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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 28<sup>th</sup> September, 2022**

**Pronounced on: 20<sup>th</sup> October, 2022**

+ **CRL.A. 52/2002**

**STATE**

..... Appellant

Through: Mr. Prithu Garg, APP for the  
State

Versus

**MEWA LAL & ORS**

..... Respondents

Through: Ms. Astha, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

**HON'BLE MR. JUSTICE AMIT SHARMA**

**JUDGMENT**

**AMIT SHARMA J.**

1. The present appeal has been preferred by the State under Section 378 Cr.P.C., challenging judgment dated 30.01.1999, passed by Sh. K.S. Khurrana, ASJ, Delhi in case FIR No. 272/1991, under Section 302/120B, IPC registered at Police Station, I.P. Estate, New Delhi.

## **FACTUAL BACKGROUND**

2. The case of the prosecution is that on 23.07.1991, at about 08:03 PM, Constable Himmat Singh (PW-8), who was posted at Police Post, JPN Hospital, had received information from the Police Control Room about an accident that had taken place near the ITO Bridge. He recorded DD Entry no. 23 (Ex.PW-8/A) and a copy of the same was handed over by him to S.I. Madan Lal (PW-24), for investigation. Subsequently, S.I. Madan Lal (PW-24), on receipt of the said DD Entry No. 23, proceeded to the place of incident at Bahadurshah Jaffar Marg, near Manak Bhawan. On reaching the spot, S.I. Madan Lal (PW-24) found the deceased lying on a *patri*, with injuries on his chest and with blood oozing out. No eye-witnesses were found available at the spot. From the nature of injuries found on the person of the deceased, S.I. Madan Lal (PW-24) came to the conclusion that the circumstance disclosed a case of murder and accordingly, prepared a *rukka* (Ex.PW-24/A) and sent the same for registration of a case, on the basis of which FIR (Ex.PW-5/A) was registered at P.S. I.P. Estate, at about 09:20 PM.

3. After conducting inquest proceedings and further investigation in the aforesaid FIR, the State filed a chargesheet against seven accused persons. It is pertinent to point out that the present respondents were arrested on 27.09.1991 in case FIR No. 191/91, under Section 398 IPC, registered at P.S. Subzi Mandi, on the disclosure made in the said case, they were arrested in the present

case. The case of the prosecution was that on 23.07.1991, between 07:00 PM to 08:00 PM, near ITO, the accused persons named in the chargesheet, in furtherance of a criminal conspiracy, committed the murder of Dr. I.S. Verma (hereinafter referred to as 'deceased'), who was a tenant in a shop owned by accused Takan Dass. Since the efforts of the latter to get the said shop vacated by the deceased were not successful through legal means, a conspiracy was hatched with his other co-accused, namely, Anand Prakash and Mewa Lal (R-1). Anand Prakash and Mewa Lal (R-1) agreed to kill the deceased for a sum of Rs. 50,000/-, which was to be paid by accused Takan Dass.

4. It was the case of the prosecution that Mewa Lal (R-1) further persuaded Ramesh @ Bhure (R-2) to participate in the said criminal conspiracy and the latter, in turn suggested involving Diler Singh (R-4), Surender Saini @ Pappan (R-3) and Sanjay (R-5) in the said conspiracy. Subsequently, as per the case of the prosecution, they all joined the criminal conspiracy to eliminate the deceased.

5. Upon filing of the chargesheet, the learned trial Court proceeded with the trial and charges under Section 302 IPC, read with 120B IPC were framed against the accused persons named in the chargesheet. The prosecution examined 34 witnesses. One witness, Kamal Singh (DW-1) was examined on behalf of Sanjay (R-5). During the course of the trial, accused Takan Dass passed away and the trial *qua* him abated. The other remaining accused persons (respondents herein), were acquitted by the learned trial

Court, vide its judgment dated 30.01.1999 and hence the present appeal.

6. The present appeal has been preferred by the State against the aforesaid judgment of acquittal on the following grounds:-

*“A. Because the Ld. court below failed to appreciate that respondent Mewa Lal and Takan Dass (deceased) were seen with Dr. I.S. Verma and that Takan Dass wanted to get his shop vacated from Dr. I.S. Verma.*

*B. Because the Ld. court below failed to appreciate that PW Arun Kumar categorically stated that he had seen the deceased sitting in the three wheeler scooter and in another TSR he had seen the respondents Mewa Lal and Ramesh and that he had seen them beating Dr. I.S. Verma.*

*C. Because the Ld. court below failed to appreciate that PW Arun Kumar identified the deceased I.S. Verma as the person who was being beaten by the respondents Mewa Lal and Ramesh.*

*D. Because the Ld. court did not appreciate the fact that Mewa Lal was identified by PW Arun and Rajinder as the person who was sitting with Ramesh and they had given beatings to the deceased.*

*E. Because the Ld. court below failed to appreciate that Ramesh was found in possession of Chain and Locket of the deceased. Similarly Mewa Lal got recovered the Dental Box and Tiffin Box of the deceased.*

*F. Because the Ld. court below wrongly came to the conclusion that since the witnesses were either interested or related to the deceased therefore their testimony can not be believed. It is submitted that as*

*per the settled law the testimony of the PWs can not be discarded merely on the ground that they are related to the deceased.”*

