A PRAHLAD

v.

STATE OF MADHYA PRADESH & ANR.

(Criminal Appeal No. 2043 of 2009)

B JULY 27, 2022

[B. R. GAVAI AND PAMIDIGHANTAM SRI NARASIMHA, JJ.]

Penal Code, 1860 – ss.302,120B and 34 – Arms Act, 1959 – ss.25,27 – Acquittal under – Prosecution case was that victim-
C *deceased had political enmity with three accused (A-1, A-2 and A-3) – All three accused hatched a conspiracy to away with the victim – Accused no.1 and accused no.2 had used motorcycle of accused no.3 to arrive near a bus stand where a gun shot was fired at victim from a short distance – Victim died – Charge-sheet filed – Trial*
D *Court acquitted all the three accused – On appeal by the State, the High Court relying upon recovery made and on basis of sole testimony of PW2, affirmed the acquittal of A-3 but convicted the other accused persons for the offences punishable under s.302/34 IPC – On appeal, by A-1 and A-2 – Held: Prosecution has not came to the court with clean hands as the story is of prosecution is full of*
E *inconsistencies – The prosecution witnesses are contradictory to each other – Investigation was carried out in irregular manner – Testimony of PW-2 was not of sterling quality thus conviction based on his sole testimony is not tenable – There was no Panchnama on record and recoveries made are inconsistent with the record, therefore*
F *cannot be relied upon – Conviction set aside – Acquittal of A-1 and A-2 by the trial Court affirmed.*

Allowing the appeals, the Court

HELD:1.The scope of interference in an appeal against acquittal is very limited. Unless the appellate court comes to a
G **finding that the view taken by the Sessions Judge is either perverse or impossible, it will not be permissible to interfere with the finding of acquittal. Equally, if two views are possible and the appellate Court finds another view to be more probable, it cannot interfere with the order of acquittal unless it finds that the view taken by the learned Sessions Judge is an impossible**
H **view. [Para 12][88-D-E]**

2. The prosecution has come out with three different versions. As per the Postmortem requisition, it is the accused No.3 who had shot the victim-deceased. As per the ocular testimony of P.W.2, which is relied on by the High Court, it is the accused No.1, sitting as pillion rider with accused No.2, who had shot the deceased; and the third version as per the Roznamcha, 11 persons had caught deceased and accused No.1 had fired at him with Katta. It is a case full of mysteries. According to P.W.2, his statement was only recorded on 23rd June, 1991, which is corroborated by P.W.16- Assistant Sub-Inspector, Harda. Whereas according to P.W.17(the I.O.), the statements were recorded only on 26th and 27th June, 1991. The Postmortem requisition states that it is accused No.3, who had assaulted the deceased with Katta. P.W.16 states that he is not aware as to where the statements recorded by him on 23rd June, 1991 are kept. P.W.17 (the I.O.), admits that Dehati Naalis was prepared by Thanedar Bharti. However, the same was not produced with the case. He further admitted that the statements of some of the witnesses were against the prosecution and therefore the same have not been produced in the Court. [Para 33][95-A-D]

3. It is thus clear that the prosecution has failed to bring out the true genesis of the incident. The prosecution has not come to the Court with clean hands. The present case too is full of inconsistencies. The evidence of the witnesses is contradictory to each others'. The investigation is carried out in a totally irregular manner. As already discussed herein above, the testimony of P.W.2 itself cannot be said to be of sterling quality. The so-called recoveries are also totally untenable. [Para 34 and 38][95-E; 97-C]

4. In this view of the matter, the conviction of the appellants on the sole testimony of P.W.2 would not be tenable. The Division Bench of the High Court has relied on the recovery of the Motorcycle and the Katta, allegedly at the instance of the disclosure statement given by the accused No.1. Insofar as the recovery of Motorcycle is concerned, the said Motorcycle has been recovered at the instance of one 'M', son of 'J', i.e., son of the accused No.3, and that too on 25th June, 1991. As such, the

finding of the High Court that it is recovered at the instance of the accused No.1 is inconsistent with the record. [Para 39][97-D-E]

5. Insofar as the recovery of the Katta at the instance of the accused No.1 is concerned, it would reveal that both the arrest as well as the recovery are shown to be made approximately at the same time on 26th June, 1991. The distance between the Police Station and the place from where the alleged recovery is made is about 5 km. Apart from that, the recovery of Katta is from an open place, accessible to one and all. Furthermore, there is no Panchnama on record to show as to in what manner the said recovery was made. As such, the said recovery is also not free from doubt and could not have been relied on by the High Court. [Para 40][97-F-G]

Guru Dutt Pathak v. State of Uttar Pradesh **(2021) 6 SCC 116;** *Dhanaj Singh alias Shera & Ors. v. State of Punjab* **(2004) 3 SCC 654 : [2004] 2 SCR 938;** *Anil Phukan v. State of Assam* **(1993) 3 SCC 282 : [1993] 2 SCR 389;** *Ramashish Rai v. Jagdish Singh* **(2005) 10 SCC 498;** *Sunil Kundu and another v. State of Jharkhand* **(2013) 4 SCC 422 : [2013] 5 SCR 924 – referred to.**

Case Law Reference

(2021) 6 SCC 116	**referred to**	**Para 12**
[2004] 2 SCR 938	**referred to**	**Para 16**
[1993] 2 SCR 389	**referred to**	**Para 35**
(2005) 10 SCC 498	**referred to**	**Para 36**
[2013] 5 SCR 924	**referred to**	**Para 37**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2043 of 2009.

From the Judgment and Order dated 11.05.2009 of the High Court of Madhya Pradesh, Jabalpur in Criminal Appeal No. 247 of 1993.

With

Criminal Appeal No. 983 of 2010.

Vivek K. Tankha, Sr. Adv., B. K. Satija, R. K. Yadav, Vipul Tiwari, Inder Dev Singh, Ms. Anisha Upadhyay, Vaibhav Kalra, Ms. Sharmila Upadhyay, Advs. for the Appellant. A

Abhinav Shrivastava, Sunny Choudhary, Advs. for the Respondents.

H. B. Hina, Mrs. B. Sunita Rao, Advs. for the Impleader. B

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Both these appeals challenge the judgment and order dated 11th May, 2009, passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.247 of 1993, thereby allowing the appeal filed by the respondent-State of Madhya Pradesh in part and reversing the order of acquittal dated 9th November, 1992, as recorded by the learned Additional District & Sessions Judge, Harda (hereinafter referred to as "the learned Sessions Judge") in Sessions Trial No. 207 of 1991 in respect of the appellants herein. C D

2. Shorn of details, the facts leading to the present appeals are as under:

2.1 On 22nd June, 1991, Police Station, Harda received a written information (Exhibit P-10) at 4.25 p.m. from Dr. Kailash Narayan Singhal (P.W.10), to the effect that one Ramesh son of Ramgopal Jat, aged about 38 years, resident of Chhoti Harda had been brought to the Hospital in a serious condition. In the said written information (Exhibit P-10), it was stated that Ramesh was attacked by a Katta shot. On the basis of the said written information, Police Station Harda registered a First Information Report ("FIR" for short) vide Crime No.153 of 1991 for the offence punishable under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). On registration of the FIR, Shri M.K. Shrivastava, City Inspector, Police Station Incharge (P.W.17) visited the spot of occurrence. Dr. Kailash Narayan Singhal (P.W.10) and Dr. Rajendra Kumar Patel (P.W.14) provided first aid to the injured Ramesh and referred him to Indore Medical College for further treatment. However, Ramesh died on the way to Indore and his dead-body was brought back to Harda, where, on 23rd June, 1991, Merg No. 18 of 1991 was registered and postmortem of the deceased was conducted. As per the postmortem report, the cause of death of the deceased Ramesh was heavy bleeding due to injury caused by firearm. E F G H

