AFR

Reserved

Case :- GOVERNMENT APPEAL No. - 780 of 2021

Appellant :- State of U.P.

Respondent :- Mukhtar Ansari

Counsel for Appellant :- G.A.

Counsel for Respondent :- Abhishek Misra,Karunesh Singh,Satendra Kumar (Singh)

Hon'ble Dinesh Kumar Singh,J.

1. Present appeal has been filed under Section 378 Cr.P.C. with an application for leave to appeal against the judgment and order dated 23.12.2020 passed by Special Judge, M.P./M.L.A., Additional Sessions Judge, Court No.19, Lucknow in Criminal Case No. 1818 of 2012: CNR No. U.P.L.K.O.10052862012 arising out of Case Crime No.131 of 2003 under Sections 353, 504, 506 IPC, Police Station Alambagh, Lucknow.

2. Learned Trial Court has acquitted respondent, Mukhtar Ansari of all charges.

3. This Court vide order dated 27.04.2021 had granted leave to appeal and admitted the appeal.

4. Prosecution case in brief is that the complainant, S.K. Awasthi was posted as Jailer in District Jail, Lucknow in the year 2003. On 23.04.2003 at around 10:30 A.M., when he was sitting in his office inside the jail, Gatekeeper, Prem Chandra Maurya told him that some persons had come to meet prisoner, Mukhtar Ansari, the respondent. Mukhtar Ansari, who was also an M.L.A., came to the office of the Jailer. The complainant ordered for his frisking, on which Mukhtar Ansari got highly annoyed. He said, "You Jailer think yourself very high. You create hurdles in coming persons to meet me." Mr. S.K. Awasthi told the respondent that these persons cannot not come inside without being frisked. Mukhtar Ansari said, "You come out of Jail today, I would get you killed." Prisoner, Mukhtar Ansari abused him and took revolver from one of the persons, who had come to meet him and pointed it towards the complainant. It was said that some people caught hold of Mukhtar Ansari and some caught hold of the complainant,

otherwise any untoward incident could have taken place. Prisoner, Mukhtar Ansari sent his men, who came to meet him, out of prison and said to the complainant, "Now your days are over and nobody can save you now."

5. At the time of incident, Deputy Jailer, Mr. Sarvesh Vikram Singh, Deputy Jailer, Shailendra Pratap Singh, Gate Keeper, Prem Chandra Maurya, I.W. Rudra Bihari Srivastava, I.W. Radheyshyam Yadav, I.W. Ram Swaroop Pal were present.

6. Mr. S.K. Awasthi, the complainant, gave a complaint to this effect on 28.04.2003 at Police Station Alambagh, Lucknow on which the FIR at Case Crime No.131 of 2003 under Sections 353, 504, 506 IPC came to be registered on the same day against respondent-Mukhtar Ansari. The investigation of the case was entrusted to Sub Inspector, Mr. Ganesh Singh and Smt. Indu Srivastava.

7. After completing the investigation, charge-sheet against the accused-respondent was filed under Sections 353, 506, 504 IPC, 2/3 U.P. Gangsters and Anti Social Activities (Prevention) Act (for short 'the Gangsters Act') on 08.06.2003. Thereafter, on 05.02.2005 a supplementary charge-sheet No.137 of 2003 under Sections 353, 506, 504 IPC was submitted in the Court. Learned Magistrate took cognizance on Charge-sheet No.137 of 2003 arising out of Case Crime No.131 of 2003 under Sections 353, 506, 504 IPC.

8. Charges were framed for offences under Sections 353, 504, 506 IPC on 28.06.2003. The accused-respondent denied the charge and claimed for trial.

9. Prosecution to prove its case, proved documentary evidence i.e. complaint (Exh.Ka-1), Chik FIR (Exh.Ka-2), GD Entry (Exh.Ka-3), Site Map (Exh.Ka-4), Charge-sheets (Exh.Ka-5 and Exh.Ka-6).

10. Prosecution also examined following witnesses to prove its case:-

(a) Gate Keeper, Prem Chanda Maurya as P.W.-1;

(b) Jailer, S.K. Awasthi, the complainant, as P.W.-2;

(c) Jail Warden, Shailendra Pratap Singh as P.W.-3;

(d) I.W. Ram Swaroop Pal as P.W.-4;

(e) I.W. Rudra Bihari Srivastava as P.W.-5;

(f) Inspector, Smt. Indu Srivastava as P.W.6

(g) Inspector Ganesh Singh as P.W.-7.

11. P.W.-1, Prem Chandra Maurya in his evidence has deposed that he had been posted as Jail Warden in Lucknow District Jail since 06.07.2002. On 27.04.2003, he was deputed as Gate Keeper on the main gate of Lucknow District Jail. Between 10:30 A.M. and 11:00 A.M. some persons came to meet prisoner, Mukhtar Ansari. The witness asked Jailer, Mr.S.K. Awasthi present in his office to allow these persons. The jailer denied permission to these persons to come inside to meet Mukhtar Ansari. Persons, who came to meet prisoner, Mukhtar Ansari returned. Thereafter, he started doing his desk work. He did not know that what happened between the Jailer, S.K. Awasthi and Mukhtar Ansari in Jailer's office. He further said that distance between the Jailer's office and main gate of the Jail would be around 40-50 ft and duty of gate keeper is quite onerous and busy. He said that he could not say that how the Jailer in his report had written that some persons came inside the jail from outside, and when the Jailer asked to frisk these persons, prisoner, Mukhtar Ansari got highly annoyed. He said that he did not see what incident took place between Jailer, S.K. Awasthi and Mukhtar Ansari. In his report, Jailer had shown him as an eye witness, but he could not say why he did so. The Investigating Officer did not take his statement. He further said that he did not know how the Investigating Officer had written that this witness out of fear opened the main gate and some persons came inside, and the alleged incident took place. This witness was not cross examined by the defence.

