

Dilawar Singh & Ors vs State Of Haryana on 16 September, 2014

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Bench: R. Banumathi, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1362 OF 2010

DILAWAR SINGH & ORS.

...Appellants

Versus

STATE OF HARYANA

...Respondent

WITH

CRIMINAL APPEAL NO. 826 OF 2010

STATE OF HARYANA

.. Appellant

Versus

BALKAR SINGH & ORS.

..Respondents

AND

CRIMINAL APPEAL NO. 830 OF 2010

CHANDA SINGH

.. Appellant

Versus

RANBIR SINGH & ORS.

..Respondents

J U D G M E N T

R. BANUMATHI, J.

Appellants Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) in Criminal Appeal No.1362/2010 challenge the legality of their conviction for the offence punishable under Section 302

IPC read with Section 149 IPC and the sentence of life imprisonment and imposition of fine of Rs.5,000/- each and also challenge their conviction for the offence punishable under Section 148 IPC and sentence of imprisonment for two years. Being aggrieved by the acquittal of Balkar Singh (A-4), Ranbir Singh (A-6) and Charan Singh (A-8), State of Haryana and Chanda Singh – father of the deceased Narinder Singh have preferred Criminal Appeal Nos. 826/2010 and 830/2010.

2. Briefly stated case of the prosecution is that deceased Narinder Singh was running a shop for the sale of fertilizers at the Ladwa Town and he was residing near Veterinary Hospital. On 22.8.1998 at about 8.45 p.m. Narinder Singh was driving his motor cycle and when he turned towards Babain Road, in Ladwa little ahead of the veterinary hospital, Dilawar Singh (A-1), Gurdev Singh (A-2) and Yash Pal (A-3) and other accused persons namely Balkar Singh (A-4), Ashok Kumar (A-5) Ranbir Singh (A-6), Shamsher Singh (A-7), Charan Singh (A-8) and Dalbir Singh (A-9) intercepted him. Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-

7) gave blow on the head of deceased Narinder Singh with their respective cutter and Narinder Singh fell down along with his motor cycle and shouted Bachao Bachao. At that time Chanda Singh-father of the deceased along with his brother Hakam Singh came nearby in their car and saw the accused being attacked. Chanda Singh and Hakam Singh cried for help and shouted 'NA MARO NA MARO'. Gurdev Singh (A-2) and Charan Singh (A-8) caused sword blows on the left leg and right leg of Narinder Singh. Ranbir Singh (A-6) gave gandasi blow on the right hand of Narinder Singh whereas Balkar Singh (A-4) gave gandasi blow to Narinder Singh on his left arm. Two other assailants namely Ashok Kumar (A-5) and Dalbir Singh (A-9) attacked Narinder Singh with hockey sticks and caused injuries to Narinder Singh. In the meanwhile, Sham Singh (PW-7) also reached there and he too shouted at the accused not to kill Narinder Singh. All the accused fled away from the spot with their respective weapons in their motor cycles. Chanda Singh (PW-6), Hakam Singh and Sham Singh (PW-7) chased the assailants in their respective vehicles but they could not catch hold of them.

3. Further case of prosecution is that on 22.8.1998 at about 9.00 p.m. ASI Charan Dass (PW-11) who was on patrolling duty received message about an injured person lying near Veterinary Hospital, Ladwa and PW-11 and police party went to the scene of occurrence and shifted injured Narinder Singh to Community Health Centre, Ladwa where Dr. Ashwini Kumar (DW-1), Medical Officer of the Health Centre examined him and found him not fit to make statement. In the meanwhile, Chanda Singh and Hakam Singh reached the spot and found that injured Narinder Singh had already been shifted to the hospital by the police. Chanda Singh (PW-6) went to the Ladwa Hospital and Hakam Singh went to the village to inform the family members of Narinder Singh about the incident. When Chanda Singh reached Community Health Centre at Ladwa, injured Narinder Singh was, in the process of being referred to the Lok Nayak Jai Prakash Hospital, Kurukshetra as his condition was very serious. In the hospital at Kurukshetra, Dr. S.C.Grover (PW-1) examined the injured–Narinder Singh and opined that Narinder Singh was unfit to make any statement. Since the condition of Narinder Singh was serious, he was immediately referred to PGI Chandigarh and Chanda Singh shifted injured Narinder Singh to PGI Chandigarh. Dr. Munish Kumar (PW-9) of PGI Chandigarh admitted Narinder Singh in the hospital on 23.8.1998 at about 2.30 a.m. and intimation was sent to the police post located near the hospital. On receipt of information from the hospital,

