Chander Pal vs The State Of Haryana on 7 February, 2002

Equivalent citations: AIR 2002 SUPREME COURT 989, 2002 (2) SCC 755, 2002 AIR SCW 699, 2002 CRI LJ (NOC) 174, 2002 (3) SRJ 357, 2002 (2) SCALE 85, 2002 (1) SUPREME 612, 2002 SCC(CRI) 487, 2002 CRILR(SC&MP) 320, (2002) 2 JT 30 (SC), (2002) 1 SUPREME 612.2, 2002 (1) SLT 735, 2002 CRILR(SC MAH GUJ) 320, (2002) 61 DRJ 386, (2002) 146 ELT 537, (2002) 1 UC 395, (2002) 95 DLT 440, (2002) 1 ALLCRIR 797, (2002) 1 ALLCRILR 761, (2002) 1 EASTCRIC 463, (2002) 2 RAJ CRI C 345, (2002) 1 SCJ 641, (2002) 1 CURCRIR 142, (2002) 2 SCALE 85, (2002) 44 ALLCRIC 621, (2002) 2 CAL HN 135, (2002) 1 CHANDCRIC 251, (2002) 1 JLJR 683, (2002) SC CR R 921, (2002) 1 CHANDCRIC 209, (2002) 1 CRIMES 312, 2002 (1) ANDHLT(CRI) 313 SC, (2002) 1 ANDHLT(CRI) 313

Bench: N. Santosh Hegde, Doraiswamy Raju

CASE NO.:
Appeal (crl.) 825 of 2000

PETITIONER:
CHANDER PAL

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT: 07/02/2002

BENCH:
N. Santosh Hegde & Doraiswamy Raju

JUDGMENT:

(With Crl.A. No.826/2000) J U D G M E N T SANTOSH HEGDE, J.

The appellants in these two criminal appeals are accused Nos.1 and 2 in Sessions Case No.24/1993 on the file of the learned Sessions Judge, Faridabad. They along with 3 other persons, namely, Dharambir, Dharam Singh and Kewal Ram were chargesheeted for an offence punishable under Sections 302, 324 read with Section 34 IPC by the Police Station NIT, Faridabad, for having

committed the murder of one Ravinder Kumar on 1.8.1992 at about 10.30 a.m. The learned Sessions Judge while acquitting 3 of the accused, who are not before us, convicted Chander Pal, appellant in Crl. A. No.825/2000 under Section 302, and Rajinder, appellant in Crl.A. No.826/2000 under Section 302 read with Section 34 IPC and sentenced them to undergo RI for life and to pay a fine of Rs.500/- each in default to undergo RI for 6 months. Appeal filed by these convicted appellants and the appeal and revision filed against the acquittal of some of the accused and for enhancement of sentence to capital punishment came to be dismissed by the High Court of Punjab & Haryana at Chandigarh vide its judgment in Crl.A. Nos.458-DB & 469-DB of 1995.

This is against the said judgment and conviction imposed on the appellants by the High Court confirming the conviction and sentence imposed by the learned Sessions Judge, the appellants are now before us in these appeals.

The prosecution case narrated in brief is as follows :

