramashraya Singh and Kamla Singh opened fire with guns while Satyendra Singh and Brijendra Singh attacked with *katta* upon the three

A sons of Bhola Singh (PW1). The other accused also attacked the victim party with their respective weapons. In the assault, the three sons of PW1 sustained injuries and fell on the ground and Ganga Singh, brother-in-law of PW1 sustained firearm injuries. During the ongoing tussle, PW1—Bhola Singh ran into the village and raised hue and cry whereupon the assailants took to their heels. The attack resulted into the death of two sons of the informant i.e. Shivshankar and Avadhesh on the spot while another son i.e. Yogendra breathed his last on the way to the hospital.

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4. At the instance of the informant (PW1), a First Information Report (Ext. Ka-1) was lodged at 9.15 a.m. on the same day at Haldharpur P.S. wherein PW1 stated that the incident had taken place on account of enmity over land dispute between the parties. Constable Muharrir Ram Manohar Maurya (PW-3) prepared the *chick report* (Ext. *Ka-4)* and registered the case as Crime No.219/94 under Sections 147,148, 149, 302, 307 and 504 IPC. The injured Ganga Singh was then sent for medical check up to the Primary Health Centre.

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5. Sub-Inspector Riyayatullah Khan, the Investigating Officer visited the place of occurrence, held inquest of the dead bodies, prepared site map and recorded the statement of the informant. He then collected blood stained roll of clay and plain clay and prepared memo. Dr. O.P.Singh (PW 6) who conducted medical examination of the injured Ganga Singh opined in his report (*Ext.Ka-33)* that all the injuries were caused by fire arms and were sustained within a period of 6 hours.

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6. Dr. Jitendra Kumar Singh (PW7) conducted post-mortem examination on the bodies of the three deceased persons. By his reports *Ka-34, 35 and 36,* he expressed the opinion that the incident might have occurred at 8.00 a.m. and that the intestines of all the three deceased contained semi-digested food material and the injuries suffered by the victims were of firearms and there was no blunt object injury. On 7-10-1994, the I.O. arrested Ramchandra Singh and Ramsaran Singh and recorded statements of witnesses. The I.O. filed charge sheet (Ext. Ka-32) against all the six accused persons. Since the accused have denied the charges and prayed for trial, the case was committed to the Court of sessions.

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7. The prosecution, in support of its case, had examined two eyewitnesses, namely, the informant Bhola Singh (PW1), father of all

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the three deceased persons and Baijnath Singh (PW 2) and five formal witnesses i.e. PW 6 Dr.O.P.Singh and P.W.7 Dr.Jitendra Kumar Singh, PW 5 the Investigating Officer and PW 4 the Sub-Inspector and PW 3 Constable Ram Manohar Maurya, who prepared the *chick FIR* and General Diary entry pertaining to registration of the case. On the other hand, the accused have produced four witnesses in their defence. During the pendency of trial, one accused, namely, Ramchandra Singh died.

8. The Trial Court, after a full-fledged trial, came to the conclusion that the accused were guilty of committing a cruel and heinous offence and by its detailed judgment dated 22-05-2003 sentenced Ram Saran Singh, Satyendra Singh and Brijendra Singh to undergo life imprisonment for the offence under Section 302/149, IPC and imposed fine of Rs.10,000/-. In default, they were directed to undergo two years' rigorous imprisonment. They were also convicted under Section 307/149 IPC and sentenced to seven years' rigorous imprisonment and a fine of Rs.5,000/-. In default, to undergo one year rigorous imprisonment. Conviction under Section 148 IPC was also recorded against these appellants. They were sentenced to two years' rigorous imprisonment and a fine of Rs.1,000/-. In default, six months' rigorous imprisonment was imposed on them. Death Sentence was imposed upon Ramashraya Singh and Kamla Singh under Section 302/149 IPC with a fine of Rs.10,000/-. In default, the appellants were directed to undergo two years' rigorous imprisonment. They were also convicted under Section 307/149 IPC and were sentenced to 7 years' rigorous imprisonment and a fine of Rs.5,000/-. In default, to undergo rigorous imprisonment for one year. Conviction under Section 148 IPC was also recorded against these appellants. They were sentenced to two years' rigorous imprisonment and a fine of Rs.1,000/-. In default of payment of fine, six months' rigorous imprisonment was imposed.