7. It is pertinent to point out that as per the case of prosecution, aforesaid Arun Kumar (PW-16) had last seen the deceased in the company of Mewa Lal (R-1), Ramesh @ Bhure (R-2) and Surender Saini @ Pappan (R-3) at about 07:00 PM in the evening and before the recovery of the deceased's body. Mewa Lal (R-1), Ramesh @ Bhure (R-2) and Surender Saini @ Pappan (R-3) were identified by the aforesaid Arun Kumar (PW-16) in the Court as persons who were last seen sitting with the deceased and giving beatings to him. It was also the case of the prosecution, before the learned trial Court, that Arun Kumar (PW-16) had also identified Mewa Lal (R-1) in the TIP proceedings conducted during the course of investigation and that he had allegedly got the dental box and tiffin box belonging to the deceased recovered. Similarly, with regard to Ramesh @ Bhure (R-2), it was the case of the prosecution that he was found in possession of chain and locket of the deceased. The prosecution had also relied upon the testimony of Rajinder Singh (PW-17) who had seen the deceased sitting in the company of Takan Dass (since deceased) and Mewa Lal (R-1) on the date of the incident, i.e., on 23.07.1991, at about 04:00 or 04:15 PM in the clinic of the deceased at Paharganj. The grievance of the State, in the present appeal, is that the learned trial Court ignored the aforesaid evidence and disbelieved the witnesses on the ground that they were either interested witnesses or related to the deceased.

**SUBMISSIONS**

8. We have heard the learned counsel appearing on behalf of the appellant as well as respondent. Learned APP for the State has primarily relied upon the testimony of Rajinder Singh (PW-17) and Arun Kumar (PW-16) and has submitted that the evidence brought forth in the aforesaid testimonies could not have been ignored by the learned trial Court. The identification by Arun Kumar (PW-16) during the course of TIP proceedings and as well as before the learned trial Court was a substantive piece of evidence, inasmuch as he had witnessed the incident wherein respondents Mewa Lal (R-1) and Ramesh @ Bhure (R-2) were seen boarding the TSR driven by Surender Saini @ Pappan (R-3) in which the deceased was already sitting and had further witnessed them giving beatings to the latter. It was submitted by the learned APP that since thereafter, the dead body of the deceased was recovered, circumstantial evidence clearly pointed out that the deceased was last seen in the company of the respondents and therefore, the onus of proof had shifted upon them, in terms of the Section 106 of the Indian Evidence Act, 1872, to explain the circumstances subsequent to their boarding the TSR in which the deceased was sitting.

9. It is also submitted by the learned APP that other circumstantial evidence on record, i.e., the recoveries made at the instance of Mewa Lal (R-1) and Ramesh @ Bhure (R-2), with regard to the personal items of the deceased, further corroborate the case of

the prosecution. The learned APP has taken this Court through the testimony of Arun Kumar (PW-16) and Rajinder Singh (PW-17) and also the witnesses relating to the recoveries made at the instance of respondents, Mewa Lal (R-1) and Ramesh @ Bhure (R-2).

10. At this stage, it will be relevant to observe that the present appeal was filed with respect to six respondents i.e. Mewa Lal (R-1), Ramesh @ Bhure (R-2), Surender Saini @ Pappan (R-3), Diler Singh (R-4), Sanjay (R-5) and Anand Prakash. During the pendency of the appeal, respondent Anand Prakash died and therefore, the appeal *qua* him abated.

11. Learned counsel appearing on behalf of the respondents submits that the learned trial Court has rightly appreciated the evidence on record. It is submitted that the learned trial Court, after a threadbare examination of the testimonies of the aforesaid witnesses and all the circumstances on record, has correctly disbelieved the case of the prosecution and therefore, acquitted the respondents in the aforesaid chargesheet. Learned counsel further submits that the entire case is based on circumstantial evidence as there is no eye witness. Reliance has been placed on Munikrishna @ Krishna etc Vs. State by Ulsoor PS (Criminal Appeal Nos. 1597-1600/2022).

**PROSECUTION CASE AND FINDINGS OF THE LEARNED TRIAL COURT**

12. Before we proceed to examine the testimonies of the aforesaid witnesses, namely Arun Kumar (PW-16) and Rajinder Singh (PW-

17), it will be necessary to outline the case put up by the prosecution before the learned trial Court.

12A. As mentioned earlier, Takan Dass (since deceased) entered into a criminal conspiracy with Anand Prakash (since deceased) and Mewa Lal (R-1), to commit the murder of the deceased, who was a tenant in the shop owned by the former. The motive behind the conspiracy was to get the deceased to vacate the said shop as Takan Dass's efforts through legal means were not successful. It was the case of the prosecution that Mewa Lal (R-1) further persuaded Ramesh @ Bhure (R-2) to participate in the said criminal conspiracy and the latter, in turn suggested involving Diler Singh (R-4), Surender Saini @ Pappan (R-3) and Sanjay (R-5) in the said conspiracy. Accordingly, as per the case of the prosecution, they all joined the criminal conspiracy to eliminate the deceased. It was further alleged in the chargesheet that accused Mewa Lal (R-1) and his co-accused Ramesh @ Bhure (R-2), Diler Singh (R-4), Sanjay (R-5) and Surender Saini @ Pappan (R-3) had gone to New Delhi Railway Station on 23.07.1991 in two, three-wheeler scooters, where the deceased usually boarded a three-wheeler scooter for going to his clinic at Laxmi Nagar from his clinic at Paharganj. Mewa Lal (R-1), Diler Singh (R-4) and Ramesh @ Bhure (R-2) sat in the scooter No. DIR-527 being driven by accused Sanjay Kumar (R-5). Another three-wheeler scooter bearing no. DL-1R-5522 was being driven by Surender Saini @ Pappan (R-3). As per their plan, Surender Saini @ Pappan (R-3) had parked his scooter no. DL-1R-5522 in front of