> The appellants herein were known to deceased Ravinder Kumar and on 31.7.1992 when they were playing the game of Ludo at the shop of Kewal Ram, (accused No.5), an argument ensued between the appellant Chander Pal and the deceased, during the course of which it is alleged that the deceased slapped Chander Pal. According to the prosecution, this incident was witnessed by one Dolly alias Sanjiv who was examined in the Sessions Court as PW-5 as also by PW-6 Lajpat Rai. Being infuriated by the said affront of having been slapped, it is contended by the prosecution that the appellants herein along with the acquitted accused persons hatched a conspiracy to do away with the deceased, in furtherance of which it is stated that on 1.8.1992 at about 10.30 a.m., the second appellant herein, namely, Rajinder went to the house of the deceased and called him on the pretext of having to talk to him. This was done in the presence of the brother of the deceased, Bhim Sen who was examined before the trial court as PW-1. The deceased who answered the request of Rajinder, walked with him to a place which is about 60 yards away from the house of the deceased, they were joined by the first appellant Chander Pal and other accused persons who came there on a scooter and a motor cycle and while the second appellant Rajinder and other acquitted accused persons held the deceased, the first appellant Chander Pal is alleged to have stabbed the deceased, causing him 2 incised wounds on the chest and abdomen and another incised wound on his thigh as also a small abrasion caused by a blunt weapon used by one of the acquitted accused. The prosecution further states that this incident in question was noticed by PW-2 Ashok Kumar who was the owner of the tea-stall in front of which the said incident took place, and it is also stated that the said Ashok Kumar when he tried to intervene in the fight, suffered a minor injury on the posterior aspect of his left forearm. It is further stated that the deceased was then taken to Escorts Medical Centre, Faridabad, where on arrival he was declared dead by the doctor. Thereafter, on getting information from the hospital authorities, PW-11 Manmohan Singh, ASI, took charge of the investigation and went to the hospital and on reaching there he recorded a statement Ex. PA made by PW-1, Bhim Sen, brother of the deceased. Based on the said statement (complaint), a case was

registered and inquest proceedings were held by said PW-11. During the course of the said proceedings, PW-11 is supposed to have inspected the place of occurrence and lifted blood stained earth from there. In the meantime, the dead body of the victim was sent for post mortem examination which was conducted on the very same day by Dr. Amar Bajaj, PW-9 at B.R. Hospital, Faridabad who, after examining the wounds referred to hereinabove, opined that the death had occurred due to the injuries to the vital organs leading to shock and haemorrhage which was the ultimate cause of death. It is further stated that PW-2 was medically examined by Dr. A K Gupta, PW-3 of the hospital at Faridabad on 1.8.1992 and the doctor then noted an injury in the shape of a reddish contusion on the posterior aspect of the left forearm. The prosecution's further case is that the appellants herein and others were apprehended by PW-11 on 14.8.1992 and he also took into custody a scooter from Dharam Singh and a motorcycle from Dharambir, the acquitted accused. The further case of the prosecution is that on interrogation on 17.8.1992, the first appellant Chander Pal led them to the recovery of a knife Ex. P- 1 which according to the prosecution was used in the stabbing of the deceased. It is further stated that an iron rod Ex. P-2 was recovered at the instance of Rajinder, second appellant herein.

It may be relevant at this point of time to note that Dr. S. Raina, PW-4, who first saw the deceased when he was brought to the Escorts Medical Centre, Faridabad, had sent an intimation to the jurisdictional Police in the form of a communication in Ex. PE wherein it is seen that he had recorded that the deceased was brought to the said hospital by one Subhash Baweja, resident of 3-G/96, NIT, Faridabad. On his statement, it was noted that the age of the deceased was 26 years and that the place of the incident was shown to be at Market No.3, Near Kalyanpur Jhuggi by a group of persons while the deceased was taking tea. The name of the accused was not mentioned. The doctor as per Ex. PE has also stated that the age mentioned in the said Ex. PE was later corrected to 26 years on the information given by the relatives of the patient who reported at the time of preparation of the card of the patient.

