Reserved

Court No. - 1

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 100 of 2023
Appellant :- Vikas Singh
Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 7 Others
Counsel for Appellant :- Sandeep Yadav,Naved Ali
Counsel for Respondent :- G.A.,Anuj Pandey,Ashish Kumar Shukla,Ashish Kumar Singh,Katyayan Mishra,Lalta Prasad Misra,Nagendra Mohan,Niteesh Kumar,Rajeev Narayan Pandey,Randheer Singh,Ripu Daman Shahi,Sarvesh Upadhyay,Sushil Kumar Singh

Hon'ble Attau Rahman Masoodi,J.
Hon'ble Ajai Kumar Srivastava-I,J.

[Per Attau Rahman Masoodi, J.]

(A) Prelude

1 Accused persons, namely, Rama Kant Yadav, Ravi Kant Yadav, Abhay Singh, Sandeep Singh @ Pappu Singh, Shambhunath Singh @ Dipu Singh, Girish Pandey @ Dippul Pandey and Vijay Kumar Gupta were subjected to trial in connection with Case Crime No. 555 of 2010 under Sections 147, 149, 504, 506, 307 I.P.C. and Section 27 Arms Act, registered at Police Station Maharajganj, District Faizabad/Ayodhya on 15.05.2010 at 21.35 hours.

2 After 12 years, one of the accused, Shambhunath Singh @ Dipu Singh filed Transfer Application (Criminal) No. 124 of 2022 in this Court for transferring the aforesaid case from the Court of Special Judge, M.P./M.L.A. Court/ Additional Sessions Judge, Faizabad to the Sessions Court of any district designated for M.P./M.L.A. cases. The trial likely to be concluded was stayed on the aforesaid transfer application so filed.

3 Thereafter, vide order dated 20.01.2023, a learned Single Judge of this Court while allowing the transfer application directed that the aforesaid Sessions Trial be transferred to the Court of Sessions Judge/Additional Sessions Judge, District Ambedkar Nagar designated for M.P./M.L.A. cases, who, in turn, shall conclude, in accordance with law, within a maximum period of six months from the date of its transfer to the concerning court in terms of the order passed on the Transfer Application.

4 Pursuant to the order dated 20.01.2023, aforesaid seven accused persons, namely, Shambhunath Singh @ Dipu Singh, Ramakant Yadav, Ravikant Yadav, Girish Pandey @ Dippul Pandey, Vijay Kumar Gupta, Abhay Singh and Sandeep Singh @ Pappu Singh, were tried by the Special Judge (MP/MLA)/Additional Sessions Judge (FTC), Ambedkar Nagar in Criminal Case No. 100 of 2023 : State of U.P. Vs. Shambhunath Singh @ Dipu Singh and 6 others, arising out of Case Crime No. 555 of 2010, under Sections 147, 149, 307, 504 and 506 of the Indian Penal Code, 1860 (in short, referred here-in-after as '**I.P.C.**') and 27 Arms Act, Police Station Maharajganj, District Faizabad (now Ayodhya).

5 Vide judgment and order dated 10.05.2023, the Special Judge (MP/ MLA)/Additional Sessions Judge (FTC), Ambedkar Nagar, acquitted all the seven accused persons (respondents herein) from the charges

leveled against them under Sections 147, 149, 307, 504 and 506 I.P.C. and Section 27 Arms Act.

6 Aggrieved by the aforesaid acquittal of all the accused persons, the complainant-Vikas Singh has preferred the instant Appeal.

7 During the course of hearing, learned counsel for the respondent No.3-Rama Kant Yadav moved an application for adducing some additional evidence on record which was dismissed vide order dated 20.08.2024 as under:-

> *"C. M. Application No. IA/10/24 [Application under Section 391 Cr.P.C.]*
>
> *During the course of hearing of the present appeal against acquittal, an application under Section 391 Cr.P.C. has been filed by one Rama Kant Yadav, who is one of the respondents acquitted in the trial.*
>
> *The application seeks to adduce some additional evidence, for which an opportunity was availed before the trial Court as well.*
>
> *We have gone through the original record of the case and find that the application filed by the respondent No.3 was restricted to its allowance in terms of the order dated 10.02.2023 passed by the learned trial Court. The Trial Court allowed the application to the extent of one witness as was prayed and the remaining part of the application made before the Trial Court, was voluntarily not pressed. The said order was acted upon by the Trial Court. Once something was given up before the Trial Court, the same cannot be re-agitated at this stage. There was no other grievance raised during the course of trial concluded in favour of the applicant/respondent No.3 and other accused persons after affording due opportunity to them.*
>
> *At this stage when the appeal is being heard on merit, we see no plausible reason for the applicant to agitate a grievance regarding adducing*

additional evidence for which there was ample opportunity during the course of trial and for which the prayer was voluntarily restricted. The attempt made on the part of the applicant-respondent No.3 serves no purpose which may be comprehended within the scope of Statute to secure the interest of justice, except a dilatory tactics. The order dated 10.02.2023 is reproduced as under:

"आज पत्रावली आदेशार्थ पेश हुई।

वि० सहायक जिला शासकीय अधिवक्ता (क्रि०) तथा वि० अधिवक्ता बचावपक्ष के तर्कों को सुना एवं पत्रावली का अवलोकन किया।

बचावपक्ष की ओर से सफाई साक्ष्य में साक्षियों के प्रस्तुतीकरण हेतु प्रा०पत्र प्रस्तुत किया गया है और यह प्रार्थना की गई है कि प्रार्थीगण को अपना बचावपक्ष प्रस्तुत करने के लिए उपरोक्त व्यक्तियों व दस्तावेजों को बतौर बचाव साक्षी व साक्ष्य तलब किया जाये। उक्त प्रा० पत्र के प्रथम पृष्ठ पर वि० अधिवक्ता बचावपक्ष द्वारा इस आशय का पृष्ठांकन किया गया है कि, "Not Pressed for rest, except the witness mentioned in the serial number 1 P.C. Rajesh Kumar Yadav." उक्त पृष्ठांकन कर वि० अधिवक्ता बचावपक्ष द्वारा कथन किया गया है कि वह सफाई साक्ष्य में सूची गवाहान में से एकमात्र गवाह पुलिस कां० राजेश कुमार यादव को सफाई साक्ष्य में प्रस्तुत करना चाहता है क्योंकि वह अभियुक्त रविकांत यादव के साथ बतौर सुरक्षा गॉर्ड तैनात किया गया था, जो बरवक्त कथित तिथि घटना के समय भी रविकान्त यादव के साथ बतौर सुरक्षा गार्ड तैनात थे, जो इस बात की पुष्टि करेंगे कि बरवक्त तिथि कथित घटना रविकान्त व उनके भाई रमाकान्त इस जनपद में ही नहीं थे। इस साक्षी के अलावा दस्तावेजी साक्ष्य प्रस्तुत करना कहा गया है।

वि० सहायक जिला शासकीय अधिवक्ता (क्रि०) द्वारा उक्त प्रा०पत्र का मौखिक विरोध किया गया है।

सफाई साक्ष्य में एकमात्र साक्षी पुलिस कां० राजेश कुमार यादव जो कि अभियुक्त रविकांत के साथ बतौर सुरक्षागार्ड तैनात होना कहा गया है, को उपस्थित करने हेतु पर्याप्त कारण दर्शित किया गया है। अन्य प्रस्तावित साक्षीगण के सम्बंध में बल नहीं दिया गया है तथा दस्तावेजी साक्ष्य प्रस्तुत किये जाने की अनुमति हेतु प्रार्थना की गई है। कोई तथ्यात्मक आपत्ति प्रस्तुत नहीं की गई है। प्रा० पत्र के आधार

पर्याप्त हैं। अतः प्रा० पत्र न्यायहित में स्वीकार होने योग्य है।

आदेश

उक्त प्रा०पत्र स्वीकार किया जाता है। सफाई साक्ष्य हेतु पत्रावली दि० 15.02.2023 को पेश हो।

दिनांक :- 10.02.2023
ह०/-
विशेष न्यायाधीश, एम.पी./एम.एल.ए. सम्बंधी आपराधिक प्रकरण/चतुर्थ अपर सत्र न्यायाधीश, अम्बेडकर नगर।"

Having regard to the order dated 10.02.2023 and the attending circumstances, we do not find it desirable to entertain such an application on the strength of the reasons as have been stated in the present application which even does not take into account the material facts on record or the order passed by the Trial Court despite he being a party to the application before the Trial Court. We however refrain from making any observation on the disclosure of incomplete facts, as stated in paragraph – 47 of the affidavit filed in support of the application under Section 391 Cr.P.C.

Thus, the instant application is misconceived and the same is, accordingly, rejected.

C. M. Application No. IA/11/24

(Application for modification of the order dated 12.08.2024)

The application for modification of the order dated 12.08.2023 moved by the applicant-respondent No.2, in absence of any cogent reason and for what has been recorded above, is also rejected.

Order on appeal

Further arguments on the appeal stand resumed.

Put up tomorrow, i.e., 21.08.2024 for further hearing.

Learned counsel for the respondents are expected to

advance their arguments in order to avail the opportunity."

8 Being aggrieved, respondent No.3/Rama Kant Yadav filed S.L.P. (Criminal) Diary No(s). 37699 of 2024 before the Apex Court and the said petition was dismissed vide order dated 29.08.2024 which reads as under:-

"1. Head learned senior counsel for the petitioner (s).

2. We are not inclined to interfere with the impugned judgment and order passed by the High Court. The special leave petition(s) stands dismissed.

3. Pending application(s), if any, shall stand closed."

B. <u>Prosecution Case</u>

9 Shortly stated, the prosecution case is that the informant-Vikas Singh (P.W.2), resident of Village Devgarh, Police Station Maharajganj, Faizabad, gave written Tehrir on 15.05.2010 at P.S. Maharajganj stating therein that while he was returning from Faizabad to his home in Devgarh by his Scorpio Car No. UP-42-M 4140 alongwith his friend Dharmendra Singh, resident of Mehtab Bagh, who was driving the vehicle and his cousins Vansh Bahadur Singh and Ajit Pratap Singh, were also sitting with him, at the turning of Mai ji's Mandir ahead of Sarai Rasi, one black Safari Car No. UP-32-CA 9473 suddenly overtook his vehicle from behind and stopped at some distance ahead of the complainant's car. In the headlights of Scorpio Vehicle, the complainant saw that Abhay Singh S/o Bhagwan Bux Singh, R/o Rajepur; Rama Kant Yadav & Ravi Kant Yadav, sons of Tulsi Ram Yadav, R/o Kudha Kesavpur, Darshan

Nagar, Police Station Kotwali Nagar, Ayodhya; Shambhu Nath Singh @ Dipu, S/o Jagjeevan Singh, R/o Poora Bazar and Sandeep Singh @ Pappu, S/o Rajendra Singh, who is brother-in-law of Abhay Singh and two unknown persons got down from the Car and stood on the side of the road. All of a sudden, Abhay Singh, Rama Kant Yadav and Ravi Kant Yadav with an intention to kill fired shots which hit his car while all of them were exhorting each other to kill him. The accused persons were hurling abusive language and in the meantime Dharmendra Singh (P.W.1), who was driving the vehicle sped up the car and saved life. It was further stated that there is a threat to his life as well as to the family as Abhay Singh is a mafia don of the State.

