The State Of Rajasthan vs Heem Singh on 29 October, 2020

Equivalent citations: AIRONLINE 2020 SC 795

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Bench: D.Y. Chandrachud, Indu Malhotra, Indira Banerjee

Rep

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3340 of 2020
Arising out of SLP (C) No. 30763 of 2019

The State of Rajasthan & Ors. ...App

Versus

Heem Singh ...Res

JUDGMENT

Dr Dhananjaya Y Chandrachud, J This judgment has been divided into sections to facilitate analysis. They are:

A The appeal

B Murder, trial and disciplinary enquiry

C Submissions of counsel

D

Proof of misconduct in disciplinary proceedings E Date: 2020.10.29 14:41:10 IST Findings of the disciplinary enquiry Reason:

F The judgment of the Division Bench

PART A

G Evidence in the disciplinary enquiry

H On a 'preponderance of probabilities'

I Judicial review over disciplinary matters

J The effect of an acquittal

K Conclusion

A The appeal

1 This appeal is from a judgment dated 24 April 2019 of a Division Bench of the

High Court of Judicature for Rajasthan at Jodhpur. The respondent, who was a police constable, filed a petition under Article 226 of the Constitution to challenge his dismissal from service after a disciplinary enquiry. A Single Judge of the High Court, by a judgment dated 1 February 2018, dismissed the petition. The Division Bench reversed the judgment and concluded that there is no evidence in the disciplinary enquiry to sustain the finding that the respondent committed a murder while on leave from duty. Independently, he has also been acquitted in a Sessions trial on the charge of murder. The Division Bench granted the respondent reinstatement in service with no back wages for the seventeen years that elapsed since his termination. The State comes in appeal.

PART

B Murder, trial and disciplinary enquiry

2 In 1992, the respondent was appointed as a Constable in the police service

Rajasthan. On 13 August 2002, he proceeded on leave and had to report back on duty on 16 August 2002. He failed to do so and eventually reported for work on 19 August 2020. He sought and was granted permission for over-staying his leave on the ground that his brother-in-law, Shankar Singh had died. On 15 August 2002, one Daulat Singh lodged a written complaint at Police Station, Khamnaur in relation to the death of his brother Bhanwar Singh, caused by an accident with an unknown vehicle. The police initially registered a crime under Sections 209 and 304A of the Indian Penal Code 1. The statements of Daulat Singh, Jodh Singh, Meera and Hamer Singh were recorded under Section 161 of the Code of Criminal Procedure 19732. It appeared during the course of the investigation that the death was homicidal. The investigation by the police proceeded for an offence punishable under the provisions of Section 302 of the IPC. The respondent was arrested on 9 September 2002. There were two co-accused, Lokesh Gurva and Iqbal Khan. After the investigation was completed, a charge-sheet was filed under Sections 302, 201 and 120B. Sessions Case 3 of 2003 was committed for trial to the court of the Additional Sessions Judge, Nathdwara.

3 The case of the prosecution was that there was a dispute over land between the respondent and Bhanwar Singh. Moreover, the respondent's father had been "IPC" "CrPC" PART B treated for a snake bite by Bhanwar Singh but his witchcraft did not yield result, leading to the death of the father. According to the prosecution, the respondent bore a grudge towards the deceased due to this incident and had proclaimed earlier that he would kill him.

4 During the pendency of the criminal trial, a memorandum was issued on 18 January 2003 to the respondent, followed by a charge-sheet, convening disciplinary proceedings under the provisions of Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules 1958 3. The imputations against the respondent are extracted below, together with the familiar errors of grammar and translation:

> "1. That you on 13.08.02 from Station House Officer, P.S. Devgarh got one casual leave and one gazette leave sanctioned and left for your home, as per which you have to attend duty on 16.08.02 at A.M. but you did not attend the duty on time and attended the duty on 19.08.02 after remaining absent for 3 days, which is proved from record.
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> 2. That even during the absence period you did not inform any officer about the reason of your absence and also not submitted any extension, which is proved from record.
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> 3. That you at your residence on 15.08.02 during leave Shri Bhanwar Singh S/o Chandan Singh Rajput R/o Ravo ki Gudli, who was working in PWD Department, Nathdwara and was going on his duty and because of dispute regarding land between you and Bhanwar Singh you with help of Lokesh, Iqbal to kill Bhanwar Singh hit him with jeep at Bheel Basti Kunthwa, due to which he fell down and while shouting your companion Iqbal brought iron rod from jeep and hit on forehead of Bhanwar Singh due to which he died on the spot.

You are an employee of disciplined department and have knowledge of law, you have committed such a grievous “the Rules” PART B offence, due to which image of police is blurred among public, which is proved from record.

4. That you after committing murder of Bhanwar Singh, you and your companion ran away from the spot and having knowledge of law gave form of an accident to the murder, which is proved from records and initial inquiry.

5. That you after the said incident by joining duty 19.08.02 at police station Devgarh while hiding reality and by telling reason of absence as accident of Bhanwar Singh you get sanctioned period 3 leaves from the SHO as casual leaves where you had committed murder. Thus, you have knowingly mislead your superior officer, which is proved from the initial inquiry and record .