A 2.2 The prosecution case, in a nutshell, is that the deceased Ramesh had political enmity with the three accused, i.e., Mohan (Accused No.1), Prahlad (Accused No.2) and Jagdish (Accused No.3). It was further the case of the prosecution that all three accused had hatched a conspiracy to do away with the deceased. Mohan (Accused No.1) and Prahlad (Accused No.2) had used the motorcycle of Jagdish (Accused B No.3) to arrive near Handia Bus Stand, where a gun-shot was fired at the deceased from a short distance.

2.3 At the conclusion of the investigation, a charge-sheet came to be filed in the Court of learned Judicial Magistrate First Class, Harda. Since the case was exclusively triable by the Sessions Court, the same C came to be committed to the learned Sessions Judge.

2.4 Charges came to be framed by the learned Sessions Judge for the offences punishable under Section 120-B and 302 of the IPC and in the alternative, for offences punishable under Section 302 read with Section 34 of the IPC and Sections 25 and 27 of the Arms Act, 1959. D

2.5 The accused pleaded not guilty and claimed to be tried. The prosecution examined 17 witnesses to bring home the guilt of the accused. Their defence was that they were falsely implicated on account of party politics in village. At the conclusion of the trial, the learned Sessions Judge found that the prosecution had failed to prove the case against the E accused beyond reasonable doubt and as such, acquitted all the three accused.

2.6 Being aggrieved thereby, the respondent-State of Madhya Pradesh preferred an appeal before the High Court. The High Court by the impugned judgment, though affirmed the order of acquittal of Jagdish F (Accused No.3), however, reversed the order of acquittal insofar as the present appellants, viz., Mohan (Accused No.1) and Prahlad (Accused No.2) are concerned. The High Court convicted them for the offences punishable under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment. Insofar as the acquittal of the present appellants for other charges under the Arms Act, 1959 is G concerned, the same was confirmed.

3. Being aggrieved thereby, the present appeals.

4. We have heard Mr. Vivek K. Tankha, learned Senior Counsel appearing for the appellant-Prahlad in Criminal Appeal No.2043 of 2009, H

Ms. Anisha Upadhyay, learned counsel appearing for the appellant-Mohan in Criminal Appeal No.983 of 2010 and Mr. Abhinav Shrivastava, learned counsel appearing on behalf of the respondent-State of Madhya Pradesh.

5. Mr. Vivek K. Tankha, learned Senior Counsel would submit that the High Court has grossly erred in reversing a well-reasoned order of acquittal passed by the learned Sessions Judge. He submitted that there are glaring contradictions and lacunae in the prosecution case. It is submitted that even the High Court has found that the prosecution was conducted in a very shoddy manner. However, in spite of there being no evidence, the High Court converted the well-reasoned order of acquittal into conviction.

6. Mr. Tankha submitted that the High Court has relied on the evidence of P.W.2- Mahesh, an alleged eye-witness, to record an order of conviction. It is submitted that the High Court has erroneously held that the testimony of P.W.2-Mahesh was corroborated by recovery of the motorcycle and the Katta from the accused persons. It is further submitted that both the seizures/recoveries of the motorcycle as well as the Katta are not sustainable in law.

7. Mr. Tankha submitted that the perusal of evidence of prosecution witnesses would itself reveal that though statements of witnesses were recorded on 23rd June, 1991, the same have been withheld by the prosecution. He submitted that from the perusal of the case diary, it will be clear that three different versions of the story have been set up by the prosecution. He further submitted that the requisition for Postmortem of the deceased Ramesh would show that in the requisition, it is mentioned that Jagdish (Accused No.3) had assaulted the deceased Ramesh with a Katta.