10 On the basis of the aforesaid written report, a case on Crime No. 555/10 under Sections 307, 147, 149, 304, 506 IPC was registered on 15.05.2010 at 09.35 hrs at P.S. Maharajganj, District Faizabad in respect of the aforesaid incident said to have occurred on 15.05.2010 at 08.45 PM.

11 It is said that due to jerk and sudden stopping of vehicle, the informant collided with the dashboard and suffered injuries. After registration of FIR, the injured-informant was sent to CHC Naya Bazar, where he was examined and later on referred to District Hospital, Faizabad. In the district hospital, he remained admitted for three days. The doctor, who examined the informant on 16.05.2010 at 12.30 A.M. found following injuries:-

a) Bluish scar of 0.1 cm X 0.5 cm on the right side about 6 cm above the eye brow.
b) Pain in right shoulder.
c) Pain in right side of the chest.
d) Bluish scar 2 cm X 0.1 cm on the left forearm 6 cm above the wrist.
e) All the injuries were fresh and X-ray was advised.

12 The Investigating Officer after completing due investigation and completing necessary formalities submitted the charge-sheet against seven accused persons, namely, Rama Kant Yadav, Ravi Kant Yadav, Abhay Singh, Sandeep Singh @ Pappu Singh, Shambhunath Singh @ Dipu Singh, Girish Pandey @ Dippul Pandey and Vijay Kumar Gupta under Sections 147, 149, 504, 506 and 307 I.P.C. and Section 27 of Arms Act.

13 The learned trial court after considering the evidence on record and testimony of the injured witness came to the conclusion that prosecution has failed to prove its case beyond reasonable doubt and consequently acquitted all the accused persons of the charges levelled against them.

14 Hence, this appeal has been preferred by the Complainant against the judgment of acquittal passed by the trial court.

15 A Co-ordinate bench of this Court comprising Hon'ble Rajan Roy,J. and one of us, namely, Hon'ble Ajai Kumar Srivastava-I,J. while entertaining the appeal found that there is substance and force in the assertions of the appellant's counsel, passed the order dated

04.10.2023 admitting the appeal and issued bailable warrants against the respondents no.2 to 7.

16 During the course of hearing, learned counsel for the appellant has vehemently argued that the findings of acquittal recorded by the trial court are wholly perverse and erroneous. The learned trial court has proceeded with predetermined mind that the prosecution story is concocted and that respondents no. 2 to 8 have been falsely implicated.

17 According to learned counsel for the appellant, the testimony of the injured witness-complainant is fully supported and corroborated by the medical report and the technical inspection report of the vehicle which should not have been discarded simply there being contradiction in his statement overlooking the fact that incident in question had occurred on 15.05.2010 whereas examination-in-chief of Vikas Singh (P.W.2) took place on 16.11.2019 i.e. after more than nine years of the incident and it is much natural that all the events cannot be recollected in a seriatum, however, from the testimony of Vikas Singh (P.W.2) it is clear that he has fully supported the prosecution version as narrated in the FIR.

18 As regards the testimony of Dharmendra Singh (P.W.1), it has been argued that the learned trial court has given too much weight to the fact that this witness did not support the prosecution version and turned hostile overlooking the surrounding circumstances and the

fact that the accused Abhay Singh is a dreaded criminal and none in the past could muster courage to give evidence against him. The trial court failed to consider the fact that there was no occasion for the complainant (injured) to give name of such a person, who was not present. As a matter of fact, Vikas Singh (P.W.2) in his deposition has clearly stated that when the accused-respondent started firing, due to wise decision of Dharmendra Singh (P.W.-1), who accelerated the vehicle in high speed, saved not only the life of the complainant but his life too as the indiscriminate firing may hit any one.

19 Elaborating his submissions, learned counsel for the appellant has submitted that the learned trial court committed an error in discarding the testimony of Vikas Singh P.W.-2, who is injured witness and his testimony is fully supported by documentary evidence i.e. injury report and the technical report of vehicle given by Technical Expert. It is a settled law that the testimony of injured witness cannot be discarded merely there being minor contradictions and discrepancies in the statement. The evidence of an injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. The evidence of an injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

20 It has been pointed out that the doctor, who had examined the injured-complainant in his deposition has proved the injuries and his statement supported the version given in the First Information

Report. The report of the Technical Expert also proves the prosecution version which says that six holes were found on the left side of the Scorpio Car and opined that these holes are due to firing.

21 Learned Counsel for the appellant has urged that the findings of acquittal are not based on correct appreciation of evidence on record and are perverse. The learned trial court has given too much weight to the contradiction and omission in the statement of injured witness while recording the findings of acquittal and overlooked the documentary evidence i.e. injury report and the Technical Expert report. The damage of vehicle fully establishes that the incident had taken place in the manner as stated in the First Information Report. Therefore, the findings of acquittal deserves to be reversed and the accused persons may be convicted for the offence committed by them.

22 Refuting the assertions of the learned Counsel for the appellant, it has been stated on behalf of the accused-respondents that the learned trial court has rightly acquitted the accused persons of the charges levelled against them as the prosecution has utterly failed to prove its case beyond reasonable doubt. It has been submitted that Dharmendra Singh (P.W.1), who was said to be driving the vehicle has not supported the prosecution version and was declared hostile. There remains only the eye-witness account of the complainant-injured, whose testimony was not found worth credible by the trial court.

23 It has been argued that the appellant has falsely implicated Abhay Singh and his associates due to inimical terms and political rivalry, as both of them belong to different political parties. It has also been pointed that the appellant is not an innocent and law abiding citizen but has criminal cases to his credit and he, in order to take revenge against Abhay Singh, concocted a false story implicating Abhay Singh and other persons. As a matter of fact, no such incident as alleged has taken place.

24 It has also been pointed out that not only Dharmendra Singh (P.W. 1) has denied the prosecution version but from the deposition of Vikas Singh (P.W.2) it is clear that there are contradictions in his statement, who has tried to fill up the lacunae in the prosecution story and shows improvement. It has been submitted that it is a settled law that the findings of acquittal cannot be upset unless perversity is established from evidence on record.

25 According to the learned Counsel for the respondents, in the instant case, the appellant has failed to show/establish perversity in the findings of the trial court and as such the appeal is liable to be dismissed and in support of his aforesaid assertions, has placed reliance upon the decisions rendered in ***Mallappa & others v. State of Karnataka***, *Criminal Appeal No. 1162 of 2011 decided on 12.02.2024;* ***Babu Sahebagouda Rudragoudar v. The State of Karnataka***, *Criminal Appeal No. 985 of 2010 decided on*

11.04.2024; and ***The State of Rajasthan v. Kistoora Ram****, Criminal Appeal No. 2019 of 2010, decided on 28.07.2022.*

26 Summing up the arguments, learned Counsel for the respondents have submitted that there is no infirmity or illegality in the impugned judgment of the trial court which deserves to be confirmed and the appeal is liable to be dismissed.

27 Having heard Shri Naved Ali, learned counsel for the appellant, Shri Anuj Pandey, learned counsel representing respondent No.2, Shri Sushil Kumar Singh, learned counsel for respondent No. 3, Dr. L.P. Mishra, learned counsel for respondent No.4, Shri Rajeev Narayan pandey, learned counsel representing respondent No.5, Shri Ashish Kumar Singh, learned counsel for respondent No. 6, Shri Nagendra Mohan, learned counsel for respondent No.7 & Shri Ripu Daman Shahi, learned counsel for respondent No.8 and going carefully through the impugned judgment and the material on record, the Court has to examine/scrutinize as to whether the trial court has rightly appreciated the evidence on record while recording finding of acquittal or has thrown the eye-witness account and documentary evidence in a cursory manner giving too much weight to the contradictions and discrepancies in the evidence.

28 A perusal of the record shows that the complainant-Vikas Singh (P.W.-2) had lodged a report on 15.05.2010 at 09.35 PM at P.S. Maharajganj stating therein that on 15.05.2010 at about 8.45 PM

while he was going to his house in Devgarh from Faizabad by Scorpio Car which was being driven by Dharmendra Singh (P.W.-1) and when he had reached near the turning of Mai Ji Temple, all of a sudden, a black Safari Car bearing No. UP 32 CA 9473 overtook his car and stopped ahead. Abhay Singh, Rama Kant Yadav, Ravi Kant Yadav, Shambhunath Singh @ Pappu, Sandeep Singh, who is brother-in-law of Abhay Singh and two other unknown persons came out of the vehicle and all of a sudden Abhay Singh, Rama Kant and Ravi Kant Yadav started firing with the intention to kill him which hit the vehicle at several places. It was further stated that all of them were exhorting each other to kill the complainant and were using expletives. In the meantime Dharmendra Singh (P.W.1) sped up the vehicle and saved life.

29 On the basis of the aforesaid written Tehrir given by the Complainant-Vikas Singh, a case on Crime No. 555 of 2010 under Section 307, 147, 149, 504, 506 IPC was registered on the same day at 09.35 PM. The distance of the police station from the place of occurrence is said to be about 12 kms. In the FIR, Abhay Singh, Rama Kant Yadav, Ravi Kant Yadav, Shambunath Singh and Sandeep Singh were named as accused. Thus, it is established that the FIR was lodged promptly and it rules out any deliberation or consultation as suggested by the defence.

30 The investigation ensued in light of the above stated facts and upon collection of substantial evidence, the charge-sheet was filed against

the accused-respondents. The case was committed to the Additional Sessions Judge and charges as mentioned above were framed. The accused persons abjured their culpability and claimed to be tried.

31 The case of the prosecution relied heavily on the testimonies of Vikas Singh (P.W.-2), Tanveer Ahmed (P.W-3), Dinesh Chandra Mishra, I.O., (P.W-4), Dr. Ravindra Pratap Narain (P.W-5) and S.I. Vijay Kumar Singh (P.W-6) apart from the documentary evidence in the shape of injury report and Technical report of the vehicle together with the surrounding circumstances. The Complainant- Vikas Singh (P.W-2) in his deposition stood by the version of events as stated by him in the FIR. The Complainant deposed candidly and admitted that had Dharmendra Singh (P.W-1) not sped up the vehicle, he would not be alive. Complainant has categorically stated that all the accused persons came out of vehicle and all of a sudden started firing which hit the vehicle and he suffered bodily injuries due to sudden stoppage of the vehicle and his body hit the dashboard of the car. It is an undisputed fact that Dr. Raveendra Pratap Narain Singh (P.W-5) in his deposition has admitted that the complainant suffered injuries due to sudden jerk. He proved the injury report Exhibit Ka-7. It is also on the record that he was referred to District Hospital, Faizabad where he remained admitted for three days. It is also on record that vehicle in which complainant was sitting, was sent for technical inspection wherein six holes were found which were caused by firing shot.