9. Aggrieved thereby, all the five accused persons preferred criminal appeals before the High Court. The High Court recorded complete disagreement with the findings given by the Sessions Judge and allowed the appeals of the accused by setting aside the judgment of the trial Court and acquitted them of the charges and also rejected the Reference for confirmation of death sentence of the accused Ramashraya Singh and Kamala Singh. Dissatisfied with the order of acquittal passed by the High Court, the brother of the deceased informant filed the present appeals by way of special leave.

A 10. We have heard Shri Viswajit Singh, learned counsel for the appellant and Shri Ranjit Rao, learned Additional Advocate General for the State and Shri Pramod Swarup, learned senior counsel for the accused-private respondents herein.

11. Shri Vishwajit Singh, learned counsel for the appellant
B vehemently contended that the High Court committed a manifest and grave error in analyzing the evidences of PW1 and PW2 and acquitted the accused without proper application of mind. It ought not to have rejected the ocular evidence of the informant PW 1 Bhola Singh, the ultimate victim and father of the three deceased persons. The finding of the High Court that PW1 was not present on the spot is untenable and
C treating his evidence as unreliable, is totally perverse and bad in law in view of the true nature and circumstances of the case. A prudent analysis of evidence of PW-1 would clearly suggest that there are no discrepancies in his evidence and rather it abundantly makes clear that he is a wholly reliable witness and his evidence is trustworthy.

D 12. Similarly, the view expressed by the High Court that the presence of PW 2–Baijnath Singh at the scene of occurrence is doubtful and it is an afterthought, cannot be sustained as perusal of FIR lodged by PW-1 Bhola Singh unequivocally shows that the name of PW-2 Baijanth Singh was referred in the FIR and his presence at the place of
E occurrence was established beyond any reasonable doubt. Moreover, nothing has been elicited in his examination-in-chief or cross-examination mounting a doubt on the veracity of his statement. Moreover, the witness has been consistent in his statement fully supporting the prosecution story.

F 13. Lamenting on the view taken by the High Court in disregarding the abduction of Ganga Singh, the injured witness, learned counsel explained that Ganga Singh could not be produced in the witness box by the prosecution for the reason that he was kidnapped by the accused persons after being threatened and beaten up by them. In this regard, two FIRs, i.e. one on 6.10.1997 and before that another on 12.9.1997
G were also lodged which would show that Ganga Singh was purposely kidnapped during the period when the evidence of the witnesses were going on and the High Court has wrongly mentioned that a photocopy of the final report would show that the allegation of kidnapping was fabricated and although no such document was either exhibited before
H the Trial Court or before the High Court. According to him, the timing of

the aforesaid kidnapping and threatening also coincided with the fact that the statement of PW-1 Bhola Singh was completed on 24.7.1997 and the statement of PW-2 Baijnath Singh was completed on 13.11.1997. Regarding the minor inconsistency between medical and ocular evidence, it is argued that it cannot derail the case of the prosecution as the inconsistency is not of an extreme nature and weightage has to be given to the evidence of eyewitness as per settled law. Merely for the reason that no blunt injuries were found on the bodies, even when the complainant had alleged, is of no consequence.

14. Negating the finding of the High Court as to the place of occurrence, learned counsel submitted that the High Court did not consider the case in its proper perspective. A perusal of entire evidence on record would clearly establish the place of occurrence and that the prosecution has succeeded in proving the guilt beyond all reasonable doubt. The evidence on record clearly reveals that the Investigating Officer had recovered the blood stained roll of the clay and the plain clay from the place of incident, which was sent for examination wherein on analysis, human blood was found on the same. Even the evidence of eyewitnesses PW-1 Bhola Singh and PW-2 Baijnath Singh is very much consistent on the said aspect and, therefore, the High Court was wrong to raise a dispute on the place of occurrence. Contending further on the doubt raised by the High Court on the timing of incident, learned counsel submitted that the High Court has laid a lot of emphasis on the presence of semi-digested food in the medical report and has held that it totally contradicts the case of prosecution with regard to the time of occurrence of the offence, whereas the doctors (PWs 6 & 7) in their examination-in-chief have clearly stated that the incident might have taken place at 8 a.m. Thus the High Court erred in recording a finding contrary to the evidence, particularly for the reason that in villages generally people wake up early in the morning and start work early after having breakfast and, therefore, presence of half-digested food cannot be a probable ground to arrive at a conclusion that the deceased must have died at night. Learned counsel finally submitted that for all the aforesaid reasons, the High Court ought not to have interfered with the well-reasoned judgment of the trial Court. In support of his submissions, learned counsel placed reliance on various authorities of this Court.