In regard to the motive, the prosecution has relied on the evidence of PW-5 & PW-6, while in regard to the incident of 1.8.1992, the prosecution has relied on the evidence of PW-1, the brother of the deceased, and PW-2, Ashok Kumar, the owner of the tea-stall who, according to them, along with Mohan Lal had witnessed the incident in question. It may be noted at this stage that neither Subhash Baweja who took the deceased to the hospital nor Mohan Lal who was the other eye-witness to the incident was examined by the prosecution. The prosecution also relied on the evidence of recovery of the knife as also the other weapons. The learned Sessions Judge after trial and on consideration of the material on record, accepted the evidence of PW-5 who had stated that he had witnessed the altercation between the deceased on the one hand and the appellants herein on 31.7.1992 in the vedio shop of A-5 when the deceased allegedly slapped the appellant Chander Pal which incident he reported to PW-1 on the very same day. Having accepted the motive pointed out by the prosecution, the learned Sessions Judge accepted the evidence of PWs.1 and 2 partially, inasmuch as the evidence of PWs.1 and 2 was accepted in regard to the appellants herein, but was rejected with reference to the 3 acquitted accused persons. It came to the conclusion that the evidence of these witnesses was reliable enough to base a conviction as against these appellants even

though same was not acceptable in regard to other accused. It held that the non- examination of Subhash Baweja and Mohan Lal did not in any way affect the prosecution case, hence, found these two appellants guilty and sentenced them as stated hereinabove.

In appeal, as already stated, the High Court concurred with the findings of the Sessions Court and the appeals filed by the appellants herein came to be dismissed.

In Crl. A. No.825/2000, Mr. Sushil Kumar, learned senior counsel appearing for Chander Pal, contended that the entire prosecution case, on the face of it is unacceptable, being full of contradictions and improbabilities. According to the learned counsel, the courts below seem to have given the benefit of doubt to the prosecution rather than to the defence. He contended that the approach of the learned Sessions Judge in appreciating the evidence of eye-witnesses is so inconsistent inasmuch as the learned Judge while rejecting the evidence of PWs. 1 and 2 on certain factual foundations, seriously erred in accepting the very same evidence on the very same factual foundation in regard to the appellants. He also submitted that the material contradictions pointed out by the defence have been very casually rejected by the learned Sessions Judge who also failed to draw adverse inference in regard to the non- examination of at least two very material and independent witnesses. He submitted that non-examination of Subhash Baweja who had taken the victim to the hospital and had given certain particulars of the place of the incident, shakes the very foundation of the prosecution case and further he submits that the place mentioned by Subhash Baweja to the doctor was an entirely a different place than that shown in the prosecution case. He submits that in the absence of any plausible explanation both in regard to the contradictions found in the case of the prosecution as to the place of the incident as also the reason for non-examination of this Subhash Baweja, the case of the prosecution becomes unbelievable. Arguing further, he contended that Mohan Lal is another person whose name has come out in the course of the prosecution evidence to show that he was also an eye-witness to the incident and the reason given by the prosecution for his non-examination as "unnecessary" gives rise to a suspicion that the prosecution was not prepared to produce independent witnesses in this case. He also doubted the timing of the complaint of PW-1 which is stated to be at 12.30 p.m. This doubt as to the recording of the complaint is based on the fact that the F.I.R. had reached the jurisdictional Magistrate only at 6 p.m. While the court was only 2-3 kms. from the Police Station, this unexplained delay, according to learned counsel, is fatal to the prosecution case. He also expressed a doubt as to how PW-11, the investigating officer, came to know of the incident because intimation from the hospital had gone only to the police out post at the hospital and the explanation of PW-11, that an unknown person telephoned to him, cannot be believed because there was no telephone in his Police Station. The learned counsel ridiculed the explanation of PW-11 that he was informed of the crime in the telephone of a shop nearby by pointing out how could a stranger know the telephone number of that shop and the arrangement PW-11 had with that shop. He submitted that the evidence of PWs-1 and 5 are that of interested witness and not worthy of acceptance on their own showing. He pointed out that PW-5 had been suspended by his employer Escorts factory at Faridabad on the ground that he had committed theft and that there are such material contradictions and improvements in his evidence which on the face of it, show that he is not a truthful witness. In regard to PW-1, it is argued by learned counsel that his evidence that he saw the incident from outside his house itself shows that he is not a truthful witness inasmuch as it is seen from the prosecution evidence itself