New Delhi Railway Station in Paharganj area. Sanjay (R-5) had parked his scooter no. DIR-527 just behind the scooter of Surender Saini @ Pappan (R-3). Ramesh @ Bhure (R-2) and Diler Singh (R-4) continued to sit in Sanjay's (R-5) scooter. The deceased reached at that place at about 07:30 PM from his clinic in order to board a scooter. Mewa Lal (R-1) had allegedly pointed out to him the scooter of Surender Saini @ Pappan (R-3) and had signaled the latter to take the deceased away in his three-wheeler scooter. Surender Saini @ Pappan (R-3), as per their criminal conspiracy hatched prior to the incident, had made the deceased board his three-wheeler scooter. When Surender Saini @ Pappan (R-3) started his scooter, Mewa Lal (R-1), Ramesh @ Bhure (R-2) and Diler Singh (R-4) followed the scooter being driven by Surender Saini @ Pappan (R-3) in the scooter being driven by Sanjay (R-5). Both the scooters, after crossing Connaught Place, Minto Bridge, Deen Dayal Upadhyay Marg, reached near ITO crossing. When the traffic light turned red, Surender Saini @ Pappan (R-3) stopped his scooter at the red light. Sanjay (R-5) also stopped his three-wheeler scooter behind the scooter of Surender Saini @ Pappan (R-3). Mewa Lal (R-1) and Ramesh @ Bhure (R-2), allegedly, immediately alighted from the scooter of Sanjay (R-5) and boarded the scooter being driven by Surender Saini @ Pappan (R-3), in which the deceased was also sitting. Both, Mewa Lal (R-1) and Ramesh @ Bhure (R-2) surrounded the deceased from the left and the right side and directed Surender Saini @ Pappan (R-3) to take a 'U-turn'. It is also alleged

by the prosecution that after the scooter being driven by Surender Saini @ Pappan (R-3), had taken a U-turn, Surender Saini @ Pappan (R-3) accelerated the speed of the said scooter and turned the same towards the road leading to Maulana Azad Medical College. Mewa Lal (R-1), allegedly, started stabbing the deceased with his dagger and Ramesh @ Bhure (R-2) tried to shoot him with his revolver, but due to a mechanical defect, the said revolver could not work in time. Meanwhile, Surender Saini @ Pappan (R-3) turned his scooter towards one narrow lane, Mewa Lal (R-1) took the deceased in his grip and Ramesh @ Bhure (R-2) stabbed him with a dagger. The body of the deceased, thereafter, was thrown by the respondents from the scooter and the respondents escaped from the scene. Further, it is the prosecution's case that the deceased was carrying one bag which contained one tiffin, some documents and some instruments. He was also wearing one gold chain with a locket and was carrying a purse. The accused Mewa Lal (R-1) and Ramesh @ Bhure (R-2) also took away the said bag, gold chain and purse. They left the scooter of Surender Saini @ Pappan (R-3) near Kabir Basti, Subzi Mandi. They threw away the purse, documents and the bag near the school near Subzi Mandi. The instruments were allegedly left by them near the bushes. The golden chain alongwith the locket was allegedly kept by Ramesh @ Bhure (R-2) while Mewa Lal (R-1) carried the tiffin with him.

**12B. It will be pertinent to observe here that the aforesaid narrative is based on the disclosure statements made by the**

**respondents.** Admittedly, the case initially registered was with respect to a blind murder. In absence of any eye witnesses, the prosecution relied upon circumstantial evidence, to prove the conspiracy between the accused persons chargesheeted, including the present respondents. The said circumstantial evidence included witnesses, who the prosecution claimed had seen the deceased in the company of the respondents no. 1 to 3 on the day of incident, in order to prove that the said respondents were involved in the alleged conspiracy. The learned trial Court, after examining the evidence put forth by the prosecution in the trial, came to the conclusion that the prosecution had failed to prove the existence of a criminal conspiracy amongst the accused persons chargesheeted, including the present respondents, for committing the murder of the deceased. The learned trial Court in Para 25 records as under:-

*“At the same time, it may also be added that no evidence worth the name was placed on record which may show that all the accused persons were found together at any time prior to the incident. No evidence has placed on record which may show that all the accused persons was found talking to any of the witnesses or to any of the accused persons prior to the incident from which the court may prima-facie come to the conclusion that all the accused persons had hatched a conspiracy to eliminate Dr. I.S. Verma from the scene. As such, in my opinion, the prosecution has miserably failed to prove the existence of criminal conspiracy among the accused persons for murdering Dr. I.S. Verma as was sought to be allowed against them.”*

12C. After disbelieving the case of the prosecution in respect of the criminal conspiracy, the learned trial Court proceeded to examine the evidence placed on record, with respect to the role of each of the accused persons named in the chargesheet.

13. At this stage, it is observed that the submissions made on behalf of the State in the present appeal, are primarily with respect to the statements made by Arun Kumar (PW-16) and Rajinder (PW-17), which incriminate Mewa Lal (R-1), Ramesh @ Bhure (R-2) and Surender Saini @ Pappan (R-3). So far as the findings *qua* the remaining respondents, namely, Diler Singh (R-4) and Sanjay (R-5) are concerned, the same have not been contested by the State in the present appeal. In view of the foregoing, we propose to examine the findings of the learned trial Court *qua* Mewa Lal (R-1), Ramesh @ Bhure (R-2) and Surender Saini @ Pappan (R-3), with respect to the testimonies of PW-16 and PW-17.