15. The learned counsel for the State supported the contentions of the appellant and conceded that the High Court erred in acquitting the

A respondents-accused ignoring certain relevant circumstances and material evidence which clearly established the guilt of the accused. According to him, the High Court has utterly failed to consider the genuine facts that the FIR was lodged at 9.15 a.m. immediately after the incident without any unreasoned delay, evidence of both the eyewitnesses i.e. PW-1 AND PW-2 were reliable as their statements were completely corroborated by the medical evidence; the injured Ganga Singh though could not be examined by the prosecution but had been medically examined by PW-6 on the same day corroborating the prosecution's story and the motive of the accused to commit the crime was established as they were having enmity with the victim party in respect of a land dispute. Learned counsel, therefore, prayed that considering the abundant and cogent evidence available on record, this Court should exercise its powers under Article 136 of the Constitution of India and set aside the impugned judgment and order by convicting the accused.

16. *Per contra*, learned counsel appearing for the accused respondents submitted that the prosecution case is unreliable for the reasons that the place of occurrence and lodging of FIR is very much disputed, there is difference between the medical and oral evidence of the witnesses, the so called injured witness Ganga Singh despite being a relative of the informant, has not been examined before the Court and the presence of semi-digested food in the stomach of the deceased suggests that the incident could have occurred between 2.00 to 4.00 a.m. totally controverting the stand taken by the prosecution. The High Court has prudently appreciated these facts and rightly held that the investigation department was hand in glove with the complainant who wanted to implicate the accused in the alleged crime. The alleged FIRs purporting to establish kidnapping story of Ganga Singh cannot be of any consequence as the same were concocted and was rightly disregarded by the High Court. Moreover, from the statements of PW-1 Bhola Singh and PW-2 Baijnath Singh, it cannot be inferred that they were actually present at the scene of offence at the time of occurrence of the incident since their evidence does not support the same. Disputing the scene of occurrence, learned counsel contended that as per prosecution version, all the three deceased were laying clay on the *nand* but PW-4 Riyatullah Khan, who has prepared the panchnama had not found any clay on the dead-bodies of the deceased nor in the post-mortem no clay was found by PW-7 Dr. Jitendra Kumar. Another clinching factor in this regard is that the place of firing as shown in the sketch map prepared by the I.O.

is contradictory to the place referred by PW-1 and P.W.2. in their statements. The motive factor also stood not proved beyond reasonable doubt, considering the statement of PW1 who had categorically stated in his evidence that there was no dispute with regard to *haudi* and the land abutted to that. A

17. Learned counsel further contended that General Diary of the case has been prepared on the plain paper, contrary to the provisions of the Police Regulation Act. Apart from this, entry of sending the case diary to the Superintendent of Police has not been made in the G.D., whereas under para 295(16) of the Police Regulation Act, it was necessary that the documents which are received in the G.D. in the police station, are sent to the police station after making entries; thus the IO has not complied with the provisions of para 107 of the Police Regulation Act and due to this reason, the investigation is vitiated. Learned counsel for the accused therefore strenuously urged that there is no error in the acquittal order passed by the High Court which does not call for any interference by this Court. B C D

18. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, in the case of ***Sambasivan and Others* V. *State of Kerala,*** (1998) 5 SCC 412, has held : E F

> "The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal are well settled. ***The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction.*** But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly G H

A erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal".

