



101(2)

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

Reserved on 28.01.2026

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(1) CRA-D-314-DBA-2003(O&M)

State of Haryana

...Appellant

vs.

Suresh Kumar and others

...Respondents

(1I) CRR-563-2003(O&M)

Ramesh Kumar

...Petitioner

vs.

State of Haryana and others

...Respondents

**Coram : Hon'ble Mr. Justice N.S.Shekhawat
Hon'ble Mr. Justice H.S.Grewal**

Present : Mr. Parmod Kumar, AAG, Haryana
for the appellant in CRA-D-314-DBA-2003 and
for respondent-State in CRR-563-2003.

Mr. S.S.Narula, Senior Advocate with
Mr. Gurinder Singh Dhillon, Advocate
Mr. Bhavpreet Singh Dhatt, Advocate
Mr. Bhardwaj, Advocate
for respondents in CRA-D-314-DBA-2003 and
for the private respondents in CRR-563-2003.

Mr. P.S.Ahluwalia, Senior Advocate assisted by
Ms. Simarpreet Sekhon, Advocate
Ms. Arveen Sekhon, Advocate
Mr. Parvesh, Advocate
Mr. Akash Gehlawat, Advocate
for the complainant in CRA-D-314-DBA-2003 and
for the petitioner in CRR-563-2003.



N.S.Shekhawat J.

1. This order shall dispose of above mentioned two cases i.e. CRA-D-314-DBA-2003 titled as “**State of Haryana Vs. Suresh Kumar and others**” and CRR-563-2003 titled as “**Ramesh Kumar Vs. State of Haryana and others**”, which have been filed against the common impugned judgment dated 16.10.2002, passed by the Court of Additional Sessions Judge, Fast Track Court, Sonipat, whereby, the private respondents in both the cases were ordered to be acquitted by the trial Court.

2. During the pendency of the present appeal, respondent No.1- Suresh Kumar, respondent No.2, Ishwar, respondent No.6-Ram Singh and respondent No.7 Maha Singh in CRA-D-314-DBA-2003 had expired and the appeal against them already stood abated, vide order dated 26.09.2024.

3. The FIR (Ex.PE) in the present case was registered on the basis of the statement made by Ramesh son of Bhalle Ram and the same has been reproduced below:-

“Statement of Ramesh s/o Bhalle Ram, Jat R/o Ahulana aged 33 years. Stated that I am an agriculturist. My father has two brothers, out of whom eldest Sheoram has expired, younger to him is Duli Chand and the youngest is my father, Bhalle Ram. One son of my tau Duli Chand is Mahender, aged 46/47 years. Today in the morning, I had come to my field called Kallarwala khet. Drizzling started. To save myself from the drizzling, I was standing under a kikar tree near the road. Mahender S/o Duli Chand, Jat resident of Ahulana along with brother-in-law of my younger brother Ishwar, namely Devender S/o Hoshier Singh, Jat resident of Bhawad, Police Station, Baroda sitting with him on his motor cycle Hero Honda No HR-06B/1888 were going to Gannaur from the village,



who had come to offer the Diwali gifts to our house, reached in front of our Kallerwala khet at about 11.15 O' clock during day and seeing me, Mahender stopped his motor cycle and brother-in-law of my brother, namely Devender got down from the motor cycle and Mahender remained seated on his motor cycle. I was talking with Devender when Anand S/o Ishwar, Yudhvir S/o Ishwar, Suresh S/o Ram Singh, caste Jat residents of Ahulana came travelling in white colour Esteem Car and parked the esteem car in front of motor cycle of Mahender Singh. In the meantime, within our view, Raj Kumar S/o Dharam Singh @ Mahal, Jat resident of Ahulana who was wearing black raincoat and Bijender @ Kala S/o Ishwar Jat, resident of Ahulana who was a pillion rider came on Hero Honda of red colour motor cycle from the side of village Ahulana and stopped the motor cycle near the motor cycle of Mahender and Bijender @ Kala who was in possession of pistol or revolver fired direct shot on Mahender from behind. On hit by the shot, Mahender fell down in middle of the road with his motor cycle on left side. Raj Kumar parked his motor cycle and Bijender @ Kala fired 4/5 shots on my fallen brother Mahender. I and Devender tried to catch them, then Raj Kumar said that if you will come near, then I will shoot you also. Then Anand said in his raised voice that work is complete and run away. On saying this by Anand, Raj Kumar and Bijender @ Kala sat their motor cycle Hero Honda and Anand, Yudhvir and Suresh boarded in their esteem car and ran away towards Gannaur with their pistol and revolver. Then I and Devender saw Mahender but he had died after sustaining bullet shot wounds behind his left shoulder, on the right ear, right temple, under the right eye and on the forehead on the head from which blood was oozing out in huge quantity. Leaving Devender with the dead body of Mahender, I went to the village for giving information. Then I, my family members and many other persons of the village came at the spot. Grudge is that



during the panchayat elections, my brother Mahender and Raj Kumar had picked up altercation with families. Due to this grudge, Bijender @ Kala had picked up quarrel with my brother Mahender during the MP election and this matter had been settled but Anand, Yudhvir, Suresh, Raj Kumar and Bijender @ Kala were having this matter in their minds. Due to this grudge, they hatched conspiracy and have committed murder of my brother Mahender. The villagers had passed this information to the police station on telephone. Now I have got recorded my statement to you, heard and admitted as correct. Legal action be taken against them. Sd/- Ramesh Kumar, Attested, Sd/- Sube Singh, SI/SHO P.S Gannaur, 17.10.1998.”

4. After the registration of the FIR, initial investigation was conducted by SI Sube Singh. He got the place of crime photographed from Jagmohan, Photographer and prepared the inquest report (Ex.PH/1) and also prepared the site plan (Ex.PR). He lifted the blood from the spot and also took into possession the motorcycle of Mahender Singh, deceased. Even the postmortem examination on the dead body was conducted by Dr. Adarsh Sharma and Dr. S.K. Gosain and the clothes of the deceased were taken into possession. After arresting the accused and conducting the necessary investigation in the present case, the challan was presented before the Court of Judicial Magistrate 1st Class, Sonipat. However, the case was triable by the Court of Sessions and was committed to the Court of Sessions Judge, Sonipat.

5. During the course of trial, the trial Court found a *prima facie* opinion that the respondents had committed the offence punishable under Sections 302, 120-B, 148, 149 of IPC and Section 25 of the Arms Act and they



were ordered to be charge-sheeted, accordingly. However, they pleaded not guilty and claimed trial.

6. In support of the charge, the prosecution had examined 18 witnesses in the present case. The prosecution examined PW-1, UGC Daya kishan, who stated that on 17.10.1998, SI Sube Singh, SHO had seized a parcel containing the wearing apparel of Mahender Singh, deceased, as per memo (Ex.PD). A bullet was also retrieved from the dead body of the deceased, which was seized as per that memo. The prosecution further examined PW-2, HC Narender Kumar, who stated that on 17.10.1998, he was working as MHC, Police Station, Ganaur. On 11.11.1998, he had sent all three parcels with intact conditions to FSL, Madhuban through Constable Billu. On 12.11.1998, two sealed parcels containing a revolver and five cartridges were delivered by SI Sube Singh and he had sent the same to FSL, Madhuban on 18.11.1998. The prosecution examined PW-3 Constable Billu, who had delivered the special report (Ex.PE) to the Area Magistrate at 4:30 PM on 17.10.1998. On 11.11.1998, MHC Narender Kumar had deposited three sealed parcels with him and the same were sent to FSL, Madhuban in intact condition on the same day. PW-4, Krishan Chander, Patwari had prepared Akshijra (Ex.PF) on the identification of Ramesh, son of Bhalle Ram. ASI Anil Kumar, PW-5 had recorded the formal FIR (Ex.PE). PW-6 Inspector, Inder Singh, SHO, P.S. Ganaur had prepared and submitted the report under Section 173 Cr.P.C. The prosecution further examined Dr. Adarsh Sharma, PW-7, who alongwith Dr. S.K. Gosain had conducted autopsy on the dead body of Mahender Singh on 17.10.1998 and found the following injuries:-



“1. Punctured wound oval $\frac{1}{2}$ x 0.4 cm size with inverted margins just below right eye. Color of abrasion and smudging present around the wound. Underlying bone fractured.

2. Punctured wound oval 0.5x 0.4 cm size with inverted margins present in right temple area Color of abrasion and smudging present around the Wound. Underlying bone was fractured.

3. Punctured wound oval 0.5x 0.4 cms with inverted margins was present just above the right ear collar of abrasion and smudering present. Underlying bone fractured.

4. Punctured wound oval 0.5 x 0.4 cms with inverted margins was present in the right front to parietal region. Collar of abrasion and smudering was press underlying bone was fractured.

5. Punctured wound oval 0.5X 0.4 cms with inverted margins was present at back of left shoulder area on exploration of the injuries on opening the skull brain badly lacerated and raptured at many places, cranial cavity was full of blood. On exploration of neck, deep fascia blood vessels and neck muscles raptured.

Direction of injury No. 1 was posteriorly upward and medially.

Injury No. 2 directed medially downward and posteriorly.

Injury No. 3 directed medially downward and posteriorly.

Injury No. 4 directed medially downward and posteriorly.

Injury No. 5 directed medially upward and anteriorly reaching up to neck.

Other internal organs were pale and healthy.

In the heart both the sides were empty (Ventricles). The stomach was containing small amount of digestive fluid.

In his opinion, the cause of death was shock and haemorrhage as a result of injuries described above.

The injuries were anti mortem in nature and sufficient to cause death in normal course of nature.

Probable time between injury and death was instantaneouos and time between death and post mortem was within 12 hours.”



7. In his cross examination, he stated that he was not a ballistic expert and could not give the distance between the assailants and the deceased, at the time of receipt of the injuries by the deceased. He had observed blackening (smudgering) around all the injuries. According to his report, the deceased had consumed the meal within 6 hours prior to his death. According to his report, the injuries must have been caused by firing more than two shots by a firearms. The assailant and the victim had fired from two different directions and there was a possibility that after receiving injuries on the face and the head, the victim might have been on the ground side or the assailant might have moved towards the back of the victim. Four bullets were recovered from the dead body and he could say that there must have been more than four shots fired on the victim. There were five entry wounds in the body of the deceased and there was no exit wound of any of the entry wound. He had not recovered the fifth bullet or the pellet from the dead body of the deceased. The prosecution further examined PW-7, Dr. Adarsh Sharma, who handed over one sealed bottle containing four bullets recovered from the dead body. Bullets (Ex.P13 to Ex.P16) were the same, which were recovered by him from the dead body of Mahender Singh, deceased. PW-8 Rajbir had identified the dead body of Mahender. The prosecution further examined PW-9, Om Parkash, who had also joined the investigation in the present case. He stated that three of the accused, namely, Anand, Suresh and Yudhvir were going in a car, whereas, the remaining two accused were going on a motorcycle towards the same side. Bijender and Raj Kumar were on motorcycle. After 15 - 20 minutes, he came to know that somebody else shot dead Mahender and they went to the same spot alongwith



other villagers. Five gunshot injuries were there on the person of Mahender, who was lying on the ground and one of his leg was on the motorcycle, which was also lying on the ground. The prosecution further examined PW-10, Ishwar, who also supported the case of the prosecution. As per him, all the five accused went towards the temple and inquired from him about Mahender. He told them that Mahender had come to the temple and after worshipping, he had returned. The prosecution further examined PW-11, Rattan Singh, who stated that at about 8 or 8.30 a.m. on 17.10.1998, a white car passed near his house, in which, Anand, Suresh and Yudhvair were sitting and Raj Kumar and Bijender were on a motorcycle. His house is located opposite to the house of Ishwar, accused. All five persons, after stopping their vehicle, entered the house of Ishwar. After 1/1.30 hours, all five persons went in their respective vehicles in the same manner. In his cross-examination, he stated that Anand, Yudhvair and Raj Kumar are army persons and might be posted at Roorkie. He told the police about the timings of arrival of the accused in the house of Ishwar at about 8 or 8.30 a.m., with which, he was duly confronted.

8. The prosecution further examined PW-12, Bhoop Singh, who stated that Ishwar had purchased a plot from him in September, 1998. The total sale consideration was released Rs.50,000/- and he had received a sum of Rs.5,000/- as earnest money. On 02.10.1998, He visited the house of Ishwar, accused at about 8.00 a.m. to get his money, but he was not present there. His wife told him that Ishwar and Anand had gone to the house of Maha Singh and he went Ganaur in the house of Maha Singh. When he went to the house of Maha Singh, main door was lying opened and found that Ram Singh, Ishwar,



Anand and Maha Singh were discussing that Mahender was obstructing in their election and they should kill him with the help of Yudhvair, Raj Kumar and Anand. They also discussed that the army persons would show their presence in the Army at the time of occurrence. After conversation, he was frightened and came to the main door of the house. Then, he called Ishwar, who invited him inside the room and he demanded his money from Ishwar, but he showed his inability to make the payment of the balance sale consideration and returned to his house. He admitted that he, Balwan Singh, Advocate and Chattar Singh were real brothers. Mahender was not his collateral. Ratia was his grandfather. He admitted that Mansa was father of Duli Chand and Duli Chand was the father of Mahender Singh, deceased. He could not tell the Khasra or plot number of the plot. However, it was measured 50 sq. yard, situated in the village nor any writing was executed regarding the sale of the said plot. He further admitted that Balwan Singh, Advocate was assisting the Public Prosecutor in this case. He admitted that he was aware of the fact that Anand, etc. were posted in army at Roorkie. He further admitted that Ram Singh, accused and Mahender Singh, deceased had contested the election for the post of Sarpanch of the village and Mahender Singh, deceased had lost the election. He further admitted that Mahender Singh was debarred from contesting the election because of the complaint of embezzlement filed by Ram Singh, accused. The prosecution further examined PW-13, Ramesh Kumar, who supported the case of the prosecution, as explained in the FIR. In cross-examination, he stated that he did not have the knowledge that Hukmi filed a suit for injunction against them and obtained status quo from the Court. He had



no knowledge that Mahender Singh, deceased was an eye-witness in a case under Section 376 of IPC of village Chatwa. The prosecution further examine PW-14, Abhey Singh, DSP, who had conducted the investigation in the present case. On 05.11.1998, Bijender Singh made a disclosure statement (Ex.PL) to the effect that he had kept a motorcycle in a sugarcane field in Uttar Pradesh, but the recovery was not effected. He arrested Yudhvir Singh and Raj Kumar in the present case. The prosecution further examined PW-15 Duli Chand. He stated that on 12.11.1998, Raj Kumar made a statement in the police custody that he had concealed the pistol. A pistol and five empty cartridges were recovered from Raj Kumar, which were taken into possession, after preparing its sketch (Ex.PQ). Still further, in his cross-examination, he stated that they left for the place of recovery after half an hour from the police station. He admitted that jungle was accessible to all and the place of recovery of pistol was half kilometer from the village. PW-16, Constable Satbir Singh had taken the case property to FSL, Madhuban. The sealed parcels were containing one 38 bore country made pistol and one more parcel containing five cartridges, which were sealed with the seal of MS. He deposited both the sealed parcels in the office of FSL, Madhuban on the same day. PW-17, Amar Dass stated that the police had interrogated Raj Kumar, who disclosed about the conspiracy and murder of Mahender Singh. Raj Kumar disclosed that he had kept one pistol in the bushes at a distance of one kilometer from village Attail and he got recovered one pistol and five empty cartridges, which were kept under the grass, adjacent to the pole near the bushes. In his cross-examination, he stated that he often used to visit the police station in connection with his own work.



The prosecution further examined PW-18, Sube Singh, Inspector, who went to the village, after registration of the formal FIR (Ex.PE). He summoned the photographer Jag Mohan on the spot and got the photographs clicked. He recovered the motorcycle and other incriminating evidence from the place of occurrence. On 12.11.1998, Raj Kumar suffered a disclosure statement (Ex.PN) and got recovered one pistol and five live cartridges, which were taken into possession, vide recovery memo (Ex.PO). He recorded the statement of Duli Chand and Amar Dass. He also arrested Maha Singh and Ram Singh on 11.11.1998. He also arrested Raj Kumar under the Arms Act. He also recorded the statements of various witnesses and obtained sanction (Ex.PU) under the Arms Act from D.M. Sonipat.

9. After closure of the prosecution evidence, the statements of all the accused were recorded under Section 313 Cr.P.C. and they submitted that they had been falsely involved in the present case. It was a case of blind murder and was wrongly converted into an eye version case by family of the deceased, by working hand in glove with the police and politicians. In the year 1988, Ram Singh had contested the election of Sarpanch against Mahender Singh, deceased and defeated him. Mahender Singh again wanted to contest Panchayat elections in the year 1992 and Ram Singh got his nomination papers cancelled as the deceased was involved in an embezzlement case. The deceased Mahender Singh and PW Ramesh enjoyed cordial relationship with the then MLA and Minister Ramesh Kaushik and taking advantage of this relationship, he pressurized the police authorities and implicated all the family members of the accused. Even an attempt was made to falsely implicate the family of the



accused in one or another case. On 05.04.1999, Chhota, father of PW Ishwar was murdered and they attempted to implicate them also in that case. However, the case was thoroughly investigated by the police and untrace report was prepared. Still further, Duli Chand son of Mansa, father of Mahender Singh (since deceased) had died a natural death on 21.01.2000 and they tried to accuse them of causing this death by intimidation. They also approached SP Office and filed many false complaints, which were found to be false on investigation.

10. In their defence, the respondents/accused examined DW1, Subedar Balwinder Singh, who stated that as per attendance register, Sepoy Yudhvir Singh was present in the Centre on 17.10.1998 for the whole day, as per entry at serial No. 25 of the register (Ex.D-1). He also brought the morning attendance book and according to which, Yudhvir Singh, Sepoy was present in the PC, company for the whole day on 17.10.1998. He also brought officer/JCO inspection book and as per that, Capt. Anand inspected the Quarter Guard of battalion No.1 at 9.00 a.m. on 17.10.1998 and made his endorsement in the remarks column (Ex.D-B). He also brought No.1 Training Battalion Officers Identity Card Register and Capt. Anand Kumar got his identity card checked from P. Bhargava, ADJt. No.1 Training Battalion on 17.10.1998 at 8.00 a.m., as per Ex.D-4). As per duty certificate (Ex.D5) issued by Col. R. Chakarvarty, Commanding Officer, No.1 Battalion, Capt. Anand was present in the Rookie Cantt. on 17.10.1998. He also brought an acquittance Roll (Ex.D6), as per which, Capt. Anand Kumar had disbursed his pay allowances to his subordinates on 17.10.1998. He also brought the copy of Military Court of Inquiry conveyed vide order dated 14.11.1998. As per this, the Court was



presided over by Lt. N.K. Sharma and had established that Capt. Anand Kumar was present in the Battalion through out the day on 17.10.1998. He also brought various letters (Ex.D9 to Ex.D22). He had seen the documents (Ex.D-5 to D-22) and identified the signatures of the officers. The defence further examined Lt. P.P. Roy, who was the Presiding officer of Court of Enquiry on 17.10.1998 and Capt. Anand Kumar was one of the members of the said Courts of Enquiry. The Court of Enquiry was held in the Officers Mess Inside the Centre, Roorki and the certificate (Ex.D23) was issued by him. The defence further examined DW3, Jasbir Singh, Subedar, who stated that Recruit Raj Kumar was getting training for the tournament under his guidance and the timings for giving training was 6.00 AM to 10.30 AM and 3.00 PM to 6.00 PM daily. As per certificate (Ex.D 25), Raj Kumar was getting training under him on this said date. He deposed before the Court of inquiry regarding the attendance of Raj Kumar on the date of occurrence at Roorki and the Court of inquiry was headed by Lt. Col. Ravinder Nath. DW-4, Sessions Major Pankaj Bhargawa had written a letter (Ex.D-26) to the Adjutant Specialist Training Btn. (Depot), Roorki for verification of entrance of Bijender, accused. After verifying the signatures of Bijender, accused, he sent a letter (Ex.D-28) after obtaining signatures of Bijender in his presence. On 17.10.1998 at 8.30 AM, he checked the identity card of Capt. Anand Kumar and obtained his signature in the register and verified the identity card and put his signature on the register (Ex.D-24). At 8:30 AM, he directed Anand Kumar to check the quarter guard of No.1 Training Battalion at Roorki at 9 AM on 17.10.1998. After checking the daily physical presence of the recruits, etc. he sent the report to Group



Headquarters, BEG Centre, Roorkie. The defence further examined Major Raghbir Singh as DW5, who also carried the specimen signatures of Bijender Kumar on entry register as well as on Ex.D-28. He also called Bijender in his office at that time and found that Bijender Kumar had visited the Battalion at 9.00 AM on 17.10.1998. The defence further examined Tejinder Pal Singh, Deputy Manager, State Bank of India, BEG Centre, Roorkie. As per him, on 17.10.1998 Capt. Anand Kumar had operated his saving bank account in their branch at Roorkie and had withdrawn a sum of Rs.2,000/- from his account. The amount was withdrawn not by cheque, but by withdrawal slip. In case of withdrawal by way of withdrawal slip, the customer has to appear in person in the bank and then only he could withdraw the amount. Still further, Col. R. Chakarvarty was examined as DW-7, who was working as Commanding Officer, No.1 Training Bengal Engineers Group and Centre, Roorkie. He knew Capt. Anand Kumar and he had inspected the quarter guard of No.1 Training Battalion at 9.00 AM on 17.10.1998. He signed officer/JCOs inspection book. Even the Court of inquiry was held and Capt. Anand Kumar had also disbursed the bonus to the persons mentioned in Ex.D6. Still further, the accused examined Major Rajiv Shukla as DW-8, who stated that Yudhvir Singh, accused was undergoing a clerical training under him on 17.10.1998 and he was present in the Battalion, as per company certificate Ex.D-31. Even the letter (Ex.D-22) dated 24.10.1998 was issued by him and as per morning report book, Yudhvir Singh was present in the company on 17.10.1998. The defence further examined HAV Baljit Singh as DW-9, who stated that he was posted as a Basket Ball Coach in BEG Centre, Roorkie. Even an Inter Battalion Recruit



Basket Ball Championship was to be held and the members of the team mentioned in Ex.D19 were selected and the name of Yudhvir found mentioned at serial No.28 in Ex.D19. The selected members had to undergo a practice session from 16.10.1998 to 19.10.1998 from 6.00 AM to 9.00 AM and 3.00 PM to 6.00 PM. Yudhvir Singh had attended the practice sessions on the dates mentioned above regularly and he knew Yudhvir Singh personally. On 18.10.1998, Yudhvir had attended the practice sessions i.e. in the morning and evening and he identified his signatures. The defence further examined Spr. Bal Kishan Pal, as DW-10, who stated that in the month of October 1998, he was doing training in BEG Centre, Rookie. As per him, he was performing his duty at Barrier No.1, Mandir Road on 17.10.1998 and during the course of duty, he made entries in the register about the entry and departure of any visitor. Bijender had entered BEG Centre Roorkie at 9.00 AM on 17.10.1998 and he had come to see Capt. Anand posted in BEG Centre, Roorkie. He was allowed to enter after obtaining his signatures. Bijender was also present at that time in the office of Major Raghbir Singh. The defence further examined DW11, Col. S.K. Argal. As per him, Yudhvir Singh, accused was one of the trainee in October 1998. He conducted the inquiry regarding the presence of Yudhvir Singh in the Centre on 17.10.1998 Ex.D31/A to E were relating to the presence of Yudhvir and were issued by the different officers under whom the accused Yudhvir was getting training on that day. As per record, Yudhvir was present in the Centre on 17.10.1998, as per his order (Ex.D-22). DW-12, Hon. Capt. Om Parkash Singh Rana stated that in October 1998, Yudhvir Singh was a trainee in his Centre. On 17.10.1998, Yudhvir Singh, Trainee was deputed as messenger



and he met him 5-6 times between 10.00 AM and 2.00 PM. Even during Court of inquiry, he made his statement (Ex.D22/A). DW 13, Col. C.M. Dixit was the Commanding Officer No.2 of Training Battalion BEG Centre Roorkie. Recruit Raj Kumar was attending the group rowing practice team and he had seen the letter (Ex.D21). Rowing team was attending training as shown against each as they were selected for 4th National Championship to be held in October 1998 at Pune. He also brought the original covering letter and found that Raj Kumar was present at Roorkie on 17.10.1998. DW-14, Luxmi Chand, Telegramme officer, Roorkie brought the receipt No.75 and stated that this was issued in lieu of a telegram sent on 17.10.1998 and since it was more than 2 months old, the record was destroyed. DW-15, HC Ramphal, brought the record of FIR No.429 dated 27.11.1998, P.S. Ganaur under Sections 148/149/427/447/285/436/379 of IPC (Ex.D-36). He had also brought the original FIR No.62 dated 20.03.1999, under Sections 148/14/427/447 of IPC P.S. Ganaur (Ex.D37). DW-16, Raj Kumar, Assistant Superintendent District Jail stated that he had received the release order of accused Yudhvair (Ex.D39) in a case, FIR No.371 of 1998 at 11:50 AM, on 27.09.1999. DW-17, Kanwar Singh, Draftsman, had prepared the site plan (Ex.D-46) according to the spot, after tracing from the original map of District Sonipat, prepared by Government of India. DW-18, Raghbir Singh prepared the site plan (Ex.D46). DW-19, Lakhmi Chand stated that he knew Ramesh, son of Bhalle Ram, who was not having any land in Kalawali field towards South. His land was situated in the field known as Kiyarwalla, which was about 1 mile towards South from the place of occurrence as well as from the village. The Kalarwala field was situated towards the East of village, where



no land of PW Ramesh was situated. He knew Amar Dass, PW, who was the maternal uncle of Balwan Singh and Bhup Singh, PW. The house of Rattan Singh, PW and Ishwar, accused were not facing each other in the street rather the back portion of these houses intervenes the house of one Jheemar. He further stated that house of Rattan was situated on the back of house of Ishwar, but the house of one Jheemar and a passage is between these two houses. Ishwar has no opening of his house towards his back.

11. Learned State counsel as well as learned counsel for the petitioner in CRR-563-2003 have vehemently argued that the trial Court had not taken into consideration the prosecution evidence in the correct perspective. Even the trial Court had wrongly relied upon the photocopies of the entries, produced by the defence witnesses, regarding the alibi of the respondents. Apart from that, there was sufficient evidence to show that such entries were manipulated only with the sole motive to save the respondents. Apart from that, the trial Court had also overlooked the most material aspect of the case that the bullets recovered from the dead body of Mahender, since deceased were found to have been fired from the revolver recovered from Raj Kumar, respondent. This fact alone showed the complicity of the respondents in the present case. Apart from that, it was also apparent that there was enmity between the parties regarding the elections held in the village for the last several years and it was wrongly held that the motive in the present case was absent. Apart from that, the medical evidence also corroborated the ocular version and also strengthened the case of the prosecution in the present case. Still further, the FSL report also corroborated the story of the prosecution.



12. On the other hand, learned counsel for the respondents have referred to the findings recorded by the trial Court to contend that it was a case of blind murder and the respondents/accused were falsely involved in the present case with some ulterior motive. Even, there was enmity between the parties due to election rivalry and the complainant party wanted to grab the agricultural land belonging to the respondents, as they had done in the past in case of lands belonging to Ram Jane and Ram Sarup. Even the pistol, which was recovered by the police near the dead body was planted on Raj Kumar to give strength to the prosecution case. Apart from that, since it was a case of murder by unidentified assailants, even Devinder, a close relative of the deceased, refused to appear as a witness, at the instance of the complainant Party. Apart from that, the trial Court had rightly believed the defence version regarding the plea of alibi of Anand, Yudhvir, Raj Kumar and Bijender. Still further, even the recovery of the fire arm from Raj Kumar was highly doubtful and the respondents were rightly acquitted by the trial Court.

13. I have heard learned counsel for the parties and perused the record carefully.

14. First of all, the entire case of the prosecution was based on the testimony of PW-13, Ramesh Kumar, who was also an eye-witness of the occurrence. As per him, at about 11.00/11.15 A.M. on 17.10.1998, he along with Devinder (brother-in-law of his brother, Ishwar) and Mahender (since deceased), his cousin, were present together. In the meantime, after 5/7 minutes, Capt. Anand, Yudhvir and Suresh, respondents/accused came in a Esteem Car, whereas, Raj Kumar and Bijender, respondents/accused came on a



Hero Honda motorcycle and parked their respective vehicles near them. As per him, Bijender @ Kala took out a pistol and fired a shot on Mahinder, which hit on the back of Mahinder and Mahinder fell on the left side on the road, after the fire shot injury. Raj Kumar, respondent/accused snatched the pistol from Bijender, respondent and fired 4 or 5 times on Mahender, when he was lying on the ground. When they tried to intervene then Raj Kumar aimed the pistol towards them and threatened to kill them. Anand stated in a loud voice that work had been done and it was not safe to stay there anymore and they should run away. Thereafter, all the accused fled from this spot. After leaving Devinder on the spot, he ran towards the village and informed the family members. In the present case, PW-13, Ramesh Kumar had specifically levelled allegations against Anand, Yudhvair, Suresh, Raj Kumar and Bijender regarding their active participation in the crime. However, the defence had examined several witnesses to prove their plea of alibi in the present case. Respondents/accused had taken a plea that Capt. Anand, Yudhvair Singh and Raj Kumar were posted in Indian Army at Roorkie, whereas, Bijender, respondent had gone to them to see his relatives. To prove the plea of alibi, the respondents had examined Subedar Balwinder Singh as DW1, who stated that as per attendance register, Yudhvair Singh, Sepoy was present at the Centre on 17.10.1998 for the whole day, as per the record (Ex.D1). He also brought the morning attendance book (Ex.D2), according to which Yudhvair Singh, Sepoy was present there and he was in the company for the whole day on 17.10.1998. He also brought the officer/JCO inspection book as Ex.D3 and according to that Capt. Anand/respondent inspected the quarter guard of battalion No.1 at 9 AM on



17.10.1998. He also brought register (Ex.D-4) to contend that Capt. Anand Kumar, respondent got his identity card checked from P. Bhargava, Adjutant No.1 Training Battalion at 8.00 AM on 17.10.1998. He also produced the duty certificate (Ex.D5) issued by the Commanding Officer No.1 Battalion and as per the said certificate, Capt. Anand, respondent was present in the Roorkie on 17.10.1998. Even he brought acquittance Roll (Ex.D6) and as per that, Capt. Anand, respondent had disbursed pay allowance to his subordinate on 17.10.1998. Apart from that, as per Ex.D7, Capt. Anand Kumar was present at Roorkie Battalion through out the day on 17.10.1998. Still further, as per DW2, Lt. P.P. Roy, he was the Presiding Officer of Court of Enquiry on 17.10.1998 and Capt. Anand Kumar, respondent was one of the members of the said Courts of Enquiry, which was held in Officers Mess Inside the Centre Roorki. He exhibited the certificate (Ex.D23), issued by him in this regard. Further, the defence examined, Subedar Jasbir Singh, DW-3, who stated that he was posted as a Coach in BEG Centre, Roorkie. He was preparing a team for the 4th Sprint National Rowing Championship scheduled to be held in Pune in October 1998. Recruit Raj Kumar, respondent was getting training for the tournament under his guidance. Raj Kumar was nominated for the said tournament as per (Ex.D21). The timings for giving training was 6.00 AM to 10.30 AM and 3.00 PM to 6.00 PM daily. Certificate (Ex.D25) was issued by him to show that Raj Kumar was getting training under him on 17.10.1998. He also deposed before the Court of Enquiry regarding the attendance of Raj Kumar, respondent in the unit. The defence further examined Major Pankaj Bhargava, DW4, who had written a letter (Ex.D26) to the Adjutant Specialist Training Battalion, Roorkie



for verification of entrance of Bijender, respondent. After verifying the signatures of Bijender, respondent, he sent a letter (Ex.D28). 17.10.1998, at about 8:30 AM. he checked the identity card of Capt. Anand Kumar and obtained his signature in the register and verified the identity card and put his signature on the register (EX.D24). At 8:30 AM, he directed Anand Kumar to check the quarter guard at 9 AM on 17.10.1998. After checking the daily physical presence of recruits, etc. he sent the report to the Group Headquarters, BEG Centre, Roorkie. Further Major Raghbir Singh was examined as DW5, who stated that he received a letter (Ex.D26) from No.1 Training Battalion, BEG Centre, Roorkie. He wrote another letter (Ex.D27) and then Major P. Bhargava verified the signatures of Bijender Kumar, respondent, visitor and found that Bijender Kumar had visited the Battalion at 9.00 AM on 17.10.1998. He also called Bijender Kumar, visitor and verified his signatures personally from the entry gate as well as the concerned official on duty. Still further, the defence examined DW6, Tejinder Pal Singh, Deputy Manager, State Bank of India, BEG Centre. Roorkie. As per him, on 17.10.1998 Capt. Anand Kumar, respondent had operated his saving bank account and had withdrawn a sum of Rs.2,000/- from his account. This amount was withdrawn not by cheque, but by withdrawal slip and in case of withdrawal slip, the customer has to appear in person in the bank. Capt. Anand Kumar had withdrawn the amount before 1 PM personally as the bank timing on that day was between 11.00 AM to 1.00 PM. The prosecution further examined Col. R. Chakarvarty, DW-7, who stated that Capt. Anand Kumar had inspected the quarter guard at 9 AM on 17.10.1998. He also attended the Court of Enquiry at BEG Centre, Roorkie between



10.00AM to 11.00 AM on 17.10.1998 and the inquiry was presided over by Lt. Col. P.P.Roy. Even Capt. Anand Kumar was present, whole of the day i.e. on 17.10.1998 at Roorkie and certificate (Ex.D5) was signed by him. The defence further examined DW-8, Major Rajiv Shukla. who stated that Yudhvir Singh, respondent was undergoing a clerical training under him on 17.10.1998 and he was present in the battalion of the company and certificate (Ex.D31) was issued by him. It was based on the record maintained in the company. Still further, the respondents further examined Hawaldar Baljit Singh, DW-9, who was posted as Basket Ball Coach in No.2 Training Battalion BEG, Roorkie. Yudhvir, respondent was part of the training and his name was there at serial No. 28 in Ex.D19). Even he had undergone a practice session from 16.10.1998 to 19.10.1998 from 6.00 AM to 9.00AM and 3.00 PM to 6.00 PM. Yudhvir Singh, respondent had attended the training program on 17.10.1998 at Roorkie and he attended both the sessions in the morning and evening. Still further, Spr. Bal Kishan Pal was examined as DW-10, who stated that on 17.10.1998, he was performing his duty at Barrier No.1, Mandir Road from 6.00 AM to 2.00 PM. As per him, Bijender, respondent had entered the BEG Centre, Roorkie on 17.10.1998 at 9.00 AM and he had come to see Capt. Anand posted in BEG Centre, Roorkie. His entry was marked in the relevant register and obtained his signatures in the register. He proved on record the certificate (Ex.D29) in this regard. Still further, DW11 Col. S.K. Argal was posted as Commanding Officer, BEG Centre, Roorkie and he stated that Yudhvir Singh, respondent, was a trainee in October 1998 and he had conducted the inquiry regarding the presence of Yudhvir Singh in the Centre on 17.10.1998. Ex.D31/A to E were



relating to the presence of Yudhvair in the Battalion and were issued by the different officers under whom Yudhvair was getting training. Still further, Honorary Capt. Om Parkash Singh Rana also appeared as DW-12 and stated that on 17.10.1998, Yudhvair Singh, Trainee, respondent was deputed as a messenger and he met him 5 - 6 times between 10.00 AM to 2.00 PM. On 17.10.1998, he made his statement Ex.D22/A) in the Court of Enquiry in this regard. DW-13, Col. C.M. Dixit also proved a letter (Ex.D21) and as per him, Raj Kumar, respondent was exempted from his training in Battalion w.e.f. 04.06.1998. As per him also, on 17.10.1998, Raj Kumar was present in the unit. Luxmi Chand, Telephone Machine Operator was examined as DW14, who stated that he had issued the telegram on 17.10.1998.

15. In the present case, we completely agree with the findings recorded by the trial Court that there was sufficient evidence in the shape of the statements of the Senior Officers of the Army as well as the official record that Capt. Anand, Yudhvair, Sepoy and Raj Kumar were posted in Army at Roorkie, and throughout the day on 17.10.1998, all three of them were present in BEG Centre, Roorkie and none of them had left the Centre through out the day on 17.10.1998. In the present case, even the respondents had been able to prove the plea of alibi of Bijender also, who had gone to see Capt. Anand at Roorki and there was sufficient evidence in the shape of the official record, which established the presence of Bijender, at BEG Centre, Roorkie. Thus, the findings recorded by the trial Court regarding the plea of alibi of Anand, Yudhvair, Raj Kumar and Bijender are liable to be accepted.



16. Still further, in the present case, from the perusal of the testimony of PW-13, Ramesh Kumar, it is apparent that the testimony of the said witness does not inspire the confidence and his conduct appears to be unnatural. In the present case, he admitted that he did not make any hue and cry, when the car and motorcycle of the respondents were parked near the motorcycle of the deceased. He did not even make any hue and cry despite the first fire shot as they were taken away. Even after the accused ran away from the spot, he did not make any hue and cry as nobody was visible. Surprisingly, Mahinder, his cousin, suffered 4 or 5 fire shots, but he did not try to help him, even after the assailants had left. Even he did not receive any blood stains on his clothes as he did not catch hold of his brother, who was dying at the spot. Even he did not shift the dead body of his cousin in the ambulance and his conduct has been rightly disbelieved by the trial Court. Apart from that, in the present case, the prosecution tried to connect the respondents with the recovery of weapon of offence from Raj Kumar, which had allegedly matched with the bullets recovered from the dead body of the deceased. In the present case, to prove the recovery of weapon from Raj Kumar, the prosecution had placed reliance on the testimony of PW-15 Duli Chand. He stated that in his presence, Raj Kumar respondent had got his statement recorded that he had concealed the pistol between Attail and Ahulana villages in the kikar bushes. Later on, Raj Kumar took them near the kikkar tree adjacent to the electric pole and got recovered one pistol and five empty cartridges, which were taken into possession by the police, after following the due procedure. However, when he was asked to identify Raj Kumar, respondent, from whom the recovery was made, he



identified Yudhvir, respondent as Raj Kumar. He also admitted that the place of recovery of pistol was hardly half kilometer from village Attail and was accessible to all. Similarly, to prove the recovery of pistol from Raj Kumar, the prosecution relied upon the testimony of PW-17. Amar Dass, who appeared to be stock witness in the present case. In his cross examination, this witness also admitted that he often visit police station in connection with his own work, which proves his proximity with the local police station. He had recovered the pistol from Raj Kumar, respondent.

18. Apart from that, the pistol and cartridges were allegedly recovered from Raj Kumar on 12.11.1998. However, as per the testimony of Head Constable Naresh Kumar, who was working as MHC in Police Station, Ganaur on the said day, the pistol and five cartridges were handed over to him on 12.11.1998. However, he kept the pistol and cartridges for 6 days and sent the same to FSL, Madhuban through Constable Satbir on 18.11.1998, without any explanation. Still further, as per the statement made by PW-13, Ramesh Kumar, the respondents had killed Mahender, deceased, due to old enmity of Panchayat elections. The said witness admitted that the Panchayat elections were held in the year 1992, in which an altercation had taken place between Raj Kumar respondent and Mahender, since deceased and no compromise was arrived at after that dispute. However, in the same breath, he admitted that nobody was injured in the incident nor anybody was medically examined and no FIR was registered on the basis of that dispute. It is also admitted that thereafter, the elections were held several times, but there was no dispute or police complaint in this regard. It is highly unbelievable that due to a minor scuffle between Raj



Kumar, respondent and Mahender, deceased in the Panchayat elections held in 1992, the accused had committed the murder on 17.10.1998 that is after a period of 6 years. Thus, in the present case, the motive on the part of the respondents to commit the crime was very weak and the findings recorded by the trial Court in this regard are ordered to be upheld.

19. Apart from that, PW13. Ramesh Kumar also admitted that at the time of the occurrence, he was present at the spot alongwith Mahender, deceased and Devinder, brother-in-law (Salla of his brother Ishwar). However, in the present case, Devinder, a close relative of deceased, Mahender and Ramesh, PW-13, was not examined by the prosecution.

20. We agree with the findings recorded by the trial Court that non-examination of a close relative of the deceased, who had been cited as an eyewitness, creates a strong doubt about the veracity of the prosecution case. We also find some substance in the argument raised by learned counsel for the respondents that it was a case where Mahender Singh was murdered by some unidentified persons and the respondents were falsely implicated and due to this, Devinder had refused to give false evidence against the respondents. Thus, this fact alone casts a cloud of suspicion on the entire prosecution case. Apart from that, the trial Court had rightly held that the testimony of PW-13, Ramesh Kumar was apparently unreliable and unbelievable. Raj Kumar, Anand and Yudhvir were posted in Army and were very well trained to use the weapons. In case, Raj Kumar was carrying a weapon and wanted to kill Mahender, there was no need for Capt. Anand and Yudhvir to go with Raj Kumar and they could have easily sent Raj Kumar alone to commit the crime. Apart from that, it is



equally unbelievable that Raj Kumar, who is an Army man, only fired one shot and thereafter, the weapon was snatched by Bijender, who fired 4 or 5 times on Mahender. while he was lying on the ground. In fact, in case they had gone to murder Mahender, Raj Kumar himself would have fired 4/5 shots on Mahender and there was no need to take alongwith 4 or 5 other family members.

21. Still further, the prosecution also tried to set up a case that Ishwar, Ram Singh and Maha Singh had also hatched a conspiracy along with the other respondents to commit the murder of Mahender, since deceased. To prove the conspiracy, the prosecution heavily relied upon the testimony of PW-12, Bhoop Singh, who stated that he had sold a plot to Ishwar, respondent in the year 1998. The total sale consideration was Rs.50,000/- and he had only received a sum of Rs.5,000/- as earnest money. He again stated that the sale consideration was Rs.45,000/- and on 02.10.1998, he visited the house of Ishwar at about 8.00 AM to get his money. Ishwar was not present at home and his wife told that Ishwar and Anand had gone to the house of Maha Singh. When he went to house of Maha Singh at Ganaur, the main door was lying opened. He entered the house of Maha Singh and found that Ram Singh, Ishwar, Anand and Maha Singh, respondents were discussing that Mahinder, (since deceased) was obstructing in their election and they should kill him with the help of Yudhvir, Raj Kumar and Anand. They also discussed that the Army persons would show their presence in the army at the time of occurrence and he had heard the conversation, while standing adjacent to the window of the room. After hearing the conversation, he was frightened and came to the main door of the house and then Ishwar called him inside the room. Then he demanded money from Ishwar, he showed



his inability to make the payment of the balance sale consideration. However, in his cross-examination, he could not tell the Khasra or plot number of the plot. However, it was measured 50 square yards in the Abadi of the village, but there was no writing was executed regarding the sale of the plot or regarding the payment of Rs.5,000/-. Even no agreement to sell was scribed between the parties. From the testimony of PW-12, Maha Singh, it is apparent that the prosecution made a futile attempt to prove the conspiracy among the respondents in the present case. In fact, Bhoop Singh was resident of village Ahulana and when he visited the house of Ishwar, he was not present there. However, the wife of Ishwar told him that he had gone to Ganaur at the house of Maha Singh. Surprisingly, the respondents were allegedly conspiring to commit the murder of Mahender and it could be heard even outside the house, at the house, at the place, which was adjacent to window of the said room. Still further, it appears that the respondents were waiting for the arrival of Bhoop Singh to start conspiring about the murder of Mahender. Thus, the statement of Bhoop Singh is apparently false and unbelievable. Moreover, Bhoop Singh had taken a stand that he had sold a plot to Ishwar, respondent, but no writing or agreement to sell was executed in this regard. He was not even aware of the Khasra or the plot number of the plot, which was to be sold to Ishwar. Thus, it stands established that the charge of criminal conspiracy against the respondents was not proved beyond the shadow of reasonable doubt.

22. Even otherwise, the law is well settled that the offence of criminal conspiracy has to be established either by direct evidence or by circumstantial evidence and the ingredients of the offence have to be proved, like any other



substantive offence. While discussing the ingredients of the offence of criminal conspiracy, the Hon'ble Supreme Court has held in the matter of "State of Kerala Vs. P. Sugathan", 2000 (4) RCR Criminal 369; 2000 AIR (SC) 3323 as follows:-

"11. Section 120B prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable ground, that is say, there should be a prima facie evidence that the person was a party to the conspiracy before his acts can be used against the coconspirators. This Court in ***Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, AIR 1965 Supreme Court 682*** held that the expression "in reference to their common intention" in Section 10 - is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything, said, done or written by a coconspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is relevant fact only "as against each of the persons believed to be so conspiring as for the purpose of showing that any such person was a party to it". It was further held :

"In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be



evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in *V.C. Shukla v. State, 1980(2) SCC 665* held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when take together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an



inference should be prior in time than the actual commission of the offences in furtherance of the alleged conspiracy.

13. In ***Kehar Singh v. State, AIR 1988 Supreme Court 1883*** it was noticed that Section 120A and Section 120B Indian Penal Code have brought the Law of Conspiracy in India in line with English Law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not to be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120B of the Indian Penal Code.

14. After referring to some judgments of the United States Supreme Court and of this Court in ***Yash Pal Mittal v. State of Punjab, 1977(4) SCC 540; Ajay Aggarwal v. Union of India, 1993(3) RCR (Criminal) 34 (SC) : AIR 1993 SCW 1866; the Court in State of Maharashtra v. Som Nath Thapa, 1996(2) RCR (Criminal) 480 (SC)*** summarised the position of law and the requirements to establish the charge of conspiracy, as under :

"The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the



goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use."

23. 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



reappreciation 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."

24 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."



25. Even otherwise, we have carefully perused the findings recorded by the trial Court and find that the trial Court judgment does not suffer from any illegality, irregularity or perversity and is liable to be upheld by this Court.

26. As a result of the above discussion, we find that there is no merit in the appeal filed by State of Haryana as well as the revision petition filed by the petitioner and both the cases are ordered to be dismissed. As a consequence, the impugned judgment dated 16.10.2002, passed by the Court of Additional Sessions Judge, Fast Track Court, Sonipat is ordered to be upheld.

27. Pending application(s), if any, stand(s), disposed of, accordingly.

28. The Trial Court record, if any, be sent back.

(N.S.SHEKHAWAT)
JUDGE

(H.S.GREWAL)
JUDGE

29.05.2026

hemlata

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