32 Tanveer Ahmad (P.W.3) in his deposition before the court stated that he was working as Computer Operator/Constable at P.S. Maharajganj and proved giving of written Tehrir by Vikas Singh (P.W.2). He stated that on the dictation of Constable Nand Lal (dead) he typed the same on the Computer. He proved Nakal Chik (Ex. Ka-2) and Nakal Report (Ex. Ka-3). Dinesh Chandra Mishra, Circle Officer (P.W.4) stated that at the relevant time he was posted as Station Officer at P.S. Maharajganj and took investigation from Sanjai Nagvanshi. He proved the charge-sheet (Ex.Ka-6). He also proved handing over the vehicle pursuant to the release order of the Court. Dr. Raveendra Pratap Narain Singh (P.W.5) in his deposition stated that at the relevant time he was posted as Emergency Medical Officer and had medically examined Vikas Singh (P.W.2), who was brought by Constable Shiva Prasad Singh. He proved the injury report (Ex.Ka-7). Vijay Kumar Singh (P.W.6) in his statement before the Court stated that on 15.05.2010, he was posted as Incharge, at Police out-post Poora Bazar and was entrusted investigation of case Crime No.555/10. He had entered Nakal Chik and Nakal Report in the case diary and had also recorded the statement of the witnesses on the same day. He also proved the site plan (Ex.Ka-8).

33 In defence, Constable Rajesh Yadav was examined as D.W.1. He stated that under the order of Senior Superintendent of Police, Faizabad, he was deputed in security of Ravi Kant Yadav (respondent no.4). He stated that he had gone to Lucknow with

Ravikant Yadav accompanied with his brother Rama Kant Yadav on 15.05.2010 and remained at Lucknow till late evening of 16.05.2010. However, in cross-examination, this witness stated that he had no proof regarding presence at Lucknow on 15.05.2010 alongwith aforesaid two persons.

34 The Court has endeavoured to peruse and discuss the evidence on record to ascertain whether finding of acquittal recorded by the trial court suffers from any perversity or not and on minute scrutiny, it is found that the trial court has proceeded with the premise that no such incident as narrated in the FIR had taken place in the manner as alleged and overlooked the vital fact that the injured witness whose vehicle was also damaged would not falsely implicate the accused-respondents and allow the actual assailants, who in fact were identified in the headlight of the vehicle, to go scot-free.

35 The question regarding the weight to be attached to the evidence of an injured witness was examined by the Hon'ble Apex Court in the case of **Mukesh and another vs. State of NCT of Delhi and others** 2017 AIR (SC) 2161. After examining the law on the subject, the Hon'ble Apex Court held that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to implicate a third party for the commission of the offence. It was held that the deposition of

the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions.

36 Here, it is also to be noted that both accused Abhay Singh and appellant-Vikas Singh are having criminal antecedents but it does not mean that false imputations have been made. In the FIR itself, the complainant has stated that accused Abhay Singh is a mafia don of the State and in cross-examination this witness has narrated the facts regarding political rivalry and motive for causing harm to the appellant.

37 The trial court while recording the findings of acquittal has observed that some facts which have been deposed in the statement before the Court were not narrated in the FIR but overlooked the well-settled proposition that non-explanation of all the facts in the First Information Report is not an important circumstance to suggest that the prosecution has not presented the true version and suppressed the genesis and the origin of the occurrence. But where the injuries received by the accused are minor and superficial or where the prosecution evidence is consistent and creditworthy, non-explanation of entire facts by the prosecution may not affect the prosecution case. Invariably, the Court has noticed that the lapses on the part of prosecution to produce witnesses for want of the adequate witness protection, the trial becomes vulnerable and vital aspects of the matter suffer on that account one way or the way.

38 Before this Court would advert to the factual matrix or gauge the trustworthiness of the witness, it will be beneficial to refer some of the factors for bringing home a conviction under Section 307 IPC. It is well-settled by catena of decisions that to justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deducted from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not to be penultimate act. It is sufficient in law, if there is presence of an intent coupled with some overt act in execution thereof. In these circumstances, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple

hurt. The Court is not oblivious of the fact that the case of the prosecution where it is confined to a vital testimony of an injured, the same is to be appreciated in the correct perspective of law having regard to the corroborative evidence on record.

39 It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second, such intent or knowledge was followed by some over *actus rea* in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The Courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

40 It would also be fruitful at this stage, to appraise whether the requirement of ‘motive’ is indispensable for proving the charge of attempt to murder under Section 307 IPC. It is significant to note that ‘motive’ is distinct from ‘object and means’ which innervates or provokes an action. Unlike ‘intention’, ‘motive’ is not the yardstick of a crime. A lawful act with an ill-motive would not constitute an offence but it may not be true when an unlawful act is committed

with best of the motive. Unearthing ‘motive’ is akin to an exercise of manual brain-mapping. At times, it becomes herculean task to ascertain the traces of a ‘motive’.

41 As regards the testimony of Dharmendra Singh (P.W.1), the trial court has not considered his testimony as he did not support the prosecution version and was declared hostile. In this context, this Court would like to refer the proposition of law as laid down in **Rabindra Kumar Dey v. State of Orissa** 1977 AIR 170 and **Syad Akbar v. State of Karnataka** 1979 AIR 1848 wherein it was held 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. It was further held that 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 their version is found to be dependable on a careful scrutiny thereof. Thus, the law can be summarized to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

42 In the case in hand, there was no occasion for the Complainant-Vikas Singh (P.W.2) to take the name of Dharmendra Singh (P.W.1) that he was driving the vehicle at the time of incident. As a matter of fact, what he has narrated in the FIR remained intact in the deposition before the Court and in the statement before the Investigating Officer. The trial court failed to consider this aspect of the matter that

statement of Dharmendra Singh (P.W.1) was recorded by the Police during investigation just immediately after the incident. Again there was no occasion for the Investigating Officer to record statement of any stranger other than the person whose name was taken in the FIR. From the tenor of the language of the statement, it can easily be presumed/inferred that he had resiled from his earlier statement under coercion and said that story is false and fabricated while in earlier part of his statement, he had stated that he was not driving the vehicle and is not aware with any such incident. Denying entire prosecution story by Dharmendra Singh (P.W.1) reflects the fear and terror of accused Abhay Singh, as was stated in the FIR. Lastly, this Court would like to mention, as noticed above, in the instant case the statement of Dharmendra Singh (P.W.1) before the Court was recorded after more than seven years of the incident allowing ample time to influence the witness and to win over him by adopting all kinds of tactics familiar to law.

43 It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance ought not to be attached to omissions, contradictions and discrepancies which do not go to the heart of the

matter and shake the basic version of the prosecution's witness. For the aforesaid reasoning the case laws relied upon by the respondents are of no avail as the facts and circumstances of this case are entirely different. As the mental abilities of a human being cannot be expected to be at tuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. [See:- **State of U.P. v. M.K. Anthony**, (1985) 1 SCC 505, **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**, (1983) 3 SCC 217, **State of Rajasthan v. Om Prakash**, (2007) 12 SCC 381, **Prithu v. State of H.P**., (2009) 11 SCC 588, **State of U.P. v. Santosh Kumar**, (2009) 9 SCC 626 and **State v. Saravanan,** (2008) 17 SCC 587] .

44 In the instant case, the incident took place on 15.05.2010. The statement of Dharmendra Singh (P.W.1) was recorded on 26.08.2017 whereas, statement of Vikas Singh (P.W.2) was recorded on 16.11.2019 i.e. after two years when the statement of Dharmendra Singh (P.W.1) was recorded. Cross-examination of Vikas Singh (P.W.2) continued till 30.04.2022. Surprisingly, it took more than two years to complete the cross-examination of Vikas Singh (P.W.2).

45 There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his

benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law.

46 In the present case, a perusal of the FIR shows that five persons, namely, Abhay Singh, Rama Kant Yadav, Ravi Kant Yadav, Shambhunath Singh and Sandeep Singh @ Pappu were named. The role of the firing was assigned to Abhay Singh, Rama Kant Yadav and Ravi Kant Yadav. However, the charge-sheet was filed against seven persons adding name of Girish Pandey @ Dippul Pandey and Vijay Gupta. A perusal of the record shows that name of Girish Pandey @ Dippul Pandey and Vijay Gupta were added on the basis of the application given by the Vikas Singh, wherein, he has stated that Rajnish Singh and Sumit Sharma, who are residents of Faizabad City told him that on the date of incident he was going to Gosaiganj and his car was behind the car of P.W. 2. They saw Girish Pandey @ Dippul Pandey and Vijay Gupta were also involved in firing.

47 The aforesaid two persons were added as accused on the basis of hearsay evidence and neither Rajnish Singh nor Sumit Sharma was produced to prove the involvement of aforesaid persons, as such the trial court has rightly acquitted them. However, the trial court fell into error in acquitting other accused persons in view of the reasoning given in the preceding paragraphs. It may be added that the persons who had not taken active part but were part of the unlawful assembly, cannot be absolved of the charges.

48 Time and again, Hon'ble Supreme Court ruled that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicarious criminal liability under Section 149 IPC. The time of forming an unlawful intent is not material. An assembly which at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident. Therefore, the accused persons who were not present at the time of firing irrespective of the fact that whether they fired shot or not, mere presence would fasten vicarious liability.

49 The view taken by the trial Court is the only view or possible view is a guiding principle applicable to unhindered and impeccably approached trial unlike the case at hand. Taking the holistic view of the matter together with detailed reasoning indicated here-in-above, the Court is of the view that findings of acquittal recorded by the trial court are erroneous, perverse and are not based on correct appreciation of evidence available on record. Consequently, the

appeal is **allowed** and the impugned judgment and order dated 10.05.2023 passed by the Special Judge (MP/MLA Court), Ambedkar Nagar is set aside.

50 Accused persons, namely, **Shambhunath Singh, Rama Kant Yadav, Ravi Kant Yadav, Abhay Singh** and **Sandeep Singh @ Pappu Singh** are convicted for the charges levelled against them under Sections 147, 149, 504, 506, 307 IPC. However, considering the overall circumstances including remoteness of the incident and delay in conclusion of trial, the Court is of the view that ends of justice would be secured by sentencing them for six months Rigorous Imprisonment under Section 147 IPC, for three years Rigorous Imprisonment under Section 307/149 IPC with a fine of Rs 5,000/- each and in default of payment of fine, accused persons will further undergo one month simple imprisonment, for six months Rigorous Imprisonment under Section 504 IPC and for six months Rigorous Imprisonment under Section 506 IPC. Accused Abhay Singh, Rama Kant Yadav and Ravi Kant Yadav, who have been assigned the role of firing in the FIR are further sentenced to three years Rigorous Imprisonment under Section of the 27 Arms Act. All the sentences are directed to run concurrently. However, acquittal of accused **Girish Pandey @ Dippul Pandey** and **Vijay Gupta** passed by the trial court is approved due to lack of evidence.