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

C 20. This Court in ***Chandrappa V. State of Karnataka***, (2007) 4 SCC 415, after referring to a catena of decisions, has laid down the following general principles with regard to powers of the appellate Court while dealing with an appeal against an order of acquittal:

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

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

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

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

(4) An appellate Court, however, must bear in mind that in case H

of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

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

21. Reason is the heartbeat of every conclusion, without proper reason the conclusion becomes lifeless. Having carefully considered the impugned judgment and order passed by the High Court as also that of the Trial Court and after perusing the records and giving anxious consideration to the facts of the case on hand in the light of well-settled law, in our considered opinion the judgment of the High Court deserves to be set aside on the ground of lack of reasoning and for the following compelling and substantial reasons:

i) The High Court had taken a view that PW 1 – Bhola Singh, father of the deceased (brother of the appellant before us) had changed his version at the time of second Chief Examination. Upon giving our anxious consideration to the chronology of events, we find that after commencement of the trial, the evidence of PW1 was started on 9.8.1996 and the chief-examination was concluded on 21.8.1996. On 9.1.1997 the cross-examination was started and further on 29.5.1997 the second Examination-in-chief was started as some of the accused had surrendered before the Court in the meanwhile. Second time Examination-in-chief was conducted on 29.5.1997 and ended up on 19.06.1997. Second Cross-examination started on 17.07.1997 which was further conducted on 24.7.1997. As seen from the various dates, the record indicates that the first chief-examination of PW 1, which started on 09.08.1996, was concluded after completing the second cross-examination on 24.7.1997. So, it is clear from the evidence of PW 1 itself that the examination and cross-examination had taken place several times in a piece-meal manner and the Court was forced to conduct the chief-examination repeatedly because

A of the subsequent surrender of some of the accused persons. While appreciating the evidence of PW1, the Courts must be conscious of the length of time consumed in recording the evidence of the prosecution witness. From a perusal of the evidence of PW1, the High Court was of the opinion that there were discrepancies and deviations in the evidence of PW1. In our considered opinion, the evidence of PW 1, who is an eyewitness who lost three sons in the fateful incident was consistent and there are no major deviations or discrepancies and if at all any minor discrepancies that occurred in the evidence of PW1 might have been due to the long gap between the date of incident and the long delay in examination, more so, those discrepancies are not material in bringing home the guilt of the accused, we find no reason whatsoever to disbelieve his evidence. The statements of PW 1 are fairly corroborated by the statements of PW 2. Hence, we are of the considered opinion that the occurrence had taken place in front of *Baithaka* of PW1—Bhola Singh and he had witnessed the said occurrence along with PW-2 Baijnath and the injured Ganga Singh.

ii) Similarly, we find no reason whatsoever to disbelieve the evidence of PW2 (brother-in-law of PW1 Bhola Singh), another key eyewitness present at the time of incident. A valiant attempt is also made by the defence to discredit his evidence that he is only a chance witness and not an eyewitness to the incident and his presence is doubtful. But, nothing has come out in his examination-in-chief or in cross-examination which creates a doubt on the veracity of his statement. Moreover, he has been consistent in his version and fully supported the prosecution story. However, his admission that at the time of panchnama, he has signed as suggested by the *Darogaji* and PW1 asked him as to whose names should be written and whose names should be left out in the panchnama, have to be seen in the context of preparing the panchnama and shall not be attributed otherwise to disbelieve his evidence.

iii) We are of the view that the High Court, for acquitting the respondents, had mainly relied upon the medical evidence in a very inappropriate manner. When the doctor (PW 7) in his examination-in-chief had categorically stated that the incident could

have occurred at 8.00 a.m. which corroborated the case of the informant, there was no reason to disbelieve this fact to hold that the incident occurred between 2.00 to 4.00 a.m. merely basing on a vague statement made by the Doctor in the cross-examination. Also we believe that merely for the reason that no blunt injuries were present on the deceased, the whole evidence of PW 1 cannot be discarded as primacy has to be given to the ocular evidence particularly in the case of minor discrepancies. This Court in **Darbara Singh Vs. State of Punjab**, (2012) 10 SCC 476, wherein this Court has held :

> "…. So far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. ***In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence*** and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. ***It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.***"

iv) We are also of the opinion that the place of occurrence is proved beyond doubt in the light of evidences of PW 1 (Bhola Singh), PW 2 (Baijnath), PW 3 (Constable Ram Manohar Maurya) and PW 4 (Riyayatullah Khan—Sub Inspector). Apart from this, the investigating officer had recovered blood stained roll of the clay and plain clay from the place of incident (Ext.Ka-8) and also had recovered cartridges from the place of the incident. Even as per the forensic report human blood was found on the roll of clay (Ext.Ka-37). The aforesaid circumstance would clearly establish that the place of incident was the *baithka* of the informant and not the village *pakvainar* as alleged by the defence.