8. Mr. Tankha, learned Senior Counsel, submitted that by noticing all these discrepancies, the learned Sessions Judge had acquitted all the accused persons. The High Court has totally erred in reversing the well-reasoned order of acquittal and that too, without recording any reasons.

9. Ms. Anisha Upadhyay, learned counsel adopted the submissions made by Mr. Vivek K. Tankha, learned Senior Counsel and submitted that both the appeals deserve to be allowed.

10. Mr. Abhinav Shrivastava, learned counsel appearing on behalf of the respondent-State of Madhya Pradesh submitted that the High

A Court has found that the learned Sessions Judge had failed to take into consideration the evidence of various eye-witnesses. He submits that the learned Sessions Judge had discarded the testimony of various eye-witnesses only on the ground that they are related to the deceased and that they are on inimical terms with the accused persons. He submitted that merely because the witnesses are interested witnesses, being related to the deceased, it cannot be a ground to discard their testimony, which is otherwise trustworthy. He further submitted that the ocular testimonies of the eye-witnesses are duly corroborated by the recoveries made at the instance of the accused persons.

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C 11. Mr. Abhinav Shrivastava, learned counsel further submitted that merely because there are lacunae in the investigation, it cannot be a ground to acquit the accused when the evidence on record points the finger of guilt towards the accused. Learned counsel therefore submits that the judgment and order of conviction, passed by the High Court warrants no interference and the appeals are liable to be dismissed.

D 12. We are aware that the scope of interference in an appeal against acquittal is very limited. Unless the appellate court comes to a finding that the view taken by the Sessions Judge is either perverse or impossible, it will not be permissible to interfere with the finding of acquittal. Equally, if two views are possible and the appellate Court finds another view to be more probable, it cannot interfere with the order of acquittal unless it finds that the view taken by the learned Sessions Judge is an impossible view. Reference in this respect could be made to a recent judgment of this Court in the case of ***Guru Dutt Pathak vs. State of Uttar Pradesh***[1], wherein this Court has considered various earlier judgments of this Court on the issue.

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F 13. In the backdrop of this legal position, we will have to examine the correctness of the view taken by the High Court.

14. At the outset, it may be mentioned that the accused persons are not disputing the factum of the death of the deceased being homicidal. However, it is the contention of the accused that they have been falsely implicated on account of political enmity.

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15. The factors which weighed with the learned Sessions Judge for acquitting the accused persons have been culled out by the High Court in its judgment. They read thus:

H [1] (2021) 6 SCC 116

"(i) The eyewitnesses were not only related witnesses but were also chance witnesses. There were material omissions and contradictions in the statements of alleged eyewitnesses. Even after asserting in their case diary statement that Ramesh was fired from a distance of 4 to 5 paces, the eyewitnesses changed the version in their sworn testimony apparently in the light of the ballistic report by deposing that the shot was fired from a distance of nearly 18 inches. No explanation was given by the eyewitnesses as to why corresponding information was not given to police or to Dr. Kailash Narayan (PW10) by any one of them.

(ii) Although, Sitabai (PW3) had stated that she had narrated the incident to a police officer in the hospital yet, in the corresponding letter of request for postmortem, name of Jagdish was written as the author of gunshot injury.

(iii) The statements of witnesses recorded by ASI P.N. Bharti (PW16) during marg enquiry were not placed on record.

(iv) Occupiers of the hotel and shops situated at the bus stand could have been the natural and probable witnesses to the incident but they were not produced in evidence and handcart puller was not examined.

(v) Though declared hostile, the statement of Narayan (PW4) and Chheetar (PW7) contradicting the evidence of other eyewitnesses could be taken into account to discard the prosecution version.

(vi) The evidence as to involvement of A3 in the conspiracy leading to murder of Ramesh given by Ram Avtar (PW13), a near relative of the deceased, did not inspire confidence. The motorcycle was not proved to be belonging to Jagdish.