51 The aforesaid accused persons are on bail and they shall surrender before the court concerned for serving out the period of sentence as awarded to them.

52 Let a copy of this order alongwith lower court record be sent to the court concerned forthwith for compliance and the compliance report shall be transmitted to the Senior Registrar of the court within a month.

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(Ajai Kumar Srivastava-I, J.) **(Attau Rahman Masoodi, J.)**

Order Date : 20th December, 2024
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HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW)

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Reserved on :- 27.08.2024
Pronounced on :- 20.12.2024

Court No. - 1

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 100 of 2023

Appellant :- Vikas Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 7 Others

Counsel for Appellant :- Sandeep Yadav,Naved Ali

Counsel for Respondent :- G.A.,Anuj Pandey,Ashish Kumar Shukla,Ashish Kumar Singh,Katyayan Mishra,Nagendra Mohan,Niteesh Kumar,Rajeev Narayan Pandey,Randheer Singh,Ripu Daman Shahi,Sushil Kumar Singh

Hon'ble Attau Rahman Masoodi,J.
Hon'ble Ajai Kumar Srivastava-I,J.

(Per:- Ajai Kumar Srivastava-I, J.)

1. I have had privilege of going through the draft judgment prepared by my esteemed brother, Hon’ble Attau Rahman Masoodi, J.

2. With utmost reverence, I find myself unable to concur with the same. The dissent arises because of legal principles which have come to be settled by a catena of judgments of Hon'ble the Supreme Court on the subject of appreciation of evidence in an appeal filed to assail acquittal.

3. However, I do concur with the finding recorded by my esteemed brother insofar as the same relates to acquittal of respondents No.5 and 6, namely, Girish Pandey @ Dippul Pandey and Vijay Kumar Gupta, for the reasons given hereinafter.

4. Needless to mention that we have already heard Sri Naved Ali, learned counsel for the appellant, Sri Umesh Chandra Verma, leaned A.G.A. for the State/ respondent No.1, Sri Anuj Pandey, learned counsel representing the respondent No.2, Sri Sushil Kumar Singh, learned counsel for the respondent No.3, Dr. L.P. Misra, learned counsel for respondent No.4, Sri Rajeev Narayan Pandey, learned counsel representing respondent No.5, Sri Ashish Kumar Singh, learned counsel for respondent No.6, Sri Nagendra Mohan,

learned counsel for respondent No.7 and Sri Ripu Daman Shahi, learned counsel for respondent No.8 and carefully perused the written submissions submitted by learned counsel for the parties.

5. Under challenge in this criminal appeal under Section 372 of the Code of Criminal Procedure[1] is the impugned judgment and order dated 10.05.2023 passed by the learned Special Judge (M.P./ M.L.A.)/ Additional Sessions Judge, Fast Track Court-Ist, Ambedkar Nagar in Criminal Case No.100 of 2023 titled as State of U.P. vs. Shambhunath Singh @ Deepu Singh and others arising out of Case Crime No.555 of 2010, under Sections 147, 149, 307, 504 and 504 of the Indian Penal Code[2] and Section 27 of the Arms Act, 1959[3], Police Station Maharajganj, District Faizabad (Ayodhya), whereby the accused/ respondents No.2 to 8, namely, Shambhunath Singh @ Dipu Singh, Ramakant Yadav, Ravikant Yadav, Girish Pandey @ Dippul Pandey, Vijay Kumar Gupta, Abhay Singh and Sandeep Singh @ Pappu Singh, have been acquitted of the charges under Sections 147, 307

1 **hereinafter referred to as "Cr.P.C."**
2 **hereinafter referred to as "I.P.C."**
3 **hereinafter referred to as "the Act, 1959"**

read with Section 149, 504, 506 I.P.C. and Section 27 of the Act, 1959.

6. The prosecution case in nutshell is that a written report came to be submitted by the first informant, Vikas Singh, who is the appellant herein, at Police Station Maharajganj, District Faizabad (now Ayodhya) stating therein that the incident occurred on 15.05.2010 at 8:45 PM. when the informant, alongwith his friend, Dharmendra Singh, who was driving the vehicle, his cousin brothers, Vansh Bahadur Singh, and Ajeet Pratap Singh, were enroute to his residence situated at Devgarh, Maharajganj by his Scorpio car bearing No.UP 42 M 4140[4]. As they reached near the turn at Mai Ji Ka Mandir, a black Safari car bearing No.UP 32 CA 9473[5] overtook the vehicle from behind and stopped at a distance ahead of their vehicle. In the said black Safari, Abhay Singh, Ramakant Yadav, Ravikant Yadav, Shambhu Nath Singh @ Deep Singh and Sandeep Singh @ Pappu Singh, who is Abhay Singh's brother-in-law, and two other unknown person were present. The informant clearly recognized all of them in

4 **hereinafter referred to as "the vehicle"**
5 **hereinafter referred to as "black Safari"**

the headlights of the vehicle. The occupants of the black Safari disembarked, and without warning, Abhay Singh and Ramakant Yadav approached the informant with an intention to kill him. Several bullets were fired at the informant's vehicle. The assailants were vocally challenging each other to kill the informant while hurling abuses also. Dharmendra Singh, who was driving the vehicle, managed to save their lives by accelerating speed of the vehicle. Abhay Singh is a known notorious criminal and mafia. The first informant, P.W. 2, Vikas Singh, reported this incident in writing to the Police Station Maharajganj, Faizabad.

7. On the basis of aforesaid written report, Ext. Ka-1 submitted by the first informant, Vikas Singh, the first information report, Ext. Ka-2 came to be lodged against the accused/ respondents No.2, 3, 4, 7, 8, namely, Shambhunath Singh @ Dipu Singh, Ramakant Yadav, Ravikant Yadav, Abhay Singh and Sandeep Singh @ Pappu Singh and two other unknown persons on 15.05.2010 as Case Crime No.555 of 2010, under Sections 147, 149, 307, 504 and 506 I.P.C.

8. According to injury report of the victim/ informant, which has been proved by P.W.-5, Dr. Ravindra Pratap Narayan Singh as Ex. Ka-7, following injuries and facts were reported by P.W.-5, Dr. Ravindra Pratap Narayan Singh :-

1.	नीलगू निशान 1 CM X 0.5 CM मस्तक पर दायी आंख के भीतरी किनारे से भौह से 6 CM ऊपर स्थित था, रंग लाल था।
2.	दाहिने कंधे पर दर्द बताता था।
3.	सीने पर दाहिने तरफ दर्द बताता था।
4.	नीलगू निशान 2 CM X 1 CM बायें अग्रबाहु पर कलाई के 6 CM नीचे स्थित था, रंग लाल था।

9. The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C. He visited the place of occurrence and prepared a site plan thereof Ext. Ka-8.

10. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ext. Ka-6 against the accused/ respondents No.2 to 8, namely, Shambhunath Singh @ Dipu Singh, Ramakant Yadav, Ravikant Yadav, Girish Pandey @ Dippul Pandey, Vijay Kumar Gupta, Abhay Singh and Sandeep Singh @ Pappu

Singh, for the offences under Sections 147, 149, 307, 504 and 506 I.P.C. and Section 27 of the Act, 1959.

11. Charges for the offences under Sections 147, 307 read with Section 149, 504, 506 I.P.C. and Section 27 of the Act, 1959 were framed against the present accused/ respondents No.2 to 8, who denied the charges and claimed to be tried.

12. In order to bring home guilt of the accused/ respondents No.2 to 8, the prosecution has examined Dharmendra Singh as P.W.-1, Vikas Singh, who is the first informant/ victim/ appellant of the present case, as P.W.-2, Tanveer Ahmed as P.W.-3, Circle Officer Dinesh Chandra Misra as P.W.-4, Dr. Ravindra Pratap Narayan Singh as P.W.-5 and Inspector Vijay Kumar Singh as P.W.-6.

13. The accused/ respondents No.2 to 8, in their statements recorded under Section Section 313 Cr.P.C., have stated the prosecution story to be false. They have also stated to have been falsely implicated in this case for various reasons assigned by them separately and they claimed to be innocent.

14. Constable Rajesh Yadav has been examined as D.W.-1 from the side of defence and some documents have also been filed by the accused/ respondents No.2 to 8 in their defence.

15. The learned trial court, after appreciating the evidence available on record adduced by the prosecution and by the accused, acquitted the accused/ respondents No.2 to 8 as stated herein above.

16. In such circumstances referred to above, the appellant, who is the first informant and a victim as defined under Section 2(wa) Cr.P.C., is before this Court with the present statutory criminal appeal, which has been filed under Section 372 Cr.P.C.

17. The crux of submissions advanced by learned counsel for the appellant is as under :-

18. First, the learned trial court, while acquitting respondents No.2 to 8, has been unduly influenced by the fact that the first informant/ injured witness, P.W.-2, Vikas Singh, has a criminal history, which is not a relevant factor for assessing the intrinsic evidentiary

value of testimony of injured/ first informant. Learned counsel for the appellant submits that the criminal antecedents of an injured witness will not adversely impact the prosecution's case. In fact, it is the character of the accused which may be relevant under the circumstances enumerated under Section 54 of the Indian Evidence Act, 1872[6]. Therefore, the impugned judgment and order dated 10.05.2023 is perverse.

19. He submits that although P.W.-1, Dharmendra Singh, has been declared hostile and nothing could be elicited from his entire testimony either for or against the prosecution. However, undue weightage has been given to his testimony by the learned trial court, who has turned hostile because of the influence of respondent No.7, Abhay Singh, who is a dreaded offender. The entire prosecution story, according to him, rests upon the sole testimony of P.W.-2, the first informant, which is cogent, consistent and of sterling character, and therefore the same could not be disbelieved by the learned trial court. However, the learned trial court chose to disbelieve the reliable

6 **hereinafter referred to as " the Act, 1872"**

testimony of P.W.-2, Vikas Singh, an injured witness, for reasons which are wholly untenable. This also renders the impugned judgment and order dated 10.05.2023 unsustainable, therefore, the same deserves to be set aside.