v) Coming to the issue of non-examination of the injured witness Ganga Singh, it is relevant to point out that the trial Court had appreciated the fact that though the prosecution had made an

attempt to produce Ganga Singh, they failed to do so as he was kidnapped at the relevant period. This stands proved by the registration of two FIRs dated 12.09.1997 and 06.10.1997 which establish the fact that Ganga Singh was threatened and kidnapped. Therefore, non-examination of injured Ganga Singh could not be fatal to the case of the prosecution and the same cannot be a ground to disregard the evidence of PWs 1 & 2. Thus, no adverse inference can be drawn against the prosecution for not examining Ganga Singh, the injured witness [Also see : ***Rajan Rai* v. *State of Bihar***, 2006(1) SCC 191].

vi) As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to produce any independent witness. But, the prosecution case cannot be doubted on this ground alone. In these days, civilized people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the Court as they feel it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy.

vii) It has been vehemently argued by the accused/respondents that the prosecution has failed to establish any motive for the alleged incident. However, the complainant had deposed about existence of land dispute between the parties and regarding the same complaints were made prior to the incident also. The Trial Court had held that there was land dispute between the parties and for the same the complainant had made complaints to the police (Ext. Ka-2 and Ka-3). We concur with the view of the Trial Court that the accused—respondents had enmity with the complainant party over a land dispute and that Ext.Ka-2 and Ka-3, the complaints made prior to the incident, could not be an after-thought as both the exhibits bear signature and dates on which these were received by the police. Thus, in the light of above discussion, it can be safely held that the accused respondents had strong motive to commit the offence against the complainant party.

viii) The High Court, while passing the impugned judgment and order, has failed to consider that the two respondents-accused Ramashray Singh and Kamla Singh had not succeeded in proving their plea of alibi. It is evident from the letter of Ministry of Defence addressed to the District & Sessions Judge, Mau (Doc.263 Ka.) where it has been specifically mentioned that the accused Ramashray Singh and one Virender Singh (DW-1) had been directed to proceed to Secunderabad from Pathankot on 4.9.1994. It is mentioned that on 6.10.1994 said Virender Singh had deposited the fused missile and Ramashray Singh accused respondent was not present on the said date and he presented himself at Secunderabad on 11.10.1994. As far as accused Kamla Singh is concerned, he had taken a plea of alibi stating that he was posted as a Hawaldar in Jammu. However, he has failed to mark any evidence in this behalf. Also it was stated by him that he was present at his quarter in Jammu. However, DW-4 Onkar Singh has stated that he, along with the accused Kamla Singh, had gone to Vaishno Devi but fails to prove the same by adducing cogent evidence. Thus, on perusal of the material on record, we concur with the finding of the trial Court that the accused have failed to establish their plea of alibi.

ix) We are also of the considered opinion that the reasons given by the High Court to reverse the conviction and sentence of the accused are flimsy, untenable and bordering on perverse appreciation of evidence.

x) The trial Court has awarded death sentence to Ramashraya Singh and Kamla Singh. On this issue, we are not able to concur with the view taken by the trial Court as the reasoning of the trial Court does not convince us that this is the rarest of the rare cases which warrants the penalty of death sentence.

22. For the aforesaid reasons, we reach to the irresistible conclusion that these appeals deserve to be allowed and the impugned judgment and order has to be set aside. Accordingly, we allow these appeals by setting aside the impugned judgment and order passed by the High Court and modify the judgment and order passed by the Trial Court by convicting all the accused respondents to life imprisonment under Section 302/149 IPC with a fine of Rs.10,000/-. In default, they are directed to undergo rigorous imprisonment for six months. They are also convicted under

A Section 307/149 IPC and sentenced to seven years' rigorous imprisonment and a fine of Rs.5,000/-. In default, they shall undergo rigorous imprisonment for three months. Conviction under Section 148 IPC is also recorded against the accused respondents and they are sentenced to two years' rigorous imprisonment and a fine of Rs.1,000/-. In default, they have to undergo three months' rigorous imprisonment. All the sentences shall run concurrently.

B

Kalpana K. Tripathy Appeals allowed.