

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1) CRA No.S-807-SB of 2003
Date of Decision: 03.06.2016

Sanjay Mittal

...Appellant

Versus

State of Haryana

...Respondent

2) CRR No. 1436 of 2003

Naveen Chander

.....Petitioner

Versus

Sanjay Mittal and others

....Respondents

CORAM:HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. T.S.Sangha, Senior Advocate, with
Mr. Ashok Jindal, Advocate, and
Mr.J.S.Lalli, Advocate,
for the appellant.

Mr. R.P.S.Ahluwalia, Advocate,
for the revisionist.

Mr. Pawan Garg, AAG, Haryana

To be referred to reporter? (Yes) (No)

Amol Rattan Singh, J.

This appeal and revision petition emanate from the judgment
and order of sentence passed by the learned Additional Sessions Judge, Fast
Tract Court, Ambala, dated 22.04.2003 and 23.04.2003 respectively.

2. A complaint was made on 03.06.2000 by Naveen Chander

(PW10) at about 11:20 PM, to ASI Ravinder Kumar (PW13), when the latter, alongwith the other police officials, is stated to have been present at D.C.Road near Police Station Ambala Cantt. on patrolling duty.

The translated version of the complaint, Ex.PG, i.e. the statement of the said Naveen Chander, reads as follows:-

“State that I am a resident of above given address and I am in a private business. Panna Lal son of Mulakh Raj, resident of H.No.4259-60, Hindu Maha Sabha Bhawan, Ambala Cantt. was my real paternal uncle, aged about 70 years. He was the Secretary of the Hindu Maha Sabha and was residing in the Bhawan itself. That tomorrow, on 04.06.2000, a meeting of the all India level was scheduled in the Hindu Maha Sabha Bhawan. That I and Vivek Singla son of Sham Lal, resident of H.No.4309/22, Panjabi Mohalla, Ambala Cantt. and Ram Parshad son of Laquir Chand Paswan, a worker in the Hindu Maha Sabha, Ambala Cantt. had fixed the 'shamianas' (tents) etc. in the Bhawan and were discussing the next days' programme with Panna Lal. It was about 10 o'clock at night that Sanjay Kumar Mittal son of Muni Lal, resident of H. No.4349-50, Anaj Mandi, Ambala Cantt. came came to park his Fiat car in the Bhawan. Pannal Lal told Sanjay Kumar that since there was a function the next day, he could not park the car there. He became angry and stated that he would park the car there only. Panna Lal and all of us told him to park his car outside, whereupon Sanjay Kumar flew into a rage and caught hold of Panna Lals' hand and slapped him twice or thrice on his face and pushed him hard. Due to the push, Panna Lal then fell on the ground and died instantly. We tried to catch hold of Sanjay Kumar but he fled away with his car. Legal action be taken against Sanjay Kumar.

I have heard my statement, it is correct.”

Upon the aforesaid complaint having been made, as per the

police proceedings recorded thereupon, the complainant appended his signatures in English under the statement, attested by the aforesaid ASI and upon an offence punishable under Section 304 IPC being shown to be made out, Constable Anil Kumar was deputed to have the FIR registered in the police station, which was then registered as FIR No.312/2000 on the night of 03.06.2000 itself. Special reports are stated to have been also despatched thereafter, to the authorities concerned.

The FIR itself is shown to be registered at 11:25 PM; and the special report was received at 4:30 AM on 04.06.2000 by the learned JMJC, Ambala Cantt.

ASI Ravinder Kumar is then stated to have proceeded to the spot to prepare the “inquest report” (Ex.PJ before the trial Court), a perusal of which shows that the deceased, Panna Lal, was shown to be a “thin, weak person”, 5.5' in height.

The cause of death, as recorded in column No.20 of the death report, is due to pushing the deceased onto the ground. The age of the deceased, as was written in the complaint, is also shown to be 70 years in the death report.

The report, recorded by ASI Ravinder Kumar, states that he was accompanied by HC Malkiat Singh, Constable Anil Kumar and Constable Karamvir.

On the death/“inquest” report, a site plan is also drawn, in which the spot of occurrence, within the courtyard of the Hindu Mahasabha Bhawan, is marked as “A”, the place where the body was actually lying, was shown to be in a room, marked as “B” and “C” is shown to be the place where the deceased is stated to have fallen after being allegedly pushed by

the appellant, Sanjay Mittal.

3. The body having been sent for post mortem examination, as per the report thereon, Ex.PE, deceased Panna Lal is again shown to be 70 years of age, of average built, poorly nourished.

The post mortem examination is shown to have been conducted at 11:30 am on 04.06.2000.

On opening the skull, 200 ml of altered blood was shown to be present in the cranial cavity in the epidermal space. Other fluid etc. were also shown to be present in the occipital region, alongwith the clotted blood.

Injuries were shown to be ante-mortem in nature and the cause of death, in the opinion of the doctor, was given to be internal brain injury which was sufficient to cause death in a normal person, in due course of nature.

However, the final and revised opinion was kept reserved, till the report of the pathologist, from the PGIMS, Rohtak, was received.

The post-mortem report also shows that the whole heart of the deceased was sent for histo-pathological examination to the PGIMS, Rohtak.

4. The matter having been investigated by the police, a report under Section 173 Cr.P.C. was submitted to the competent Court, upon which the appellant was charged by the Additional Sessions Judge, Ambala, on 30.10.2000, as follows:-

“That you on 3.6.2000, in the area of police station Ambala Cantt., committed culpable homicide not amounting to murder by causing death of Panna Lal and you thereby committed an offence punishable under Section 304 of Indian Penal Code and within cognizance of this Court.

And I hereby direct that you be tried by this Court on the abovesaid charge.”

The accused having entered a plea of “not guilty”, he was put to trial.

5. The prosecution examined 13 witnesses, of whom PW1 was HC Malkiat Singh, who deposed with regard to having taken a “parcel containing a piece of heart”, sealed with the seal 'ST', alongwith the sample seals and a letter from the doctor to ASI Ravinder Kumar, which was taken into possession vide memo, Ex.PA.

PWs2, 3 and 4 also were formal witnesses, of whom PW2 deposed with regard to handing over a copy of the special report to the Area Magistrate and higher police officials, which he stated was without delay. PW3, Constable Baljit Singh, deposed with regard to handing over a parcel sealed with the seal 'ST' alongwith the sample seal to the Department of Pathology, PGIMS, Rohtak, on 07.06.2000. PW4, HC Jagdish Singh, deposed in terms of his affidavit, Ex.PB, which is to the effect that he had handed over a sealed parcel of a 'jar' containing the heart of the deceased, to the aforesaid Constable Baljit Singh who, after depositing it at PGIMS, Rohtak, on 04.06.2000, handed over a receipt of such deposit, with PW4.

6. PW5 was Constable Ram Saroop who testified that he had prepared the site plan, Ex.PC, of the place of occurrence, with marginal notes made thereupon, at the instance of the complainant, Naveen Chander, on 05.07.2000.

On cross-examination, this witness stated that the rooms opposite the gate of Bhawan were locked, though he could not say how many rooms there were.

A perusal of this site plan, Ex.PC, shows it to be a more detailed and 'formal' version of the site plan shown on the 'inquest' proceeding, with the rooms etc. given in more detail, most of which are shown as godowns/machine room/printing room, with one room shown to be an office and another shown to be the store of the "Youngmen Club".

Again, the room where the body was stated to have been kept, is shown as Mark-B and Marks-A and C are also shown to be the same spots as they were on the site plan on the death/inquest report.

7. Coming back to the testimonies, PW6 was one Ram Parshad/Ram Parkash, age 30 years, shown to be a mason, resident of Khatik Mandi, Ambala Cantt., who testified that at the time of the incident he was residing in the building of the Hindu Mahasabha, Ambala Cantt. and that the deceased Panna Lal was the Secretary of the Sabha and was also residing there.

This witness further testified that on 04.06.2000 a function was to be held and Panna Lal and others were making arrangements for the function and at the time of the incident, this witness stated that he was laying out the "Durries" etc. at the place of the function. The appellant-accused is stated to have come there, wanting to park his car in the open space of the building, which was objected to by the deceased, after which, as per this witness, the appellant-accused went away from the spot in his car. PW6 further testified that no incident took place in his presence.

Upon the above statement, he was requested to be declared hostile, which was allowed by the Court, upon which he was cross-examined by the learned Public Prosecutor.

In the cross-examination, PW6 stated that a case was registered

against the appellant, Sanjay Mittal and that the police had come to him (this witness) and directed him to make a statement and actually he had not volunteered the said statement before the police, to the effect that he had witnessed the occurrence.

He also denied that he had told the police that the appellant was adamant to park his car and was angry at not being allowed to do so. Upon this he was confronted with the statement, Ex.PD, shown to have been made on 04.06.2000 before the ASI (presumably under Section 161 Cr.P.C., though not so recorded on the said exhibit).

He also denied that he had told the police that accused Sanjay Mittal had caught hold of Panna Lal and thereafter had pushed him down onto the ground. Upon this, he was again confronted with the statement, Ex.PD.

Similarly, he denied that he had told the police that Panna Lal had died due to the push given by the appellant, upon which he was again confronted with the aforesaid statement.

Naturally, PW6 denied that he had been won over by the accused. He also denied that he was present at the spot and had witnessed the occurrence.

Upon cross-examination by the defence counsel, this witness stated that after giving water and a tablet to Panna Lal, he had his son to call Vivek and Naveen Chander (the latter being the complainant, PW10), upon which they took Panna Lal to the hospital.

8. PW7 was Dr.Shashi Tripathi, Medical Officer, Civil Hospital, Ambala Cantt., who proved the copy of the post mortem report, Ex.PE, stating that he had also brought the original with him, signed by himself and

Dr. Vinod Gupta.

This witness testified in terms of the post mortem report, already discussed hereinabove, and further stated that the probable time between the injury and death was within a few minutes to a few hours, with the post mortem examination being conducted within 24 hours of the death.

The doctor further testified that after going through the report of the Pathologist of the PGIMS, Rohtak, dated 07.07.2000, "we opined that the cause of death in this case was due to internal brain injury which had led to the heart arrest leading to the death of the person".

