Brahm Swaroop & Anr vs State Of U.P on 26 October, 2010

Equivalent citations: AIR 2011 SUPREME COURT 280, 2011 (6) SCC 288, 2010 AIR SCW 6704, AIR 2011 SC (CRIMINAL) 155, 2011 (1) ALL LJ 231, 2011 (2) SCC(CRI) 923, 2010 (71) ALLCRIC 975, 2010 (11) SCALE 443, 2010 ALL MR(CRI) 3975, (2010) 96 ALLINDCAS 71 (SC), (2010) 11 SCALE 443, (2010) 4 CHANDCRIC 259, (2011) 48 OCR 158, (2010) 4 RECCRIR 898, (2010) 4 CURCRIR 357, (2010) 3 UC 1858, (2010) 4 DLT(CRL) 522, (2010) 4 CRIMES 267

Author: B.S. Chauhan

Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1235 of 2005

Brahm Swaroop & Anr. ...Appellants

Versus

State of U.P. ...Respondent

With

Criminal Appeal Nos. 1295-1296 of 2005

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. These appeals have been preferred against the judgment and order dated 4th May, 2005, of the High Court of Judicature at Allahabad, passed in Criminal Appeal No. 6180 of 2003, along with Criminal Appeal Nos.3749 of 2003 and 4648 of 2004, against the judgment and order of the Sessions court, Bareilly dated 5th August, 2003, in Sessions Trial No. 855 of 2001 in Crime No. 384/2000.

2. Fact and circumstances giving rise to these appeals are as under:

> (A) First Information Report No.239/2000 was lodged on 31st May, 2000 at 3.20 P.M. by Atar Singh (PW.1) at Police Station Bahedi, Distt. Bareilly. It stated that his grand father Natthu Singh @ Raghunath Singh had an enmity with the family of one Nem Chand Gangwar and on that date he along with Natthu Singh @ Raghunath Singh, Rajendra Singh @ Goli, Virendra Singh, Dharam Pal Singh, Rajendra Singh and Satyapal Singh had come to Bahedi to get the Dynamo of their Jeep No. DDA 6162 repaired. Natthu Singh @ Raghunath Singh was sitting at the counter of the repairing shop, while Dharam Pal Singh and Rajendra Singh were sitting in the Jeep.

Virendra Singh was standing in front of the Jeep. Gyanendra Singh kept his gun in the Jeep near Dharam Pal Singh and went towards the grove to urinate. At about 3.00 P.M., Nem Chand Gangwar (A.1) and his sons Balwant (A.2) and Chandra Pal (A.3), Jogendra (A.4), Brahm Swaroop (A.5) and Jagdish Baggar (A.6) armed with deadly weapons came there and started firing, after surrounding these persons with their respective weapons. Nem Chand Gangwar (A.1) assaulted Natthu Singh (D.1) with his Kanta. He died on the spot. Rajendra Singh (D.2) and Dharampal Singh (D.4) received serious injuries by fire arm and became unconscious. Virendra Singh (D.3) fell near the Jeep after receiving fire arm injuries. The informant, Atar Singh (PW.1) also received injuries in the incident. Brahm Swaroop (A.5) took away the rifle of Rajendra Singh (D.2) and Jagdish Baggar (A.6) took away the licensed gun of Gyanendra. It was also alleged that the chap Serial No. 5809 of the gun of the accused had fallen on the spot.

All the three injured persons were taken to the hospital at Bahedi.

Rajendra Singh (PW.2) and Satyapal Singh also witnessed the incident.

(B) After investigation of the case, the prosecution submitted the chargesheet under Sections 396, 148, 302 read with 149, 307/149 of the Indian Penal Code, 1860 (hereinafter called the IPC). Brahm Swaroop (A.5) and Balwant (A.2) were further charged under Section 25 of the Arms Act (hereinafter referred to as `Arms Act'). During the trial, the prosecution examined 12 witnesses to prove its case. After considering the whole case and appreciating the evidence, on the conclusion of the trial, the Sessions court vide judgment and order dated 5th August, 2003, in Sessions Trial No. 855 of 2001 acquitted Brahm Swaroop (A.5) and Jagdish Baggar (A.6) of all the charges under Sections 148, 302, 149, 307, 396, 424 I.P.C. and Section 25 of the Arms Act. Chandra Pal (A.3) and Balwant (A.2) were convicted under Section 302 read with 34 I.P.C. and were awarded death

sentence and a fine of Rs.5,000/- and, in case of failure to deposit the fine, six months imprisonment in addition. Nem Chand Gangwar (A.1) and Jogendra (A.4) were convicted under Sections 302/34 I.P.C.

and awarded imprisonment for life with fine of Rs. 10,000/- each, and in case of failure to deposit the fine, one year further imprisonment.