6. That you are an employee of disciplined department, has full knowledge of law and despite of having knowledge of law you committed a heinous crime, which seriously hurt the image of police department among general public and your said act has blurred the image of police among public. Your said act comes under category of 'savior only eater', which is proved from the initial inquiry and record.” 5 By a judgment dated 8 October 2003, the Additional Sessions Judge acquitted the respondent and the two co-accused, giving them the benefit of doubt. The Additional Sessions Judge observed that PW1 Meera and PW2 Poorna Devi, the daughters of the deceased, were not present at the scene of offence and their evidence was hearsay. A succession of witnesses – PW3 Jai Singh, PW4 Babudas, PW5 Sundarlal, PW17 Jagat Singh, PW18 Kishan Singh, PW19 Banshi Lal, PW20 Shankar Singh, PW22 Devi Singh, PW23 Kaisar Singh and PW34 Pratap Singh – were declared hostile during the course of the trial. The case turned on the evidence of PW21 Jodh Singh, the alleged eye-witness. The Additional Sessions Judge found that on 7 September 2000, about 2 years prior to the incident, the deceased had PART B intimated the SHO at Khamnaur P.S. recording a threat to his life inter alia from the respondent. The SHO registered a report under Section 107 of the CrPC and conducted proceedings. Although finding prima facie that there was enmity between the respondent and the deceased, the Additional Sessions Judge declined to accept the evidence of PW21. While evaluating it in the context of the co-accused, Lokesh, the Additional Sessions Judge noted:

> “Thus, this evidence is prima facie ... that accused Heem Singh has enmity with deceased Bhanwar Singh. Whether due to this enmity Heem Singh by conspiring with co-accused persons by telling accident by jeep with aid of co-accused Iqbal committed murder of Bhanwar Singh, on this point the observation of this Court is that accused Lokesh Gaurva who was told as jeep driver by the witness Jodh Singh at the time of incident, against that Lokesh Gaurva by involving with Heem Singh at the time of incident hitting Bhanwar Singh by jeep such evidence is not given by PW-21 Jodh Singh. Additional Public Prosecutor on this point during cross- examination has not taken on record by seeking any clarification or declaring PW-21 as hostile. Thus, there is no evidence on record for conviction of accused Lokesh Gaurva under Sections 302, 201, 120B IPC read with Section 34 IPC.” (emphasis supplied) The above extract indicates that the Public prosecutor did not have PW21 declared

hostile, though this should have been ordinarily, the correct course of action. The Additional Sessions Judge declined to believe the testimony of PW21 insofar as the respondent and co-accused Iqbal were concerned, finding that the witness was inconsistent and untrustworthy. The respondent was given the benefit of doubt and was acquitted.

PART B 6 The disciplinary enquiry on the charge of murder proceeded with much the same evidence. Jodh Singh was the star witness during the disciplinary proceedings. During the course of the disciplinary enquiry, the enquiry officer recorded the statements of PW1 Jodh Singh, PW2 Devi Singh, PW3 Shankar Singh and PW4 Hamer Singh among several witnesses. The disciplinary enquiry led to the submission of the enquiry report. The enquiry officer found the charges to be proved. The findings on each of the charges are extracted below:

> "CHARGE NO.1 Said constable on 13.08.02 from Station House Officer, P.S. Devgarh get on one casual leave and one gazette leave sanctioned and left for his home who has not attended the duty on time and attended the duty after 3 days, which is proved from the statements of Shri Bhanwar Singh, S.I. SHO Devgarh, Shri Bhanwar Singh Const. No.351, Shri Rajesh Kumar, Const. No. 563 & Shri Munishwar Mishra, Ka.Ii. and from copy of GD Report. Thus, I found the said charge as completely proved.
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> CHARGE NO.2 The Constable during the absence period did not inform any officer about the reason of his absence and also not submitted any extension, which is proved from records and statements of Shri Muniswar Mishra, Ka. Li. Force Branch, Shri Bhanwar Singh S.I. SHO Devgarh. Thus, I found the said charge as completely proved.
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> CHARGE NO.3 The said constable at his residence on 15.08.02 during leave Shri Bhanwar Singh S/o Chandan Singh Rajput R/o Ravo ki Gudli, who was working in PWD Department, Nathdwara and was going on his duty and because of dispute regarding land between him and Bhanwar Singh, he with help of Lokesh, Iqbal to kill Bhanwar Singh hit him with jeep at Bheel Basti Kunthwa, due to which he fell down and while shouting his companion Iqbal brought iron rod from jeep and hit on PART B forehead of Bhanwar Singh due to which he died on the spot. Thus, being an employee of disciplined department and having knowledge of law, he has committed such a grievous offence due to which image of police is blurred among public.
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> In respect of said charge the prosecution has produced statements of Jodh Singh PW-1, Devi Singh PW-2, Shankar Singh PW-3, Hamer Singh PW-4, out of which Jodh Singh PW-1 in his statement at the time of incident has proved presence of himself, charged constable and tractor at the place of incident. Similarly, witness Shankar Singh PW-3 stated that he saw half an hour ago to the incident, the charged constable roaming near place of incident and his parked tractor. Similarly, witness Shri Hamer Singh PW-4 stated that there is prior enmity between charged constable and deceased Bhanwar Singh and prior to the death of father of charged constable,

stating through witness to Bhanwar Singh that I will kill him by hitting with jeep or tractor and the incident of same kind is committed. Similarly, witness Shri Nanalal SHO Khamnaur PW-9 also in his statement against the charged constable on finding offence verified arresting him and seizure of iron rod, jeep & tractor used in the incident. Thus, from the aforesaid analysis the said charge is found as completely proved.

The charged constable in defense of said charge has produced a copy of order passed by the Hon'ble Additional Sessions Judge Nathdwara in case related to said incident, after perusal of which it is found that the Hon'ble Court has not completely acquitted the said constable rather acquitted by giving him the benefit of doubt. From this it is clear that the Hon'ble Court has not acquitted charged constable in free form. Thus, I found said charge as completely proved due to which the image of police has blurred.

CHARGE NO.4 It is the charge against constable that he after committing murder of Bhanwar Singh, along with his companions ran away from the spot and having knowledge of law gave form of an accident to the murder.

PW-1 Jodh Singh, PVV-3 Shankar Singh, PW-4 Hamer Singh, PW-9 Nanalal has confirmed the aforesaid charge. Thus, said charge is completely proved from the enquiry.

PART B CHARGE NO.5 It is the charge against constable that he while joining duty on 19.08.02 at police station Devgarh by hiding reality and by telling reason of absence as accident of Bhanwar Singh he got sanctioned period of 3 leaves from the SHO as casual leaves.