12. P.W.-2, Mr.S.K. Awasthi, the complainant supported the FIR version and said that the incident was of April, 2003. It took place during day time. He was posted as Jailer in District Jail, Lucknow. The accused-respondent was a prisoner in the jail. Some persons had come from outside to meet the accused-respondent, and dispute took place in respect of frisking these persons. The incident took place inside the jail. Prisoner, Mukhtar Ansari took out revolver from one of the persons who had come to meet him. He further said that along with him entire staff and two Deputy Jailers, Sarvendra Vikram Singh and Shailendra Pratap Singh were present. The gate keeper under pressure and fear of the accused-respondent allowed these persons who had come to meet

prisoner, Mukhtar Ansari inside the jail. Prisoner, Mukhtar Ansari had extended threats to him. He lodged the FIR at the police station regarding this incident. He proved the complaint given at the police station which was marked as Exh. Ka-1. After examination-in-chief got concluded, no cross examination of the witness was conducted on behalf of the accused-respondent and the trial Court closed the examination of the said witness vide order of date i.e. 12.12.2003 when his examination-in-chief was recorded.

13. Mr.Shailendra Pratap Singh, who was posted as Deputy Jailer, was examined as P.W.-3. He said that on 27.04.2003, he was present in his office. Someone told him that some hot talk was taking place between prisoner, Mukhtar Ansari and Jailer, Mr. S.K. Awasthi. On this, he went to the office of Jailer and found Mukhtar Ansari coming out of the office of the Jailer. Mr. S.K. Awasthi was sitting in his office. Mr. S.K. Awasthi told him that some hot talk had taken place between him and prisoner, Mukhtar Ansari in respect of some persons coming to meet him. No cross examination of this witness was conducted on behalf of the defence.

14. Mr. Ram Swaroop Pal was examined as P.W.-4. He on oath said that he was posted as Warden in District Jail, Lucknow on 27.04.2003 and Mr. S.K. Awasthi was the Jailer. On the date of incident at 10:30, he was in lock up office. Office of Mr. S.K. Awasthi was not visible from his office. Distance between two offices was more than 500 meters. On 27.04.2003 at around 10:00 A.M., no disturbance/deterrence was created in discharge of the official function of the Jailer, Mr. S.K. Awasthi. Mukhtar Ansari did not abuse Jailer and humiliate him nor he gave threat to the Jailer for his killing. This witness was declared hostile, and was cross examined by the prosecution. During the cross examination, he said that on the alleged date of incident his duty was in the Lock-up complex from 5:30 AM to 8:00 PM. He did not have any information in respect of the incident, subject matter of the case. After finishing his duty, he went to his residence. The investigating officer did not make enquiry from him. The witness was confronted with his statement recorded under Section 161 Cr.P.C. He said that he did not give any such

statement. He denied the suggestion that he was giving false statement under pressure and fear of the accused.

15. P.W.5, Mr. Rudra Bihari Srivastava (retired), aged around 66 years, in his statement said that he was posted as Chief Warden on 27.04.2003, and Mr. S.K. Awasthi was the Jailer of the District Jail, Lucknow. His duty on the said date at 10:30 A.M. was on the second gate, and the distance of the Jailer's office from his duty place would be around 250 meters. Office of the Jailer was not visible from his office as the window remained closed. He said that at around 10:30 AM on 27.04.2003, prisoner, Mukhtar Ansari did not create any disturbances/deterrence in the official duty/ function of the Jailer nor he abused the Jailer to humiliate him nor he gave any threat of killing him. No incident took place in front of him. This witness was also declared hostile and was cross examined by the prosecution.

16. In his cross-examination, he said that his duty on the date of incident was from 8 AM to 8 PM, and while he was on duty he did not get the information regarding the alleged incident. After duty got over, he went to his residence. The investigating officer did not make any enquiry from him nor recorded any statement of him. The witness was confronted with his statement recorded Section 161 Cr.P.C. then he said he was not aware that how the investigating officer had written his statement. He denied the suggestion that he was giving evidence under pressure mounted by the accused, Mukhtar Ansari out of fear.

17. P.W.-6, Smt. Indu Srivastava said that in the year 2003, she was posted as S.S.I. at Police Station Alambagh. Investigation of the offence registered at Case Crime No.137 of 2003 under Sections 353, 504, 506 IPC, 2/3 Gangsters Act was entrusted to her after the previous investigating officer, Shri Ganesh Singh was transferred from the police station. Earlier, the Investigating Officer had completed the investigation up to Parcha No.5. She had requested the district authorities for approval of the gang chart against the accused-respondent, however, the District Magistrate did not approve the gang chart. Earlier, the investigating officer had completed the investigation in respect of the Gangsters Act up to Parcha No.5. Report for deleting the provisions of the Gangsters Act was sent to Superintendent of Police (East), Lucknow on

11.01.2004. Supplementary charge sheet and Parcha No.6 were completed by her. She made efforts to get the earlier charge-sheet cancelled on 15.05.2004. She completed Parcha No.7 and again efforts were made to get earlier charge-sheet cancelled.

18. On 10.06.2004, an additional Parcha No.8 was completed by P.W.-6, and on the said date, she went to District Jail and a request was made from the District Jailer's office to give the list of persons, who had come to visit the jail on 27.04.2003. On this request, information was given that no application or name was mentioned of the person(s) who came to meet Mukhtar Ansari on the said date. On 20.07.2004, she submitted Parcha No.9 and went to District Jail and met Deputy Jailer S.P. Singh and Jailer R.C. Gupta, and their statements were recorded. She tried to collect information regarding the incident, however, no one was ready to give any statement against the accused. On 10.06.2004 she completed supplementary Parcha Nos. 10 and 11 and made efforts to get the previous charge-sheet cancelled. However, she did not receive any order during her investigation from the witnesses. Thereafter, she was transferred. She also said that that Constable Moharir who was posted during her tenure, she had seen him reading and writing. She recognized his writing. She said that the chik FIR and carbon copy were prepared by Head Moharrir.

19. In her cross examination, P.W.-6 said that she was entrusted with the investigation on 11.01.2004 and the investigation was complete on 29.09.2004. She also said that she had made an entry in the G.D. regarding her going to jail. She denied the suggestion that she had completed the charge-sheet sitting in the police station. She also denied the suggestion that she was giving evidence under pressure of the higher authorities.