14. As per the case of the prosecution, at about 04:00-04:15 PM, Rajinder Singh (PW-17, son-in-law of the deceased) had visited the clinic of the deceased in Paharaganj. The said witness testified that he overheard hot words being exchanged inside the clinic and he had seen Takan Dass (since deceased) and Mewa Lal (R-1) sitting inside the said clinic. He further testified that the deceased had informed him that Takan Dass was insisting upon him to vacate the shop. This witness states that after giving solace to the deceased, he had come back. He disclosed the said incident to the SHO I. P. Estate on

25.07.1991. Learned trial Court, after scrutinizing the aforesaid testimony of PW-17, came to the conclusion that the evidence of the said witness was introduced as an afterthought by the prosecution to link Mewa Lal (R-1) with the commission of the offence. The reasoning of the learned trial Court, for arriving at the aforesaid conclusion is recorded in the impugned judgment at Para 33 in the following words:

*“33. Now, admittedly, PW Rajinder Singh was the close relative of Dr. I.S. Verma. He had been residing near the house of his father-in-law in Laxmi Nagar at a distance of 5/7 minutes walk from his residence. It has been also admitted by him that he had been visiting the house of his father-in-law frequently. He was running jewellery shop and the timings of the shop were between 10 AM to 7.30 PM He had not explained as to what was the compulsion on him for visiting the shop of his father-in-law on 23.7.91 at about 4/4.15 PM Although, it was explained by him that he used to do field work and used to supply stones and ‘mankas’, etc. to the shopkeepers but it has not been explained by him in his evidence as to which shopkeeper he had supplied the stones and ‘Manakas’ in Paharganj area on that day. It is also significant to add that no assistant or nurse was found present at the shop when this witness had entered the shop. No patient was found present in the side shop. Since Dr. Verma used to visit his Paharganj clinic at about 1.30 PM and used to remain there till 7.30 PM, in normal course, Dr. Verma must be attending some patient during the peak hours but surprisingly, no patient or attendant was found present inside the shop when PW Rajinder Singh is stated to have visited the shop of his father-in-law. It is also significant to add*

*that this witness although, being close relative had not advised his father-in-law to lodge the report with the police. He had not even talked about the incident to his wife on that date. He had not visited the house of his father-in-law on 23.7.91 to enquire about the condition of his father-in-law when according to the version of this witness, Dr. Verma was feeling upset and disturbed in the evening time on being pressed by accused Takan Dass for vacating the shop. It has been admitted by PW Rajinder Singh that accused Takan Dass was known to him prior to the incident. So much so, he had not even narrated the incident to his brother-in-law Inder Sanjay Verma on 24.7.91 even after hearing the murder of his father-in-law at about 4/4.30 PM. Consequently, the assertion of this witness that he had seen accused Mewa Lal sitting in the shop of his father-in-law at about 4.15 PM on 23.7.91 does not inspire confidence.”*

It was further observed by the learned trial Court, that even if it is presumed that the witness had seen Mewa Lal (R-1) with the deceased and Takan Dass (since deceased) in the manner as stated by him in the testimony, the same cannot be a ground to conclude the involvement of Mewa Lal (R-1) in a conspiracy for murdering the deceased, in the absence of any other corroborative piece of evidence.

15. It is further the case of the prosecution that Arun Kumar (PW-16) was a resident of Aram Bagh, Delhi. He used to sell lotteries near Gandhi Memorial Hall, near Pyare Lal Bhawan, at the bus stand of ITO. On 23.07.1991, at about 7/8.00 PM, after completing his daily work, he was going back to his house. When he had crossed the

intersection of ITO and gone towards Rouse Avenue road side, he found that one three-wheeler scooter had just stopped in front, at the red light. The same was being driven by Surender Saini @ Pappan (R-3). One passenger was found sitting on the three-wheeler scooter and he was wearing a safari suit. Another three-wheeler scooter also arrived at the red light. In that three-wheeler scooter, two boys having a blackish complexion were sitting. They turned out to be Ramesh @ Bhure (R-2) and Mewa Lal (R-1). After alighting from the scooter, they went towards the first scooter and boarded the same and started grappling with the passenger who was sitting in the first scooter. Meanwhile, the traffic light had turned green and both three-wheeler scooters took a U-turn and went towards Rouse Avenue. With this testimony, the prosecution had sought to prove the involvement of Mewa Lal (R-1), Ramesh @ Bhure (R-2) and Surender Saini @ Pappan (R-3), in so far as they were seen with the deceased before the recovery of the body of the latter. The learned trial Court did not lose significance of the testimony of PW-16 and minutely examined the same. The finding with respect to the credibility of PW-16, by the trial Court, in the impugned judgment is recorded as under:

*“36. No doubt, the evidence of PW16 Arun Kumar was very material and important so far as regards the prosecution case was concerned. In fact, the evidence of said witness has given a new lease of life to the prosecution case, but after closely and seriously scrutinising the evidence of this witness, in my opinion, the same does not inspire confidence and*

*was not sufficient to convict the accused for such a heinous offence of murder. In this connection, it will not be out of the place to mention that it was claimed by this witness that he had been selling lotteries at ITO bus stand. It was also claimed by him that he had been paying the licence fee to the MCD for running his lottery business in a Kiosk, But surprisingly he did not produce any receipt with a view to show that he was running a lottery business in the kiosk near ITO bus stand. At the same time, it may also be added that it has also come in his evidence that last draw of the lotteries used to take place at 5 PM. It has not been explained by him as to why he had been waiting for two hours for going back to his house on the date of incident. Apart from that, it was claimed by him that he had been residing at premises No. 6-H Aram Bagh, Delhi which was allotted to his father in 1989. In the same breath, it was also claimed by him that he had been residing alongwith his younger brother whose name was Barun Kumar and who has been studying in 7th Class in a Govt School, in Laxmi Nagar in those days. In his cross-examination conducted on 1.8.95 it was also revealed by him that he used to reside in Laxmi Nagar in those ways and his brother used to study in a Govt School in Laxmi Nagar. At the same time, it may also be added that when he appeared for participating in TIP proceedings on 9.10.91 in Tihar Jail before Mrs. Sangita Dhingra Sehgal, the then Id.MM for identifying the accused persons, he had disclosed his address as RZ - 72, Laxmi Nagar, New Delhi as was apparent from the TIP proceedings Ex.PW9/H. So, from these circumstances; it can be gathered that at the time of incident, he was residing at RZ-72, Laxmi Nagar and not at Aram Bagh as was claimed by him. The reason for his concealing the residential address of Laxmi Nagar, New Delhi was*

*not difficult to explain. By showing his address of Aram Bagh, Delhi, this witness wanted to explain that he had gone towards Rouse Avenue side for catching the bus plying at route no.313 for going to Aram Bagh. In these circumstance, when it has come on record that this witness has disclosed his address of Laxmi Nagar to the Id. M.M. and nothing has been brought on record to show that his father was allotted the H.N0.6-H.Aram Bagh, Delhi a reasonable conclusion can be drawn that this witness was not residing at the said address of Aram Bagh, Delhi on the date of incident. If it was so, there was no question of his going towards Rouse Avenue side after crossing the traffic red light at ITC crossing and therefore, he could not have seen two three-wheeler scooters stopping at the red light. As such, his evidence that he had seen accused Surender Saini driving the three wheeler scooter and accused Ramesh and Mewa Lal alighting from the other scooter and rushing towards the scooter being driven by accused Surender Saini and grappling with the passenger sitting in that scooter does not appeal to the reason. Consequently, his evidence that he had seen all the three accused persons at the red light of ITO crossing does not inspire confidence. Now, even assuming the fact that this important witness had been residing at Aram Bagh, New Delhi, it has come in his cross-examination that he had gone to red light (of ITO crossing) to catch the bus for Aram Bagh plying at route no.313. The bus used to come from Laxmi Nagar and used to go to Inder Puri en-route Paharganj. It may also be added that Aram Bagh was situated in Paharganj area. It was also revealed in the cross-examination of this witness that he used to board the bus out side the Custome House when the same used to be released on red light. It has been further admitted by him that after crossing the*

*Custom House, the traffic run to the left which goes to Tilak Bridge and Pragati Maidan. He has also conceded that from the Custom House to ITO crossing, the traffic was not allowed to take right turn. He also frankly conceded that there was a divider on the road which goes up to Rouse Avenue, so, from his cross-examination, it was quite evident that there was a divider on the road and which went up to Rouse Avenue side and he used to catch the bus out side the Custome House, Admittedly, Rouse Avenue was situated after crossing Bahadur Shah Jaffar Marg. So it was not necessary for this witness to have crossed the red light at ITC crossing for going towards Rouse Avenue side for catching the bus out side the Custom House. So, his contentions that after he had reached the 'patri' after crossing the red lights of ITO crossing, he had seen the accused persons Mewa Lal and Ramesh boarding the scooter being driven by accused Surender Saini does not inspire confidence.*

*37. Now, assuming the fact that this witness was present near Rouse Avenue Road after crossing the red light of ITO crossing - The question arises whether he could have very well seen the accused persons at that time and could have very well remembered their distinct feature and whether he could have identified them lateron when he had fleeting glimpses of the accused persons at the relevant time. Admittedly, it was the night time, it has been admitted by this witness that from the point from where the Rouse Avenue Road starts from ITO crossing, there was no light whatsoever. It is admitted case that the accused persons were not known to this witness earlier to this incident. The judicial notice can be taken that the red lights installed at every intersection to regular the road traffic turn into green within half minute or so. Admittedly, the three-*

*wheeler scooter stated to have driven by accused Surender Saini had come to stop at the red light of ITO crossing. This witness had then seen accused Mewa Lai and Ramesh @ Bhure coming out from the scooter while standing in the middle of the road. The red light had turned into green and both the scooters had taken 'U turn' and gone back towards Rouse Avenue side as was claimed by this witness. Consequently, it is very difficult to hold that this witness would have time and opportunity to closely observe the height, complexion and age of the accused persons when he had seen them for few second in the night time and consequently, his claim that he had seen accused Mewa LaL, Ramesh and Surender Saini at the relevant time in three wheeler scooter doesnot inspire confidence. It is also curious to add that this witness had even claimed that he had seen the deceased Dr.I.S.Verma sitting in the three wheeler scooter wearing safari suit and he had so closely seen him that he could identify his dead body on the next date of incident. In my opinion, this type of evidence coming from the mouth of a chance witness does not carry conviction. It will also not be out of the place to mention that there must be heavy traffic at the red light as it is well known fact that the said area always remain congested due to heavy traffic. There was a police booth near that place. The traffic police is always present to manage the heavy traffic. The said incident was neither witnessed by any other pedestrian or passenger or by any police official or by any traffic constable, nor this witness informed any body present there about the unusual quarrel being going on in three wheeler scooter. Consequently, his testimony on which the fate of the accused persons for committing such heinous offence depends cannot be believed for the above reasons.*