Said charge is proved from the statements of witnesses PW-7 Shri Rajesh Kumar, PW-6 Bhanwar Singh S.I. and aamad report Ext. P-8 written by charged constable. Thus, I found the said charge as completely proved.

CHARGE NO.6 It is the charge against constable that he being an employee of disciplined department, has full knowledge of law and despite of having knowledge of law he has committed a heinous crime, which seriously hurt the image of police department among general public.

Since, from the enquiry the Charge No. 1 to 5 are completely proved. Thus, the said charge automatically gets completely proved." 7 The disciplinary authority issued a notice to show cause to the respondent on 23 October 2003, to which he submitted a response on 17 November 2003. On 11 December 2003, the District Superintendent of Police came to the conclusion that though the respondent had been given the benefit of doubt in the criminal trial, the charges against him stood established. He was dismissed from service. The appeal preferred by the respondent was dismissed by the Inspector General of Police on 17 June 2005. A review before the State Government was dismissed on 29 August 2008. This led to the institution of writ proceedings before the High Court. A learned Single Judge of the High Court, by a judgment dated 1 February 2018, rejected the Writ

Petition. In appeal, the judgment of the Single Judge was reversed by the PART C Division Bench on 24 April 2019. By its judgment, the Division Bench directed re- instatement of the respondent in service with consequential benefits but without back-wages.

C Submissions of counsel

8 Mr Ashish Kumar, AAG appearing on behalf of the appellants submits that:

(i) In a disciplinary enquiry involving a charge of misconduct, the test is whether the charge is established on a 'preponderance of probabilities' unlike in a criminal trial where the prosecution has to establish their case 'beyond reasonable doubt';

(ii) While exercising judicial review under Article 226 of the Constitution against the findings in a disciplinary enquiry the court cannot reappreciate the evidence in the manner of an appellate court, and so long as the finding of misconduct is based on some evidence, no interference is warranted;

(iii) The High Court has failed to ascribe adequate weight to the orders in the disciplinary proceedings: the order dated 11 December 2003 pursuant to departmental proceedings; the order dated 17 June 2005 of the Inspector General of Police exercising appellate powers; and the order dated 29 August 2008 in review proceedings passed by the Home Department; and

(iv) The evidence in the disciplinary enquiry indicates that:

PART C

(a) There was enmity between the deceased and the respondent arising out of a dispute over land;

(b) The co-accused was found at the scene of offence;

(c) The deceased had a couple of years prior to the incident, lodged a complaint with the police apprehending danger from the respondent;

(d) The evidence of PW1 Jodh Singh and PW3 Shanker Singh showed the presence of the respondent in the vicinity; and

(e) The judgment in the criminal trial, acquitting the respondent of the offence of murder, did not constitute a clean acquittal but was founded on the benefit of doubt.

9 On the above grounds, it was urged that the High Court has transgressed the limitations on its power of judicial review in allowing the appeal, setting aside the judgment of the Single Judge and in

interfering with the disciplinary penalty imposed by the appellants.

10 On the other hand, Mr Jasmeet Singh, learned Counsel appearing on behalf of the respondent submitted that:

> (i) The departmental enquiry was concluded in violation of the rules governing the enquiry. All the orders in the disciplinary enquiry were based on the examination-in-chief of an alleged eye-witness, PW1 Jodh Singh, while ignoring that his deposition was completely demolished in the course of the cross-examination;

PART C

(ii) In the course of the cross-examination, PW1 Jodh Singh admitted that he had named the respondent only under the pressure of the Sarpanch. The disciplinary authority as well as the appellate and reviewing authorities ignored vital evidence, and consequently their findings were perverse;

(iii) Since the alleged crime took place outside the scope of service, it was incumbent upon the department to place reliance on the entire record of the Sessions trial in which the respondent was acquitted. The departmental enquiry is based on a selective examination of the records of the Sessions Court;

(iv) The entire evidence on record would demonstrate that the respondent was not even remotely connected with the murder of Bhanwar Singh; and

(v) There is a "minor charge" against the respondent of availing of three days extra casual leave without informing the superior officer. On this charge, it has been submitted that:

> (a) The grant of additional casual leave was approved upon his joining duties by the superior officer and the charge was duly modified to state that the approval was taken by misrepresenting facts; the respondent was alleged to have concealed his involvement in the crime of murder;
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> (b) If the charge of being involved in the murder is not established, this charge will cease to exist; and PART D
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> (c) Even assuming, without conceding, that the respondent was guilty of taking casual leave without informing the superior, he was never guilty of such conduct in the past and the leave was taken because of the death of his brother-in-law.

11 On the basis of the above submissions, it has been urged that the findings in the departmental enquiry were perverse and have been correctly set aside by the Division Bench of the High Court. The respondent has been out of service for 17 years and has (it has been urged) had to combat the social stigma of being terminated from service. The High Court having since re-instated the

respondent without back-wages, it was urged that no interference by this Court is warranted. D Proof of misconduct in disciplinary proceedings 12 The primary charge in the disciplinary proceedings relates to the involvement of the respondent in the murder of Bhanwar Singh. According the respondent, the disciplinary enquiry pertains to an event which took place outside the fold of his service. It was asserted that the disciplinary enquiry in regard to the involvement of the respondent in a murder bore no nexus to his employment. This submission cannot stand scrutiny, having regard to the nature of the employment and the position of the respondent as member of the police force. The respondent was a constable in the service of the police department of the State of Rajasthan since 1992. Involvement of a member of the police service in a heinous crime (if it is PART D established) has a direct bearing on the confidence of society in the police and in this case, on his ability to serve as a member of the force. Such an individual is engaged by the State as a part of the machinery designed to preserve law and order. The State can legitimately assert that it is entitled to proceed against an employee in the position of the respondent in the exercise of its disciplinary jurisdiction, for a breach of the standard of conduct which is expected of a member of the state police service. Confidence of the State in the conduct and behaviour of persons it has appointed to the police is integral to its duty to maintain law and order. The real issue is whether the charge of misconduct stands established in this case on the basis of some evidence, applying the evidentiary principle of a preponderance of probabilities.