20. It would be relevant to take note of the fact that examination-in-chief of Jailer, S.K. Awasthi, aged around 61, was recorded on 12.12.2003, and he was not cross examined by the accused and right to defence to cross examine him was closed on the said date. Vide an order dated 30.01.2014 on an application moved on behalf of the accused under Section 311 Cr.P.C., the said witness recalled and cross examined on 25.02.2014. In his cross examination, he said that he was posted in

Lucknow District Jail in 2002-03. Complete information including entry of any visitor inside the jail was made in the jail book. He denied the suggestion that it was not necessary to mention name of the visitor who would meet which prisoner, and only number of persons coming to meet the prisoner was mentioned. He clarified that the visitor would give an application in which he would write name of the prisoner whom he would like to meet. However, it was not necessary to get the signature of the visitor made on gate register. He also accepted the suggestion that as per the Jail Manual, only three persons can be allowed to meet a prisoner in a day, and only twice a prisoner can meet the visitors in a week. Any visitor coming to meet a prisoner is frisked and thereafter he comes inside. Frisking is done outside the gate as well as inside the gate. When incident took place he was in the office, the accused-respondent came in the office and he protested. The witness said, "I had stopped visitors coming to meet him, he became angry and went out of the office." Thereafter, the witness remained sitting in the office. He further said that the fact of showing weapon and threats of killing him were heard by him but he did not see from his own eyes. These facts were told to him by staff and, thereafter, he got the FIR registered. FIR was registered as per his own wisdom. Whatever information regarding the incident was recorded by him, he informed his higher officials and then lodged the FIR.

21. He further deposed that it was prohibited to take mobile and firearm inside the jail. No person could have a firearm inside the jail as only after frisking, prisoners were sent inside the jail. Routine checking would also take place inside the jail. He also said that FIR was registered after consultation with the higher officials. He denied the suggestion that under pressure of the Government, he lodged the false FIR. He accepted the suggestion that he did not see weapon in the hands of Mukhtar Ansari and he did not extend treats to anyone before him, and he also did not abuse the witness on the said date. Mukhtar Ansari did not create deterrence/disturbance in performing the official duties by him.

22. P.W.-7, Inspector Ganesh Singh, deposed that on 28.04.2003 he was posted as S.S.I. in Alambagh Police Station. He conducted the

investigation of the Case Crime No.131 of 2003 under Sections 353, 504, 506 IPC. He received the copy of the FIR to conduct the investigation. On the said date, he recorded statement of the complainant, Mr. S.K. Awasthi. He inspected the place of incident, prepared site plan, which was marked as Exh-Ka-4. He recorded the statement of Chief Warden, Rudra Bihari Srivastava and Radhey Shyam, eye witnesses. He also recorded the statement of Deputy Jailer, Shailendra Pratap Singh and after having sufficient evidence against the accused-Mukhtar Ansari, he prepared charge-sheet under Section 353, 504, 506 IPC, 2/3 of the Gangsters Act. He submitted charge-sheet No.134 of 2003 in the Court, which was in his writing and signature. This was marked as Exh Ka-5. He prepared supplementary Parcha No.SCD-5 and from supplementary SCD-6 to 13 were completed by Smt. Indu Srivastava. Supplementary charge-sheet was submitted under Section 353, 504, 506 IPC in the Court, which was marked as Exh-Ka-6.

23. In his cross examination, he said that he carried out the investigation outside the jail and inside the jail. He denied suggestion that he completed the investigation sitting in the police station. He also said that he denied the suggestion that provisions of the Gangsters Act were added under the pressure of higher authorities. District Magistrate did not sanction the Gang chart. He denied the suggestion that the case diary was not sent to the circle officer. He denied the suggestion that he carried out the investigation under the pressure of higher authorities. He also denied the suggestion that he used to receive call from a Minister for filing of charge-sheet, and he also denied the suggestion that he prepared the charge-sheet under the political pressure. He also denied the suggestion that he was coming to give evidence after 17 years under the pressure of higher officials.

24. In his statement recorded under Section 313 Cr.P.C. the accused-respondent denied the incident and said that no hot talk between him and Jailer took place on the date of incident and for this reason, Gatekeeper, Prem Chandra Maurya did not hear anything. He further said that the complainant, S.K. Awasthi had given false evidence regarding the fact that when the incident took place, his entire staff including two Deputy Jailers, Sarvendra Vikram Singh and Shailendra Pratap Singh were

present. He denied that the Warden allowed the visitors inside the Jail under his fear and terror. In respect of statement of P.W.-3, Shailendra Pratap Singh that while he was sitting in the office some hot talk had taken place between S.K. Awasthi and Mukhtar Ansari, and when he went to the office of the Jailer he found accused going out of the office and S.K. Awasthi was sitting in his office, he denied the incident. He also denied the statement regarding the version given by other witnesses and said that the investigation was conducted under political pressure to falsely implicate him. He said that he had been M.L.A. for 5 terms from different political parties. He defeated the candidates of different political parties. He was quite popular in the constituency and he was falsely implicated in the case.

25. Learned Trial Court after considering the evidence and submissions on behalf of the prosecution and the defence vide impugned judgment and order held that from the evidence, offences under Sections 504, 506 did not get proved against the accused-respondent nor the offence under Section 353 IPC was made out and, therefore, learned Trial Court acquitted the accused.

26. Mr. U.C. Verma, learned Additional Government Advocate appearing for the State-appellant assisted by Mr.Rao Narendra Singh, learned A.G.A. has submitted that place of incident, presence of the complainant and witnesses are not in dispute. Alleged incident had taken place inside the jail. The accused-respondent is biggest bahubali of the State, facing several dozens of cases of heinous offences. Accused-respondent's name strikes fear and terror in the hearts and minds of general public, and even in the Government officials. Mr.R.K. Tiwari earlier Jailer was killed in a cold blooded manner in a broad day light near Governor House, Lucknow allegedly on behest of the accused-respondent and other accused as he was enforcing the rules and regulation of jail which was causing hindrance in carrying out illegal and criminal activities of the accused-respondent from Jail in organized manner. These accused, however, could secure acquittal as witnesses turned hostile which is a pattern in all cases where the accused-respondent had secured acquittal.

