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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Judgment Reserved On: 08.07.2019
Judgment Pronounced On: 30.08.2019**

CRL.A.174/2002

The State

..... Appellant

Versus

Shambhu Dayal & Ors.

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Radhika Kolluru, APP for the State with Insp. Chander Bhan.

For the Respondent : Mr. Gurbaksh Singh, Mr. Rahul Sarkar and Mr. K. Bhardwaj, Advocates for R-1 &2.
Mr. M. Shamikh, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. The appellant has instituted the present appeal under section 378 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') against the impugned judgment and order dated 15.10.1999, in Sessions Case No. 14/98, arising out of FIR No.143/1987, registered at Police Station –Anand Parbat; whereby

the Trial Court has acquitted the accused persons Shambhu Dayal, Prakash Chand and Sh. Lal Singh (hereinafter referred to as ‘the respondents’) of a charge framed against all of them under section 452/304/34 Indian Penal Code, 1860 and u/s. 342 IPC against accused Lal Singh.

2. The case of the prosecution as elaborated by the learned Trial Court is as follows:

“2. Prosecution case, as disclosed in charge-sheet, is that on 23.11.87, Smt. Kamlesh Kumari, the complainant, gave statement to Shri Harmeet Singh, ACP, Patel Nagar at RML Hospital in the presence of Shri Kartar Singh that she was residing at 408/5AC, Anand Parbat with her children. The house was taken on rent from Ranjit Singh. The sons of Puran Singh were asking her to vacate the house since long saying that they had purchased the house. For this she had obtained a stay from the Court. In the evening of 14.11.87, she was present at her house along with her children namely daughter Saroj aged 12 years, son Naresh aged 09 years and other son Suresh, aged 06 years. Her husband being truck driver was out of Delhi. At about 7.30 p.m., Shambhu Dayal and Prakash Chand entered into her house and gave them beatings with dandas and legs. In the meanwhile SHO Lal Singh came in civil dress. He gave her beatings and torn her clothes; took her to police station and put in lock up. On 16.11.87, she came from jail on bail and came to know that her children were present in the house of Sonia, her daughter’s friend. Around 10/11p.m. she brought her children back to her house and her son Naresh told her that he was running fever and was having pain in his left

leg. There was marks of contusion on leg of her son. On the next day she took her son to a doctor in gali No.16 for medicine.

On 18.11.87, when the condition of her son deteriorated, her relative Ramesh got her son admitted in hospital. Since he was not aware of as to how her son sustained injury, he could not disclose the facts to the doctor. The condition of her son further deteriorated in the hospital due to the beatings given by Shambhu Dayal and Prakash chand. The case be registered against them and an action be taken. Her son was not given beatings by any police official.

3. The said statement of Smt. Kamlesh was recorded at 11 p.m. and on 24.11.87, ACP Harmeet Singh made his endorsement at 8 a.m. and got the case registered u/s. 308/34 IPC.

The investigation was then handed over to Insp. Suresh Kumar of vigilance. He then got medically examined the complainant from JPN Hospital wherein also she gave some statement to the doctor. In that statement to the doctor, she stated that on Saturday, at about 7 p.m. SHO Lal Singh in civil dress and other police officials in uniform came and after entering in her house SHO Lal Singh gave beatings and took her to police station and thereafter put in the lock-up at P.S. Pahar Ganj but she was not medically examined. Insp. Vigilance examined Km. Saroj and thereafter arrested accused Shambhu Dayal on 24.11.87 itself. The MLC of injured Naresh was got prepared but his statement could not be recorded as he was stated to be in deep comma. On 26.11.87, at about 8.30 a.m. Naresh Kumar died in the RML Hospital. His inquest proceedings were conducted and the body was sent for post-mortem. On 26.11.87, after post-mortem the investigation was transferred to Crime Branch and was entrusted to Insp.-cum-ACP Shakti singh. The offence was converted to 304/34 IPC. The dead-body was handed over to his heirs.

3. After completion of the investigation, charge-sheet was filed in the court. Ld. Trial Court had framed charge against all the three accused persons for the offences punishable under Sections 452/304/34 of the IPC and an additional charge for the offence under Section 342 IPC was framed against accused Lal Singh.

4. To substantiate the accusation, the prosecution has examined 18 witnesses. The case of the prosecution rests primarily on the testimonies of **PW2 Smt. Kamlesh** (mother of the deceased), **PW3 Ms. Saroj** (sister of the deceased) and **PW5 Smt. Maya Devi** (neighbour of the complainant). The statements of the accused persons/respondents were recorded under section 313 Cr.P.C, wherein they denied the case of the prosecution and submitted that they are innocent and falsely implicated.

5. The learned Trial Court, upon analysis, examination, and evaluation of the prosecution evidence and after considering the rival submissions recorded acquittal in favour of the accused persons for the charged offences.

6. Aggrieved by the impugned judgment, Ms. Radhika Kolluru, learned APP argued that the judgment passed by the Trial Court was

perfunctory in nature, full of conjectures and surmises and, therefore, liable to be set aside.

7. It is argued that Ld. Trial court erred in ignoring the fact that complainant PW2 Smt. Kamlesh had categorically stated that she did not make the statement **Ex.PW2/A** nor was it read over to her. She was illiterate rustic woman having done schooling only up to 2nd or 3rd class and she specifically stated that her signatures were obtained fraudulently without reading out the contents to her. It is further submitted by Id. APP that her supplementary statement u/s. 161 CrPC made before the Crime Branch Investigating Officer bears true and correct facts leading to the occurrence which also forms part of the chargesheet filed u/s. 173 CrPC and this statement is in consonance with the statement made before the court and Ld. Trial Court should have relied upon the same.