He further testified that in a case of arrest of the heart, there is a chronic ischaemic change in the heart aorta, which was given in the pathologists' report and that may have had some contribution to the death.

The witness thereafter proved the opinion given by himself and Dr. Vinod Gupta on 20.07.2000, as Ex.PF.

On cross-examination, this witness stated that there were no external marks of injuries, either on the skull or any other part of the body. He admitted to be correct that as per the report of the pathologist, deceased Panna Lal was a chronic heart patient. He further stated that in case of a natural haemorrhage, it can lead to bleeding and the blood would accumulate in the affected area, and that even in the case of a heart attack, the blood, as found in the present case, can be there if the person who suffers the heart attack, falls down.

9. PWs8 ASI Ram Kumar and 11 DSP Manbir Singh were again formal witnesses. PW8 deposed with regard to the registration of the FIR, Ex.PG/1, which he stated he had recorded after incorporating a Daily Diary Report at 11:25 PM. PW11 testified with regard to having prepared the

report under Section 173 Cr.P.C., on 30.08.2000, when he was posted as the SHO, P.S. Ambala Cantt.

10. PW9 was Pathologist Dr. A.S.Gupta, who testified that he had given the following opinion upon examining the heart of the deceased:-

“The representative micro sections examine different areas of the heart shows areas of fibrosis on the left ventricular wall and interventricular septum. Aorta and coronary show marked atherosclerotic changes. Histological findings are: compatible with chronic ischaemic heart disease. My report is Ex.PH and bears my signatures. The case was referred by Dr.Shashi Tripathi, MO, CH, Ambala.”

(Note:-The above is reproduced, word for word, from the opinion reproduced in the testimony, even though there are glaring mistakes of spellings).

11. PW-10 was the complainant, Naveen Chander, stated to be aged 50 years on the date of his deposition before the trial Court.

This witness deposed that Panna Lal was his “real uncle”, aged about 70 years and was the Secretary of the Hindu Mahasabha and was residing in the building of the Sabha.

A meeting of the Hindu Mahasabha had been scheduled to be held on 04.06.2000 in the building of the Sabha at Ambala Cantt and it was to be attended by delegates from all over the country. He further testified that on 03.06.2000 he (PW-10), along with Vivek Singla and Ram Parshad (Pws 12 and 6, respectively), was arranging for the meeting, and tents etc. were “going to be placed” for that purpose.

At about 10:00 p.m., the appellant, whom this witness identified in Court, came in his car bearing registration No. HR-01-A-8644,

which was a white coloured Fiat. The deceased had asked the appellant to park the car outside, in view of the function, with this witness as also Pws 10 and 6 standing along with Panna Lal. The appellant had allegedly refused to do so, stating that he would park the car inside the building only, upon which some altercation took place between the deceased and the accused, during which the accused gave 2/3 slaps to Panna Lal and pushed him forcibly on the ground. As per PW-10, he, Vivek Singla and Ram Parshad tried to take care of Panna Lal, who is stated to have died on the spot.

In order words, PW10 testified in terms of his complaint, Ex.PG.

This witness further testified that he had reported the matter to the police. He identified his complaint Ex. PG, along with his signatures. He further testified that “we took Panna Lal to the doctor, where he was declared brought dead”.

In cross-examination, the witness stated that he did not know as to who the President of Hindu Mahasabha was on 03.06.2000, or as to who the other office bearers were and that he (PW-10) was not one. He further stated that Vivek Singla was also not holding any office in the Mahasabha on 03.06.2000.

He next stated that Ram Parshad (PW-6) used to reside in the Mahasabha building itself since about 4 to 5 years prior to the date of occurrence, along with his son.

The witness further stated that he himself was setting up the tents in the Bhawan and that Vivek Singla was assisting him in fixing the curtains etc. The tents and curtains were stated to have been brought

through Ram Parshad from Navin Tent House, Ambala Cantt, though he did not know the address of the tent house. He further stated in the cross-examination that the tents had been brought in the evening and that he (PW-10) had been called by Panna Lal for setting up the tents, for which purpose he had reached the Bhawan at about 7:00 p.m. The witness further stated that Vivek Singla had arrived per chance, though he had not been summoned by anyone to help in the arrangements.

As per this witness, (the workers of) Navin Tent House had already set up half the tents when he arrived, though he could not give the number of tents so set up. He also could not tell as to how many tents and curtains were set up by himself, Vivek Singla and Ram Parshad, in the remaining half part of the Bhawan.

PW10 further stated that he did not know the agenda of the function to be held on 04.06.2000, though he had produced a card of the function to be held on 04.06.2000 and had handed it over to the police “during investigation”, at the time of lodging the report itself, on 03.06.2000. The witness denied the suggestion that he did not possess the invitation card or had not produced it at any time during investigation; (upon which the Public Prosecutor had told in the trial Court-as recorded by the trial Court-that the said card was on the police file).

This witness also volunteered that on account of the death of Panna Lal, the function was not held on 04.06.2000. His attention was then drawn to his complaint, Ex. PG, where there was no mention of any invitation card.

The witness further deposed in cross-examination that the owner and labourers of Naveen Tent House had not been produced by him

before the police during investigation, nor had he given the registration number of the car of the accused, as he was not asked to do so by the police, when he had lodged the report.

Thereafter, he gave the name and address of the doctor, to whom Panna Lal was taken by him and Ram Parshad, in a '*rickshaw*', to be Dr. C.K. Mittal of Ambala Cantt. He (PW-10) admitted that he had not given the name of the doctor to the police.

12. Thereafter, PW-10 was questioned on his occupation, to which he stated that on 03.06.2000 he used to sell salt and was in the service of M/s Chaman Lal Om Parkash of Ambala Cantt, who were wholesalers, and that he also used to take commission from them as a salesman/agent and had been working with them as a commission agent for some time, though he had never purchased any salt from the said firm for further sale. He deposed that he received a salary of Rs. 2,500/- per month but had left the service of the firm w.e.f. 05.06.2000 and had started his own business of sale/purchase of salt.

He also stated that he had worked with another firm in Ambala, who were contractors, in the year 2002, though he had remained unemployed in between.

13. The next part of the cross-examination is with regard to his own relationship with the appellant and the appellants' brother, Manav Kumar. In reply to that he stated that he had no connection with them though the appellant was also known as Vishwas Gupta. He further volunteered that the appellants' uncle, Om Parkash, was his (PW-10s') partner, in a firm known as M/s Tin Maker, running from the Hindu Mahasabha Bhawan. The witness further deposed that the firm was

constituted on 19.04.1978 and had two sleeping partners, one of whom, Prem Devi, is the mother of the appellant. He thereafter stated that the father of the appellant was alive in 1978 and had died three months after the death of Panna Lal, but then corrected himself to say that it was Om Parkash who had died three months after the occurrence, whereas he could not deny that the father of the appellant, Muni Lal, had died in 1980.

14. The cross examination, thereafter, is in respect of this witnesses' relationship with the firm and its partners, his use of a motor cycle of the firm, upon which there was seemingly some dispute, as also with regard to the said firm being a tenant on the premises of the Hindu Mahasabha for a long time. To that issue, the witness stated that he did not know as to whether the premises was on rent with Om Parkash and Muni Lal and later stated that he did not know whether actually the firm was a tenant on the premises.

He admitted that he did not know as to whether he was removed as a partner of the firm or when and if it was dissolved. He admitted that a complaint had been lodged against him for taking away the motor cycle, though he had not "put any claim" when he came to know that it belonged to the firm and as such, the complaint was found to be false.

Thereafter, PW-10 admitted that the appellant and his brother became partners in the firm after the death of their father. He stated that after the firm ceased to function, it never worked in the premises of Mahasabha, though it had been in possession of three rooms and a vacant space in front of those rooms over which a shed had been erected by the Mahasabha. A fourth room also remained in possession of the firm for ten years from 1978, after which it came into the possession of Panna Lal,

though he did not know as to how Panna Lal came into possession thereof.

The witness admitted that the appellant had started using the shed for parking his car for about six months prior to 03.06.2000 though he had been requested by Panna Lal not to park his vehicle there, despite which the appellant continued to do so. The witness thereafter stated that after 1988 M/s Tin Makers did not use the premises of Hindu Mahasabha Bhawan and had shifted to a different address and that the premises which were in possession of the firm were actually in his (this witnesses') possession from 1978 and that he used to lock the rooms from the beginning, with the locks still remaining there.

The deposition thereafter reads to say that PW-10 delivered possession of the rooms to Panna Lal before his death, though he could not say when.

He also stated that he never paid any rent to either the Hindu Mahasabha or to Panna Lal till he delivered the possession of the rooms.

PW-10 also denied knowledge as to whether any ejectment petitions had been filed by the Mahasabha or Panna Lal for eviction of Om Parkash, Proprietor of M/s Tinwalla/Tin Makers, from the premises. Consequently, he also denied knowledge of whether any particular Advocate had been engaged by Panna Lal in such petition/s, or whether any statement had been made before the Rent Controller, upon which the petitions were withdrawn.

Despite denying earlier that he had paid no rent for the occupation of the rooms of Hindu Mahasabha, PW-10 then stated that he had entered into a rent agreement with Panna Lal for taking one room on rent from the Hindu Mahasabha @ 300 per month w.e.f. 20.05.2000 and

that Bal Kishan Anand and Arvind Kumar, with whom he had worked earlier, (they being contractors), had witnessed the said rent deed and that one of the rooms “out of those three rooms” were in the tenancy of M/s Tinwalla/Tin makers.

Obviously, it needs to be noticed that earlier this witness had stated that he did not know if M/s Tinwalla had rented out any room from the Hindu Mahasabha.

He denied knowledge of the exact location of the room and also denied knowledge of whether the appellant, using his name of Vishwas Gupta, had filed any application in the police station with regard to members of the Hindu Mahasabha trying to take forcible possession of the room by breaking upon the locks.

15. Thereafter again, the cross-examination is on the lines of this witnesses' relationship with the firm M/s Tin Makers, to which he stated that it was never disclosed to him that he would only be working for the firm and would not be a partner, though in fact he was a partner but had not settled any account with the firm since 1988, despite being a partner to the extent of 30%. He admitted that he was being paid Rs. 2,500/- per month “by way of capital”, on the promise that the account would be settled later.

16. The cross-examination then turned to the relationship/interest of Vivek Singla (PW-12) and his family with the Hindu Mahasabha Bhawan, to which PW-10 replied that Vivek Singlas' father was “a Neta” not doing any work, though his mother was teaching in the BD High School near the Hindu Mahasabha Bhawan and that Panna Lal deceased, whom the witness again described as his uncle, had started a school in the premises though he could not say whether the school was started for Vivek Singlas'

mother and HC Goel, Principal of the B.D. High School.

He also denied knowledge of whether Vivek Singla had ever resided in the Bhawan, along with Panna Lal, but admitted that the school in the premises had shut down immediately after Panna Lals' death; however, he again denied knowledge of whether the furniture etc. had been taken away by Vivek Singla's mother and HC Goyal.

17. The cross-examination thereafter again came back to the usage of the room in possession of Panna Lal and the electricity supply in the said room, which this witness admitted to be in the name of Manav Kumar, brother of the appellant, partner in M/s Tinwalla, though the possession of the room was with Panna Lal.

PW-10 however, denied that the payment for the electricity was made by Manav Kumar on 02.11.2000 and stated that it had actually been made by the Mahasabha.

The witness then denied knowledge of whether one Babu Ram Panwar had been the General Secretary of the Sabha for about 20 years and whether Babu Ram Panwar's name was printed on the card that this witness stated he had handed over to the police. He also stated that Babu Ram Panwar was appointed as the temporary President of the Mahasabha on 04.06.2000, by the National President at Delhi.

Again coming back to the usage/tenancy of the rooms of the Hindu Mahasabha Bhawan, the witness admitted that there were three/four other tenants also on the premises on 03.06.2000 and also stated that there was no electricity supply in the rooms that were under the tenancy of M/s Tinmakers. He further denied knowledge of the other tenants making any complaints to the appellant that they were being harassed and that “we

wanted to take forcible possession from them”. He however admitted that he had been 'challaned' at the instance of the other tenants and a case had been registered against him, which was pending in the Court.

At this stage he was also asked as to the number of poles erected at the spot; to which he stated that the entire area was covered with tents.

18. The next part of the cross-examination again pertains to the actual occurrence, in which the witness admitted that Panna Lal had been a heart patient for 10 to 15 years.

He also stated that the accused had covered half the covered area with his car and was facing the room, with Panna Lal, this witness himself, Vivek Singla and Ram Parshad standing together at one place, when Panna Lal had asked the accused-appellant to take the car out of the premises.

PW10 further stated that the accused did not quarrel with either him, Vivek Singla or Ram Parshad and that he had turned the car under the tent to go away. He denied that there was not enough space for the car to turn around because of the poles.

He further stated that Panna Lal had fallen on the '*Pucca*' floor and that there were five to seven labourers on the roof of the Bhawan at that time.

He further admitted to be correct that Ram Parshad was like an attendant to Panna Lal and used to take him in his '*Rickshaw*' wherever Panna Lal wanted to go, out of the Bhawan. He further stated that the '*Rickshaw*' actually belonged to Panna Lal.

The witness denied that he had suggested to Babu Ram

Panwar, aforementioned, the Acting President, that he had involved the appellant in a case of the death of his uncle and that now possession of all the rooms should be taken, by breaking open the locks.

He also denied the suggestion that Babu Ram Panwar had refused to do any illegal work or that one Pardeep Kumar Gaur, who was thereafter the President of the Hindu Mahasabha, had also refused to take forcible possession.

PW-10 then stated that no office bearer reached the premises on the date of the occurrence up-to 10:00 p.m., to see the arrangements for the function on the next day. He also stated that he had not informed any national leader of the Hindu Mahasabha at Delhi with regard to Panna Lals' death (as he was busy in looking after Panna Lal).

He denied knowing the number of chairs brought to the Bhawan, because that was done by Ram Parshad. The witness, thereafter, stated that the stage was still to be set up. He further denied the suggestion that it was only after Panna Lals' heart stroke and his having fallen down on account of that, that Ram Parshad had sent messages through his son to this witness and other persons, with regard thereto.

Naturally, he further denied the suggestion that he was not setting up any 'shamiana', chairs' etc., along with Vivek Singla and that he had concocted the whole story only to become a witness of a "false occurrence".

PW-10 thereafter stated that the police met him in the Police Station Ambala Cantt and that he came along with the police officials in their Jeep to the place of occurrence, where several persons were present near the body, though he did not remember their names. He denied the

suggestion that at that time his own wife, Veena Attri, and other persons, namely Arun Kumar, Kishan Lal, Arvind Kumar and Pardeep Kumar, were also present along with Ram Parshad and Vivek Singla.

19. In further cross-examination, PW-10 stated that the Assistant Sub Inspector who came with him, deputed two Constables to remain with body and himself went away stating that he would come the next morning to start the proceedings, as it was already dark. Thereafter, the police arrived at 10:00 a.m., though the body had been taken to the hospital at night itself, where it remained in the mortuary. The police was also stated to have visited the mortuary at about 1:00 a.m. to conduct proceedings. (The statement says it was the next day, but it is not clear whether he meant 1:00 a.m., as written in the trial Court proceedings, or 1:00 p.m.).

PW-10 then denied the suggestion that neither he nor Vivek Singla saw the occurrence and further denied that he had concocted the story only in order to take possession of the shop.

20. He admitted that the accused and his brother had filed a criminal case against him and five others under Section 380 IPC, in the Court of the Judicial Magistrate Ist Class, Ambala Cantt, which was still pending. He thereafter, volunteered that the complaint was actually filed only to pressurize him and others with regard to the instant case, after the occurrence.

This witness further denied the suggestion that Babu Ram Panwar had informed Om Parkash, partner of M/s Tin Makers, that this witness and others had taken forcible possession by breaking the locks and on hearing that news Om Parkash had died of shock.

Finally, the witness denied to having deposed falsely or having

concocted a story because of old enmity with the family of the appellant, or because of their alleged dishonest dealings with him.

21. Vivek Singla, who deposed as PW-12, in his examination-in-chief by and large corroborated the testimony of PW-10, as regards the manner of occurrence and the time thereof.

In cross-examination this witness also stated that he was not a worker of the Hindu Mahasabha, though he was confronted with a statement to the police where he had allegedly said that he was. Though PW-10 had stated that Vivek Singla (i.e., this witness PW-12), had come to the spot per chance and had started helping in the arrangements, PW-12 himself stated that he had been asked by the deceased to help him, 3-4 days prior to 03.06.2000 and that is how he had gone to the complex.

He further stated that his father, being a politician, used to meet the deceased in the Mahasabha complex, though he had not come there on 03.06.2000.

He next stated in cross-examination that his statement was recorded at the police station after he was called there by the police, before which he kept sitting at the complex, when PW-10 had gone to the police station.

PW-12 next stated that he did not know whether his parents had ever resided in the Hindu Mahasabha complex, though he himself could not remember ever having resided there and further, he denied knowledge whether any part of the Mahasabha complex was used for any purpose by his family. He admitted that his mother was teaching at the B.D. High School, of which Hukam Chand Goyal was the Headmaster. He however, denied knowing if his mother and the said person had ever started a school

in the Hindu Mahasabha complex or had vacated the premises on 12.06.2000.

The next part of the cross-examination is with regard to this witnesses' relations with PW-10, whom he said he actually did not know except as an inhabitant of the same neighborhood that he himself resided in ('Punjabi Mohalla').

He further stated that the appellants' father, as also his uncle, Om Parkash, used to reside with him (the appellant), but denied knowledge of the time of death of the father of the appellant, as also his uncle.

He described the business of the appellants' father and uncle to be that of sale and purchase of bags, as per what he knew, but denied knowledge of whether or not PW-10 had ever worked with the appellant or his father.

22. The witness then stated that he and PW-10 had both taken the deceased to Dr. C.K. Mittal (though this is at variance with the statement of PW-10, who stated that he and Ram Parshad, PW-6 had taken the deceased to the doctor). However, he stated that they took the body in the 'rickshaw' driven by a 'rickshaw' puller, whom he stated was present in the complex. Thereafter, he stated that they came back from the doctor within five minutes as the doctor had declared Panna Lal to be dead.

He further stated that he remained at the police station for 30-35 minutes but did not know for how long PW-10 remained there. PW-12 further stated that after the police station, he came back to the Sabha complex, though he did not know the time and also did not know as to what time the police reached there, though he had identified the body of the deceased, in the complex, to the police. He stated that he remained in the

complex with the dead body up-to 5:00 a.m., when it was taken to the hospital, after which he went home. He denied knowledge of whether or not the police had recorded the statement of any person in the complex but stated that the police had seen the injury marks on the body of Panna Lal, but conducted no other proceedings.

He further stated that no blood had oozed out from the injury and he had also not noticed any blood on the floor.

The witness denied knowledge of the place from where the tents etc. were brought, but stated that spreading out of the tents and '*daris*' was in progress when he reached the complex. He further stated that "we were three persons, besides other 4-5 persons" present in the complex, spreading the '*daris*'. This witness, however, stated that the tents were completely set up but could not say as to whether any labourers from the tent house were working where the '*daris*' were to be spread and where the accused wanted to park his car. He also stated that the tenants were a "bit away from the said place".

23. Thereafter, in cross-examination, this witness denied knowing as to whether the accused used to earlier also park his car in the complex or not, as he was not a routine visitor to the complex.

He further stated that he had seen some tins lying in the complex and he knew that some firm was working there but did not know whose firm it was. He also denied knowledge of whether the rooms were ever on rent with the appellant or his family, or whether any rent petitions had been filed to get them evicted.

PW-12 further denied knowledge of whether PW-10 had taken any room on rent, though he stated that he had seen him usually sitting in

the rooms. He further stated that he had seen PW-10 sitting in a room one day prior to the death of Panna Lal.

Vivek Singla then deposed that he had started a plastic moulding factory in the Hindu Mahasabnha complex about 10 years ago and had taken the premises on rent @ Rs. 300/- per month but that no rent deed was executed. He next stated that he had rented the premises for 3 to 4 months and had obtained a rent receipt and further stated that he had seen the accused and his family members visiting the complex, when he (PW-12) was running his factory there. He, however, denied knowledge of whether the accused or his family members or partners had taken any room on rent.

24. Lastly, this witness denied that nothing had happened in his presence or that the accused had not slapped or pushed Panna Lal, though he also admitted that Panna Lal was a heart patient. However, he denied the suggestion that he had actually died of a heart attack, after which his family and the family of PW-10 were summoned by the son of Ram Parkash (PW-6), to the complex. He also denied that he had deposed falsely because of his family connection with Panna Lal.

25. The last witness for the prosecution was the Investigating Officer, Sub Inspector, Ravinder Kumar, (Assistant Sub Inspector at the time of incident). The Investigating Officer deposed that while he was posted as an Assistant Sub Inspector at Police Station Ambala Cantt, on 03.06.2000, PW-10 had met him while he was on patrolling duty, and had recorded his statement, Ex. PG, upon which he made his endorsement, (which he identified), and thereafter had sent the complaint for registration of an FIR.

The witness further stated that the FIR was registered by Assistant Sub Inspector Ram Kumar, and that he himself had proceeded to the spot along with the complainant (PW-10) and had conducted proceedings under Section 164 Cr.P.C, the report of which he identified. He also identified the site plan, Ex. PK and stated that he had sent the body for post mortem examination, in respect of which the written request was identified by him as Ex. PL.

This witness next stated that he had recorded the statements of witnesses under Section 161 Cr.P.C. and searched for the accused and that after the post mortem examination, he had been handed over a parcel containing the heart of the deceased by Constable Karamvir (PW-3), which he had taken into possession, vide the memo Ex. PA.

He further stated that he had recorded the statement of the Moharrar Head Constable and Constable Baljit Singh (PWs 1 and 3 respectively), on 09.06.2000 and that he had formally arrested the accused on 29.08.2000, as prior to that he was on anticipatory bail. He next testified that he had got the scaled site plan, Ex. PC, prepared by Constable Ram Karan (PW-5) and had also collected the opinion of Dr. Shashi Tripathi (PW-7), after receipt of the Pathological report from the PGIMS, Rohtak. He identified the report as Ex. PF.

26. On cross-examination this witness stated that he had reached the Hindu Mahasabha complex at 11:45 p.m. and that when he reached there, there were two ladies and six or seven males present there, some of whom he named as Vivek Singla, Ram Parkash, Ram Kishan, Sharda and Arun Kumar. He stated that he started "inquest proceedings" at 12:00 midnight which he concluded at 5:00 a.m. and further stated that he also

recorded the statements of Pws 10 and 12 (Naveen and Vivek Singla).

As opposed to the statement of PW-12, Vivek Singla, the Investigating Officer in his cross-examination stated that he had not recorded Vivek Singla's statement at the police station at any time. He, however, stated that the statement Ex. DA, of Vivek Singla, was recorded at about 7:00 a.m., in the complex of the Hindu Mahasabha. However, he stated that Ex. DA was correctly reproduced, from the part marked as A to A.

The witness stated that he had never recorded the statements of any "habitants of the Hindu Maha Sabha complex", or of any labourers.

He further stated that when he reached the complex there were no labourers or other persons present at that time (it seems what the witness stated was with regard to residents/occupants of the complex not being there, though he had named other persons as noticed above). He further stated that he did not record the statement of PW-10 Ram Prakash's son.

Thereafter, the cross-examination reads to say that after the conclusion of the "inquest proceedings" the dead body was sent for post mortem examination, though this witness denied that the body was ever kept in the mortuary at night and he further denied that he had told PW-10, Naveen Chander, that he would conduct the proceedings in the morning as it was dark.

27. In the next part of the cross-examination, the Investigating Officer refers to the investigation, stating that during that process he had joined office bearers of the Mahasabha though he could not remember their names, which he stated he could tell after consulting his case diary.

The trial Court recording thereafter shows that he actually

examined his case diary and gave the names of such Hindu Mahasabha office bearers to be Arun Kumar, Ram Kishan, Arvind Kumar and Pardeep Kumar. Obviously, two of these names, i.e. Ram Kishan and Arun Kumar, are common to the names he had earlier given as being amongst those 6/7 persons present when this witness reached the spot upon the complaint being made by PW-10.

PW-13 then stated that he had not noticed any marks of injury on the dead body, nor had he seen any blood on the ground, or on the dead body. He further stated that he did not join “any tent wala” in the investigation and further stated that it had come out in the investigation that the appellant and his family members had been tenants in the complex for several years.

The last part of the testimony, as usual, denied the suggestion that the investigation was tainted or that he had recorded the statements while sitting at the police station.

28. In his statement under Section 313 Cr.P.C., other than either completely denying, or denying for want of knowledge, all other questions put to him, the accused-appellant stated that PW-10 Naveen Chander, “was serving with us and he was shunted out due to misconduct and behaviour”. He further stated that PW-10 and other people concocted a false story as there were two rent petitions pending in the Court of the Rent Controller, which were fixed for hearing on 07.08.2000 and 10.08.2000. Thus, as per the accused, he was involved in the case falsely so that PW-10 could “grab the property of Tin Wala in which Sanjay Mittal was also a partner.” He further stated that PW-10 and other members of the Akhil Bhartiya Hindu Maha Sabha, Mandir Marg, Delhi, took forcible possession “of the premises

of the accused” on 04.06.2000 by unlocking the premises and taking all assets and machinery, for which a complaint was filed against PW-10 and others, under Sections 406, 420, 441, 446 and 380, read with Section 120-B IPC, in the Court of the Judicial Magistrate Ist Class, Ambala Cantt. He further stated that a civil suit under Section 6 of the Specific Relief Act, was also pending against the Hindu Mahasabha and the Akhil Bhartiya Maha Sabha, in the Court of the Civil Judge (Junior Division) Ambala Cantt, seeking the relief of possession.

30. After the statement of the accused under Section 313 Cr.P.C., the first witness who stood in his defence was one Arun Kumar (DW-1), aged 45 years of the Azad Tent House, Ambala Cantt.

This witness stated that he had been running a tent business for about 12 years and that B.R. Panwar had given him the order to set up the tent in the Hindu Maha Sabha building on 3.6.2000, for a function to be held the next day. He stated that he had completed the installment of the tent, on 3.6.2000, at about 6.00 p.m., through his labour force and that the 'darries' and chairs were to be sent the next day, i.e. 4.6.2000, in the morning. He further stated that the next day his workers went with the 'darries' but were turned back as they were told that a member had died.

DW-1 further stated that there was no Naveen Tent House in Ambala Cantt.

On cross examination by the public prosecutor, this witness stated that he had sent the 'articles' at about 4/4.15 p.m. and that his workers had gone to deliver the articles and to set up the tents though he himself had not gone. He denied remembering as to how many 'shamianas' were installed but stated that there were probably 6 in number, for which he

sent two persons, for installing them. He further stated that his workers had returned at 6.30 p.m. after completing the work and that “The function was held on 4.6.2000 at 10 A.M.”

He did not remember as to how many chairs were to be sent and that there was no settlement qua the number of 'darries'. He further stated that he had sent 50 chairs in two rickshaws which were returned and that he had sent his workers at 7.00 A.M. on 4.6.2000.

DW-1 further stated that he was told about the death of a member by the 'rickshaw wala' who had taken the chairs along with his workers.

This witness further stated that though the market opened at 9.00 A.M., he did not open his tent house according to the market schedule as his business was of a different type. He stated to be correct the suggestion hat his tent remain installed on the premises during night of 3.6.2000.

As regards charges, he stated that they are taken from the person who places the order and since he had not actually received any payment, therefore, he had not brought any receipt for the same, though he had received Rs.500/- by way of an advance for the entire payment, at the time of receipt of the order.

DW-1 further stated that there are about 40/42 tent houses in Ambala Cantt, though he did not have the list of the same and thereafter denied knowledge of whether there are 100/125 tent houses. He further denied the suggestion that he did not install the tent in the Hindu Maha Sabha premises on 3.6.2000. Thereafter, he was cross-examined on his relations with the accused, to which this witness replied that he knew him

since the birth of the accused, as he knew the family, though he was not on visiting terms with them.

He next stated that he had been working in front of the shop of the accused.

Lastly, this witness denied the suggestion that he was deposing in favour of the accused in order to help them.

31. The next defence witness (DW-2) was Babu Ram Panwar, aged 63 years, resident of Baldev Nagar, Ambala City, who testified that he was an old member of the Hindu Maha Sabha, Ambala Cantt and was elected as its General Secretary in the year 1996. He further stated that the deceased Panna Lal was the President of the Hindu Maha Sabha, Ambala Cantt and used to reside in the building of the Sabha.

This witness also admitted that a function was to be held on 4.6.2000 at the Sabha premises, for which he was a Convener. He also produced the invitation card (Ex.DB) and stated that he arranged for installation of tents from Azad Tent House from Ambala Cantt.

This witness stated that Naveen Chander and Vivek Singla were not members of the Hindu Maha Sabha, nor had they any concern with it. He further stated that they were not invited for the function, nor were they called to make arrangement for the function to be held on 4.6.2000. As per this witness, they were not even present in the premises when the tents were installed on 3.6.2000.

DW-2 further testified that the accused and his family members were tenants of the Hindu Maha Sabha, running a business in the name of M/s Tin Wala, doing the business of 'bardana' (jute bags) and tin.

He stated that Naveen Chander (PW-10) was the nephew of

the deceased and Ram Parshad (PW-6) was from Bihar and used to look after the deceased.

He further testified that the appellant-accused had been parking his car in the premises of the Hindu Maha Sabha, being a tenant, much prior to 3.6.2000. He further stated that the accused came to the premises at about 10 pm to park his car, upon which the deceased told him no to do so as the function was to be held the next day, after which the accused went away in the car. This witness further testified that no quarrel of any sort took place between the accused and Panna Lal and that after the departure of the accused, Panna Lal suffered a heart-stroke, as he was a chronic heart patient. As per this witness, he told the attendant of the deceased (who at this point he referred to as Ram Parkash and not Ram Parshad), to inform the relatives of Panna Lal and accordingly he (Ram Parkash) sent his son to do so.

In the next part of his testimony, DW-2 stated that “The accused persons” had taken 4 rooms on rent on the premises of the Hindu Maha Sabha and that he himself (DW-2) had taken one room from the accused for the purpose of the function.

However, he stated that the function actually did not take place on account of the death of Panna Lal and instead a condolence meeting was held in the premises on 4.6.2000. He further testified that he was elected as President of the Hindu Maha Sabha in the said meeting and that some members of the Sabha, who had come from Delhi and also from Ambala itself, suggested that the other three rooms which were on rent with the accused, be taken forcibly from him, as one room had already been taken for holding the function. The witness stated that he, however, had replied that

legal process should be adopted to get the rooms vacated, even though the aforesaid persons had told him since the accused had been involved in a criminal case, the possession of the rooms could easily be taken.

DW-2 further testified that of all the rooms which were on rent with the accused, one was given to Naveen Chander (PW-10) and a promise had been made to the mother of Vivek Singla (PW-12), that 'some portion' would be given to her for running the school.

He further testified that the school had been functioning since April 2000, in the name of Hindu Maha Sabha Public School. However, on 12.6.2000, he had got the premises vacated from the mother of Vivek Singla and Hukam Chand Goel, who were running the school.

This witness also testified that the (electricity) meter installed in the room that had been given to PW-10, was in the name of Manav Kumar, brother of the accused, who had been paying the electricity charges. He further stated that the same room had been taken from the accused for the purpose of the function.

Lastly, in his examination-in-chief, DW-2 stated that he had narrated all the above said facts to the police.

32. In cross-examination by the public prosecutor, this witness stated that a record was maintained with regard to elections of members of the Hindu Maha Sabha, and that he had brought the proceeding register of the Sabha, on the first page of which it was stated that "This register contains 72 pages leaves at the time of taking charge'.

He admitted that beneath the said certification his own signatures were appended, in Hindi, below which the date given was 5.6.2000, i.e. the date on which he had taken charge as President, on being elected as such on 4.6.2000.

This witness next stated that it was not necessary that the proceeding book should remain in the possession of the Secretary and not the President. He further admitted that the register had 'started from 4.1.96' and that the register was handed over to him by Naveen Chander (PW-10), from the record of deceased Panna Lal.

He also stated that other files have been handed over to him but he could not say how many there were. The record handed over was said to pertain to the correspondence of the Hindu Maha Sabha. He also admitted that he had received the record pertaining to the rented property of the Sabha, including rent notes, rent receipts etc., which he had not brought to Court.

33. In the next part of the cross-examination, this witness stated that they had started the preparation for the function somewhere in the month of April 2000 and that he had himself remained on the premises on 1.6.2000, 2.6.2000 and 3.6.2000 and had otherwise been visiting the premises regularly.

On 3.6.2000, he stated, he reached the premises of the Sabha at 8/9 a.m. and that the work of installing the tents had started in the morning. The compound was to be covered with the tents and the workers of the 'tent wala' had finished their work at about 5/6 P.M. He further stated that 2/3 persons of the tent house were working there and he had made advance payment to the 'tent wala' as labour charges, though he did not remember

the amount paid. He further stated that he had made an entry in his register for the said purpose though he had not brought the said register, as it was not with him but with the “sabha itself” as he was no longer the President of the Sabha.

He further stated that the proceedings register that he had brought along with him had not been handed over by him to his successor.

DW-2 further stated in cross-examination that no resolution was passed regarding installing of the tents and payments to be made for the same, etc. He volunteered to say that since he was the Convener of the function, there was no necessity to pass a resolution in that regard.

He further stated that no quotation was obtained before placing the order on Azad Tent House and further volunteered to say that he had himself contacted several tent houses and accordingly had placed the order with the said tent house, because they had agreed to provide the tents on labour charges only. However, he did not remember the name of the other tent houses that he contacted. He also denied knowledge about the 'partners' of M/s Tin Wala and further stated that he was working as a member of the Hindu Maha Sabha since 1987.

DW-2, however, admitted that M/s Tin Wala were on rent in the premises since a long time, though he did not know the exact period. He further stated that the said firm was still continuing as a tenant but litigation was pending.

34. On further cross-examination with regard to the occurrence itself, this witness stated that when the accused had come in the car to park it, he himself was sitting in his office. He further replied that there were about 10/12 rooms in the premises of the Hindu Maha Sabha, though only

one room had been kept for the office of the Sabha. He further stated that he did not recollect as to how many electricity meters were installed in the building and in whose names they were and as to who paid the bills, though he stated that there may be many electric meters.

Thereafter, DW-2 stated that the accused was not known to him prior to the date of occurrence and that he came to know about him only on the day of occurrence.

He denied not being present at the scene when the occurrence took place as he was sitting in his office. He also denied knowledge of the numbers of criminal cases lodged against himself. However, he admitted that a police case had been registered against him and further volunteered to state that it was registered as he was exposing the mis-deeds of the police and the administration. He also admitted that “the appeal is pending against him in the Hon'ble High Court”. He further stated that the counsel for the complainant in the present case was also his own counsel in the “rape case and other cases”. This witness denied the suggestion that he was removed from the office of Presidentship upon it being revealed to the Sabha that criminal cases were pending against him. He also denied that M/s Tin Wala was not a tenant on the premises of the Sabha. He then stated that it was M/s Tin Makers who was the tenant of the Sabha.

DW-2 denied knowledge of whether Naveen Chander (PW-10) was a partner of M/s Tin Makers and further denied knowing whether Om Parkash was also a partner in the said firm.

He admitted that the deceased Panna Lal had filed an ejectment petition against Om Parkash, Prop. M/s Tin Wala, on behalf of the Hindu Maha Sabha, though he denied knowledge whether any counsel had

appeared on behalf of Om Parkash. He further denied the suggestion that Om Parkash had already delivered the possession of the rooms in his occupation, to Panna Lal, during the pendency of the ejectment proceedings.

Lastly, DW-2 denied knowledge as to whether Panna Lals' counsel had made a statement with regard to the possession having been taken, in the presence of the counsel for "respondent Om Parkash."

35. The next defence witness (DW-3) was constable Mohinder Singh, of Police Station Ambala Cantt. This witness stated that he had brought the summoned record, i.e. the FIR register. He further stated that FIR No.616 dated 2.10.2001, had been registered in the police station "against Naveen Chander S/o Panna Lal R/o Hindu Maha Sabha, Bhawan Ambala Cantt" for the alleged commission of an offence punishable under Section 420 IPC. He stated that the case was registered at the instance of one Hari Mohan Mittal, Asstt. Executive Engineer, Sub Division No.2, UHBVN, Ambala Cantt. He identified the copy of the FIR to be Ex.DC, which he stated was a photostat copy of the original, which he further stated was the correct copy prepared from the original.

In cross-examination by the public prosecutor, DW-3 stated that he had no personal knowledge about the facts of the case about the FIR in question and that it was not written in his hand, nor was the complaint received by him or in his presence.

36. DW-4 was Vinod Kumar, Record Keeper, in the judicial record room, at Ambala City.

This witness stated that he had brought the summoned file of case No.288/R, decided on 7.8.2000, titled as Hindu Maha Sabha Vs. Om

Parkash, Prop. M/s Teen Wala. He further stated that certified copy of the statement of Sh. M.C. Bagga, Advocate was Ex.DD and a certified copy of the learned Rent Controller, was identified by the witness to be Ex.DE. He further stated that Rs.4259.60 pc. were tendered as rent by Om Parkash on 17.2.2000, accepted by Panna Lal for the period from 1.3.1993 to 31.7.1997.

He next stated that Rs.6531/- were tendered as rent on 2.1.98, which included costs and interest but was accepted under protest.

He next stated that in the summoned file there was a 'Vakalatnama' in favour of Sh. Ajay Trehan, Advocate, Ambala. This witness further stated that he had brought the summoned case file of case No.104/R/ 4.8.99 decided on 10.08.2000, also titled as Hindu Maha Sabha Vs. Om Parkash, Prop. M/s Teena Wala, Ambala Cantt.

The next sentence reads as under:-

“Sh. M.C. Bagga, Adv. counsel for the petitioner is on file certified copy is Ex.DF and certified copy of the order dated 10.8.2000 is Ex.DG.”

DW-4 further stated that there was a memo of appearance of Sh. Ajay Trehan, on behalf of Om Parkash respondent, dated 5.11.99, after which there was no memo of appearance qua any 'Vakalatnama' on behalf of Om Parkash.

On cross-examination, this witness stated that the Hindu Maha Sabha was the petitioner (in the aforesaid case), through its President. He admitted to be correct that on the statement of Sh. Ajay Trehan, Advocate, in case No.104/R/99, a sum of Rs.3910/-, was assessed and tendered on behalf of the respondent Om Parkash, which amount included an interest and costs from 1.8.97 to 31.8.99, in which case the Hindu Maha Sabha was

the petitioner.

37. DW-5 was Pawan Kumar, Additional Ahlmad in the Court of JMIC, Ambala Cantt.

This witness stated that he had brought the case file of criminal case No.429/1 19.12.2000, which was pending in the Court of the learned JMIC with the next date fixed as 11.3.2003, titled as Manav Kumar Vs. Naveen and others. (The date of deposition of this witness is seen to be 5.3.2003).

DW5 next stated that the accused in the aforesaid case had been summoned vide order dated 17.1.2001 and that Naveen Chander, Hukam Chand Goel, Dinesh Chander Tyagi and Sandeep Kulkarni, Moninder Bharat, Vishunath Khanna, had been summoned.

He identified the certified copy of the summoning order as Ex.DH and further, the certified copy of the report of the police, dated 15.12.2000, to be mark 'A'.

In cross examination, DW-5 stated that there was nothing on record regarding the pendency of any proceedings seeking quashing of the summoning order, by this Court.

38. The last witness for the defence was Dr. Vinod Gupta, Medical Officer, Civil Hospital, Mullana (DW-6).

He stated that he had brought the record already on the file, i.e. the post mortem report of the deceased, dated 4.6.2000. This witness further stated that he along with Dr. Shashi Tripathi (PW-7) were the members of the team that had conducted the post mortem examination on the body of deceased Panna Lal. He further stated that after going through the post mortem report, it was seen that there was no external injury on the scalp and

there was also no bone injury on the skull. (Note: Though the pencil marked and the pen marked words 'no' and 'No' respectively, are inserted in the typed version of the recorded evidence, however, it is not seen to be a mischievous interpolation, because the post mortem report also does not show any fracture of the skull).

The following is recorded in column 5 of the post mortem report (Ex.PE):-

“Scalp- Normal No Fracture skull seen. On opening the skull 200 ml of altered blood present in cranial cavity in the epidural space. On opening dura mater tense turbid fluid came out with oedematous gyrii congestion of the brain present in the occipital region and clotted blood present in the between the gyrii (sulcei) in the occipital region. Injuries described are antemortem.”

Thus there is no injury recorded on the scalp or skull and the description, in the report, of this region of the body, is with regard to the contents seen after opening the skull.

Coming back to the deposition of DW6 (Dr.Vinod Gupta), this witness thereafter stated that any amount of blood in the cranial cavity can be there due to a rupture of a vessel of the brain, which could be due to a disease of major vessels or due to a rupture, or a fall or any injury. He further stated that high blood pressure, coincided with some disease of the artery, can lead to presence of blood in the cranial cavity (haemorrhage).

This doctor reiterated this opinion, also in relation to the pathology report on the heart (Ex.PH), that the blood in the cranial cavity could possibly be present due to a major vessel disease like atherosclerosis and increase in blood pressure, due to spontaneous rupture (natural rupture)

and on the other hand, it also could not be ruled out that it may have been be due to a fall, or without a fall.

In his cross-examination, he stated that at the time of conducting the post mortem examination, on 4.6.2000, the opinion on the cause of death was given to be due to internal brain injury, but the final opinion was reserved till receipt of the report of the viscera (heart) from the PGIMS, Rohtak.

Thus, on receipt of the report on 20.7.2000, this witness along with his colleague on the medical board, opined that the death could have been due to chronic ischaemic changes in the heart and aorta as was mentioned in the hand written opinion, Ex.PF, upon which this witness identified his signatures as also those of Dr. Tripathi (PW-7).

The last part of the testimony is again a reproduction of the fact that it could not be ruled out that the death was only due to heart failure but that it could also not be ruled out that if there was no external injury, there could still be an internal injury, though that possibility, according to this witness, is very rare.

39. With the oral testimonies of the witnesses reproduced, for the prosecution and the defence, it needs to be noticed that the following documents were exhibited by either side in evidence:-

For the prosecution		
1	Ex. PA	Memo on receipt of heart
2	Ex. PB	Affidavit of HC Jagdish Singh PW4
3	Ex.PC	Scaled Site Plan
4	Ex.PD	Statement of Ram Parkash u/S 161 Cr.P.C.
5	Ex.PE	Post Mortem Report
6	Ex.PF	Opinion of the Medical Board on cause of death.

For the prosecution		
7	Ex.PG	Ruka
8	Ex.PG/1	FIR
9	Ex.PH	Report of Dr. (Pathologist)
10	Ex.PJ	Death Report
11	Ex.PK	Scaled Site Plan
12	Ex.PL	Application for post mortem
For the defence		
1	Ex.DA	Statement of Vivek Singla u/S 161 Cr.P.C.
2	Ex.DB	Invitation Card to function
3	Ex.DC	FIR u/s 420 IPC against PW10
4	Ex.DD	Statement of Advocate before the Rent Controller
5	Ex.DE	Order dated 7.8.2000
6	Ex.DF	Statement of Advocate before the Rent Controller
7	Ex.DG	Order dated 10.8.2000
8	Ex.DH	Criminal complaint by appellant and his brother against PW10 and others, dated 19.12.2000.
9	Ex.DI	Plaint in civil suit by M/s Tinwala, the appellant, and his brother, against the Hindu Maha Sabha seeking relief of possession and permanent injunction (dated 30.10.2000).

40. On the basis of the evidence led, the learned trial Court (Additional Sessions Judge), found the appellant guilty of an offence punishable under Section 304 IPC (2nd part), and consequently sentenced him to four years rigorous imprisonment and to a fine of Rs.1000/-, in default of which he was ordered to undergo further imprisonment for one month.

Hence, the appeal by the convict against his conviction and sentence and the revision petition by the complainant, Naveen Chander, seeking enhancement of the sentence imposed upon the appellant, to 10 years rigorous imprisonment, alongwith a fine.

41. Addressing arguments before this Court, Mr. T.S. Sangha, learned Senior Counsel appearing for the appellant, other than taking this Court through the basic essentials of the case, first pointed to the cross-examination of PW-10, i.e. the complainant Naveen Chander, to the part where this witness stated that he was setting up the tents etc. himself in the Bhawan on 03.06.2000 and that Vivek Singla (PW-12) was assisting him in fixing the curtains etc. and that the tents and curtains were brought through PW-6 Ram Parshad from Navin Tent House, Ambala Cantt, though this witness (PW10) stated that he did not know the name of the owner of the said tent house, nor its address.

Mr. Sangha, then pointed to the testimony of DW-1 Arun Kumar, who had stated in his examination-in-chief that it was he who had supplied the tents and labour force to set up the tents, on an order made by DW-2, Babu Ram Panwar. Mr. Sangha pointed to his testimony to further state that the installation of the tents was actually complete by 6:00 p.m. on 03.06.2000 and that the '*darries*' and chairs were to be sent on the morning of the function itself, i.e. on 04.06.2000, which were duly sent though workers, who were then turned back on account of the fact that the function had been cancelled due to the death of a member of the '*Sabha*'.

This witness, whose address is given as Azad Tent House, resident of Ambala Cantt, stated in his testimony that there is no Navin Tent House in Ambala Cantt., though in his cross-examination, he had first stated that there were 40/42 tent houses in Ambala Cantt but had thereafter, denied knowledge of whether there are actually a 100/125 tent houses in the town.

Mr. Sangha submitted that as a matter of fact, neither PW-10 Naveen Chander, nor PW-12 Vivek Singla, was actually present at the spot

at the time when Panna Lal died and the whole story was cooked up only to take advantage of the fact that Panna Lal had actually told the appellant to park his car outside, as was told to these witnesses by people present there, and thereafter, the deceased, who was admittedly a heart patient, had actually died of a heart attack.

Learned Senior Counsel submitted that because of the bad blood between the appellant and his family, with PW-10 and Panna Lal, originating both, from the issue of possession of the rooms of the '*Maha Sabha*', as also on account of alleged unfair dealings by the appellants' fathers' firm with PW-10 Naveen Chander.

Panna Lals' heart condition was known to the complainant, PW-10, as was admitted by him in his cross-examination where he had stated that his uncle was suffering from the ailment for about 10-15 years.

42. Mr. Sangha, further submitted that his above contention with regard to PWs 10 and 12 not being present at the spot at the time of Panna Lals' death, is corroborated from the testimony of Ram Parshad, PW-6, who, even as admitted by PW-10, was a constant attendant on the deceased, and used to even take him in the '*rickshaw*' wherever Panna Lal had to go, outside the Bhawan.

This witness had first stated that in his examination-in-chief, that the appellant had gone away from the spot after the objection raised by deceased to his parking the car. He was thus declared to be hostile, and thereafter, in cross-examination by the learned P.P., had stated that he had given a water and tablet to Panna Lal, before sending his son to call PWs 10 and 12 from their houses and upon their arrival, Panna Lal was taken to the hospital.

42. Mr. Sangha next submitted that in any case PWs 10 and 12 are not natural eye witnesses, as admittedly none of them was a member of the Hindu Maha Sabha and both of them eventually stated that they had been asked by the deceased to come to the Bhawan to help set up the tents.

However, on the other hand, DW-2 was an old member of the Maha Sabha and the Convener of the function, as is proved even by the invitation card, Ex. DB, and thus, it was natural for him to have arranged for the tents etc. for the function, which he stated he had arranged from Azad Tent House, as they were the only ones who agreed to do the work simply on labour charges.

Thus, Mr. Sangha submitted, that nobody from Navin Tent House examined by the prosecution, to firstly even prove that such a tent house existed, and thereafter, to corroborate the testimony of PWs 10 and 12 that work was still going on for setting up the tents even at 7:00 p.m., when PW 10 stated he arrived. On the other hand, DW-1 specifically stated that he was the proprietor of Azad Tent House and had got the tents set up, which testimony is corroborated by DW-2.

The presence of PW-12, Vivek Singla, per chance according to PW-10, and as per PW12s' own version, upon him being called by the deceased, was therefore, as per learned Senior Counsel, completely unnatural, as the only presence, in the normal formal course of things, would be that of PW-6, the attendant of the deceased and that of DW-2, being the convener of the function.

43. Towards the motive for the case to be falsely concocted, Mr. Sangha further submitted that the acrimony between the complainant, i.e. PW-10 with the family of the appellant, is only too obvious even from the

testimony of PW-10, who admitted that though he was initially taken as a partner in M/s Tin Wala, by the father and uncle of the appellant, he was eventually treated like an employee on a payment of Rs. 2,500/- per month. Still further, the complainant also admitted that the appellant and his brother, Manav Kumar, had filed a complaint against him for having taken away a motor cycle belonging to the firm.

He further submitted that obviously there was also litigation ongoing, pertaining to the occupation of the premises of the Maha Sabha, with the uncle of the complainant, i.e. the deceased Panna Lal, occupying one of the rooms earlier taken on rent (or occupied by) M/s Tin Wala, and attempts being made by the complainant and his uncle, to get the premises vacated from M/s Tin Wala/Tin Maker. In fact, the deceased had also filed an ejectment petition on behalf of the Hindu Maha Sabha, of which he was the President, against M/s Tin Maker.

Hence, Mr. Sangha submitted, that PW-10 was definitely an interested witness and, with the mother of PW-12 also running a school from the premises of the Bhawan, which she had to subsequently vacate on 12.06.2000, even as admitted by DW-2 and not specifically denied by PW-12, who simply denied complete knowledge of any such school running, PW-12 was also obviously an interested witness. Even his denial of any knowledge of the school was not a possibility, as per learned counsel, firstly on account of him being his mother son and secondly, because he admittedly came to the premises at least off and on, though he initially stated that he was not a regular visitor. In this regard, learned counsel pointed to PW12s' testimony stating that he had seen PW10 (Naveen) "sitting usually in the rooms," though he tried to cover it up by saying that

he had seen him one year prior to Panna Lals' death.

44. Mr. Sangha next pointed to the medical evidence of all three doctors examined, i.e. PWs 7 and 9 and DW-6, to submit that from the testimony of the doctors, as also from the Pathology report, it was clear that Panna Lal could have died simply because of his heart disease and not because of any push given to him resulting in any injury.

Learned Senior Counsel pointed to the fact that there was no external injury on the head or any part of the body of Panna Lal and that PW-7, Dr. Shashi Tripathi, had specifically stated in cross-examination that even in the case of a natural haemorrhage, the blood would accumulate in the affected area, as was in the present case, if the person suffering from the (heart) attack falls down.

The same opinion was also given by DW-6, Dr. Vinod Gupta, who was the other member of the team that conducted the post mortem examination, along with Dr. Shashi Tripathi. This witness too had stated that death could not be ruled out due to a brain haemorrhage and that collection of the blood in the cranial cavity could also be due to a major vessel disease, like atherosclerosis. Mr. Sangha also pointed to Ex. PH, i.e. the pathology report, to show that the heart of the deceased actually showed atherosclerotic changes.

Therefore, learned Senior Counsel submitted that even though the medical evidence was not conclusive one way or the other, but with the deceased admittedly being a chronic heart patient, and there being no external injury on the body, then, in the light of the testimonies of the doctors, the appellant in any case deserves the benefit of doubt.

45. Mr. Sangha next submitted that even if the prosecution case

was to be accepted in toto, no offence under Section 304-II of the IPC is made out, as simply by pushing the deceased, if the appellant did so, he could not know that it could result in his death. Thus, as per learned Senior Counsel, at most an offence under Section 323 IPC could be made out, even on acceptance of the prosecution story.

Further, Senior Counsel submitted that normally a 35 year old businessman, i.e. the appellant, would not slap a 70 year old man, though in the circumstances of the prosecution story, a push possibly may have been given, which in any case would not amount to an offence under Section 304 IPC.

46. Lastly, he submitted that the learned trial Court wholly erred in imposing a sentence of imprisonment for a period of four years on the appellant, for even upon a conviction under Section 304, keeping the entire circumstances in perspective, the occurrence having taken place, if at all, at the spur of the moment and the death of the deceased having occurred simply because of a push even as per the prosecution version, even for an offence under Section 304, the very minimum sentence should have been awarded, if at all, because the provision (Section 304 IPC) also provides for punishment by simply a fine, depending upon the circumstances of each case.

On the quantum of punishment, learned Senior Counsel further submitted that any punishment of an imprisonment also, if it is to be imposed by this Court, can also be off set by putting the appellant on probation of good conduct, he being a first time offender.

To substantiate his arguments, Mr. Sangha cited the following judgments:-

1. **Jani Gulab Shaikh** vs. **State of Maharashtra** (1970) CAR 40 (SC);
2. **Satnam Singh** vs. **State of Punjab** 2004 (1) RCR (Crl.) 974;
3. **Ram Chand** vs. **State of Punjab** (2007) (3) RCR (Crl.) 799.

47. Mr. R.P.S. Ahluwalia, learned counsel appearing for the revisionist-petitioner (complainant) in CRR No.1436 of 2003, first submitted with regard to the presence of PWs 10 and 12 at the place of occurrence on 03.06.2000.

Learned counsel submitted that, actually it was most natural for PW10 to have been present to help his old uncle in the arrangements for the function the next day and as such, there should be no surprise with regard to that and therefore, the contention of learned senior counsel for the appellant to the contrary, is wholly without any basis.

As regards the presence of Vivek Singla, PW12, Mr. Ahluwalia submitted that he too had come, as per his own admission, upon being asked by the late Panna Lal to help him and as such, there was again no element of surprise that an elderly man of 70 years would call any young man to help him in making the arrangements.

He submitted that simply because the attendant on the late Panna Lal, i.e. PW6 Ram Parshad, had been won over by the accused and therefore deposed that both these witnesses (PWs10 and 12) were not present there, would not take the truth away of their being present.

48. Learned counsel next submitted that as regards the tents having been arranged from Naveen Tent House, though without doubt no person from the tent house has been examined in that regard, however, the

prosecution witnesses were not cross-examined on that part and therefore, the contention that the whole story was cooked up, is again without any basis. He further submitted that though otherwise there would be a possibility that Babu Ram Panwar (DW2) may have been present, being the convener of the function, however, admittedly the deceased was the President of the Maha Sabha in Ambala and as such, being the head of the organisation, eventually the success or failure of the function would fall upon him and hence, he would rely upon those close to help him in making the arrangements.

Mr. Ahluwalia further submitted that obviously Babu Ram Panwar and the deceased were on opposite sides of the fence, even within the organisation, inasmuch as, whereas the deceased had allowed the school run by PW12s' mother and Hukam Chand Goel to run from the premises and Babu Ram had got them to vacate the premises immediately after Panna Lals' death, as proved from the deposition of Babu Ram, who also admitted to having criminal cases registered against him. That Babu Ram was opposed to Naveen Chander can also be seen from that part of each of their depositions, to the effect that whereas Naveen Chander stated that Manav Kumar, brother of the appellant, was not paying the electricity bill of the room in which the deceased resided and it was actually the Maha Sabha that was doing so, Babu Ram deposed that it was actually Manav Kumar who was paying the electricity charges. Hence, Mr. Ahluwalia submitted that the testimony of Babu Ram cannot be relied upon and in fact, it was the defence which had completely concocted a new story of the tents being actually set up by Arun Kumar (DW1) of Azad Tent House. Thus, the non-examination of anybody from the Naveen Tent House, as per the learned counsel, was

equally 'off-set' by non-production of any receipt by DW1 or DW2 in respect of the payment of the tents put up allegedly by Azad Tent House run by DW1.

49. As regards the medical evidence, Mr. Ahluwalia submitted that no doubt, the doctor had opined that the death could be the result of a heart attack or because of a fall and that collection of blood in the cranial could take place due to either reason, however, he further submitted that with PWs10 and 12 having positively deposed with regard to the appellant having pushed the deceased, thereby leading to his fall and consequent death, the alternate possibility of a heart attack having occurred suddenly on the spot, did not arise.

He further submitted that even if PW10 may had some animosity with the family of the appellant, that would be no reason for him to involve the appellant in such a grave crime, as prior to that there was no serious criminal complaint at least registered by the appellant or his family against PW10, except for the small issue of a motorcycle which in any case was admitted by PW10 to the extent that he had kept the motorcycle not knowing that it actually belonged to the firm. He submitted that simply on account of that incident of many years earlier, he would not involve the appellant in a serious case which like the present one. In fact, the criminal proceedings lodged against PW10 by the appellant, under Section 420 IPC, only six months after the death of Panna Lal, was a counter blast to the FIR registered at the behest of PW10 against the appellant.

Mr. Ahluwalia further submitted that even as per the testimony of PW7, Dr. Shashi Tripathi, the final opinion was that the cause of death was due to internal brain injury which led to heart arrest, though the history

of heart disease that Panna Lal had may have contributed to his death. Mr. Ahluwalia submitted that therefore, the old heart disease of the deceased may have only been a contributing factor, but not the cause, of the death of Panna Lal.

50. Next, learned counsel for the complainant submitted that as regards the crime not falling within the ambit of Section 304 of the IPC, factually it was admitted that the appellant knew the deceased, since he used to come to the Bhawan regularly to park the car. The office of M/s Tin Makers, of which the appellant was a partner, being within the Bhawan premises, and Panna Lal admittedly residing there, therefore, knowing Panna Lal to be an old man and visibly a weak man, though the appellant may not have had the intention of killing him, he most definitely had the knowledge that a physical attack on such an old and weak man can result in his death. He, therefore, drew attention to the definition of culpable homicide as given in Section 301 of the Penal Code, as also to Section 304 thereof. Both the provisions are reproduced hereinunder:-

“301. Culpable homicide by causing death of person other than person whose death was intended.- If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.”

“304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if that act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

Learned counsel for the complainant-revision petitioner, therefore, submitted that the trial Court had not erred in convicting the appellant for an offence punishable under Section 304 IPC, though as per learned counsel, that Court had erred in awarding a punishment of only 4 years rigorous imprisonment, considering that the appellant had firstly slapped an old man twice or thrice and thereafter pushed him so hard, knowing that in such circumstances it could cause the death of the old person.

Learned counsel, in fact, prayed that the sentence of the appellant be enhanced to the maximum possible.

51. On the issue that by causing an injury on the head of the deceased, it would be deemed to be within the knowledge of the accused that it could lead to his death, and also that there was no ground to reduce the sentence simply because the occurrence was 15 years old, Mr. Ahluwalia cited a judgment of the hon'ble Supreme Court in **Tarsem Singh v. State of Punjab**, 2002(1) RCR (Criminal) 670.

On the applicability of Section 304, Part-II, he also cited the

judgment in State of Karnataka v. Mohamed Nazeer @ Babu AIR 2003 (SC) 999.

On the issue that just because a witness is related to the deceased and is therefore an interested witness, that is no ground to disbelieve him, he cited the judgment in Satbir Singh and others v. State of Uttar Pradesh, (2009) 13 SCC 790.

52. Mr. Pawan Garg, learned Assistant Advocate General, Haryana, other than reiterating the arguments made by Mr. Ahluwalia, pointed to the fact that DW2, Babu Ram Panwar, had admitted that the appellant/accused had come at 10:00 p.m. to park his car in the premises, as was also admitted by PW6 Ram Parshad (though without giving the time of the occurrence). He further submitted that admittedly the police was called soon thereafter, and if the occurrence had only been a heart attack, it would be most unnatural for PWs10 and 12 to simply cook up such a long story in such a short time, take the deceased to the hospital, come back from there and then to the police station to lodge the complaint, within a span of one hour and 20 minutes. He pointed to the time of recording of the FIR, i.e. 11:25 PM. He also pointed to the time recorded by PW13, ASI Ranbir Singh on the police proceedings behind the recorded complaint of PW10, to show that the message/'ruqa', after recording of the complaint, had already been sent at 11:20 p.m.

Thus, learned State counsel submitted, that it was very obvious that the complaint was recorded as per the sequence of actual events, and the defence witnesses, as also PW6 Ram Parshad, all deposed very obviously falsely. He, therefore, submitted that the conviction of the appellant and even sentence imposed upon him of 4 years of rigorous

imprisonment by the trial Court, did not call for interference and that the appeal should be dismissed.

53. Having heard learned counsel for the parties and having perused the evidence in detail, I am of the opinion that undoubtedly, the version of the prosecution is more believable, inasmuch as, the complaint was lodged and FIR registered within less than one and a half hours of the incident; i.e. the incident is stated to have taken place at about 10:00 p.m. and the complaint was made at 11:20 p.m., with the FIR registered at 11:25 p.m. and between this time, the deceased was admittedly taken to a nearby doctor in a rickshaw, who, though not examined, declared him to be dead, upon which the body was brought back and thereafter a complaint made and the FIR registered at the instance of PW10 Naveen Chander. Thus, a long story to have been concocted by PW10 Naveen Chander and PW12, Vivek Singla, in that time, is unlikely, as projected by the defence.

According to the defence version, it was because of rancour in the mind of PW10 on account of a long standing dispute between him and the family of the appellant, starting from the days of his partnership with the father and uncle of the appellant in the late 1970s, that he involved the appellant in a false case, simply taking advantage of the fact that his uncle, deceased Panna Lal, had fallen down on account of a heart attack and had died suddenly, with an internal injury received in the head.

Similarly, it is the allegation of the defence that since Panna Lal was siding with the mother of PW12 Vivek Singla in running a private school, allegedly with the Principal of the B.D. High School, from the premises of the Hindu Maha Sabha Bhawan, and the deceased himself was also residing in a room otherwise rented out to the family of the appellant,

the story was concocted by both these persons to involve the appellant falsely in the case.

54. As already said, the defence version is not really believable, given the short time span from 10:00 p.m. to 11:20 p.m., taking it that about 20 minutes to half an hour would have been taken to put the body in the rickshaw, take it to the doctor, have the pulse and eye pupils etc. examined by the doctor and thereafter to get the body back and lodge the complaint.

Also, it is difficult to believe that two people otherwise not given to crime (PWs10 and 12), would cook up such a story and involve another person in a case of culpable homicide.

Yet, weighed against that very large probability against the appellant, versus a false story having been cooked up, the evidence led is to be seen.

55. The only admitted and proven witness to the incident is PW6 Ram Parshad/Ram Parkash, who both sides admit was on the spot with the deceased, as of course, does the said witness himself. His presence would also be natural, he being an attendant upon the deceased.

Of course, the prosecution version is that even PWs10 and 12, i.e. Naveen Chander and Vivek Singla, were also present on the spot when the occurrence occurred, whereas the defence version is that they were called later by Ram Parkash.

On the other hand, DW2, Babu Ram Panwar alleged that in fact, he was present at the spot when the appellant came to park his car at 10:00 p.m. and upon being told by the deceased not to park the car, he simply took his car away. This, in fact, is the stand of the defence, which PW6 Ram Parkash corroborated in his testimony. Very possibly, this

witness turned hostile, upon having been otherwise won over by the defence.

56. However, the question is as to whether it can be proved that PWs10 and 12 were actually present at the spot, or came there later, upon being called by Ram Parkashs' son after having been told that Panna Lal was ill/had been pushed down by the appellant/had died.

Though I do not agree with the learned counsel for the appellant that simply because PWs10 and 12 were not members of the Hindu Maha Sabha, therefore, their presence is not possible; in fact, the stand taken by these witnesses is perfectly believable, to the effect that they had been summoned by the deceased to help him with the arrangements of the function. PW10 being his nephew obviously would have very readily answered to his uncles' summons or request, as could also have PW12 Vivek Singla, both, on account of the fact that he was a young man in his 30s and the deceased was 70 years old and as such, may have simply agreed to help him on request, especially as it is very obvious that the deceased was probably allowing his mother and her partner to run a school in the Sabha premises.

Yet, whether they were actually present or not, despite there being nothing unimaginable about the possibility of their presence, is an issue which needs to be considered.

57. Firstly, according to both these witnesses, the tents had not been set up even till 7:00 p.m., when PW10 is stated to have arrived and helped in setting up the tents, with PW12 helping him to set up the curtains etc. (as per the version of PW10).

According to PW12, he was present at 10:00 p.m. spreading

“darries”, with no mention of curtains. Of course, that can be taken to be a minor contradiction, but it is further seen that though both PWs10 and 12 stated that the tents had been arranged from Naveen Tent House, neither was anyone from tent house examined to depose as to what time the tents were fully set up, nor was any receipt etc. produced to show that the tents were actually taken on rent and set up by the said tent house, whose existence itself was never proved.

On the other hand, the defence examined DW1, Arun Kumar, who deposed that he was running Azad Tent House and actually he had supplied the tents, darries etc. for the function, on having been given the order for the same by DW2, B.R.Panwar. This version was corroborated by B.R.Panwar, with both these witnesses further stating that the installation of the tents had been completed about 6:00 p.m., with the chairs and “darries” to be sent early the next morning, i.e. on the date of the function itself (04.06.2000).

Thus, there are two wholly contradictory versions on as to who actually installed the tents and when they were fully installed.

Of course, even the defendants, despite having examined DW1, could not prove by any documentary evidence that the tents were actually got from Azad Tent House belonging to DW1 and not from Naveen Tent House as claimed by Pws10 and 12.

No receipt of any payment whatsoever, or any invoice etc. or documents placing the order for the tents was produced by the defence. Further, other than the oral testimony of DW1 that he had been paid Rs.500/-advanced by DW2, and DW2 having stated that he had paid 'some money' to DW1, there was no documentary evidence to prove that it

was actually DW1 who had actually got the tents set up.

58. Therefore, as to whether the tents were fully installed by 6:00 p.m. as claimed by the defence, or were still being installed up to 7:00 p.m. and beyond, when PWs10 and 12 allegedly arrived at the Bhawan to help the deceased, remains a question mark, with no investigation worth the name having been conducted by the police, to even try and obtain the source from where the rented tents were obtained.

Thus, with it not proved at all that the tents were actually obtained from Naveen Tent House as per the prosecution story (testimonies of Pws10 and 12), it also remains completely doubtful as to whether the tents were still in the process of being set up and PWs10 and 12 actually came to help the deceased to do the remaining work after 7:00 p.m.

To that extent, keeping the entire circumstances in view, it is most probable that PWs10 and 12 actually were summoned by PW6 Ram Parkash through his son, upon the occurrence actually having taken place, in the manner depicted by the prosecution. Thereafter, of course, either one or both of them (PWs10 and 12), took the body to the doctor in the rickshaw; though strangely, PW6 Ram Parkash does not say he went alongwith them. The doctor (Dr.C.K.Mittal) whom PW10 stated that he had taken his uncle to and who actually declared him dead, was never examined.

59. The contradiction in the testimony of the Investigating Officer (PW13) and PWs10 and 12, of course, need not be dwelled upon too much, inasmuch as, as per PWs10 and 12, the complaint was lodged by PW10 at the Police Station itself, whereas the Investigating Officer stated that it was lodged while he was on patrolling duty outside the police station. However, it is seen that the police very rarely actually admits to a complainant

coming to the police station and lodging a complaint, with the standard version being that the complainant approached a police party while he was on patrolling duty.

Be that as it may, it makes no significant difference because undoubtedly the complaint was lodged, either within or very near the police station premises, which in any case is stated to be near the place of occurrence.

The version of PWs10 and 12 was that PW13 initially came to the place of occurrence and thereafter returned in the morning, whereas the testimony of the Investigating Officer is that he stayed at the spot through the night till 5:00 a.m. Yet, that again makes no material difference to the main question, i.e. as to whether PWs10 and 12 were present at the spot at the time of occurrence or not, and actually witnessed the appellant slapping and pushing the deceased as claimed.

60. Though this Court, as already stated earlier, is not at all disinclined to believe that the prosecution version with regard to the manner of death of Panna Lal, however, the presence of PWs10 and 12 at the spot, at the time of actual occurrence, is highly doubtful, in view of the fact that it was never established as to whether the tents were actually set up by 6:00 p.m. or they continued to be set up even at 7:00 p.m. and beyond. Obviously, if they had already been set up by 6:00 p.m., as deposed by DWs1 and 2, then the entire prosecution version, given by PWs10 and 12, falls flat. If, on the other hand, it had been established that the tents were actually set up by Naveen Tent House and were still being set up even beyond 7:00 p.m., by examining anyone from the said tent house or producing any proof that they were actually set up by the said tent house,

then the presence of PWs10 and 12 may have been established.

That not being so, and PW6, Ram Parshad @ Ram Parkash testifying wholly against the prosecution version, the presence of PWs10 and 12 is not held to be established, at the actual time of occurrence.

In the opinion of this Court, Ram Parshad probably saw the occurrence and reported it to PWs10 and 12 as it occurred, which they reported to the police by adding that they were present when it happened. However, such opinion of the Court being only based on 'probable conjecture', does not establish the prosecution case beyond reasonable doubt.

61. Hence, with the established eye witness (PW6) obviously not having testified in terms of the prosecution version of the occurrence and the presence of the other alleged eye witnesses for the prosecution, i.e. PWs10 and 12, not having been proved, the appellant is given the benefit of doubt and is acquitted of the charge framed against him.

Consequently, the judgment of the learned trial Court, dated 22.04.2003 is set aside, as is the order of sentence dated 23.04.2003.

Criminal Appeal No.807-SB of 2003 is, thus, allowed.

Criminal Revision No.1436 of 2003

62 Since the appeal of the appellant has been allowed, granting him benefit of doubt, the revision petition, seeking enhancement of sentence, is dismissed, with no comment made on the maintainability of such a revision petition by a complainant/victim, simply seeking enhancement of the sentence. That question has been rendered academic.

June 03, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE