

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A.718/2000**

Judgment reserved on : 2nd December, 2016

Date of decision : 9th January, 2017

STATE (Govt. of Delhi) Petitioner
Through: Ms.Aashaa Tiwari, APP for State.

versus

ISHWAR CHAND HARIT & ORS. Respondents
Through: Ms.Inderjeet Sidhu, Amicus Curiae

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. This judgment shall dispose of an appeal filed by the State instituted on 29.9.2000 seeking to assail the impugned judgment dated 19.04.2000 of the learned ASJ, Shahdara the FIR No. 331/89, PS Bhajanpura whereby four of the accused Ishwar Chand, Ravinder, Davender arrayed as respondent Nos. 1, 2 and 3 respectively to the present appeal (of whom respondent No. 2 Ravinder S/o Kanchan Singh having expired, was deleted from the array of parties vide order dated 28.02.2002), were acquitted of the charges levelled against them of the alleged commission of offences punishable under Section 347/365/323/368 r/w Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") apart from the separate charge having also been framed against the Ishwar Chand/accused No.1/respondent No.1 herein and the accused Ravinder Kumar-respondent No. 2 (who has already been deleted from the array of parties) under Section 397 IPC, with which, the said accused persons had been charged on

03.11.1995. The State was granted leave to appeal vide order dated 22.11.2001 whereby Crl.M.C. 2967/2000 was allowed.

2. The proceedings against the accused Davinder S/o Rajpal arrayed as respondent No 3 have also abated as observed vide order dated 04.11.2016 in view of his demise on 16.05.2008 as reported by Inspector Kishan Kumar SHO PS Bhajanpura.

3. The trial Court record indicates that there were four persons facing trial before the trial Court i.e. Ishwar Chand, Ravinder, Davinder and Mahender. However, proceedings against the accused Mahender S/o Roop Singh abated on 11.01.1995 due to his demise as he expired on 11.12.1993. The present appeal thus now is only against the surviving respondent No. 1, Ishwar Chand.

4. In the instant case the Ishwar Chand/accused No. 1/respondent No.1 herein did not put in appearance on the date of hearing i.e. 04.11.2016 but the record indicates that he had been served and was represented on 12.12.2001 by counsel Mr.Rupesh Sharma when Ishwar Chand/accused No. 1/respondent No.1 herein and respondent No. 3 (since deceased) were both allowed to be released on furnishing personal bonds with surety to the satisfaction of the Registrar General of this Court with direction that the appeal be listed in due course. The said bond is indicated to have been submitted by Ishwar Chand/accused No. 1/respondent No.1 herein on 19.12.2001 before the then Registrar General, High Court of Delhi. Taking into account the factum that Ishwar Chand/accused No. 1/respondent No.1 herein himself did not put in appearance on 04.11.2016 and his interest has been duly put forth and looked after by the learned Amicus Curiae in terms of the verdict of this Court in *State vs. Ram Gopal & Ors., 2006 Cri LJ 2805*, the appeal has been taken up for hearing.

5. Through the appeal, the State has sought to submit that the acquittal of the respondents had resulted in the miscarriage of justice and that the impugned

judgment dated 19.04.2000 was against the facts and the law. It was further submitted through the appeal on behalf of the State that the complainant Narender Kumar Sharma **PW-1** and his wife Ram Kumari Sharma **PW-2** had both supported the prosecution version and the multiple injuries caused to them were corroborated by medical evidence and that the learned trial Court had not given justifiable reasons to discard their testimony. *Inter alia*, it was submitted through the appeal that a strong circumstantial evidence of recovery of robbed articles such as gold chain, gold ring, driving licence at the instance of Ishwar Chand/accused No. 1/respondent No.1 herein from his brother's house at Bulandshahr, U.P. had been discarded erroneously by the learned trial Court. It was further submitted by the State that the learned trial Court had given no substantial reason as to why the testimony of **PW-9** ASI Om Prakash who first saw the complainant in blood stained clothes was not to be believed. It was also contended by the learned APP through the appeal that the learned trial Court had erred in believing the defence version of the respondent that the plot was purchased by the Ishwar Chand/accused No. 1/respondent No.1 herein, though no receipt of any documentary proof was shown. It was also submitted on behalf of the State that the impugned judgment is based on conjunctures and surmises and was not in accordance with law.

6. Vide order dated 04.11.2016 Ms.Inderjeet Sidhu, Advocate was appointed as Amicus Curiae to assist the Court on the merits of the appeal. We have thus heard the appeal on 02.12.2016. Arguments were addressed on behalf of the State by Ms.Aashaa Tiwari, learned Addl. Public Prosecutor and on behalf of respondent No. 1 by Ms. Inderjeet Sidhu, learned Amicus Curiae.

CHARGES FRAMED

7. The trial Court record requisitioned on 22.11.2000 has been received and perused. The charge of allegations framed on 03.11.1995 against the accused

persons including Ishwar Chand/accused No. 1/respondent No.1 herein (three other accused having since been expired) was to the effect that on 09.08.1989 at H. No.L-101, Gali No. 7 Kartar Nagar within the jurisdiction of PS Bhajanpura all of them along with Mahender (expired on 11.01.1995) and Shakeel (also dead) had in furtherance of their common intention wrongly confined Smt. Ram Kumari Sharma, **PW-2** wife of Sh.Narender Kumar Sharma **PW-1** in a room for the purpose of extorting her ornaments and some documents and for making her sign and execute documents and had also in furtherance of the said common intention kidnapped and obstructed Smt. Ram Kumari Sharma secretly and wrongly confined her at Pran Garh, U.P. and had criminally intimidated and threatened to kill her and had also beaten her and thereby put her in fear of death or grievous hurt, extorted and snatched the registered deed, title deed and her ornaments and thereby committed offences punishable under Section 347/365/506/323 and 368 read with Section 34 IPC to which all the said accused pleaded not guilty and claimed trial. Furthermore, it is stated that Ishwar Chand/accused No.1/respondent No.1 herein and the co-accused respondent No. 2 (since expired) were also charged to the effect that on 09.08.1989 at house No L-101, Gali No. 6 Kartar Nagar they used a rifle and katta i.e. deadly weapons whilst committing robbery and they were both charged for the commission of the offence punishable under Section 397 IPC to which they both pleaded not guilty and claimed trial.

8. In support of the prosecution version, the State put forth in the witness box 17 witnesses of whom **PW-10** SI Gauri Shankar and **PW-14** Dr. S.B.Aggarwal were given up as being unnecessary by the State on 06.03.1999 and 20.04.1999 respectively.

9. Ishwar Chand/accused No.1/respondent No.1 herein (the only surviving accused to the present appeal) through his statement under Section 313 Cr.P.C.

denied the incriminating evidence led against him and claimed that he had paid a sum of Rs.83,000/- to Narender Kumar Sharma i.e. complainant **PW-1** his 'Sadu' (i.e. his wife's sister's husband) which the respondent No. 1 had paid to Sh. Narender Kumar Sharma towards the sale consideration of a plot which was adjacent to the house of the complainant and that an amount of Rs.22,000/- remained due which was to be paid at a later stage. It was also claimed by the respondent No. 1 that he had not got the documents executed but had taken possession of the said plot and had started living there with his family members and that he had asked the complainant Narender Kumar Sharma to get the documents executed but that Narender Kumar Sharma had been putting off the same on the pretext that the owner of the property was an old lady residing at Shahpura. The respondent No. 1 further claimed that one day when he met the son of the owner and asked for the execution of the sale deed, he, the respondent No. 1 learnt that Narender Kumar had got the documents of that plot executed in his own favour. Respondent No. 1 thus submitted that this was the bone of contention between him and Narender Kumar Sharma i.e. the complainant and that he, the respondent No. 1 thus met the father of the Narender Kumar and asked him to get the documents executed, but, the father of Narender Kumar Sharma told respondent No. 1 that Narender Kumar Sharma was a fraud. Respondent No. 1 thus stated that he had been cheated and that the father of Narender Kumar Sharma could also not help him and that he, Narender Kumar Sharma then asked him to return the money or to get the documents executed, as a consequence of which he the respondent falsely implicated him in this case in connivance with the police. Ishwar Chand/accused No.1/respondent No.1 herein claimed innocence and further stated that his goods were also grabbed by Narender Kumar Sharma. Seven witnesses in defence to assert the plea of innocence of the accused were put forth.

FACTS ALLEGED

10. **Ex.PW-5/A** which is copy of DD No. 28A dated 09.08.1989, PP Gamri indicates that ASI Om Prakash had given a telephonic information at 12:35 a.m. that a person known to him i.e. Narender Kumar Sharma R/o L-101, Gali No. 6, Shivaji Marg Kartar Nagar, Delhi and his wife Smt. Ram Kumari Sharma had been taken to U.P. and had been assaulted by Ishwar Chand/accused No. 1/respondent No.1 herein and 2-3 men who had also taken away their articles and that the police be sent. **Ex.PW-5/A** i.e. DD No. 28A further indicates that the inquiry on the basis of this information was entrusted to ASI Chhote Lal who along with Ct. Virender Kumar went to the spot. **Ex.PW-9/A**, the rukka recorded on the statement of Narender Kumar Sharma, the complainant **Ex.PW-1/A** which forms the basis of the registration of FIR No. 331/89, PS Bhajanpura under Section 347/365/368/506/34 IPC indicates that ASI Chhote Lal along with Ct. Virender Singh No. 1307, North East had reached H.No.L-101,No.6, Kartar Nagar, Delhi on receipt of **Ex.PW-5/A** i.e. DD No. 28A PP Gamri Extn., where they met Sh. Narender Kumar Sharma, the complainant who gave his statement. As per the said statement which forms the complaint, Sh. Narender Kumar Sharma stated that on 09.08.1989 at about 8:00 a.m. he was present at his house when his brother-in-law who was also his *Sadu*, his sister-in-law's husband and who was also his paternal aunt's son (bua's son) Sh.Ishwar Chand s/o Shyam Dev, respondent No. 1 herein, native of Bulandshahr who was then residing in the house of the complainant at Kartar Nagar had come to his house along with a fair complexioned normal built 20 year old boy and after some time, the wife of Ishwar Chand i.e Smt. Shashi Bala who was his sister-in-law (saali) i.e. sister of the wife of Narender Kumar Sharma) also came and that the respondent No. 1 told him that he had to take Rs.15-20,000/- from a lady at Sikendarabad and that he, Narender Kumar Sharma and his wife Smt. Ram

Kumari Sharma should accompany them and make an excuse that they needed money urgently for their maternal uncle's daughter's marriage. As a consequence thereof, as per the FIR, Sh.Narender Kumar Sharma, the complainant and his wife Smt. Ram Kumari Sharma **PW-2**, accompanied the respondent No. 1 and the boy with him and sat in a sky blue coloured van which was standing on the road, which van was brought by Ishwar Chand/accused No. 1/respondent No.1. The said vehicle was driven by a driver and that when they reached Ghaziabad, a man standing on the road aged 27-28 years was made to sit in the vehicle by Ishwar Chand and after some time they made the vehicle stop at Sikendarabad. Thereafter Ishwar Chand/accused No. 1/respondent No.1 left the complainant and his wife and Shashi Bala in the vehicle saying that he was first going to meet that lady alone to get his money and after some time Ishwar Chand/accused No. 1/respondent No.1 herein came back and informed them that the lady had gone to Pran Garh and thus they were all to go there and then all went in that vehicle to Pran Garh in the same Maruti van. There, as per the FIR at the house of Ishwar Chand/accused No. 1/respondent No.1 herein there were two persons present, as it was very hot inside the house, all of them left the complainant's wife seated in that house and (came out of the house and sat in a room amongst the trees) and in sometime, respondent No. 1 along with five men came to the spot and threatened Narender Kumar Sharma and tied his hands and made him lie down on a cot and made everyone leave the room and took a katta and a rifle in their hands and started beating him and threatening him with dire consequences and assaulted him, and asked him where the registered documents and ornaments were kept. As per **Ex.PW-1/A**, the complainant stated that out of fear, he informed Ishwar Chand as to where his money and ornaments were placed in an almirah in his room and after about 11:00 a.m., Ishwar Chand/accused No. 1/respondent No.1 herein left the

complainant under the supervision of two men and two men were deputed outside the room and at about 4:00 p.m. Ishwar Chand/accused No.1/respondent No.1 herein came back and threatened the complainant and took his signatures and thumb impression on some documents and also snatched Rs.4000/- and his identity card from his pocket and also took away the watch and ring that he was wearing and left him i.e. the complainant in a tied condition.

11. As per **Ex.PW-1/A** after sometime on hearing his noise 2-3 ladies came and untied him and in the meantime his wife also came on hearing his voice, and she informed that Ishwar Chand/accused No.1/respondent No.1 herein and his men had also snatched her chain and bangles and had taken her signatures and thumb impression on several papers. The complainant as per **Ex.PW-1/A** further stated that Ishwar Chand and his men had threatened him that if he lodged a complaint with the police he would be killed. As per **Ex.PW-1/A** the complainant took a lift from the villagers and on a scooter and Vicky, and he and his wife reached Sikanderabad from where they took a bus and came home. As per **Ex.PW-1/A**, Smt. Shashi Bala, the sister-in-law (saali) of the complainant i.e. the sister of the wife of the complainant who had been left behind by the complainant and his wife to take care of the children informed that Ishwar Chand/accused No. 1/respondent No.1 herein had come with a man to the house of the complainant and had taken away a VCP and a gold tika and documents of the registration of the house of the complainant. As per **Ex.PW-1/A**, the complainant thus alleged that Ishwar Chand/accused No.1/respondent No.1 herein had cheated him and deceptively taken him and his wife to Sikendarabad and Pran Garh and had forcibly extorted the taking of his signature and taken away his gold articles and his VCP in relation to which a complaint was also made at Pran Garh, U.P. and that the accused Ishwar Chand/accused No. 1/respondent No.1 herein had thus taken him and his wife to

Pran Garh in a Maruti van No. DID 2580 or DID 2850 and had assaulted him. As per **Ex.PW-1/A** it was stated by the appellant that he could identify Ishwar Chand/accused No.1/respondent No.1 herein and his associates.

12. On the basis of **Ex.PW-1/A** and the endorsement thereon, i.e. **Ex.PW-9/A**, DD No. 16A dated 10.08.1989 and FIR No. 331/89, PS Bhajanpura are indicated to have been registered at 2:35 a.m. on **10.08.1989** with the copy of the said FIR being on the record as **Ex.PW-3/A**. Subsequently, vide **Ex.PW-1/D** the complainant Narender Kumar Sharma vide a written complaint dated **02.09.1989** addressed to the SHO, PS Bhajanpura informed that at the time of making his complaint on 10.08.1989 on the basis of which FIR No. 331/89 was registered, he knew only the name of Ishwar Chand/accused No.1/respondent No.1 herein and was not aware of the names of other accused persons about whom he had stated he could recognize on seeing them, and that at the time of submission of his complaint **Ex.PW-1/D** dated 02.09.1989 he had learnt from his close sources the names of these associates of Ishwar Chand, Ravinder Kumar Tewatia S/o Khacheru Tewatia, Shakeel Ahmad @ Shakeel, Mahender Singh S/o Chadru, Birender S/o Rajpal r/o Village Pran Garh PS Sikendarabad, Distt. Bulandshahr and that these were the persons who had tied his legs and hands and had assaulted them and had kept a watch on him and his wife and that he sought action against these persons as well.

13. As per the charge sheet the accused persons were arrested during the course of investigation but the accused Shakeel Ahmad @ Shakeel expired on 03.12.1990 at the JPN hospital, due to an accident. The charge sheet further indicates that Smt. Shashi Bala wife of Ishwar Chand along with Neeraj Kumar S/o Vikram Singh were arrayed in column No. 2 as accused persons and were not sent up for trial. (Significantly Sh.Neeraj Kumar S/o Vikaram Singh was examined as a defence witness **DW-6** by the accused). The charge sheet

indicates that a gold ring and gold chain, identity card and driving licence belonging to Narender Kumar Sharma were allegedly recovered at the instance of Ishwar Chand/accused No.1/respondent No.1 herein.

MATERIAL WITNESSES EXAMINED BY THE STATE

14. **PW-1** Narender Kumar Sharma, the complainant in his testimony on oath while putting forth the version in **Ex.PW-1/A** also stated that after he had been left bolted inside the room of his house by Ishwar Chand/accused No.1/respondent No.1 herein at Pran Garh, he and his companions who had taken his signatures on some stamp papers, most of which were blank i.e. 25 in number and in the denomination of Rs.50/-, Rs.10/-, Rs.20/-, Rs.5/- and Rs.2/- and some were plain judicial papers and some of which had revenue stamp affixed on them, his hands had been untied but his feet had been kept tied and he was also threatened that he would be killed in case he does not sign those papers and his thumb impression on some of them had been taken and thereafter they left bolting him inside the room. He further stated that he cried and that his wife along with some ladies came there and opened the door and thus his wife took him to the house of the Sarpanch as he was bleeding from his nose and had injuries on his feet and thereafter they narrated the incident to the Sarpanch. It was also stated by **PW-1** that his wife Smt. Ram Kumari Sharma told him that she had also been beaten and her gold ring and chain had been snatched and that her modesty has been outraged by all the five persons i.e. Ravinder, Devender, Shakeel, Mahender and Ishwar Chand/accused No.1/respondent No.1 herein and that he had also been threatened by them that their children would be killed. He, **PW-1** further stated in his testimony that the Sarpanch got them dropped at Sikendarabad bus stand by Vicky and Scooter and when they boarded the bus, he **PW-1** told the driver about the incident and that he had no money to

purchase the ticket and the driver allowed them to travel without a ticket and left them at Delhi.

15. **PW-1** further stated when they reached their home they found that Ishwar Chand's wife was present in the house along with the children and she told them that Ishwar Chand had come along with two persons and had taken away from the safe, one gold tika, a VCP, sale deed of the house, one LIC certificate, ration card and his educational certificate and that their children were safe and they reported the matter to the police. He further stated that he and his wife were medically examined at the GTB hospital and after some time their relatives came from the village and told the name of the persons, who accompanied Ishwar Chand/accused No.1/respondent No.1 herein and after 5-6 days the police took them to Sikendarabad at the GT Road where they saw the vehicle No. DID 2850 standing there at some distance from there and the accused Ravinder (since deceased) was standing and they informed the police about it and the police arrested Ravinder and took the van into possession vide a seizure memo **Ex. PW-1/B**, which bore his signatures. **PW-1** further stated that the police interrogated the accused Ravinder and recorded his disclosure statement and after 10-12 days, the police arrested the Ishwar Chand/accused No. 1/respondent No.1 herein and then he was called by the police and he identified Ishwar Chand/accused No.1/respondent No.1 herein and got recovered ornaments from his brother's house and told that the VCP had been given to Shakeel. This witness further stated that the VCP was not recovered but Ishwar Chand/accused No.1/respondent No.1 herein got recovered the gold chain, ring, identity card and ration card of the complainant and that Ishwar Singh also disclosed that the sale deed and rifle had been kept by him at Chithera but they were not recovered. *Inter alia*, this witness identified the gold ring, gold chain, identity card and ration card and identity card **Ex.P1, P2 and P3** and stated that

the gold chain and gold ring belonged to his wife and that the identity card belonged to him. *Inter alia*, **PW-1** testified to having identified the ornaments at the Shahdara Court.

CROSS EXAMINATION OF COMPLAINANT

16. On being cross-examined **PW-1** Sh.Narender Kumar Sharma, the complainant further stated that Ishwar Chand/accused No. 1/respondent No.1 herein was residing as tenant in his house from 1988 and he went on to say that he was residing since 1989 and that he vacated his house in the month of September, 1989. He further stated that his wife was sitting in an adjacent room where he had been confined at the village Pran Garh and there was a distance of a wall between both the rooms where he was confined and where his wife was sitting.

17. During his cross-examination this witness, *inter alia*, stated that he had stated to the police in **Ex.PW-1/A**, his complaint that, Ishwar Chand/accused No. 1/respondent No.1 herein asked his wife to sit inside and he had asked Narender Kumar Sharma to sit outside near the garden and thus confronted him with **Ex.PW-1/A** and rather admitted that in **Ex.PW-1/A**, he had stated that due to the summer season his wife sat inside and due to the heat, they all came out and sat down between the trees. He also stated that he had not stated in his statement **Ex.PW-1/A** that he had been tied up with a rope from the cot lying in the room and he had stated that Ishwar Chand/accused No. 1/respondent No.1 herein had given him a rifle butt blow on his shoulder, stomach and back. This witness was during cross-examination confronted with his statement that he had told the police that Ishwar Chand/accused No. 1/respondent No.1 herein had obtained his signatures on blank judicial stamp papers and on plain judicial papers, as these aspects were not recorded in **Ex.PW-1/A**. The witness has also

been confronted with **Ex.PW-1/A** where the aspect of he and his wife having gone to the Sarpanch was not recorded, but had been testified by the witness.

18. **Significantly, this witness in his cross-examination stated that he had not told the police that the modesty of his wife has been outraged and had stated that his wife did not disclose to the Sarpanch regarding outraging of her modesty and even did not inform him when they were going back to Delhi from Pran Garh nor did she tell him about the same when they reached the house nor did she inform him when they were going to police, nor did she tell about the same in the police station, and rather stated that his wife informed about the same on 11.08.89 for the first time at about 5:30 p.m. about her modesty being outraged and he further stated that he had enquired from his wife whether in her statement she had told the police on 09.08.1989 of her modesty being outraged but she had stated that she had not so told to the police. The witness further stated that he had told the police on 11.08.1989 itself when his wife had told him about the outraging of her modesty, though he admitted that in his complaint dated 02.09.1989 i.e Ex. PW-1/D given by him to the SHO he had not disclosed about the modesty of his wife being outraged. He admitted that in Ex.PW-1/A and in all other subsequent statements, he made no mention about the outraging of the modesty of his wife by the culprits.**

19. He, **PW-1** further stated that he had told the police that the wife of Ishwar Chand on his return had told him that accused Ishwar Chand/accused No. 1/respondent No.1 herein had come along with a companion and not two persons and that he **PW-1** had mentioned that the LIC certificate, ration card and educational certificate were also stated to have been taken away by the accused Ishwar Chand/accused No. 1/respondent No.1 herein as told by his wife and was thus confronted with **Ex.PW-1/A** where there was no mention about

the said documents. This witness during the cross-examination further admitted that Ishwar Chand/accused No.1/respondent No.1 herein was his real *sadu* and that the accused Ishwar Chand and his wife were residing in his house since February, 1989. **He further stated that he did not know about the financial dealing of Ishwar Chand/accused No.1/respondent No.1 herein and that he did not ask the name or the address of the lady from whom Ishwar Chand/accused No.1/respondent No.1 herein was to get money before proceeding from Delhi nor did he enquire about this dealing nor was this lady known to him.** He further stated that at that time, as he, **PW-1** was ready to go to hospital and, therefore, (the witness having already stated in his complaint also testified that he was working as a dental hygienist in the police hospital since 1988) he went with Ishwar Chand/accused No.1/respondent No.1 herein without asking any question and that he did not ask Ishwar Chand/accused No.1/respondent No.1 herein to take his wife along with them though Ishwar Chand/accused No.1/respondent No.1 herein proposed that Narender Kumar Sharma should take his wife along with them.

20. This witness further stated during cross-examination that he had visited the house of Ishwar Chand/accused No. 1/respondent No.1 herein at Pran Garh once earlier. **PW-1** further stated that he raised an alarm when he was being tied at the house of Pran Garh but no one had come to his rescue and that he was raising an alarm when he was being beaten and that he was wearing a safari of a white colour and his clothes had become blood stained because of the injuries and that he had gone in the same clothes to PP Gamri where his report was lodged. This witness has further stated that none of the police officials demanded his blood stained clothes nor did he hand them over to the police. This witness has further stated during cross-examination that he had raised an alarm for about half an hour and that the door had been opened. **Significantly,**

this witness during cross-examination stated that he had never informed anyone about this incident except the police after coming to Delhi and stated that before lodging of the FIR, he, had not disclosed this fact to anyone except ASI Om Pal of the PCR.

EXAMINATION OF PW-2

21. **PW-2** examined by the State was Smt.Ram Kumari Sharma w/o Narender Kumar Sharma. This witness testified that the Ishwar Chand/accused No. 1/respondent No.1 herein had taken her and her husband to Sikendarabad for taking Rs. 20,000/- from a lady and from Sikendarabad as the lady was stated to be not there at Sikendarabad to Pran Garh. This witness stated that when they reached Pran Garh and reached the house of Ishwar Chand, he Ishwar Chand/accused No. 1/respondent No.1 herein asked her and her husband to sit in a room together and he asked her husband to accompany him outside the house as he wanted to introduce some of his friends to ‘doctor sahib’ and thus her husband accompanied Ishwar Chand/accused No. 1/respondent No.1 herein and she remained sitting alone in the house. She further stated that 2-3 ladies were also talking just adjacent to the room where she was sitting and in the meantime at about 11-11:30 a.m. she heard the shrieks of her husband “Neetu Bachao Maar Liya” and after hearing the shrieks she came outside the room and asked for help. **PW-2** further stated that Ishwar Chand/accused No. 1/respondent No.1 herein and his companions compelled her to go inside in her room and they took her forcibly to the room and started beating her. She further stated that at that time Ishwar Chand/accused No. 1/respondent No.1 herein was armed with a rifle and the accused Ravinder was armed with a katta and the third man was also armed with a katta and that Ishwar Chand/accused No. 1/respondent No.1 herein had given her beatings with the rifle. She further stated that the accused persons did with her what they should not have done and

stated that they were five persons and she cannot explain what they had done and she further stated that they misbehaved with her. As per the trial court record as the witness was hesitating, the proceedings were held in camera and the witness then stated that they did what a man would do after closing a woman in a room and stated that the accused persons did *galat kaam*. She further stated that Ishwar Chand/accused No. 1/respondent No.1 herein had asked her for the keys of the safe on the point of the rifle and had asked her where she had kept the documents of the title of the house and had also asked her to disclose where she had kept the cash and jewellery and she had then disclosed that the safe was open and the money, jewellery and the documents were lying there and that her sister Shashi Bala i.e wife of the accused Ishwar Chand/accused No. 1/respondent No.1 herein was present there and that she would tell everything. This witness has further stated that Ishwar Chand/accused No. 1/respondent No.1 herein had left the room at about 12:00 noon and had asked three persons to look after her i.e. Smt. Ram Kumari Sharma and they were the accused Ravinder, Davender and another person who had been picked up from the Ghaziabad bus stand and about 4:00 p.m. Ishwar Chand/accused No. 1/respondent No.1 herein came and all the persons stated that the goods had been removed from her house and that her children had also been brought and that they wanted her to sign the papers failing which she would be killed. She, **PW-2** stated that there were 20-25 papers in number including stamp papers of denomination of Rs.2 to Rs.100/- and some of them were written and revenue stamps were also affixed on them. She further stated that the chain and the ring worn by her were also snatched and from there they went to her husband to get the signatures and thereafter they went away after closing the room of her husband and after they went, she came out and heard the cry of her husband and with the help of 2-3 ladies she rescued him. She further stated that thereafter

they had gone to the Sarpanch and had narrated the incident and that she had also told her husband what had happened with her and he similarly told what had happened with him and informed that he had also been made to sign all such papers and also that his driving licence, cash of Rs.4000/-, and wrist watch were also snatched from him. Significantly, this witness during cross-examination stated that her statement was recorded by the IO at her house in the night at about 12/12:30 midnight i.e. statement **Ex.PW-2/DA**.

22. **Apart from being confronted with the aspect that she had told the police in her statement under Section 161 Cr.P.C. that she had heard the cries of “Neetu Bachao Maar Liya”, on hearing the cries she had come out, which aspect was not recorded in Ex.PW-2/DA. She also stated that she had told the police in Ex. PW-2/A that they did with her what they should not have done and that she could not explain what they misbehaved with her and was confronted with Ex.PW-2/DA where it was not so recorded. She further stated that what they did was after closing the woman in a room and that they did and it was ‘Galat Kam’ and thus she was confronted with Ex.PW-2/DA where it was not so recorded. She was also confronted with her statement in examination-in-chief that Ishwar Chand/accused No. 1/respondent No.1 herein has asked her about the goods of the safe at the point of the rifle and she had disclosed that the safe was opened wherein this aspect was also not recorded.**

23. This witness stated that she had told the police that her sister Shashi Bala wife of the Ishwar Chand/accused No. 1/respondent No.1 herein was present at house and she would tell everything and which aspect was also not found recorded in **Ex.PW-2/DA**. She was also confronted with **Ex.PW-2/DA** her statement to the police with her testimony in Court that Ishwar Chand/accused No. 1/respondent No.1 herein along with other accused had told that goods had

been removed from her house and that her children had been brought, which aspect also did not form part of **Ex.PW-2/DA**. She testified further during cross-examination that she had told the police in **Ex.PW-2/DA**, that they had narrated the incident to the Sarpanch which aspect was also not so recorded and rather it was mentioned that with the help of other persons after arranging the scooter and Vicky they then came to Sikendarabad and the assistance of the Sarpanch was not detailed in **Ex.PW-2/DA**. She further stated during cross-examination that she had told the police in her statement dated 10.08.89 what had happened with her and she similarly told her husband what had happened with her and thus was confronted with **Ex.PW-2/DA** wherein this aspect was not recorded.

24. **PW-2 Smt. Ram Kumari Sharma in her cross-examination admitted that there was a post office being run in one of the rooms of that house which was closed on that day and stated that post office was run next to the room where she was confined and that Madhu Sudan was the Post master of that post office. She also stated that Madhu Sudan, Jatan Saroop, Radhey Shyam, Brahmanand and Dev Dutt were brothers of accused the Ishwar Chand/accused No. 1/respondent No.1 herein. She further stated during cross-examination that Ishwar Chand/accused No. 1/respondent No.1 herein, is the husband of her younger sister and that the marriage of Ishwar Chand/accused No. 1/respondent No.1 herein and her sister had taken place 6-7 years prior to the incident and both of them had been living in their house which was near the house at Kartar Nagar being relatives *without rent*. This witness has also stated that her statement was also recorded by the Crime Branch 2/3 days after the incident and that she had told the Crime Branch official in her statement that all the five persons did with her what a man would do after closing a woman in a room and that**

they were five in number and was thus confronted with ExPW-2/DA wherein it was not so recorded. PW-2 further stated that those persons misbehaved with her after closing the door from outside and that she could not resist as they were five persons. She further stated that she was medically examined the next day and stated that she did not tell the doctor regarding the '*galat kaam*' and rather stated that she told the next day about the same to her husband and that she was not medically examined thereafter. Inter alia, this witness in her statement denied the fact that she had fabricated the version of '*galat kaam*' just to gain sympathy.

25. PW-9 examined by the State was Sh.Om Prakash who testified to the effect that on 09.08.1989 he was posted at the PCR as an ASI and at about 12/12:30 midnight he was coming to Kartar Nagar from Maujpur and he met Narender Kumar Sharma and his wife i.e. PW-1 and PW-2 respectively and they were in a bad state of affairs and had injuries on their person and he heard their complaint and lodged a report at PP Gamri. On being cross-examined, this witness admitted that Narender Kumar Sharma was a dentist at the Old Police Line Hospital and he had come in contact within him there and on that day he was not aware of the residential house of Narender Kumar Sharma. He stated that he made no statement to the police but denied that that he did not meet him at Kartar Nagar and denied that he had lodged no police report at PP Gamri.

26. PW-8 examined by the State was ASI Chhote Lal who stated that on 09.08.1989 he was posted at PP Gamri and on that day DD No. 28A, copy of which Ex.PW-3/A was assigned to him for action and he along with Ct.Narender Kumar reached the spot at Kartar Nagar where he met Narender Kumar Sharma whose statement Ex.PW-1/A was recorded by PW-8 on which he made the endorsement as Ex. PW-9/A which was sent through Ct. Varendar for registration of the FIR. This witness in his cross-examination stated that

Ex.PW-1/A and **Ex.PW-2/DA** were correctly recorded by him. He further stated that the investigation was conducted by him but that he had not interrogated the neighbours. **PW-8**, however, denied that he had testified falsely.

27. **PW-11** Narayan Verma S/o Lakhpat Rai, a jeweller, testified to having manufactured the chain Ex.P2 and ring Ex. P2 for which he issued receipts **Ex. PW-11/A** and **Ex.PW-11/B** on **02.09.1989**

28. **PW-12** examined by the State was Sh. S.K.Sarvaria, the then Additional District and Sessions Judge who testified to having prepared the report of the test identification proceedings of the case properly conducted on 28.02.1990 (**Ex.PW-12/B**). **PW-6** examined by the State was SI Prem Singh who testified to the effect that the investigation of the case was handed over to him by the Inspector of the Crime Branch and he had prepared the site plan **Ex.PW-6/A** on 24.12.1989 i.e. at Pran Garh.

29. **PW-15** examined by the State was SI Jagdish Prasad who testified to the effect that investigation of the case had been assigned to him on 12.08.1989 and that the complainant was joined in the investigation on 15.08.1989 and testified inter alia to the arrest of the accused Ishwar Chand/accused No. 1/respondent No.1 herein on 22.08.1989 from his house located at Vishwas Nagar, Shahdara and testified to the arrest and disclosure statement made by Ishwar Chand/accused No. 1/respondent No.1 herein and testified to the recovery of the chain, ring, identity card along with driving licence at the behest of the accused. He further testified to the seizure of the receipts of the ornaments vide memo **Ex.PW-1/G**, receipts being **Ex.P-1 to P4**.

WITNESSES OF RECOVERY

30. **PW-1**, the complainant Sh.Narender Kumar Sharma in his examination-in-chief testified to the recovery of ornaments of the complainant at the house of

the brother of accused Ishwar Chand/accused No. 1/respondent No.1 herein at Satta Mohalla, Bulandshahr i.e. the recovery of the gold chain, gold ring, identity card and ration card i.e. **Ex.P1 to P3** respectively.

31. **PW-16** HC Ompal Singh also testified to the recovery of the ring, chain, driving licence, identity card on 23.08.1989 when the accused Ishwar Chand/accused No. 1/respondent No.1 herein was in the lock up at Gokulpuri and had thereafter been interrogated by the IO whereafter the accused had led the police on 24.08.1989 to the house of Madhu Sudan and on checking it was found to contain a ring, driving licence, identity card and another driving licence which was sealed and put in a cloth parcel and sealed with the seal of JPS. The witness also testified to the preparation of the seizure memo of Maruti van No. DID 2850 **Ex. PW-1/B** seized on 15.08.1989 signed by him.

32. **PW-15**, examined, SI Sh.Jagdish Prasad of the Special Branch testified to the effect that the investigation of this case was entrusted to him on 12.08.1989 and that the complainant was joined in the investigation on 15.08.1989 and that Ishwar Chand/accused No. 1/respondent No.1 herein was arrested from a house located at Vishwas Nagar, Shahdara and on his personal search being conducted vide **Ex.PW-1/C** whereafter the accused made a disclosure **Ex.PW-15/A**, the Ishwar Chand/accused No. 1/respondent No.1 herein had taken the police party to Mohalla Satta Bulandshahr and had got recovered a chain, ring, identity card and driving licence and regarding the ownership of ornaments two receipts **Ex.P1** and **P2** were filed. During cross-examination this witness had stated that he met the **residents of the Village Pran Garh there, but they expressed their ignorance about the same and that he had not seen any post office in the house at Pran Garh.** He further stated that the receipts **Ex.PW-11/A** and **Ex.PW11/B** were issued in the name of the daughter of Gauri Shankar and that he did not meet Gauri Shankar since

the goldsmith told that those receipts pertained to the wife of Narender Kumar Sharma and the complainant's wife had not stated in her statement that her father's name was Gauri Shankar. This witness further stated that he had not enquired about the address of Gauri Shankar but denied that the receipts had been fabricated by the police in collusion with the complainant. He further testified to the recovery having been effected from the possession of Ishwar Chand/accused No. 1/respondent No.1 herein at 7:30 a.m. on 24.08.1989 and he stated that he had not recorded the statement of any person from where the recovery was made and stated that he had not associated anyone from the locality from the time of recovery. *Inter alia*, this witness stated that he was not aware that there was any altercation between the accused and the complainant for getting the house vacated. He also denied that he had learnt that Narender Kumar Sharma had falsely framed Ishwar Chand/accused No. 1/respondent No.1 herein in the case.

MEDICAL EVIDENCE

33. **Ex.PW-17/A** and **Ex.PW-13/A** placed on record are the MLCs of Smt.Ram Kumar (**PW-2**) and Sh. Narender Kumar Sharma (**PW-1**) respectively both dated 10.08.1989 of the GTB hospital. Injuries sustained by Smt.Ram Kumar Sharma **Ex.PW-17/A** are indicated to be '*a contusion longitudinal lateral aspect of right thigh with a nature of injuries being having been opined to be simple caused by a blunt object.*' The nature of injuries sustained by Narender Kumar Sharma were also opined to be simple caused by a blunt object, as opined on 16.09.1989 with the nature of injuries being '*contusion with tenderness and of horse shoe shaped 4 cm above the umbilical level and 3 cm to the mid umbilical line swelling on the nose and upper lip and left side of the neck and small blister on the wrist and right arm*' and *contusion on the right arm and deep abrasion and multiple blisters on the left radial aspect.* Both

Smt. Ram Kumari Sharma and Sh.Narender Kumar Sharma at the time of examination on 10.08.1989 were found to be alert and conscious and Narender Kumar Sharma was also opined to be fit for statement. The said MLCs of Sh.Narender Kumar Sharma **Ex.PW-13/A** and that of Smt. Ram Kumari Sharma **Ex. PW-17/A** were proved through the testimonies of Dr.B.Narayan, CMO GTB hospital and **PW-17** Dr. R.K.B.Choudhary, CMO GTB hospital respectively.

DEFENCE WITNESSES EXAMINED

34. Seven defence witnesses were examined during the trial before the learned trial Court. **DW-1** examined was Madhusudan, the elder brother of the Ishwar Chand/accused No. 1/respondent No.1 herein. He stated that the complainant Narender Kumar Sharma was the real son of his real maternal uncle and was also the brother-in-law *Sadu* of the accused Ishwar Chand/accused No. 1/respondent No.1 herein. **He further stated that he was working as a Post Master in the post office being run from his house situated at Pran Garh, Distt. Bulandshahr which is open from 10:00 a.m. and closed at 5:00 p.m. He further stated that on 09.08.1989 (i.e. the date of incident) the said post office was open and he was present in the post office on that day from 10:00 a.m. to 5:00 p.m. and stated that the postmen Rohtash Kumar and Satish Chand were also present in that office. He further stated that on that day he had not noted Narender and his wife coming and going out from that house. He further stated that the adjoining room was also in the possession of the post office and stated that he had not heard any commotion on that day.**

35. He further stated that he resided in the said house where the said post office is located. On being cross-examined on behalf of the State this witness categorically denied that the post office was a temporary post office opened in

the village and stated that a sum of Rs.2400 is paid as wages to the post master. He further stated that his father was the owner of the said premises and after his death he becomes the owner of the said premises. He also stated that the permission of his father had been taken for opening the post office in the said premises and a sum of Rs.200/- is paid as rent by the Government. He further stated that he was issuing rent receipts and he could produce the same. He further stated that there were four villages in the postal circle and about 150 postal articles are received in the post office daily and there are two post men in the post office and that there is a record in the form of attendance and he could produce the same in relation to the date of incident. He further categorically denied that Ishwar Chand/ the accused No. 1/respondent No.1 herein, Ravinder Kumar, Davender, Mahender and Shakil had wrongly confined Smt. Ram Kumari Sharma wife of Narender Kumar Sharma in the house at the Village Pran Garh and denied that he had extorted ornaments at the point of a country-made pistol and also denied that Smt. Ram Kumari Sharma was beaten by them. He denied that Narender Kumar Sharma **PW-2** was also beaten by them and denied that he had testified falsely in order to save his brother, Ishwar Chand/the accused No. 1/respondent No.1 herein.

36. **DW-2** examined by the defence Sh.Dharamveer testified to the effect that the complainant of the case i.e. Sh. Narender Kumar Sharma was the son of his uncle and stated that earlier Ishwar Chand/accused No. 1/respondent No.1 herein was residing in J-Block Kartar Nagar and stated that Ishwar Chand/accused No. 1/respondent No.1 herein had paid a sum of Rs.83,000/- to purchase a plot from someone through Narender Kumar Sharma and that the money was paid by the Ishwar Chand/accused No. 1/respondent No.1 herein to Narender Kumar Sharma, **PW-1**, the complainant at his house and that he later

on learnt that there had been altercations between Narender Kumar Sharma and Ishwar Chand/ the accused No. 1/respondent No.1 herein.

37. It was further stated by **DW-2** that Narender Kumar Sharma had informed Ishwar Chand/accused No. 1/respondent No.1 herein that his elder brother would pay the remaining amount of Rs.22,000/-. This witness testified to the effect that he was residing in the said house which was to be purchased by him and that he **DW-2** came from his native village and then he came to know that Ishwar Chand/accused No. 1/respondent No.1 herein and others had been arrested. He further stated that he had met Narender Kumar Sharma who had told that Ishwar Chand/accused No. 1/respondent No.1 herein had misbehaved with him and he would teach him a lesson. Inter alia, he **DW-2** along with Narender Kumar Sharma had gone to the house of Ishwar Chand/accused No. 1/respondent No.1 herein and stated that in his presence **PW-2** Narender Kumar Sharma had broken the lock of the said house and removed the entire articles from that house and loaded all the goods in a matador and transported the same to Pilkhawa. On being cross-examined by the State, the witness **DW-2** stated that Ishwar Chand/accused No. 1/respondent No.1 herein intended to purchase a plot in J-block Kartar Nagar, Shahdara but that he **DW-2** did not know to whom the said plot belonged. The said plot was stated to be of 50 sq. yds. and a sum of Rs.83,000/- was paid in his presence and that some notes were of Rs.100/- in denomination, some of 50/- and some were of 10/- denomination had been used and had been brought by Ishwar Chand/accused No. 1/respondent No.1 herein in a red coloured bag made of cloth. The witness also denied the occurrence of the incident as alleged by the prosecution.

38. **DW-3** examined by the defence was Babu Giri who stated that he was residing at village Pran Garh since his birth and that his house was located at a space of about 10 paces from the house of the accused Ishwar Chand/accused

No. 1/respondent No.1 herein. He stated that he was running a shop in his house and that the door of his shop opened towards the house of the Ishwar Chand/accused No. 1/respondent No.1 herein. He further stated that he was present at his house and no untoward incident had taken place. He also stated that Narender Kumar Sharma, the complainant was known to him and was related to the Ishwar Chand/accused No. 1/respondent No.1 herein. He, inter alia, stated during cross-examination that Ishwar Chand/accused No. 1/respondent No.1 herein along with other co-accused persons had committed robbery and had they had robbed Smt. Ram Kumari Sharma and her husband of their ornaments and documents.

39. **DW-4** produced by the defence was Sh.Satender Kumar S/o Sh. Babu Singh who stated that during the period 1988-90 he was residing as a tenant at house No. 11/1155 Satha Mohalla, Bulandshahr and stated that as far as he recollected the police never came to the said house during the said period. He further stated that Ishwar Chand/accused No. 1/respondent No.1 herein used to visit the said house since it was the house of the in-laws of his elder brother. This witness categorically denied during cross-examination that on 24.08.1989 Ishwar Chand/accused No. 1/respondent No.1 herein had led the police party to the house of Madhusudan at 11/1155, Satta Mohalla and that he had got recovered one lady's ring and a driving licence belonging to Narender Kumar Sharma and an identity card and another identity card of the police hospital and the copy of learning licence from a heap of papers.

40. **DW-5 Sh. Manender Singh stated that a sum of Rs.70,000/- was borrowed from the accused Ishwar Chand/accused No. 1/respondent No.1 herein from him in the month of March, 1988 and that the accused Ishwar Chand/accused No. 1/respondent No.1 herein had borrowed the sum from him to purchase a plot or a house. He further produced the photocopy of**

his saving bank account No. 6327/30 situated at the State Bank of India, Dadri Branch U.P. which is Ex.PW-5/A, original of which is seen and returned, in support of his statement, that he had in fact given a sum of Rs.70,000/- to Ishwar Chand/accused No. 1/respondent No.1 herein and stated that he had paid this amount at the instance of his brother. On being cross-examined he further stated that no writing was done when he gave the amount to Ishwar Chand/accused No. 1/respondent No.1 herein as an interest free loan.

41. DW-6 examined was Sh.Neeraj Kumar R/o Village Bhattpura, PS Sikendarabad, Distt. Bulandshahr who as per the prosecution version was the driver of the vehicle No. DID 2850 in which the accused/respondent No.1 herein had taken Narender Kumar Sharma and Ram Kumari Sharma to Bulandshahr. This witness categorically stated that on 09.08.1989 he had not gone anywhere with a vehicle along with Ishwar Chand/accused No. 1/respondent No.1 herein and others. He further stated that on 15.08.1989 his vehicle No. DID 2850 was apprehended by the police in the area of PS Bhajanpura because documents of the vehicle were not there with him at that time. This witness further stated that the Ishwar Chand/accused No. 1/respondent No.1 herein was not known to him. DW-6, Neeraj Kumar s/o Vikram Singh on being cross-examined on behalf of the State stated that his statement was not recorded by the police on 25.08.1989. He further denied that on 09.08.1989 Ishwar Chand, respondent No. 1 herein had hired his vehicle i.e. DID No. 2850 for Pran Garh @ Rs.350 per day and denied that he came to Delhi along with Ishwar Chand/accused No. 1/respondent No.1 herein. He also denied that Narender Kumar Sharma, Ram Kumari Sharma and others were taken by him at Pran Garh in the vehicle. DW-6 further denied that one person had

boarded his vehicle from the bus stand at Ghaziabad and that they had further gone to Pran Garh. He also denied that he remained standing outside the house of Ishwar Chand/accused No. 1/respondent No.1 herein and denied that Ishwar Chand/accused No. 1/respondent No.1 herein along with Narender Kumar Sharma and his wife had gone inside the house. He further denied that he received a sum of Rs.600/- as fare from Ishwar Chand/accused No. 1/respondent No.1 herein and denied that he had been won over by the accused persons and thus had testified falsely. He further categorically denied that his vehicle had been used by the accused persons for the purpose of dacoity.

42. DW-7 examined by the defence was Smt.Manorma w/o of Sh. Pramod Kumar who stated in her testimony dated 02.02.2000 that she had gone along with her husband to Delhi and that they had taken a room on rent in the house of one Narender Kumar located in the area of Kartar Nagar and stayed in the said house in the year 1988-89. She further stated that the Ishwar Chand/accused No. 1/respondent No.1 herein used to visit the said house often. She further stated that she had never seen Narender Kumar Sharma and his wife being taken away by anyone and also denied that Ishwar Chand/accused No. 1/respondent No.1 herein ever came to the aforesaid house in her presence. She also denied that Ishwar Chand/accused No. 1/respondent No.1 herein ever tried to lift the goods of the said house and to load them into a vehicle.

OBSERVATIONS OF THE LEARNED TRIAL COURT

43. As observed in the impugned judgment, the learned trial Court vide the impugned judgment has, considered the evidence on the record to ascertain the reliability of the witnesses on the following parameters:

- (a) Whether the witness' statement is inherently improbable or contrary to the course of nature;

- (b) Whether his deposition contains a mutually contradictory or inconsistent passage;
- (c) Whether the witness is found to be a bitter enemy of the opposite party and, therefore, possesses ample motive to wish him harm;
- (d) Whether the witness is not found to be a person of veracity;
- (e) Whether the witness is found to have been bribed or accepted a bribe or received other corrupt inducement to give his evidence and;
- (f) Whether his demeanour while under examination was found to be abnormal or unsatisfactory.

44. Vide paragraphs 8 to 20 of the impugned judgment dated 19.04.2000, the learned trial Court has very carefully analyzed the evidence on the record led both by prosecution and defence, and has held that the prosecution had miserably failed to establish its case against the accused persons and that the version of the prosecution was highly improbable and contrary to the natural course of events. It was also observed by the learned trial Court that there were many loopholes in the prosecution version and a reasonable doubt surfaced, and prudence persuaded the learned trial Court to discard the case of the prosecution and to acquit the persons of the charges and thus the accused were accordingly acquitted.

ANALYSIS

45. It is essential to observe that as laid down by the Supreme Court in ***Chandrappa vs. State of Karnataka & Ors.* 2007(4) SCC 415** and ***Prandas vs. The State* AIR 1954 SC 36**, that though an Appellate Court has full powers to review and reappraise and reconsider the evidence upon which an order of acquittal is founded and the Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on the exercise of such powers and an Appellate Court on the evidence before it, may reach its own conclusion both on

questions of fact and of law, nevertheless, an appellate Court, must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. It was further laid down that the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court and that if two reasonable conclusions were possible on the basis of evidence on record, the Appellate Court should not disturb the findings of the acquittal recorded by the trial Court. As laid down by the Supreme Court, in ***Ganpat v. State of Haryana*, 2010 (12) SCR 400** while dealing with the appeal preferred by the State, it is the duty of the Appellate Court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

46. Thus gauged, on the ratio of the verdicts of the Supreme Court, in ***Chandrappa, Prandas and Ganpat* (supra)**, it is brought forth that the testimonies of Narender Kumar Sharma and Smt. Ram Kumari Sharma w/o the complainant and Sh. Om Prakash, ASI bring forth, as rightly held by the learned trial Court, wholly unreasonable and unnatural course of human conduct.

47. This is so, in as much as, the testimony of prosecution witnesses, Sh. Narender Kumar Sharma and Smt. Ram Kumari Sharma, bring forth the inconsistencies in the prosecution version as under:

(a) NATURE OF RELATIONS BETWEEN COMPLAINANT & ACCUSED/RESPONDENT No.1

- That the complainant, Sh. Narender Kumar Sharma was closely related to Ishwar Chand/accused No. 1/respondent No.1 herein in as much as is the son of the Bua of Narender Kumar Sharma;
- Furthermore, Ishwar Chand/accused No. 1/respondent No.1 herein, is the co brother of Narender Kumar Sharma in as much as the wife of Ishwar Chand/accused No. 1/respondent No.1 herein, Smt. Shashi Bala and Smt. Ram Kumari Sharma w/o Narender Kumar Sharma are sisters as brought forth through the record.
- The closeness of relations between the complainant and his family and that of the accused is indicated through the testimony of Smt. Ram Kumari Sharma **PW-2**, who categorically stated that no rent or any other charges were being taken from Ishwar Chand/accused No. 1/respondent No.1 herein, though he was residing in the house owned by Narender Kumar Sharma;
- She stated that they were living in their house without paying rent being their relatives.
- The testimonies of Narender Kumar Sharma and his wife Ram Kumari Sharma do not attribute any hostility, bias or enmity between the Ishwar Chand/accused No. 1/respondent No.1 herein and Narender Kumar Sharma till the date of the alleged incident i.e. 09.08.1989;

(b) TRANSACTION OF PROPOSED SALE BETWEEN ACCUSED/RESPONDENT No.1 AND COMPLAINANT

- The accused Ishwar Chand/accused No. 1/respondent No.1 herein had categorically stated in his statement under Section. 313 Cr.P.C. that

he had some property dispute at his village with his brother and that he had never lived at the house of Narender Kumar Sharma as a tenant and that he had paid a sum of Rs. 83,000/- to Narender Kumar Sharma towards the sale consideration of the plot which was adjacent to the house of the complainant and an amount of Rs. 22,000/- remained due which was to be paid at a later stage. He had further stated that he had not got the document executed and had taken possession of the said plot and had started living there with his family members and though he had asked Narender Kumar for getting the document executed, he had made a pretext that the owner was an old lady and was residing at Shahpura, and that one day when he met the son of the owner and asked for execution of the sale deed, he learnt that Narender Kumar Sharma had got the documents executed in his favour and then he met the father of Narender Kumar Sharma to get the document executed and that the father of the complainant informed him that Narender Kumar Sharma was a fraud and that the father of Narender Kumar Sharma could also not help the accused/respondent No.1 when the accused/respondent No.1 asked Narender Kumar Sharma to return the money or to get the document executed, and that Narender Kumar Sharma had falsely framed him in this case with the connivance of police.

- As observed by the learned trial Court in para. 8 page 10 of the impugned judgment, it was not the case of Narender Kumar Sharma or his wife that they had ever asked the accused Ishwar Chand/accused No. 1/respondent No.1 herein to vacate their house and that when relations between the parties were cordial and that the accused was residing as a licensee in the house of Narender Kumar Sharma and Narender Kumar Sharma himself did not assert that he was in a hurry to get the house

vacated, it was held by the learned trial Court that in that event, Ishwar Chand/accused No. 1/respondent No.1 herein allegedly stating that after getting the amount he would vacate the house, - was not in consonance with ordinary human behaviour;

- It was furthermore observed by the trial Court that Ishwar Chand/the accused No. 1/respondent No.1 herein was to vacate the house on his own and in that event there was no necessity for the complainant and his wife to go to Sikendarabad on a particular day to take a sum of money for after getting the money, from Sikendarabad the house was not to be vacated on that very day;
- Whereas Sh. Narender Kumar Sharma stated that Ishwar Chand/the accused No. 1/respondent No.1 herein had asked him to accompany him to Sikanderabad as he had to take some money from some person to the tune of Rs.8-9000/- , Smt. Ram Kumari Sharma in her testimony in examination in chief stated that Ishwar Chand/accused No. 1/respondent No.1 herein had come on 09.08.1989 to her house and had stated that he wanted to get Rs.20,000/- from some lady at Sikanderabad whereas in **Ex. PW-1/A**, the complainant stated that the Ishwar Chand/accused No. 1/respondent No.1 herein stated that he had to recover a sum of Rs. 15-20,000/- from a lady at Sikanderabad whereas in **Ex. PW-1/A** which forms the basis of the FIR the complainant asserted that the accused/i.e. respondent No. 1 herein stated that he wanted the complainant to make an excuse that the money was required for his maternal uncle's daughter's wedding, there is no such assertion in the examination-in-chief of **PW-1** Narender Kumar Sharma to this effect, though **PW-2** Smt. Ram Kumari Sharma makes an assertion qua this aspect;

- Through his testimony, the witness Narender Kumar Sharma stated that Ishwar Chand/accused No. 1/respondent No.1 herein was residing as a tenant in his house in Delhi and when he asked the Ishwar Chand/accused No. 1/respondent No.1 herein why he needed him, Ishwar Chand/ the accused No. 1/respondent No.1 herein stated that after collecting that amount from Sikenderabad he would vacate his house and would get another house.

(c) ***IMPROBABILITY OF REASONS FOR SMT. RAM KUMARI SHARMA TO BE TAKEN TO PRAN GARH***

- The learned trial Court also observed to the effect that as per the statement of **PW-1** Narender Kumar Sharma, Ishwar Chand/ the accused No. 1/respondent No.1 herein asked **PW-1** to take his wife along with him as money had to be collected from a widow, but in the meantime, the wife of Ishwar Chand/ the accused No. 1/respondent No.1 herein also came there and offered to look after their children in their absence and that it could not be understood why Narender Kumar Sharma had not questioned Ishwar Chand/ the accused No. 1/ the respondent No.1 herein for not taking his own wife, as the wife of Ishwar Chand/accused No. 1/respondent No.1 herein would have played the same role which was expected from Smt.Ram Kumari Sharma. It was thus observed by the learned trial Court that the behaviour and conduct of the complainant and Smt.Ram Kumari Sharma was not in consonance with ordinary human behaviour in the natural course of events;
- It was observed by the learned trial Court that though the complainant and his wife had been taken by Ishwar Chand/ the accused No. 1/respondent No.1 herein to take money from the lady on reaching Sikendarabad, the complainant and his wife were made to remain seated

in the vehicle in which they were taken to Sikendarabad and were not brought face to face with the lady from whom the money was to be collected and the said aspect as to why they were not taken was not explained nor was the accused questioned by the complainant or his wife as to why they were not being taken to that lady;

- That as per the statement of **PW-1** Narender Kumar Sharma, - Ishwar Chand/ the accused No. 1/respondent No.1 herein returned back in 2-3 minutes from that house at Sikendarabad and informed that that lady had gone to Pran Garh and thus they went to Pran Garh and even there at Pran Garh, the complainant and his wife were not taken to meet that lady but despite the same they did not put any query to the Ishwar Chand/accused No. 1/respondent No.1 herein;

(d) IMPROBABILITY OF INCIDENT HAVING OCCURRED AS ALLEGED

- That though the complainant was threatened and given danda blows and confined inside a room with his hands and legs tied with rifle butt blows given on his back, shoulder and stomach and he was asked a question as to where the sale deed of his house was and the keys of his safe were also demanded, he, the complainant, informed that the safe was not locked and that the ornaments and title deed were lying in the safe but at that time when he was being so assaulted, the complainant raised no alarm for help nor did he call out for the attention of his wife at that time. Furthermore, the learned trial Court observed that when Narender Kumar Sharma and his wife were to leave it was expected that they would keep their house in safety, under lock and key, and the factum that the safe at the house was not locked and the title deed, jewellery, cash were lying in the safe, was not in consonance of human behaviour and standards of

behavioural probability, as while leaving his home for outstation, the owner would put his belongings into safe custody. The learned trial Court also observed that the accused persons had, as per the testimony of **PW-1**, taken away the ring, wrist watch, Rs.4000/- cash, driving licence and identity card from the complainant around 11:30 a.m. on 09.08.1989 and had confined him and bolted him inside the house and as per the testimony of **PW-1**, Ishwar Chand/accused No. 1/respondent No.1 herein had returned at 4:00 p.m. and started giving beatings to him and obtained signatures by him on 25 judicial papers of the denomination of Rs.50/-, 10/-, 20/-, 5/- and 2/- whereafter his hands were untied and his thumb impressions were obtained, and after the same he was again bolted inside the room. When he cried his wife came along with some ladies and opened the door. It was observed by the learned trial Court that the testimony of **DW-1** brought forth that for about 4½ hours neither Narender Kumar Sharma did any act to invite the attention of his wife or villagers, nor did his wife bother to invite the attention of any of the villagers who ought to have reached for their rescue;

- That **PW-1** had stated that on hearing his cries, his wife along with some ladies reached there, which fact brought forth that there were some persons near the room where **PW-1** was detained and that his cries could invite the attention of some ladies along with his wife and that if some disorderly behaviour had been going on in the house, those ladies ought to have taken note of that fact, but **PW-1** stated that all that was going on went unnoticed and the ladies reached there when the accused persons left. It was observed by the learned trial Court that this version was not believable;

- The factum that **PW-1** stated that he had taken his wife to the house of the Sarpanch of the village and they had narrated their tale and that he was bleeding from his nose and had injuries on his feet and that his wife also told him that she too was beaten and her gold ring and chain had been snatched, and that though the Sarpanch got them dropped at Sikendarabad on a scooter and Vicky, he made no attempt to call any other person nor did he accompany them to the police station, - was all unnatural;
- It was also observed by the learned trial Court that the factum that when **PW-1** and his wife reached their house they found Smt. Shashi Bala wife of Ishwar Chand/ the accused No. 1/respondent No.1 herein was present there with the children and she informed that the Ishwar Chand/accused No. 1/respondent No.1 herein had reached there with two persons and had taken away a gold tika, VCP, sale deed and educational certificate from their safe, - were all unbelievable versions, for if the husband of Shashi Bala had committed theft at the house of the complainant, the factum that Shashi Bala neither opposed her husband from removing the goods and valuable security from the house of her own sister nor did she lodge any report with the police, nor did she herself move away from the house though she had an option to leave if she had a guilty conscious and she continued to wait for the arrival of the complainant and his wife, - were all contrary to the ordinary human behaviour especially, as Shashi Bala continued to be present with the children of Narender Kumar Sharma when he and his wife returned back during the night hours;

(e) VARIANT VERSIONS OF LODGING OF COMPLAINANT

- The trial Court has also observed to the effect that **PW-1** had informed that after reaching his house he had reached PP Gamri at about 11:30 p.m. and lodged his report which was also confirmed by his wife. Both of them denied that they had narrated the facts to anyone on the way but ASI Om Prakash **PW-9** had put forth another version for, he stated, that on 09.08.1989 at about 12/12:30 a.m. when he was coming to Kartar Nagar from Maujpur, Narender Kumar Sharma and his wife met him and they were in a bad state of affairs and their clothes had blood stains and he heard them and lodged their complaint at PP Gamri. As observed by the learned trial Court ASI Chhote Lal **PW-8** reiterated the same as stated by ASI Om Prakash. DD No. 28A dated 09.08.1989 **Ex.PW-5/A** recorded at the behest of ASI Om Prakash at 12:35 a.m. on 09.08.1989 categorically stated that Ishwar Chand/the accused No.1/respondent No. 1 herein and 2-3 persons had allegedly assaulted and beaten Narender Kumar Sharma and his wife Ram Kumari Sharma. DD No. 28A also records the case of the complainant that he had been taken away. It was also brought forth as observed by the learned trial Court that ASI Om Prakash knew the complainant and his wife and thus they narrated their tale of woe to him. The learned trial Court observed to the effect that the entire record indicated that Narender Kumar Sharma and his wife had denied having given any information to ASI Om Prakash as per DD No. 28A stating that they had not informed anyone of the incident till they reached PP Gamri because they wanted to wipe out the impression that facts were reported after consultation with ASI Om Prakash. The learned trial Court also observed to the effect that the testimony of ASI Om Prakash also brought forth the circumstances that all efforts were made

by Narender Kumar Sharma and Ram Kumari Sharma to remove the impression that the report was lodged by Narender Kumar Sharma after due deliberation by ASI Om Prakash.

- The learned trial Court also categorically observed to the effect that though ASI Om Prakash denied that he was aware about the residential address of the complainant when he met them on the way, **Ex.PW-5/A** DD No. 28A categorically contradicts this aspect in as much as the complete postal address of the complainant, is found mentioned therein. The learned trial Court has thus observed that this was an effort made by Om Prakash and the complainant and his wife to create an impression that the report lodged by Narender Kumar Sharma is spontaneous and without any deliberation, advice and embellishment of facts.

- It was also observed by the learned trial Court that Smt. Ram Kumari Sharma had deposed that they had reached Delhi at about 10:30 p.m. but had not gone to their house due to fear that someone may be present there and reached the house of their neighbour and narrated the incident to their neighbour who called the police at the spot and that if they had gone to a neighbour at 11/11:30 p.m., it could not be understood as to why and when they met ASI Om Prakash at about 12/12:30 p.m. in the night and thus it was not explained as to how DD No. 28A stood registered;

(f) NON JOINDER OF INDEPENDENT WITNESSES IN INVESTIGATION

- No neighbours of the victim party are indicated to have been joined in the investigation nor were they brought into the witness box to substantiate the contentions of the complainant. It was thus observed by the learned trial Court that the confusion created by the complainant party

was only with an intention to overreach the Court to get a finding to the effect that the FIR was lodged by Narender Kumar Sharma without fabricating facts and introducing a new story.

- The learned trial Court has further observed to the effect that **PW-1** had stated that the wife of Satya Dev, brother of Ishwar Chand/accused No. 1/respondent No.1 herein was present in the house on the date of the incident but does not explain as to where she went at the time of the incident and that neither **PW-1** nor his wife gave any explanation as whether the wife of Satya Dev came to the rescue of **PW-1** or not and that the wife of Satya Dev was also not cited as witness.

- It was also observed by the learned trial Court that the prosecution version was that the accused had not sought the presence of a lady at Pran Garh but if a lady was already there in the house, the non-examination of that lady without any just explanation unnecessarily led to the drawing of an adverse inference against the prosecution that had she been examined, she may have testified against the prosecution and that the testimony of Smt. Ram Kumari Sharma **PW-2** also brought forth a wholly improbable version;

(g) NON REPORTING BY PW-2 OF FACTUM OF SEXUAL ASSAULT

- The factum that **PW-2** for the first time gave her version of sexual exploitation when she entered the witness box and did not report about the same through **Ex.PW-1/A** nor through **Ex.PW-1/D** to the police nor before any doctor when she was examined nor did she inform anyone at Pran Garh nor did she inform the Sarpanch, - all made her version wholly improbable;

(g) NON FUNCTIONING OF POST OFFICE

- The learned trial Court also observed to the effect that though **PW-2**

stated that there was a post office at Pran Garh in the house of the Ishwar Chand/accused No. 1/respondent No.1 herein which was run by Madhusudan, brother of the accused, she stated that it was closed on that day but she had herself stated in her testimony that it was a working day, and her husband who was working at the Old Police Line Hospital had sent his leave application when he had accompanied the accused Ishwar Chand, respondent No. 1 herein.

(i) DOUBTFUL RECOVERIES

- The learned trial Court also observed that it was not probable that the accused who had allegedly snatched the gold ornaments and documents of the complainant had preserved the identity card and driving license of Narender Kumar Sharma who got them recovered subsequently which itself cast a doubt on the prosecution version.
- The learned trial Court further discarded the testimonies of Jagdish Prasad **PW-15** and HC Om Pal Singh **PW-16** stated recovery witnesses as their testimonies in relation to recoveries of **Ex.P1** gold ring and **Ex.P2** gold chain **Ex.P3** Identity card and **Ex.P4** driving license of Narender Kumar Sharma were variant in relation to the date when they went to get the recovery effected at the behest of the accused Ishwar Chand, respondent No. 1 herein. Though SI Jagpal Singh stated that they left Delhi on 23.08.1989 in a private vehicle and recovery was effected on 24.08.1989 and they returned to Delhi at 5-6:00 p.m. HC Om Pal Singh stated that they had gone to Bulandshahr on 24.08.1989 by a bus during noon hours and clarified that he remained outside a room when Ishwar Chand/accused No. 1/respondent No.1 herein went inside and brought the polythene containing ring, chain, identity card and driving licence of the complainant. It was thus observed by the learned trial Court that there are

discrepancies about the date when the two witnesses left and in relation to the vehicle by which they travelled and the time when they reached and effected recovery.

(j) PROBABLE REASONS FOR FALSE IMPLICATION

- The learned trial Court has also observed to the effect that the reason as to why Narender Kumar Sharma and Ram Kumari Sharma roped in their relations and others in the battle, and the answer thereto was available in the statement of Vikram Singh recorded under Section 161 Cr.P.C. It was further observed by the learned trial Court to the effect that the said statement can be used only to contradict the witness and had been so used by the prosecution in as much as this witness Vikram Singh R/o village Pran Garh, Sikendarabad, Distt. Bulandshahr, U.P. had stated that he is an agriculturist at village Pran Garh, Sikendarabad and that Narender Kumar and his wife had never come. This witness on being cross-examined by the State denied that on 09.08.1989 at about 7:00 p.m. Narender Kumar with his wife came to his house and that Narender Kumar had wounds on his body and denied that he made any statement before the police. This witness was confronted with the entire statement under Section 161 Cr.P.C. and reiterated having not made the same. The learned trial Court has observed to the effect that though this statement under Section 161 Cr.P.C. which can be used only for contradicting the witness and was so used, yet it presented the case of the prosecution and needed attention.
- The learned trial Court observed to the effect that it was reported in the said statement that on 09.08.1989 at about 7:00 p.m. Narender Kumar Sharma and his wife came to the house of Vikram Singh and there were injuries on the person of both of them, they were frightened and asked

this witness to save their life. Both of them told him that they were beaten by the Ishwar Chand/accused No. 1/respondent No.1 herein, with the help of his associates and thereafter obtained his signatures on some pieces of papers and after narrating those facts they went to the house of Ishwar Chand/accused No. 1/respondent No.1 herein. After some time he went to the house of Ishwar Chand/accused No. 1/respondent No.1 herein. Ishwar Chand and his brother Satya Dev were present there and Narender Kumar Sharma and his wife were also present. Satya Dev was arranging milk to give it to them for drinking and Narender Kumar and his wife after consuming the milk asked Satya Dev to take out his scooter and drop Narender Kumar and his wife to Sikanderabad. It was observed by the learned trial Court to the effect that this statement brought forth that Ishwar Chand/accused No. 1/respondent No.1 herein and Satya Dev were present at the house at Pran Garh and were arranging milk for Narender Kumar Sharma and his wife, when **PW-7** had gone there and that the story of abduction of Narender Kumar Sharma and his wife from Delhi had not been projected before this witness.

- It was further observed by the learned trial Court to the effect that it would be implicit thus to the effect that Narender Kumar Sharma and his wife had gone there at village Pran Garh and there was some dispute between Ishwar Chand/accused No. 1/respondent No.1 herein and Narender Kumar Sharma and as a result of their dispute, some altercation had taken place in which Narender Kumar Sharma had sustained some injuries and also alleged that his signatures were obtained on some papers.
- It was further observed by the learned trial court that the story of robbing them was also not projected before Vikram Singh nor was the

aspect of sexual exploitation spoken about before Vikram Singh and though they had an altercation with Ishwar Chand/accused No. 1/respondent No.1 herein, yet they were ready to consume milk when Satya Dev arranged it for them.

(k) OTHER INCONSISTENCIES

- The learned trial Court further observed that it was obvious that the incident which might have taken place between Ishwar Chand/accused No. 1/respondent No.1 herein and Narender Kumar and Ram Kumari was not so alarming which could make these witnesses panic and that on the way to Delhi, Narender Kumar Sharma had deliberations with his wife and ASI Om Prakash and a twist had been given to the facts and while leaving for Pran Garh and that Smt. Shashi Bala was left by them at their house to look after their children.
- It was also observed by the learned trial Court that Shashi Bala was not aware of the happenings and she was present at the house of Narender Kumar Sharma when they returned back to Delhi. The learned trial Court further observed to the effect that the incident if at all it had happened, had taken place only at Pran Garh.
- It was also observed vide the impugned judgment that Narender Kumar was working as dentist hygienist at the Civil Hospital, Delhi which was earlier known as Police Hospital, Delhi. He exploited his connection with Delhi Police and got roped Ishwar Chand/accused No. 1/respondent No.1 herein and others in the case here and this case was a brainchild of Narender Kumar Sharma and ASI Om Prakash and that the crime had not been generated here at Delhi;
- Another aspect detailed in the impugned judgment is to the effect that **Ex.PW-11/A** and **Ex.PW-11/B**, the receipts issued by Narayan

Verma **PW-11**, the goldsmith who prepared the ornaments **Ex.P1** and **P2** i.e. the ring and chain respectively for Narender Kumar Sharma, were admitted to have been issued by him on **02.09.1989** despite the factum that the incident had taken place on **09.08.1989**. The learned trial Court thus observed to the effect that this itself indicated that these receipts were later on procured by Narender Kumar Sharma and that the witness Narayan Verma entered at the instance of Narender Kumar Sharma and that in the receipts **Ex.PW-11/A** and **Ex.PW-11/B**, the name of Narender Kumar was not mentioned which itself made the testimony of the witness Narayan Verma hollow and that this fact itself brought forth that their testimonies were unworthy of any credit.

- The learned trial Court also adverted to the testimonies of two defence witness Neeraj Kumar **DW-6** and Smt.Manorma **DW-7** observing to the effect that the testimonies of Neeraj Kumar, the alleged driver of the vehicle No. DID 2850 who was not produced in the witness box of the prosecution and was produced by the accused testified that on 09.08.1989 he had not gone with Ishwar Chand/accused No. 1/respondent No.1 herein anywhere with his vehicle and his testimony had not been effectively challenged by the prosecution. The learned trial Court observed to the effect that the testimony of Manorma, the tenant of Narender Kumar Sharma who was not produced in the witness box by the prosecution and was produced by the defence as witness was not shattered in any manner and that **DW-7** had categorically denied that Narender Kumar Sharma and his wife had gone along with Ishwar Chand/accused No. 1/respondent No.1 herein and it was observed to the effect that it was thus brought forth that though the version of abduction of the complainant and his wife from their house was not established in

any manner what emerged was that Narender Kumar Sharma and his wife had gone to Pran Garh of their own where they had some altercations with Ishwar Chand/accused No. 1/respondent No.1 herein and after reaching Delhi they fabricated facts after deliberation with ASI Om Prakash and lodged a false case.

CREDIBILITY OF DEFENCE WITNESSES

48. It is essential to observe as laid down by the Supreme Court in the case of ***State of Haryana vs. Ram Singh***, a verdict dated 15.01.2002 in Crl.A.No.78/1999 that the evidence tendered by defence witnesses cannot always be termed to be a tainted one and that defence witnesses are entitled to equal treatment and equal respect as that of the prosecution and that the issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. To the same effect is the verdict of the Supreme Court in the case of ***State of U.P. vs. Babu Ram***, a verdict dated **11.04.2000 in Crl.A.No.279-80/1995** which lays down that “*Depositions of witnesses, whether they are examined on the prosecution side or defence side or as Court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a Court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.*”

49. Taking the said principles of law for appreciation of evidence into account it is essential to observe that **DW-1** Madhusudan, brother of the accused Ishwar Chand, respondent No. 1 herein who was running the post office in the house where the incident is alleged to have taken place at Pran Garh, Distt. Bulandshahr has categorically testified to the effect that on the date i.e.

09.08.1989 the said post office was open and that he was present from 10:00 a.m. to 5:00 p.m. and that Rohtash Kumar and Satish Chand were also present and that Narender Kumar Sharma and his wife had not come out of that house nor had he heard any commotion in the house. The prosecution during the cross-examination of this witness has been unable to challenge the veracity of the testimony of this witness in any manner.

50. The testimony of **DW-2** Dharambir also corroborates the statement of the Ishwar Chand/accused No. 1/respondent No.1 herein under Section 313 Cr.P.C. that Ishwar Chand/accused No. 1/respondent No.1 herein had paid a sum of Rs.83,000/- to purchase a plot from someone through Narender Kumar and that there had been altercations in relation thereto and that Narender Kumar had stated that he would teach Ishwar Chand/accused No. 1/respondent No.1 herein a lesson. The statement of **DW-2** corroborates the fact that Ishwar Chand/accused No. 1/respondent No.1 herein had paid a sum of Rs.83,000/- to Narender Kumar Sharma for the purchase of a plot in relation to which the title deed was stated to have been executed by the complainant in his own name instead of it being in the name of the Ishwar Chand/accused No. 1/respondent No.1 herein.

51. The testimony of **DW-5** Mahender Singh produced by the accused also brings forth the aspect that a sum of Rs.70,000/- was also borrowed by the Ishwar Chand/accused No. 1/respondent No.1 herein from the said witness.

52. **DW-6** Neeraj Kumar who was put forth in the charge sheet in column no. 2 as an accused, though not arrested, and was produced by the accused in defence, categorically stated that he had not taken Ishwar Chand/accused No. 1/respondent No.1 herein and others in his vehicle No. DID 2850 anywhere, much less to Pran Garh, on 09.08.1989. This witness has also categorically asserted that his vehicle had been intercepted by the police as he did not have

the papers of the vehicle on 15.08.1989. Significantly, **Ex.PW-1/B** the seizure memo in relation to Maruti Van shows that it was seized on 15.08.1989 and had been seized by the police of PS Bhajanpura. This witness has categorically denied that his vehicle was used by the accused persons for commission of any dacoity.

CONCLUSION

53. Taking the totality of the circumstances of the case into account, especially the discrepancies in the testimonies of the prosecution witnesses including inter alia:-

- the improvements made by **PW-1** and **PW-2** in their statements made from their statement recorded by the police including variations from **Ex.PW-1/A**, the complaint, which forms the basis of registration of the FIR,
- the variations in relation to material particulars set forth during the prosecution version and in the testimonies of the prosecution witnesses examined on oath especially **PW-1** and **PW-2**;
- the variations in the testimonies of SI Jagdish Prasad and HC Om Pal Singh, the alleged recovery witnesses in relation to the mode and manner in which the recovery was allegedly effected;
- the probabilization of the facts put forth by the defence witnesses being brought forth through the entire available record,

all make the allegations levelled of the alleged commission of the offence punishable of extortion, abduction, criminal intimidation, assault and robbery as alleged by Narender Kumar Sharma and his wife Smt. Ram Kumari Sharma, wholly circumspect and it is thus apparent in the facts and circumstances of the instant case that there are no compelling

nor substantial reasons to differ with the view taken by the learned trial Court on the basis of the evidence on record, both on questions of fact and of law.

RESULT

54. In view of the above conclusion, it is held that there is no infirmity in the impugned judgment dated 19.04.2000 of the learned trial Court in SC 194/98 in FIR 331/1989 registered ad PS Bhajanpura. In view thereof the Crl. Appeal No.718/2000 filed by the State which survives now only against the sole surviving accused No. 1/respondent No.1/ Ishwar Chand herein, is thus dismissed. The trial Court record be returned.

ANU MALHOTRA, J

GITA MITTAL, J

JANUARY 09, 2017

mr