8. It is further submitted by Id. APP that the testimony of complainant PW-2 was corroborated by other eye witnesses whose presence was natural at the time of incident i.e. **PW-3 Saroj**, sister of the deceased and **PW-5 Maya Devi**, neighbour of the deceased. The statements of these witnesses have been wrongly discarded by

the Ld. Trial Court saying that there are various improvements and contradictions in their version. It is submitted that the occurrence had taken place in the year 1987 and the statements of witnesses were recorded in the Court somewhere in 1995 and, therefore, minor discrepancies were bound to occur in the testimonies and these should have been ignored by the Ld. Trial Court.

9. It is next submitted by Id. APP that **PW-11 Dr. L.T. Ramani** in his post-mortem report suggested that all injuries were ante mortem caused by blunt force impact. Dr. L.T. Ramani PW-11 has further deposed that the possibility cannot be ruled out that the injury on the thigh and hip joint which were grievous in nature would have aggravated the condition of the child (deceased) but Ld. Trial Court has over looked the above testimony while acquitting the respondents.

10. It is further submitted by Id. APP that Section 140 of the D.P. Act did not apply to this case and, therefore, the Ld. Trial court erred in law in relying upon the same. It is submitted that accused Lal Singh was not discharging any official duty when he had gone to assist the co-accuseds and had threatened PW-2 Smt. Kamlesh to

vacate the rented premises as local police has no power to interfere in the matter when a civil suit regarding the property in question is already pending. It is further submitted by ld. APP that the Ld. Trial court also over looked the fact that a case under section 448 IPC which was foisted upon PW-2 was also sought to be cancelled by the police which shows involvement of all the respondents in falsely implicating the complainant.

11. It is further submitted by ld. APP that Ld. Trial court failed to appreciate the fact that deceased who was 8-9 years old has lost his life for no fault of his and there was no reason for PW-2 mother of the deceased to falsely implicate any person other than the real culprits.

12. Per contra, Ld. Counsels Mr. Gurbaksh Singh, Mr Rahul Sarkar and Mr. K Bhardwaj for respondent no.1 & 2 and Mr. M. Shamikh, Ld. counsel for respondent no.3 argued that there is no infirmity in the impugned judgment passed by the learned Trial Court and no interference is, therefore, called for by this Court. It was contended that the testimony of complainant PW-2 Smt. Kamlesh and other eye-witnesses i.e. PW-3 and PW-5 are full of

contradictions, inconsistencies and improvements as they have given different versions in their statements. The prosecution version is, therefore, not reliable and Ld. Trial Court has rightly acquitted all the accused persons.

13. We have heard the learned counsel for the parties, gone through the evidence appearing on record and the impugned judgment dated 15.10.1999.

14. Statement of complainant, PW-2 Smt. Kamlesh is reproduced hereunder for appreciating the rival submissions:-

‘S. Ranjit Singh was my land-lord. We used to pay Rs.60/- as rent to him of one room, one kitchen and latrine and bath room. My husband was a truck driver. Mostly he used to remain out of station on driving truck. Ranjit Singh used to reside in gali no.27 at Anand Parbat. The house was taken on rent in the year 1974 and upto 1984 rent was paid to Ranjit Singh. After 1984 Ranjit Singh was not seen. Thereafter Manohar Lal stated that he was the owner of the house and demanded rent. We paid rent of three/ four months to him. He did not produce any documentary proof regarding the ownership of the house as such we stopped paying rent to him. We filed a case in the court against Manohar Lal. Thereafter Puran Chand started saying that he was the owner of the house. He did not produce any documents regarding the ownership of the house. There were 20/25 tenants in that building. Only four/ tenants remained in that building and others were ejected from the building by Purain Chand and the accused Shambhu Dayal, Parkash Chand.

They were evicted either paying some money to them or by threatening them. They also asked us to vacate the house. We refused to vacate the same. Connections of water and electric supply were disconnected by the accused persons. They threatened us and asked us to vacate the premises.

On 02.11.1987 one thandedar named Vajinderpal Singh came at my house and asked me to come to the police station as I was called by the SHO. P.S. Anand Parbat. In the evening, I went to the police station and met the SHO. The SHO was Lal Singh who is the accused now present in the court. Accused Lal Singh asked me to vacate the room. I expressed my inability to vacate the house as I was having small children. Accused Lal Singh asked me to come on 04.11.1987. On 04.11.1987 I went to the police station and met accused Lal Singh. The other two accused persons now present in the court were also sitting there. Accused Lal Singh asked me to vacate the room by receiving Rs.10,000/-. I told the accused that I will reply after considering the matter.

On 12.11.1987 I was again called by accused Lal Singh in the police station. Accused Lal Singh asked me to vacate the house. I told him that I was having small children and was unable to vacate the room and shall vacate the same after examination. Accused Lal Singh threatened me that if I fail to vacate the room my house-hold articles will be in the police station and I will be in the lockup of the police station. In the next morning on 13.11.1987 I came to my advocate and explained to him that the police was threatening me to vacate the room. My advocate told me that the case was pending in the court and that there was stay order from the court and my room cannot be vacated by any person. Thereafter I returned to my house and I saw that house-hold articles of Maya Devi who is my neighbor and tenant in the same building was thrown out of the room and

my three children were taken to the police station. Maya Devi had told me that my children were taken to the police station. I went to the police station. My children were in the police station. I was not permitted to see my children and accused Lal Singh told me that I will get my children if I vacate the room. Thereafter I again came to Tis Hazari Courts and met my counsel Shri Patial. My advocate telephoned to the police control room and accompanied me to my house and went to the police station and got my children released. The police of PCR had also reached at my house. When we reached there the police control room van was standing outside my house in the gali. From the police station I returned to my house along with my children. The articles of the house were lying scattered. My children and Maya Devi were made to sleep in my room and I slept outside of my room. During the night at about 10.00 PM accused Shambhu Dayal came at my house and hit a stone on my head and sustained injuries. Puran Chand was also with him. I went to the police station. I was taken for medical examination by the police. Thereafter I returned to my house. No action was taken by the police against Shambhu Dayal. I saw them in the morning at their house when I returned from the hospital.