13 The standard of standard of proof in disciplinary proceedings is different from that in a criminal trial. In Suresh Pathrella v. Oriental Bank of Commerce 4, a two judge Bench of this Court differentiated between the standard of proof in disciplinary proceedings and criminal trials in the following terms:

> " ...the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities." (2006) 10 SCC 572 PART E This standard is reiterated by another two-Judge Bench of this Court in Samar Bahadur Singh v. State of U.P. 5:
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> "Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities." E Findings of the disciplinary enquiry

14 On 13 August 2002, while posted at Police Station Devgarh, the respondent took a day's casual leave and one 'gazetted leave' and was to report back on 16 August 2002. It is admitted that he over-stayed his leave and joined on 19 August 2002. According to the respondent, the additional leave was sanctioned after he joined back on duty. The State as his employer claims that the respondent concealed the intervening circumstance of his involvement in the murder of Bhanwar Singh on 15 August 2002. Now it is important to note that the respondent was placed under arrest on 16 September 2002 much after he had rejoined duty and was released on bail on 30 October

2002. Since the arrest took place after he rejoined duties, it cannot be said that there was a suppression by him of his custodial detention when he joined duties on 19 August 2002. In any case, this part of the charges is subsidiary to the main charge in the disciplinary proceedings. In the (2011) 9 SCC 94 PART E departmental proceedings, broadly speaking, the charges that were leveled against the respondent were:

(i) Over-staying leave by a period of three days beyond the leave that was sanctioned;

(ii) Not seeking an extension of leave from the superior officer;

(iii) Involvement in the murder of Bhanwar Singh (the respondent is alleged to have run away from the scene of offence and tried to give it the colour of an accident);

(iv) Getting additional leave sanctioned by suppressing the correct reason on a misrepresentation to the superior officer; and

(v) Conduct which has hurt the image of the police department.

15 The respondent was tried for the offence of murder and was acquitted by the Sessions Court on 8 October 2003. During the course of the criminal trial a succession of prosecution witnesses were declared hostile (PWs 3, 4, 5, 17, 18,19,20,22, 23 34). The Additional Sessions Judge found it unsafe to rely upon the evidence of the sole eye-witness, Jodh Singh (PW21 at the Sessions Trial) based on the inconsistencies in his evidence. In fact, the trial judge even observed that no steps had been taken by the Public prosecutor to have him declared hostile. The acquittal of the respondent on the charge of murder was based on the now familiar spectacle of prosecution witnesses turning hostile. It is true that the acquittal brought PART E finality to the question as to whether he had committed the offence of murder punishable under the Penal Code. However, the disciplinary enquiry stood on a broader footing. The disciplinary proceedings related not merely to the involvement of the respondent in the murder, but to the violation of service rules and the impact of his conduct on the image of the police force.

16 On the primary charge of the involvement of the respondent in the murder of Bhanwar Singh, Jodh Singh (PW1 in the Disciplinary Enquiry) was the prime witness, as in the criminal trial. Jodh Singh was an engine mechanic and stated in the course of his examination on 18 July 2003 that two or three years earlier, the respondent came to him with an engine crane for repair together with Iqbal Khan (who was also a co-accused at the Sessions trial). The witness stated that Iqbal Khan had assaulted Bhanwar Singh with an iron rod when he was proceeding on a cycle near Bheel Basti Nala. Further, he stated that on the same day he had seen the respondent about 300 feet away from the scene of offence going towards Nathdawara on a cycle. Also, about 300 feet away from the scene of offence, he found the tractor of the respondent parked. Jodh Singh claims to be an eye-witness to the murder of Bhanwar Singh by Iqbal. In quite the same vein as he did during the criminal trial, during the course of his cross examination, Jodh Singh did not support his statements during the examination in chief. For the completeness of the record, it is necessary to extract the relevant part of the cross-examination which has been recorded in question and answer form in the enquiry

proceedings:

"Cross through Pairokar Heem Singh Const. No.642 PART E

1. Question - After 20 days of this incident Sarpanch Shri Pratap Singh called at his house and told that you shall get written name of Heem Singh and Lokesh also along with Iqbal, I refused then Sarpanch Ji told that you have to get name of Heem Singh written therefore, I told name of them in the statements given to police.

2. Is it correct that you saw Iqbal while killing Bhanwar Singh but at that time Heem Singh was not present there at the time of incident. Yes, It is true.

3. Is it correct that you did not know about giving of threats to kill by Heem Singh to Bhanwar Singh. Yes, it is true.

4. Is it correct that on that day you are going to Gudla from Kunthwa from road going from Nathdwara to Ghata Ghotiya and Heem Singh met you while going on motorcycle from Kunthwa to Nathdwara. The place where Heem Singh met, on moving 300 ft forward from there you saw Iqbal while killing Bhanwar Singh. Yes, it is true.

5. Is it correct that from whom Heem Singh brought crane and for whom, you did not know about that. Yes, it is true that I am not aware about that.

6. Is it correct that no person with name Ram Singh lives a Gudli? Yes, it is true, but in my statements about which Ram Singh I mentioned, he is resident of Chundavte ka Guda, Kunthwa, whose well is there where I repaired the crane.

7. Is it correct that after killing of Bhanwar Singh by Iqbal the jeep which passed from there, which passed after crushing cycle and Bhanwar Singh? Yes, it is true but Iqbal went after sitting in that.