ASI Karam Chand (PW-4) went to the hospital and on his application Dr. Kanya Rejangam (PW-8) opined that injured Narinder Singh was unfit to make statement. Injured Narinder Singh succumbed to injuries at about 5.30 a.m. on 23.8.1998 and death intimation was sent to the Police Post, PGI Chandigarh. On the same day Chanda Singh came back to Ladwa and went to the police station and lodged the complaint on the basis of which FIR was registered at Ladwa Police Station, ASI Charan Dass (PW-

11) went to PGI Chandigarh and conducted the inquest on the dead body of deceased Narinder Singh. In PGI, Dr. Surinder Singh (PW-10) conducted autopsy on the body of Narinder Singh and noted 18 incised injuries and other injuries all over the body of the deceased and issued the Post Mortem Certificate. Dr. Surinder Singh (PW-10) opined that the deceased died of cut injuries on the head and due to haemorrhage from multiple incised wounds. The accused surrendered before the court on various dates and on information of their surrender, Inspector Jagdish Ram (PW-12) took the accused to police custody and based on their confession the weapons and motor cycles were seized. After completion of investigation, the accused were charge sheeted under Section 302 IPC read with Section 149 IPC.

4. To bring home the guilt of the accused, prosecution has examined PWs 1 to 16 and placed reliance on documents and material objects. The accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances and they denied all of them. Accused Ranbir Singh took a plea of alibi by stating that he is practising as an advocate at Kurukshetra and was not present at the spot on the date of occurrence. Gurdev Singh (A-2) also took the plea of alibi and stated that he was posted as a Naib Tehsildar and in connection with his official work had gone to village Sardhaheeri on the date of occurrence. The accused examined DWs 1 to 6 as witness on their side.

5. Upon consideration of the evidence, the trial court convicted and sentenced Dilawar Singh (A-1), Yash Pal (A-3), Balkar Singh (A-4), Ranbir Singh (A-6), Shamsher Singh (A-7) and Charan Singh (A-8) under Section 302 IPC read with Section 149 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.5,000/- each with default clause and also convicted them for the offence punishable under Section 148 IPC and sentenced to undergo rigorous imprisonment for two years. The trial court acquitted Gurdev Singh (A-2), Ashok Kumar (A-5) and Dalbir Singh (A-9).

6. Being aggrieved by the conviction and sentence, convicted accused 1,3,4 and 6 to 8 preferred appeal before the High Court. The High Court confirmed the conviction of Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) and acquitted Balkar Singh (A-4), Ranbir Singh (A-

6) and Charan Singh (A-8). Being aggrieved by the conviction, Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) have filed Criminal Appeal No. 1362/2010. Being aggrieved by the acquittal of Balkar Singh (A-

4), Ranbir Singh (A-6) and Charan Singh (A-8), State has preferred Criminal Appeal No.826/2010 and Chanda Singh (PW-6)–father of the deceased Narinder Singh has filed Criminal Appeal No. 830/2010.

7. Mr. Giri, learned Senior Counsel appearing for the convicted accused Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) submitted that serious doubts arise as to the presence of Chanda Singh (PW-

6) in the scene of occurrence and trial court as well as High Court ought not to have based the conviction on the evidence of PW-6 and conviction of the aforesaid accused is not sustainable.

8. Mr. Rao Ranjit, learned counsel, appearing for the State has taken us through the evidence of Chanda Singh (PW-6) and Sham Singh (PW-7) and other evidence and submitted that evidence of PW-6 is corroborated by evidence of PW-7, recovery of weapons and Serology Report and courts have recorded concurrent findings of fact that PW-6 is a reliable witness and the same does not warrant interference. The learned counsel further submitted that when the learned courts have believed the evidence of PWs 6 and 7 qua Dilawar Singh(A-1), Yash Pal(A-3) and Shamsher Singh(A-7), the courts ought not to have disbelieved the case of prosecution qua Balkar Singh (A-4), Ranbir Singh (A-6) and Charan Singh (A-8) for reversal of acquittal.

9. We have heard the learned counsel appearing for the accused 4, 6 and 8 who were acquitted and also Mr. Shishpal Laler, learned counsel appearing for the appellant- Chanda Singh.

10. The prosecution case revolves around the ocular version of Chanda Singh (PW-6) father of deceased Narinder Singh who witnessed the occurrence along with his brother Hakam Singh and Sham Singh (PW-7). PWs 6 and 7 have spoken about the attack on the deceased and overt act of accused Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) and others. Hakam Singh was not examined. Evidence of Sham Singh (PW-7) corroborates the version of Chanda Singh (PW-6). Learned courts below found the evidence of PW-6 trustworthy and recorded respective findings for convicting Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) and acquitting other accused.

11. Contending that Chanda Singh (PW-6) could not have witnessed the occurrence and the learned courts erred in placing reliance upon version of PW-6, evidence of PW-6 is inter alia assailed on various grounds :- (i) PW-6 had no reason to be present in Babain Road near Veterinary Hospital, Ladwa; (ii) Conduct of PW-6 is not natural that on witnessing the attack on his son, he had not naturally reacted in trying to save his son but he is alleged to have chased the accused; (iii) PW-6 had he been the witness, he would have given statement to the police immediately after the occurrence and there would not have been an inordinate delay in registration of FIR i.e. on 23.8.1998 at 11.00 A.M and the delay in registration of FIR falsifies his evidence.

12. Insofar as the contention of the appellants that Chanda Singh (PW-6) had no reason to be present in the place of occurrence, deceased Narinder Singh was dealing in fertilizers at Ladwa and was residing in a house near the veterinary hospital of the town. PW-6 has stated that their home place Mehra is at a distance of 5 kms from Ladwa and is connected by a pakka road which leads towards Babain from Ladwa. Village Mehra is connected with this Ladwa - Babain road by a link road and when this link road is connecting PW-6's home village Mehra, there is nothing unusual about Chanda Singh going through Babain Road and his presence in the place of occurrence. It is

unreasonable to contend that Chanda Singh (PW-6) had no compelling reason to be present in the place of occurrence.

13. Learned counsel for the appellant contended that the conduct of Chanda Singh (PW-6) is unnatural and being father of the deceased and on seeing his son belaboured, PW-6 had not swiftly acted to save his son and neither PW-6 nor Hakam Singh or Sham Singh (PW-7) took the deceased to the hospital and Chanda Singh and other witnesses are alleged to have left the injured at the place of incident and proceeded to chase the assailants and such unnatural conduct of PW-6 only shows that he was not present at the place of occurrence.

14. We find no merit in the submission that Chanda Singh (PW-6) is to be disbelieved on the ground that he has not acted in a particular manner to save his son. Every person who witnesses a murder reacts in his own way. On seeing Narinder Singh being attacked, PW-6 and Hakam Singh might have been shocked and stunned. Being two together, PW-6 and Hakam Singh might have perhaps thought of catching the assailants and appear to have chased them by following them in the car.

15. In *Rana Partap and Ors. vs. State of Haryana* (1983) 3 SCC 327, while dealing with the behaviour of the witnesses, this Court opined thus:

“6....Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter- attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

16. In *State of H.P. v. Mast Ram* (2004) 8 SCC 660 it has been stated that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable. Everyone reacts in his own way and, hence, natural human behaviour is difficult to prove by credible evidence. It has to be appreciated in the context of given facts and circumstances of the case. Similar view has been reiterated in *Lahu Kamlakar Patil and Anr. v. State of Maharashtra* (2013) 6 SCC 417.

17. Behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic and no hard and fast rule can be laid down as to the uniformity of the human reaction. The evidence of PW-6 is not to be disbelieved simply because he did not react in a particular manner. PW-6 explained how he happened to be there in the place of occurrence and had cogently spoken about the occurrence and his evidence remained unscathed despite searching cross examination.

18. In his evidence Chanda Singh (PW-6) stated that they have chased the assailants for about 300 – 400 meters and then abandoned the chase and returned to the place of occurrence after fifteen minutes. In the meanwhile, injured Narinder Singh was shifted to Community Health Centre,

Ladwa by ASI Charan Dass (PW-11). Sham Singh (PW-7) stated that after chasing the assailants they have returned to the place of occurrence within 5-7 minutes. On behalf of the appellants, it was contended that chasing the accused to a distance of 200–300 meters would have taken only about 5-7 minutes and the fact that Narinder Singh was shifted to the hospital by the time PW-6 returned to the place of occurrence only shows that PW-6 was not present at the time of occurrence and that he has been planted as an eye-witness subsequently. Version of PW-6 that they have chased the assailants and came back after about 15-20 minutes, does not affect his credibility nor the prosecution case. It is brought on record that on the date of occurrence i.e. 22.8.1998 there was solar eclipse and Solar Eclipse Fair was going on in Kurukshetra and large number of people congregated and the place of occurrence and nearby place was crowded with temporary bazaars and exhibitions and therefore PW-6 could come back to the place of occurrence only after 15 minutes and in the meanwhile injured Narinder Singh was shifted to Community Health Centre, Ladwa by ASI Charan Dass (PW-11). The alleged time taken in chasing the accused and the fact that in the meanwhile Narinder Singh was shifted to the Community Health Centre, Ladwa, in our view, does not militate against the credibility of PW-6.

19. Learned counsel for the appellants then contended that police station in Ladwa is situated within a short distance from the place of occurrence and yet no information was given to the police immediately. It was submitted that Chanda Singh (PW-6) had not given statement to police either at Ladwa or at Kurukshetra or atleast to PW-4, ASI Karam Chand of Police Post at PGI Chandigarh who came to the hospital on receipt of information of admission of injured Narinder Singh in PGI Chandigarh and FIR was registered only on 23.8.1998 at 11.00 A.M. and the inordinate delay in giving information to the police and registration of FIR raises serious doubts about the credibility of prosecution case and trustworthiness of PW-6.

20. We find no merit in the submission that delay in registration of FIR is fatal to the prosecution case for the reason that delay is satisfactorily explained by the prosecution. Let us briefly recapitulate the sequence of events. After chasing the assailants for few minutes, PW-6 came to Community Health Centre, Ladwa at 9.00 – 9.15 P.M. Hakam Singh went to village Mehra to inform the family members and for arranging money. By the time PW-6 arrived in the Ladwa Hospital, the hospital authorities were making arrangement to refer the injured to Kurukshetra as his condition was very serious. By the time PW-6 went to Ladwa Hospital, PW-11 left to village Mehra to inform the family members of injured Narinder Singh. Evidently in Ladwa Hospital, PW-6 could not have met ASI Charan Dass (PW 11). PW-6 shifted the injured to Kurukshetra Hospital at 10.30-11.00 P.M. and then shifted Narinder Singh from Kurukshetra Hospital to PGI Chandigarh. They left Kurukshetra between 11.30- 12.00 P.M. for PGI and reached PGI Chandigarh at 2.30 A.M. on 23.8.1998. ASI Charan Dass (PW 11) reached Kurukshetra Hospital at about 11.30 P.M. and moved an application to the doctor regarding fitness of the injured to make a statement. Again in Kurukshetra there was hardly any time for PW-6 to meet PW-11, ASI Charan Dass. There is nothing on record showing that PW-6 met PW-11 either at Ladwa or at Kurukshetra. When PW-6 was busy in arranging medical aid to save his son, delay in lodging the FIR cannot be said to be fatal. The sequence of events clearly show that PW-6 was taking all steps to save the life of his son and making arrangements for money, ambulance etc.

21. Whether the delay is so long as to draw a cloud of suspicion on the prosecution case will depend upon variety of factors which will vary from case to case. As pointed out by the learned courts, from the very beginning the condition of injured Narinder Singh was very serious and he was struggling for existence and his father PW-6 and uncle Hakam Singh were concerned about the welfare of the injured. While so, they could not have thought of approaching the police first and informing them about the incident and the assailants. Where delay in lodging complaint and registration of FIR has been satisfactorily explained, the delay by itself was no ground for disbelieving the prosecution evidence particularly when it had been accepted both by the Sessions Court and the High Court.

22. Coming to the further contention of the appellants raising doubts about the credibility of PW-6 in not making any statement at least to ASI Karam Chand (PW-4) of Police Post PGI Chandigarh, on receipt of the information regarding admission of injured Narinder Singh, ASI Karam Chand (PW-4) went to the PGI Hospital to record the statement of injured Narinder Singh. At that time, Chanda Singh (PW-6) was attending his son. The contention of the appellants is that PW-6 had the occasion to inform the police about the incident at least to ASI Karam Chand (PW-

4) but the same was not done which raise serious doubts about the presence of Chanda Singh (PW-6) at the scene of occurrence. By perusal of the evidence of PW-4, it is seen that on receipt of intimation (rukka) from PGI Chandigarh, PW-4 rushed to the hospital for recording the statement of injured Narinder Singh. Since Chanda Singh (PW-6) did not offer any statement to ASI Karam Chand (PW-4), since Narinder Singh was then alive, there was no occasion for recording the statement of Chanda Singh. It is also brought in evidence that after the death of Narinder Singh ASI Karam Chand (PW-4) did not go to PGI for the second time. In our view, there is no merit in the submission that PW-6 is to be disbelieved on the ground that he did not choose to give any statement at least to ASI Karam Chand (PW-4).

23. Narinder Singh died at 5.30 A.M. on 23.8.1998 and thereafter Chanda Singh (PW-6) went to Ladwa Police Station on 23.8.1998 at 11.00 A.M. and lodged the complaint and FIR was registered as Ext PE No. 314/1998 at Ladwa Police Station. Sequence of events clearly show that PW-6 was attending his son and was taking steps to shift injured Narinder Singh from Community Health Centre Ladwa to Lok Nayak Jai Parkash Hospital, Kurukshetra and from Kurukshetra to PGI Chandigarh and PW-6 was busy in arranging for money, medical aid and ambulance etc. The delay of about 15 hours and 15 minutes in lodging the FIR, in our view, cannot be said to be fatal. Learned courts have recorded concurrent finding that the delay in registration of FIR has been satisfactorily explained and the delay is not fatal to the prosecution case.

24. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed it is necessary for the court to scrutinize the evidence, to find out whether it is against the general tenor of the prosecution case. Learned courts below found evidence of PW-6 reliable and accepted the same. The power of this Court under Article 136 of the Constitution are very wide. But in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. When the learned courts below found the evidence of PW-6 reliable and acceptable, we do not find any perversity in the approach of the learned courts in accepting the evidence of

PW-6 warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India.

25. Evidence of Chanda Singh (PW-6) is corroborated by the evidence of Sham Singh (PW-7). Credibility of PW-7 is assailed on the ground that he was also challaned along with Narinder Singh in criminal case in 1994 and that PW-7 has animosity against the accused persons. The mere fact that PW-7 was also challaned along with Narinder Singh and that he was inimical towards the accused would not result in mechanical rejection of evidence of such a witness; but would only make the court cautious while evaluating the testimony of the witness and we do not find any infirmity in the appreciation of evidence of PW-7 by the courts and relying upon the same as corroborative evidence.

26. PWs 6 and 7 have spoken in one voice against Dilawar Singh (A-

1), Yash Pal (A-3) and Shamsher Singh (A-7). Their evidence is also corroborated by the medical evidence of Dr. Surinder Singh (PW-10) who conducted the autopsy on the body of Narinder Singh. As per Post-Mortem Certificate, 18 incised wounds were found on the body of the deceased which strengthen the prosecution case as to the overt act of the accused 1, 3 and

7. Based on the confessional statement of the disclosure of Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) cutters were recovered and detection of human blood in those cutters also lends credence to the prosecution case.

27. Placing reliance on the evidence of DW-1, Dr. Ashwini Kumar feeble attempt was made to contend that serious doubts arise about the prosecution case. Of course, according to DW-1, Dr. Ashwini Kumar who admitted injured Narinder Singh in Ladwa Hospital, he found only five injuries on the person of the injured and he opined that the same had been caused by blunt weapon. As per Post Mortem Certificate as many as 18 incised wounds were found on the body of Narinder Singh. As held by the learned courts DW-1 did not examine the injuries on the person of the injured in right perspective and did not correctly record the injuries on the person of Narinder Singh. Opinion of DW-1 that the injuries were the result of blunt weapon is false and for that reason he has been rightly challaned by the police for the offence punishable under Section 218 IPC on the ground that he had prepared the wound certificate falsely. Reasonings contained in paragraphs 44 and 45 in the judgment of the Sessions Court sufficiently answer the arguments advanced on behalf of the appellant and the evidence of DW-1 is of no assistance to the accused.

28. The trial court and the High Court recorded concurrent findings holding that the appellants accused Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) have committed the offences punishable under Section 302 IPC read with Section 149 IPC and under Section 148 IPC. It has been repeatedly held by this Court that even though powers of this Court under Article 136 of the Constitution are very wide, in criminal appeals this Court does not interfere with the concurrent findings of fact, save in exceptional circumstances.

29. Considering the scope of power of this Court under Article 136 of the Constitution in criminal appeals, in the case of Ganga Kumar Srivastava vs. State of Bihar (2005) 6 SCC 211, it is observed:

“From the aforesaid series of decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution of India following principles emerge:-

(i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interference with the concurrent findings of fact save in exceptional circumstances.

(ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly.

(iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

(iv) When the evidence adduced by the prosecution fell short of the test reliability and acceptability and as such it is highly unsafe to act upon it.

(v) Where the appreciation of evidence and finding is vitiated by any error of law or procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.”