On 14.11.1987, at about 7/7.30 p.m., accused Shambhu Dayal and Prakash Chand, now present in court, came to my house. Accused Prakash Chand was having a danda and Shambhu Dayal was empty handed. They gave me threatening to vacate the house. They also gave beatings to me and to my son Naresh who was present there. I & my son were beaten with danda and hand and fist blows. In the meantime accused Lal Singh, now present in the court, in civil clothes along with a constable came there. Accused Lal Singh also gave me beatings and my clothes were also torn by him. My shirt was torn by accused Lal Singh (At this stage a shirt is shown by the

witness which is torn from front portion objected to) My son Naresh Kumar has caught me from my leg and was saying why his mother was being beaten. Accused Lal Singh hit his foot on my son and he was pushed and his left leg struck with the wall and he sustained injuries in his leg. Accused Lal Singh exhorted the other two accused persons to kill us. I was dragged to police station. My son was left there. Hearing the noise, Maya Devi, my daughter Saroj and my younger son who was seeing television in neighbour's house also came there. I was put in the lock-up by the SHO. I was threatened in the police station and was abused. Accused Lal Singh stated that Indira Gandhi was nothing before the police and I was a small sparrow. My sureties came in the police station but I was not released on bail by the accused Lal Singh. Somebody brought some police man in the police station and he also questioned accused Lal Singh as why I was confined in the police station. Accused Lal Singh also abused him and he left the police station. Thereafter, I was sent to P.S. Pahar Ganj and I was put in the lockup at P. S Parharganj. I had received multiple injuries due to beatings given by the accused persons and became unconscious in the lock-up at about 5 am. One Sham Lal from P.S. Anand Parbat came to PS Pahar Ganj. CQ. Sham Lal came to PS. Paharganj as someone from PS Paharganj telephoned to P.S. Anand Parbat).

Sham Lal stated that he was taking me to hospital but I was not taken to the hospital and was brought back to PS Anand Parbat by said Sham Lal. I asked as to what my fault and why I was being harassed. Sham Lal told me that I can be released on bail from the Court. I was produced in the Court at Tis Hazari. I was not released as my surety was not having documents. Thereafter I was sent to Jail. I was unwell in the jail and medicines were given to me in the jail. On 16.11.198, I was released from Jail on bail. I returned to my house at

around 10/10.30 pm. My son Naresh was crying due to pain and the injuries. My son was present in the house of one Sobha when I returned from jail. As it was night time I could not take my son to any doctor.

On 17.11.87 I took her son Naresh to a doctor who was Sikh. The doctor advised me to take my son to the hospital due to serious condition. My relatives Ramesh and Devraj came on 18.11.1987 and took my son to RML Hospital. He was admitted there as he was having injuries in his leg and was treated in the hospital. I told the doctor that he had sustained injuries in this manner. Then my advocate was called by my brother to the hospital. The condition of my son was serious and blood was being given to him on 21.11.1987. On 23.11.1987 Bijender Pal of P.S. Anand Parbat came to me. He saw my son. He did not talk to me and left the hospital. On my enquiry the doctor told me that condition of my son was serious and chances of survival were remote. I with my advocate Mr. Patial went to police Headquarter and contacted senior police officers. I also gave a letter to them and told about the condition of my son.

On 25.11.1987 some police officer met me and I told him that I was in shock and as such I was unable to make any statement. He wrote some statement which was not read over to me and my signature were obtained on that alleged statement. That statement is Ex.PW2/A it bears my signatures at point A. This statement was not made by me.

On 26.11.1987 my son Naresh Kr. died in the hospital due to the injuries inflicted by accused Lal Singh, Shambhu Dayal and Parkash Chand. We demonstrated for justice I do not remember the name of those Kothi. Thereafter the investigation of the case was transferred to Crime Branch. DCP Amoth Kanth assured me of proper investigation. My house-hold articles were taken away by the police on 14.11.1987. My ornaments

consisting of jhumka, chain with locket, ring, kares and Rs. 3000/- cash were also taken by the police from my house which have not been returned to me uptill now. The clothes of the children, television without machinery, beddings sewing machine were returned to me by the police of Crime Branch. Rest of the articles were not returned to me.

15. Perusal of the above statement of PW-2 reveals that it is full of improvements and is at variance with her first statement Ex.PW2/A made to ACP Harmeet Singh on 23.11.1987 and second statement Ex.PW2/DA made to the Doctor Vikas at JPN Hospital on 24.11.1987. Statement of PW-2 Smt. Kamlesh given to ACP Harmeet Singh on 23.11.1987 has already been reproduced in second para of the judgment. The said statement was duly signed by the complainant **PW-2 Kamlesh**. Perusal of her statement reveals that complainant has not levelled any allegation against SHO Lal Singh to the effect that he has beaten her son Naresh. She has, however, alleged that SHO Lal Singh had torn her clothes and beaten her and she was arrested and sent to jail by him.

16. The second statement made by the complainant is to Medical Officer, JPN Hospital where she was medically examined. The said statement has been exhibited as **Ex.PW2/DA** and it runs as under:-

‘Brief facts as stated by patient herself:

Alleged H/o. having been beaten by SHO Lal Singh of Anand Parbat along with nearly 10 policeman around 7.00 PM on Saturday evening. Allegedly the SHO Lal Singh was in plain clothes. Other policemen were in dress. The patient was allegedly beaten by SHO Lal Singh himself after he entered the house forcefully along with him man. Allegedly the patient was alone in her house along with her three children. There was no lady constable along with the police party as per the version of the patient. The patient was then taken by SHO to police station Anand Parbat and kept there till 1 AM and then sent to Pahar Ganj police station lockup. As per the version of patient no medical examination of her was done. She was allegedly released on bail on Monday morning.