8. Is it correct that you did not recognize the driver of jeep, neither saw number of jeep nor recognized jeep that it belongs to whom? Yes, it is true." The disciplinary authority arrived at its findings on the charge of misconduct observing thus:

PART F "In respect of said charge the prosecution has produced statements of Jodh Singh PW-1, Devi Singh WP-2, Shankar Singh PW-3, Hamer Singh PW-4, out of which Jodh Singh PW-1 in his statement at the time of incident has proved presence of himself, charged constable and tractor at the place of incident. Similarly, witness Shankar Singh PW-3 stated that he saw half an hour ago to the incident, the charged constable roaming near place of incident and his parked tractor. Similarly, witness Shri Hamer Singh PW-4 stated that there is prior enmity between charged constable and deceased Bhanwar Singh and prior to the death of father of charged constable,

> stating through witness to Bhanwar Singh that I will kill him by hitting with jeep or tractor and the incident of same kind is committed. Similarly, witness Shri Nanalal SHO Khamnaur PW-9 also in his statement against the charged constable on finding offence verified arresting him and seizure of iron rod, jeep & tractor used in the incident. Thus, from the aforesaid analysis the said charge is found as completely proved.
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> The charged constable in defense of said charge has produced a copy of order passed by the Hon'ble Additional Sessions Judge Nathdwara in case related to said incident, after perusal of which it is found that the Hon'ble Court has not completely acquitted the said constable rather acquitted by giving him the benefit of doubt. From this it is clear that the Hon'ble Court has not acquitted charged constable in free form. Thus, I found said charge as completely proved due to which the image of police has blurred." F The judgment of the Division Bench

17 The Division Bench of the High Court observed that quite apart from the cross-examination, the examination-in-chief of Jodh Singh was not susceptible to the inference that the respondent was even remotely connected with the murder. The imputation against the respondent was that he had collaborated with Iqbal and Lokesh, and murdered Bhanwar Singh by running him over with a jeep. On this PART F imputation, the High Court held that there is no evidence to establish that the respondent had conspired or collaborated with the said two persons to murder Bhanwar Singh. On the contrary, High Court noted, the cross-examination of PW1 Jodh Singh indicated that he was instigated by the Sarpanch to falsely implicate the respondent and that while he had seen the assault by Iqbal, the respondent was not present at the scene of offence. Further, the evidence of PW2 Devi Singh and PW3 Shankar Singh did not, according to the High Court, implicate the respondent, and PW4 Hamer Singh only spoke about the previous dispute arising from the death of the father of the respondent from a snake bite for which Bhanwar Singh had attempted a cure. The High Court also noted that the evidence of PWs 5, 6, 7, 8, 9 and 10 in the disciplinary enquiry was of only a formal nature. 18 The High Court held that the cross-examination of Jodh Singh was ignored in the course of the disciplinary enquiry and was not referred to by the disciplinary authority while arriving at its findings. On the recovery of the jeep and tractor with a trolley and iron rod, the High Court observed that the evidence of the Investigating Officer contains a "vague statement" that the recoveries of the offending articles/vehicle was made at the instance of the accused. There were three accused in the trial, and hence according to the High Court, it was not possible to link the recoveries to the respondent.

19 The disciplinary enquiry was governed by Rule 16 of the Rules. The relevant parts of Rule 16 are extracted below:

> PART F "16. Procedure for imposing major penal 16. Procedure for imposing major penalties.– ... (6)(a). Where the Government Servant has pleaded not guilty to the charges, at the commencement of the enquiry, the Inquiring Authority shall ask the Presenting Officer appearing on behalf of the Disciplinary Authority to submit the list of witnesses and documents within 10 days, who shall also simultaneously send a

copy to the Government Servant.

Delinquent Officer, within ten days of the receipt of the list of prosecution witness and documents, shall submit the list of documents required by him for his defence. The Inquiring Authority shall then summon the documents of both sides and ask the parties to admit or deny them. It shall then summon such evidence as is necessary, giving opportunity to the presenting officer for examination-in-chief and also to the Government Servant or his assisting officer, whosever may be present, for cross-examination. The Presenting Officer shall be entitled to re-examine the witness on any point on which they have been cross examined but not on any new matter, without the leave of the Inquiring Authority, after the close of the prosecution evidence the Government Servant shall be called upon to submit the list of the witnesses within 10 days which he would like to produce in his defence. The Inquiring Authority after considering the relevancy of the witnesses and the documents shall summon only the relevant witnesses and the documents and record the evidence thereof, while giving opportunity of Examination-in-Chief and cross-examination/re-examination to the parties and then close the evidence. The Inquiring Authority shall consider the relevancy of the witnesses and the documents called for by both the parties and in case of his refusal to summon any witnesses or documents, he shall record the reason in writing. The Inquiring Authority may also put such questions to the witnesses of the parties, as it thinks fit, in the interest of justice. An opportunity for hearing the arguments shall be given to the parties.

Note:- If the Government Servant applied orally or in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (6)(a), the Inquiring Authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority.

PART F (6)(a)(1). The evidence of any person which is of a formal character may be given by affidavit and may, subject to all just exception, be accepted in evidence in departmental proceedings. Where the enquiry officer thinks fir that the person should be summoned and examined personally, or if either party, namely the presenting officer or the delinquent officer insists on the personal attendance of the witness, arrangements should be made for the personal attendance of such witness.

(6)(b). The enquiring Authority may, for good and sufficient reasons to be recorded in writing, recall witnesses for examination in part-heard cases being conducted by him. (6)(c). The Inquiring Authority shall give a notice within 10 days of the order or within such further time not exceeding 10 days as the Enquiring Authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub- rule (6)(a).