27. This Court recently while rejecting Criminal Misc. Bail Application No.46494 of 2021 of the accused-respondent in a case registered as Case Crime No.185 of 2021 under Sections 419, 420, 467, 468, 471, 120B IPC, Police Station Sarai Lakhansi, District Mau vide order dated 30.06.2020 while rejecting the bail of the accused-respondent, has held as under:-

> *"**4.** The applicant deserves no introduction in the State of U.P. on account of his alleged "Robin Hood' image in Hindi speaking States of India. He is the harden and habitual offender, who is in sphere of crime since 1986 but surprisingly, he has managed not a single conviction against him. It is indeed astounding and more amusing angle of the issue, that a person having more than 50+ criminal cases to his credit of various varieties, has managed his affairs in such a way that he has not received a single conviction order against him. Infact it is slur and challenge to the judicial system that such a dreaded and "White Collored' criminal in the field of crime undefeated and unabetted."*

28. This Court has noted the long criminal history of the accused-respondent in the aforesaid judgment which is reproduced as under:-

> ***"Cases registered at Gazipur***
>
> *Case Crime No. Under Sections Police Station/District*
>
> *1. 493/05 302, 506, 120B IPC Mohammdabad*
>
> *2. 589/05 302, 504, 506, 120B IPC Bhanwar Col*
>
> *3. 169/86 302 IPC Mohammadabad*
>
> *4. 266/90 467, 468, 420, 120B IPC*
>
> *5. 172/91 147, 323, 504, 506 IPC Mohammadabad*
>
> *6. 237/96 136(2), 130, 135, 136(1) Public Property Act & 384, 506 IPC Mohammadabad*
>
> *7. 1182/09 307, 506, 120B IPC Mohammadabad*
>
> *8. 1051/07 3(1) U.P.Gangster Act Mohammadabad*
>
> *9. 482/10 3(1) U.P.Gangster Act Karanda*
>
> *10. 361/09 302, 120 IPC & 7 C.L.Act Karanda*
>
> *11. NCR No. 219/78 506 IPC Saidpur*
>
> *12. NCR No. 19/97 506 IPC Saidpur*
>
> *13. 106/88 302 IPC Kotwali*
>
> *14. 682/90 143, 506 IPC Kotwali*
>
> *15. 399/90 147, 148, 149, 307 IPC Kotwali*

16. 44/91 302, 506 IPC Kotwali

17. 165/96 147, 148, 149, 307, 332, 353, 506, 504 IPC & 7C.L Act Kotwali

18. 834/95 353, 504, 506 IPC Kotwali

19. 284/96 3(2) NSA Act Kotwali

20. 33/99 3(2) NSA Act Kotwali

21. 192/96 3(1) U.P.Ganster Act Kotwali

22. 121/21 21/25 Arms Act Mohammadabad

Cases registered at District Varanasi

1. 58/98 3 NSA Act Bhelupur

2. 17/99 506 IPC Bhelupur

3. 285/17 302 IPC Bhelupur

4. 19/97 364A, 365 IPC Bhelupur

5. 229/91 147, 148, 149, 302 IPC Chetganj

6. 410/88 147, 148, 149, 302, 307 IPC Cantt.

Cases registered at District Lucknow

1. 209/02 3/7/25 Arms Act Hazratganj

2. 106/99 307, 302, 120B IPC Hazratganj

3. 91-A/04 147, 148, 149, 307, 427 IPC Cantt.

4. 428/99 2/3 Gangster Act Hazratganj

5. 126/99 506 IPC Krishna Nagar

6. 66/2000 147, 336, 353, 506 IPC Alambagh

7. 236/20 468, 471, 120B IPC & Section 3 of Damages of Public Property Act Hazratganj

Case registered at District Chandauli

1. 294/91 302, 307 IPC Mughalsarai/Chandauli

Case registered at District Shonbhadra

1. 121/97 364A Anpara

Cases registered at District Mau

1. 808/04 147, 148, 149, 393, 307, 504, 506, 342 IPC Kotwali

2. 1580/05 147, 148, 149,302, 435, 436, 427, 153A IPC Kotwali

3. 1866/09 147, 148, 149,302, 307, 120B, 404, 325/34 IPC & 7 CLAct Kotwali

4. 399/10 302, 307, 120B, 34 IPC & 7 CL Act & 25/27 Arms Act Dakshin Tola

5. 891/10 3(1) Gangster Act Dakshin Tola

6. 185/21 419, 420, 467, 468, 471, 120B IPC Sarai Lakhansi

7. 55/21 3(1) of U.P.Gangster Act Dakshin Tola

8. 4/20 30 Arms Act and Sections 419, 420, 467, 468, 471, 120 B IPC Dakshin Tola

Cases registered at New Delhi

1. 456/93 364A, 365, 387 IPC Tilak Marg

2. 508/93 24/54/59 Arms Act & S. Tada K.G. Marg

Case registered in State of Punjab

1. 5/19 386/506 IPC Mathaur, Mohali

Cases registered at District Azamgarh

1. 20/14 147, 148, 149, 302, 307, 506, 120B IPC & Tarwa 7 Crl. Law Amendment Act

2. 160/20 3(1) U.P.Gangster Act Tarwa

Cases registered at District Barabanki

1. 369/21 419, 420, 467, 468, 471, 120B, 506, 177 IPC & 7 Crl. Law Amendment Act Kotwali."

29. This Court also commented about the criminals like the accused-respondent being elected by the public as their representative for six consecutive terms in following words:-

*"**26.** The above mentioned is a rich criminal horoscope of the applicant on which the applicant can boast and claim himself to be a popular public figure, who was elected as MLA for the six consecutive time. As mentioned above, this is a most unfortunate and ugly face of our democracy where a person on one hand facing almost two dozen Sessions Trials and on the other hand the public is electing him as their representative for six consecutive times. It is really uphill task to adjudicate, as to whether he is really a popular public figure? Or his nuisance value, which are giving dividends to him?"*

30. Mr. U.C. Verma has submitted that the incident is dated 27.04.2003. The accused-respondent did not allow trial to proceed until he was sure of turning the witnesses hostile. Most of the witnesses got retired when they turned up for examination in the Court. He has submitted that trial court start only in July, 2013.