Nem Chand Gangwar (A.1) and Jogendra (A.4) were further convicted under Sections 307/34 I.P.C. and awarded 10 years rigorous imprisonment and fine of Rs.5000/- each and in case of failure to deposit the fine, they would undergo 6 months imprisonment in addition.

(C) Being aggrieved by the aforesaid judgment and order of the Sessions Court, three appeals bearing Criminal Appeal No. 4648 of 2004, Criminal Appeal No. 3749 of 2003 and Government Appeal No. 6180 of 2003 were filed before the High Court of Judicature at Allahabad. The High Court vide its judgment and order dated 4th May, 2005, disposed of the aforesaid three appeals by the impugned common judgment and order dismissing the appeals filed by the convicts, however, with the modification that the sentence of death imposed by the trial court on Chandra Pal (A.3) and Balwant (A.2) was altered to life imprisonment. The Government appeal against acquittal of Braham Swaroop (A.5) and Jagdish Baggar (A.6) stood allowed, and they were convicted under Section 302 read with 34 I.P.C. and sentenced to undergo imprisonment for life with a fine of Rs.10,000/- and, in default of payment of fine, rigorous imprisonment for a further period of one year. Both the said accused were further convicted under Sections 307/34 I.P.C. and sentenced to undergo 10 years rigorous imprisonment with a fine of Rs.5,000/- each and, in default of payment of fine, for a further period of six months R.I. The High Court directed that all the punishments would run concurrently.

However, their acquittal for the offences under Section 25 of the Arms Act, was upheld.

3. Shri K.T.S. Tulsi, learned senior counsel appearing for the appellants in all three appeals, has submitted that the place of occurrence is not free from doubt for the reason that no blood stained earth had been lifted from the place near the Jeep and no blood stains were found in the Jeep. The incident had occurred at the residence of Natthu Singh @ Raghunath Singh (D.1) as an entry has been made in this regard in the General Diary at about 11.00 A.M. and the investigating officer Raj Guru, Inspector, P.S. Bahedi (PW.10) had gone to that place. The prosecution did not disclose the genesis of the case correctly. Natthu Singh @ Raghunath Singh (D.1) was a history-

sheeter and a large number of criminal cases were pending against him. Virendra Singh (D.3) and Dharampal Singh (D.4) were involved in criminal cases and facing trial in the said cases. Therefore, they have large number of enemies and the whole case of the prosecution becomes totally improbable. Had the incident occurred as alleged by the prosecution, the Jeep should have got some bullet marks as Rajendra Singh (D.2) and Virendra Singh (D.3) were sitting in the Jeep. Neither were any bullet marks on the Jeep nor had any pellets been recovered from the Jeep or the nearby area. An FIR had initially been registered under Section 396 I.P.C. and, in view of the fact, that one of the victims died on the spot and another died enroute to the hospital, had the prosecution given

the correct version of events, the FIR ought to have been registered under Sections 302 and 307 I.P.C.

along with other Sections. The inquest has been manipulated and there are five blanks therein which make the whole prosecution case doubtful. The use of weapons was not established. The Magistrate received the Special Report after five days. Atar Singh (PW.1) could not tell names of the father of Brahm Swaroop (A.5) as well as of Jagdish Baggar (A.6) though the same had been mentioned in the FIR lodged by him. The prosecution did not examine any independent witness. The reversal of the acquittal of Brahm Swaroop (A.5) and Jagdish Baggar (A.6) by the High Court is totally unwarranted and unjustified. Thus, the appeals deserve to be allowed.

4. On the contrary, Shri Shail Kumar Dwivedi, learned Additional Advocate General for the State of U.P., has vehemently opposed the appeals, contending that the FIR had been lodged promptly; without any loss of time. The incident occurred at 3.00 P.M. and the FIR had been lodged at 3.20 P.M. on the same day giving the names of all the accused; the soil containing blood was mentioned in General Diary.