Note:- The Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

The Inquiring Authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents

are kept, with as requisition for the production of the document by such date as may be specified in such requisition:

> Provided that the Enquiring Authority may, for reasons to be recorded by it in writing, refuse to requisite such of the documents as are in its opinion, not relevant to the case.
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> On receipt of the requisition, every authority having the custody or possession of the requisitioned documents shall produce the same before the Inquiry Authority:
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> Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or, any of such documents would be against the public interest or security of the State, it shall inform the Inquiring Authority accordingly and the Inquiring Authority shall, on being so informed, communicate the information to the PART F Government Servant and withdraw the requisition made by it for the production or discovery of such documents.
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> (6)(d). In case of joint departmental enquiry under rule 18 or in the case of enquiry under rule 16 of these rules, the Government Servant/s/fail/fails to appear without sufficient cause on the date fixed for the hearing of which he had the notice, the Inquiry Authority, may proceed with the enquiry in the absence of such Government Servant(s).
>
> (6)(A). If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not including in the list given to the Government Servant or may itself call for new evidence or re-

call re-examine any witness and such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the Inquiry for three clear days before the production of such new evidence, exclusive of the days of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government Servant to produce new evidence, if it is of the opinion that production of such evidence is necessary in the interest of justice.

Note:- New evidence shall not be permitted or called for or, any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produces originally.

(6)(B)(a). Where a Disciplinary Authority competent to impose any of the penalties specified in clauses (i) to (iii) of Rule 14, but not competent to impose any of the penalties specified in clauses (iv) to (vii) of Rule 14, has itself inquired into or caused to be inquired into the articles of any charge

and that authority, having regarding to its own findings or having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that the penalties specified in clauses (iv) to (vii) of Rule 14 should be imposed on the Government Servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties. PART F (6)(B)(b). The Disciplinary Authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any witnesses is necessary in the interest of justice, recall the witnesses and examine, cross-examine and re-examine the witness and may impose on the Government Servant such penalty as it may deem fit in accordance with rules.

(7). At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government Servant has admitted the facts constituting them or has had an opportunity of defending himself against them. (8). The record of the inquiry shall include: -

> (i) the charges framed against the Government Servant and the statement of allegations furnished to him under sub-rule (2);
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> (ii) his written statement of defence, if any;
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> (iii) the oral evidence taken in the course of the enquiry;
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> (iv) the documentary evidence considered in the course of the enquiry;
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> (v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to inquiry; and
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> (vi) a report setting out the findings on each charge and the reasons therefore.
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> (9). The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge.

The Disciplinary Authority may while considering the report of the Enquiring Authority for just and sufficient reasons to be recorded in writing remand the case for further/de-novo enquiry, in case it has reason to believe that the enquiry already conducted has been laconic in some respect or the other." PART G G Evidence in the disciplinary enquiry 20 Elaborate as it is, the judgment of the Division Bench of the High Court ought to have scrutinized other aspects of the evidentiary record. These facets would have enabled the court to form, to use a term familiar to the language of judicial discourse, an 'overall perspective of the matter'. As we shall presently indicate, this has a bearing on whether an order of reinstatement (which the High Court has granted while setting aside the disciplinary findings) does justice to the evidentiary record. This court has to undertake the exercise, not in order to re-appreciate the findings in the enquiry, but because the High Court in an

intra-court appeal conducted the exercise while setting aside the penalty. Apart from the somersault by Jodh Singh in his cross examination, which has largely weighed with the High Court, there are other crucial aspects which emerge from the record in the disciplinary enquiry. To them we now turn. To ensure brevity, we summarize the point before excerpting from the deposition.

21 Evidence of PW1 Jodh Singh – Quite apart from the excerpts from the cross examination of PW1, which have been noticed by the High Court, his statement before the enquiry officer establishes that: (a) proximate to the incident, he did meet the respondent (Heem Singh) along with Iqbal, which indicates a prior familiarity between them; (b) the respondent's father died from a snake bite; and (c) Jodh Singh met the respondent on the date of the incident at a spot which was 300 feet PART G away from where he saw Iqbal murdering Bhanwar Singh. This is based on the following evidence:

> "Two-three years ago Heem Singh came with an engine crane from Sardargarh, which I repaired at Ram Singh's well after visiting Ravo Ki Gudli, at that time one ... Iqbal Khan stating to be of Sardargarh, he was also there. During fitting of crane I talked with him therefore, I know him." "I also know Bhanwar Singh of Ravo ki Gudli, who was uncle of Heem Singh. On biting by snake he did witch work and doing service in PWD at Nathdwara. 2 years prior to death of Bhanwar Singh; snake bit Nathu Singh the father of Heem Singh. I don't know whether Bhanwar Singh done any witch work on Nathu Singh or not. Nathu Singh was kept admitted in Udaipur for 15-20 days after biting of by snake. On getting discharged from hospital, after 2-3 days of coming back home Nathu Singh died." "Is it correct that on that day you are going to Gudla from Kunthwa from road going from Nathdwara to Ghata Ghotiya and Heem Singh met you while going on motorcycle from Kunthwa to Nathdwara. The place where Heem Singh met, on moving 300 ft forward from there you saw Iqbal while killing Bhanwar Singh. Yes, it is true."

22 Evidence of PW2 Devi Singh – PW2 resiled from his statement in his entirety, and stated that he knows nothing about the death of Bhanwar Singh and admitted to whatever the police told him.

23 Evidence of PW3 Shankar Singh – PW3's evidence establishes that he met the respondent on the date of the incident at the spot where his tractor was parked, along with another person whom he has not identified. Moreover, when he was coming back after 30/45 minutes, he saw the dead body of Bhanwar Singh. However, he states that he is not aware of a prior enmity between the respondent PART G and Bhanwar Singh, and is not sure of Heem Singh's involvement in the death of Bhanwar Singh. This is based on the following evidence:

> "On 15.08.02 at around 5-6 hours I after shutting down my tea shop going towards fields from Kunthwa on my cycle. After going through fields going to Kotela, from behind Heem Singh Singh of Ravo ki Gudli who is a constable came on motorcycle and moved ahead me. I reached at Nala Bheel Basti Valley where near wall saw parked tractor of Heem Singh. Heem Singh went back from there to Kunthwa who asked me that where you are going. I said that I am going to Kotela. One person is sitting at the steering of tractor, whom I don't know, to whom I asked that what

> happened to tractor he replied that fuel ran out, owner went to bring fuel. At that time I did not see any other person. After around half an hour or 3/4th hour I came back from Kotela at that time on Bheel Basti Nala Road dead body of Bhanwar Singh who is uncle of Heem Singh was lying there." "At that time I did not see tractor of Heem Singh, neither saw Heem Singh. Whether there is any enmity between Heem Singh and Bhanwar Singh, I do not know, I reside around 5 km away from them." "If Heem Singh is involved in the murder of Bhanwar Singh, I am not aware about that."