that the place of incident cannot be seen from the house of PW-1 or even on immediately on coming into the street. That apart, it is also pointed out that this witness, according to PW-2, came to the place of incident only after the attack on deceased was over and when the accused persons were fleeing from the place of incident. It is also pointed out that this witness being the brother of deceased is an interested witness, hence, courts below ought not to have been relied upon to his evidence. In regard to PW-2, learned counsel contends that assuming that PW-2 could have been present at the place of the incident his evidence in regard to the identity of the accused persons, could not have been accepted because he did not know these accused persons and there being no identification parade, it is not safe to rely upon his sole testimony to convict the appellant. He also points out that even though PW-2 stated that he helped to carry the deceased who was bleeding profusely to the hospital, there were no blood stains on his clothes which is highly improbable, and so far as the injury suffered by him is concerned, apart from the fact that this part of his evidence was not accepted by the trial court, on the face of it such evidence is unbelievable and at least unsafe to base a conviction. The learned counsel also pointed out that, according to PW-2, A-1 was in police custody from 2.8.1992 and he had seen the said accused in police custody. Therefore, the Police had facilitated the identification of this accused without any identification parade, hence the identification of A-1 by PW-2 ought not to be accepted.

While Mr. U R Lalit, learned senior counsel appearing for A-2, concurs with the arguments addressed by Mr. Sushil Kumar on behalf of A-1 and he further supplemented it by contending that there are umpteen contradictions between the evidence of PWs.1 and 2 rendering it unsafe to rely upon their evidence to base a conviction. He also pointed out that while other accused persons who have been attributed the same overt acts of A-2 have been acquitted by disbelieving the prosecution case in regard to them on the common evidence, he said that there is no way by which the courts below could have accepted the very same evidence in regard to the second appellant to convict him.

In reply, Mr. Dhanda, learned counsel appearing for the State, submitted that the very fact that the complaint in question has named all the accused persons and had come into existence as early as 12.30, barely an hour after the death of the deceased, itself shows that the prosecution has come out with a clean case. He further submitted that PWs.1, 2 and 5 do not have any reason whatsoever to falsely implicate the appellants or other accused and at least PW-2 not being an interested witness whose presence at the place of the incident cannot be doubted, has rendered a natural version of the incident which took place on 1.8.1992 and there is no reason why his evidence cannot be accepted. According to him, the contradictions, if any, relied upon by the learned counsel for the appellants herein, are not material contradictions so as to turn down the case of the prosecution. Even otherwise, according to the learned counsel for the State, on many material aspects the defence has not even questioned the veracity of the prosecution case, he urged that the defence evidence adduced by examining DW-2 cannot be accepted because the documents relied upon by the defence are not maintained in the normal course of business. He also contended that the so-called telegram and petitions sent are all concocted documents. He also urged that the appellants were absconding for nearly 13 days which itself goes to show the culpability of the accused.

We have heard learned counsel for the appellants. The prosecution case was that on 31.7.1992 there was an altercation between the deceased and the appellants herein while playing a game of Ludo,

this is based on the evidence of PWs. 5 and 6. So far as PW-6 is concerned, for very good reasons the courts below have not chosen to place any reliance on his evidence. It is pointed out that the father of the deceased was a Police official and PW-6 was also a Police official in the same Police force, therefore, the investigating agency has gone out of the way to make out a case against the appellants and other accused persons to solve an undetected murder. This suggestion of the defence finds support from the fact that prosecution has chosen to examine PW-6 in support of its case. Coming now to the evidence of PW-5 in regard to the incident on 31.7.1992, it is to be seen that this witness is a neighbour of the deceased, and was known to the family of the deceased to that extent this witness is an interested witness. His presence at the time of the incident was not corroborated by any other independent source. This witness states that during the course of scuffle on 31.7.1992, he also sustained an injury while trying to intervene in the fight, which injury was caused by the second appellant herein. But in the cross-examination, he states that he did not go to the doctor to get the injury treated and it is only when the Police came to record his statement they took him to the doctor and got the injury treated. However, it is seen from his evidence that he did not state before the Police that the injury on him was inflicted by Rajinder though he improved his statement before the court and stated so in his examination-in-chief. That apart, in the examination in chief, he stated that the incident on 31.7.1992 took place at about 6.30 p.m. while in his statement before the Police under Section 161 Cr.P.C., he had mentioned the time as 4 p.m. These contradictions in his statement before the court when compared with the previous statement and coupled with the fact that he is admittedly a neighbour and friend of the deceased and his brother, makes us feel that it is not safe to rely upon his evidence to accept the prosecution case that the incident in question on 31.7.1992 had taken place and that the same was witnessed by this witness.