***38. At the same time, it may also be added that this witness has given two contradictory statements regarding when he had seen the dead body of deceased Dr.I.S.Verma. At one place, it was revealed by him in his cross-examination that he had seen the dead body of deceased at JPN Hospital, at other place, it was claimed by him that he had come to know about the presence of dead body near Bal Bhawan on the next date after reading the Newspaper and he had gone lateron near Bal Bhawan where the dead body of deceased was lying and was not accompanied by any person or shop-keeper. Now, it was evident from the testimony of PW24 SI Madan Lal who was the first police officer to reach the place of incident where the dead body was lying that he had sent the dead body for post-mortem examination alongwith inquest papers on 23.7.91 itself. So, in case the dead body was removed from Bal Bhawan Raod on 23.7.91 how this witness had gone to that place for identifying the dead body on the next day of the incident i.e. on 24.7.91. So, such type of contradictory statements made by this witness on two different occasions clearly suggest that his testimony was not reliable one and he can go to any extent in his earnest desire to support, the prosecution case. It appears that this witness was the resident of Laxmi Nagar and the deceased and PW Rajinder Singh were the residents of Laxmi Nagar and perhaps due to previous intimacy with the family of deceased, he agreed to become a witness to support the prosecution case in his keen desire to get justice done to the family of the deceased by getting guilty person convicted at any cost. ”***

(emphasis supplied)

16. Similarly, with respect to the case of the prosecution regarding the recoveries made at the instance of the respondents, the learned trial Court concluded that the same were highly doubtful and suspicious. As mentioned earlier, the recoveries in the present case were made subsequent to the arrest of the present respondents on 27.09.1991 in case FIR No. 191/91, under Section 398 IPC, registered at P.S. Subzi Mandi. The independent witness, Om Prakash (PW-2), who was a witness to all the recovery memos had turned hostile and did not support the case of the prosecution. The relevant portion of the impugned judgment with regard to the finding with respect to the recoveries is reproduced below:

*“39. ... It is not worthy that SI Madan Lal, who was first to reach at the place where the dead body of deceased Dr.I.S.Verma was lying had found that one wrist-warch and one gold ring was still intact on the body of deceased Dr.I.S.Verma and a sum of Rs.1432/- were also lying in his back pocket of his pant. So, it is not understood why the accused persons should have not removed the said valuables and would have removed the worthless goods such as tiffin box, and dental box which were of no use to them. It also does not appeal to the reason that accused Ramesh would have continued to keep the golden chain in his possession which he knew was stolen property and could involve him in serious offence of murder. It is also not understood as to why accused Mewa Lal would have kept the tiffin box of deceased in his house even after two months of the incident when he very well knew that it could involve him in a serious offence of murder. Similarly, why Rajesh, the friend of accused Mewa Lal would have*

*kept the country made pistol and three cartridges at his home without any cause and reason when the same were of no use to him. It also does not appeal to the reason that the dental box would have been continuously lying in abandoned condition near the bushes in Kabir Basti area after two months of the incident and would have not been taken away by any person. All these attending circumstances clearly suggests that the investigating officer in their bid to solve the blind murder case had planted these incriminating articles in order to strenthen their case. In these circumstances, in my opinion, when the prosecution has failed to prove the recovery of the said incriminating articles at the instance of accused Mewa Lal and Ramesh, the prosecution case therefore becomes doubtful and suspicious, especially, when the concerned court had acquitted them for the offence registered against them disbelieving the whole story put up by police.”*

17. The next circumstance which has been sought to be relied upon by the State is the identification of Mewa Lal (R-1) in the TIP proceedings, conducted during investigation and the refusal by Ramesh @ Bhure (R-2) and Surender Saini @ Pappan (R-3) to participate in the TIP proceedings. In this regard, the learned trial Court has observed that no evidence had been brought on record to show that the respondents were kept in muffled faces during their custody, at the police station on 26.09.1991. In this regard, the learned trial Court has further observed that Mewa Lal (R-1), as per the case of the prosecution itself, was taken to different places, for getting the alleged incriminating articles recovered. In this background, the learned trial Court has observed as under:-

*“41....So, the chances of the accused Mewa Lal, Ramesh @ Bhure and Surender Saini being shown to the witnesses at P.S. Subzi Mandi cannot be ruled out. In these circumstances, the refusal on the part of the accused Ramesh @ Bhure and Surender Saini @ Pappan in participating in TIP on the ground that the witnesses have seen them at P.S. Subzi Mandi appears to be justified. Consequently, this Court cannot draw any adverse presumption against them u/s 114 of Evidence Act for their refusal in participating in TIP proceedings. Similarly, the chances of accused Mewa Lal being shown to the witnesses after his arrest cannot be ruled out. Even otherwise, PW Arun Kumar in his cross-examination has admitted that he was taken to Tihar Jail by the police on 25/26.9.91. Although, he was not definite about the exact date. So it means that this important witness was taken to Tihar Jail by the Investigating Officer perhaps to have a close look at accused Mewa Lal. In any case, as already stated, it was impossible for PW Arun Kumar to have closely examined the distinct feature of accused persons when he had seen them for few seconds and it was not possible for him to have recollected their distinct feature when he had seen them for the first time after a gap of more than 2 months in Tihar Jail and these circumstances clearly create a doubt in my mind regarding the identity of accused Mewa Lal at the instance of PW Arun Kumar. Similarly, the identity of accused Mewa Lal by PW Rajinder Singh also become doubtful when no normal precaution was taken by police by keeping in muffled face after his arrest. Even the arrest of accused on 26.9.91 appears to be doubtful as the concerned court who tried his case u/s 398 IPC totally disbelieved the prosecution case....”*

In view of the above, the learned trial Court did not accept the contention of the prosecution that the identification of Mewa Lal (R-1) and refusal by Ramesh @ Bhure (R-2) and Surender Saini @ Pappan (R-3) to participate in the TIP proceedings, corroborated the case of the prosecution.

### **APPEAL AGAINST ACQUITTAL**

18. It is well settled that in an appeal against acquittal under Section 378 Cr.P.C, the scope of the appellate Court is to the extent that the judgment of acquittal should not be ordinarily interfered with unless the findings in such judgment are shown to be arrived at by incorrect or perverse appreciation of material on record and the law. This settled position of law with respect to the scope of the appellate Court *qua* an appeal against the acquittal has been considered in a catena of judgments by the Hon'ble Supreme Court. In **Basheera Begam v. Mohd. Ibrahim, (2020) 11 SCC 174** the Hon'ble Supreme Court has held:

*“190. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if*

*the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be “not guilty”. When there is circumstantial evidence pointing to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.*

*191. In Sadhu Saran Singh v. State of U.P , this Court observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.”*

19. Recently, the Hon’ble Supreme Court in **Jafarudheen v. State of Kerala, (2022) 8 SCC 440**, made a detailed analysis of the precedents, with respect to the scope of an appeal against acquittal and recorded as under;

***“Scope of appeal filed against the acquittal***

*25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial*

*court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.*

***Precedents***

***26. Mohan v. State of Karnataka as hereunder : (SCC paras 20-23)***

*“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the appellate court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the appellate court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The appellate court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty-bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the appellate court shall remind itself of the role required to play, while dealing with a case of an acquittal.*

*21. Every case has its own journey towards the truth and it is the Court's role to undertake. Truth has to be*

*found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An appellate court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.*

*22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, the trial court on the one hand and the appellate courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The appellate court is expected to maintain a degree of caution before making any remark.*

*23. This Court, time and again has laid down the law on the scope of inquiry by an appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this Court in Anwar Ali v. State of H.P : (SCC pp. 182-85, para 14)*

*‘14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : (Babu case, SCC p. 199)*

*“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at*

*by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn, Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, Triveni Rubber & Plastics v. CCE, Gaya Din v. Hanuman Prasad, Arulvelu and Gamini Bala Koteswara Rao v. State of A.P.)”*

*It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.*

*14.3. In the recent decision of Vijay Mohan Singh, this Court again had an occasion to consider the scope of Section 378 CrPC and the interference by the High Court in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under : (Vijay Mohan Singh case, SCC pp. 447-49)*

*“31. An identical question came to be considered before this Court in Umedbhai Jadavbhai. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappraisal of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused.*

*Confirming the judgment of the High Court, this Court observed and held in para 10 as under : (SCC p. 233)*

*‘10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.’*

*31.1. In Sambasivan , the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under : (SCC p. 416)*

*‘8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case viz. first recording its*

*conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.'*

*31.2. In K. Ramakrishnan Unnithan, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found*

*that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.*

*31.3. In Atley, in para 5, this Court observed and held as under : (AIR pp. 809-10)*

*‘5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.*

*It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of*

*the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence has been recorded in its presence.*

*It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.*

*If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State; Wilayat Khan v. State of U.P.) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.'*

*31.4. In K. Gopal Reddy, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.'''*

*(emphasis in original)*

*27. N. Vijayakumar v. State of T.N.as hereunder : (SCC pp. 695-99, paras 20-21 & 23-24)*

*“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under : (SCC p. 432)*

*‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*

*(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*

*(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

*(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with*

*acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

*(4) An appellate court, however, must bear in mind that in case of acquittal, there is 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. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'*

*21. Further in the judgment in relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of "possible view" to "erroneous view" or "wrong view" is explained. In clear terms, this Court has held that if the view taken by the trial court is a "possible view", the High Court ought not to reverse the acquittal to that of the conviction.*

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*23. Further, in Hakeem Khan v. State of M.P. this Court has considered the powers of the appellate court for interference in cases where acquittal is recorded by*

*the trial court. In the said judgment it is held that if the “possible view” of the trial court is not agreeable for the High Court, even then such “possible view” recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under : (SCC pp. 722-23)*

*‘9 . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact*

*that he attended the Court at some distance and arrived by bus after the incident took place.'*

*24. By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a "possible view". By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested by PW 11 till 7.00 p.m."*

### **CONCLUSION**

20. In view of the above general principles, the appellant/State had to demonstrate that the impugned judgment suffered from any illegality or perversity. Whether the view taken by the learned trial Court was a possible one or not has to be determined on the basis of evidence on record, including the testimonies of the witnesses and documents. In the present appeal, the grounds urged by the State

were the same as those that were raised before the learned trial Court. It is not the case of the appellant/State that the learned trial Court has omitted to consider or deal with any particular piece of evidence or circumstance, which otherwise could have reversed the scale in favour of the prosecution. The learned trial Court, in our considered view, has minutely and diligently dealt with the entire evidence and circumstances brought on record by the prosecution during the trial of the present case.

21. As pointed out hereinbefore, the learned trial Court, after due consideration, has disbelieved the testimonies of Arun Kumar (PW-16) and Rajinder Singh (PW-17). Arun Kumar (PW-16), who happened to be a chance witness, was a key witness to the prosecution case. A perusal of the cross-examination of Arun Kumar (PW-16) would demonstrate that the conclusion of the trial Court was possible and reasonable one. The Hon'ble Supreme Court, in **Baby alias Sebastian and Another v. Circle Inspector of Police, Adimaly, (2016) 13 SCC 333**, while dealing with evidence of a chance witness as observed as under:-

*29. A careful reading of the evidence on record clearly highlights the material contradictions and discrepancies in the prosecution evidence especially the testimonies of Mathai (PW 6) and Eldose (PW 17) upon which strong reliance has been placed by the High Court in convicting both the appellants by setting aside the acquittal order passed by the trial court. From the testimony of PW 6 one thing is clear that he is a chance witness who happened to have witnessed the incident by chance. It is a well-settled*

***legal principle that the evidence of a chance witness cannot be brushed aside simply because he is a chance witness but his presence at the place of occurrence must be satisfactorily explained by the prosecution so as to make his testimony free from doubt and thus, reliable.***

***30. This Court in Jarnail Singh v. State of Punjab has elaborately explained the reliability of a chance witness as under: (SCC p. 725, paras 21-22)***

***“21. In Sachchey Lal Tiwari v. State of U.P. this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and passer-by had deposed that he had witnessed the incident, observed as under: (SCC p. 414, para 7)***

***If the offence is committed in a street only a passer-by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.***

***The Court further explained that the expression “chance witness” is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.***

***22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh, Harjinder Singh v. State of Punjab, Acharaparambath Pradeepan v. State of Kerala and Sarvesh Narain Shukla v. Daroga Singh). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan).” (emphasis supplied)”***

(emphasis supplied)

The answers given by the said witness with respect to his residential address and reasons for being present at the spot whereby he witnessed respondents no. 1 to 3 in the company of the deceased were evasive and contradictory. Similarly, the identification by Arun Kumar (PW-16) of the deceased and of the respondents no.1 to 3 is also not worthy of any credit. At this stage, we may observe that as per this witness, he had identified the body of deceased in presence of the Investigating Officer. However, none of the official witnesses, including the Investigating Officer state that this witness had identified the body of deceased in their presence. Apart from that, as observed by learned trial Court, this witness contradicted himself regarding the place of the identification, i.e., whether at the spot where the body of the deceased was recovered, or in the mortuary at the hospital. It is pertinent to note that the relevance of this witness had been on the premise that he had identified the body of deceased and had claimed to have witnessed the presence of respondents no. 1 to 3 in the company of the former. This witness had stated:

*“Next morning i.e. on 24.7.91, I came to my shop Time was about 6 AM, there I came to know that a person had been murdered on Bal Bhawan Road near Manak Bhawan. The police was asking the people if some body recognizes the deceased. I told the SHO. Then I was taken to the JPN Hospital. There I identified the deceased and I told about the quarrel between the deceased and two persons in TSR.”*

Thus, the genesis of this witness's testimony is the identification of deceased's body. In absence of any other

corroborative evidence supporting this claim as to when, where and how this witness identified the body of deceased, the possibility that this witness was planted subsequently to support the prosecution case cannot be ruled out. In our considered view, the conclusion of the learned trial Court that Arun Kumar (PW-16) could not satisfactorily explain his presence at that particular point of time and therefore, was a planted witness is a reasonable view. Even otherwise, the testimony of this witness does not inspire confidence and therefore, cannot be relied upon.

22. The bedrock of the prosecution case was the testimony by Arun Kumar (PW-16) as it was the strongest link in the chain of circumstances sought to be proved to establish the guilt of the present respondents. The evidence of Rajinder Singh (PW-17), the alleged recoveries and the TIP proceedings, which were canvassed on behalf of the prosecution, were at best corroborative in nature. The finding with respect to this evidence has been dealt with in detail by the learned trial Court as pointed out in the previous paragraphs. The conclusion of the learned trial Court is again a reasonable and possible one.

23. As discussed above, in any appeal against an order of acquittal, the presumption in favour of the accused is strengthened and such a presumption should not ordinarily be disturbed, unless there are substantial and compelling reasons for the same. It is now well settled that the burden on the prosecution in prosecuting an

appeal against acquittal is onerous. The prosecution has to demonstrate that the judgment rendered by the learned trial Court was arrived at on the basis of an incorrect appreciation of the facts and evidence on record, necessitating interference by this Court. It is also a settled principle that if the view taken by the learned trial Court "*is a possible view*", then the order of acquittal should not be reversed.

24. Having heard, learned counsel appearing on behalf of both the parties and going through the record of the case, we are of the view that the reasoning and conclusion arrived at by the learned trial Court in the present impugned judgment is a possible view. We have already highlighted the material contradictions in the prosecution case referred to by the learned trial Court in the impugned judgment and the same do not suffer from any infirmity or illegality. We have satisfied ourselves from the record of the case that the finding in the impugned judgment of the learned trial Court is both possible and plausible.

25. In view of the foregoing, we don't find any reason to interfere with the impugned judgment dated 30.01.1991, passed by Sh. K.S. Khurana, ASJ, Delhi in case FIR No. 272/1991, under Section 302/120B, IPC registered at Police Station, I.P. Estate, New Delhi.

26. Consequently, the present appeal filed by the appellant/State is dismissed and disposed of accordingly.

27. Pending application(s), if any, also stand disposed of.
28. Bail bonds submitted on behalf of the respondents stand discharged.

**AMIT SHARMA  
JUDGE**

**SIDDHARTH MRIDUL  
JUDGE**

**OCTOBER 20, 2022/ab**