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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRA-D-706-DBA-2003**

**Date of Reserve:13.05.2024**

**Date of Pronouncement:17.05.2024**

State of Haryana

...Appellant

Vs.

Vinod Singh

...Respondent

**Coram :**   **Hon'ble Mr. Justice Gurvinder Singh Gill**  
              **Hon'ble Mr. Justice N.S.Shekhawat**

**Present:**   Mr. Munish Sharma, DAG, Haryana.

Mr.B.S Saroha, Advocate  
for the respondent.

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**N.S.Shekhawat J.**

1.           By way of the present appeal, State of Haryana has challenged the judgment dated 22.01.2003, passed by the Court of Additional Sessions Judge, Rohtak, whereby Vinod Singh, respondent and his four other co-accused were ordered to be acquitted by the Trial Court of the charge under Section 302 IPC.

2.           The prosecution story, as it emerges from the report under Section 173 Cr.P.C, is that a V.T, message was received in Police Station City, Rohtak from Police Post PGIMS, Rohtak to the effect that Ravi son of Mahender Singh was brought dead and Lal Ji son of Dharam had been admitted in PGIMS, Rohtak in injured condition. On getting this information, ASI Ram Kumar along with other police officials reached PGIMS, Rohtak and recorded the statement of Anita wife of Ravinder Singh @ Ravi. In her statement, Anita stated that at about 10:00 P.M on 27.12.1999 she along with her husband, Ravinder Singh @ Ravi and her brother Sudesh Pal, were present in their house



and were watching TV. The wire of the cable was passing through their house. Pappu, accused, who lived in their street had joined the connection of his television with their cable connection and due to this, their television was disconnected. She and her husband asked Pappu as to why he had done so and why he had connected the cable wire with his television, as Pappu was not paying any cable charges. He replied that cable did not belong to his father. Pappu got down from the roof, caught hold of neck of her husband and dragged him in the street and gave him slaps. In the meanwhile, Lala, who was brother-in-law of Pappu, Saroj wife of Manohar Lal and Vinod, brother of Pappu, who was carrying a country made pistol in his hands and came there. Vinod fired a shot all of a sudden from the backside, which had hit on the right side of the head of her husband and he fell down on the ground. She along with her brother, Sudesh Pal brought her husband to their house. Vinod fired another shot, which hit his brother-in-law, Lala by chance. Thereafter, all the assailants fled away from the spot and her mother-in-law Lahli, also reached to the spot. She and her mother-in-law, Lahli shifted Ravinder @ Ravi to Medical College and Hospital, Rohtak for treatment. However, after sometime, her husband died in the hospital. Her husband Ravinder @ Ravi had been killed by Vinod, Pappu, Saroj and Lala with common intention. On the said statement made by Anita widow of Ravinder @ Ravi, the FIR in the present case was registered.

3. After recording the above statement, ASI Ram Kumar made his endorsement and on the basis of the statement, the formal FIR Ex.PG/2 was recorded by SI Shiv Singh for the offence under Sections 302/34 of IPC and Section 25 of Arms Act.

4. After conducting the investigation, the final report under Section



173 Cr.P.C was presented before the Area Magistrate, which was committed for trial to the Sessions Court, Rohtak. Vide the order and charge-sheet dated 06.01.2001, charge under Sections 302/34 of IPC was framed against Vinod, Pappu, Jugnu and Saroj. Thereafter, several prosecution witnesses were examined by the Trial Court. However, later on, Lala son of Dharam Chand was also arrested and the charge was again ordered to be framed under Sections 302/34 of IPC in the present case and the witnesses were examined by the Trial Court again.

5. During the course of trial, on the asking of Lala, accused, all the material witnesses which were already examined were summoned again and their statements were recorded again. However, learned counsel for Lala, accused stated that he had no objection, in case the statements of certain formal witnesses i.e SI Shiv Singh PW-1, who had recorded formal FIR; C. Jagbir Singh, PW-4, who had tendered in evidence Ex.PD regarding delivery of special report; Shri Niwas Reader to District Magistrate, PW-6 who proved sanction order Ex.PH of District Magistrate for trial of accused Vinod under Section 25 of Arms Act, C. Samit Kumar, PW-11 and Inspector Shyam Singh, PW-12, who were examined earlier, are read against him as well and there was no need to cross-examine the said formal witnesses again. Still further, the prosecution again examined nine witnesses namely, SI Pitanjali Kumar as PW-1, Dr. Ashok Rathi as PW-2, MHC Rajender Singh as PW-3, C.Sudershan as PW-4, Dr. R.K Jain as PW-5, Complainant Anita as PW-6, eye witness Sudesh Pal as PW-7, ASI Ram Singh as PW-8 and ASI Ram Kumar as PW-9.