Reverting back to the prosecution case in regard to the incident of 1.8.1992, it is to be noticed that the same is based on the evidence of PWs.1 and 2. We will first consider the evidence of PW-1 who is none other than the brother of the deceased. It is on record that he hails from an affluent family of the area and he states that on 1.8.1992 at about 10 a.m. the second accused herein came to his house and took the deceased with a view to have a talk with him. He further states after about 10 minutes, he heard the shrieks for help from his brother and when he rushed out of the house, he saw that some of the accused including the second appellant herein had caught hold of his brother and the first appellant was inflicting blows with a knife. He specifically states in his examination-in-chief that the blows were inflicted on the deceased within his view. This he says in respect of his position as at that point of time he was in front of his house. The prosecution has produced a Memo and a sketch prepared by PW-7 which indicates that from the place of PW-1's residence even from outside the house, it is not possible to see the place of incident because there is a bend in the road which blocks the vision. Therefore, it is most unlikely that PW- 2 could have actually seen the attack on his brother. This inference of ours is also supported by the fact that PW-2 in his evidence specifically states that PW-1 arrived at the place of the incident when the accused persons started fleeing from the scene of occurrence. It is also to be noted at this point that though it is the prosecution case that PW-1 accompanied the deceased to the hospital, in the records of the hospital, it is nowhere noted that he did so. On the contrary, the contents of Ex. PE show that it was Subhash Baweja who brought him to the hospital and who could give the particulars of the deceased wherein it is stated that the deceased was of 29 years. Notings in Ex. PE and the evidence of PW-3, the doctor show that subsequently at the instance of a relative, this age was changed from 29 to 26 years. This was clearly