20. Thirdly, he has laid much emphasis on the fact that the lapse(s), if any, in the investigation are not of such a nature as to adversely impact the otherwise proven prosecution story, as not every lapse in investigation is fatal to the prosecution. His submission is that the first informant, P.W.-2, Vikas Singh had no role in the preparation of the seizure memo regarding the vehicle, which, in any case, was to be prepared by the investigating officer. In the same breath, he also drew attention to the fact that the first informant, P.W.-2, Vikas Singh, is also an injured witness whose testimony is consistent, cogent, and reliable for proving the prosecution case beyond reasonable doubt in order to clinch conviction of respondents No. 2 to 8 for the charges levelled against them even on the basis of sole testimony of P.W.-2, Vikas Singh, which is of sterling character. However, by not recording the conviction of

respondents No. 2 to 8, the learned trial court has committed an illegality that renders the impugned judgment and order dated 10.05.2023 unsustainable and which deserves to be set aside for this reason alone.

21. Learned counsel for the appellant has concluded his submission by submitting that the prosecution has succeeded in proving its case beyond reasonable doubt, therefore, the impugned judgment and order dated 10.05.2023 deserves to be set aside and the respondents No. 2 to 8 deserve to be convicted for the offences under Sections 147, 307 read with Section 149, 504, 506 of the I.P.C. and Section 27 of the of the Act, 1959.

22. To substantiate his aforesaid submissions, learned counsel for the appellant has placed reliance upon the judgment of High Court of Delhi in **Dharampal and another vs. State**[7] and a judgment of this Court in **State of U.P. vs. Ajai Mishra and others**[8].

23. Per contra, the gist of submissions advanced by learned counsel for the respondents is as under :-

7 **2011 SCC OnLine Del 3123**
8 **2023 SCC OnLine All 173**

A. It is argued that though, while disposing of an appeal against acquittal, the Appellate Court has the power to re-appreciate the evidence adduced before the learned trial court in view of Section 386 Cr.P.C., however, while doing so, the overriding limitation on such power is that the Appellate Court should not interfere with the judgment of acquittal passed by the trial court if the view taken by the learned trial court is a possible view in light of the facts of the case and the evidence adduced to prove prosecution case.

B. It is submitted that a finding of acquittal recorded by the learned trial court cannot be disturbed merely on the ground that the Appellate Court forms a different view than the view taken by the learned trial court, except where the view taken by the learned trial court is itself perverse having regard to the evidence adduced before the learned trial court.

C. It is also submitted that while dealing with an appeal against acquittal, the Appellate Court has to bear in mind the golden rule of criminal jurisprudence that an accused is innocent until proven guilty, which is

strengthened by the judgment of acquittal in favor of the accused/respondent. This means that there is now a double presumption of innocence in favour of the accused/respondent in an appeal against acquittal. Therefore, there must be some overwhelming reasons to repel such double presumption of innocence in favour of the accused/ respondents No.2 to 8.

D. It is further submitted that the prosecution itself chose to adduce only two witnesses of fact, namely, P.W.-1, Dharmendra Singh and P.W.-2, Vikas Singh, who is the informant and an injured witness. In the written report, Ext. Ka-1, it was mentioned that on the alleged date of the incident, i.e., on 15.05.2010 at about 08:45 PM, the first informant, Vikas Singh, was travelling in the vehicle, which was driven by his friend, P.W.-1/ Dharmendra Singh, who has been declared hostile as he did not support the prosecution case. Thereafter, the prosecution examined P.W.-2, Vikas Singh, who is the first informant and an injured witness also. It is submitted that according to the written report, Ext. Ka-1, two more persons, namely, Vansh Bahadur Singh and Ajeet Pratap Singh, cousin brothers of the

first informant, Vikas Singh, were also named as witnesses in the charge sheet, Ext. Ka-6. They were also sitting in the vehicle with the first informant, Vikas Singh. However, the prosecution, for reasons best known to it, failed to examine any of them in support of the prosecution case. Non-examination of witnesses, namely, Vansh Bahadur Singh and Ajeet Pratap Singh, thus, amounts to withholding of the best evidence by the prosecution, which gives rise to presumption that if the prosecution had examined these witnesses, they would have deposed against the prosecution.

E. Their further submission is that, it is the prosecution's own case that due to the alleged firing opened by the accused/ respondents No. 2 to 8, no injury was caused to the first informant, who was sitting in the front left seat of the vehicle nor any injury was caused to the driver, P.W.-1, Dharmendra Singh, or to Vansh Bahadur Singh and Ajeet Pratap Singh, who were also travelling in the vehicle. However, the vehicle was never seized by the investigating officer, and no seizure memo thereof was prepared. According to the prosecution's own story, the vehicle was handed over to

Constable Kamma Lal on 10.06.2010, who took it to the F.S.L., Lucknow, on 15.06.2010. Since Constable Kamma Lal has also not been examined by the prosecution, therefore, it remains unknown that in whose custody the vehicle remained between 10.06.2010 to 15.06.2010, when it was finally handed over to F.S.L., Lucknow, for its forensic examination. In absence of such crucial evidence about the safe custody of the vehicle post-incident, the possibility of tampering with the alleged vehicle cannot be ruled out. The only presumption that can be drawn in this situation is that the alleged marks of entry of bullets, as shown in the F.S.L. report dated 22.07.2010, may have been manipulated to falsely implicate respondents No.2 to 8. It is submitted that such a lapse cannot be considered to be of trivial nature. In fact, it directly impacts the sanctity of the prosecution case. The lack of evidence demonstrating that the vehicle was in such safe custody post-incident to rule out any possibility of tempering with the vehicle seriously prejudices the rights of the accused/ respondents No.2 to 8.

F. It is also submitted that according to prosecution story all the fires, which were allegedly opened by the private accused/ respondents, had hit the left side of the vehicle. No fire was opened by the private accused/ respondents in order to target the front windshield of the vehicle. Admittedly, the first informant/ injured, P.W.-2, Vikas Singh was sitting on the left front seat of the vehicle, whom the accused/ respondents intended to kill. Therefore, in want of any proof that there was any damage on the front windshield of the vehicle or on the bonnet of the vehicle itself suggests that in such circumstances, no intention to kill can be inferred.

G. It is further submitted that though conviction in an appropriate case can be recorded on the basis of testimony of a solitary prosecution witness, however, such testimony has to be free from all blemishes and has to be of sterling character before it could become sole basis of conviction of accused/ respondents No.2 to 8. It is submitted that a close scrutiny of the testimony of P.W.-2, Vikas Singh, would amply reveal that his testimony does not inspire confidence at all which is full

of such inconsistencies, which renders the entire prosecution story to be unreliable. In this regard, it is pointed out that in the written report, Ext. Ka-1, it is mentioned that on the date of incident, out of eight respondents, only two respondents, namely, Ramakant Yadav and Abhay Singh, opened fire from the firearms, which they were carrying with them. There is also a mention in the written report, Ext. Ka-1, that there were two unknown persons also, who were present on the spot on the date of incident. Subsequently, the names of respondents No.5 and 6, namely, Girish Pandey @ Dippul Pandey and Vijay Kumar Gupta, came to be added during investigation on the basis of a subsequent information given to the first informant by one of his acquaintances, namely, Sumit Sharma. It is contended by Sri Rajeev Narayan Pandey, learned counsel for respondent No.5, Girish Pandey @ Dippul Pandey, that in his testimony, P.W.-2, Vikas Singh, has clearly stated that at the place of incident on 15.05.2010, respondent No.5, Girish Pandey @ Dippul Pandey was neither present nor did he open any fire. P.W.-2/ Vikas Singh, has also admitted that he knew respondent No.5, Girish Pandey @ Dippul Pandey prior to the incident-in-

question. Therefore, the fact that the name of respondent No.5, Girish Pandey @ Dippul Pandey, did not find mention in the written report, Ext. Ka-1, which was submitted by none other than P.W.-2, Vikas Singh himself, despite respondent No.5, Girish Pandey @ Dippul Pandey, having been known to him, makes a serious dent in the veracity of the testimony of the sole prosecution witness, P.W.-2, Vikas Singh. It also shows that name of respondent No.5, Girish Pandey @ Dippul Pandey, was subsequently mentioned by the first informant because of some ulterior reasons and for his false implication. This fact also shows that the prosecution story is tainted with falsity. In this regard, it is also relevant to mention that P.W.-6, Inspector Vjay Kumar Singh has stated in his testimony that the first informant P.W.-2, Vikas Singh, in his statement recorded under Section 161 Cr.P.C., had not stated that respondents No.5 and 6, namely, Girish Pandey @ Dippul Pandey and Vijay Kumar Gupta, had also fired at the vehicle bearing registration No. UP 42 M 4140.

H. It is also submitted that P.W.-2, Vikas Singh, has admitted in his testimony that he received the

vehicle some 15-20 days prior to its examination by the F.S.L., which means that immediately before this vehicle was handed over to F.S.L. for forensic examination by Constable Kamma Lal, the vehicle remained with the first informant himself. It is undisputed that the vehicle was released on 28.06.2010 on an application moved by someone else other than the first informant, who claimed himself to be the registered owner of the vehicle. This fact itself shows that the vehicle was not seized by the investigating officer immediately after the alleged incident. Admittedly, P.W.-2, Vikas Singh, the first informant, is not registered owner of the vehicle. Despite this fact, the vehicle remained with the first informant, therefore, in such a situation, it becomes difficult to rule out possibility of tempering with the vehicle.

24. Before dilating upon the issue of appreciation of prosecution evidence in the light of submissions advanced by learned counsel for the parties as also the written submissions filed by them, I find it apposite to refer to paragraphs No.24 and 26 of a judgment rendered by Hon'ble the Supreme Court in **Ramesh and**

others vs. State of Haryana[9] regarding scope of interference in an appeal against acquittal, as under :-

> "24. We have duly appreciated the submissions advanced by the counsel for the parties on both sides. No doubt, the High Court was dealing with the appeal against the judgment of the trial court which had acquitted the appellants herein. The scope of interference in an appeal against acquittal is undoubtedly narrower than the scope of appeal against conviction. Section 378 of the Code of Criminal Procedure, 1973 confers upon the State a right to prefer an appeal to the High Court against the order of acquittal. At the same time, sub-section (3) thereof mandates that such an appeal is not to be entertained except with the leave of the High Court. **Thus, before an appeal is entertained on merits, leave of the High Court is to be obtained which means that normally judgment of acquittal of the trial court is attached a definite value which is not to be ignored by the High Court. In other words, presumption of innocence in favour of an accused gets further fortified or reinforced by an order of acquittal. At the same time, while exercising its appellate power, the High Court is empowered to reappreciate, review and reconsider the evidence before it. However, this exercise is to be undertaken in order to come to an independent conclusion and unless there are substantial and compelling reasons or very strong reasons to differ from the findings of acquittal recorded by the trial**

9 **(2017) 1 SCC 529**

court, the High Court, as an appellate court in an appeal against the acquittal, is not supposed to substitute its findings in case the findings recorded by the trial court are equally plausible.

26. This legal position is reiterated in Govindaraju v. State [Govindaraju v. State, (2012) 4 SCC 722 : (2012) 2 SCC (Cri) 533] and the following passage therefrom needs to be extracted: (SCC p. 732, paras 12-13)

> "12. The legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 CrPC. This is an indication that appeal from acquittal is placed on a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 CrPC has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-section (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to

the judgment of acquittal cannot be ignored by the courts.

13. Under the scheme of CrPC, acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the appellate court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law.""

(emphasis supplied)

25. Likewise, Hon'ble the Supreme Court in **Guru Dutt Pathak vs. State of U.P.**[10] in paragraph No.15 has held as under:-

"**15.** In Babu v. State of Kerala [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court has reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under : (SCC pp. 196-199)

"12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and

10 **(2021) 6 SCC 116**

order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. [Balak Ram v. State of U.P., (1975) 3 SCC 219 : 1974 SCC (Cri) 837] , Shambhoo Missir v. State of Bihar [Shambhoo Missir v. State of Bihar, (1990) 4 SCC 17 : 1990 SCC (Cri) 518] , Shailendra Pratap v. State of U.P. [Shailendra Pratap v. State of U.P., (2003) 1 SCC 761 : 2003 SCC (Cri) 432] , Narendra Singh v. State of M.P. [Narendra Singh v. State of M.P., (2004) 10 SCC 699 : 2004 SCC (Cri) 1893] , Budh Singh v. State of U.P. [Budh Singh v. State of U.P., (2006) 9 SCC 731 :

(2006) 3 SCC (Cri) 377] , State of U.P. v. Ram Veer Singh [State of U.P. v. Ram Veer Singh, (2007) 13 SCC 102 : (2009) 2 SCC (Cri) 363] , S. Rama Krishna v. S. Rami Reddy [S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535 : (2008) 2 SCC (Cri) 645] , Arulveluv. State [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] , Perla Somasekhara Reddy v. State of A.P. [Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98 : (2010) 2 SCC (Cri) 176] and Ram Singh v. State of H.P. [Ram Singh v. State of H.P., (2010) 2 SCC 445 : (2010) 1 SCC (Cri) 1496])

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under : (SCC OnLine PC : IA p. 404)

> '… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial;

(3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] , Balbir Singh v. State of Punjab [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal v. State of Maharashtra [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Khedu Mohton v. State of Bihar [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Sambasivan v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh v. State of M.P. [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] and State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri)

325] , this Court reiterated the legal position as under : (SCC p. 432, para 42)

> '42. … (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (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 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 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.'

16. In Ghurey Lal v. State of U.P. [Ghurey Lal v. State of U.P., (2008) 10 SCC 450 :

(2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh [State of Rajasthan v. Naresh, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] , the Court again examined the earlier judgments of this Court and laid down that : (SCC p. 374, para 20)

> '20. … An order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne [State of U.P. v. Banne, (2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] , this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High

Court. The circumstances include : (Banne case [State of U.P. v. Banne, (2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] , SCC p. 286, para 28)

> '28. … (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;
>
> (ii) The High Court's conclusions are contrary to evidence and documents on record;
>
> (iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;
>
> (iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;
>
> (v) This Court must always give proper weight and consideration to the findings of the High Court;
>
> (vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High

> Court have recorded an order of acquittal.'
>
> A similar view has been reiterated by this Court in Dhanapal v. State [Dhanapal v. State, (2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336] .
>
> **19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."**
>
> (emphasis supplied)

26. In a recent judgment rendered in **H.D. Sundara and others vs. State of Karnataka**[11], Hon'ble the Supreme Court in paragraphs No.8, 8.1, 8.2, 8.3, 8.4, 8.5 and 9 has succinctly reiterated aforesaid principles as under :-

11 **(2023) 9 SCC 581**

"Consideration of submissions

8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding

that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

9. Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] only to find out whether the view taken was correct or incorrect. After reappreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the

order of acquittal on the ground that another view could have been taken."

(emphasis supplied)

27. The judgment rendered by Hon'ble the Supreme Court in **Mallappa and others vs. State of Karnataka**[12] and a judgment rendered by a Division Bench of this Court in **Ajai Mishra's case (supra)** may also be usefully referred to. In this regard, paragraph No.26 of **Ajai Mishra's case (supra)** is quoted herein below :-

> **"26. The Hon'ble Apex Court recently in the case of *Ravi Sharma* v. *State (Government of NCT of Delhi* (2022 SCC OnLine SC 859) and *Jafarudheen* v. *State of Kerala* (2022 SCC OnLine SC 495), which was passed after following earlier precedents like (I) *Mohan alias Srinivas aliwas Seena Alias Taialor Seena* v. *State of Karnataka* (2021 SCC OnLine SC 1233), (ii) *N. Vijayakumar* v. *State of Tamil Nadu*, (2021) 3 SCC 687), reiterated the scope of section 378 of the Code of Criminal Procedure while dealing an appeal against acquittal by the High Court in the following words;**
>
> > ***"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr. P.C., the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a***

12 **(2024) 3 SCC 544**

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

28. The prosecution, in exercise of its rights to adduce any number of witness in support of its case in view of Section 134 of the Act, 1872, has chosen to examine two witnesses of facts, namely, Dharmendra Singh as P.W.-1 and Vikas Singh, who is the first informant and an injured, as P.W.-2.

29. P.W.-1, Dharmendra Singh, is one who has been referred to as a friend of the first informant in the written report, Ext. Ka-1. However, in his statement recorded under Section 161 Cr.P.C., the first informant, P.W.-2/ Vikas Singh, stated that the vehicle was being driven by his driver, namely, Dharmendra Singh, P.W.-1. This assertion that the vehicle was being driven by his driver, P.W.-1, Dharmendra Singh, was maintained in his statement recorded before the trial court as P.W.-2. This witness, being an educated person, is not expected to be unsure about the fact whether P.W.-1, Dharmendra Singh, was his friend or his driver. P.W.-1, Dharmendra Singh, in his statement, has stated that he was not driving the vehicle bearing No. UP 42 M 4140 on

15.05.2010 as he was not traveling with P.W.-2, Vikas Singh on the date of the incident. However noticeably he has also stated that he owns Gayatri Enterprises. There is no cross-examination of this witness on this point by the prosecution to show that he does not own or run Gayatri Enterprises and he is a driver by profession. Therefore, this fact becomes significant while assessing evidentiary value of the testimony of P.W.-1, Dharmendra Singh, despite the fact that he has been declared to be a hostile witness. This fact also appears to be significant for assessing the veracity of testimony of P.W.-2, Vikas Singh and the truthfulness of the prosecution's case as contained in the written report, Ext. Ka-1. Particularly, when P.W.-1, Dharmendra Singh has specifically denied the suggestions given to him by the prosecution that he has turned hostile because of the fact that one of the respondents i.e. respondent No.7, Abhay Singh is a known criminal and mafia.

30. In such a situation as stated above, the prosecution is left with the sole testimony of P.W.-2, Vikas Singh, the first informant/ injured.

31. While evaluating testimony of solitary witness, in **Lallu Manjhi and another vs. State of Jharkhand**[13], Hon'ble the Supreme Court in paragraph No.10 has held as under :-

> **"10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (*i*) wholly reliable, (*ii*) wholly unreliable, and (*iii*) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. (See: *Vadivelu Thevar* v. *State of Madras* [AIR 1957 SC 614 : 1957 Cri LJ 1000] .)"**
>
> (emphasis supplied)

32. What is meant by "sterling" was succinctly dealt with by Hon'ble the Supreme Court in a judgment rendered in **Rai Sandeep @ Deepu vs. State (NCT of Delhi)**[14]. Paragraph No.22 being relevant is quoted herein below :-

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13 **(2003) 2 SCC 401**

14 **(2012) 8 SCC 21**

"22 [Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.] . In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the

version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(emphasis supplied)

33. When adverted to the facts of this case in the light of law laid down by Hon'ble the Supreme Court in **Lallu Manjhi's case (supra)** and **Rai Sandeep @ Deepu's case (supra)**, it is noticed that P.W.-2, Vikas Singh, has stated in the written report, Ext. Ka-1, that

the vehicle bearing registration No. UP 42 M 4140 was being driven by his friend, P.W.-1/ Dharmendra Singh. However, subsequently, he stated that the vehicle was being driven by his driver, P.W.-1, Dharmendra Singh. In this regard, the precise words used by P.W.-2 are reproduced in devanagari as under :-

"गाड़ी ड्राइवर धर्मेन्द्र सिंह चला रहे थे।"

34. Whereas in the written report, Ext. Ka-1, the relevant words in devanagari used by P.W.-2, Vikas Singh are reproduced herein below :-

> "आज दिनांक 15. 05. 2010 को फैजाबाद से अपने वाहन UP 42 M 4140 स्कारपिओ गाड़ी से अपने घर देवगढ़ आ रहा था। मेरी गाड़ी मेरे मित्र धर्मेन्द्र सिंह चला रहे थे।"

35. It is needless to remind that P.W.-1, Dharmendra Singh, has not only turned hostile but also stated that he was not present at the spot on the date of the incident and that he was not driving the vehicle. Nothing could be elicited in his cross-examination to demonstrate that he does not own Gayatri Enterprises as stated by him in his testimony.

36. P.W.-2/ Vikas Singh, has proved the written report as Ext. Ka-1 by stating that the incident occurred on 15.05.2010 at 8:45 P.M. when the first informant, alongwith his friend, Dharmendra Singh, who was driving the car, his cousin brothers, Vansh Bahadur Singh and Ajeet Pratap Singh, were enroute to his residence situated at Devgarh, Maharajganj by his vehicle. As they reached near the turn at Mai Ji Ka Mandir, a black Safari overtook the vehicle from behind and stopped at some distance ahead of his vehicle. In the said black Safari, Abhay Singh, Ramakant Yadav, Ravikant Yadav, Shambhu Nath Singh @ Deep Singh and Sandeep Singh @ Pappu Singh, who is Abhay Singh's brother-in-law, and two other unknown person were present. The informant clearly recognized all of them in the light of headlights of the vehicle. The occupants of the black Safari disembarked, and without warning, Abhay Singh and Ramakant Yadav approached the informant with an intention to kill him. Several bullets were fired at the informant's vehicle. The assailants were vocally challenging each other to kill the informant while hurling abuses also. P.W.-1, Dharmendra Singh, who was driving the vehicle, managed to save their lives

by accelerating speed of the vehicle. Abhay Singh is a known notorious criminal and mafia.

37. According to P.W.-2, Vikas Singh, when the accused started firing at the vehicle, he instructed P.W.-1, Dharmendra Singh, to accelerate the speed of the vehicle in order to make safe escape from the place of occurrence, and due to this, P.W.-2, Vikas Singh, dashed against the front windshield of the vehicle and sustained some injuries on his chest and head, etc. He also had an injury from the broken glass of the front windshield of the vehicle, which bled. However, the fact that he also received any injury including any such injury, which bled, does not find mention in the written report, Ext. Ka-1, which was submitted by none other than P.W.-2, Vikas Singh, himself. While it is no more *res integra* that the first information report is not an encyclopedia and does not require all facts to be mentioned in the written report, however, absence of such an important fact like receiving injuries in the incident in the written report, Ext. Ka-1, which was submitted by the injured/ first informant himself, is of significance in the facts of this case, in order to assess veracity of facts mentioned in

the written report, Ext. Ka-1 as also the testimony of P.W.-2, Vikas Singh.

38. It is pertinent to mention that the F.S.L. report of the vehicle, in which P.W.-2, Vikas Singh was travelling, does not show that the windshield of this vehicle was damaged or broken. There is nothing on record to show that such a damaged/broken front windshield was ever changed, and if it was changed, when and by whom it was changed. It is also noteworthy that the fact that P.W.-2, Vikas Singh, received any injury from the broken glass of the windshield, which bled, does not find support from the medical evidence available on record. The injury report of P.W.-2, Vikas Singh, which has been proved by P.W.-5, Dr. Ravindra Pratap Narayan Singh, as Ext. Ka-7, does not mention about presence of any incised, cut, or punctured wound. The medical examination of the injured/first informant, P.W.-2, Vikas Singh, was done by P.W.-5, Dr. Ravindra Pratap Narayan Singh, on 16.05.2010 at 12:30 A.M. Meaning thereby the medical examination of the injured witness/ first informant, P.W.-2/ Vikas Singh was conducted promptly after about 3 hours and 45 minutes

of the incident. In the injury report, Ext. Ka-7, only complains of pain and contusion are reported. There is no mention of any recently healed up wound also. Thus, absence of any such injury, which could have bled makes the medical evidence, which was promptly conducted in this case, to be irreconciliable with the testimony of sole prosecution witness, P.W.-2/ Vikas Singh.

39. Where the contradictions are of such nature which creates serious doubt about the truthfulness of testimony of a witness, it cannot be safe to rely upon testimony of such a witness. In this regard, judgments of Hon'ble the Supreme Court in **State of Rajasthan vs. Rajendra Singh**[15] and **A. Shankar vs. State of Karnataka**[16] may be usefully referred to.

40. It is also decipherable from the statement of P.W.-2, Vikas Singh, that on 15.05.2010 at about 08:45 PM, at the place of occurrence, he saw his vehicle being overtaken by the accused person's black Safari bearing No.UP 32 CA 9473. The accused/ respondents, who were

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15 **(2009) 11 SCC 106**

16 **(2011) 6 SCC 279**

armed with firearms, got out of the black Safari and started firing at the vehicle with the intention to kill the first informant. According to P.W.-2, they were also extending threats to kill him. It is not the prosecution's case that the vehicle in which P.W.-2, Vikas Singh, was travelling stopped even for a while at the place of occurrence. In a situation where the vehicle was overtaken by the respondents, who were traveling in black Safari bearing registration No. UP 32 CA 9473 and which stopped ahead of the vehicle, from which, the accused/ respondents alighted and started firing, it was hardly possible for anyone to hear the threats being extended by the accused. More particularly, when P.W.-2, Vikas Singh, himself has stated that upon hearing the sound of gunfire, he ducked on the floor of the vehicle. In such a situation, it is also difficult for anyone to see as to which respondent fired at him or towards the vehicle.

41. It is also apparent that in the written report, Ext. Ka-1, the first informant P.W.-2, Vikas Singh himself had mentioned that only three accused/ respondents No.3, 4 and 7, namely, Rama Kant Yadav, Ravi Kant

Yadav and Abhay Singh respectively, opened fire at the vehicle. However, in his examination-in-chief, P.W.-2/ Vikas Singh has stated that the respondents No.2 to 8 opened fire at him. However, P.W.-2, Vikas Singh has himself stated in his cross-examination that accused/ respondents No. 5, Girish Pandey @ Dippul Pandey had not opened fire at him and he had not seen him at the place of occurrence on the date of incident. This witness has also stated that 2-4 shots were fired at the vehicle. However, the F.S.L. report reveals six holes in the vehicle, meaning thereby that at least six bullets had pierced the metallic body of the vehicle. These contradictions are are of such nature, which cannot be said to be trivial and therefore they cannot be ignored because they make a serious dent in the truthfulness of the testimony of P.W.-2, Vikas Singh.

42. Though, recovery of firearm, otherwise, is not a condition precedent to establish any offence as defined under I.P.C., which is stated to have been committed by using an arm or firearm as defined under the Act, 1959, however, in the facts of this case, when it is projected by the prosecution that the vehicle had six marks of bullet

entry on the left side of the body of the vehicle, Scorpio bearing No.UP 42 M 4140, recovery of firearm of such caliber, whose bullets were capable of piercing the metallic body of the vehicle would have lent support to prosecution story to the effect that the fires were opened by the accused/ respondents No.3, 4 and 7, namely, Rama Kant Yadav, Ravi Kant Yadav and Abhay Singh respectively, on the date of incident, which caused such entry marks (holes) in the vehicle, Scorpio bearing No. UP 42 M 4140.

43. P.W.-2, Vikas Singh, has stated in his testimony that after getting the first information report lodged at Police Station Maharajganj, District Faizabad (now Ayodhya), he left the vehicle at the police station itself. It is pertinent to mention that there is no seizure memo of this vehicle on the record. This vehicle was received by Constable Kamma Lal on 10.06.2010, which he handed over to F.S.L. Lucknow on 15.06.2010. P.W.-2, Vikas Singh, has stated that he is not the owner of the vehicle. It is borne out from the testimony of P.W.-2, Vikas Singh that the vehicle remained with P.W.-2, Vikas Singh, who is not its registered owner, before the same

was handed over to Constable Kamma Lal on 10.06.2010 for its examination by F.S.L., Lucknow. As stated above, Constable Kamma Lal handed over the vehicle to F.S.L., Lucknow on 15.06.2010. Meaning thereby, this vehicle remained with Constable Kamma Lal for a period of about five days, about which, no explanation has been offered by the prosecution. For reasons best known to the prosecution, Constable Kamma Lal has not been examined. Although every lapse in investigation, which does not have any serious bearing on the quality and fairness of the investigation, has no adverse effect on the otherwise proven prosecution story. However, such a lapse, which has a direct bearing and which prejudices the right of fair trial of the accused/ respondents, cannot be ignored or brushed aside. In this regard, a reference may usefully be made to a judgment rendered by Hon'ble the Supreme Court in **Arvind Kumar alias Nemichand and others vs. State of Rajasthan**[17], wherein, Hon'ble the Supreme Court has held that an investigating officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to

17 **(2022) 16 SCC 732**

look for materials available for coming to a correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation. In this case, investigation was conducted by S.H.O. Sanjay Nagvanshi, who has not been examined by the prosecution, and thereafter by P.W.-4, Circle Officer Dinesh Chandra Misra. P.W.-6, Inspector Vijay Kumar Singh had also conducted some part of the investigation, who had recorded statements of the witnesses, namely, P.W.-1, Dharmendra Singh, P.W.-2, Vikas Singh, Vansh Bahadur Singh and Ajeet Pratap Singh, under Section 161 Cr.P.C. He had also prepared site plan, which has been proved by him as Ext. Ka-8. However, none of the investigating officer, examined by the prosecution, has been able to explain as to why and under what circumstances, the vehicle, in which, the first informant P.W.-2, Vikas Singh was travelling on the date of incident and which, according to prosecution story, had received six bullet entry marks in this incident, was not seized and why no seizure memo in respect thereof was prepared immediately after the incident.

44. It is true that the first informant P.W.-2, Vikas Singh himself had no role in preparation of seizure memo regarding the vehicle. However, the same was admittedly neither seized nor taken into custody by the investigating officer immediately after the incident, in accordance with law. The fact that the vehicle remained with the first informant after the incident and thereafter it remained with Constable Kamma Lal for five days without any plausible explanation, seriously prejudices accused because during such period, possibility of tempering with the vehicle cannot be ruled out in the facts of this case.

45. P.W.-3, Head Constable Tanveer Ahmed has proved Ext. Ka-2, Ext. Ka-3 and Ext. Ka-4 by stating that the same were prepared by Constable Nand Lal, whose handwriting and signature he identified. He has also stated that said Head Constable Nand Lal has died. However, this witness has stated that Ext. Ka-4 does not bear either thumb impression or signature of the first informant, Vikas Singh in column No.14 of Ext. Ka-4.

46. It is also significant to mention that Ext. Ka-5 has been proved by the P.W.-4, Dinesh Chandra Mishra. This Ext. Ka-5 is one envelop containing photographs of the vehicle. However, having regard to the fact that this envelop containing photographs of the vehicle, Scorpio bearing No. UP 42 M 4140, which were taken pursuant to a release order passed in favour of its registered owner, in my considered opinion, the photographs and negatives ought to have been proved by the photographer, who had taken the photographs and had preserved the negatives thereof and not by the investigating officer, who had nothing to do with the preparation of either photographs or their negative(s).

47. P.W.-2, Vikas Singh, in his testimony, has fairly admitted that he did not receive any firearm injury in this incident and that the injuries he sustained were caused due to the sudden acceleration of the vehicle, which made him dash against the front windshield and the dashboard of the vehicle. Therefore, in order to prove that any such incident had taken place on 15.05.2010 at about 08:45 PM at the place "A" shown in the site plan, Ext. Ka-8, which was proved by P.W.-6,

Inspector Vijay Kumar Singh, it was incumbent on the prosecution to have proved that the vehicle was hit by bullets fired by the accused, who were armed with firearms. It was also the duty of prosecution to prove that immediately after the incident, the vehicle was duly seized and remained in safe custody to rule out any possibility of tampering with the vehicle.

48. It transpires from the testimony of investigating officer, P.W.-4/ Dinesh Chandra Misra that he himself has admitted that during investigation of this case, no firearm was recovered from the possession or on the pointing out of accused/ respondents No.3, 4 and 7, namely, Rama Kant Yadav, Ravi Kant Yadav and Abhay Singh respectively. He has also admitted that no live cartridges or empty cartridges were recovered from the alleged place of occurrence.

49. Section 27 of the Act, 1959 being relevant is quoted herein below :-

> 27. Punishment for using arms, etc.—(1) Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

> (2) Whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.
>
> (3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person,[shall be punishable with imprisonment for life, or death and shall also be liable to fine].

50. A bare perusal of aforesaid provision makes it clear that sub clause (2) and (3) of Section 27 of the Act, 1959 deals with punishment for use of any prohibited arms or prohibited ammunitions. In want of recovery of any prohibited arms or prohibited ammunitions from the possession of the accused/ respondents No.3, 4 and 7, namely, Rama Kant Yadav, Ravi Kant Yadav and Abhay Singh respectively, they could not have been charged or convicted under Sections 27(2) and 27(3) of the Act, 1959. Insofar as offence under Section 27(1) of the Act, 1959 is concerned, in this regard paragraph No.9 of a judgment rendered by Hon'ble the Supreme Court in **Mahendra Singh vs. State of West Bengal**[18] being relevant is quoted herein below:-

18 **(1974) 3 SCC 409**

> "**9.** On the evidence on the record, therefore, it is not possible to hold that the existence of the arms in the almirah were without the appellant's knowledge or that his possession of the arms was unconscious. His conviction under Section 25(1)(*a*) of the Arms Act, 1959 is, therefore, fully justified. **It is, however, difficult to sustain his conviction under Section 27 of the Arms Act. There is no evidence to support the offence under that section and indeed the trial court has convicted him without properly applying its mind to the ingredients of that offence. The judgment of the trial court seems to suggest that mere possession of the arms would also constitute an offence under Section 27 of the Arms Act. This view is clearly not correct. But since no separate sentence was imposed under Section 27, it is unnecessary to say anything more about it than that the conviction under Section 27 must be quashed.**"
>
> (emphasis supplied)

51. Thus, in view of aforesaid facts and having regard to the provisions contained in Section 27 of the Act, 1959, the accused/ respondents No.3, 4 and 7, namely, Rama Kant Yadav, Ravi Kant Yadav and Abhay Singh respectively, were rightly not convicted for offence under Section 27 of the Act, 1959 by the learned trial court.

52. It is mentioned in the written report, Ext. Ka-1, that two persons, namely Vansh Bahadur Singh and

Ajeet Pratap Singh, who were cousin brothers of the first informant, P.W.-2, Vikas Singh, were also present in the vehicle and who also saw the entire incident; however, the prosecution did not produce either of them. P.W.-6, Inspector Vijay Kumar Singh, has stated in his testimony that Vansh Bahadur Singh and Ajeet Pratap Singh had not stated in their statements recorded under Section 161 Cr.P.C. that respondents No.5 and 6, namely Girish Pandey @ Dippul Pandey and Vijay Kumar Gupta, had fired at the vehicle in this incident. Therefore, it amply shows that the prosecution did not try to come up with the correct version of prosecution story by not producing Vansh Bahadur Singh and Ajeet Pratap Singh as prosecution witnesses in the trial court. There is nothing on record to show that either they were won over by the accused/ respondents or they were threatened by the accused/ respondents. They were material witnesses in the facts of this case. Hence, it may safely be said that the prosecution, in the peculiar facts of this case, deliberately withheld the aforesaid material prosecution witnesses from deposing, thereby giving rise to an adverse presumption as envisaged under Section 114(g) of the Act, 1872. This conclusion stands supported by a

decision rendered by Hon'ble the Supreme Court in paragraph No.10 of **Khatri Hemraj Amulakh vs. The State of Gujarat**[19]**,** which is quoted herein below:-

> "10. According to the statement of Dharamshi recorded in Gujrati, his tailoring shop is near the house of the accused. On the day of occurrence at about 10 a.m. Dharamshi saw the accused sitting on a stone opposite his (Dharamshi's) shop. The accused appeared to be in a state of excitement. He was looking to the ground and was not speaking with any one. After sitting like that for about an hour, the accused met Shiv Lal whose shop is also nearby. Thereafter, the accused went inside his house. Dharamshi later on that day learnt of the murder of Thakari deceased. Accordingly however, to the English record of the statement of Dharamshi, the accused after sitting on the stone for about an hour in a state of excitement met Shiv Lal. The accused and Shiv Lal then went together to the house of the accused. The learned judges of the High Court relied upon the Gujrati version of the statement of Dharamshi and accepting that to be correct, came to the conclusion that the accused was alone with Thakari deceased at the time of the present occurrence. In this connection, we find that though Dharamshi has deposed in court that the accused was in a state of excitement, Dharamshi made no mention of the accused being in the state of excitement in his statement recorded by the police. **It would thus appear that Dharamshi has tried to improve upon his police statement. Shiv Lal, with whom the accused was closetted, according to the Gujrati version of Dharamshi's statement, and who also went along with the accused inside the house, according to the English version, has not been examined as a witness in the case and there is nothing on the material before us to indicate as to why Shiv Lal was not examined by the prosecution. The non-examination of Shiv Lal**

19 **(1972) 3 SCC 671**

> **who was a very material witness would give rise, in our opinion, to an inference that, if examined, he would not have supported the prosecution evidence. We thus find that a very important piece of evidence which could have shown as to whether the accused went inside his house shortly before the occurrence is missing in this case. In any case we do not find it safe to act upon the uncorroborated statement of Dharamshi.**"
>
> (emphasis supplied)

53. There is yet another aspect of this matter which needs to be outlined. P.W.-2, Vikas Singh, who is the first informant and an injured witness, has stated in his testimony that out of seven accused/ respondents No.2 to 8, respondent No.5, Girish Pandey @ Dippul Pandey did not open fire at him on the date of incident whereas respondent No.5, Girish Pandey @ Dippul Pandey alongwith respondent No.6, Vijay Kumar Gupta were stated to have done so in a subsequent report submitted by P.W.-2, Vikas Singh on the basis of information given to him by Sumit Sharma. Therefore, such a change in the stand taken by P.W.-2, Vikas Singh in respect of one of the accused/ respondents i.e. respondent No.5, Girish Pandey @ Dippul Pandey in his own testimony cannot be said to be a result of fading memory. It can also not be said to be a contradiction of

a trivial nature. Such a significant deviation in the testimony of P.W.-2, Vikas Singh himself in respect of one of the accused/ respondents, who was also assigned role of opening fire at the vehicle on the date of incident, makes another serious dent in the credibility of of testimony of P.W.-2, Vikas Singh. The law laid down by Hon'ble the Supreme Court in **Ram Singh vs. State of U.P.**[20] while referring with approval a judgment rendered by Hon'ble the Supreme Court in paragraph No.37 has held as under :-

> **"37. This Court in Javed Shaukat Ali Qureshi [Javed Shaukat Ali Qureshi v. State of Gujarat, (2023) 9 SCC 164 : (2023) 3 SCC (Cri) 720] , has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under : (SCC p. 175, para 15)**
>
> > **"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot**

20 **(2024) 4 SCC 208**

make a distinction between the two accused, which will amount to discrimination.””

(emphasis supplied)

54. Thus, a threadbare analysis of the testimony of sole prosecution witness, P.W.-2/ Vikas Singh, in its entirety and because of aforesaid overall reasons, it is difficult to say that testimony of P.W.-2, Vikas Singh is of sterling quality. It is also difficult to place him in the category of a wholly reliable witness, whose testimony is of such quality which inspires confidence of the Court to base conviction of the accused/ respondents No.2 to 8 on its sole basis. At best, he could be placed in the category of a witness, who is neither wholly reliable nor wholly unreliable as classified by Hon’ble the Supreme Court in **Lallu Manjhi’s case (supra)**, therefore, in view of law laid down by Hon’ble the Supreme Court in **Lallu Manjhi’s case (supra)**, his testimony was required to be corroborated by some other ocular or circumstantial evidence before the same could be relied upon in order to convict the accused/ respondents. As discussed above, the two other persons, namely, Vansh Bahadur Singh and Ajeet Pratap Singh, who are cousin

brothers of the first informant, P.W.-2, Vikas Singh, were also shown in the chargesheet as eye witnesses. However, none of them was produced by the prosecution in support of its case in the trial court for the reasons best known to the prosecution itself.

55. Undisputedly, the testimony of an injured witness can ordinarily be safely relied upon. However, having regard to the various contradictions appearing in the testimony of solitary prosecution witness, P.W.-2 Vikas Singh, it is also relevant to refer to a judgment rendered by Hon'ble the Supreme Court in **Sudhir and another vs. State of Madhya Pradesh**[21], wherein, Hon'ble the Supreme Court has held that the conviction cannot be sustained on the basis of sole testimony of victim/ injured, which suffers from substantial infirmities and inconsistencies.

56. Thus, having given my thoughtful consideration to the rival submissions in light of oral submissions as well as written submissions in their entirety, I find that the view taken by the learned trial court, while recording acquittal of accused/ respondents

21 **(1985) 1 SCC 559**

No.2 to 8 of all charges levelled against them, does not suffer from any infirmity or illegality and the same is not perverse. It is not only a possible view of the matter, which could reasonably be formed on the basis of the evidence available on record before the learned trial court, but the same appears to be the only conclusion which could be formed on the basis of evidence available on record. There is nothing on record indicating that any inadmissible evidence was relied upon by the learned trial court or that, while recording the finding of acquittal of the accused/ respondents No. 2 to 8, the trial court failed to consider any evidence that was otherwise admissible, but the same was not considered. It can also not be said that the mention of various cases against the first informant, P.W.-2/ Vikas Singh, was the sole reason for recording the finding of acquittal of respondents No.2 to 8 in this case by the learned trial court. Therefore, no interference with the impugned judgment and order dated 10.05.2023 is warranted having regard to the law laid down by Hon'ble the Supreme Court in **Ramesh's case (supra), Guru Dutt Pathak's case (supra), H.D. Sundara's case (supra), Mallappa's case (supra)** and **Ajai Mishra's case (supra)**.

57. In the light of what has been discussed above, the present criminal appeal lacks merit, which deserves to be dismissed and is, accordingly, **dismissed**.

58. The accused/ respondents No.2 to 8 are on bail. Their bail bonds are cancelled and their sureties are discharged.

59. In compliance with the provision contained in Section 437-A Cr.P.C. the accused/ respondents No.2 to 8 are directed to furnish the personal bonds and two sureties each to the satisfaction of the court concerned within a period of eight weeks from today.

60. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 20.12.2024
cks/-

Court No. - 1

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 100 of 2023
Appellant :- Vikas Singh
Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 7 Others
Counsel for Appellant :- Sandeep Yadav,Naved Ali
Counsel for Respondent :- G.A.,Anuj Pandey,Ashish Kumar Shukla,Ashish Kumar Singh,Katyayan Mishra,Lalta Prasad Misra,Nagendra Mohan,Niteesh Kumar,Rajeev Narayan Pandey,Randheer Singh,Ripu Daman Shahi,Sarvesh Upadhyay,Sushil Kumar Singh

Hon'ble Attau Rahman Masoodi,J.
Hon'ble Ajai Kumar Srivastava-I,J.

In view of difference of opinion between the members of the Bench, let the record of the Criminal Appeal be placed before Hon'ble the Chief Justice under Section 433 of Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding Section 392 Code of Criminal Procedure) for nomination of Bench.

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(Ajai Kumar Srivastava-I, J.) **(Attau Rahman Masoodi, J.)**

Order Date : 20th December, 2024
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