31. Mr. U.C. Verma has further submitted that the accused-respondent used to enjoy high status and privileges inside the jail and, therefore, would carry out his organized criminal activities from the jail including killing of the people for exhortation, political opponents and officials,

who he thought were coming in his way of his crime world or they could challenge him politically or otherwise. He used to treat jail as his seat of power where his people could come and meet him freely at any time even carrying arms without any hindrance or obstacle by jail officials. Mr. S.K. Awasthi, the complainant, P.W.-2 tried to regulate visitors according to Jail Book and Jail Manual, and this could not be tolerated by the accused-respondent. He has further submitted that there was no enmity between the complainant and accused-respondent Mukhtar Ansari for his false implication. He has further submitted that P.W.-2, who was the complainant, his examination was completed on 12.12.2003, the accused did not cross examine on that day and the right of cross examination was closed. The witnesses got retired soon thereafter and after his retirement when he was won over for fear and terror of the accused-respondent, an application came to be filed under Section 311 Cr.P.C. to recall the said witness, and vide order dated 30.01.2014, the witness was recalled. He has submitted that the said witness in his examination-in-chief has fully supported the prosecution case in all respects and evidence given in cross-examination after he was won over, was because of fear and terror as after retirement there would be concern for his security and security of his family. Even P.W.-3 has supported the prosecution case and deposed that the dispute took place between the accused-respondent and the complainant in respect of visitors coming to meet the accused-respondent-Mukhtar Ansari and hot talk between the accused-respondent and the complainant. He saw the complainant coming out of the office of the complainant.

32. P.W.-6, second Investigating Officer, Smt. Indu Srivastava who completed the investigation had said that her staff was not willing to give evidence against the accused-respondent. P.W.-7, who conducted the final investigation, has also supported the prosecution case. She further said that there was no application and record of visitors who had come to meet the accused-respondent. This would mean that the accused-respondent wanted to the visitors to meet him without any formality. Mr.U.C. Verma, learned A.G.A. for the appellant-State has, therefore, submitted that the offence under Sections 353, 504, 506 IPC are proved on the basis of evidence of prosecution, and the trial Court

erred in acquitting the accused-respondent. He has further submitted that even if there is contradiction in the evidence of P.W.-2 given in examination-in-chief and cross examination, it is for the Court to separate wheat from the chaff and find out of the truth. Statement in examination-in-chief has equal value as of cross examination. Even from the evidence of P.W.-3, and P.W.-6 charges against the accused-respondent for offence under Sections 504, 506, 353 IPC are clearly proved and the appeal is liable to be allowed.

33. On the other hand, Mr. Jyotindra Mishra, learned Senior Advocate assisted by Mr. Satendra Kumar (Singh), Advocate appearing for the accused-respondent has submitted that evidence of none of the witnesses is cogent and credible. P.W.-1, P.W.-4, P.W.-5 did not support the prosecution case either in their examination-in-chief or cross examination. P.W.-2 supported the prosecution case in his examination-in-chief he did not support the prosecution case in his cross examination. Evidence of P.W.-6 and P.W.-7 independently are not enough to prove the prosecution case as they are the formal witnesses, who conducted the investigation. He, therefore, has submitted that the Trial Court after considering the evidence brought by the prosecution did not find the prosecution case proved against the accused-respondent. From the evidence available on record, it cannot be said that the prosecution was able to prove case against the accused-respondent beyond reasonable doubt, and there is no error in the impugned judgment and order passed by learned Trial Court. He has, therefore, submitted that the appeal is without any merit and substance and is liable to be dismissed.

34. Mr. Jyotindra Mishra, learned Senior Advocate has further submitted that in case of appeal against acquittal, the appellate court is required to consider whether the view taken by the Trial Court is possible one or not. If the view of the Trial Court is possible one, then acquittal should not be set aside by merely substituting its reason. He in support of the aforesaid submission has placed reliance on the judgment of in the case of **Dhanapal vs State by Public Prosecutor, Madras: (2009) 10 SCC 401** wherein the Supreme Court has culled out the principal for dealing the judgment of acquittal of trial Court by appellate Court in para 39 which reads as under:-

*"**39.** The following principles emerge from the cases above:*

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

35. Mr.Jyotindra Mishra, learned Senior Advocate has further submitted that in appeal against acquittal under Section 378/386 Cr.P.C. the appellate Court should not likely to interfere with the judgment of acquittal, even if the appellate Court believes that there is some evidence pointing finger towards the accused. In support of the said submission, he has placed reliance on the judgments in the cases of **State of Rajasthan vs Naresh @ Ram Naresh: (2009) 9 SCC 368** and **State of Uttar Pradesh vs Banne @ Baijnath & Ors: (2009) 4 SCC 271.**

36. Mr.Jyotindra Mishra, learned Senior Advocate has further submitted that in criminal jurisprudence there is presumption of innocence until the guilt is proved beyond reasonable doubt. If an accused is acquitted in the trial, presumption of innocence gets re-enforced, and the appellate court in exercise of appellate jurisdiction under Section 378/386 Cr.P.C. should reverse an acquittal only when it has "very substantial and compelling reasons." For the aforesaid submission, learned Senior Advocate has placed reliance on the judgment of the Supreme Court in the case of **Ghurey Lal vs State of Uttar Pradesh : (2008) 10 SCC 450.**

37. It has also been submitted that if the view taken by the Trial Court is not perverse or impossible view, the High Court should not interfere with the order of acquittal. Para 17 of the judgment in the case of **Samghaji Hariba Patil vs State of Karnataka (2006) 10 SCC 494** has been placed on service by the learned Senior Advocate which reads as under:-

> *"**17.** We have noticed hereinbefore that the High Court has taken a contrary view. Had the High Court been the first court, probably its view could have been upheld, but it was dealing with a judgment of acquittal. We have taken notice of the depositions of the main prosecution witnesses only to show that the view of the learned trial Judge cannot be said to be perverse or the same was not possible to be taken. While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible. The appellant had no axe to grind. The prosecution had not proved that he had any motive. He was only said to be the friend of Accused 1. If the accused had gone there with six others to assault the deceased and his family members, it is unlikely that the appellant would take with him for the said purpose, a hammer to an agricultural field. The hammer is not ordinarily used for agricultural operations. Even if we assume that Accused 1 had been nurturing any grudge against the deceased, it is unlikely that the appellant would be involved therein."*

38. I have considered the facts, circumstances, evidence and submissions of the learned counsels for the appellant-State and accused-respondent.