6. After examining the prosecution witnesses, the entire incriminating evidence was put to the accused, however, they pleaded their innocence and



stated that they had been falsely roped in the criminal case and opted to lead defence evidence. In defence, accused examined Lahli, mother of Ravinder @ Ravi (deceased). Even, FIRs Ex.DC to Ex.DF were also exhibited to prove the conduct of Sudesh Pal, PW-7, as he was involved in several cases under the Excise Act and NDPS Act.

7. Since the statements of PW-1, SI Shiv Singh, PW-4 C. Jagbir Singh, PW-6, Shri Niwas Reader to District Magistrate, PW-11, C. Samit Kumar and PW-12 Shyam Singh Inspector are formal in nature, the said statements are not being reproduced here. However, after appearance of Lala, accused, nine witnesses were re-called and were re-examined and were also subjected to cross-examination by the accused. The prosecution examined Pitanjali Kumar, SI as PW-1, who had arrested the accused Lala son of Dharam Chand on 07.03.2002 in the present case. The prosecution further examined PW-2 Dr. Ashok Rathi, who had medico-legally examined Lala son of Dharam Chand, accused and found the following injuries:-

*1. A lacerated wound of size 2.cm x. 5cm. muscle deep, was present on the left temporal region of scalp, it was 7 cm. from the left pinna. Fresh bleeding was present. Advised surgeon's opinion.*

*2. A lacerated wound of size 1cm x 0.5cm. muscle deep was present on the back of chest on the medial and lower aspect of left scapular region with diffused swelling of size 5cm x 4cm. was present around it. Fresh bleeding was present.*

*3. A penetrating wound of size 5cm x 2.05 cm. from the acromion joint with multiple blackened marking with tattooing marks around the wound with collar of abrasion was present inferior laterally around the wound. Fresh bleeding was present. The opinion of Orthopedic surgeon was sought for injury no.2 & 3 & Surgeon's opinion was sought for injury no.1 & 2. Forensic medicines*



*expert's opinion was sought for injury no.3.*

He further stated that the patient was admitted in Ward No.6 for further management. Nature of injuries was kept under observation and the probable duration of all the injuries was within 6 hours. Injury no.3 was caused by firearm while the rest of injuries were with blunt weapon. His medico legal report is Ex.PK, which bore his signatures. He had brought the original record. He had sent ruqua Ex. PB to the Police Post PGIMS Rohtak regarding arrival of the injured in the Hospital. Lala son of Dharam Chand was brought by his wife kamlesh. In his cross-examination, he stated that the patient was conscious when he was brought in the hospital. There were tattooing marks and blackening around the injury No.3 and such marks could appear if the fire arm was used from a distance of 3 ft. The police moved an application Ex.PC at 04:45 AM on 28.12.1999 and ASI Ram Kumar had recorded the statements of injured in his presence. Later on, the police never came to him for further opinion regarding injuries No.1 and 2 nor the opinion of Orthopedics or Surgeon was shown to him. The prosecution brought Rajender Singh as PW-3, who was working as MHC in Police Station City, Rohtak. He stated that Ram Kumar, ASI had deposited with him several parcels. On 12.01.2000, the inspector also deposited with him one sealed bundle of pistols, which were to be kept in Malkhana. On 16.02.2000, he handed over all the sealed parcels/packets to Sukhdarshan, Constable for taking the same to FSL Madhuban. The laboratory raised certain objections and the parcels were brought back and were re-deposited with him. On 24.03.2000, ASI, Ram Kumar took the sealed packets of bullet from him for getting the objections removed and after doing so, he re-deposited the case property with him again.



Thereafter, on 27.03.2000, he again handed over all the sealed case property for taking the same to FSL, Madhuban. In his cross-examination, he admitted that all the sealed packets/parcels were sent to FSL on 16.02.2000 for the first time. The objection was raised by the FSL and he had handed over the letter to the I.O. He had again sent the case property to FSL on 27.03.2000. He stated that the FSL had mentioned in the objection letter that the manner in which the parcel was sealed was defective and the thread was of different type and the places, where seals were affixed were not the proper places and there could not suspicion about the tampering with the packet. The prosecution further examined PW-4, C.Sudershan, who had taken the parcels to FSL on both the occasions. Dr. R.K Jain appeared as PW-5, who had conducted the post mortem examination over the dead body of Ravinder @ Ravi on 28.12.1999 and found the following injuries:-

*1. Fire arm entry wound at the right pinna 4 cm medial to right pinna, 5 cm in diameter with irregular margins with 4 to 5 linings skull, cavity deep in right occipito-parietal region. Right margin of the wound showing abraded contusion. No singeing, no blackening, no tattooing was present. On exploration scalp was showing effusion of blood more on right side.*

*2. Brain was showing punctured wound below injury no.1, 3cm x 2 cm x 4 cm in size in the substance of right occipital pole of right cerebral hemisphere, brownish metallic deformed bullet recovered from the brain substance at the sight of punctured wound.*

*3. Bone was showing hole in the right occipital parietal region in the area of 2.5 cm below injury no.1 and was showing infusion of blood at the margin, bevelling of inner table of bone was being seen with margins.*



4. *There was subarchnoid haemorrhage present more on right side.*

Bullet entered from right to left and the track was going inward and upward from external injury no.1 to right occipital pole of right cerebral hemisphere.

Walls, ribs, cartilages, pleura, larynx, trachea were healthy, both lungs were healthy and pale, all chambers of head were empty, anterior abdominal wall peritonious, mouth, pharynx and oesophageous were healthy, stomach was healthy and contained semi digested food. Small intestines were healthy having chyme, large intestines were also healthy with bad faecal matter. Live spleen, kidney were healthy and pale. Bladder was empty. External genitalia healthy.

8. In his opinion, the death had occurred due to head injury with firm arm, which was ante mortem in nature and sufficient to cause death in ordinary course of nature. In his cross-examination, he stated that blackening, charring and tattooing were possible, when the fire arm was used from a distance of 3-4 feet. Only one bullet was recovered from the head injury. When the parcel of bullet reached FSL, it was returned with the objection that it was not properly sealed and was tampered with. When he opened the seal for sealing again, he found one bullet and one small piece in that parcel and he re-sealed it. He had mentioned the facts in his letter Ex.DA. The tampering was not done at his level. When the parcel was returned to him by the FSL, it was having the seal of FM. The sample was inside a vial and the bullet and the piece were in a polythene paper inside that vial. The re-sealing was done under the verbal orders of the SMO. The prosecution further examined PW-6 Anita widow of



Ravinder @ Ravi, who reiterated the version as mentioned in the FIR. However, she had slightly improved her version. In her cross-examination she stated that she had told the police that Pappu had removed the wire and had connected his own television. She admitted that Pappu had no electricity connection in his house nor he obtained the connection of cable. She admitted that her husband was never challaned, however, she was challaned in a case of Narcotic Drugs. She had visited the police station at about 02:00 PM. She had told the police about the occurrence in night, but her statement was recorded in the next morning. She admitted that Sudesh Pal did not come to the hospital during the night. Sudesh Pal, brother of Anita was examined as PW-7 and he supported the case set up by PW-6, Anita with certain improvements. In his cross-examination, he admitted that he had not visited the police station that night nor accompanied his sister to the hospital. He had gone to his village that night, but he returned on 28<sup>th</sup>. The prosecution further examined ASI, Ram Singh as PW-8, who had initiated the investigation in the present case. He admitted in his cross-examination that the statement of Anita was recorded at 04:00 AM and after recording her statement, the statement of Lala, accused was also recorded. The inquest report was prepared in his presence. In his cross-examination, he admitted that on 27.12.1999, he was on duty in the police station from 08:00 AM to 08 AM on the next day. However, Anita complainant did not come to the police station for reporting the matter. He stated that he had obtained the opinion of the doctor with regard to the condition of Lala, injured and the doctor declared Lala, injured to be fit to make statement, but he did not record the statement of Lala as his name was mentioned as accused in the report lodged by her, after the occurrence. He admitted that name of the accused Jugnu



did not appear in the statement of Anita. He further admitted that clothes of Lala, injured were sealed by the doctor and were taken into possession by the police. However, those were not sent to FSL, Madhuban for investigation. He further admitted that the cause of dispute was cable wire, but he did not shown the places from where the cable wire was removed and where it was connected. The place of connection and removal was mentioned in the statement of Anita. The place where Lala, sustained bullet injury was not shown in the site plan. Even he could not tell as to whether there was a cable connection at the house of Pappu or not. After the closure of the prosecution evidence, the statements of all the accused under Section 313 Cr.P.C were recorded and they had pleaded their false implication in the present case.