17. Perusal of the above statement, **Ex.PW2/DA**, reveals that complainant has not levelled any allegation against respondents Shambhu Dayal and Prakash Chand. In the said statement, she has only alleged that she was beaten by SHO Lal Singh and taken to police station. She has nowhere stated that SHO Lal Singh had beaten her son Naresh. Further she has also not leveled any allegation that beatings were given to her or her children by respondents Shambhu Dayal and Prakash Chand.

18. The complainant has, however, denied that she has made the statement **Ex.PW2/A** before ACP Harmeet Singh, though she has admitted her signature at point A on the above statement. She has

stated that on 25.11.97 one police officer had met her and she had told him that she was in shock and as such unable to make any statement.

19. We have given our thoughts to the matter. The statement Ex.PW2/A is duly signed by witness. She has admitted that she had signed the statement but she did not know what was written in it as she was under shock. In our opinion it is difficult to believe the version of PW2 that she had signed the statement without knowing the contents thereof. The said statement has been recorded in Hindi on 23.11.87. It is not the case of the complainant PW-2 Smt. Kamlesh that she did not know Hindi. There is nothing on record to suggest that she has complained to higher authorities or even her counsel Mr. Patial (with whom she was in constant touch), that she had signed the statement without knowing the contents thereof. We are, therefore, unable to agree that the statement Ex.PW2/A was not made by the complainant but she had only signed the same.

20. Ld. Trial Court has thoroughly analyzed the statements given by PW-2 and we do not find any infirmity or perversity in the reasoning given by it while appreciating her testimony. Ld. Trial

Court has rightly held that all the statements given by PW-2 Smt. Kamlesh are contradictory and unreliable. In her first statement Ex.PW2/A (on the basis of which FIR was registered) the complainant has not levelled any allegation against respondent no.3, Lal Singh that he has beaten her son Naresh. In the second statement (Ex.PW2/DA made to the Doctor) also, she has nowhere stated that SHO Lal Singh has beaten her son. It is only in her third statement that she has levelled allegations against SHO Lal Singh that he has beaten her son Naresh. Ld. Trial Court has rightly disbelieved the testimony of the complainant for the reason that there are many improvements in the same.

21. Perusal of the record further reveals that complainant **PW-2** was in constant touch with her **counsel Mr. Patial**. In her examination in chief, she has deposed that on **13.11.87** she had met her advocate and explained to him that police was threatening her to vacate the house. The advocate had told her that the case was pending in the court and there was a stay regarding the property in question and the house cannot be vacated by the police. On the same day, she had contacted her counsel again as she had come to know

that her children were taken to police station and she was not allowed to meet them. Thereafter she had again gone to Tis Hazari Court and met her counsel Sh. Patial and with his help got her children released from the police station. Perusal of her statement further reveals that on **23.11.87** when she came to know that her son's condition was serious and his chances of survival were remote, she along with her counsel had gone to Police Head Quarters and contacted senior police officers. The testimony of PW-2, thus, shows that the complainant was in constant touch with her counsel. It is strange that despite the fact that she was getting legal assistance, she has not stated in her statements Ex.PW2/A and Ex.PW2/DA that respondent no.3 Lal Singh had beaten her son on 14.11.1987. It is, thus, difficult to believe the version of PW-2 who has given different versions of the incident on different dates and has not levelled allegations against respondent no.3, SHO Lal Singh for beating her son either before PW-16 ACP Harmeet Singh on 23.11.1987 or before Doctor Vikas on 24.11.87. However, in her statement dt. 23.11.1987 she has alleged that respondents no.1 & 2 i.e. Prakash Chand and Shambhu Dayal had beaten her son on

14.11.1987. Ld. Trial Court has examined the statement of PW2 Smt. Kamlesh and pointed out the contradictions and its finding runs as follows;

‘36. In her statement Ex. PW 2/A initially recorded by PW 16 ACP Harmeet Singh and her statement EX. PW2/DA made before the doctor, when she was medically examined, she categorically stated that she was not beaten by any Police wala. Prior to it she did not make any complaint to any senior officer. It was only when she found the condition of her son, who was admitted in the Hospital on 18-11-87, serious she raised hue and cry, ACP Harmeet Singh of P. S. Anand Prabat reached hospital and met her and recorded her statement Ex.PW2/A, on 23-11-87. The investigation then was handed over to Inspector Suresh Kumar of vigilance, who then prepared injury sheet of the complainant Smt. Kamlesh and got her medically examined from the doctor, to whom she also made a statement Ex.PW2/DA. Now, these are the two initial statements made by Smt. Kamlesh, one before PW 16 ACP Harmeet Singh and the other to the doctor, who medically examined her. In both these statements, as I have stated above she nowhere stated that accused Lal Singh gave her and her son beatings. On 26-11-87, Naresh, son of Smt. Kamlesh, died in the hospital the complainant raised hue and cry and the investigation was transferred to crime branch and the matter was investigated by Insp. Shakti Singh. Now when she was again examined by the police she came out with the version involving Insp. Lal Singh also. Now, there are two statements of the witness, one narrated to ACP Harmeet Singh vide Ex. PW2/A and the other to the doctor vide memo Ex.PW2/DA. The version given in the statement Ex.PW2/A by the complainant Kamlesh is the basis, on which FIR Ex.PW6/A

was recorded. Now PW2 Smt. Kamlesh stated in court that though some police officials met her and wrote some statement and obtained her signature but she never made any such statement. She further admitted that statement is Ex.PW2/A and bear her signature at point 'A' but categorically stated that this statement was not made by her. Thus, if her such assertion for having not made statement Ex.PW2/A to the police is accepted, then the entire case of the prosecution goes away, particularly because the basis of FIR is the statement of complainant Ex.PW2/A. PW16 ACP Harmeet Singh, on the other hand, has categorically stated that on 23.11.87, he recorded the statement of Kamlesh Ex. PW2/A and it contains the facts narrated by her.

22. The question which now arises for consideration is whether the testimony of the complainant PW-2 can be relied upon for convicting Insp. Lal Singh and other respondents. It is a settled law that when the testimony of a witness is full of contradictions, inconsistencies and improvements, it will not be in the interest of justice to rely upon such an untrustworthy statement. Ld. Trial Court has also given reasons in para no. 41 to 44 for not believing the testimony of complainant, PW-2. The findings of Ld. Trial Court are as under;

‘41. As per these two statements, ie. PW 2/A and PW 2/DA it appears that both are contradictory to each other. In first statement EX. PW2/A she did not state that accused Lal Singh hit her son Naresh because of which he struck against the wall and sustained injuries.

She rather stated there in that no police official beat her son. She, however, stated that accused Shambhu Dayal and Prakash Chand had beaten her after entering into her house but strangely enough when she gave the history to the doctor in her statement EX. PW2/DA she did not state about the accused Shambhu Dayal or Prakash Chand having beaten her or her son. She rather implicated only accused Lal Singh for having come to her house with 10 policemen and after beating her forcibly took her to police station.

42. Now, when she came in the witness box she gave totally different version including the events happened prior to 14.11.87. She then introduced a new fact that her son Naresh was also beaten by accused Shambhu Dayal and Prakash Chand and thereafter by accused Lal Singh because of which her son sustained injury on his leg and due to that his condition deteriorated for which he was admitted in hospital and later on he died on 26-11-87. Had there been any reality or truth in the facts narrated by her in Court she must have disclosed those facts initially to PW 16 ACP Harmeet Singh and then to the doctor, who examined her on 24-11-87. She categorically stated in her cross examination that she had stated before the doctor at the time of her medical examination on 24-11-87 the entire incident having been occurred in the evening of 14-11-87 at her house including her having been beaten by accused Shambhu Dayal and his brother Prakash Chand but when her such statement was confronted the said fact was not found mentioned therein. Now it is not clear as to what prevented her in giving all the material facts, may be untrue, about her son Naresh having been beaten by the accused persons. It is not the case that PW2 Kamlesh was totally ignorant of the facts. She was in constant contact with her Advocate Shri Patial. Admittedly, she had been meeting her Advocate of and on and whenever there need be. Even during the arguments of this case

also her counsel was there assisting the Ld. Prosecutor. This shows that she had been consulting and seeking advise from his Counsel. When she was so well advised she ought to have given the true facts at the first opportune time. It has been held time and again that the FIR shall be recorded without any loss of time so that the same can be free from embroideries, exaggerations and without anybody's intermeddling, embellishing and adulterating the same with lies. In case **Gulshan Kumar Vs. State, 1993 (1) Delhi Lawyer 207**, the Hon'ble High Court commended upon the FIR saying that an adulterated First Information Report is of great value because it is the version of the incident given at the first available opportunity by the victim and shows on what material the investigation commence and what was the story then told. An FIR recorded without any loss of time is likely to be free from embroideries, exaggerations and without anybody's intermeddling with it and adulterating the same with lies. The purpose of FIR is to obtain earliest account of a cognizable offence, before there is an opportunity for circumstances to be forgotten and embellished.

43. In the instant case PW2 Kamlesh had two occasions to make her initial statement which may form part of the FIR. The complainant did not prefer to make specific allegation in either of these two statements that the accused persons gave beatings to her son Naresh also. It has been held time and again by the superior Courts that the names of the assailants and other relative facts must be disclosed at the earliest opportunity. Even in case of **Jagir Singh Vs. State of Delhi reported in 1975 SC Cases (Crl.) page 129**, it has been held that "non-disclosure of name of the assailant claimed to be previously known at the first possible instance while admitting the deceased in the hospital and reporting the incident to police Ct. on duty would be an unnatural conduct after admitting

the deceased in the hospital and the conviction cannot be based on such testimony.” In the case in hand also in her two initial statements Ex.PW2/A and Ex.PW2/DA, PW22 Kamlesh, the complainant, did not specifically state that her son Naresh was also beaten by the accused persons.

44. The statement made in Court by PW2 Kamlesh giving events prior to 14-11-87 and of that day also regarding her son Naresh having been beaten by the accused, therefore, has to be taken as afterthought made after due deliberations and considerations obviously with her Advocate to whom she had been consulting time to time.’

23. We do not find any illegality or infirmity in the above findings of the Ld. Trial Court. The testimony of PW-2 which is at variance with her earlier statements does not inspire confidence and is, therefore, totally unreliable.

24. Perusal of the testimony of the daughter of the complainant **PW-3 Ms. Saroj Kumari** reveals that her version is also full of contradictions and rightly disbelieved by the Ld. Trial Court. This witness has also nowhere stated that respondents Shambhu Dayal and Prakash Chand have given beatings to her brother Naresh. According to PW-3, both Shambhu and Prakash had given beatings to her mother. She has also not supported the statement of her mother to the effect that these respondents had giving beating to her

brother Naresh. She has in fact deposed that accused Prakash was beating her mother with danda whereas Shambhu Dayal was giving beating with hands, fist and blows. In the meanwhile, Insp. Lal Singh had come there in civil clothes along with three other policemen. They, i.e., PW-3 along with her mother and brother had thereafter bolted the door. The door was, however, broke open and accused Lal Singh started beating her mother. She has deposed that her brother had questioned SHO Lal Singh as to why his mother was being beaten and he had also clung to his mother's leg. However, respondent no.3 Lal Singh had pulled her brother Naresh and threw him on the ground with force. On the exhortation of respondent no.3 Lal Singh, respondent no.1 & 2 i.e. Shambhu Dayal and Prakash Chand had beaten her mother with fist blows and danda. When she had come to rescue her mother, she was also beaten. The witness has, thus, nowhere stated that respondent no.3 Lal Singh had given beating to her brother but has deposed that he had thrown his brother on the ground. The fact of bolting the door is also not reflected in the statement of complainant PW-2 Kamlesh and the fact that her daughter PW-3 Saroj was beaten was also not deposed

by PW-2 Smt. Kamlesh. Thus, there are contradictions in the statements of PW-3 Ms. Saroj Kumari which makes her testimony doubtful.

25. Ld. Trial Court has also given detailed reasons for not believing the testimony of PW-3 Ms. Saroj Kumari and it runs as follows;

47. PW-3 Km. Saroj at the time of alleged incident was of tender age being about 12 years old and as such the possibility of amenability of tutoring her cannot be ruled out at the first instance. This witness nowhere state that accused Shambhu Dayal and Prakash gave beatings to his brother Naresh. She simply stated that when on hearing noise she came out from her neighborer's house she saw that Shambhu Dayal and Praksh Chand were giving beating to her mother. Therefore, she does not corroborate the testimony of PW2 Kamelsh to the effect that these accused persons also give beating to her brother Naresh. She further gave some new versions which was probably not known to the others namely PW2 Kamlesh and PW5 Maya Devi as they have not stated about the same and that fact is when she stated that in the meanwhile Insp. Lal Singh also came there in civil clothes along with 3/4 other policemen. She bolted the door from inside. They pushed the door with force and it was unbolted. This version otherwise would show that she, her mother and Maya Devi had bolted the door from inside and this was never the case of the complainant neither stated to the police nor in the court. She further stated that when Prakash with danda and Shambhu Dayal with hands and first blows started beating her mother on the asking of accused Lal Singh, She came to

rescue her but she was also beaten and she sustained injuries. Again, this fact was not disclosed by PW2 Kamlesh in her statement to the police or in court nor PW5 Maya Devi stated about it. She again stated that in meanwhile Nagar and Bhajju came there and threaten them to ran away or otherwise they would be treated in the same manner in which her mother was treated. Again this fact has not been stated by PW2 Kamlesh neither to the police nor in court. PW5 Maya Devi also silent about it. Further, She stated that when she had taken her brother to the house of her friend in gali No.17 at the house of Sobha Devi, two policeman came at the house of Sobha Devi and took her and Sobha Devi to police station from where Sobha Devi was allowed to go but she was not and then she and her mother were taken to police station Pahar Ganj where her mother was put in lock-up and she was allowed to go away. Again, this fact has neither been stated by PW2 Kamlesh in her any statement nor has been corroborated by PW8 Smt. Sobha Devi. She also contradicted to her mother's statement as to in what accommodation they were living tenanted portion. According to PW2 Kamlesh, the complainant the rented accommodation with her consist of one room, one kitchen, one bathroom, and one latrine but PW3 Km. Saroj categorically stated that they were a tenant in one room only.

26. So far as testimony of **PW-5 Smt. Maya Devi** is concerned, there are contradictions in her statement as well. Ld. Trial Court has not believed this witness and has given the following reasons for the same;

48. Similarly, PW5 Maya Devi while narrating the incident in court stated that accused Lal Singh to Kamlesh to police station by

dragging from her hair but PW2 Smt. Kamlesh did not talk about having her dragged from her hair. She also stated in court that accused Lal Singh uttered the filthy and abusive language to her as well as PW2 Kamlesh but neither PW2 Kamlesh nor PW3 Saroj ever stated that accused Lal Singh used such filthy and abusive language. Further, as per her statement injured Naresh was taken to hospital by relatives of Kamlesh on the next day of the arrival of Kamlesh. As per the case of the prosecution narrated by PW2 Kamlesh she returned home from jail on bail on the night of 16-11-87 and her son Naresh was admitted in hospital on 18-11-87 but as per the statement of PW5 Maya Devi Naresh was taken to hospital on the next day of the arrival of PW2 Kamlesh which according to her would fall on 17-11-87. PW2 Kamlesh also stated that Ramesh and Devraj, relatives of her, had taken Naresh to RML Hospital on 18-11-87 but the MLC Ex.PW15/A reveals otherwise. As per this MLC Naresh was admitted by his mother i.e. PW2 Kamlesh. PW5 Maya Devi also contradicted PW2 Kamlesh regarding the rented accommodation with her. She stated that PW2 Kamlesh had only one room on rent. There is also a contradiction on the material fact between all the three witnesses as to how Naresh was allegedly beaten. PW2 Kamlesh stated that accused Lal Singh hit his foot on her son and he was pushed and his left leg struck with the wall and he sustained injury in his leg. PW3 stated that accused Lal Singh pulled her brother Naresh and threw him on the ground with force and her brother sustained injuries. PW5 Maya Devi stated that accused Lal Singh caught hold of arm of Naresh and gave kick on his person and subsequently he fell down on the ground. It is, thus, clear that all these three witnesses have given a different account for having beaten Naresh, the deceased. This material contradiction between the three witnesses becomes more significant when it came in the

evidence in court. The factum of having beaten was never disclosed by the complainant either to PW16 ACP Harmeet Singh, who recorded her statement Ex.PW2/A nor to the doctor, who recorded her statement Ex.PW2/DA.

49. Therefore, under the circumstance, the contradictory and inconsistent version of all the witnesses made after a pretty long time of the incident leads to the conclusion that such facts were given only after due deliberations and consultation. Since, such version has come out at a belated stage that too from the mouth of the interested witnesses it would not be safe to rely the same. Even otherwise, as is evident from the record there is no independent public witness to corroborate their version. Admittedly, the public persons of the locality had witnessed the incident. PW3 Saroj has categorically stated that on the day of the incident on hearing the noise other persons of the locality also came out of the their house and they also witnesses of occurrence but strangely enough no such public witness has been examined to corroborate and substantiate the allegations levelled by these witnesses after pretty long time of the incident.

27. Thus, there are various contradictions in the statements of material witnesses. PW-3 has not stated that respondent no.3 Lal Singh had beaten her brother Naresh. She has only stated that he was thrown on the ground whereas PW-2 Smt. Kamlesh has stated that he was beaten by Lal Singh. Whereas PW-5 has stated that SHO Lal Singh had caught hold of the arm of Naresh and had given kick on his person as a result of the same he had fallen down. PW-3 has

nowhere stated that respondents Shambhu Dayal and Prakash Chand had beaten her brother whereas PW-2 Smt. Kamlesh has stated so. PW-5 has deposed that respondents Shambhu Dayal and Prakash Chand had given beating to PW-2 Kamlesh. She has nowhere stated that these respondents had beaten Naresh. PW-3 has stated that they had bolted the door when respondent no.3 Lal Singh had come with police officials, however, this is not the version of PW-2 Smt. Kamlesh. On the other hand, PW-5 has nowhere deposed that door was bolted. PW-3 Ms. Saroj Kumari has further deposed that when Prakash and Shambhu Dayal were beating her mother on the direction of respondent no.3 Lal Singh, she was also beaten, but this is not the version of PW-2 or PW-5.

28. In our opinion in view of the several contradictions and inconsistencies in the statements of the material prosecution witnesses, the Ld. Trial Court has not committed any illegality by giving a finding of acquittal.

29. We are also conscious of the fact that it is a settled law that appellate court should not disturb the findings of acquittal recorded by Ld. Trial Court unless the findings are perverse and Ld. Trial

Court has totally misdirected itself. In **‘Muralidhar and Ors. Versus State of Karnataka reported at (2014) 5 SCC 730’** the Hon’ble Apex Court has discussed the law as to when the Appellate Court should interfere in the judgment of acquittal and relevant portion of Para 12 of the judgment runs as follows;

‘It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the

judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.'

30. In '**Bannareddy & Ors. vs. State of Karnataka & Ors.**, reported as **2018 (2) Crimes 94 SC**' the Hon'ble Supreme Court has held that the High Court should interfere in appeals against acquittals only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly and if two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt.

31. In the instant case the Ld. Trial Court has thoroughly appreciated the evidence and has taken a reasonable view which has formed the basis of judgment of acquittal. The conclusion reached by the Trial Court is neither palpably wrong nor based on erroneous

view of the law. In the absence of any misappreciation of the evidence by Ld. Trial Court or any patent illegality committed by it while analysing the evidence, we are of the opinion that there are no grounds to interfere in the judgment of the Ld. Trial Court. As discussed earlier, the Ld. Trial Court has correctly held that there are material contradictions in the prosecution version and the evidence is not reliable and trustworthy. The witnesses have made inconsistent statements and there are material contradictions. Prosecution version is, therefore, not trustworthy and unreliable. We are, therefore, of the opinion that Ld. Trial Court has rightly taken note of the contradictions and inconsistencies in the statements of material witnesses, i.e., PW-2, PW-3 and PW-5 and acquitted the respondents for the offence charged and there are no grounds to disturb the said finding.

32. The Ld. APP for the State has, however, argued that Ld. Trial Court has acquitted Lal Singh u/s. 342 IPC for illegal confinement of PW2 Smt. Kamlesh on 14.11.87 on the ground that the act of the SHO is covered under the protection given to the Public Servants for the acts done by them in the discharge of their official duty. It was

argued that an act of illegal confinement does not fall under the protection extended to Public Servants or Police Officials. It was further argued that Ld. Trial Court has also wrongly relied upon Section 140 of the Delhi Police Act which also gives protection to police officials for the acts done by them under colour of duty. **Sec. 140** of the **Delhi Police Act** runs as follows;

“140. Bar to suits and prosecution -(1) In any case of alleged offence by a police officer or other person or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the Court that the offence or wrong is committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.”

(2)

(3)

33. Ld. APP has further argued that no umbrella of protection can be extended to a public servant for acts which are not done in discharge of their official duty but are per se illegal and not part of a public servant’s duty. It was further argued that Ld. Trial court has

also wrongly held that there is a limitation period of three months for entertaining any prosecution for commission of an offence by a police official unless previous sanction of the administrator is obtained and even then it cannot be beyond one year. Since the offence had taken place on 14.11.87 but the challan was filed on 12.01.1989, the Ld. Trial Court, has, therefore, held that prosecution of respondent no.3, Lal Singh u/s. 342 IPC cannot be sustained in view of the Section 140 of the Delhi Police Act. It was argued that the above reasoning of the Ld. Trial Court is not in accordance with law for the reason that act of wrongful confinement by respondent no.3 Sh. Lal Singh was not part of his duty. In this regard the prosecution has relied upon the following judgments;

- i) State of Maharashtra vs. Atma Ram, AIR 1996 SC 1786,
- ii) The State of Andhra Pradesh v. N. Venugopal and Ors., 1964 SCR (3) 743
- iii) Devinder Singh & Ors. vs. State of Punjab (2016) 12 SCC 87,
- iv) Choudhary Parveen Sultana v. State of West Bengal & Anr. (2009) 3 SCC 398,
- v) S. K. Zutshi & Anr. vs. Bimal Debnath & Anr. (2004) 8 SCC 31,
- vi) State of Orissa v. Ganesh Chandra Jew, 2004 (8) SCC 40,
- vii) P.P. Unnikrishnan & Anr. vs. Puttiyottil Alikutty & Anr. AIR 2000 SC 2952
- viii) Gulzar Muhamad vs. State of H.P. Anr. 2008 Cri. L.J. 350,
- ix) Smt. Padmamma vs. A.V.R. Narsimha Rao and Anr. 2005 Cri. L.J. 1160

- x) Shabir Tambawala vs. State of Maharashtra and Anr., 1997 CriLJ 3465
- xi) Ganapathy Goundan vs. Emperor 1932 AIR (Mad) 214

34. We have gone through the above judgments and are totally in agreement with the law laid down therein to the effect that protection from prosecution is available to a public servant for the acts done by him in the discharge of his official duty and not otherwise. The Ld. APP has, however, argued that alleged act of illegal confinement of PW-2 complainant Smt. Kamlesh by Lal Singh, respondent no.3 cannot be connected with discharge of his official duty. Perusal of the Trial Court record reveals that for the alleged wrongful confinement of complainant by SHO Lal Singh, the following charge was framed on 20.02.1990.

‘Thirdly, that you Lal Singh on the aforesaid date, time and place, forcibly took Smt. Kamlesh to the police station and kept her wrongfully confined in the police station and thereby committed an offence punishable u/s. 342 I.P.C. and within the cognizance of this court.’

35. The words ‘aforesaid date and time’ mentioned in the charge should be read as 14.11.87 at about 7.30 PM. As per evidence appearing on record, PW-2 was arrested in a case u/s. 448 IPC on the basis of a complaint registered against her by respondent no. 2,

Prakash Chand. The complainant Smt. Kamlesh was thereafter arrested in the above case bearing FIR no. 138/87 and was sent to judicial custody. The question which now arises for consideration is whether the arrest of Smt. Kamlesh by respondent no.3 Lal Singh was illegal and unjustified? Perusal of the judgment of the Ld. Trial Court reveals that a closure report was filed by the prosecution in the above case. However, whether the same was accepted or not was not proved on record. The arrest of an accused in an FIR by the SHO is an act which falls in the discharge of his official duty and cannot be termed as wrongful confinement. According to complainant PW-2, she was arrested by respondent no.3 Lal Singh and produced before Ld. MM and thereafter released on bail on 16.11.1987. The above acts of SHO Lal Singh cannot be said to be beyond his scope and power as the same were done in discharge of his official duty only. Moreover, had the closure report been finally accepted, the fact whether SHO Lal Singh, i.e., respondent no.3 had wrongfully confined the complainant Kamlesh could have been considered by the court. There is no evidence on record to show that

the same was accepted by the Court and has, thus, become final. In these circumstances, the contention of Ld. APP cannot be accepted.

36. Ld. APP for the state has next argued that PW-11 Dr. L.T. Ramani, who conducted the post-mortem on 26.11.87 on the dead-body of Naresh Kumar, in his report **Ex.PW11/A** has opined that the injuries were ante-mortem and caused by blunt force possibly by fall and were 8/9 days duration and the injuries were not sufficient to cause death. Death was due to pneumonitis as diagnosed clinically. Time since death was about 6 hours. In his second opinion, **Ex.PW11/B**, he has further opined that the injuries, both external and internal, did not show any sign of infection and in his opinion pneumonitis was not the result of injuries. However, he has stated that the possibility that such injuries can aggravate the condition of child cannot be ruled out. It was, therefore, argued by Ld. APP that Ld. Trial Court has erred in appreciating the evidence that death was due to pneumonitis but not because of injuries caused to him by the respondents.

37. We have carefully considered the contention of Ld. APP for the state. Before we proceed further with the above contention, it

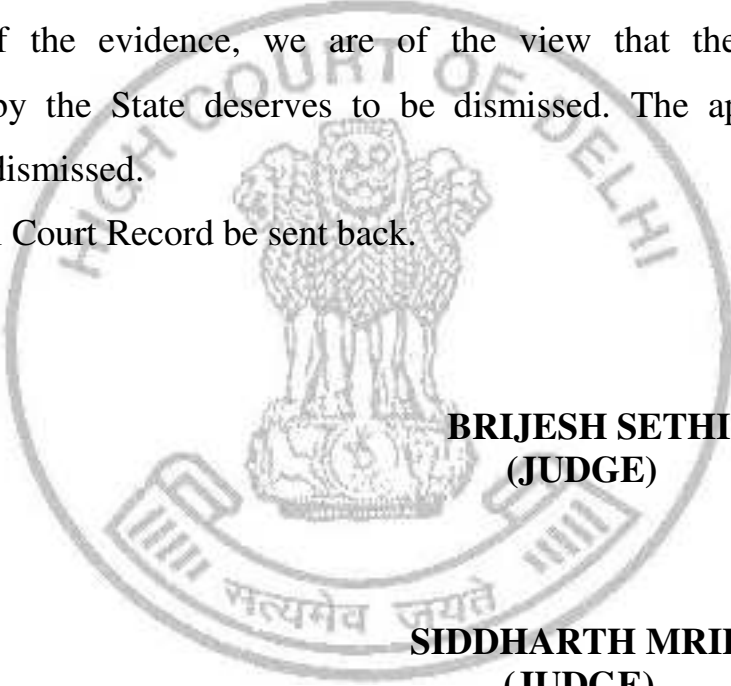
needs to be kept in mind that as per our discussion in the earlier part of the judgment, we have come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The decision on this issue will, therefore, be not of much relevance. However, since Ld. APP for the state has raised it, we will decide the same.

38. Perusal of post-mortem report Ex.PW11/A reveals that death was due to pneumonitis as diagnosed clinically. Dr. L. T. Ramani PW-11 has also opined in his subsequent opinion Ex.PW11/B that the injuries both external and internal were not the cause of pneumonitis. Though, he has stated that there is possibility of aggravation of the condition of the child by such injuries, however, in his opinion it is not **definite** or **conclusive**. Thus, PW-11 was doubtful whether deceased Naresh could have died because of alleged injuries caused to him by the respondents and, in such circumstance, benefit of doubt would certainly go to the respondents.

39. We, therefore, do not find any infirmity, illegality and perversity in appreciation of medical evidence by the Ld. Trial Court.

40. In view of the above discussion and keeping in mind the contradictions and inconsistencies appearing in the statement of material witnesses, we see no reasons to interfere with the order of acquittal passed by the learned Trial Court and, therefore, on overall analysis of the evidence, we are of the view that the appeal preferred by the State deserves to be dismissed. The appeal is, therefore, dismissed.

41. Trial Court Record be sent back.



BRIJESH SETHI
(JUDGE)

SIDDHARTH MRIDUL
(JUDGE)

August 30th, 2019
(Amit)