The omission of the names of fathers of Brahm Swaroop (A.5) and Jagdish Baggar (A.6) cannot be fatal to the prosecution case and it is not necessary that the informant must be aware of all the contents of the FIR itself. The prosecution examined the injured witness, who would not spare the real culprits and involve someone falsely. The deposition of the injured witness has to be given due weightage. The manner in which the inquest report is made, has to be ignored as law does not require to it to furnish all the information and it is not necessary to fill up the names of all the accused. Even if the Special Report reached the Judicial Magistrate at a belated stage, it would not be fatal to the prosecution case. The prosecution case is duly supported by the medical evidence and though the eye witnesses were closely related to the deceased persons, their depositions are required to be examined with care and caution, but cannot be ignored. Minor discrepancies in the evidence, cannot adversely affect the prosecution case. Thus, the appeals are liable to be dismissed.

5. We have considered the rival contentions of the parties and perused the evidence on record.

Legal Issue Inquest : Section 174 Cr.P.C.

6. Undoubtedly, there are five blanks in the inquest report. The crime number and names of the accused have not been filled up. The column for filling up the penal provisions under which offences have been committed is blank. The time of incident and time of dispatch of the special report have not been mentioned. Therefore, Shri Tulsi has submitted that the FIR is ante-timed and there is manipulation in the case of the prosecution.

7. The whole purpose of preparing an inquest report under Section 174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C') is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. For the purpose of holding the inquest it is neither necessary nor obligatory on the part of

the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. The object of the proceedings under Section 174 Cr.PC is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. The question regarding the details of how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings i.e. the inquest report is not the statement of any person wherein all the names of the persons accused must be mentioned. Omissions in the inquest report are not sufficient to put the prosecution out of court. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery etc. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses can not be discarded if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilised for contradicting the witnesses of inquest. (See Podda Narayana & Ors. v. State of Andhra Pradesh, AIR 1975 SC 1252; Khujji v. State of Madhya Pradesh, AIR 1991 SC 1853; George & Ors. v. State of Kerala & Anr., (1998) 4 SCC 605; Shaikh Ayub v. State of Maharashtra, (1998) 9 SCC 521;

Suresh Rai v. State of Bihar, (2000) 4 SCC 84; Amar Singh v.

Balwinder Singh & Ors., (2003) 2 SCC 518; Radha Mohan Singh alias Lal Sahab & Ors. v. State of Uttar Pradesh, (2006) 2 SCC 450; and Aqeel Ahmad v. State of Uttar Pradesh, AIR 2009 SC 1271).

8. In Radha Mohan Singh (supra), a three judge bench of this Court held:

> "No argument on the basis of an alleged discrepancy, overwriting, omission or contradiction in the inquest report can be entertained unless the attention of the author thereof is drawn to the said fact and he is given an opportunity to explain when he is examined as a witness in court."

(Emphasis added)

9. Even where, the attention of the author of the inquest is drawn to the alleged discrepancy, overwriting, omission or contradiction in the inquest report and the author in his deposition has also admitted that through a mistake he omitted to mention the crime number in the inquest report, this Court has held that just because the author of the report had not been diligent did not mean that reliable and clinching evidence adduced by the eyewitnesses should be discarded by the Court. (Vide: Dr. Krishna Pal & Anr. v. State of Uttar Pradesh, (1996) 7 SCC 194).

10. In view of the law referred to hereinabove it cannot be held that any omission or discrepancy in the inquest is fatal to the prosecution's case and such omissions would necessarily lead to the inference that FIR is ante-timed. Shri N.K. Sharma Sub Inspector (PW.7) had denied the suggestion made by defence that till the time of preparing the report the names of the accused persons were not available. He further stated that the column for filling up the nature of weapons used in the crime was left open as it could be ascertained only by the Doctor what weapons had been used in the crime. Thus, the submissions made in this regard are preposterous.

Delay in sending report to the Magistrate :

11. Undoubtedly, there is delay of 5 days in sending the Special Report. This Court in Badam Singh v. State of M.P., (2003) 12 SCC 792, while considering this issue held that where the investigating officer categorically stated that he was not in a position to give any explanation for the delay in sending the Special Report, it may be fatal to the prosecution's case.

12. However, a larger Bench of three Judges in Balram Singh & Anr. v. State of Punjab, (2003) 11 SCC 286, held as under:

> "10.....we notice that in reality there is no delay in preparing the FIR but there was some delay in transmitting the said information to the Jurisdictional Magistrate. Having been satisfied with the fact that the FIR in question was registered in the morning of 6-5- 1990, we do not think that the delay thereafter in communicating it to the Jurisdictional Magistrate on the facts of this case, has really given any room to doubt that the said document (FIR) was created after much deliberations. At any rate, while considering the complaint of the appellants in regard to the delay in the FIR reaching the Jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case."

13. In State of Rajasthan v. Teja Singh & Ors., (2001) 3 SCC 147, this Court held that the receipt of special report by the Magistrate is a question of fact and the prosecution may explain the delay in sending the special report. However, the explanation so furnished by the prosecution must be convincing and acceptable. The same view has been re-iterated in Ramesh Baburao Devaskar & Ors. v. State of Maharashtra, (2007) 13 SCC 501.

14. In Sarvesh Narain Shukla v. Daroga Singh & Ors., AIR 2008 SC 320, this Court held that delay in forwarding the Special Report to the Magistrate could not raise a suspicion that FIR had been written later and was ante-timed. Suspicion of manipulation of the documents prepared during the initial investigation would not dislodge the documentary and oral evidence on the spontaneity of the lodging of the FIR.

15. In Aqeel Ahmad (supra), this Court held that the forwarding of the report to the Magistrate is indispensable and absolute and it must be sent at the earliest, promptly and without any undue delay as the purpose is to avoid the possibility of improvement in the prosecution's case and the introduction of a distorted version by deliberations and consultation and to enable Magistrate concerned to keep a watch on progress of investigation. However, no rule of universal application can be laid down that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. It would depend upon the facts of each case. If there has been some lapse on the part of the Investigating Officer that would not affect the credibility of the prosecution's witnesses.

16. In State of Kerala v. Anilachandran @ Madhu & Ors., AIR 2009 SC 1866, this Court placed reliance upon its earlier judgments in Pala Singh v. State of Punjab, AIR 1972 SC 2679; and Sarwan Singh v. State of Punjab, AIR 1976 SC 2304 and held that the police should not unnecessarily delay sending the FIR to the Magistrate as the delay affords the opportunity to introduce improvement and embellishment thereby resulting in a distorted version of the occurrence. However, in case the prosecution offers a satisfactory explanation for the delay, the court has to test it. An un-explained delay by itself may not be fatal, but it is certainly a relevant aspect which can be taken note of while considering the role of the accused persons for the offence.

A similar view has been re-iterated in Pandurang Chandrakant Mhatre & Ors. v. State of Maharashtra, (2009) 10 SCC 773.

17. In Akbar Sheikh & Ors. v. State of W.B., (2009) 7 SCC 415, this Court held as under:

> "44. Submission of Mr Ghosh that the first information report is ante-timed cannot be accepted. It is possible that PW 1 because of lapse of time has made certain statements which go beyond the record viz. holding of inquest before the FIR was recorded. The number of accused persons in the first information report might have also been put by the investigating officer at a later point of time. The fact that the post-mortem examination had been held on 16-5-1982 itself goes a long way to establish the genesis of the occurrence. While saying so, we are not unmindful of the fact that the first information report was sent to the Magistrate after twenty-four hours. But then, in a case of this nature such a delay may not, by itself, be held to be fatal".

18. In the instant case, the defence did not put any question in this regard to the investigating officer Raj Guru (PW.10), thus, no explanation was required to be furnished by him on this issue. Thus, the prosecution had not been asked to explain the delay in sending the special report. More so, the submission made by Shri Tulsi that the FIR was ante-timed cannot be accepted in view of the evidence available on record which goes to show that the FIR had been lodged promptly within 20 minutes of the incident as the Police Station was only 1 k.m. away from the place of occurrence and names of all the accused had been mentioned in the FIR. Dr. Nar Singh Bahadur (PW.4) examined Virendra Singh (D.3) on 31st May, 2000 itself at 5.40 p.m. and had noted fire arm injures on his body and opined that the injuries were fresh in nature. Dr. Anshu Kumar Agrawal (PW.6) had examined Atar Singh (PW.1) on 31st May, 2000 itself at 3.50 p.m. and had noted multiple pellet wounds with surrounding charring over anterior surface of left thigh middle part and a single pellet wound over the anterior surface at right arm lower part. Dr. K.K. Saxena (PW.5), Radiologist conducted an X-Ray examination of Attar Singh (PW.1) on 31.5.2000 and found three small rounded radio opaque with metallic density and F.B. Shadow on middle of left thigh and right arm.

The prompt lodging of the FIR is proved from the chik report and the statement of the complainant under section 161 Cr.P.C., which was recorded immediately after lodging the FIR. Any defect in the preparation of the inquest report by the investigating officer cannot lead to an inference that the FIR was not registered at the alleged time.

The FIR contains all the essential features of the prosecution's case including names of eye witnesses, time and place of incident, names of the victim, motive, name of the accused persons, weapons in their hands and manner of assault. Thus, all these things lend a seal of assurance not only to the presence of eye witnesses at the place of the incident, but also to the participation of the appellants in the crime.

Courts attach great importance to the prompt lodging of FIR and prompt interrogation of a witness under Section 161 Cr.P.C. as the same substantially eliminates the chances of embellishment and concoction creeping into the account contained therein.

19. It has further been submitted by Shri Tulsi that the place of occurrence is not free from doubt as it has been stated by the investigating officer, Raj Guru, Inspector, P.S. Bahedi (PW.10) that on receiving the phone call at 11.00 A.M. purported to have been made from the residence of Natthu Singh @ Raghunath Singh (D.1) that dacoits had attacked them he made an entry in the General Diary, and proceeded to that place and recorded the statement of some persons there. The vehicle in which Rajendra Singh (D.2) and Dharampal Singh (D.4) were sitting did not have any blood marks and no blood stains were found near the jeep and no pellets had been recovered from the said place. On the contrary, Shri Shail Kumar Dwivedi, Addl. Advocate General has submitted that cement containing blood stains from the counter had been collected and proved. So far as the alleged incident at 11.00 A.M. is concerned, the investigating officer, Raj Guru, Inspector, P.S. Bahedi (PW.10) had stated that "this was the conspiracy to misguide the police and to drive it out of the Kasba."

20. If we accept the submissions made by Shri Tulsi then the question of collecting the blood stained cement from the counter of the repairing shop could not arise. Shri Raj Guru I.O. (PW.10) has stated that the tool box was found marked with splinters and badly damaged. More so, the statement of Atar Singh (PW.1), the informant, cannot be ignored as he has stated that Virendra Singh (D.3) was bleeding but blood did not fall on the ground as Virendra Singh's (D.3) clothes absorbed all the blood. He had further stated that Natthu Singh @ Raghunath Singh (D.1) was sitting at the counter and there was quite a lot of blood from the wounds of Natthu Singh (D.1) which fell on the ground and not on the counter. In view of the above, we do not find any force in the submissions made by Shri Tulsi in this regard.

21. Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that effects the credibility of a witness, more so, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence. (Vide:

> Dalip Singh & Ors. v. State of Punjab, AIR 1953 SC 364; Masalti v. State of U.P., AIR 1965 SC 202; Lehna v. State of Haryana, (2002) 3 SCC 76; and Rizan & Anr. v. State of Chhattisgarh Through The Chief Secretary, Government of Chhatisgarh, Raipur, Chhatisgarh, (2003) 2 SCC 661).

Injured witness Attar Singh (PW.1) has been examined, his testimony cannot be discarded, as his presence on the spot cannot be doubted, particularly, in view of the fact that immediately after lodging of FIR, the injured witness had been medically examined without any loss of time on the same day. The injured witness had been put through a grueling cross-examination but nothing can be elicited to discredit his testimony.

22. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide: State of U.P. v. Kishan Chand & Ors., (2004) 7 SCC 629; Krishan & Ors.v.

State of Haryana, (2006) 12 SCC 459; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Jarnail Singh & Ors. v. State of Punjab, (2009) 9 SCC 719; Vishnu & Ors. v. State of Rajasthan, (2009) 10 SCC 477; Anna Reddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 2661; and Balraje @ Trimbak v.

State of Maharashtra, (2010) 6 SCC 673).

23. In such a fact-situation though Natthu Singh @ Raghunath Singh (D.1) was history-sheeter and Rajendra Singh (D.2) and Dharampal Singh (D.4) had criminal cases against them and they had large number of enemies, it cannot be inferred that somebody else had killed them.

Discrepancies and inconsistencies in depositions of witnesses:

24. It has been submitted by learned Senior counsel for the appellants that there is a contradiction between the medical and ocular evidence. From the post mortem report of Virendra Singh (D.3) (Ext.Ka-8), it is evident that his body was having contusions; the post mortem report of Rajendra Singh (D.2) (Ext.Ka-9) reveals that he was having abrasions; and the post mortem report of Nathu Singh (D.1) (Ext.Ka-10) also reveal several abrasions. The High Court has given cogent reasons explaining these discrepancies by saying that at the time of firing, the deceased must have reacted to the assault and might have received some abrasions and contusions in order to save themselves. Rajendra Singh (PW.2) has stated that he remained at the place of occurrence till 7 p.m. and he denied his signatures. The High Court has furnished a cogent explanation for such contradiction, and held that his statement had been recorded after 3 years of the incident and thus, such infirmity is bound to occur but does not affect the credibility of the witnesses.

25. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth,

exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See:

State of U.P. v. M.K. Anthony, AIR 1985 SC 48; and State of Rajasthan v. Om Prakash, AIR 2007 SC 2257; State v. Saravanan & Anr., AIR 2009 SC 152; and Prithu @ Prithi Chand & Anr. v.

State of Himachal Pradesh, (2009) 11 SCC 588).

Appeal against Acquittal :

26. It is well established in law that the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law.

Similarly, the incorrect placing of the burden of proof may also be a subject matter of scrutiny by the appellate court. The court of appeal may not interfere where two views are possible for the reason that in such a case it can be held that prosecution failed to prove the case beyond reasonable doubt and accused is entitled for benefit of doubt.

(Vide: Balak Ram & Anr. v. State of U.P., AIR 1974 SC 2165;

Allarakha K Mansuri v. State of Gujarat, (2002) 3 SCC 57;

Raghunath v. State of Haryana, (2003) 1 SCC 398; State of U.P. v.

Ram Veer Singh & Ors., AIR 2007 SC 3075; S. Rama Krishna v.

S. Rami Reddy (D) by his LRs. & Ors., AIR 2008 SC 2066;

Sambhaji Hindurao Deshmukh & Ors. v. State of Maharashtra, (2008) 11 SCC 186; Arulvelu & Anr. v. State, (2009) 10 SCC 206;

Perla Somasekhara Reddy & Ors. v. State of A.P., (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh, (2010) 2 SCC 445).

27. In Sheo Swaroop and Ors. v. King Emperor, AIR 1934 PC 227, the Privy Council held as under:

> "...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

28. In Chandrappa and Ors. v. State of Karnataka, (2007) 4 SCC 415, this Court observed as under:

> "(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal.

Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

29. In State of Uttar Pradesh v. Banne @ Baijnath & Ors., (2009) 4 SCC 271, this Court gave illustrations of certain circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include:

> i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;
>
> ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

30. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a routine manner, where the other view is possible should be avoided, unless there are good reasons for such interference.

31. The trial Court had acquitted two accused persons, namely, Brahm Swaroop (A.5) and Jagdish Baggar (A.6) mainly on the grounds that Attar Singh (PW.1) did not tell the names of their respective fathers though it has so been mentioned in the FIR.

Secondly, the prosecution could not explain how could the gun of Gyanendra be recovered from Brahm Swaroop (A.5) if it was taken away by Jagdish Baggar (A.6) and third ground had been that on 3.6.2000 a gun was recovered on the pointing out of Brahm Swaroop and he had admitted that he had used the gun in the crime. The said gun was sent for ballistic expert and the report (Ext.Ka-28) shows that the barrel of the gun did not have any residue and it had not been used recently.

32. So far as the first issue is concerned, the names of the father of two persons accused could not be given by Atar Singh, informant, (PW.1) in the court, though mentioned in the FIR. The question does arise as to whether, it is fatal to the case of the prosecution. In Sone Lal & Ors. v. State of U.P., AIR 1978 SC 1142, this Court while dealing with the issue held:

> ".....informant was not aware of some of the contents of the FIR itself.....If the accused had any reason to think otherwise it was permissible for him to cross-examine the witness concerned and to lay the foundation for his own version. Lastly, it was suggested by the Sessions Judge that although the parentage of the accused Dularey was not mentioned in the FIR yet it was mentioned in the general diary which shows that the FIR was prepared subsequently. The High Court has clearly pointed out that it was fully explained that due to inadvertence the parentage of Dularey was not mentioned in the FIR but after being ascertained from the

> informant it was mentioned in the general diary. In these circumstances, therefore, the omission, if any, does not appear to be of any significance. These were the main reasons given by the Sessions Judge for disbelieving the FIR and, in our opinion, the High Court was right in pointing out that the reasons given by the Sessions Judge were both unsound and untenable."

33. In the case of Rotash v. State of Rajasthan, (2006) 12 SCC 64, this Court held:

> ".....The question is as to whether a person was implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case. PW.6 received as many as four injuries...."

Thus, in the fact-situation of the present case, this factor alone could not discount their involvement in the crime. More so, it is evident from the record that there was no suggestion to Atar Singh (PW.1) that the names of the fathers of the two accused persons were mentioned at the instance of some other persons. He had not been asked as how the name of their father had been mentioned in the FIR.

Such an inference could not have been drawn by the trial Court without giving an opportunity of explanation to Atar Singh (PW.1).

34. On 3.6.2000, a gun was recovered on its being pointed out by appellant Brahm Swaroop and he stated that he had used the said gun in the commission of the crime. However, the FSL report suggested that the gun had not been fired recently and from this the trial court concluded that the report did not corroborate the usage of the said gun in the crime and was a major flaw in the prosecution's case. The High Court held that this inference of the trial court was perverse. The case of the prosecution had all along been that Brahm Swarup was armed with a DBBL gun (which is a different type of gun from the said gun), and the said gun was not mentioned either in the FIR or in the testimonies of any of the prosecution witnesses. It was the statement of Brahm Swaroop that he had used the said gun in the crime. Further, this statement was inadmissible as Brahm Swaroop had made the statement to a police officer while he was in custody.

35. As far as the question of the other gun, which Jagdish Baggar took from Gyanendra and its recovery from Brahm Swaroop is concerned, both the Trial Court and the High Court disbelieved the recovery. However, the High Court took the view that no benefit can be given to the accused persons on the ground that the recovery of the said gun was not worth to be believed. Even in the absence of the proper recovery of the said gun, there was enough evidence to prove beyond reasonable doubt, the guilt of the accused. The High Court took the view that in light of the fact that the eyewitness accounts and the medical evidence were in harmony with each other and clearly established the guilt of Brahm Swaroop and Jagdish Baggar, the decision of the Trial Court to acquit them could not be in consonance with the evidence available on record and thus, perverse. Thus, no fault can be found with the findings so recorded by the High Court in reversing their acquittal.

36. We also do not find any force in the submissions made on behalf of the appellants that there could be no recovery of weapons on 3.6.2000 when the statement of Jagdish Baggar (A.6) was recorded firstly on 7.6.2000 in the District Jail, for the reason that Shri N.K. Sharma, Sub-Inspector (PW.7) has stated that Balwant (A.2) and Brahm Swaroop (A.5) were arrested on 3.6.2000 and they were having the gun with them. Balwant (A.2) himself brought one Rifle out of gathered hay and therefore, the statement of N.K. Sharma (PW.7) cannot be brushed aside as he has referred to the butt of the gun which was broken and the chap of which had fallen down.

37. We have, ourselves appreciated the evidence and reached conclusions similar to the High Court:

(i) If the evidence of the eye-witnesses is trustworthy and believed by the court, the question of motive becomes totally irrelevant.

(ii) Merely because the witnesses were close relatives to the deceased, that cannot be a ground to discard their evidence.

(iii) Prosecution examined an injured witness. His presence on the spot cannot be doubted and his deposition is to be given due weightage.

(iv) In the facts and circumstances of the case there was no conflict between the direct evidence and medical evidence. Even if deceased were having some minor abrasions and contusions for the reason that they might have reacted to the assault and tried to save themselves, cannot create a doubt in the prosecution case about the presence of the witnesses.

(v) The eye witnesses have been cross-examined thoroughly, but nothing useful to the accused could be elicited from them. The testimony of the eye witnesses is credible and worthy of confidence.

(vi) The acquittal of Brahm Swaroop (A.5) and Jagdish Baggar (A.6) by the trial court cannot be held to be based on cogent reasons. The High court has rightly reversed their acquittals for offences under sections 302/34 and 307/34 IPC, but has rightly upheld their acquittal under Section 25 of the Arms Act.

38. In view of the above, we do not find any cogent reasons to interfere with the impugned judgment and order of the High Court.

The appeals lack merit and, are accordingly, dismissed.

.....J. (P. SATHASIVAM) .....J. (Dr. B.S. CHAUHAN) New Delhi, October 26, 2010