

23

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. A. 818/2007 - Reserved on: 25.02.2011
Crl. A. 264/2011 – Reserved on: 01.03.2011
Both decided on: 10.03.2011

+ CRL. A. 818/2007

SADIQ BEG Appellant
Through: Sh. Ajay Verma, *Amicus*.

Versus

THE STATE Respondent
Through: Sh. Lovkesh Sawhney, APP, for the State.

+ CRL. A. 264/2011

STATE Appellant
Through: Sh. Saleem Ahmed, Addl. Standing Counsel for the State along
with Inspector Jagwinder Singh, Police Station Moti Nagar.

Versus

SADDIQUE BEG AND ORS. Respondents
Through: Sh. M. Tripathi with Sh. Harish Sharma, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE G. P. MITTAL

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

%

1. This common judgment will dispose of an appeal, Cr. A. No. 818/2007 preferred by Saddique, against a judgment and order of the Learned Additional Sessions Judge dated 30.10.07, in SC No. 102/01/06, convicting the appellant for committing offences under Section 302/34 IPC, as well as Criminal Appeal No. 264 of 2011, by the State, which was granted leave to appeal by this court, against the same judgment - of the said Additional Sessions Judge. The State is aggrieved by the acquittal of the respondents in that appeal, i.e. Virender and Prashant. For convenience, this court proposes to refer to the appellant Sadique, and the acquitted accused, who are Respondents in the state's appeal, by their names.

2. According to the prosecution, on 06.02.2000, one Harender, who returned home on a scooter, told his brother Chandveer (PW-3) that Sadique had been quarrelling with a rickshaw puller, whom he (Harender) saved. Sadique allegedly did not take kindly to this and threatened him i.e. Harender; he even threatened to kill him. PW-3 claimed that he left Harender at home and went to Karam Pura to pick up some medicines. When he was near A & B Block of SBM Colony, he witnessed Harender being assaulted by three boys. One of them had caught hold of him by the waist. Sadique, whom Chandveer knew, was armed with a knife. The third boy was armed with an Ustra (razor). The two boys i.e. Sadique and the other (who was armed with Ustra) were assaulting Harender with the knife and the Ustra. Chandveer raised an alarm saying *Bachao bachao*; upon this, all the three boys left Harender and fled from the spot. A number of persons from the colony had gathered there. Chandveer and Rajeev (PW-7) then removed Harender to the ESI hospital, Basai Darapur, and got him admitted there. This information was passed on to the Police Station, Moti Nagar, and recorded in DD No. 34B. The prosecution alleged that Harender was referred for surgery. At that time, SI Mahinder Singh sought to record his statement; it was not possible, because he was unfit to make any statement. Instead, Chandveer's statement was recorded (PW-3/A), and sent with *rukka* to record an FIR, which was done, in respect of offences under Sections 307/34 IPC. Harender succumbed to his injuries at 9:30 AM the next day; the police duty officer sent this information to the Police Station, through DD NO. 64 of 07.02.2000 (Ex. PW-13/A). Postmortem was conducted upon the dead body; later, after investigation, Sadique was arrested on 09.02.00. The police claimed that a country made pistol was recovered, for which another FIR No. 55/2000 was registered under Section 25 of the

85

Arms Act. He allegedly admitted to commission of the crime, and involvement of Virender and Prashant. Sadique's disclosure statement, and later his leading the police to the concerned place, resulted in the recovery of a dagger, Ex. P-1, which was sealed and taken into possession through Ex. PW-3/A. The other two accused, Virender and Prashant, were arrested in a park, on 09.02.2000; Virender's arrest led to his disclosure statement Ex. PW-3/F and recovery of Ustra. Sadique also assisted in the recovery of his trousers Ex. P-6 with blood stains, which was taken into possession through Memo Ex. PW-21/C. Virender assisted in the recovery of a pullover Ex. P-5, with blood stains, through Memo Ex. PW-21/D; Prashant assisted in recovery of his trouser Ex. P-3, and shoes Ex. P-4, through Memo Ex. PW-21/E. Medical opinion was furnished to the prosecution whether the injuries could have been inflicted with the weapons. On the basis of these materials, the prosecution filed its report, pressing charges under Sections 302/34 IPC against all the three accused; all of them were charged, by the Trial Court. They entered the plea of not guilty and claimed trial.