30. In the case of Charanjit & Ors. vs. State of Punjab and Anr. (2013) 11 SCC 163, it was observed as under:-

“26. Thus, the trial court and the High Court have recorded concurrent findings of facts holding the appellants guilty of the offences under Sections 323/34, 504/34, 376(2) (a) and 376 (2) (g) IPC and the appellant Radha Krishan guilty of the offence under Section 342 IPC also. It has been repeatedly held by this Court that even though the powers of this Court under Article 136 of the Constitution are very wide, in criminal appeals this Court does not interfere with the concurrent findings of facts, save in exceptional circumstances where there has been grave miscarriage of justice {Sambhu Das v. State of Assam (2010) 10 SCC 374}. As we have found that the concurrent findings of facts recorded by the trial court and the High Court in this case are based on legal evidence and there is no miscarriage of justice as such by the two courts while arriving at the said findings, we are not inclined to disturb the impugned judgment of the High Court in exercise of our discretion under Article 136 of the Constitution.”

31. As we have found that the concurrent findings of fact recorded by the trial court and the High Court qua Dilawar Singh (A-1), Yash Pal (A-3) and Shamsher Singh (A-7) are based on evidence, in our view, there is no miscarriage of justice by the learned courts while arriving at the said findings and we are not inclined to disturb the impugned judgment of the High Court in exercise of our discretion under Article 136 of the Constitution. The appeal preferred by the Dilawar Singh(A-1), Yash Pal (A-3) and Shamsher Singh (A-7) fails and is liable to be dismissed.

32. Appeals against Acquittal qua Balkar Singh (A-4), Ranbir Singh (A-6) and Charan Singh (A-8):- Being aggrieved by the acquittal of Balkar Singh (A-4), Ranbir Singh (A-6) and Charan Singh (A-

8), State and Chanda Singh have preferred Criminal Appeal No. 826/2010 and Criminal Appeal No. 830/2010.

33. A-6, Ranbir Singh has put forth defence plea of alibi. A-6, Ranbir Singh was a practising lawyer at Kurukshetra and he was working as a junior advocate in the office of Senior Advocate, Mr. S.C. Sharma. Mr. Yudhvir Singh, advocate was examined as DW-6, who was also practising with Mr. S.C.Sharma. He stated that on the date of occurrence A-6, Ranbir Singh was in the office of Senior Advocate and not at the place of occurrence. Trial Court has not accepted the plea of alibi raised by him only on the ground that the Senior Advocate with whom A-6, Ranbir Singh was practising was not examined. The High Court held that evidence of DW-6 cannot be doubted as there was no reason to disbelieve him and plea of alibi taken by A-6, Ranbir Singh cannot be rejected on the ground that his Senior Advocate Mr. S.C. Sharma was not examined and on those findings as recorded, High Court acquitted Ranbir Singh, the 6th accused. We do not see any perversity in the appreciation of evidence by High Court and we find no substantial ground to interfere with the acquittal of A-6.

34. Insofar as A-4, Balkar Singh and A-8, Charan Singh are concerned, the case of the prosecution is that A-4 gave gandasi blow to Narinder Singh on his left arm and A-8, Charan Singh gave a blow with his sword on the right leg of Narinder Singh. PW-10, Dr. Surinder Singh stated that death of the deceased was caused by sharp edged weapon and could not have been caused by any blunt weapon. The High Court was of the view that the overt act of A-4, Balkar Singh and A-8, Charan Singh, do not find corroboration with medical evidence and on those findings the High Court set aside the conviction of A-4, Balkar Singh and A-8, Charan Singh and acquitted them.

35. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.

36. In Chandrappa and Ors. v. State of Karnataka (2007) 4 SCC 415, the scope of power of appellate court dealing with an appeal against acquittal has been considered and this Court held as under:

“42.....(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.” Unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal. It has been so stated in *State of Rajasthan vs. Shera Ram* (2012) 1 SCC 602.

37. On evaluation of the evidence found by the High Court while recording an order of acquittal, in our view, does not suffer from any infirmity or illegality or manifest error. We see no reason to interfere with the order of acquittal of Accused 4, 6 and 8.

38. We, therefore, do not find any merit in the appeal preferred by accused (A-1, Dilawar Singh), (A3, Yash Pal), and (A-7, Shamsher Singh). The appeal fails and the same is dismissed. The appeals against acquittal preferred by the State and by Chanda Singh also are dismissed.

.....J. (T.S. Thakur)J. (R. Banumathi) New Delhi;

September 16, 2014