(vii) The investigation was tainted with soft peddling and indifferent attitude of the investigating officer. Although, he claimed to have visited the spot immediately after registering the case under Section 307 of the IPC against unknown persons but nonseizure of blood and other articles from the spot coupled with non-preparation of spot map completely belies his statement. There were material interpolations in

A the corresponding entries in the Roznamcha. These entries as well as the admissions made by Investigating Officer M.K. Shrivastava (PW17) reflect that some other persons were also involved in the incident."

16. The High Court, after making the aforesaid observations, goes B on to discuss the evidence of the witnesses. The High Court in paragraph 31 observed that a defective investigation cannot, by itself, be a ground for acquittal, if the prosecution case is established by other cogent evidence. Relying on the judgment of this Court in the case of ***Dhanaj Singh alias Shera & Ors. vs. State of Punjab***[2], the High Court observed C that the only requirement in such a case is that the Court has to be circumspect in evaluating the evidence.

17. Thereafter, the High Court in paragraph 34 observed thus:

"34. The panch witnesses selected for proving the recovery of Katta and motorcycle as per disclosure statement given by A1 D were also not independent in the real sense of term. Ramdin (PW8) is the cousin of A3, the maternal uncle of A1, who happens to be the real uncle of A2. Hari Ram (PW9) also had a grudge against Ramesh as, admittedly, he was convicted under Section 326 of the IPC for causing grievous hurt to Ramdin, the brother of Ramesh. In these circumstances, it was not possible to reject E testimony of M.K. Shrivastava (PW17) as to recovery of Katta and the motorcycle. According to him, he prepared the memorandum (Ex.P-4) as per information given by A1 and recovered one deshi katta and a motorcycle at the instance of A1 only. The katta thus, seized was sent for forensic examination F along with the pellets and clothes of the deceased preserved by the autopsy surgeon Dr. Rajendra Kumar Patel (PW14). The ballistic expert Dr. J.K.Agrawal opined with certainty that the gunshot injury causing holes in the shirt and vest of the deceased could be caused by fire through katta. It was also observed that the pellets were compatible to a 12-bore cartridge capable of being G fired through the katta.

35. To sum up, none of the reasons assigned by learned trial Judge to discard the overwhelming incriminating evidence against A1

H [2] (2004) 3 SCC 654

and A2. regarding their respective overt acts in causing death of Ramesh, is worthy of acceptance."

18. Thereafter, in paragraphs 36 to 40 of the impugned judgment and order, the High Court considered the case of the respondent-State against the complicity of the accused No.3-Jagdish and observed thus in paragraph 41:

> "41. Thus, although complicity of A3 in the murder of Ramesh could not be established beyond a reasonable doubt yet, acquittal of A1 and A2 for the offence was not justified. The obvious reasoning is - even if it is concluded that the interested witnesses were not able to view the incident as being standing at a considerable distance, the ocular testimony of Mahesh coupled with the medical and forensic evidence concerning the firearm seized from A1 and the recovery of the motorcycle from his possession was sufficient to prove complicity of A1 and A2 and the benefit of certain inconsistencies in the prosecution case caused due to apparent laxity of investigating officer could not be given to them. Nevertheless, their acquittal in respect of the offences under the Arms Act does not call for any interference in view of the fact that the prosecution sanction given by DM was not proved."

19. It could thus clearly be seen that the High Court has converted the order of acquittal into an order of conviction as against the accused appellants herein based on the testimony of P.W.2-Mahesh, corroborated by the seizure of the Katta and the Motorcycle. The High Court observed that the same have been seized/recovered on the disclosure statement made by the accused No.1-Mohan. The High Court observed that the Panch witnesses were not independent, and yet it believed those recoveries on the testimony of P.W.17-M.K. Shrivastava (the I.O.).

20. The High Court in paragraph 35 specifically observed that, none of the reasons assigned by the learned Sessions Judge to discard the overwhelming incriminating evidence against the accused No.1-Mohan and accused No.2-Prahlad regarding their respective overt acts in causing the death of Ramesh, is worthy of acceptance.

21. To examine the correctness of the findings of the High Court, it will be apposite to scrutinize the evidence on record.

22. Insofar as the evidence of P.W.1-Har Narayan, P.W.3-Sita Bai, the brother and the sister-in-law of the deceased Ramesh respectively, and P.W.5-Hari Prasad, the brother of Sita Bai (P.W.3) is concerned, the High Court itself has observed that it is not probable that they could have witnessed the incident from the place where they were allegedly standing. As such, it will not be necessary to discuss their ocular testimony.

23. The High Court mainly relied on the testimony of P.W.2-Mahesh. P.W.2-Mahesh states that on the date of the incident, he, Har Narayan (P.W.1), Ramesh and Narayan went to Harda for purchasing fertilizers. He stated that, thereafter, Sita Bai (P.W.3) also joined them and from Naya Bazar, all of them started going towards Handia Bus Stand. He states that, thereafter, he and the deceased Ramesh went to Mama Hotel to have a cup of tea. The remaining people waited on the other side of the road across the said Hotel. After taking tea, when they were coming out from the Hotel, he saw accused No.2 Prahlad coming from Handia side on Motorcycle. Accused No.1-Mohan was the pillion rider. Accused No.1-Mohan gave a gun-shot at the stomach of the deceased Ramesh from a distance of about one feet. After that accused No.2-Prahlad and accused No.1-Mohan fled towards Handia on the said Motorcycle. He stated that, thereafter, the injured Ramesh was put on a hand-pulled thela and brought to the Government Hospital. Injured Ramesh was taken to the Operation Theatre. After half an hour, the injured Ramesh was taken out from the Operation Room. Thereafter, on the doctors' advice, Ramesh was taken to Indore Hospital, accompanied by him. There are material contradictions and improvements in his evidence.

24. It will be relevant to note that it was P.W.2-Mahesh who had brought the deceased Ramesh to the Hospital, who had accompanied him when he was being taken to Indore as well as while returning to Harda after the deceased Ramesh had died on the way.

25. At this juncture, it will be relevant to refer to Exhibit P-15, which is the requisition for conducting Postmortem. In the said requisition, the following endorsement is made:

> "Sir, due to fire by Katta by Shri Jagdish s/o Shiv Ram Jat, R/o Chhoti Harda, Ramesh s/o Ram Gopal Jat, R/o Chhoti Harda died."

26. In this background, it will be relevant to refer to the following depositions of P.W.2- Mahesh in his cross-examination:

> "14. The day on which my statement was recorded it was only mine. It is wrong to say that my statement was recorded on 26. Stated himself that it was recorded on 23rd in the morning. My statement was recorded at 7'o clock at the police station."

27. It could thus clearly be seen that he has denied that his statement was recorded on 26th. He has further admitted that his statement was recorded on 23rd in the morning at 7'O clock in the police station.

28. P.W.17-M.K. Shrivastava (the I.O.) in his cross-examination has admitted thus:

> "47. In Roz Namch dated 23.06.1991 there is no mention of the statements of witness Narayan, Mahesh, Harinaraya, Sitabai and Kailash taken during investigation. On 23.06.1991 there is no investigation report in regard to this case. on 24.06.1991 in Roznamcha there is no mention about the entries of recording statement of witness Chhitar, Ramavatar, and Babulal. In this regard no reason has been stated. Roznamcha entry started at 6'0 clock in the morning and continued till 6'0 clock on 2nd day. And whatever proceedings are being carried out in 24 hours those are being mentioned in that. During investigation I recorded the statements of witness only once. I have brought Roznamcha entry number 1490, dated 26.06.91 with me. On this Roznamcha entry there is mention about the report of this case that is Ex.D-8. The copy of the same is Ex. D-8 (C)."