at a later point of time, as stated by the doctor. If actually PW-1 had accompanied the deceased to the hospital then it was reasonable to believe that he would have given the particulars of the deceased to the doctor himself, and that if he had actually noticed the incident in question, the actual place as put forth by the prosecution in their case would have been mentioned in Ex. PE and not the place as given by Subhash Baweja. And also the fact that the deceased's age was wrongly mentioned in the first instance and it was later on corrected from 29 to 26 years which the doctor says was on the information given by the relatives of the patient reported at the time of preparation of the card indicates that when the deceased was brought to the hospital, his relatives including PW-1 were not present and it was Subhash Baweja who took the deceased to the hospital and who described the incident and place of incident to the doctor which was recorded as Ex. PE. In this background, the non-examination of Subhash Baweja throws considerable doubt on this part of the prosecution case as to where exactly the incident in question took place and why Subhash Baweja whose presence was not mentioned by PWs. 1 and 2 at the place of the incident or in the hospital came to pick up the deceased and bring him to the hospital and also give a different version as to the place of incident then the one put forth by the prosecution. PW-11 who was the investigating officer in his evidence before the court has given no explanation whatsoever as to why Subhash Baweja was not examined even though his complete address was mentioned in Ex. PE recorded by the doctor. This lapse on the part of the prosecution also gives rise to a doubt as to the fact whether PWs.1 and 2 did at all witness the incident in question or the same actually took place near the tea stall of PW-2. At this point, it is also relevant to notice the fact that according to the evidence of PW-1, there was another eye- witness to the incident, namely, Mohan Lal who according to this witness, witnessed the attack on the deceased and also accompanied the deceased to the hospital and that Mohan Lal was also present in the hospital when the Police came there. This witness is also not examined and from the records, we find that he was given up as "unnecessary". We find it extremely difficult to accept this explanation and non-examination of both Subhash Baweja and Mohan Lal, in our opinion further throws very strong doubt on the prosecution case. As a matter of fact Mohan Lal played a very important role as a Panch witness in the seizure of the blood stained earth from a place where the deceased was attacked, and according to the Panchnama of seizure, the seal put on the package in which the earth was packed, was given to the possession of Mohan Lal. Thus Mohan Lal seems to have played an important role even in the investigation and still the prosecution has failed to examine this witness. There is one more reason why we are hesitant to accept the evidence of PW-1. That is because of the fact that PW-1 was not familiar with the first appellant Chander Pal and the defence has suggested to this witness that he could not have identified A-1 because he was really not known to him. It is also suggested that this witness while mentioning the names of other accused persons in the complaint, this witness has mentioned either the name of their fathers or at least their caste and place of residence while in regard to the appellant Chander Pal he has neither mentioned the name of his father nor the place of the incident. The explanation given by PW-1 to the suggestion made in this regard to him by the defence is that he used to visit the Kelvinator factory where A-1 was working for the purpose of procuring business from the factory and during those visits he had seen Chander Pal, hence he was able to identify the accused. We notice that his visit to Kelvinator factory on previous occasions is not corroborated by any other evidence; be it oral or documentary. It has also come in evidence that the said factory engages about 5,000 to 7,000 workmen and this witness has not given any special reason why he specifically noticed Chander Pal so as to remember his name and identify him at the time of the assault out of those many employees

of the Kelvinator factory. In the background of the interestedness of this witness, and the material contradiction in his evidence even this suggestion of his not knowing Chander Pal becomes relevant. Therefore, we find it difficult to place reliance on the evidence of this witness.

This brings us to the consideration of the other eye- witness PW-2, Ashok Kumar. This witness of course is stated to be a person owning a tea-stall where according to the prosecution the incident in question took place. He stated in his examination in chief that on 1.8.1992 at about 10.30 a.m. while he was proceeding to his tea-stall, he saw the deceased and second appellant Rajinder talking to each other and at that time the accused persons came on a scooter and a motorcycle and all 4 of them pounced on the deceased while second appellant caught hold of the deceased. The first appellant inflicted blows on him with a knife. He stated that he tried to rescue the deceased but one of the acquitted accused Dharambir attacked on his left forearm with an iron rod. He further stated that on hearing the cries of the deceased, his brother PW-1 arrived and the said incident was witnessed by Mohan Lal also. He stated that after the accused persons left the place of occurrence, the deceased was removed to Escorts Hospital at Faridabad, where he was declared brought dead and his statement was recorded both in the hospital as well as at the place of occurrence. He stated that Mohan Lal attested the Memo Ex. PA which was the Panchnama prepared by the Thanedar for having collected the blood stained earth. This witness has admitted that there are about 1,000 people residing in the Jhuggis near the place of incident and that the house of PW-1 was about 60 yards away from the place of the incident. He stated that the attack on the deceased lasted for about 1 or 2 minutes. He specifically stated in his evidence that when PW-1 arrived at the place of incident, the accused persons were in the process of fleeing after inflicting injuries on the deceased. This shows that there is contradiction between the evidence of this witness and that of PW-1 who in his evidence has stated that he saw the incident in question and identified the accused who assaulted the deceased. This witness also specifically stated that he did not know Chander Pal before the incident in question. Therefore, there being no identification parade, it becomes rather difficult to accept the evidence of this witness when he identifies Chander Pal, appellant herein, as one of the assailants. It is, however, very interesting to note that this witness in course of his evidence given before the court had stated that he had seen Chander Pal, the accused in Police custody at the Police Station on 2.8.1992. If this evidence is correct then it throws a very serious doubt on the prosecution case that if actually the first appellant was arrested on 1.8.1992 as suggested by the defence to PW-11 and as stated by PW-2 then it shows that till 14.8.1992, the day when he was shown to be arrested by Police, the prosecution had no case against him and his arrest on 1.8.1992 also facilitated his identification by the prosecution witness. In this background, if we were to examine the evidence of PW-2, we get an impression that he is a person who seems to be waiting to help the prosecution in this case beyond the realm of truth. There is another unanswered question in the prosecution case i.e. why no prosecution witness spoken about the role played by Subhash Baweja. It is to be noted that none of the prosecution witnesses including PW-2 speaks about the presence of Subhash Baweja either at the place of incident or in the hospital. This omission to mention the name of Subhash Baweja by witnesses is very ominous. The absence of explanation in this regard throws a cloud of suspicion on the evidence of PW-2 as well as PWs.1 and 11. That apart, the supposed injury suffered by PW-2 as having been caused by one of the accused Dharambir has been totally disbelieved by the Sessions Court as also the High Court. To this extent, it is not even accepted by the courts below.

With all these contradictions and strong doubts created in our mind with reference to certain facts which are referred by us hereinabove, we think it rather difficult to place reliance on the evidence of PWs.1 and 2 in the background of the fact of the suggestion made by the defence that the murder in question was a blind one without any witness and only because the deceased was the son of a former police official, the investigating officer has implicated these accused persons with extraordinary zeal of obtaining a conviction. In this regard, we will have to refer to certain peculiar facts which are found on record. As per the evidence of PW-1, the accused persons were arrested on 14.8.1992. This is spoken to by PW-11, investigating officer. Though according to the prosecution the accused persons were all known to them and knew their places of residence and work, no explanation is given why they could not be arrested earlier. The IO in his examination before the court has not given any explanation as to what efforts he made to trace out these accused persons. Nowhere in his evidence he states whether these accused persons were absconding. He merely states that the accused persons were arrested by him on 14.8.1992. He of course denies the suggestion that the first appellant was nabbed on 2.8.1992 itself but then there is sufficient material on record to show that the arrest of this accused person, as stated by PW-11 cannot be believed. There is a series of telegrams which were sent by the brother-in-law of the first appellant to the Chief Minister of Haryana, Deputy Commissioner of Faridabad, Chief Justice of Punjab & Haryana High Court, Inspector-General of Haryana as also an application to the C.J.M., Faridabad, which were made on various dates before this accused was supposed to have been arrested by the Police i.e. on 14.8.1992. In these communications, it was specifically averred that the appellant Chander Pal was arrested by the Police on 2.8.1992 and had been kept in illegal detention. The prosecution pleads that these telegrams were sent deliberately to create evidence to malign the prosecution. Assuming that this explanation of the prosecution is plausible, but then we cannot brush aside a positive statement made by PW-2 to which a brief reference has already been made by us earlier in this judgment. As stated above, this witness PW-2, Ashok Kumar, has stated in his cross-examination thus : "I had seen Chander Pal accused in the custody of Police at the premises of Police Station. He was seen in the custody of Police by me on 2.8.1992. His photographs were not taken by the Police in my presence." This evidence of PW-2 is neither clarified in the re-examination nor any explanation has been given by PW-11 or any other prosecution witness. That being so, we will have to accept that it is a fact and that this accused was as a matter of fact arrested by the Police on 2.8.1992 itself. This is somewhat corroborated by the defence evidence wherein the timesheet of Kelvinator factory reflecting the entry and exit of first accused to the said factory in the course of his work was produced through DW-1 and the said timesheets are kept on record by the Sessions Court. A perusal of this timesheet shows that this accused had marked his presence in the factory in the forenoon of 31.7.1992. DW-1 has stated in his evidence that the accused was to have joined duty again on 1.8.1992 in the afternoon but since then he was marked absent because he had not reported for duty. This fits in with the theory of the defence that this accused person was arrested by the Police on 1.8.1992, and was seen by PW-2 in their custody. In our opinion if as a matter of fact the first accused was arrested and was kept in custody from 2.8.1992, it becomes abundantly clear how PWs.1 and 2 so easily identified the first appellant with whom they were not familiar till then.