24 Evidence of PW4 Hamer Singh – PW4's evidence establishes that: (a) there was a land dispute between the respondent and Bhanwar Singh, in relation to which Bhanwar Singh had lodged a police report; (b) The respondent's father had been 'treated' by Bhanwar Singh by performing witchcraft on him, but he died of the snake bite; (c) the respondent personally told him to inform Bhanwar Singh that he would kill him by for causing the death of his father; (d) Bhanwar Singh had lodged a complaint with the police in regard to the death threat issued by the respondent to PART G him; and (e) when he came to know of Bhanwar Singh's death, he immediately suspected the respondent. This is based on the following evidence:

> "Bhanwar Singh is uncle of Heem Singh. There is land dispute between them from last 5-7 years. In this respect Bhanwar Singh also lodged a report at police station Khamnaur. I do not remember exact time. 2-3 years ago snake also bite Nathu Singh the father of Heem Singh. On that Bhanwar Singh also performed witch work on him. Nathu Singh was also taken to hospital but he could not survive, died after 15-20 days. Nathu Singh died and next day I went to meet him, after meeting returning back to my house at that time outside the house of Nathu Singh, Nathu Singh's son Heem Singh was sitting on front tyre of his tractor, who stopped me and said that you should say to Bhanwar Singh that I will kill him by hitting either with tractor or motorcycle. I said Heem Singh that what he did, why are you asking to kill him. On this Heem Singh said to me that he is behind my house therefore, ... illegible... after death of Nathu Sing on the same day Bhanwar Singh told me that Heem Singh has thrown me out of his house that you must not come in funeral of my father therefore, Bhanwar Singh did not come in funeral of Nathu Singh. On stating to Bhanwar Singh what Heem Singh said to me, Bhanwar Singh said that Heem Singh cannot kill me despite that I have lodged report in police. On the day when I heard about death of Bhanwar Singh in village at around 6-7 hours, at that time I guessed that Bhanwar Singh was killed by Heem Singh or through him. Today also saying same thing." "2. It is correct that doubt of murder of Bhanwar Singh by Heem Singh to me was due to land dispute between them and threat to kill Bhanwar Singh by Heem Singh through me and still have doubt."

25 Evidence of Bhanwar Singh (SHO, Devgarh) – His evidence shows that the respondent did initially take leave for the death of his brother in-law. This is based on the following evidence:

> "Shri Heem Singh No. 642 has filed an application requesting for one casual leave and one G.H. due to death of his PART G brother-in-law in his family, on which I

> sanctioned...Thereafter, the said Constable after being present before me on 19.08.02 filed application requesting for sanction order and for taking decision on 3 days absence, on which I passed sanction order granted sanction for 3 days absence as C.L."

26 Evidence of Nana Lal (SHO, Khamnaur) – His evidence highlights that the police investigating Bhanwar Singh's death added the offence under Section 302 of the IPC based on the evidence of Jodh Singh PW1. He also acknowledged that Jodh Singh changed his stance before the Court, however, did not offer any justification for it. This is based on the following evidence:

> "On the basis of preliminary investigation it was found that there was serious previous enmity between Heem Singh and deceased Bhanwar Singh. Due to this enmity Heem Singh S/o Nathu Singh Rajput for murder of his uncle Bhanwar Singh conspired in a well-planned manner with his companions Iqbal Khan and Lokesh Gaurva and killed him by hitting him with tractor and by causing injuries on head by hitting with iron rod. Fard information of accused persons under Section 27 of Evidence Act and jeep and tractor with trolley and iron rod are recovered. At the instance of accused persons place of incident is pointed out." "Question - 2. You have done investigation till 2 months under Sections 304A and 279 IPC, whether during said period nobody told you that Bhanwar Singh was murdered? Answer - During the period of one month witness Babudas on 11.09.02 told about presence of 2-3 persons at the spot of incident.

Question - 3. Whether Babudas is an eye witness of the incident or not?

Answer - No. Question - 4. Whether during this period of one month from 15.08.02 you have recorded statement of any eye witness that Bhanwar Singh is murdered?

Answer - No. Question - 5. Under whose statement you altered the offence under Section 302 IPC?

PART G Answer - Offence is altered due to the statement of Jodh Singh.

Question - 6. Do you know that Jodh Singh has not stated before the Court that I have told police about murder. Rather he said that they took statement by beating me and the same is also recorded in the statement of Court?

Answer - It also came in the statement of Jodh Singh that about murder he told to Pratap Singh and police and in argument witness Jodh Singh has stated that police threatened him beat him then took statement which is wrong." 27 Evidence of Sudhir Joshi (RPS Deputy Superintendent, Nathdwara) – He has stated in his evidence that the police's image has become tarnished due to the suspicions raised on Heem Singh's involvement in the murder of Bhanwar Singh. This is based on the following evidence:

> "On preliminary investigation conducted by me absence of constable No. 642 Shri Heern Singh on .. illegible.. and by conspiring with his companions committing murder of his uncle, due to which this act of constable the image of police among public has been blurred and ... by newspapers and belief on police became suspicious in public."