39. Section 353 IPC defines assault or criminal force to deter public servant from discharge of his duties as under:-

> *"**353.** Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

If an accused uses criminal force against a public servant with an intention to prevent him or deter that public servant from discharging his duty as public servant then, he would commit offence under Section 353 IPC, he may be punished for said offence up to 2 years or with fine or with both."

40. Criminal intimidation is defined under Section 503 IPC which reads as under:-

*"**503. Criminal intimidation.**—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation."*

41. Punishment for criminal intimidation is provided under Section 506 IPC which reads as under:-

*"**506. Punishment for criminal intimidation**.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

By State amendment in Uttar Pradesh, it is provided that punishment for offence under Section 506 IPC is imprisonment of 7 years or fine, or both. Offence is cognizable and non bailable.

42. Intentional insult with intent to provoke breach of the peace is defined under Section 504 IPC which reads as under:-

504. Intentional insult with intent to provoke breach of the peace. —Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

43. Facts of the case regarding place of incident, presence of the accused at the place of incident, presence of the complainant and the witnesses of fact are not in dispute. Date and time of the incident are not in dispute. The accused-respondent has reputation of most dreaded criminal and mafia don who had more than 60 cases of heinous offences to his credit as mentioned earlier. No one can dispute his credibility of striking terror and fear in minds and heart of the people including the Government officials. Mr. U.C. Verma, learned Additional Government Advocate has submitted that the accused-respondent used to have free run even inside the jail and he had been carrying on his criminal activities in an organized manner from the jail. During his incarceration in the jail, he had committed several heinous offences including elimination of his political rivals, kidnapping/abduction, usurping private and public properties, amassing wealth and properties from proceeds of crime. Even inside the jail, his people would come to meet him without any hindrance created by any jail staff. The warden opened the gate and allowed the people who had come to meet the accused-respondent out of fear and terror of the accused without due permission. He has submitted that in most of the cases the witnesses had turned hostile, and he secured acquittal. This fact cannot be disputed for which this Court has taken judicial notice as mentioned earlier.

44. Jailer, Mr. S.K. Awasthi, the complainant, P.W.-2 did not have any enmity with the accused-respondent, Mukhtar Ansari but it appears that he was trying to enforce rules inside the jail and, therefore, ordered that no visitor should be allowed to meet the prisoners unless permission is granted. P.W.-2, in his examination-in-chief, had said that the accused-respondent got highly enraged by the very fact that the Jailer was not allowing visitors who had come to meet the accused-respondent inside

the jail without permission. He took out a revolver from one of the visitors who have been allowed inside the jail by Jail Warden. He also extended verbal threats of killing the Jail Warden. Interestingly, the said witness was not cross examined on 12.12.2003 when his examination-in-chief took place. I find substance in the submission of Mr. U.C. Verma, learned A.G.A. that after he was won over, an application came to be filed to recall the said witness which was allowed by the learned Trial Court vide order dated 30.01.2014, and then witness to some extent did not support the prosecution case in his cross examination.

45. The evidence given in the examination-in-chief does not get completely obliterated, if the witnesses in his cross examination turns hostile or does not support his evidence given in examination-in-chief. Evidence of witness who has supported the prosecution case in examination-in-chief does not get effaced or washed off the record altogether. In such a situation, it is the duty of the Court to examine the evidence carefully and find that part of evidence which can be accepted and be acted upon.

46. The Supreme Court in the case of **Dayaram and another vs State of Madhya Pradesh: (2020) 13 SCC 382** while dealing with hostile witnesses in paras 10.4 to 10.7 has held as under:-

> *"**10.4** .....From their examination-in-chief it is evident that the deceased was conscious and, in a state to lodge the FIR. In their cross-examination, these witnesses denied having any knowledge about the persons who attacked the deceased. They were declared hostile during their cross-examination. The testimony, prior to cross-examination can be relied upon.*
>
> ***10.5.** Reliance is placed on the decisions of this Court in Bhagwan Singh v. State of Haryana [Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389 : 1976 SCC (Cri) 7] , Rabindra Kumar Dey v. State of Orissa [Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233 : 1976 SCC (Cri) 566] and Syad Akbar v. State of Karnataka [Syad Akbar v. State of Karnataka, (1980) 1 SCC 30 : 1980 SCC (Cri) 59] , wherein it has been held that the evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution witnesses turned hostile. The evidence of such witnesses cannot be treated as effaced or washed off the record*

altogether but the same can be accepted to the extent that their version is found to be dependable on careful scrutiny.

10.6. *This Court in Khujji v. State of M.P. [Khujji v. State of M.P., (1991) 3 SCC 627 : 1991 SCC (Cri) 916] , in para 6 of the judgment held that: (SCC p. 635)*

> *"6. … The evidence of PW 3 Kishan Lal and PW 4 Ramesh came to be rejected by the trial court because they were declared hostile to the prosecution by the learned Public Prosecutor as they refused to identify the appellant and his companions in the dock as the assailants of the deceased. But the counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and the part of the evidence which is otherwise acceptable can be acted upon."*

(emphasis supplied)

10.7. *This position in law was reiterated in Vinod Kumar v. State of Punjab [Vinod Kumar v. State of Punjab, (2015) 3 SCC 220 : (2015) 2 SCC (Cri) 226 : (2015) 1 SCC (L&S) 712] , wherein the Court held that: (SCC p. 237, para 31)*

> *"31. The next aspect which requires to be adverted to is whether testimony of a hostile witness that has come on record should be relied upon or not. Mr Jain, learned Senior Counsel for the appellant would contend that as PW 7 has totally resiled in his cross-examination, his evidence is to be discarded in toto. On a perusal of the testimony of the said witness, it is evincible that in examination-in-chief, he has supported the prosecution story in entirety and in the cross-examination, he has taken the path of prevarication. In Bhagwan Singh v. State of Haryana [Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389 : 1976 SCC (Cri) 7] , it has been laid down that even if a witness is characterised as a hostile witness, his evidence is not completely effaced. The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence."*

(emphasis supplied)

47. There is no legal bar for conviction upon the testimony of hostile witness, given in examination-in-chief, if it is corroborated by other reliable evidence.

48. The Supreme Court in the case of **Ramesh & Ors vs State of Haryana: (2017) 1 SCC 529** has held that evidence of a hostile witness cannot be totally rejected but requires its closest scrutiny and portion of evidence which is consistent with the case of the prosecution or defence may be accepted. The Supreme Court has noted the disturbing phenomenon almost a regular feature that in criminal cases witnesses turn hostile for various reasons. One of the reasons is status of the accused. Para 39 of the said judgment reads as under:-

> *"**39.** We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during investigation, the investigating officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the court and justifiably so. However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations."*

49. The Supreme Court has noted earlier judgments wherein such peculiar behavior of witnesses turning hostile, has been commented upon in paras 40 to 44. The Supreme Court culled out the reasons which can be discerned for retracting their statements before the Court and turning hostile. It would be apt to reproduced paras 40-44 of the judgment in Ramesh (supra):-

> *"**40.** In some of the judgments in past few years, this Court has commented upon such peculiar behaviour of witnesses turning hostile and we would like to quote from few such judgments. In Krishna Mochi v. State of Bihar [Krishna Mochi v. State of Bihar, (2002) 6 SCC 81 : 2002 SCC (Cri) 1220] , this Court observed as under : (SCC p. 104, para 31)*
>
> > *"31. It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to*

depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power."

41. *Likewise, in Zahira Habibullah Sheikh (5) v. State of Gujarat [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] , this Court highlighted the problem with the following observations : (SCC pp. 396-98, paras 40-41)*

"40. "Witnesses" as Bentham said:"are the eyes and ears of justice". Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface.… Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer.… There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth presented before the court and justice triumphs and that the trial is not reduced to a mockery. …

41. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in court the

witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation (sic repetition). We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short "the TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies."

42. *Likewise, in Sakshi v. Union of India [Sakshi v. Union of India, (2004) 5 SCC 518 : 2004 SCC (Cri) 1645] , the menace of witnesses turning hostile was again described in the following words : (SCC pp. 544-45, para 32) "32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of*

Section 327 CrPC should also apply in inquiry or trial of offences under Sections 354 and 377 IPC."

43. *In State v. Sanjeev Nanda [State v. Sanjeev Nanda, (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2012) 3 SCC (Civ) 899] , the Court felt constrained in reiterating the growing disturbing trend : (SCC pp. 486-87, paras 99-101)*

> *"99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.*
>
> *100. This Court in State of U.P. v. Ramesh Prasad Misra [State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360 : 1996 SCC (Cri) 1278] held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K. Anbazhagan v. Supt. of Police [K. Anbazhagan v. Supt. of Police, (2004) 3 SCC 767 : 2004 SCC (Cri) 882] , this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court [Sanjeev Nanda v. State, 2009 SCC OnLine Del 2039 : (2009) 160 DLT 775] and they found the accused guilty.*
>
> *101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Manu Sharma v. State (NCT of Delhi) [Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] and in Zahira Habibullah Sheikh (5) v. State of Gujarat [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness*

becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked."

44. *On the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the court and turning hostile:*

(i) Threat/Intimidation.

(ii) Inducement by various means.

(iii) Use of muscle and money power by the accused.

(iv) Use of stock witnesses.

(v) Protracted trials.

(vi) Hassles faced by the witnesses during investigation and trial.

(vii) Non-existence of any clear-cut legislation to check hostility of witness."

50. Had P.W.-1 been examined on the same day in all likelihood, he would have supported the prosecution case as he did in his examination-in-chief. The accused-respondent deliberately did not cross examine the said witness on the said date and after the said witness was won over, an application came to be filed under Section 311 Cr.P.C. to recall the said witness and said application was allowed vide order dated 30.01.2014 and in the cross-examination he deviated from the prosecution case to some extent.

51. Criminal case is built on edifice of evidence which is admissible in law. The Supreme Court noted in **Swaran Singh vs State of Punjab: (2000) 5 SCC 668** that criminal cases can be adjourned again and again till the witness get tired or gives up. Adjournments are taken till the witness is no more or is tired. This result in miscarriage of justice. The witness is not treated with respect in the Court. Para 36 of the aforesaid judgment reads as under:-

*"**36.** A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the court many times and at what cost to his own self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter is adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in court, he is subjected to unchecked and prolonged examination and cross-examination and finds himself in a hapless situation. For all these reasons and others a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all. High Courts have to be vigilant in these matters. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. If the criminal justice system is to be put on a proper pedestal, the system cannot be left in the hands of unscrupulous lawyers and the sluggish State machinery. Each trial should be properly monitored. Time has come that all the courts, district courts, subordinate courts are linked to the High Court with a computer and a proper check is made on the adjournments and recording of evidence. The Bar Council of India and the State Bar Councils must play their part and lend their support to put the criminal system back on its trail. Perjury has also become a way of life in the law courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the*

complaint. Perhaps law needs amendment to clause (b) of Section 340(3) of the Code of Criminal Procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the court should resort to the use of the provisions of law as contained in Chapter XXVI of the Code of Criminal Procedure."

52. The Supreme Court in para 7 of the **Radha Mohan Singh @ Lal Saheb vs State of U.P. : (2006) 2 SCC 450** has held as under:-

*"**7.** It is well settled that while hearing an appeal under Article 136 of the Constitution, this Court will normally not enter into reappraisal or review of evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. The Court may interfere where on proved facts wrong inference of law is shown to have been drawn. (See Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663] , Dalbir Kaur v. State of Punjab [(1976) 4 SCC 158 : 1976 SCC (Cri) 527] , Ramanbhai Naranbhai Patel v. State of Gujarat [(2000) 1 SCC 358 : 2000 SCC (Cri) 113] and Chandra Bihari Gautam v. State of Bihar [(2002) 9 SCC 208 : 2003 SCC (Cri) 1178 : JT (2002) 4 SC 62] .) Though the legal position is quite clear still we have gone through the evidence on record in order to examine whether the findings recorded against the appellants suffer from any infirmity. The testimony of PW 1 Ganesh Singh, who is an injured witness, and PW 4 Ramji Singh clearly establish the guilt of the accused. According to the case of the prosecution the incident took place shortly after sunset. The eyewitnesses have deposed that after the incident the deceased Hira Singh was carried on a cot to the "bandh", which is on the outskirts of the village. As no conveyance was available, the first informant had to wait for quite some time and thereafter a tempo was arranged on which the deceased was taken to the district hospital where he was medically examined by PW 2 Dr. Siddiqui at 9.00 p.m. It has come in evidence that the village is at a distance of six miles from Police Station Kotwali, Ballia. The non-availability of any conveyance is quite natural as it was Holi festival. Even PW 3 Mohan Yadav fully supported the prosecution case in his examination-in-chief. In his cross-examination, which was recorded on the same date, he gave details of the weapons being carried by each of the accused and also the specific role played by them in assaulting the deceased and other injured persons. As his cross-*

examination could not be completed it was resumed on the next day and then he gave a statement that he could not see the incident on account of darkness. His testimony has been carefully examined by the learned Sessions Judge and also by two learned Judges of the High Court (Hon'ble K.K. Mishra, J. and Hon'ble U.S. Tripathi, J.) and they have held that the witness, on account of pressure exerted upon him by the accused, tried to support them in his cross-examination on the next day. It has been further held that the statement of the witness, as recorded on the first day including his cross-examination, was truthful and reliable. It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof. (See Bhagwan Singh v. State of Haryana [(1976) 1 SCC 389 : 1976 SCC (Cri) 7 : AIR 1976 SC 202] , Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC 233 : 1976 SCC (Cri) 566 : AIR 1977 SC 170] , Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59 : AIR 1979 SC 1848] and Khujji v. State of M.P. [(1991) 3 SCC 627 : 1991 SCC (Cri) 916 : AIR 1991 SC 1853]) The evidence on record clearly shows that the FIR of the incident was promptly lodged and the testimony of PW 1 Ganesh Singh, PW 4 Ramji Singh and also PW 3 Mohan Yadav finds complete corroboration from the medical evidence on record. We find absolutely no reason to take a different view."

53. From the aforesaid discussion, it can be seen that law is very clear that appellant court lightly should not interfere with the judgment and order of acquittal unless the said judgment is perverse or the view taken by the learned Trial Court is impossible view. It is also well settled that testimony of hostile witness does not get effaced completely and washed off record but it is for the Court to closely scrutinize the testimony of such witness in the facts and circumstances of the cases and take into consideration while convicting or acquitting the accused that part of the testimony of such witness which supports the prosecution case and can be relied on for convicting the accused.

54. Witness P.W.-2, who was given threats of life by pointing a revolver by the accused-respondent, has fully supported the prosecution case in

all respects in his examination-in-chief. His testimony in his examination-in-chief is fully in tune with the prosecution case. The said witness did not have any enmity with the accused-respondent, and there was no reason to falsely implicate the accused-respondent for commission of the offence for which the accused-respondent was charged. There is no reason to disbelieve his testimony given in examination-in-chief. His testimony in his cross examination which takes place after he could have been won over does not appear to be credible. The submission of Mr. U.C. Verma, learned Additional Government Advocate, cannot be brushed aside that the application for his re-examination came to be filed after said witness was won over for threat or some other reasons. If the testimony of the such witness is read together with the testimony of P.W.-3, P.W.-6 and P.W.-7, charges against the accused-respondent for committing offences under Sections 504, 506, 353 IPC are proved beyond reasonable doubt.

55. Trial Court had completely ignored the evidence of P.W.-2 given in examination-in-chief and had only considered his cross examination. The approach of the trial Court is palpably erroneous and against the well settled legal position as discussed above. The impugned judgment and order passed by the learned Trial court is unsustainable.

56. Admittedly, the complainant was posted as Jailer in the District Jail, Lucknow on the date of incident. He was present in his office when the alleged incident took place. He was discharging public/official duty on the date, time and place of the incident. From the evidence brought on record, it is proved that the accused-respondent used criminal force by pointing pistol towards him with intent to prevent and deter the complainant from discharging his duty as a Jailer, therefore, offence under Section 353 IPC is clearly proved against the accused-respondent and he is convicted for committing the said offence.

57. From evidence on record, it is also proved that the accused-respondent abused the complainant and insulted him knowing fully well that it would undermine the authority of the Jailer and would cause breach of peace inside the jail and outside inasmuch as if a public servant can be humiliated and abused, then authority of public functionary would get diminished and people would not respect the

lawful authority. Therefore, the accused-respondent is found guilty for committing the offence under Section 504 IPC.

58. From evidence on record, it is proved that the accused-respondent on the date, time and place of incident took pistol/revolver from a visitor and pointed towards the complainant and threatened him for his life. He is found guilty for committing offence under Section 506 IPC. He intimidated the complainant who as a Jailer was performing public duty by abusing him and pointing revolver/pistol towards him and threatened to kill him. It would have invoked excitement inside the jail likely to create breach of peace, tumult and disorder inside the jail in discharge of public duties by the jail staff.

59. In view of the foregoing discussion, present appeal is ***allowed.*** Impugned order dated 23.12.2020 passed by Special Judge, M.P./M.L.A., Additional Sessions Judge, Court No.19, Lucknow is set aside. The accused-respondent is convicted for offences under Sections 353, 504, 506 IPC. He is sentenced for offence under Section 353 IPC to undergo rigorous imprisonment for 2 years with fine of Rs.10,000/-. For offence under Section 504 IPC, he is sentenced to undergo rigorous imprisonment for 2 years with fine of Rs.2,000/-. For offence under Section 506 IPC, the accused is sentenced to undergo rigorous imprisonment for 7 years with fine of Rs.25,000/-. All the sentences would run concurrently.

60. Let the learned Trial Court record be remitted back for preparing the custody warrant of the accused-respondent as per the law.

(Dinesh Kumar Singh, J.)

Order Date:- 21st September, 2022

prateek