We will now briefly examine the approach of the learned Sessions Judge in regard to the prosecution evidence as pointed out to us by learned counsel for the appellants. While discussing the evidence of the prosecution with reference to the acquitted accused, this is how learned Judge considered the

prosecution evidence :

> "However, the case of prosecution against Dharambir and Dharam Singh was of course symptomatic of deficiencies owing to failure on its (prosecution) part to lead positive and concrete evidence on the point of identity of these two assailants. In the first information report, Ex. PA, Dharam Singh accused was not named as assailant. The name of that assailant was described therein as Biru. It was not at all the case of prosecution that Dharam Singh accused was also addressed by the name of Biru. Both of them were described therein as belonging to Thakur community and residents of Asaoti. However, that version has convincingly been demonstrated on record to be factually incorrect. On the own telling of Bhim Sen (PW 1), he had not mentioned the father's name of either that person named Biru or other accused Dharambir. In his deposition in Court, he (PW 1) had disowned the fact that he had described both the assailants as belonging to Thakur community and residents of village Aasoti but he was duly confronted with that statement, Ex. PA, where they were described as such. Admittedly, he had never visited the house of either Dharam Singh or Dharambir accused and had also no business dealings with them. He was also frank enough to concede that he had no dealings of any kind with Dharambir-accused. In his statement before the Court, he has no doubt asserted that he had been seeing Dharambir playing Ludo in the company of Chander Pal and Ravinder but had to admit that he had not made any such statement before the police. No evidenciary value could, thus, be attached to the vague and bald statement made by him that he knew both these accused from before. Had that been so, there was no question of his having made an apparent mistake in describing their names, parentage, community or place of residence."

If the learned Sessions Judge was justified in rejecting the prosecution evidence based on the reasoning found in the paragraph extracted hereinabove, we fail to understand how the very same evidence could be accepted in regard to the appellants herein. Every one of the reasoning mentioned in the above paragraph of the judgment of learned Sessions Judge, if applied on the same yardstick to the prosecution evidence in regard to the appellants herein, we do not find any symptomatic differences in regard to applying the said evidence to the appellants herein and rejecting the same with reference to the acquitted accused. In our opinion, on the parity of the reasoning adopted by learned Sessions Judge, the case of the appellants could not have been distinguished from those of the acquitted accused persons. It is this fundamental error in the judgment of learned Sessions Judge which has denied the appellants herein the benefit of doubt which should have been made available to the appellants. We need not dwell upon the confirming judgment of the High Court in this regard very much because in our opinion it has merely accepted and confirmed the judgment of learned Sessions Judge without noticing the material discrepancies in the evidence of PWs.1 and 2, without noticing the effect of non-examination of Subhash Baweja and Mohan Lal and without taking into consideration the effect of illegal detention or arrest of first appellant on 2.8.1992 itself or the reasoning of the learned Sessions Judge while rejecting the prosecution case in regard to the acquitted accused.

For the reasons stated above, we on a re-appreciation of the entire material on record and taking into consideration the arguments addressed on behalf of the parties, are satisfied that the prosecution has failed to prove beyond all reasonable doubt that these appellants are the assailants of deceased Ravinder and are responsible for his murder. Therefore, we allow these appeals, set aside the judgment and conviction imposed on them by the Sessions Court as well as by the High Court and acquit the accused persons. They shall be set at liberty forthwith, if not required in any other case.

.....J. (N Santosh Hegde) .....J. February 7, 2002. (Doraiswamy Raju)