3. The prosecution relied upon testimony of 22 witnesses. The main witnesses relied on in this case were PW-3 Chandveer; PW-5, Pradeep Kumar; PW-7 Rajeev; PW-21 SI Mahender and PW-22 Gurdeep, the latter two being police witnesses who had investigated the case. Considering the materials on record including the depositions of these witnesses, and submissions on behalf of the parties, the Trial Court convicted Sadique for the offences punishable under Sections 302/34 IPC, and acquitted the other two accused, i.e Virender and Prashant. These two appeals have been preferred against the impugned judgment of the Trial Court.

4. Mr. Ajay Verma, learned counsel for Sadique, submitted that the Trial Court erred in recording his conviction, since the impugned judgment clearly states that the entire prosecution story about his having made a disclosure statement, could not be believed. In this context, counsel pointed to the testimonies of PW-19, PW-10 and SI Ran Singh (PW-20), and submitted that they were contradictory. The court even recorded that in view of the contradictions of police witnesses, regarding recovery of the dagger, that version could not be believed. In spite of these, and crucially, despite the appellant Sadique having been acquitted of the offence under Section 25 Arms Act, the impugned judgment recorded his conviction, in clear error of law.

5. It was next argued that the Trial Court gave disproportionate credence to the testimony of PW-3, who was clearly an interested and partisan one, being the brother of the deceased Harender. It was also argued that the witness had clearly mentioned about one Sanjay, who also allegedly witnessed the incident; yet the prosecution did not examine him. Learned counsel also submitted that the credibility of PW-3 is suspect because he did not mention about the presence of PW-5, another alleged eye witness.

6. It was submitted that PW-3's version cannot also be accepted because he could not even recollect whether his clothes had been blood stained, when taking Harender to the hospital. If indeed that were the position, this fact would have been imprinted in the mind of the witness. The absence of any recollection falsified the story of PW-3 about having witnessed the incident, as claimed by him, and having taken the deceased to the hospital.

7. It is submitted that the Trial Court could not have arrived at the findings of guilt, having regard to the circumstance that PW-3 did not actually witness the prior incident deposed about by him; that evidence was hearsay. Furthermore, submitted learned counsel, the prosecution version was riddled with suspicion, because in the earliest version recorded –at the hospital, on the night of the incident, the name of Sadique was not mentioned. Reliance was, for this purpose, placed on the deposition of PW-11, as well as Ex. PW-11/DA. It was submitted that the absence of accused's name, in the circumstances, ought to have weighed with the Trial Court in concluding that Sadique was framed in the case.

8. It was submitted that the articles of clothing allegedly recovered from Sadique, were said to contain blood stains; however the prosecution was unable to connect the said alleged blood stains, to the crime. Learned counsel contested that the recoveries were in fact made, and stated that the deposition of witnesses having been discarded and not believed, the Trial Court should have considered the cumulative impact of that aspect, along with other fatal infirmities in the prosecution version, such as absence of any details of the attack, in the earliest intimation to the police, the sheer improbability of the alleged motive, non-examination of Sanjay, and the contradiction in the police's version, which should have impelled the court to acquit Sadique. For these reasons, the appeal, he submitted, had to succeed.

9. On behalf of the State, the learned APP submitted that the Trial Court correctly appreciated the evidence, and arrived at the findings of guilt, so far as Sadique was concerned. It was submitted that the Court did not place any reliance on the recovery sought to be put forward by the prosecution, in the context, and chose to rest its conclusions on the ocular evidence of PW-3, PW-5 and PW-7, whose testimonies were clinching about the presence of Sadique, as well as the prominent role played by him, in the killing of Harender. It was urged that the appellant's argument about acquittal in the Arms Act case, i.e FIR 55 falsifying the present prosecution, is unfounded, because that was an independent case, based on allegations leveled by the prosecution, and did not in any way impinge on the attack by Sadique, on Harender, which was a different incident. It was submitted that the testimony of PW-3 was unshaken, despite cross examination, in its material particulars. Learned APP also submitted that there was no occasion for the court to view his testimony with suspicion merely because the witness was the deceased's brother. It was also urged that PW-7 had accompanied the injured Harender, to the hospital, as was evident from the MLC; the earliest version, ie. the DD entry also corroborated this.

10. The learned APP argued that PW-5 had deposed that Harender was mercilessly beaten by the appellant Sadique, a fact borne out by the medical evidence. Furthermore, submitted the prosecution, the police had acted swiftly in this matter, since the MLC was recorded within half an hour after the incident, and the police station was notified this within two hours, after taking down the concerned narration of witnesses. In these circumstances, there could have been no scope for the police to cook up a story, and falsely implicate anyone. The learned APP argued that the accused Sadique ought to have explained, once there was clear evidence of his presence, and positive identification, as well as the role played by him, whether he was present, at that place, or somewhere else, or if he had any rebuttal. It was not his case – nor was it suggested to the prosecution witnesses that there was any pre-existing enmity between him and the deceased, which could have supplied the motive for the attack, or that he was provoked into doing something. Having not discharged the onus of explaining his conduct, and not offered any explanation when questioned about the adverse evidence led by the prosecution, under Section 313, Cr. PC, the appellant cannot claim that he was falsely implicated.

11. It was next argued that the non-examination of the witness Sanjay is entirely inconsequential, because the prosecution evidence was sufficient to establish Sadique's guilt. The learned APP argued that in this case, the assault took place at 8:30; the injured was removed almost immediately to the hospital; the police were intimated about the attack, and apart from the MLC, the first information or *rukka* was recorded at 10:40 PM. The concerned witnesses were unanimous and consistent as to Sadique's role, and the chain of circumstances were so tightly linked as to form part of one transaction, all of which unambiguously proved his guilt.

12. As far as the State's appeal was concerned, it was submitted that the learned Trial Judge erred in giving undue emphasis to the fact that PW-3 did not disclose the names and identity of Virender and Prashant. The learned APP submitted here that the said witness clearly mentioned in his deposition that though he recognized the said two assailants by face, and knew them by sight, he did not know their names. He also mentioned their descriptions to the police. He however, had categorically mentioned about the role played by each of them in his deposition. Furthermore, argued the APP, the court ignored the circumstances that corroborated with the deposition of PW-7, who accompanied the injured to the hospital, knew about the identity of the said two assailants, and did mention that in his police statement, under Section 161. In these circumstances, the court ought not to have acquitted them, after concluding that their presence had not been proved.

13. The learned APP next argued that in the present case, the acquittal of Virender and Prashant was not justified, because their presence and role was clearly deposed to by at least two eyewitnesses, who knew them by face. The police reached the hospital around 9:10 PM and recorded the statements of the eyewitnesses, a process which went on till 10:20 or so; after that the information was sent to the police station. The Magistrate was informed about the incident, at 10:00 AM. Till then, the case registered was of attempt to murder; soon thereafter, Harender died. The cumulative effect of these was that there was no room for improvements, or cooking up stories, or falsely implicating the respondents Virender and Prashant. It was lastly urged that the Trial Court wrongly concluded that there were no injuries which could have been inflicted by the Ustra. The APP, pointed out that out of the 10 injuries spoken about by the doctor, he clearly mentioned that six of them were inflicted by a dagger like weapon. Four injuries were such as

88

could, from a bare reading of the opinion, be said to have been inflicted through a razor like weapon.

14. Learned counsel for Virender and Prashant submitted that there are fatal infirmities in the prosecution which persuaded the Trial Court to conclude that they were not involved in the crime, and were falsely implicated. It was argued, in this context, that PW-3 consistently did not reveal the identity of these two accused; he claimed to have revealed their description to the police. He was allegedly present when they were arrested, to make sure that there was no necessity of a TIP.

15. Learned counsel submitted that significantly PW-3, in his earliest statement recorded by the police, Ex. PW-3/A nowhere claimed that he knew the two accused Virender and Prashant from before. He did not also mention that he could identify them. It was submitted that according to the prosecution evidence, PW-7 was aware of the identity and addresses of all the accused. He had accompanied the injured, and was in the hospital when Ex. PW-3/A was recorded. If his version about knowledge of identity of these two were indeed correct, he would have disclosed their names to PW-3, which is not the case. It was submitted that the sheer improbability of PW-7 not disclosing to PW-3 about the true identities of the two accused, is apparent, and was given due weightage by the Trial Court. Learned counsel also submitted that the so-called supplementary statement of Chandveer, recorded on 08.02.2000, when he disclosed the names of the said accused, reinforced the findings recorded, that the police were making up a case against them. In the circumstances, urged Learned counsel, the court should reject the State's appeal. It was also submitted that having regard to the nature of evidence, the findings of the Trial Court do not warrant interference, on an application of settled principles in consideration of appeals by the High Court in criminal cases. No substantial or compelling grounds exist for upsetting the Trial Court's judgment, which is sound, and well reasoned.

16. As stated earlier, the incident, was apparently preceded by a small altercation between Sadique and the deceased, when the former was quarrelling with a rickshaw puller; Harender intervened, and saved the rickshaw puller. Allegedly, Sadique got enraged, and threatened Harender. Chandveer Malik, Harender's brother deposed about this previous incident, and stated that he had gone to fetch some medicine; while returning, he saw Harender being attacked by three boys, whom he knew. One, Sadique, he knew by name; the others he claimed to know by

face. According to him, Sadique gave a knife blow to Harender; another assailant had an Ustra with him, and attacked the deceased with it; third boy allegedly held the deceased Harender by the waist. He raised an alarm, upon which the three assailants fled the spot. He claims to have taken Harender to the ESI hospital, Basai Dara Pura along with PW-7 Rajiv, and one Sanjay. He claimed that Prashant held Harender by the waist, and Virender was wielding the Ustra. He recorded his statement, Ex. PW-3/A by the Police. In his deposition (as PW-3) he claimed that the sample blood was lifted by memo Ex. PW-3/B.

17. PW-3 claims having gone to the Police Station on 09.02.2000 when he became aware about the arrest of some people in connection with the crime; he then found Sadique in police custody. Sadique, it is claimed, took the police party to the place of occurrence and pointed it out amongst the bushes near the Karam Pura Nala from where the knife was recovered through memo Ex.PW-3/E. It is stated that Sadique claimed to be in a position to get the other accused arrested. PW-2 also mentioned about a disclosure statement by Virender and the recovery of an ustra from the bushes of SBM Park through memo Ex.PW-3/F. The witness identified the dagger Ex.P-1 and the ustra Ex.P-2. Since PW-3 omitted to depose fully about his previous statement, with permission, he was cross examined by the prosecution, when he admitted that his statement was recorded twice and reiterated knowing Virender and Prashant by face though not by name. He identified the sketch of the ustra Ex.P-2 which was prepared in his presence and proved it as Ex.PW-2/E. He sought to prove Prashant's disclosure statement and recovery of his clothes through Ex.PW-2/B as well as the memos recording the alleged places pointed out by Prashant and Virender Ex.PW-3/J and Ex.PW-3/K which contained his signatures. He further stated that Sadique's pant and Virender's jersey with blood stains were taken into possession by the police and also at Prashant's instance one pair of shoes and a light cream colour trouser with blood stains were taken into possession. They were proved as Ex.PW-3 and P-4. The jersey was marked as Ex.P-5. He mentioned in the cross examination that the place of occurrence was at a distance of 250 meter from a medical store which in turn was about a half kilometers from his house. He stated about having seen the incident from the distance of about 15-20 feet. He was extensively cross examined on certain details like the registration of the car in which he went along with the victim to the hospital, clothes worn by Rajiv and other person. The distance between the place of occurrence and the hospital was about 4 kilometers; he further deposed that about five policemen were in the hospital and further that he was not aware about the exact

number since he had gone to make a phone call. He further stated about having gone to the Police Station the same day at 10:30 PM and having known Sadique Baig for about 8 years.

18. PW-3 deposed that on 09.02.2000 when he went to the Police Station he came to know that some people had been arrested in connection with the crime; he was unable to recollect at what time the knife was recovered at the behest of Sadique. He reiterated about having raised an alarm along with Rajeev, PW-7 and that some others from nearby houses had also sought to intervene. He claimed having taken his brother on the lap and having not allowed him to fall down. It is further stated that PW-3 had mentioned about the physical characteristics of the other two accused to the I.O. He acknowledged having not named Sadique to the doctor who immediately attended Harender but having mentioned it to the Duty Constable at the Hospital. It is stated that PW-3 and Rajeev had reached the spot simultaneously. PW-7, however, did not identify or mention the names of Prashant and Virender to him.

19. PW-7 corroborated the depositions of PW-3 and further stated that his residence was 50 feet away from the place of occurrence; he knew the parentage and correct addresses of the accused persons at that point of time. He deposed having disclosed the name and parentage and residential addresses of three accused to the police about one hour after the incident. He denied the suggestion that the street lights of the area had been disconnected at the relevant time. The public light was situated above the place of occurrence and was surrounded by other residential buildings. He claimed having reached the place of occurrence within few seconds and also about the injured crying bachao-bachao at that time. He deposed that the accused ran away somewhere towards the Karam Pura area. He stated that the injured was held by one person from the back; the deceased's face was towards the person stabbing him. PW-7 knew PW-3 as the deceased's brother but his attention was not fixed at him during the time of the attack. He denied the suggestion that PW-3 was not present or that both of them did not try to save the injured. He stated that the injured was bleeding and that even his clothes were stained by the deceased's blood. He also supported PW-3's version about being present in the hospital and further stated that he did not tell about the assailants to him. He did not remember whether he had informed the police with regard to PW-3 Chandveer. After reaching the hospital, the police enquired about the incident from him. He also stated that no police official had recorded his statement on the day of occurrence in the hospital and that he was called for a statement only once thereafter. This witness was cross examined about the presence of other witnesses in the area, the colour of

the car in which the injured was removed to the hospital, names and identity of his neighbours etc.

20. PW-11 Constable Karamveer deposed having entered D.D. No.34B dated 06.02.02; it was marked as PW-1/DA, lodged at the instance of PW-7 Rajeev who had accompanied the injured. He also deposed that the informant was not asked how the injuries were received as it had to be done by the I.O. PW-12 Constable Desraj deposed that upon receipt of DD-34B, he along with S.I. Mahender Singh reached the hospital where the I.O. obtained the M.L.C. and recorded that he was unfit to make statement. He deposed that PW-3's statement was recorded by the I.O. upon which the latter made an endorsement which was carried by him (PW-12) to the Police Station to get the case registered, after the seizure of the blood stained earth, earth control was made through memo Ex.PW-3/A. It is stated that he along with I.O. went to the place of occurrence; though several persons were present, none made any statement. He stated that the police were present at the spot for investigation till about 12-12:30 AM. PW-21 supported the version of other police witnesses and corroborated the testimony of PW-3 and the recording of Ex.PW-3/A.

21. Ex.PW-3/A is a statement of PW-3. It mentions that the time of the incident was about 8:30 PM. The recording of the statement is shown to have been made at 10:20 PM. The D.D. No.34B has been marked as PW-11/DA. This too is on the date of the attack. The MLC Ex.PW-1/A records that the deceased was taken to the hospital at 8:45 PM and the Constable who was present at that time was Karamvir. Post Mortem Report has been produced as Ex.PW6/A. According to the MLC, there were 6 injuries on the person of the deceased; the post mortem mentions about 10 wounds. The cause of death, according to the opinion in the post mortem is cumulative effect of asphxia resulting from aspiration of blood and blood clots and severe degree of internal hemorrhagic shock, continuous bleeding occurring from part of left side of thyroid artery and triggered down collected in stomach and then moving upward specifically in an trachea which was sufficient to cause death in the ordinary course of nature. The death was caused by a sharp edged weapon. It is evident that a cumulative reading of the evidence particularly the testimony of PW-3 and PW-7 clearly identified the presence and role of the appellant Sadique. As pointed out by the respondent - State, in this case the Trial Court did not place reliance, while recording Sadique's conviction - on the recovery of the knife. Therefore that is not a factor which can be legitimately taken into account. So far as the contention that

PW-3 is an interested witness whose testimony should not be relied upon is concerned, it has not been shown by Sadique as to how this statement is unworthy of credence. Secondly, the materials on record disclosed that it is not the lone testimony of PW-3 but also the depositions of PW-7 which was relied upon by the Trial Court. In this context, the further argument that the prosecution did not examine one Sanjay who was supposed to have been present thereby implying another infirmity in the findings is unmerited. If the appellant was of the opinion that Sanjay had some positive information, to impart some assistance to him, he could have placed reliance on him by taking steps to summon him or at least asked the Court to examine him as a Court witness. Furthermore, the prosecution's case has to rest on the evidence led by it. It is the credibility and veracity of the witnesses who deposed before the Court which is tested and not the hypothesis of a defence or any other version that could possibly have been explored by the prosecution. In this case, the cumulative effect of depositions of PW-3 and PW-7 is that Sadique was present and had attacked the deceased Harender with a knife. Despite a detailed cross examination of both these witnesses, this core part of their testimonies has remained unshaken. In the very first statement Ex.PW-3/A recorded by the police, Sadique's name finds a clear mention. This was later sent along with the rukka at 10:40 PM, the same evening. Having regard to the proximity in point of time to the incident and the chain of circumstances, i.e., the incident (which occurred at 8:30 PM); shifting of the injured to the hospital (8:45 PM), police recording the statement (10:20 PM), and forwarding of the intimation to the Police Station (10:45 PM), possibility of falsely introducing or accusing someone is next to none. The deceased had received as many as six severe injuries - recorded in the MLC. PW-7 testified that he was bleeding profusely. Although, at the time he reached the hospital, the deceased was conscious, later apparently his statement could not be recorded. Both PW-7 and PW-3 corroborate each other about an attack by Sadique. Their depositions are identical even to the extent that PW-7 stated about the presence of PW-3.

22. As far motive is concerned, there is some merit in the submission that PW-3's testimony with regard the previous incident may not be the sole basis for concluding that Sadique had a motive. However, the Court cannot be unmindful that motive assumes importance where eye witness' testimony needs corroboration or where the prosecution is based entirely on circumstantial evidence. In a clear case based on eye witness testimony, the Court based on to test the credibility of the witness to see if their versions are unshaken or are improbable or not

believable for any reason. On this aspect, the Supreme Court had, in *Rajesh Govind Jagesha v. State of Maharashtra*, (1999) 8 SCC 428, held that:

"This Court in Gurcharan Singh v. State of Punjab³ held that:

"But it has repeatedly been pointed out by this Court that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance."

Again in Datar Singh v. State of Punjab⁴ this Court reiterated that mere absence of a strong motive for committing the crime cannot be of any assistance to the accused if the offence could be proved by evidence. Where the direct evidence regarding the commission of offence is worthy of credence and can be believed, the question of motive becomes, more or less, academic. "Motive" may be relevant in a case based upon circumstantial evidence only, being one of the circumstances.

23. In this case, the testimony of PW-3 & PW-7 as regards the essential particulars i.e., nature of attack, identity of accused Sadiq and the weapon used being unshaken, the mere circumstance, that PW-3 happens to be the victim's brother by itself would not lead the court to suspect the depositions unless something is brought out in the cross examination. It has not been suggested in this case that PW-3 or for that matter the victim had any previous history of enmity or ill will against Sadique. In the circumstances, the role of Sadique as an aggressor stands established. So far as the other arguments are concerned, the court is of the opinion that minor discrepancies connected with the disclosure or seizure of some articles which ultimately do not result in falsifying the prosecution, ought not to cloud the court's scrutiny into the facts if the testimony of the eye witness are firm. If the discrepancies, on the other hand, are so fundamental or their cumulative effect is such that what appears to the court is a cooked up story on the part of the prosecution, the findings cannot result in an accused's conviction. The standard to be applied here, felicitously expressed by the Supreme Court in *State of Punjab v. Wassan Singh* 1981 (2) SCC 1 is of "manifestly untenable". It was again remarked in *State of Rajasthan v. Kalki*, (1981) 2 SCC 752 that:

"discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person."

In this case, however, the discrepancies sought to be highlighted are not of that nature or character. For these reasons, the conviction recorded by the Trial Court in respect of the appellant Sadique and the sentence imposed cannot be faulted.

38

24. Turning now to the State's Appeal against acquittal of Virender and Prashant, the impugned judgment discloses that the Trial Court premised its conclusions on the reasoning that there was no evidence to suggest that the Ustra had been used. The impugned judgment, for this purpose, relies on the testimony of PW-6, Dr. L.C. Gupta. The court also disbelieved the prosecution version regarding recovery of the Ustra. As far as the rest of the conclusions are concerned, the Trial Court was influenced by the circumstance that even though PW-3 and PW-7 were together, when the deceased was removed to the hospital, the former was not informed about the true identity and names of the two respondents, Virender and Prashant. It was also noticed that the recovery of the Ustra had not been established.

25. So far as the injuries are concerned, during hearing, the learned APP sought to place reliance on the Post Mortem report, suggesting that there were 10 injuries on the person of the deceased, of which at least two could have been caused by an Ustra. It was submitted that despite questioning, the witness PW-6 did not deny that such injuries could have been inflicted with that kind of weapon. The deposition of PW-6, in the opinion of the court, nowhere leads to such a conclusion. All that the witness said was that the injury was caused by a sharp weapon. If the prosecution wanted a clearer opinion, it could have sought leave of the court to cross examine him, about the possibility of the Ustra being used, or could have sought such a clarification in re-examination. No such course was adopted. In the circumstances, the deposition of the witness cannot be said to be unambiguous about the use of Ustra; the use of dagger, on the other hand, was clearly spoken of by PW-6.

26. The Trial Court was of the opinion that in the normal course, when PW-3's statement was recorded, it would have been natural to seek PW-7's assistance in disclosure of identity of Virender and Prashant. There was all the more reason for this, since both these witnesses had taken the injured to the hospital, in a critical condition. Furthermore, an aspect which cannot be lost sight of is that in the first version, as well as in the first statement recorded by PW-3, the identity of these two accused is not revealed. However, the same witness claimed the very next day that he knew their identities, and revealed it. The Trial Court concluded that all these were improbable. What influenced it most was that since both PW-3 and PW-7 were together, particularly when the former reported the matter to the police, in the hospital, it was contrary to the normal course of human conduct to withhold the identity and names of the said two accused.

27. The correct approach to be adopted by a High Court while dealing with States' appeals against acquittals, has been the subject matter of several judicial. The law was summarized by the Supreme Court, in *Raj Narain Singh v. State of U.P.*, (2009) 10 SCC 362, thus:

"The same view has been reiterated by this Court in Ghurey Lal v. State of U.P.², SCC at p. 477, in which one of us (Hon'ble Dalveer Bhandari, J.) after discussing a number of authorities on this issue summarised the law as follows: (SCC para 69)

"69. The following principles emerge from the cases above:

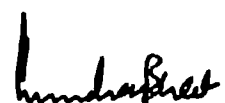
1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

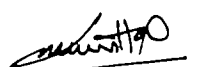
2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong."

28. In this case, we are not persuaded to take a view different from the one recorded by the Trial Court in the impugned judgment, so far as the acquittal of Virender and Prashant are concerned.

29. For the above reasons, both appeals have to fail. CrI. Appeal Nos. 818/2007 and 264/2011 are dismissed.


S. RAVINDRA BHAT, J


G. P. MITTAL, J

MARCH 10, 2011