29. It is thus clear from his evidence that in the Roznamcha dated 23rd June, 1991, there is no mention of the statements of the witnesses taken during investigation. It is further admitted that, on the said date, there is no investigation report in regard to this case. He further admitted that on 24th June, 1991, in Roznamcha, there is no mention about the entries of recording statement of witnesses. He stated that Roznamcha entry started at 6'o clock in the morning of 26th June, 1991 and continued till 6'o clock in the morning on 2nd day, i.e., 27th June, 1991.

30. A perusal of the Roznamcha entries would make for an interesting reading. The relevant portion of the Roznamcha entry No.1480 (Crime No.153/1991) dated 26th/27th June, 1991 reads thus:

A "It has also been stated in the statement that at Handia Bus Stand, in front of shop of Badri Jat, they met Ram Narayan, his son Kailash, Jagdish Sarpanch, Prem Narayan S/o Jagdish, Mohan, Revaram, Badri, Ram Bharose, Laxmi Narayan, Prem Narayan and Prahlad of their Village standing there. All these people caught Ramesh. It has been stated in the statement that Mohan fired at
B Ramesh with Katta. These witnesses were called earlier also for making the statements."

31. In this background, it will be relevant to refer to the evidence of P.W.16-P.N. Bharti, Assistant Sub-Inspector, Police Station, Harda. In his deposition, he clearly admitted that he had recorded the statement
C of witnesses on 23rd June, 1991. However, the same were not produced with the Challan. He further stated that he does not have any information as to where those statements are kept.

32. It will also be relevant to refer once again to the deposition of P.W.17-M.K. Shrivastava (the I.O.), which reads thus:
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"61. On 22.06.1991 in regard to present case one Dehati Naalis was prepared by Thanedaar Rethia in Hospital. Thanedaar Rethia upon my instructions participating in investigation in present case. Thanedaar Barathia was not doing independent investigation. Dehati Naalis was prepared on
E the same day by Thanedaar Barathia in the Harda Hospital after making enquiry from Hari Prasad. This I am stating on the basis of entry no. 1290 dated 22.06.1991 in Roznamcha. The said Dehati Naalis has not been produced with the case.

F 62. In regard to marg ASI Bharti recorded the statements of witnesses but the same has not been produced with the chalan and has not been enclosed with the case diary also. Where these statements are today I cannot tell. It is correct that in Marg investigation/enquiry the statements of
G witnesses were recorded those statements and statement of witness Harnarayan and Mahesh recorded on 26.06.1991 and the statements of witness Sitabai and Kailash recorded on 27.06.1991 are against the prosecution therefore the same have not been produced in the court."

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33. It is thus clear that the prosecution has come out with three different versions. As per the Postmortem requisition, it is the accused No.3-Jagdish who had shot the deceased Ramesh. As per the ocular testimony of P.W.2-Mahesh, which is relied on by the High Court, it is the accused No.1-Mohan, sitting as pillion rider with accused No.2-Prahlad, who had shot the deceased; and the third version as per the Roznamcha, 11 persons had caught deceased Ramesh and accused No.1-Mohan had fired at him with Katta. It is a case full of mysteries. According to P.W.2-Mahesh, his statement was only recorded on 23rd June, 1991, which is corroborated by P.W.16-P.N. Bharti, Assistant Sub-Inspector, Harda. Whereas according to P.W.17-M.K. Shrivastava (the I.O.), the statements were recorded only on 26th and 27th June, 1991. The Postmortem requisition states that it is accused No.3-Jagdish, who had assaulted the deceased Ramesh with Katta. P.W.16-P.N. Bharti states that he is not aware as to where the statements recorded by him on 23rd June, 1991 are kept. P.W.17-M.K. Shrivastava (the I.O.), admits that Dehati Naalis was prepared by Thanedar Bharti. However, the same was not produced with the case. He further admitted that the statements of some of the witnesses were against the prosecution and therefore the same have not been produced in the Court.