28 A complete review of the evidence indicates there was a pre-existing hostility between the respondent and Bhanwar Singh. This hostility initially arose in the context of a land dispute. The hostility between them escalated exponentially after the death of the respondent's father for which he blamed Bhanwar Singh. It evidently rose to an extent where the respondent openly issued a death threat to Bhanwar Singh, leading Bhanwar Singh to file a police complaint against the respondent apprehending a threat from the respondent to his safety. As regards the incident leading to the death of Bhanwar Singh, the respondent and his parked tractor were PART G seen proximate in time and in terms of the location where Bhanwar Singh's dead body was found by both PW1 Jodh Singh and PW3 Shanker Singh. The respondent was found to be together with one of the co-accused proximate in time. These circumstances are coupled with respondent's movements at and around the time of the murder, commencing with but not confined to his being at the village on leave for two days coinciding with the murder. This may not have been sufficient to sustain a conviction on a charge of murder in the sessions trial. But the State had sufficient material to conclude that the connection of the respondent to the incident would affect the reputation of its police force and that the presence of the respondent as a member of the force was not in the interest of public administration. Whether on the basis of the evidence, the respondent could have been implicated in the conspiracy to commit murder of Bhanwar Singh is one aspect of the matter. Evidently direct evidence to sustain a charge of conspiracy is difficult to come by even in the course of a criminal trial. Quite independent of this is the issue whether the connection of the respondent with the circumstances leading to the death of Bhanwar Singh affected his ability to continue in the State police force without affecting its integrity and reputation. The latter aspect is the one on which the judgment of the Division Bench is found to be deficient in its reasoning.

H On a 'preponderance of probabilities'

29 In M. Siddiq v. Suresh Das 6, a Constitution Bench of this Court has described the standard of 'preponderance of probabilities' in the following terms:

"720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence.] In Miller v. Ministerof Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372], Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms: (All ER p. 373 H) "(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice." (emphasis supplied)

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in Bater v. Bater [Bater v. Bater, 1951 P 35 (CA)], where he formulated the principle thus: (p. 37) "... So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter." (emphasis supplied) (2020) 1 SCC 1 PART I The disciplinary enquiry was convened on a serious charge of misconduct – that the respondent as a member of the police force had committed an act of murder while on leave. As the above extract indicates, even within the standard of a preponderance of probabilities, the degree depends on the subject matter.

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I         Judicial review over disciplinary matters



30        We have to now assess as to whether in arriving at its findings the High Court
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has transgressed the limitations on its power of judicial review. In Moni Shankar v.

Union of India7, a two judge Bench of this Court had to assess whether the Central Administrative Tribunal had exceeded its power of judicial review by overturning the findings of a departmental enquiry by re-appreciating the evidence. In regard to the scope of judicial review, the Court held thus:

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial

> review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.
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> (2008) 3 SCC 484 PART I We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See State of U.P. v. Sheo Shanker Lal Srivastava [(2006) 3 SCC 276 : 2006 SCC (L&S) 521] and Coimbatore District Central Coop. Bank v. Employees Assn. [(2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68])" (emphasis supplied) 31 The learned Single Judge placed reliance on judgments which enunciate that the mere acquittal in the criminal case did not absolve the respondent from the charge of misconduct in departmental proceedings. The Single Judge held that:
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> (i) The departmental enquiry was conducted in accordance with law;
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> (ii) The statement of Jodh Singh in the course of his examination-in-chief as an eye-witness sufficiently proved the allegations; and
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> (iii) Since the charge of murder stood proved, all the other charges stood established.

32 The Division Bench found fault with the Single Judge for not having seen the evidence of Jodh Singh in its entirety. A two-Judge Bench of this Court in P. John Chandy and Co. (P) Ltd. v. John P. Thomas 8, has held:

> "For proper appraisal of evidence, a court must consider the whole statement. Cross-examination constitutes an important part of the statement of a witness and whatever is stated in the examination-in-chief, stands tested by the cross-examination." (2002) 5 SCC 90 PART I While embarking on the exercise the Division Bench re-appreciated the evidence in the manner of a first appellate court. This criticism of the decision is not unfounded.

33 In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a

recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse PART J determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.

J The effect of an acquittal

34 In the present case, we have an acquittal in a criminal trial on a charge of

murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents PART J indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association v. Union of India 9, this Court held:

> "37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge." (emphasis supplied) In Inspector General of Police v. S. Samuthiram 10, a two-Judge Bench of this Court held that unless the accused has an "honorable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for

> technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an "honourable acquittal". Noticing this, the Court observed:
>
> "Honourable acquittal
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> 24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 :
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> (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings.

In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined (2009) 9 SCC 24 (2013) 1 SCC 598 PART J by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In R.P. Kapur v. Union of India [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope v. Emperor [ILR (1934) 61 Cal 168] which is as follows:

> (Raghava case [1972 SLR 44 (SC)] , SLR p. 47, para 8) "8. ... 'The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted".'" (Robert Stuart case [ILR (1934) 61 Cal 168] , ILR pp. 188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on

the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical PART J reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so." (emphasis added) 35 In the present case, the respondent was acquitted of the charge of murder. The circumstances in which the trial led to an acquittal have been elucidated in detail above. The verdict of the criminal trial did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial. True, even on the more relaxed standard which governs a disciplinary enquiry, evidence of the involvement of the respondent in a conspiracy involving the death of Bhanwar Singh would be difficult to prove. But there are, as we have seen earlier, circumstances emerging from the record of the disciplinary proceedings which bring legitimacy to the contention of the State that to reinstate such an employee back in service will erode the credibility of and public confidence in the image of the police force.

PART K

K Conclusion

36 Therefore, the direction of the Division Bench for reinstatement is set aside. In

exercise of the jurisdiction under Article 142 of the Constitution, we direct that the cessation from service will notionally take place on the respondent completing minimum qualifying service. The direction of the High Court that the respondent shall not be entitled to back wages is upheld. The retiral dues of the respondent shall be computed and released on this basis within a period of three months. 37 The appeal is allowed in the above terms. No order as to costs. 38 Pending application(s), if any, stand disposed of.

……J. [Dr. Dhananjaya Y Chandrachud]
……J. [Indira Banerjee] New Delhi;

October 29, 2020.