9. The accused examined Lahli wife of Mahinder, mother of Ravinder @ Ravi (deceased) as DW-1. She stated that Ravinder @ Ravi (deceased) was her son and Anita, PW-6 was her daughter-in-law. About 10 months prior to the occurrence, Anita had given birth to a male child and her sister Chhoti had come to their house. Sudesh, brother of Anita, earlier used to reside with them and resided with them for about 10 years. Her son Ravinder @ Ravi had developed illicit relations with Chhoti during her stay with them and there was a family dispute on this. Sudesh was doing the illegal business of smack and he demanded a sum of Rs.50,000/- from Ravinder @ Ravi for marrying his sister Chhoti with him. Ravinder @ Ravi was not in a position to meet his demand and he refused to pay the amount. On this, Sudesh took away Chhoti to his parental house. On the date of occurrence, Sudesh had fired at Ravi and killed him. Sudesh also fired another shot, which had hit Lala @ Lalji, accused. Thereafter, Sudesh fled from the spot and she had brought her injured son to the



hospital. Lala @ Lalji, accused was also shifted to the hospital and Anita was with them. Her son Ravinder @ Ravi succumbed to his fire arm injuries. She told these facts to the police and also explained the correct facts. Still further, there was no electricity connection in the house of Pappu, accused those days. The electricity connection was disconnected about 01 year ago. Even though the 05 accused namely Vinod, Pappu, Jugnu, Smt. Saroj and Lala were ordered to be tried by the Court of Additional Sessions Judge, Rohtak and all were ordered to be acquitted. Yet the State of Haryana has challenged the acquittal of Vinod Singh, accused only by the Trial Court.

10. Learned State counsel vehemently argued that in the present case, the statements of PW-6, Anita and PW-7 Sudesh Pal, both eye witnesses were duly corroborated by the statement of PW-5, Dr. R.K Jain and the impugned judgment is legally unsustainable. Learned State counsel further submits that the Trial Court had took into consideration the minor variations, which had admitted in the testimonies of PW-6 and PW-7 and such minor contradictions could not have been relied upon to acquit the respondent in the present case. Apart from that, the ocular account in the present case was duly corroborated by the medical evidence and it stood proved that Vinod Singh, respondent had fired shot on the head of the Ravinder @ Ravi, since deceased. Learned State counsel further submitted that even in pursuance of the disclosure statement, Vinod had got recovered a country made pistol, which was concealed by him under the clothes in a trunk, which was lying in his house. Thus, there was a conclusive evidence regarding the involvement of Vinod in the present case. Apart from that, the empties were also sent to the FSL and as per the FSL report, the fired bullet lifted from the spot and was found to have been



committed from the country made pistol, which was recovered from Vinod Singh respondent. Apart from that, it was wrongly held that the recovery of the country made pistol was also doubtful in the present case. The Trial Court had completely overlooked while recording the findings of acquittal of the respondent as during the course of investigation also, his involvement in the crime was duly proved. Thus, learned State counsel prayed for setting aside the judgment of acquittal.

11. On the other hand learned counsel appearing on behalf of respondent vehemently argued that the testimonies of the prosecution witnesses had been rightly rejected by the Trial Court and the impugned judgment is based on correct appreciation of evidence led by the prosecution as well as by defence.

12. I have heard learned counsel for the parties and with their able assistance, I have gone through the Trial Court record carefully.

13. In the present case, the entire prosecution case primarily rests on the testimonies of PW-6, Anita, widow of Ravinder @ Ravi and her brother Sudesh Pal, PW-7, who is also an eye-witness to the occurrence. However, a cumulative reading of the testimonies of PW-6, Anita and her brother Sudesh Pal, PW-7 would reveal that their evidence was contrary to each other and both the witnesses tried to improve their statements materially, while appearing as prosecution witnesses. While appearing as PW-6, Anita stated that at about 10:00 PM, when she went to the roof, she found that Pappu, accused had fitted a wire in their cable, which was passing from their roof. She removed the wire and the accused came running to her, asking why she had removed the wire. Then he came down from the roof, entered their house and pulled her husband