34. It is thus clear that the prosecution has failed to bring out the true genesis of the incident. The prosecution has not come to the Court with clean hands. As such, the High Court has rightly held that the investigation conducted by the P.W.17-M.K. Shrivastava (the I.O.) was not done in a fair and impartial manner. However, in spite of that, though the High Court has refused to rely on the testimony of the Panch witnesses, it has relied on the recovery of the Motorcycle and the Katta, allegedly at the instance of the accused No.1-Mohan only, on the basis of the testimony of the very same P.W.17-M.K. Shrivastava (the I.O.).

35. Mr. Abhinav Shrivastava, learned counsel appearing on behalf of the respondent-State of Madhya Pradesh is right in contending that the conviction could be based on the sole testimony of a single eye-witness and therefore the High Court was justified in convicting the accused on the basis of the testimony of P.W.2-Mahesh. In this respect, it will be relevant to refer to the judgment of this Court in the case of ***Anil Phukan vs. State of Assam***[3], wherein this Court has observed thus:

[3] (1993) 3 SCC 282

A **"3.** …….Indeed, conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his
B testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that
C the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect…."

36. It is also equally well settled that previous enmity is a double-edged sword. Though, it can provide a motive for the crime, it can also
D be a ground for false implication. Reliance in this respect, could be made on the judgment of this Court in the case of ***Ramashish Rai vs. Jagdish Singh***[4], wherein this Court has observed thus:

7. ……..By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication.
E It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence. …….".

37. It is further contended by Shri Shrivastava, learned counsel, that merely because there are lacunae in the investigation, it cannot be a
F ground to acquit the accused, if there is other evidence available on record. In this respect, we may gainfully refer to the observations of this Court in the case of ***Sunil Kundu and another vs. State of Jharkhand***[5]:

"**29.** We began by commenting on the unhappy conduct of the investigating agency. We conclude by reaffirming our view. We
G are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of

[4] (2005) 10 SCC 498
H [5] (2013) 4 SCC 422

an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. In this case, the lapses are very serious……."

38. The present case too is full of inconsistencies. The evidence of the witnesses is contradictory to each others'. The investigation is carried out in a totally irregular manner. As already discussed herein above, the testimony of P.W.2-Mahesh itself cannot be said to be of sterling quality. The so-called recoveries are also totally untenable.

39. In this view of the matter, the conviction of the appellants on the sole testimony of P.W.2-Mahesh would not be tenable. The Division Bench of the High Court has relied on the recovery of the Motorcycle and the Katta, allegedly at the instance of the disclosure statement given by the accused No.1-Mohan. Insofar as the recovery of Motorcycle is concerned, the said Motorcycle has been recovered at the instance of one Mahesh, son of Jagdish Jat, i.e., son of the accused No.3, and that too on 25th June, 1991. As such, the finding of the High Court that it is recovered at the instance of the accused No.1-Mohan is inconsistent with the record.

40. Insofar as the recovery of the Katta at the instance of the accused No.1-Mohan is concerned, it would reveal that both the arrest as well as the recovery are shown to be made approximately at the same time on 26th June, 1991. The distance between the Police Station and the place from where the alleged recovery is made is about 5 km. Apart from that, the recovery of Katta is from an open place, accessible to one and all. Furthermore, there is no Panchnama on record to show as to in what manner the said recovery was made. As such, the said recovery is also not free from doubt and could not have been relied on by the High Court.

41. We are therefore of the considered view that the High Court has totally erred in reversing the well-reasoned order passed by the learned Sessions Judge acquitting the accused. The High Court has

A travelled much beyond the scope of interference in an appeal against acquittal. The present appeals therefore deserve to be allowed. It is ordered accordingly.

Ankit Gyan Appeals allowed.
(Assisted by : Aarsh Choudhary, LCRA)