out of their house by catching his collar. By that time, Lala, Vinod, Jugnu and Saroj also arrived in the street and they grappled with him and her husband was thrown in the ground. Thereafter, Saroj exhorted Vinod for bringing pistol from their house for killing Ravinder @ Ravi. Vinod brought the pistol from his house and all the accused asked him to kill Ravinder @ Ravi. On this Vinod fired a shot at Ravinder @ Ravi, hitting him on the back of his head. At this stage, it can be safely observed that this witness had considerably improved from her initial version. Even she added the name of Jugnu as one of the accused, who had raised *lalkara*. In her cross-examination, she admitted that Pappu had no electricity connection in his house nor he had obtained the connection of cable. Whereas, on the other hand PW-7, Sudesh Pal made an altogether different statement. As per him, at about 10:00 PM, his sister Anita went up stairs and found that Pappu and Vinod had taken connection from the cable. She removed the connection and connected their own cable. On this Saroj also came on the roof and asked Anita as to why she removed the cable. Anita told her that she was paying Rs.100/- per month and both the ladies came down. In the meantime, Pappu, accused entered their house and took out Ravinder @ Ravi in their street. The remaining accused also arrived their and started giving him slaps and fist blows. Vinod rushed to his house and brought a pistol. Saroj, Lala and Jugnu instigated him to fire a shot at Ravinder @ Ravi., from which he had ultimately died. Thus, from the statements of PW-6 and PW-7, it is apparent that the statements of both these witnesses were highly contrary and it was unsafe to place reliance on the statements of such witnesses. Moreover, PW-6 Anita had admitted in her statement that Pappu had no electricity connection in his house nor he had obtained the connection of cable.



Thus, when Pappu had no electricity connection at his house, there was no reason for the complainant i.e. Anita to pick quarrel with him. Thus, as per the testimony of PW-6, Anita itself, there was no motive on the part of Pappu, accused to initiate the fight with her.

14. Apart from that in the present case, the prosecution had examined ASI Ram Singh, who had investigated the present case initially. He admitted in his cross-examination that the cause of death in the present case was cable wire. However, he had not shown the places from where the cable wire was removed and where it was connected. He further stated that he could not say whether there was a cable connection at the house of Pappu or not. Thus, when Pappu, co-accused was having no electricity connection and no cable connection is in house, then there was no question of fight between both the sides on the said ground.

15. Apart from that, in the present case, the defence examined Lahli, mother of Ravinder @ Ravi, as a witness in the present case. She clearly stated that about 10 months prior to the occurrence, Anita had given birth to a male child and her sister namely Chhoti had come to their house. Her son Ravinder @ Ravi had developed illicit relations with Chhoti during her stay with them and there was a family dispute on this account. Sudesh Pal, PW-7, brother of Anita, used to indulge in illegal business of smack. Sudesh Pal asked for a sum of Rs.50,000/- from Ravinder @ Ravi for marrying his younger sister with him. However, Ravinder @ Ravi was not in a position to meet his demand and refused to pay the amount. On this, Sudesh Pal took away the Chhoti to his parental house. On the date of occurrence, Sudeshpal had fired at Ravi and killed him. He fired at Lala @ Lalji, accused and thereafter, Sudesh Pal fled



from the spot. The statement of DW-1, Lahli also finds corroboration from the statement of PW-6, Anita also, wherein, she admitted that only she and her mother-in-law, Lahli had shifted Ravider @ Ravi to PGIMS, Rohtak. She admitted that Sudesh Pal had not had gone to the hospital during the night with them. Even, Sudesh Pal PW-7, also admitted that he neither visited the police station on that night nor he had accompanied his sister to the hospital. This clearly shows that after the occurrence, Sudesh Pal, PW-7 had fled from the spot. This further proves the case of the accused that after firing the shots, Sudesh Pal had fled from the spot. Otherwise, he would have definitely accompanied his sister and brother-in-law to the hospital as well as to the police station. This fact alone raises big questions with regard to the credibility of the case of the prosecution.

16. Apart from that, even this Court also agrees with the findings recorded by the Trial Court that the prosecution had miserably failed to prove the recovery of pistol from Vinod Singh, respondent and also failed to connect the recovery of bullet, which was taken out from the dead body, with the present occurrence. In pursuance of his disclosure statement dated 12.01.2000 Ex.PS, a country made pistol was allegedly recovered from Vinod Singh. However, the place from where the recovery was effected was uninhabited and nobody was residing there. Even no independent person was joined from the public, at the time of recording the disclosure statement or effecting the recovery. It is further apparent from that testimony of PW-3, HC Rajender Singh, who was posted as MHC in Police Station, Rohtak that Shyam Singh Inspector had deposited with him one sealed bundle of pistols on 12.01.2000, which were to be kept in Malkhana. In the present case, only one pistol was



allegedly recovered from Vinod Singh, whereas, as per the testimony of PW-3, HC Rajender Singh, bundle of pistols was deposited on 12.01.2000 with him. Still further, after a period of more than 01 month i.e. 16.02.2000, he handed over all the sealed parcels to Sukhdarshan, Constable for taking the same to FSL Madhuban. However, the FSL, Madhuban had raised an objection with regard to the sealing of the case property, which clearly pointed out towards the tampering with the parcels. HC Rajender Singh further admitted that on 24.03.2000 i.e after more than a month, Ram Kumar ASI again obtained sealed packet of bullet from him for removal of the objection and after 03 days, he again handed over all the sealed case property to him for taking the same to the FSL, Madhuban. In the present case, the sealed packets of bullet and the case property remained with Ram Kumar, ASI from 24.03.2000 to 27.03.2000 and it has not been explained by the prosecution as to how the seals were changed by the I.O. in the present case. Apart from that, when the sealed packets/parcels were sent to FSL on 16.02.2000 for the first time, the FSL clearly stated that in the objection letter, the manner in which parcel was sealed was defective and the thread was of different types and the seals were not affixed at proper places and there could be suspicion about tampering with the packets. Apart from that, PW-5, Dr. R.K Jain also admitted that only one bullet was recovered from the head of the Ravinder @ Ravi (since deceased). He had only sealed one bullet recovered from the head injury of Ravinder @ Ravi. When the parcel of the bullet reached FSL, Madhuban, it was returned with the objection that it was not properly sealed and was tampered. Surprisingly, when he opened the seal, he found one bullet and a small piece in that parcel. He again re-sealed the parcel on the verbal orders of the Senior Medical Officer. In fact, such a



procedure which was adopted by PW-5, Dr. R.K Jain was not permissible in law and this clearly proves that the bullet, which was taken out from the head injury of Ravinder @ Ravi could be tampered/re-placed.

17. Apart from that, we have carefully perused the findings recorded by the Trial Court. In the present case, Lahli, mother of Ravinder @ Ravi had appeared as DW-1. She, being the eye witness to the occurrence and mother of the deceased, would be the last person to spare the real assailants/killers of her son and to involve Sudesh Pal, PW-7 for no reason. It is neither the case of the prosecution, nor of defence that DW-1 Lahli was having strained relations/enmity with PW-7, Sudesh Pal and PW-6, Anita. Apart from that, the Trial Court has correctly refused to place reliance on the testimonies of PW-6 and PW-7, which were not only self-contrary, but the said witnesses left no stone unturned to involve the accused in the present case. Jugnu, who was their neighbour and was well known to them, still he was not mentioned as accused in the initial version, but while appearing as PWs, they tried to involve him by levelling false allegations against him. Apart from that, the Trial Court has correctly observed that the statement of PW-8 ASI Ram Singh and PW-9 ASI Ram Kumar were not worth placing reliance. Even, as per statement of PW-2 Dr. Ashok Rathi, the statement of Lala, accused was recorded by ASI Ram Kumar in his presence. However, while appearing as a witness, ASI Ram Kumar stated that he had not recorded the statement of Lala. In fact, from the testimonies of PW-8 and PW-9, it is apparent that the police had not even bothered to look into the version of the accused in the present case and the possibility of the false implication of the accused in the present case could not



be ruled out. Even otherwise, we have carefully perused the findings recorded by the Trial Court and finds no reasons to deviate from the same.

18. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

*"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by*



*some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."*

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867**, this Court observed:

*"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."*

19. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on **11.07.2022**, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure*



(for short ‘Cr.P.C.’) while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, 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 analyzed. 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.”

20. In view of the above discussion and the law laid down by the Hon’ble Supreme Court, we are of the opinion that the view taken by the the Trial Court was plausible and the impugned judgment does not suffer any irregularity.

21. Thus, findings no merits, the present appeal is ordered to be dismissed.

(GURVINDER SINGH GILL)  
JUDGE

(N.S.SHEKHAWAT)  
JUDGE

17.05.2024  
hitesh

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |