REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 946-947 OF 2019

ASHOK KUMAR SINGH CHANDEL ....APPELLANT(S)

VERSUS

STATE OF U.P. ...RESPONDENT(S)

WITH
CRIMINAL APPEAL NOS. 1030-1031/2019
ASHUTOSH SINGH @ DABBU Vs. THE STATE OF U.P., ETC.

WITH
CRIMINAL APPEAL NOS. 1046-1047/2019
RAGHUVIR SINGH Vs. STATE OF U.P. ETC

WITH
CRIMINAL APPEAL NOS. 1269-1270/2019
PRADEEP SINGH & ANR. Vs. STATE OF U.P., ETC.

WITH
CRIMINAL APPEAL NOS. 1804-1805/2019
BHAN SINGH Vs. THE STATE OF UTTAR PRADESH ETC.

WITH
CRIMINAL APPEAL NOS. 1980-1981/2019
SAHAB SINGH Vs. THE STATE OF UTTAR PRADESH

WITH
CRIMINAL APPEAL NOS. 1279-1280/2019
NASEEM Vs. THE STATE OF UTTAR PRADESH

WITH

SLP (CRL) NO. 10742/2019

RAJEEV SHUKLA Vs. ASHOK SINGH CHANDEL & ORS.

WITH

W.P.(CRL.) NO. 57/2022

RAJEEV KUMAR SHUKLA Vs. STATE OF U.P. & ORS.

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. These Criminal Appeals are by seven accused convicted and sentenced to life by the High Court of Judicature at Allahabad for the murder of five persons. The deceased belonged to or were associated with the same family; two of them were brothers, the third was their minor son and the other two were their close family friends. Apart from these criminal appeals, there is also a Special Leave Petition filed by the informant (PW-1), who is the sole surviving brother in the family, praying for enhancement of the sentence from life to death and also a Writ Petition seeking transfer of accused no. 5 to a jail outside Uttar Pradesh for serving out the sentence in lieu of his influence in the State.

2.1 The judgment of the High Court was rendered in an appeal against acquittal of all the accused by the Trial Court[1]. The High Court by its judgment[2] impugned herein reversed the findings of the Trial Court and

1 Court of the Upper Sessions Judge, Hamirpur; ST No. 145/2000, 146/2000 and 147/2000 dated 15.07.2002.

2 In Government Appeal No. 5123/2002 and Criminal Revision No. 1548/2002 dated 19.04.2019.

convicted all the accused for the offences under Sections 148, 302 read with 149, 307 read with 149 of the Indian Penal Code, 1860[3] and sentenced them to life imprisonment. The details of the conviction and sentences are as under.

2.2 All these accused were sentenced to undergo life imprisonment for the offence under Section 302 read with Section 149 IPC and to pay a fine of Rs. 20,000/- each, in default to undergo six months additional simple imprisonment. The accused were sentenced to undergo rigorous imprisonment for three years for the offence under Section 148 IPC and to pay a fine of Rs. 5000/- each and in default to undergo simple imprisonment of six months. All the accused were sentenced to undergo ten years rigorous imprisonment for the offence under Section 307 read with149 IPC and to pay a fine of Rs. 10,000/- each, in default to undergo six months simple imprisonment.

2.3 The acquittal of Ashok Kumar Singh Chandel(A5) under Sections 379 and 404 IPC by the Trial Court was upheld. Further, the acquittal of accused Sahab Singh (A8) for an offence under Section 25 of the Arms Act, 1959[4] and the acquittal of accused Ashok Singh Chandel(A5) for an offence under Section 30 of the Arms Act was also confirmed by the High Court without any variation. With these findings, the Criminal Appeal of the State and the Criminal Revision of the informant (PW-1) were substantially allowed.

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3 hereinafter referred to as ‘IPC’.
4 hereinafter referred to as the ‘Arms Act’.

3. Challenging the judgment of the High Court, the present criminal appeals are filed by the accused Raghuvir Singh (A1) in Crl. A Nos. 1046-1047/2019, Ashutosh Singh @ Dabbu (A2) in Crl. A. Nos. 1030-1031/2019, Uttam Singh (A3) and Pradeep Singh (A4) in Crl. A Nos. 1269-1270/2019, Ashok Kumar Singh Chandel (A5) in Crl. A Nos. 946-947/2019, Naseem (A6) in Crl. A Nos. 1279-1280/2019, Sahab Singh (A8) in Crl. A No. 1980-1981/2019, and Bhan Singh (A10) in Crl. A Nos. 1804-1805/2019.

***The Incident*:**

4. The prosecution case as it unfolds in the First Information Report[5] is that there has been a long-standing factional dispute between two groups in Hamirpur, U.P. The group represented by Ashok Chandel (A5) and the group represented by Shukla family were inimically disposed against each other for a long time. The FIR is about the incident that has occurred at 09.10 P.M. on 26.01.1997 at Mohalla Subhash Bazar, Kasba, Hamirpur as two events occurring one after another in quick succession. The first incident is in front of the gun shop owned by accused no. 6, referred to as '*Naseem's gun shop'* and the second incident is near the residence of *Parma Pandit* which is about 50-75 meters from Naseem's gun shop. The two incidents are as follows.

5.1 ***First part of the incident:*** On 26.01.1997, Rajiv Shukla (PW-1) along with his servant Lallan went to the market Mohalla Subhash Bazaar, Kasba, Hamirpur in the evening of 26.01.1997 at around 07.30 PM to buy some

5 hereinafter referred to as 'FIR'.

articles. As they were returning from the market, they saw PW-1's elder brother, Rakesh Kumar Shukla, his two sons, Gudda and Chandan, Sri Kant Pandey, Vipul (PW-1's son) and Ved Prakash, returning home in a vehicle, all through referred to as a 'jonga'.

5.2 On seeing the jonga, PW-1 and Lallan stopped to speak to Rakesh Kumar Shukla and others in the jonga. As the jonga was parked in the middle of the road, facing east direction in front of Naseem's (A6) gun shop, six accused, namely Ashok Kumar Chandel (A5), Naseem (A6), Shyam Singh (A7), Sahab Singh (A8), Jhandu (A9) and Rukku (driver of A5) came out of Naseem's gun shop, all armed with rifles and guns and suddenly started firing indiscriminately at the jonga.

5.3 It is stated in the FIR that immediately after hearing the sound of fire from the side of the market, Raghuvir Singh, liquor contractor (A1), his son Ashutosh alias Dabbu Singh (A2), Pradeep Singh (A4), Uttam Singh (A3) and Bhan Singh (A10) arrived at the spot in another vehicle and started firing at the jonga. Due to the firing, Sri Kant (since deceased) and Ved Prakash (since deceased), who were sitting on the rear side of the jonga, received bullet injuries. Rakesh Kumar Shukla (since deceased), Gudda (since deceased), Chandan and Vipul also received bullet injuries. Because of the firing, panic gripped, and the market was shut down.

6.1 ***Second part of the incident*:** Immediately on getting information about the occurrence, Rajesh Kumar Shukla, elder brother of PW-1, Ravi Kant Pandey (PW-2), Bhagwati Sharan Nayak, Sri Prakash Nayak, Anil and many others reached the place of the incident. As the children Chandan and Vipul sustained minor injuries, they were immediately taken out of the jonga and sent home with the help of some people in the area.

6.2 Rajesh Shukla reversed the jonga from in front of Naseem's gun shop and started driving it towards the hospital, which is on the west side of the Subhash Bazar Road. However, as they reached Parma Pandit's house, which is just 50-75 meters from Naseem's gun shop, the accused, having already reached the spot. At that moment, Ashok Chandel (A5) exhorted that "*no one from the Shukla Family should escape alive*", and on hearing that, all the accused again started firing indiscriminately. At this point, Rajesh Shukla got out of the jonga with his rifle to take aim and fire back at the accused persons. However, during the cross-fire, Rajesh Shukla sustained fatal injuries and fell down on the spot. PW-1, who was standing on the driver's side (right side) of the jonga, also received bullet injuries on his leg. Similar is the position of PW-2, who also received bullet injuries on his leg. As PW-1 and his companions took cover to conceal themselves, PW-1 saw the assailants snatch the rifle from Rajesh Kumar Shukla (since deceased), who had fallen due to bullet injuries and escaped from the scene of offence, towards 'chowraha' in their vehicles.

6.3 Having seen Rajesh Kumar Shukla also succumb to bullet injuries like Gudda and Rakesh Kumar Shukla, hoping to save Srikant Pandey and Ved Prakash, PW-1 put them in the jonga and drove to the hospital.

***At the hospital*:**

7.1 PW-1 reached the hospital at around 07.50 P.M, and he was immediately examined by Dr. N.K. Gupta, PW-8 who gave the injury report-Exb. Ka-13 which records injuries on his left thigh (back portion) caused by firearms. Dr. S.R. Gupta, PW-7, who was the Radiologist on duty that day, got his X-Ray-Exbs. Ka-44-46 done.

7.2 While PW-1 was being treated, Dr. P.N Paya, PW-5, examined the bodies of deceased Rakesh Kumar Shukla, Rajesh Kumar Shukla and Sri Kant Pandey and declared them dead. Dr. R.S. Gupta, PW-6, examined Gudda and Ved Prakash and declared them dead. One Mr. Hardayal was also injured in the firing was examined by PW-8 Dr. N.K. Gupta. His injury report, Exb. Ka-14 was prepared at 8.45 P.M. PW-8 also examined PW-2 at 10 P.M. and gave the injury report, marked as Exb. Ka-15. Vipul and Chandan were also examined at 10.30 P.M., and their injury reports were marked and exhibited as Exbs. Ka-16 and Ka-17, respectively.

Filing of the FIR:

8.1 After obtaining immediate medical attention, PW-1's statement ('*tehreer*') was recorded at the hospital by Saraswati Sharan, the scribe who

was examined as PW-3. Upon completion of the *tehreer*, at around 09.10 PM, PW-1 went to the police station to report the incident and to lodge the FIR. At the Police Station, Constable Mahesh Singh, examined as PW-9 prepared the FIR[6], Exb. Ka-20, in his own handwriting, by copying the contents from the *tehreer* under Sections 147, 148, 149, 307, 302, 34 & 395 IPC.

8.2 In the FIR, PW-1 mentioned about the two incidents, first in front of Naseem's gun shop and second near Parma Pandit's house and named ten accused and two unknown persons. The motive behind the attack was stated to be a political rivalry between Ashok Kumar Chandel and the Shukla family. In this context, the informant mentioned about a criminal case involving Shyam Singh (A7). In that case, Rakesh Kumar Shukla and Rama Kant Pandey (brother of Sri Kant Pandey) assisted the prosecution against Shyam Singh (A7). He also mentioned about the Assembly Elections, where the Shukla family opposed Shyam Singh (A7) and Ashok Kumar Chandel (A5), leading to a political rivalry.

8.3 The FIR was thereafter copied into the General Diary by the Investigating Officer, Lalman Verma, PW-12. After copying the FIR, PW-12 proceeded to the place of occurrence in furtherance of the investigation.

9. It is important to mention at this stage that on the next day, i.e. on 27.01.1997, at 7.50 P.M. two more FIRs[7], were registered against Sahab Singh

6 FIR no. 33/1997.
7 FIR no. 34/1997 and FIR no. 35/1997.

and Ashok Kumar Chandel under Sections 25 and 30 of the Arms Act, 1959 respectively.

Investigation:

10. After lodging the FIR, PW-1 returned to the hospital where the *panchayatnama*[8] of the deceased was being conducted. Thereafter, PW-1 went to the place of occurrence in the jonga, which was driven by Lallan, where he met the Investigating Officer, PW-12. The Investigating Officer, recorded the statement of PW-1 in the presence of an independent witness and also prepared a site map-Exb. Ka-25. Having noticed a pool of blood on the road near Naseem's gun shop, PW-12 collected samples of bloodstained soil and grass-Exb. Ka-26. The Investigating Officer also collected 12 blank cartridges (6 bore and 6 brass)- Exb. Ka-27 in front of Parma Pandit's house. An expired Manarth Card (Railway travel card), issued by the Indian Railways Board, New Delhi-Exb. Ka-28 was also recovered by him in front of Naseem's gun shop, the card bore the name of Ashok Kumar Chandel. The jonga by which PW-1 went to the place of occurrence was also seized along with a piece of the footrest which had blood on it, a sample of the broken piece of the front glass of the jonga and some pieces of glass lying at the spot, all of them later marked as -Exb. Ka- 29.

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8 Panchnama has been referred to as '*Panchayatanama'* in the High Court as well as the Trial Court Judgment. For the purposes of the present appeals, we will use the word 'Panchnama'.

11. After the investigation at the place of occurrence, PW-12 went to the hospital where Sub-Inspector R.N. Singh Pal and ASI Harishchandra Singh were present and preparing the panchnamas[9] of the dead bodies. All the dead bodies were sealed separately and sent for post-mortem. The post-mortems of the bodies of Rakesh Shukla, Rajesh Shukla and Sri Kant Pandey were conducted on 27.01.1997 the following day between 10 AM to 12.30 PM by PW-5[10]. Similarly, the post-mortems of Gudda and Ved Prakash were also done on 27.01.1997 between 2 PM and 2.30 PM by PW-6[11].

Arrests:

12. The next day, that is on 27.01.1997, the Investigating Officer proceeded to Laxmibai Tiraha after finding out that some of the accused were at Naseem's house. Upon reaching the place, the police party found Naseem (A6), Shyam Singh (A7), Sahab Singh (A8) and Bhan Singh (A10) trying to flee through the backdoor of Naseem's house leading to River Betwa. They were arrested and a rifle along with 10 brass bullets tied in a green belt was recovered from the possession of Sahab Singh(A8). On being questioned about the rifle, Sahab Singh stated that the rifle belonged to Ashok Kumar Chandel. The seized rifle and the bullets were marked as Exb. Ka-24 and they were sent for FSL Report. A copy of the seizure memo was provided to Sahab Singh. On the basis of the

9 Rakesh Shukla (Exb. Ka-30); Rajesh Shukla (Exb. Ka-37); Sri Kant Pandey (Exb. Ka 43); Guddu (Exb. Ka-48); Ved Prakash (Exb Ka-53).
10 Rakesh Shukla (Exb. Ka-3); Rajesh Shukla (Exb. Ka-4); Sri Kant Pandey (Exb. Ka-5).
11 Gudda (Exb. Ka-6); Ved Prakash (Exb. Ka-7).

seizure memo, cases under Sections 25 and 30 of the Arms Act were registered against accused Sahab Singh (A8) and Ashok Kumar Chandel (A5).

13. A search for the rest of the other accused was made, however, as they could not be found a report under Sections 82 and 83 (proclamation of person absconding) of the Code of Criminal Procedure, 1973[12] was presented to the court on 28.01.1997. On the very same day, on receiving information regarding the looted rifle of Rajesh Kumar Shukla at the residence of Ashok Kumar Chandel, at Mohalla Vivek Nagar, his house was raided and a country-made pistol and one licensed Double Barrel Breach Loading (DBBL) gun were recovered.

14. There was another lead regarding the looted rifles at the residence of one Mr. Anand Purwar. However, nothing in relation to the murders was recovered in the raid, except one licensed DBBL gun of 12 bore, four cartridges and a licensed Mauser gun with 8 cartridges. These were seized in the presence of independent witnesses and a copy of the same was provided to Anand Purwar. These weapons were not sent for forensic examination.

15. On 29.01.1997, statements of witnesses to the panchnama were recorded. Section 161, Cr.P.C statement of Bhagwati Saran Nayak who was present on the day of the incident was recorded, however statement of victims Vipul and Chandan could not be recorded as they were very young. The

12 hereinafter referred to as ‘Cr.P.C’

Investigating Officer (PW-12) also recorded the statement of Hardayal on 16.02.1997.

16. Upon obtaining information about the presence of accused Raghuvir Singh (A1), Dabbu (A2), Pradeep (A4) and Uttam (A3), in a Maruti car near city forest, they were perused and arrested on 01.02.1997.

17. Another raid was conducted at Ashok Kumar Chandel's Kanpur residence however no weapons were recovered. Upon receipt of information about the weapons used by Raghuvir (A1) and Dabbu (A2), their Moradabad residence was raided but nothing could be recovered. Later, even a Court witness was again sent to Moradabad for recovery of the weapons, but nothing was recovered.

18. On 21.02.1997, accused Jhandu (A9) was arrested and his Section 313 Cr.P.C statement was recorded. As accused Rukku was absconding, his trial was separated from the present case. Ultimately, he was convicted by the Trial Court[13] on 12.04.2007 and sentenced to life imprisonment. His conviction and sentence was confirmed by the High Court[14] by judgment dated 24.05.2019. He has not filed a Special Leave Petition before us.

19. On completion of the investigation, a charge-sheet, Exb. Ka-58, was filed against 10 accused on 22.02.1997 and the case was set for trial.

The Trial:

13 Sessions Trial number 127/2003.
14 Criminal Appeal No. 2617/2017.

~~20.~~ The Trial Court framed charges against the accused persons on 25.01.2002 under sections 147, 148 and 302 read with section 149, IPC against all the 10 accused and under Sections 25 and 30, Arms Act against Sahab Singh and Ashok Kumar Chandel respectively. The Trial Court also framed charges against Ashok Kumar Chandel under Sections 379 and 404 IPC. While prosecution examined fourteen witnesses being PW-1 to PW-14, the defence examined three witnesses being DW-1 to DW-3. There was also one Court witness being CW-1.

21. The following are the prosecution witnesses with an indication about the purpose for which they were examined.

PW-1	Rajiv Shukla, informant and injured eye-witness
PW-2	Ravi Kant Pandey, injured eye-witness
PW-3	Saraswati Sharan, Scribe
PW-4	Malkhan Singh, SI, MT 33rd Battalion PAC, Jhansi
PW-5	Dr. P.N. Paya, Surgeon District Hospital, Hamirpur
PW-6	Dr. R.S. Gupta, Paediatrician, District Hospital, Hamirpur
PW-7	Dr. S.R. Gupta, Radiologist, District Hospital, Hamirpur
PW-8	Dr. N.K. Gupta, Medical Officer, District Hospital, Hamirpur
PW-9	Constable, Mahesh Singh, Constable, P.S. Kothwali, Hamirpur
PW-10	Munnalal Mishra, Head Mohrir, P.S. Kothwali, Hamirpur
PW-11	Aftab Ali, Aftab Ali, Constable. Kothwali, Hamirpur
PW-12	Lalman Verma, Inspector In-Charge, Investigating Officer, P.S. Kotwali Hamirpur
PW-13	KD Pal, Sub-Inspector, P.S. Kotwali Hamirpur
PW-14	Sukhram Sonkar, Deputy Superintendent of Police, CDCID
Court	SI Ramsurat Mishra, Second Officer, (S.I.), P.S. Kotwali

witness	Hamirpur

22. The following are the defence witnesses.

DW-1	Lalram Kushwah – Executive Engineer, Electricity Distribution Division, Hamirpur
DW-2	Premdas Saloniya, Jailor, Jail, Hamirpur
DW-3	Akhilesh Kumar, Constable Clerk, Vigilance Office, Office of the Superintendent of Police, Hamirpur

23.1 Of all the witnesses, the prosecution strongly relied on the evidence of PW-1 and PW-2 who are examined as injured eye-witnesses.

23.2 PW-1 in his testimony gave a detailed description of the events at the place of incident. He deposed about the first as well as the second incident including the position at which the deceased as well as the eye-witnesses were situated at the time of the incident. He also deposed about the weapons used by the accused persons, injuries sustained by the deceased persons and the bullet marks on the jonga. PW-1 also recounted the events that followed the incidents including the lodging of the FIR, medical treatment at the hospital and recording of his statement by the IO at the place of occurrence.

23.3 The other ocular witness presented by the prosecution is Ravi Kant Pandey, PW-2. He testified about his presence during the second incident and his involvement in rescuing the children from the jonga. He gave a detailed description about his position during the incident and the injury sustained by him. He also detailed the deceased persons in the jonga, including his brother

Sri Kant Pandey while naming all the accused and the firing. He further mentioned about his treatment in the hospital and also that of the children who he accompanied.

24. Other witnesses are the police officers and the doctors who treated the deceased persons as well as the injured witnesses as mentioned in the table above. The defence witnesses were examined only to contradict the statements of PW-1 and PW-2.

Judgment of the Trial Court:

25. By its judgment dated 15.07.2002, the Trial Court acquitted all the accused. As this is a case of reversal in an appeal against acquittal, it is extremely important to examine the reasoning and the findings of the Trial Court in minute detail. This is for the reason that in an appeal against acquittal, the appellate court must exercise its jurisdiction only for *very substantial and compelling reasons*. For determining whether substantial, compelling and sufficient reasons existed for the High Court to reverse a finding of acquittal, we will first scrutinize the judgment of the Trial Court in detail. The decision of the Trial Court is based on its conclusions on the (a) motive, (b) place of occurrence, (c) contradictions in the statement of PW-1 and PW-2, (d) recovery of weapons (e) and the illegality with respect to the FSL report.

26.1 ***Motive*:** The Trial Court found that the prosecution failed to establish any motive for the accused to commit the offence. The conclusions were based on three grounds:

26.2 Firstly, the Trial Court held that the motive based on the alleged involvement of Shyam Singh (A7) in a past murder case in which the deceased and his associates assisted the prosecution is '*insufficient*' and '*far-fetched*'.

26.3 Secondly, the Trial Court dismissed the alleged opposition of the deceased party to the election of Ashok Kumar Chandel in the Assembly Elections of 1996 as not convincing enough. Trial Court also held that PW-1 could not clearly articulate the political animosity.

26.4 Thirdly, the alleged animosity between the Chandel group and the Shukla group based on the competing interests of the educational institutions run by Naseem –Islamia Inter College, Hamirpur and those supported by Shukla group – Vidya Mandir is not based on any evidence.

27. ***Place of occurrence****:* The Trial Court recorded that the incident occurred in two parts. As far as the first part is concerned, it returned a finding that *"this place of occurrence has not been challenged by the defence and from the questions by Naseem himself during the cross-examination of the witness it is clear that the incident had taken place."* With respect to the second incident, the Trial Court again returned a finding to the effect that "*the investigation officer during inspection of the place of occurrence found blood but he did not*

collect blood stained soil from here. This is his mistake but this does not draw any adverse inference on the prosecution case."

28. The prosecution's contention that the entire incident was ***pre-planned*** did not impress the Trial Court because there were three different routes by which the deceased party could reach their residence from their sister's house. In view of this, the Trial Court held that there was no certainty about PW-1 and Lallan on the one hand and Rakesh Shukla and others in the jonga meeting in front of Naseem's gun shop, i.e. the place of occurrence on the other. The Trial Court held that this meeting could not have been expected by the accused party to lay an ambush.

29. ***Differences in the contents FIR copied from the Tehreer*****:** The Trial Court examined the *tehreer* and compared it with the FIR. The discrepancies were highlighted to come to a conclusion of improbability of scribing the *tehreer* within '10-15 minutes' and for coming to a conclusion that the FIR is ante-dated and fragmented. In this context;

i. The Trial Court doubted the FIR for the reason that certain words and phrases in the *tehreer* did not appear in the FIR. For the reason that words such as '*tatha*' in the *tehreer* was replaced with '*aur*' and the sentence '*tatha mere per me goliya lagi*' was omitted in the FIR, the Trial Court concluded that the FIR was ante-dated and fragmented. It

was also noted that while the *tehreer* ends with a prayer for police protection, the FIR is silent on the same.

ii. Taking into account the time at which PW-1 was medically examined (8.30 PM), followed by his narration of the incident to PW-3 for scribing the *tehreer*, the Trial Court held that the *tehreer* could not have been prepared within 10-15 minutes. This conclusion was based on a calculation made by the Trial Court on the statement of PW-1 with respect to his medical examination and the lodging of the FIR. Further, the Trial Court considered that the *tehreer* is meticulously written without any mistake, which is not possible to be done in less than 30 minutes. For this reason, the Trial Court concluded that the *tehreer* itself is doubtful and, therefore, even the FIR is doubtful.

30. ***Contradictions in the timings of lodging the FIR:*** The Trial Court came to the conclusion that there are inconsistencies in the statements of PW-1 about the lodging of the FIR. This finding led to the conclusion that the prosecution has not proved the fact beyond a reasonable doubt. The conclusion was based on the following grounds:

i. While the FIR states that the incident took place at 7:30 PM, the *fax* sent by the Superintendent of Police mentions the incident as 7.45 PM. This contradiction cast a doubt on the story of the prosecution, particularly the veracity of the statement of PW-1.

ii. Based on the statement of PW-1 that he left the place of occurrence 10-15 minutes after the incident and reached the hospital within 3-4 minutes after which he was examined by PW-8 at 8.30 PM, the Trial Court concluded that the incident could have taken place only at 8.00 PM and not 7.30 PM. Yet another reason for the Trial Court to disbelieve the statement of PW-1.

31. ***Fax sent by Superintendent of Police, Hamirpur****:* The Trial Court heavily relied on the f*ax* message sent from the office of the Superintendent of Police, Hamirpur to the higher authorities informing them of the occurrence of the incident. This *fax* message, though not part of the investigation was introduced by the defence through DW-3. The description of the events in the FIR are in stark contradiction with the events narrated in the *fax*. Relying on the *fax* and accepting the evidence of DW-3, the Trial Court came to the conclusion that the prosecution failed to prove beyond reasonable doubt, the occurrence of the event at the time mentioned in the FIR, the motive, presence of the accused persons etc. As the *fax* contradicts the statement of PW-1 his entire evidence must be rejected.

32. ***Trial Court on the testimony of injured eye-witness PW-1:*** The Trial Court's reason for rejecting the evidence of PW-1 as an eyewitness is based on its conclusions about the following inconsistencies in his statement:

i. *The veracity of statement of PW-1 based on the bullet marks on the jonga*: Taking note of the bullet marks on the jonga, the Trial Court came to the conclusion that the version of PW-1 that there was indiscriminate firing is unbelievable. The Trial Court held that there was only one bullet hole on the back side of the jonga while the other parts of the jonga were intact, except a partially broken mirror on driver's side. On this basis, the Trial Court disbelieved that there was indiscriminate firing towards the jonga by the accused persons.

ii. *The veracity of statement of PW-1 as it contradicts the injuries sustained by him*: Based on the statement of PW-1 that he was on the non-driver side of the jonga, the Trial Court came to the conclusion that this version cannot be believed as the injuries sustained by him do not match his own description as if that were true, he would have been in the direct line of firing and could not have escaped with just one bullet injury on his leg.

iii. *The veracity of the statement of PW-1 based on injuries sustained by the deceased persons*: The Trial Court came to the conclusion that the gun shot injuries on the body of Rakesh Kumar Shukla do not match the description of PW-1. Similarly, the gunshot wounds received by Sri Kant, Ved Prakash and Gudda were contrasted with the narration of events by PW-1 to disbelieve his version. Further, in view of the fact that there were no independent witnesses to vouchsafe for the incident,

the Trial Court concluded that the prosecution failed to establish PW-1's presence and in turn the event.

iv. *The veracity of PW-1's statement based on the documentary evidence relating to the treatment at the hospital*: The Trial Court concluded that the entries made in the medical register were back-dated as there was no record with respect to any payment made in furtherance of the treatment. The injury report prepared by PW- 8 indicated that the injuries on PW-1 were on the left knee, whereas the G.D. entry noted that the bandage was on his left calf. This led the Trial Court to disbelieve the injury on PW-1. Further, with respect to the medical examination of PW-1, it was observed that the Bed Head Ticket, as well as the medical examination report, had certain discrepancies with regard to the timing, date, parental name as well as the place of injury which had over-writing and cuttings. Due to these factors, PW-1's injuries as well as the medical evidence were disbelieved.

v. *Unnatural behaviour by PW-1 during the second incidence*: PW-1's presence at the second incident was also disbelieved by the Trial Court on the ground that his behaviour is unnatural. The reason for such a conclusion is this. The Trial Court felt that PW-1 should have in the natural course narrated the incident to Rajesh Shukla and Ravi Kant Pandey as they reached the place of occurrence. Further, the Trial Court held that if the firing was indiscriminate, he could not have narrated the

incident with minor details as to who used which gun. In this context, the Trial Court also noted that PW-1 could not remember the persons who took the children Vipul and Chandan home at the time of the incident.

vi. *The veracity of PW-1's statement with respect to electricity connection at the time of the incident:* The Trial Court believed the evidence of DW-1, Executive Engineer at the Electricity Distribution Division, Hamirpur that there was no electricity between 7.50 PM to 8.45 PM. In view of this, the Trial Court concluded that PW-1 could not be an eye-witness of the incident as he could neither have identified the accused nor clearly seen the incident.

33. ***Trial Court on the testimony eyewitness, PW-2***: The Trial Court disbelieved the presence of PW-2 at the second place of the incident based on its conclusion that the injury on his body was not that of a firearm. The Trial Court held that this witness cannot be believed as there is a contradiction in his statement about who had actually taken the children, Vipul and Chandan home. Further, the Trial Court concluded that the conduct and behaviour of PW-2 is unnatural as he did not immediately go to the hospital after receiving bullet injuries and also did not accompany his brother who died during the incident.

34. ***Recovery of weapons:***

i. The Trial Court disbelieved the story of the prosecution about the recovery of an 8x60 bore rifle from Sahab Singh during his arrest, as it

contradicted the *fax* message sent by the Superintendent of Police which mentioned the recovery of a 0.315 bore rifle from Sahab Singh. Based on this contradiction, the Trial Court concluded that the recovery from Sahab Singh is false as there are two different rifles mentioned in two different documents.

ii. Trial Court found it strange that PW-12 searched only Ashok Kumar Chandel and Raghuvir's Moradabad house for the murder weapons, and none of the houses of the other accused persons were searched.

iii. In view of the fact that the Court Witness (CW-1) could not recover any weapon from the Moradabad house, the Trial Court concluded that the whole investigation was mala-fide and was intended to implicate Ashok Kumar Chandel.

iv. The Trial Court discredited the seizure of the weapon and the bullet cartridges from Sahab Singh as the statement of PW-14Dy. Superintendent of Police, CBCID that PW-11 and 12 mentioned to him that they recovered 18 bullets, contradicts with evidence PW-11 and 12 who stated that they recovered 10 bullets.

35. ***Ballistic Report***: The Trial Court held that the ballistic report is not admissible in evidence as the requirements of Section 293, Cr.P.C were not followed.

36. ***Recovery of Railway Manarth Card belonging to Ashok Chandel from the place of occurrence***: The Trial Court came to the conclusion that the

Manarth Card recovered from the place of occurrence had expired way back on 12.01.1994 which is more than three years prior to the incident. The Trial Court also found that the said Manarth Card was not sealed and stamped like other pieces of evidence. While the Trial Court did not dispute that the Railway Manarth Card belonged to Ashok Kumar Chandel it doubted the recovery from the place of occurrence.

37. In view of the above findings and conclusions, the Trial Court acquitted all the accused of all the charges.

38. Challenging the judgment of the Trial Court, the State preferred a criminal appeal and the informant (PW-1) filed a criminal revision before the High Court.

Judgment of the High Court:

39. We have undertaken a detailed description of the reasons and conclusions adopted by the Trial Court only to see if the High Court while reversing an order of acquittal has sufficient and cogent reasons to interfere with the reasoning of the Trial Court. A strict scrutiny of the judgment of the High Court is necessary as an order of acquittal can be interfered with only for *substantial and compelling reasons*. Following the same structure adopted by the Trial Court, we will consider and examine the reasons adopted by the High Court with respect to each and every finding of the Trial Court.

40. As stated earlier, the High Court in appeal convicted all the accused under Sections 148, 302 read with 149, 307 read with 149 IPC and acquitted the accused Ashok Kumar Chandel under Sections 379 and 404 IPC and Section 30 Arms Act. Sahab Singh was also acquitted of 25 of the Arms Act. The High Court's findings are as under:

41. ***Motive:*** The High Court held that there is sufficient evidence to conclude that there existed a motive for the Chandel group for committing the offences against the deceased and their men. The High Court concluded on the basis of evidence on record that Rakesh Kumar Shukla along with Rama Kant Pandey (brother of deceased Sri Kant Pandey) lobbied against Shyam Singh (A7), who was involved in a criminal case. Further, it also came on record that the deceased party opposed Ashok Kumar Chandel in the Assembly Elections. All this, according to the High Court establishes that Shyam Singh and Ashok Kumar Chandel were on hostile terms with the Shukla family. As regards Sahab Singh, it was held that he was Ashok Kumar Chandel's private gunner and therefore, he also had the same motive. In so far as Naseem (A6) is concerned, he was supported by the Chandel group because Naseem's Educational Institution – Islamia Inter College was in competition with Vidya Mandir, supported by the Shukla Family. In view of all these factors, as indicated above, the High Court concluded that there is sufficient motive. At the same time, the plea of Ashok Kumar Chandel that he was falsely

implicated and that one Alok Purwar alias Titu who is the owner of a petrol pump was responsible for the murders was discarded by the High Court as there was no evidence.

42. ***High Court's analysis of the approach adopted by the Trial Court in drawing its conclusions on the evidence of witnesses and the documentary evidence:*** Apart from reversing the findings given by the Trial Court on specified issues such as motive, the contradiction in the timing of lodging the FIR, its inconsistencies with the *tehreer*, reliability on the *fax* message, recoveries of firearms etc., which are being recounted hereinbelow, the High Court noted a fundamental problem. The problem related to the approach adopted by the Trial Court, the High Court was of the opinion that much of the conclusions drawn by the Trial Court were based on a very technical and pedantic approach in analysing the evidence of witnesses or drawing inferences from the documentary evidence. The technical approach adopted by the Trial Court has according to the High Court caused grave miscarriage of justice. This is explained by the High Court while dealing with each issue in the following manner.

43. ***FIR and Tehreer discrepancies:*** The High Court was of the opinion that the approach adopted by the Trial Court in construing the *tehreer* and the FIR were super technical. The High Court found that the explanation proffered by the prosecution for omissions in the FIR to be genuine as the investigating

officer was pressurizing PW-9 who prepared the FIR to provide a copy of the report and therefore, it is reasonable to assume that such omissions could have taken place. Moreover, the possibility of a few words being left out while writing a long report cannot be ignored and hence the mistakes were considered bonafide. Rejecting the allegation that FIR is ante-timed, the High Court observed that after PW-1 was treated in the hospital at 8.30 PM he could go to the police station to lodge an FIR and that there is nothing unnatural about it, considering the nature of his injuries. The High Court examined the spot map as per which the hospital and the police station were in close proximity. The documentary evidence supported the statement of PW-1 that he returned to the hospital for proper treatment and was discharged the next day at 09.00 AM.

44. ***Testimonies of PW-1 and PW-2:*** The High Court was of the opinion that the approach adopted by the Trial Court in discarding the evidence of PW-1 and PW-2 was hyper-technical. At the outset, the place of occurrence and also the occurrence of the event were not doubted by the Trial Court. The evidence of PW-1 and PW-2 being injured witnesses cannot be discarded based on minor inconsistencies. The High Court examined each of the contradictions and inconsistencies found by the Trial Court and concluded that the same was drawn on a speculative premise. The High Court held that, "*a perusal of above analysis made by the Trial Court appears to have been done over meticulously*

with lot of guess work made on this part". In this context, the High Court relied on the decision of the Supreme Court in the case of *State of U.P.* v. *Gokaran and ors*[15]. In this case, Supreme Court had interfered with the order of acquittal by the High Court stating that – "*it becomes the duty of the Court to interfere with the acquittal in order to redeem the course of justice.....the High Court has adopted a hyper-technical approach to the entire prosecution case....*"

45. Reversing the finding of the Trial Court based on the evidence of DW-1, Executive Engineer, Electricity Distribution Division, Hamirpur suggesting that there was no power during the time of occurrence of the incident, the High Court held that even according to DW-1, he was not sure as to which phase the electricity connection to the Subhash Market was connected. Yet again, the High Court felt that the Trial Court judgment is based on surmises and conjectures, particularly when there were direct injured eye-witnesses.

46. On the question of contradictions in the statements of PW-1 and PW-2 with regard to their position and injuries sustained, it was held that the Trial Court was incorrect in discarding their testimonies as in a situation of indiscriminate firings, it becomes very difficult for any witness to recollect as to who exactly was shooting at whom and from which exact direction. It was also observed that it is too much to expect an injured witness to depose

15 (1984) Supp SCC 482.

distinctly about each and every injury received by the deceased and other injured persons. The High Court went on to observe that the Trial Court paid more attention to ascertain as to which particular injury was caused in what sitting position to the injured and the deceased rather than looking at the incident as a whole. The findings of the Trial Court doubting the presence of the witness on technical grounds was not accepted by the High Court.

47. While considering the conduct of PW-2 right after the incident, the High Court did not find anything unnatural. PW-2 was asked to look after the injured children Vipul and Chandan and hence he went home, and this is completely natural.

48. ***Recovery of Weapons:*** The High Court rejected the findings of the Trial Court with respect to (a) the *fax* message sent by the Superintendent of Police mentioning the arrest of Sahab Singh with a 0.315 bore rifle as opposed to the recovery memo which mentioned 8x60 bore rifle recovered from Sahab Singh (b) non-examination of a public witness during the arrest and recoveries (c) the search made during the arrest of the accused for the following reasons.

49. The High Court came to the conclusion that the Trial Court erred in arriving at the decision that there was no recovery made from Sahab Singh on the basis of the *fax* message. The High Court found that the conclusions of the Trial Court were perverse as the 0.315 bore rifle in the continental system having measurements are in millimeters (mm) is nothing but an 8x60 bore rifle

which is the British system of annotation. However, on the legality of recovery, the High Court held that the seizure was not corroborated by an independent witness and therefore it proceeded to acquit Sahab Singh (A8) as well as Ashok Kumar Chandel (A5) under Sections 25 and 30 of the Arms Act.

50. ***Manarth Card Recovery:*** As regards the recovery of Manarth Card (railway travel card) belonging to Ashok Kumar Chandel is concerned, the Trial Court's decision to discard the same as the card had expired long before the incident was rejected by the High Court for the reason that it is not uncommon that people carry passes or ID cards even after the date of expiry. According to the High Court, the recovery of the card cannot be rejected just because the validity of the card expired before the incident. The High Court also observed that the Investigating Officer has nothing against Ashok Kumar Chandel to falsely implicate him.

51. ***Ballistic Report:*** Accepting the ballistic report, the High Court observed that the report was forwarded by one of the Director/ Deputy Director/ Assistant Director of the said lab under the seal. This is in compliance with the statutory requirement under Section 239 Cr.P.C and hence the report was not discarded and was considered admissible.

52. In support of its conclusions, the High Court relied on the decisions of this Court in *Masalti* v. *State of U.P.*[16]; *Praveen Kumar* v. *State of Karnataka*[17];

16 (1964) 8 SCR 133.
17 (2003) 12 SCC 199.

State of U.P v. *Gokaran and ors*[18]; *Menoka Malik and ors* v. *State of West Bengal and ors*[19].

Submissions on Behalf of the Appellants:

53. In this batch of appeals, we heard Mr. Harin P Raval, Mr. Siddharth Dave, Mr. Jayant Muthuraj, Mr. Ratnakar Dash, Mr. Basava Prabhu Patil, Mr. Vishvajit Singh, Senior Advocates, followed by Ms. Bansuri Swaraj, Advocate for the Appellants. We have also heard, Ms. Aishwarya Bhati, Learned Additional Solicitor General and Mr. A.K. Mishra, Additional Advocate General for the State of U.P. and Ms. Sonia Mathur, Senior Advocate for the Informant.

54. The senior counsels were assisted by S/Shri Shiv Kumar Pandey, Abhay Raj Singh Chandel, Chandrashekhar A. Chakalabbi, Awanish Kumar, Abhinav Garg, D.Girish Kumar, Kumar Vinayakam Gupta, Kartikey Kanojia, M/s Dharmaprabhas Law Associates, AOR, S/Shri Sandeep Jha, Arjun D. Singh, Ashish Singh, Advocates, Dharmendra Kumar Sinha, AOR, Uday Prakash Yadav, Simarjeet Singh Saluja, Ms. Prerna Dhall, Ms. Noor Rampal, Ms. Aastha Mehta, Ms. Ishita Sinha, S/Shri Rohit Pandey, Murari Tiwari, Advocates, Ramjee Pandey, AOR, Ms. Manisha Chava, Shri Rustam Singh Chauhan, Ms. B.L.N. Shivani, Shri Rajeev Kumar Dubey, Ms. Harshita Raghuvanshi, Ms. Shreyase Aggrwal, Shri Ashiwan Mishra, Advocates, S/Shri

18*Supra* no. 15.
19 (2019) 18 SCC 721.

Kamlendra Mishra, Shashank Singh, AOR, Anupam Chaudhary, Manoj Kumar Dwivedi, Mrinal Kumar Sharma, Ms. Ana Upadhyay, Shri Akash Singh, Ms. Manya Hasija, Advocates, S/Shri Prem Sunder Jha, AOR, Pankaj Bist, Advocate, Krishnanand Pandeya, AOR, Manish Kumar, Advocate, Anshuman Srivastava and Shri Naresh Kumar, AOR.

55. We will encapsulate the submission of the learned counsels for the Appellants as well as the State before we proceed to analyze and answer the same.

56. Leading the arguments on behalf of the Appellants, Mr. Harin Raval for A5 submitted that in case of an appeal against acquittal, there is a double presumption in favour of the accused. As having secured an acquittal from one of the courts, the presumption of his innocence is reinforced and reaffirmed. Therefore, if two conclusions are possible on the basis of the evidence on record, then the appellate court should not disturb the finding of acquittal recorded by the trial court. He relied on the decision of this Court of *N. Vijaykumar* v. *State of Tamil Nadu*[20]. He also submitted that the High Court has reversed the findings of the Trial Court without providing any reasons and has simply supported its findings by stating that the Trial Court decision was based on assumptions and speculations.

20 (2021) 3 SCC 687.

57. As the substantial part of the case of the prosecution is dependent on the evidence of PW-1, he rightly focused on the credibility and veracity of the evidence of this witness. He argued that the following features of the case would make it clear that PW-1 was not present at the scene of offence and he cannot be accepted as an eyewitness at all.

i. According to PW-1, he was on the right side of the jonga (non-driver side) when he was speaking to deceased Rakesh Shukla at which point the alleged ‘indiscriminate’ firing began from Naseem’s gun shop. If this were true, in this positioning PW-1 would have been in the direct line of firing and could not have escaped with one bullet injury on his leg. Further, as per the evidence of PW-8, the bullet injury on PW-1 was on the upper portion of his left leg, which would only be possible if his back was facing the assailants.

ii. Since, PW-1 had stated that he was on the non-driver side and so was deceased Gudda in the jonga who received fatal injuries, it is highly improbable that PW-1 did not receive any injuries in the first incident while being present on the non-driver side.

iii. As per PW-1’s evidence, he was standing in front of the jonga during the first incident when there were bystanders. However, none of them were made witnesses and examined by the prosecution.

iv. During the second incident, when deceased Rajesh Kumar Shukla was injured by 16 bullets as per the post-mortem report, it is highly

improbable that PW-1 would receive minor injuries on the lower part of the body while standing adjacent to Rajesh.

v. As per the evidence of PW-5 (Dr. PN Paya), Rakesh Shukla received injuries on his left side which contradicts his position in the jonga on the right side.

vi. PW-9 had stated that when PW-1 reached the police station to lodge the FIR, the bandage was on his calf, however, as per PW-1's injury report, his injuries were on his thigh. If he had received immediate medical treatment from PW-8 then his bandage would have been on the thighs.

vii. PW-2 sustained a 2x2 CM wound which cannot be caused by a rifle, DBBL or an SBBL gun. Therefore, the description of the firearms as deposed by PW-1 cannot be believed. Moreover, no firearms were recovered expect for the one recovered from Sahab Singh which is also not proved to be used in the incident.

58.1 Referring to the contradictions arising out of the treatment of PW-1 in the hospital the learned counsel tried to establish that the presence of PW-1 is doubtful for the following reasons:

i. The Bed Head Ticket of PW-1 does not mention an X-Ray recommendation.

ii. There is no entry in the cash register of any money being deposited regarding any X-Ray or treatment being done.

iii. It was deposed by PW-1 that the X-Ray took place at 10 PM however, the X-Ray department closes at 2 PM. Therefore, the timings of the same cannot be believed.

iv. There is no mention of date on the X-Ray plates of PW-1.

v. As per the evidence of PW-12, one Srideen took PW-1, Ravi Kant, Hardayal and Vipul to the hospital for X-Ray on 28.01.1997 and he also brought them back home. Thus, the statement of PW-1 regarding the X-Ray is doubtful. Moreover, a material witness, Srideen was never examined by the prosecution.

58.2 It was argued that if PW-1 was admitted to the hospital on 26.01.1997 and was discharged only on 27.01.1997 at 9 AM, his statement that he went to the police station at 09.10 PM to register the FIR and then returned to the hospital and then to the place of occurrence at 10 PM cannot be believed. PW-1 stated that he took all the dead bodies to the hospital, however, the police memo initially recorded four bodies and the fifth dead body was received after 9 PM. If PW-1 left to lodge the FIR at 9 PM and at the same time if the hospital records received the fifth body at 9 PM then how was PW-1 aware of this fact to mention it in the *tehreer* which was written at 8.30 PM. In light of this, it was contended that the FIR is ante-timed. The learned Senior Counsel submitted that there is only one hole on the left side of the windscreen of the jonga and the remaining parts were intact. If this is true, then the version of PW-1 that the incident was of indiscriminate firing cannot be believed. Further,

as per the evidence of PW-4, there was no diesel in the jonga and this is directly in line with the defence theory put up that, the incident was a result of a quarrel with one Titu regarding moving the jonga which according to Rakesh Shukla had no diesel. In this context, the *fax* message sent by S.P. Mathur was relied on. It is submitted that Hardayal was treated in the hospital at 8.30 P.M and therefore, the statement of PW-1 that he did not see Hardayal cannot be believed.

58.3 Mr. Raval submits that the *fax* sent by S.P. Mathur to the higher authorities mentions arrest of Sahab Singh on 26.01.1997 with 315 bore rifle and what is shown in the recovery memo is an 8x60 bore rifle. The High Court's findings that rifle of 8x60 bore and 315 bore are the same is fallacious as the conversion comes to 480 bore.

59.1 Questioning the presence of PW-2 at the scene of the offence Mr. Raval submitted that:

i. The conduct of PW-2 was very unnatural as he reached the hospital only at 10 PM even though he had allegedly received a bullet injury. Moreover, his brother Sri Kant Pandey has also died.
ii. PW-2 stated that Chandan and Vipul were sent home with someone from the Mohalla but they were neither produced nor examined by the prosecution. There is also a material contradiction as to whether PW-2 took Vipul and Chandan home or not.

59.2 Mr. Raval also relied on the evidence of the defence witness DW-1, to discredit prosecution witnesses, PW-1 and PW-2 on the ground that there was no electricity at the place of occurrence when the incident happened.

60.1 Mr. Siddharth Dave, learned Senior Advocate appearing for Ashutosh Singh alias Dabbu (A2), argued that no evidence was led by the prosecution to prove how two groups of accused gathered at one place by forming an unlawful assembly in pursuance of a common object to fire indiscriminately at the persons sitting in the jonga. It is the case of the prosecution that at around 7.30 PM on 26.01.1997, PW-1 along with his servant Lallan who had gone to purchase some articles from the market met Rakesh Shukla in the jonga. If the said meeting was a chance meeting, then the formation of an unlawful assembly with a common object would stand disproved. Moreover, there were no allegations as to at what prior point in time the accused form an unlawful assembly.

60.2 It was urged that the incident took place in two parts and therefore, it was incumbent upon the prosecution to lead evidence as to when the unlawful assembly in the first part dispersed and when it gathers again during the second incident. In light of this, it was argued that offence under Section 149 was not made out by the Appellants as there was no evidence to prove the formation of an unlawful assembly with a common object. The Counsel placed reliance on

the judgments of this Court in *Nawab Ali v. The State of U.P.*[21], *Masalti v. State of U.P.*[22] and *State of Rajasthan v. Shiv Charan and ors*[23] to say that it is incumbent upon the prosecution to show that the person concerned was a member of the unlawful assembly at the time of the commission of the offence. Moreover, mere presence or association with other members alone is not per se sufficient to hold that each member is criminally liable for the offence committed by the others, unless, there is sufficient evidence on record to show that each member intended to or knew the likelihood of commission of such an offending act, being a member of the unlawful assembly as provided for under Section 149, IPC.

61. Mr. Jayanth Muthuraj, learned Senior Advocate, appearing for Pradeep Singh (A4), submitted on the improbabilities of the first as well as the second incident. With respect to the first incident, he would say that PW-1 sustained no injury and it has remained unexplained how the new vehicle comprising of five people comes all of a sudden and starts firing, and even after that PW-1 was not injured. So far as the second incident is concerned, he took us to the inquest report and argued that the prosecution is not able to explain interpolation and cutting in many places. He argued in similar lines as that of Mr. Raval about the non-examination of certain witnesses, he also submitted that there were contradictions about sending Vipul and Chandan to the house.

21 (1974) 4 SCC 600.
22 (1964) 8 SCR 133.
23 (2013) 12 SCC 76.

Who took them to the residence is a mystery. He also touched upon the issue relating to the delay in FIR, the *fax* message sent by the Superintendent of Police and the recovery of Manarth card bearing the name of Ashok Kumar Chandel near Naseem's shop and the evidence of DW-1 establishing that there was no electricity at the time of the incident.

62. Mr. Ratnakar Dash, learned Senior Counsel appearing for Uttam Singh (A3) and Bhan Singh (A10) commenced with U.P. Police Regulation 97 about the recording of the FIR. He, however, did not pursue this submission. He adopted the same line of submission as that of Mr. Raval about the credibility of the PW-1 in view of the uncertainty about the injuries. Mr. Dash argued that there was no motive attributable to his clients Uttam Singh and Bhan Singh. He adopted the same argument as that of Mr. Siddharth Dave with respect to the second incident and concluded by stating that there are no recoveries from Uttam Singh as well as Bhan Singh.

63. Mr. Basava Prabhu Patil, learned Senior Advocate, appeared on behalf of Sahab Singh (A8) submits that his client's name appears in the FIR along with the gunner of Chandel who was also cited. However, after the filing of the charge sheet, the gunner's name is deleted and his client is prosecuted as accused no. 8. He submits that his client is a farmer and he is falsely implicated. Mr. Patil also questioned the veracity of the evidence of PW-1 and PW-2. He argued that the prosecution has taken the Government gunner out

and substituted him instead. He has nothing to do with Chandel and the recovery of the rifle, for this he relied on his Section 313, Cr.P.C statement. It is interesting to note that Mr. Patil has questioned the authenticity of the *fax* alleged to have been sent by Mr. S.K. Mathur, SP to his superior officers. In the *fax*, it is alleged that Ashok Singh Chandel's private gunner Sahab Singh was arrested while carrying a 0.315 bore rifle before the alleged arrest on 27.01.1997. Mr. Patil submitted that though his client was acquitted of the charge under Section 25 of the Arms Act, in view of the fact that the recovery was not based on any independent witness he was convicted under Section 302, IPC along with all others only on the basis of evidence given by PW-1.

64. Ms. Bansuri Swaraj, learned Advocate made submissions on behalf of Naseem (A6) who is referred to as the *Bandukwala*. She submitted that Naseem is 70 years old and has no motive to indulge in the crime at all. She joined the other counsels in making the common argument about the contradictions in statement of PW-1 and PW-2. Questioning the arrest memo, she argued that if the *fax* mentions Sahab Singh's arrest before 27.01.1997, then Naseem's arrest along with Sahab Singh as evidenced by the arrest memo dated 27.01.1997 is a forged document. Finally, she concluded by stating that no recovery of weapons was made from his client.

Submissions by the State:

65. The State was represented by the Learned Additional Solicitor General, Ms. Aishwarya Bhati. The learned ASG commenced her submission with the occurrence of the incident on 26.01.1997 which is not disputed. The death of 5 persons was also not disputed. With the aid of a pictographic depiction of the site map and injuries on the body, she explained the incident in the context of place, time, and persons involved. Recounting the relationship between the parties, from the very beginning she states that there is sufficient evidence to conclude that there is a longstanding rivalry between the group of Chandel, Raghuvir Singh, Naseem, and other members as against the group comprising of the Shukla family.

66. Learned ASG identified the injuries of the witnesses and the deceased and compared them with the documentary evidence and the statements of doctors to emphasize the veracity of the eyewitnesses. She has also referred to the post-mortem report of Rakesh Shukla, Rajesh Shukla, Srikant Pandey, Gudda, and Ved Prakash and again co-related it to the evidence of the doctors who were examined with the corresponding exhibits. This is another factor, according to the learned ASG to add credence to the statement of the eyewitnesses.

67. Learned ASG referred to the evidence of PW-1 in detail and sought to correct the statements made by the witness with the evidence on record. She would further submit that there is no reason to disbelieve the evidence of the

eyewitnesses and if their version is accepted then the various possibilities and contradictions that the Appellants have suggested have to be discarded. The learned ASG laid emphasis on the approach adopted by this Court in dealing with an appeal against acquittal and submitted that there is no inviolable rule that an Appellate Court would refrain from interfering with the judgment of acquittal even if there is grave miscarriage of justice.

68. Referring to the submission of the Appellants that non-examination of witnesses would be fatal for the prosecution, she has referred to certain decisions of this Court indicating the correct approach that needs to be adopted. The reasoning adopted by the High Court in reversing the decision of the Trial Court was brought to our notice. The learned ASG emphasized that the Trial Court had adopted a super technical approach in analyzing the statement of the eyewitnesses and rejected them without appreciating the principles on the basis of which an injured eyewitness evidence is to be considered. It is her submission that the Trial Court has committed a serious error in acquitting all the accused in the teeth of clear evidence of the eyewitnesses. The learned ASG concludes by saying that the High Court has not committed any error, in fact or in law while reversing the decision of the Trial Court. For this reason, she had prayed dismissal of these appeals.

Submissions by the Informant:

69. Ms. Sonia Mathur learned Senior Counsel supporting the learned ASG has submitted that there is sufficient proof of the presence of PW-1 in the first as well as the second incident. She referred to the 1995 murder involving Shyam Singh, where Rakesh Kumar Shukla and Rama Kant Pandey assisted the prosecution. These incidents coupled with the Shukla family and associates opposing Ashok Chandel in the Assembly Election are a strong motive for killing five members of the Shukla family. In the alternative, she has submitted that in view of the presence of injured eyewitnesses the need to prove motive becomes irrelevant. Ms. Sonia Mathur took us through the compilation comprising important pieces of evidence and explained the position in which the witnesses and the deceased got bullet injuries and corroborated them with the medical evidence. She has also supported the prosecution on all the points that were taken up by the ASG.

Analysis and Findings:

70. *Preliminary:* We will commence with dealing with three preliminary submissions, commonly urged by all the learned counsels for the Appellants. First of this submission relates to the error committed by the High Court in interfering with the judgment of the Trial Court while exercising jurisdiction of a criminal appellate court against an order of acquittal. The second common submission relates to the alleged failure on the part of the prosecution to establish a clear motive for the accused to commit the offences. The third

submission advanced by some of the counsels relates to the lack of evidence regarding the occurrence of the event and that too at two places.

71. After the preliminary submissions, we will deal with the arguments advanced by the defence to impeach the veracity of the testimonies of PW-1 and PW-2 as the injured eye-witnesses. These arguments relate to the discrepancies in the timing of lodging of the FIR and contradictions about the presence of PW-1 at the place of incidence because of the evidence relating to (a) the bullet marks on the jonga (b) the physical position of PW-1 and the injuries sustained by him and the deceased at the time of the incident (c) the contradictions arising out of the timing of X-Ray reports and issuance of the Bed Head Ticket (d) and the absence of electricity at the time of the incident. With respect to PW-2, we will examine the submissions (a) regarding his presence at the place of the incident (b) injuries sustained by him (c) his unnatural behaviour at the time of the incident.

72. We will then deal with the submission questioning the conviction under Section 149 IPC. Thereafter, we will deal with the contradictions in the FIR on the basis of the *fax* message. Then, dealing with the submission on recoveries, we will consider the submissions relating to (a) recovery of the Railway Manarth Card from the scene of the offence (b) and recovery of the weapon and bullets during the arrests. We will finally deal with the submission about the admissibility of the ballistic report.

I. Jurisdiction of the High Court in Appeals Against Acquittals

73. This is the first preliminary submission and it is based on a principle laid down by this Court that in an appeal against acquittal, the criminal appellate court will not interfere with the acquittal unless there are *substantial* and *compelling* reasons. The common submission of all the counsels appearing for the Appellants is, therefore, that the High Court was not justified in reversing the order of acquittal.

74. The position of law with respect to the jurisdiction of the High Court in cases of appeals against acquittals is well established. After reviewing the judgments on this subject, this Court clarified in *Chandrappa and Ors* v. *State of Karnataka*[24] that:

> *"**3**. Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion."*

75. It is sufficient to note the principle laid down in the Constitution Bench of this Court in *M.G. Agarwal* v. *State of Maharashtra*[25]:

> ***"16.** …But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is*

24 (2007) 4 SCC 415.
25 (1963) 2 SCR 405.

undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. King Emperor and NurMohammad v. Emperor [AIR 1945 PC 151] ...

17. *…Similarly in Ajmer Singh v. State of Punjab [(1953) SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so". In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse…"*

76. Following the Constitution Bench, this Court in *Ghurey Lal* v. *State of UP*[26] has formulated the following principles:

26 (2008) 10 SCC 450.

*"**69.** The following principles emerge from cases*

1. The Appellate Court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

***70.** In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i. The trial court's conclusion with regard to the facts is palpably wrong;

ii. The trial court's decision was based on an erroneous view of law;

iii. The trial court's judgment is likely to result in "grave miscarriage of justice";

iv. The entire approach of the trial court in dealing with the evidence was patently illegal;

v. The trial court's judgment was manifestly unjust and unreasonable;

vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the ballistic expert, etc.

vii. This list is intended to be illustrative, not exhaustive.

> *2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.*
> *3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/Appellate Courts must rule in favor of the accused."*

77. Keeping in mind the above-referred principles we will now proceed to examine the impugned judgment and see if the High Court has properly applied the principles while exercising the criminal appellate jurisdiction against the order of acquittal.

II. Motive

78. The second common ground raised by many Appellants relates to the motive behind the commission of the offence. The Trial Court held that the disputes between Chandel and other accused with the Shukla group are '*insufficient*' for committing murder. Counsels for the Appellants have repeatedly argued that the prosecution failed to establish any motive for the accused to commit the crime. We will deal with this submission in fact as well as in law.

79. On facts, three instances are referred to by the prosecution to indicate the existence of a prior rivalry between the two groups. *Firstly*, in the year 1995, one Sanjay Kumar Shukla of Sumerpur and Shiv Narain Mishra, President of Degree College were murdered by accused Shyam Singh (A7) and others. In that murder case, deceased Rakesh Kumar Shukla along with Rama

Kant Pandey (brother of deceased Sri Kant Pandey) lobbied against Shyam Singh. Ashok Kumar Chandel and Raghuvir Singh were in close alliance with Shyam Singh. *Secondly*, the Shukla family and associates opposed Ashok Kumar Chandel in the Assembly Elections that year. As a result, accused Shyam Singh, Ashok Kumar Chandel and Raghuvir were on hostile terms with the Shukla family. Sahab Singh is stated to be the private gunner of Ashok Kumar Chandel and therefore he would have the same disposition against the Shukla family. *Thirdly*, accused Naseem was the Manager of Islamia Inter College and the other competing educational institution in the town, Vidya Mandir was run by the members associated with Shukla family. Naseem was close to Ashok Kumar Chandel and they were acting together since they were inimical towards Shukla's individually and also as a group.

80. PW-1 has in his deposition spoke about the existence of long political enmity with Ashok Chandel in the following terms.

> *"13. I had long political enmity with Ashok Chandel. My family used to oppose him in the election. Ashok Chandel used to contest election for MLA. He lost the 1996 election for MLA with a huge margin because of our opposition. Ashok Chandel had lost the election before this in the year 1995. Shiv Narayan Mishra and Abhay Shukla, Chairman, of degree college were killed at Sumerpur publicly in which accused Shyam Singh and others were prime accused against which chargesheet had been filed. In the said incident, my brother Rakesh Shukla and Sh. Ramakant Pandey, Advocate, i.e. brother of deceased Shrikant Pandey, had favoured the deceased. Ashok Chandel and Raghuvir Singh and other had favoured Shyam Singh. This is the reason for their animosity/grudge.*
>
> *14. Naseem was the manager of Islamiya Inter College, Hamirpur. Whereas, the Chairman of the Vidya Mandir,*

> *Hamirpur (Inter College). are Brahmins. There exists competition between both the institutions. Ashok Chandel, Raghvir Singh, Naseem etc. used to sit together often."*

81. At the outset, we hold that the finding of the Trial Court that the motive suggested by the prosecution is '*insufficient*' for the commission of the murder of five persons is an inappropriate measure.

82. Sufficiency or insufficiency of motive does not have a direct bearing on the actual evidence against the accused, particularly when the prosecution relies on direct evidence of injured eyewitnesses. This position of law is clear from the following decisions of this Court. In *Shivaji Genu Mohite* v. *The State of Maharashtra*[27], this Court held:

> *"**11**. Assuming that the prosecution evidence was not sufficient or cogent enough for a motive to be spelt out of it, the fact that the prosecution was not able to discover such an impelling motive would not reflect upon the credibility of a witness, proved to be a reliable eyewitness…..*
> ***12**. As stated earlier, the fact that the prosecution in a given case has been able to discover a sufficient motive or not cannot weigh against the testimony of an eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if a motive is not established the evidence of an eye-witness is rendered untrustworthy."*

27 (1973) 3 SCC 219.

83. In the case of *State of Uttar Pradesh* v. *Kishanpal and Others*[28] it was held that:

> *"**39**. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence of in adequacy of motive cannot stand in the way of conviction."*

84. In another case of *Sheo Shankar Singh* v. *State of Jharkhand and Anr*[29], this Court observed:

> *"**15**. ….. These decisions have made a clear distinction between cases where the prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eyewitnesses on the other……. Proof of motive, recedes into the background in cases where the prosecution relies upon an eye witness account of the occurrence. This is because if the court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible, absence of evidence to the motive is rendered inconsequential…*
> ***16**. The case at hand rests upon the deposition of the eyewitnesses to the occurrence. Absence of motive would not, therefore, by itself make any material difference……"*

28 (2008) 16 SCC 73.
29 (2011) 3 SCC 654.

85. Also, in the case of *Darbara Singh* v. *State of Punjab*[30]:

> *"**15.** ……In a case where there is direct evidence of witnesses which can be relied upon, the absence of motive cannot be a ground to reject the case. Under no circumstance, can motive take the place of direct evidence available as proof……..*
> ***16.** Motive in criminal cases based solely on the positive, clear, cogent and reliable ocular testimony of witnesses is not at all relevant. In such a fact situation, the mere absence of a strong motive to commit the crime, cannot be of any assistance to the accused….."*

86. In view of the evidence on the aspect relating to motive, coupled with the clear position of law with respect to the relevance and weightage of motive in cases of evidence of direct injured eyewitness to the incident, the conclusion of the Trial Court that the case of the prosecution fumbles as it failed to prove the motive is incorrect. The decision of the High Court, based on the principles laid down by this Court is unexceptionable.

III. Place of occurrence

87. Some of the counsels for the Appellants submitted that the prosecution has failed to adduce any evidence about the occurrence of the event at the place alleged. This submission need not detain us for long as this was also raised before the Trial Court and it was not accepted even by the Trial Court. It is, therefore, sufficient for us to refer to the finding of the Trial Court on this submission. While rejecting this argument, the Trial Court recorded that the

30 (2012) 10 SCC 476.

incident occurred as two events in quick succession. With respect to the first event the Trial Court held:

> *"This place of occurrence has not been challenged by the defence and by the questions by Naseem himself during the cross examination of witnesses it is clear that the incidence had taken place."*

88. Similarly, the Trial Court recorded the following with respect to the second event of the incident in the following manner:

> *"The second place of incident has been said to be occurred in front of the house of Parmanand Pandit and as per site map [Exh. A-25], house of Anirudh Kumar Sahu is located west side of house of Naseem….*
>
> *xxx*
>
> *The investigation officer during inspection of the place of occurrence found blood but did not collect blood-stained soil from there. This is his mistake but this does not draw any adverse inference on the prosecution case.B. B. words have been shown by the investigation officer in the site map [Exh-A-25] after inspection of the place of occurrence, on which places it is said that bullet cartridges total 12 have been found, out of which 6 are to said of 12 bore and 6 of brass. He has not indicated as to which bullet cartridges was found from which place separately. These B. B. marks are shown in the map as the road below the platform at Nasim's house an in front of house of Parma Pandit. Therefore the place of incident is not doubtful."*

89. In view of the clear and categorical finding of the Trial Court itself about the place of occurrence, we need not entertain any doubt about the place of occurrence. This issue is answered accordingly.

IV. Timings of lodging of the FIR and Discrepancies therein

90. Faced with the direct evidence of eyewitnesses cited by the prosecution, the defence mounted a challenge to the veracity and the truthfulness of the eyewitnesses. At the outset, they would submit that the prosecution could not answer the severe improbabilities depending upon the time taken by PW-1 to move from the scene of the offence to the hospital and then to the police station. We will presently deal with this issue.

91. The prosecution case is that the incident took place at around 07.30 PM and lasted for about 8-10 minutes. Thereafter, PW-1 reached the hospital with all the deceased in the jonga by 07.50 PM. After reaching the hospital, he got the dead bodies examined first and then himself. He was eventually examined at 8.30 PM. After his preliminary examination, Saraswati Sharan, PW-3, scribed the *tehreer* as narrated by PW-1 in the hospital itself. It is after this that PW-1 left for the police station at around 09:00 PM to lodge the FIR which came to be registered at 09.10 PM.

92. Challenging the prosecution story, the learned counsel for the Appellants made four submissions **(i)** it was contended that the statement in the *tehreer* that PW-1 brought five dead bodies with him to the hospital, and thereafter he left for the police station at 9PM is in contradiction to the police memo (Exb. Ka-18) sent by the hospital to the police station at 9PM, which in turn mentions only four dead bodies and two injured persons **(ii)** it could not have been possible for PW-3 to write such a long *tehreer* and that too without any

mistake in a span of 15-20 minutes before PW-1 proceeded to the police station **(iii)** it was also urged that, there were certain omissions made in the FIR which was copied from the *tehreer* and hence, there were material discrepancies in both the documents **(iv)** finally, according to PW-1's Bed Head Ticket received from the hospital, the discharge timing is mentioned to be 9 AM on 27.01.1997 on the next day and therefore he could not have lodged the FIR at 09.10 PM on 26.01.1997. We will now deal with each of these submissions.

93. *Firstly***,** it can be observed from the evidence of the doctor, PW-8 that he examined the dead bodies and the two injured namely, PW-1 and Hardayal and prepared a police memo to that effect. The same was sent to the police station by 9 PM. The evidence of PW-8 is extracted below:

> *"All these injuries have possible to come at 7 .30 PM of 26.1.97. On that day I had sent a Police Memo to the Inspector in-charge of P.S. Kotwali for information. I had sent this memo at 9 PM. I had prepared this in my handwriting and signature and it was mentioned <u>that dead bodies of five persons have been brought in this hospital</u> and two injured have also come, whose names are Rajiv Shukla S/o Sh. Bhishm Prasad Shukla and name of other is Hardyal Verma S/ o Sh. Mahadev Prasad. Original of it was sent to the Police, which is Ex. 7 6A / 7 on the case file, exhibited as Ex.A-18"*

94. The above-referred evidence, when contrasted with Exb. Ka-18 (which is in Hindi) does not give rise to any contradiction for the following reason. In the first paragraph of Exb. Ka-18 there is a mention of four dead bodies and two injured. The second paragraph mentions one more dead body brought at 9 PM.

95. Further, as per the evidence of PW-1, he has taken all the deceased to the hospital together. He has also stated that from the hospital he did not take the jonga to the police station to lodge the FIR, instead, he went by autorickshaw. This was because one dead body was still in the jonga and was surrounded by female members of the family. It was brought inside the hospital around the time he was about to leave for the police station. The relevant portion of PW-1's testimony is extracted herein below:

> *"250. I had gone to the Kotwali by rickshaw, reason being that a few ladies had come from home. A dead body was inside the Jonga.*
> *251. The ladies had surrounded the car and the kotwali was at a short distance only. The ladies of my own family also had come (illegible) ladies from colony and Pandey jee's family also had come when. I had gone to lodge a report."*

96. It is thus clear that there were five bodies and PW-1 brought them to the hospital in the jonga after the incident. The conclusion of the Trial Court is therefore erroneous and is not based on the evidence on record. The High Court is fully justified in reversing this finding as it is not merely an alternative view but a correction of an error which is substantial and compelling.

97. *Secondly*, we have seen the *tehreer*, it is a short document. The conclusion of the Trial Court that the *tehreer* could not have been written in less than 30 minutes and therefore the FIR could not have been filed at 9.10 PM is speculative and based on an imaginative arithmetic calculation. There was no basis for the Trial Court to assume that this document could not have

been written in 15-20 minutes, particularly in view of the evidence of PW-3 who is stated to be an experienced scribe. In this very context, the further conclusion of the Trial Court that the document could not have been written without any mistakes or cuttings is yet again speculative and without any basis.

98. *Thirdly*, it was argued that Constable Mahesh Singh, PW-9 who prepared the FIR by copying the contents of the *tehreer* made certain omissions like the word '*tatha*' were replaced by '*aur*' and the word '*anya*' was written out of alignment. Also, the sentence '*tatha mere per me goliya lagi*' was omitted. During the examination-in-chief of this witness, he mentioned that he was under pressure to complete the FIR formalities and the investigating officer was hurrying him to hand over the report. This explanation was accepted by the High Court as such omissions cannot be held to be fatal to the case of the prosecution.

The Trial Court committed a serious error in discrediting the version of PW-1 about the occurrence of the event on the basis of such minor and inconsequential omissions. It was therefore necessary for the High Court to interfere with the glaring mistakes committed by the Trial Court. This is a good and sufficient ground to interfere.

99. *Finally*, we are in agreement with the observation made by the High Court with regard to the discharge timing mentioned on the Bed Head Ticket, as this is a natural conclusion to be drawn based on the evidence available on

record. It is, therefore, logical to conclude that PW-1 would have gone to the police station to lodge the FIR and returned to the hospital for further treatment.

100. The variations indicated in the *tehreer* and the FIR, as well as the argument of improbability based on a minute-by-minute construct by the learned counsels for the Appellants, can under no circumstance become fatal to the acceptance of the *tehreer* and the FIR. This Court, while noting the defects and variations in the investigation observed in *Rammi Alia Rameshwar* v. *State of M.P.*[31]:

> "***24.*** *When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.*
>
> ***25.*** *It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the*

31 (1999) 8 SCC 649.

> *section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness….*
> ***26.*** *A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness…..*"

101. The Trial Court has taken a super technical approach in doubting the timing of lodging of the FIR for arriving at an erroneous conclusion the FIR and the *tehreer* are ante-timed. In these circumstances, there are compelling and substantial reasons for the High Court to interfere with the findings and conclusions of the Trial Court.

V. *Presence of PW-1 at the place of incidence*

102. Yet another substantive argument advanced on behalf of the Appellants is that the presence of PW-1 at the scene of the offence is doubtful. Therefore, his testimony must be rejected on the ground that he is not an eye-witness at all. To make this point good, the learned counsels advanced four-fold submission, which is also the reasoning of the Trial Court. We will refer to each of the submissions and deal with them.

A. Bullet marks on the jonga

103. Based on the statement of PW-1 in the FIR that the accused party fired at them '*indiscriminately*', it is argued that this statement cannot be believed as there were no multiple bullet holes on the jonga. In fact, the jonga only has one bullet hole on the left side of the windscreen.

104. A proper reading of the evidence demonstrates the following. The Head Constable, M.T., Malkhan Singh, PW-4, conducted the technical examination of the vehicle and prepared a report exhibited as Ex-A2. Though Exb. A-2 is in Hindi, and the content of it is available in the testimony of PW-4, which we can consider and understand the correct fact situation. PW-4 states in the report that the jonga had a hole in the windscreen window and multiple holes in the back side of the driver's seat. He also stated that there were holes in the upper body of the back tyre of the left side of the jonga and on both sides of the window. The driver-side mirror was also broken.

105. This description matches the seizure memo of the jonga exhibited as Ka-29, which was prepared when the jonga was seized. The relevant part of PW-4's testimony is as under:

> *"….There was a hole in the body towards back in left side. Condition of steering was ok. Condition of break was ok. Condition of Back Pedal, Electric (Light) was fine. Transmission was fine. Suspension was fine. Tyres were in running condition. There was a hole in the front mirror (wind screen) window and right side and there were holes in the back seat of right side (driver seat). Driver mirror was also broken…..*
>
> *xxxx*
>
> *9. Holes were found in the side doors of both side windows. Holes were not found in the back curtain. Holes of curtains, except one or two, remaining holes ' are inside the fold of curtain. That which is one or half hole has not gone while folding the curtains from many places."*

106. We have carefully perused the seizure memo of the jonga which clearly describes *"kai jagah par goliyon ke nishan hai"*, meaning thereby that there

are many bullet marks found on the jonga. Further, the inspection report prepared by PW-4 on 25.02.2002 also mentions about the existence of multiple bullet marks on the jonga. This is also the version of PW-1.

107. Even the investigating officer, PW-12 who prepared the seizure memo of the jonga, found 12 blank cartridges on the spot along with samples of the broken front glass of the jonga.

108. It is in the context of the above-referred evidence that we need to look at the testimony of PW-1 about which the Appellants have argued as if he supports their case. The following extraction from his testimony makes it clear that this submission has no ground to stand.

> *"…I don't remember the number of hole, I had seen at that time. I had seen only one hole in the glass (wind shield). I did not notice the hole on other parts of the body of the vehicle. <u>It is incorrect to suggest that there might not been any other gun shot hole in the vehicle except one on the glass (wind shield)</u>."*

109. On an overall examination of the testimonies and the documentary evidence on record, it is evident that the jonga had multiple bullet holes on different parts. The contention that only one bullet hole was found on the windscreen is to be rejected, and we have no hesitation in holding that the conclusion drawn by the Trial Court that there was no *'indiscriminate'* firing is based on the misreading of the evidence. We are also of the opinion that this is a substantial and *compelling* reason for the High Court to interfere with the judgment of the Trial Court.

B. *Position of PW-1 and the injuries sustained by him and the deceased at the time of the incident*

110. The Appellants argued that the injuries on PW-1 and the deceased persons do not match the position they were in when the firing occurred. We will answer this with reference to the first as well as the second incident.

111. At the first incident, from the testimony of PW-1 as well as the site plan drawn by PW-12, PW-1 was initially standing in front of the jonga when he stopped to speak to the deceased Rakesh Shukla. While explaining that the site plan does not accurately describe Lallan's and his position, he categorically states that he moved to the right side (non-driver side) of the jonga when it was facing east to speak to the deceased Rakesh as there were people on the driver's side. We will quote this in his own words as this is of some importance:

> *"….The Jonga had been stopped/parked in the mid of the road. I was in front of the Jonga only, when it was stopped there. I do not recall exactly if I was on the right side (Patari) of the road. At that time, the Jonga was facing east. The east falls in the direction of my home. I moved to the Jonga at non-driver side to speak to him. I had gone to my right side. There were a few people standing in the side of driver. My servant· (domestic help) Lallan had come to me*
>
> *xxx*
>
> *I had told the I.O. the fact that the Jonga was standing exactly in the mid of the road but not that we were standing on the right side of the road. I do not know the reason why the LO. has shown (demarcated) our location in the right side of the road but not in front of the Jonga…"*

112. It is at this point of time that the firing started, that is when PW-1 was on the non-driver side. If this is considered true, then PW-1's testimony that he shielded himself behind the jonga falls into place and he is certainly not in the direct line of firing. We have no hesitation in rejecting the contention of the Appellants that PW-1 is in the direct line of firing. It is not in dispute that PW-1 is on the non-driver side of the vehicle and when the firing began from Naseem's gun shop which is in the south side of the jonga. In fact, this submission is speculative as the complainant has not even indicated in the FIR that he was on the driver-side of the jonga during the first instance. PW-1's testimony is clearly in consonance with the statement in the FIR. It is surprising that Trial Court has rejected the very presence of PW-1 on the scene of the offence on the basis of a hypothetical argument, and the High Court was justified in interfering with such a finding.

113. In so far as the second incident is concerned, Appellants contend that, when deceased Rajesh stepped out of the jonga after turning the same towards the hospital to fire back at the Appellants, he was hit by several bullets, PW-1 could not have escaped with just one bullet shot. This, according to the Appellants, is so improbable that his presence is falsified. In fact, the Trial Court accepted this submission. We have examined this submission in detail and have found it to be incorrect for the following reasons.

114. After the first incident, the jonga was turned to proceed towards the hospital. On reaching the second spot near Parma Pandit's house, when the assailants again attacked, Rajesh got down from the jonga with his rifle in an attempt to retaliate. At that point, he suffered multiple bullet injuries. Consistent with his stand, PW-1 was behind the jonga on the right side, which is the driver's side, and that is how he could take cover of the jonga, but he could not escape a bullet injury on his leg. So far as deceased Rajesh Shukla is concerned, he proactively got out of the jonga and took a position to fire at the assailants. There is a clear distinction between the position taken by Rajesh on the one hand and PW-1 on the other. There is, therefore, sufficient explanation for PW-1 receiving not as many bullets injuries as the deceased Rajesh. We may also add that the submission made by the Appellants is not based on any evidence but proceeds on a theory of probability. The High Court has correctly rejected this theorization, which has unfortunately impressed the Trial Court. This is without any basis. It was, therefore compelling for the High Court to interfere and correct the glaring mistake of the Trial Court.

115. In a situation like this, when there is a group attack which lasted for only a few minutes, it is unreasonable to expect an eye-witness to recount each fact in mathematical detail. A recent decision of this Court recounted a chaotic

situation like this by reviewing the existing case laws on the subject. In *Abdul Sayeed* v. *State of Madhya Pradesh*[32], this Court held as under:

> "***27.*** *In the instant case, a very large number of assailants attacked Chand Khan and Shabir (the deceased), caused injuries with deadly weapons to them. The incident stood concluded within few minutes. Thus, it is natural that the exact version of the incident revealing every minute detail i.e. meticulous exactitude of individual acts cannot be given by the eyewitnesses.*
> ***28.*** *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."….."*

116. Reiterating the same principle about the evidence of an injured witness, this Court in *Rajendra Alia Rajappa & Ors* v. *State of Karnataka*[33], held as under:

> "***18.*** *This Court in Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457 : 2000 SCC (Cri) 1546] , has considered the minor contradictions in the testimony, while appreciating the evidence in criminal trial. It is held in the said judgment that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses.…"*

32 (2010) 10 SCC 259.
33 (2021) 6 SCC 178.

117. In light of this, the argument of improbability that while deceased Rajesh Shukla received 16 bullet injuries, Rakesh and Gudda received fatal bullet injuries and PW-1 received just one bullet injury, must be rejected.

118. Yet another argument raised by the Appellants is that, as per the injury report of PW-1, he received one bullet injury on the upper portion of his left thigh. However, as per the testimony of PW-9, the bandage was not on PW-1's thigh but on his calf. This statement of PW-9 must be understood in the context of the statement that PW-1 sustained a bullet injury. This is an important part of the evidence. The mathematical analysis of PW-9's evidence is unnecessary. The injury report of PW-1 is in corroboration with the evidence of the doctor, examined as PW-8. Further, even the X-Ray supports the view that PW-1 received an injury on his left thigh. All these evidences, which are contemporaneous and credible, cannot be discarded on the basis of the testimony of PW-9 given four years after the incident. The oral and documentary evidence consistently points towards an injury on the leg of PW-1. That one of the witnesses refers to the injury being on the calf cannot cast doubt on the presence of PW-1 at the scene of the offence. The Trial Court committed a serious error in relying on the evidence of PW-9 for discarding the entire evidence of PW-1. This finding was rightly set aside by the High Court.

C. X-Rays and Bed Head Ticket

119. PW-1 and PW-12, both depose that PW-1 went back to the hospital from the place of occurrence due to the pain of his injury. After reaching the hospital, it was stated that PW-1 was advised an X-Ray for his injuries by PW-8, who did his preliminary examination. It has been argued by the Appellants that the X-Ray done on PW-1 was forged for three reasons **(i)** there was no entry for treatment of PW-1 in the *medico-legal register* or recommendation of X-Ray in the Bed Head Ticket **(ii)** the time of X-Ray of PW-1 is 10 PM, however, the department stops working at 2 PM **(iii)** there was no money deposited by PW-1 and Hardayal for their treatment.

120. We will deal with these submissions by taking the last argument first. The Medical Officer, PW-8 who treated PW-1 as well as Hardayal has deposed that after the preliminary treatment of the deceased and the victims, a police memo describing the deceased as well as the injured victims was sent by him to the police station at 9 PM. It was also stated that the entry of treatment of the victims was made in the *accidental register* instead of the *medico legal register* as the police did not accompany PW-1 and Hardayal. Therefore, no entry was made in the *medico legal register*. Further, this witness also admitted that in cases where entries are made in the accidental register, no fees is charged from the patients. The statement of this witness is important and it is extracted hereinbelow:

> *"…..Entry which is made in the medico legal register, which are sent by police for medical examination or any*

> *doctor himself conducts the medical examination by writing application. We do so because no charges are levied of the matter referred by police and medical fees has to deposit in the matter of giving application at his own. <u>These injuries would have come by some quarrel and from any other reason or beatings etc., which relates to medical examination. No charge is deposited in case of accidental case, treatment has to be given by us, hence we recorded further proceeding in the accidental register. The report which I have given in respect of the injuries of those injured, they have been recorded in accidental register.</u> When police has not come with the injured and injured has come, neither gives application nor deposits fees and has asid to do the examination then under compulsion we write injuries in the accidental register after conducting his examination. First we demand application from the injured or says that to come with police when he does not give application then we examined him in the accidental register. Injured come and write in medico legal case that how the injuries have come, then we examined him…..”*

121. It has also been admitted by the PW-7, the Radiologist, under whose supervision the X-Ray was done that the X-Ray was conducted on the reference of the Emergency Medical Officer, PW-8 who sent a reference slip for the same. In view of the statements of the doctor PW-8 as well as the Radiologist, PW-7, there is clarity and certainty about the entry in the *accidental register* and as such, there is no money deposited by PW-1 and Hardayal. There is absolutely no justification for the Trial Court to conclude that these documents are forged. Seen in the context of various contemporaneous documents, supporting the injuries on the body of PW-1, it is

difficult to accept the submission made by the Appellants that the X-Ray is a forged document or that it is ante-dated.

122. Coming to the submission that the X-Ray of PW-1 and Hardayal could not have been taken at 10 PM when the department closes at 2 PM, we have examined the evidence of PW-7, who has categorically stated that the X-Ray was taken under his supervision. The relevant portion of his statement is as under:

> *"On dated 27 .1. 97 also I was posted at the post of Radiologist in Dist. Hospital, Hamirpur. On that day under my supervision the X-Ray of the right thigh, along with left thigh and left knee of injured Rajiv Shukla S/o Sh. Bhishm Shukla R/o Ramedi P.S. Kotwali Hamirpur aged about 31 years was conducted who was referred by E.M.O. District Hospital, Hamirpur for X-ray. He himself had come from the emergency ward. In the X-ray one small round metal non-transparent (torn paper) was seen in the right thigh, left thigh and left knee alongwith leg. Report was prepared by me on the basis of X-ray plate, which bears the identification mark and thumb impression of the injured. This Rajiv Shukla is present in the Court, the report exhibited as Ex.A-8. Three X-Ray plates exhibited as Ex.44 to 46, which bears thumb impression of the injured and is attested by me."*

123. This witness was cross-examined at length but he explained that despite the department normally closing at 2 PM, he insisted that the X-Ray of PW-1 and Hardayal was actually taken at 10 PM on 26.01.1997. The defence tried to discredit this witness by suggesting that he had some issues with Ashok Kumar Chandel which he denied. We have no reason to disbelieve this witness.

Moreover, it is not unbelievable that a hospital could make a special provision for X-Ray in times of immediate medical aid. Instead of referring to and considering the material evidence on record relating to X-Ray and the bed head ticket, the Trial Court arrived at its own conclusion based on probabilities. The High Court was therefore justified in setting aside the judgment of the Trial Court.

D. *Electricity failure at the time of the incident*

124. The last attempt to persuade the court to discard the evidence of PW-1 is based on an argument that during the period commencing from 07.30 PM to 08.45 PM, there was no electricity at the scene of the offence. To make good this argument, the defence examined DW-1, who was working as an Engineer at the Electricity Distribution Division. This witness deposed that he received information at 07.50 PM regarding the breakdown of the electricity connection at Akil Tiraha; as a result, the electricity supply discontinued in areas from Kali Chauraha to Devi Das, which included Subhash Market (place of the occurrence) and Suphiganj. It was informed that the connection broke down 15-20 mins before 07.50 PM, i.e., around 7.30 PM. He stated that the connection was only restored at 08.45 PM after repairing the broken wires. On this basis, it was urged that it would have been difficult for PW-1 to identify the Appellants and also for other witnesses to identify persons around the market.

125. The High Court examined this issue in detail. It was observed that DW-1 has admitted to the fact that although there was an electricity cut between 07.30 PM to 08.45 PM, he was not sure if the place of occurrence, i.e., Subhash Market was affected by the same. He went on to state that there were total of three phases connected to Akil Tiraha, and out of those three phases, two continued to remain operational despite the breakdown. DW-1, in his cross-examination, has affirmed that:

> *"…..I am unable to say about how many connection of the electricity was connected there at Subahs Bazara from Akil Tiraha with that phase that is broken and the electricity supply was interrupted. There in total number of three phases but after breaking the wire, two phases of electrification were continued. Akil Tiraha is in very far distance from Subhash Bazaar. I am not able to say about electricity connections from Akhil Tiraha to Subhash Bazar or whether was connected there or not…."*

126. Having examined the matter in detail, the High Court came to the correct conclusion that electricity shutdowns are quite common and the public is not solely dependent on street lights. In a place like Subhash Market, people must keep their own arrangements like generators in cases of electricity cuts. Moreover, DW-1 clearly admitted that, "…*but after breaking the wire, two phases of electrification were continued. Akil Tiraha is in very far distance from Subhash Bazaar. I am not able to say about electricity connections from Akhil Tiraha to Subhash Bazar or whether was connected there or not….*".

127. As against the reasoning and the conclusions drawn by the High Court, the Trial Court has simply referred to the evidence of DW-1 stating that there was no electricity and immediately concluded that the testimonies of PW-1 and PW-2 are not trustworthy. The Trial Court has not examined the evidence of DW-1 in detail and has, in fact left out the crucial portion of the evidence. The High Court was, therefore, completely justified in reversing this finding drawn by the Trial Court.

128. In conclusion, with respect to the issue relating to the presence of PW-1 as doubted by the Trial Court, we have examined the matter in detail. The evidence about the existence of multiple bullet holes on the jonga establishes 'indiscriminate' firing, as stated by PW-1. We have also seen that the injuries on the body of PW-1 and that of the deceased persons co-relate with the testimony establishing PW-1's presence at the scene of occurrence. Further, the injury on PW-1 at the scene of the offence is proved on the basis of the medical evidence supported by testimonies of the doctors. Furthermore, we have also seen that the defence could not probablize their theory that there was no electricity at the scene of offence in view of the equivocal evidence of their own witness DW-1.

129. For all these reasons we are of the opinion that the High Court was correct in its conclusion that the prosecution has successfully established the presence of PW-1 at the scene of the offence. We are also convinced that the

High Court is justified in reversing the order of acquittal for the *glaring* mistakes and *distorted* conclusions that the Trial Court has drawn.

VI. *Presence of PW-2 at the place of incidence*

130. Learned Counsel for the Appellants submitted that the evidence of PW-2 must be discarded for the following reasons; **(i)** he cannot be accepted as an eye-witness as the injuries on his body are not of a firearm **(ii)** his version is in contradiction to PW-1 who instructed PW-2 to check on the children and that he is unaware as to who took the children home **(iii)** the conduct and behaviour of PW-2 are unnatural because when his own brother Sri Kant Pandey received fatal injuries, he chose not to go to the hospital.

131. The way to answer this first issue is to refer to the medical evidence. While the X-Ray report described the injury on PW-2 as *"one small metallic radio opaque shadow is seen in left leg"* corroborating the same, Dr. SK Gupta, PW-7 has, in his own words, stated:

> *"…Shadow of a small non-transparent radio thing of metal was seen in it. I had prepared the report in my handwriting and signature on the basis of X-ray plates..."*

132. The doctor's evidence as well as the X-Ray report stand duly corroborated and the Appellants have brought nothing on record to falsify the same. In light of the report and the testimony, the injury sustained by PW-2 has to be believed.

133. With respect to the second issue, there is no confusion or contradiction about the shifting of the children. We have gone through the evidence of PW-2 and he has clearly explained that upon hearing gunshots he rushed to the spot along with Rajesh Shukla and others and saw PW-1 and Lallan moving the children out of the jonga. In his cross-examination, he stated that he was unaware as to who actually took the children to the residence. It is after the second incident when he also received an injury that PW-1 asked him to go home and check on the children, Chandan and Vipul. It can be seen from his testimony that:

> *"18. When I reached there, Chandan was outside the Jonga and Vipul was being driving out. At that time, in my first glimpse, Chandan was standing at left side of Jonga. Rajeev was standing outside the vehicle. He was driving Vipul from the vehicle. He pulled out Vipul immediately. I cannot tell the name of the person, with whom Chandan and Vipul were send the home. Then voluntarily told that they were send home along-with some known person of the mohalla. I cannot tell that they were taken to the house in some vehicle or on foot.*
>
> *xxx*
>
> *22. I was there, when Rajeev Shukla took Rakesh, Gudda, Sri Kant, Ved, Rajesh to the hospital by putting them in Jonga. I cannot tell whether there was someone else in the vehicle or not, as I had come back to the house. The moment, Rajeev Shukla sit in the Jonga, I moved to the house as per his instruction.*
>
> *xxx*
>
> *29. Rajeev told me to go to the house, I am going to the hospital. I do not remember whether I had told this fact to the 'Daroga' or not"*

134. Coming to the third issue, the evidence of PW-2 cannot be brushed aside under the assumption that he did not accompany his brother to the hospital. It is not as if he left his brother on the road and went home to check on Chandan and Vipul. He saw his own person, PW-1, a close family associate taking his brother along with PW-1's own brothers to the hospital. In such situations, it is natural for people to share responsibilities. PW-2 come forward to take care of and protect children. There is nothing unnatural about it. While PW-1 was taking PW-2's brother to the hospital it is natural that PW-2 would take care of the other emergencies of checking on the children who also received minor injuries. In any event, there is no standard for expecting a particular behavior or reaction of a victim. This Court in *Rana Pratap and ors* v. *State of Haryana*[34]**,** held:

> ***"6.*** *Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."*[35]

34 (1983) 3 SCC 327.

135. For the reasons stated above, there is absolutely no reason for rejecting the evidence of PW-2 and doubting his presence at the scene of the offence. The Trial Court was not justified in disbelieving the evidence of PW-2.

VII. Discrepancies in the FIR and the Fax sent by the Superintendent of Police

136. The learned counsels have referred to a *fax* message said to have been sent from the office of the Superintendent of Police (SP) to the superiors informing them about the occurrence of this very incident. The contents of this *fax* are used by the defence to contradict the very happening of the incident in the manner described by the prosecution. They also contradict the time of the incident, apart from certain alleged recoveries.

137. This *fax* message is said to have emanated from the office of the Superintendent of Police. Except for this *fax*, we have not been informed of any role being played by the SP during the investigation. It is through the evidence of DW-3, examined by the defence on 27.06.2002 that a parallel story advanced by the defence comes into play.

138. The circumstances in which the *fax* never formed a part of the investigation and that it emanated only with its introduction by DW-3 examined on 27.06.2002, causes much suspicion about the *fax* as well as its

35 This principle has been reiterated in a number of decisions of this court in *Leela Ram (Dead) through Duli Chand v. State of Haryana and anr* (1999) 9 SCC 525; *State of U.P. v. Devendra Singh* (2004) 10 SCC 616; *Kathi Bharat Vajsur and anr v. State of Gujarat* (2012) 5 SCC 724.

contents. There is nothing to corroborate the contents of the *fax*. The prosecution has in fact established the contents of the FIR with clinching evidence, both oral and documentary. The entire evidence of the defence was to discredit the eyewitnesses and to show contradictions in their statements on the basis of contemporaneous documentary evidence. We have already considered those submissions and have rejected the same by upholding the conclusions drawn by the High Court. The circumstance in which the f*ax* originated has not been established to the satisfaction of the Court. The evidence of DW-3 does not inspire confidence as well.

139. In conclusion, we reject the *fax* as well as the submissions based on the contents of the *fax* for the reason that firstly, the timings as indicated in the FIR stand confirmed by other oral and documentary evidence as discussed earlier. There is nothing to suggest about the happening of the event as mentioned in the *fax*. Secondly, as the prosecution has established the occurrence of the incident as described in the FIR on the basis of bullets on the vehicle, empty cartridges, blood recovery from the place of occurrence coupled with proof of injuries based on medical evidence we have to accept the story in the FIR and reject the one propagated in the *fax* involving Titu leading the attack on the victims. Even the so-called recovery of a 0.315-bore rifle referred to in the *fax* must be rejected and we will explain this aspect in more detail while discussing the next argument relating to the recoveries and the arrest.

140. *Fax* is not part of the investigation. Even assuming that there is some defect in the investigation on this count, it will have no bearing on the prosecution case. This Court has observed in a number of cases, that defective investigation by the investigating authorities by itself does vitiate the case of the prosecution when there are credible eye-witness testimonies as well as other compelling pieces of evidence. In *Karnel Singh* v. *State of M.P.*[36] this Court held that:

> "***5.****….In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective….."*

141. Similarly in the case of *C. Muniappan and Others* v. *State of Tamil Nadu*[37] this Court held:

> *"**55.** There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable*

36 (1995) 5 SCC 518.
37 (2010) 9 SCC 567.

> *or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial….."*

VIII. *Unlawful Assembly and Common Object*

142. Mr. Siddharth Dave, Senior Counsel, appearing for Ashutosh, Appellant No. 2 made three-fold submissions. He argued that the prosecution has failed to prove that there was an unlawful assembly and that Appellant No.2 was one of the persons constituting the unlawful assembly. He submitted that mere presence or association with other members alone is not sufficient to hold everyone criminally liable as vicarious or constructive liability can be fastened only if it is proved that an unlawful assembly is physically formed.

143. The submission proceeds on a premise that a *prior formation* of an unlawful assembly with a common object is a must and should have been a *condition precedent* for roping the accused within the fold of Section 149, IPC. Mr. Dave submitted that the prosecution has not explained that there was a common object on the basis of which the accused came to the spot and fired at the jonga in front of Naseem's gun shop. An extension of this very argument is that the prosecution failed to prove how the unlawful assembly was disbanded after firing in front of Naseem's gun shop and again reassembled as an unlawful assembly before Parma Pandit's house. These submissions pale into insignificance if we appreciate the true and correct effect of an unlawful

assembly as enunciated by this Court. We will refer to some of the leading judgments on the point. In the case of *Amzad Ali Alias Amzad Kha and ors* v. *State of Assam*[38], this Court held:

> "***5****. ....It is incorrect to claim that prior formation of an unlawful assembly with a common object is a must and should have been found as a condition precedent before roping the accused within the fold of Section 149 IPC. No doubt the offence committed must be shown to be immediately connected with the common object, but whether they had the common object to cause the murder in a given case would depend and can rightly be decided on the basis of any proved rivalry between two factions, the nature of weapons used, the manner of attack as well as all surrounding circumstances. Common object has been always considered to be different from common intention and that it does not require prior concert and common meeting of minds before the attack. Common object could develop eo instanti and being a question of fact it can always be inferred and deduced from the facts and circumstances of a case projected and proved in a given case….."*

144. Also in *Bhargavan and ors* v. *State of Kerala*[39], it was held by this Court. that:

> "***14.*** *"Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful*

38 (2003) 6 SCC 270.
39 (2004) 12 SCC 414.

> *assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot eo instanti*."

145. Further, the PW-1 is an eye-witness to the first incident before Naseem's gun shop. The advent of Raghuvir Singh's gang in a vehicle is immediately after the firing commenced from and in front of Naseem's gun shop. PW-1 clearly mentioned about Raguvir Singh, Ashutosh Singh, Pradeep Singh, Uttam Singh and Bhan Singh wielding weapons and firing at the jonga. The second incident is vouchsafed by PW-1 as well as PW-2, who have reached Parma Pandit's house as the deceased party alighted the children Vipul and Chandan and turned the jonga towards the hospital. Having reached Parma Pandit's house, these accused again attacked the jonga and fired indiscriminately. It is therefore futile to suggest that there was no common object and that the assembly was not unlawful. In fact, PW-1 spoke of the exhortation by Ashok Kumar Chandel that *"no one from the Shukla Family*

should escape alive" and thereafter all other accused including the Raghuvir group started firing. This is yet another factor which establishes the existence of a common object. The argument that the prosecution has not proved when the unlawful assembly after the first incident was disbanded and when it reassembled again as an unlawful assembly in front of Parma Pandit's house is also to be rejected for the reason that the distance between the two places is merely 50-75 meters, and all this happened within a matter of minutes. The submissions were advanced as if there is a requirement to prove a common intention, which is not a requirement for an unlawful assembly under Section 149 IPC. It is apt to refer to the decision of this Court in *Bhupendra Singh and ors* v. *State of U.P.*[40], at this stage:

> *"**14**…..Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement*

40 (2009) 12 SCC 447.

> *after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 has to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object which may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly."*

146. With respect to the submission that the prosecution failed to establish any vicarious liability, it is enough to refer to the decision of this Court in *Saddik Alias Lalo Gulam Hussein Shaikh and ors* v. *State of Gujarat* [41], where the Court expressly rejected this argument and held:

> "***18.*** *Further, once it is established that the unlawful assembly had a common object, it is not necessary that all the persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew beforehand that the offence actually committed was*

41 (2016) 10 SCC 663.

likely to be committed in prosecution of the common object."

147. While concluding, we may note that there is no specific finding on unlawful assembly and the common object under Section 149 by the Trial Court. The High Court has discussed this issue and has also relied on the decision of this Court while dealing with the submission. Having considered the matter in detail, we are of the opinion that the High Court has examined the issue from all perspectives and in great detail before reversing the decision of the Trial Court. The decision of the High Court is, therefore unexceptionable.

IX. Recoveries of Weapons, Railway Manarth Card and Arrest of Sahab Singh

A. Recovery of Railway Manarth Card belonging to Ashok Chandel

148. The Appellants made two-fold submissions with respect to the recovery of the Railway Manarth Card from the place of the incident. Firstly, the railway card had expired on 12.01.1994 and the present incident being of 1997, it was argued that under no circumstances would a person be carrying an expired railway card. Secondly, it is submitted that the recovery of the card from the place of the incident is doubtful as it was sealed and stamped separately from all other material objects that were recovered from the place of the incident. It is also submitted that the diary entry mentions all other material objects except the Railway Manarth card.

149. With respect to the first issue, the High Court's view is correct as it is not unimaginable that accused Ashok Kumar Chandel carried an expired card. There is nothing unusual or uncommon about carrying expired cards, as people do it for some reason or another. The Investigating Officer, PW-12, found the Railway Manarth card at the scene of the offence. So far as the submission relating to the irregularity in the recovery and the marking of the Manarth card is concerned, we are of the opinion that there is no reason for the IO to plant the card there, as there is no past enmity between him and Ashok Kumar Chandel. Once the presence of PW-1 and PW-2, injured eye witnesses is accepted, then this argument will make no difference.

B. Recovery of Weapons and the Arrests

150. A little factual background is necessary before noting the argument raised by the Appellants.

151. The Investigating Officer, PW-12, deposed that after receiving information from an informant that four accused were trying to escape from Naseem's gun shop, he, along with Constable Aftab Ali, PW-11 and other police officers, proceeded to the spot and arrested the four accused namely Naseem (A6), Bhan Singh (A10), Shyam Singh (A7) and Sahab Singh (A8). Upon the arrest, one 8x60 bore rifle was recovered from Sahab Singh (A8) along with ten brass cartridges from his belt. PW-11, Constable Aftab Ali, deposed the same and also mentioned that attempts were made to secure public

witnesses. However, no one was ready due to the apprehension of danger. He also stated that the recovery memo, Exb. Ka-24 was prepared, and a copy was given to Sahab Singh, who tore the same into pieces. In his evidence, Dy. SP, Sukhram Sonkar, PW-14 stated that PW-12 had in his statement before the CBCID stated that one rifle along with 18 bullets, ten from the belt and eight from the butt cover of the rifle, were recovered from Sahab Singh (A8).

152. It is in the above-referred background, the learned counsels have raised two contentions. Firstly, the recovery from Sahab Singh contradicts the contents of the *fax*, which mentions the recovery of a 0.315 bore rifle and not an 8x60-bore rifle. Secondly, it is also the contention that the prosecution has not proved the recoveries at all.

153. We have already considered and rejected the story set up by the defence on the basis of the *fax* message. In fact, the contents of the *fax* are referred to only to contradict the nature of the weapon recovered from Sahab Singh; that is, while the recovery mentioned in the *fax* refers to the weapon as a 0.315-bore rifle, the recovery memo, Exb. Ka-24 mentions the weapon as an 8x60-bore rifle.

154. It is important to note that the Trial Court accepted this submission and held it to be a serious contradiction which the prosecution failed to answer. The High Court has correctly reversed the decision of the Trial Court as its conclusions are fallacious. There is no distinction between a 0.315 bore rifle

and an 8x60-bore rifle except for the system of measurement, one being the British System and another being the Continental system. The conclusions of the High Court are as under:

> *"We find that confusion probably occurred in the mind of the trial court that the 315 bore rifle is different rifle than 8x60 bore rifle which is fallacious. In fact, 8mm rifle in continental system would be called to be .315 bore rifle in British system because in British system, its measurement is in inches while in continental system, its measurement is given in mm., therefore, this finding of the trial court that no such recovery was made was found proved from the accused, Sahab Singh is an erroneous finding on the basis of logic given."*

155. We are of the view that the High Court had a substantial and compelling ground to interfere with this glaring mistake and the distorted conclusions that the Trial Court has drawn. As the learned counsels for the Appellants raised and argued this point all over again, we had to independently verify the conclusion and the finding of the High Court.

156. The treatise, W.H.B. Smith on *Mauser Rifle and Pistols*[42] provides a detailed description of an 8x60 sporting rifle under the chapter 'Mauser Sporting Rifles'. The relevant portion is extracted hereinunder for ready reference:

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42 W.H.B. Smith, *Mauser Rifles and Pistols* (The Stackpole Company, Pennsylvania, United States of America, 4th edn, 1954, pg nos. 156, 157)
Also see: 0.315" Sporting Rifle, available at: https://ddpdoo.gov.in/product/products/product-details/0-315-quot-sporting-rifle. The website of Directorate of Ordnance (Coordination and Services) where 0.315 bore rifle is also described as an 8mm rifle.

"This design was made in Germany specifically for foreign markets. It was finished much better than those for home consumption. Various types of sights were provided and this design was made in both single-trigger and double trigger types.

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The usual barrel length of this type is 24 inches.

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The standard calibers of the 24-inch was as follows: 7x57mm (.276), ***8x60 mm (.315)****, 9x57 mm (0.355) …"*

157. With respect to the second submission, about the doubt cast on the recoveries, we have the concurrent depositions of PW-10, PW-11 and PW-12 all of whom consistently speak about the recoveries of the rifle and the bullets. The relevant portion of their testimonies are as under:

158. Head Constable, Munna Lal Mishra, PW-10, stated in his evidence that:

"…On that day at 11.50 SHO Lalman Verma, SI R.S. Tiwari, SI Roshan Lal, Ct. 621 Kamlesh Kumar and Ct. 154 Aftab Ali along with Jeep and Driver Ram Kishan came at the police station and produced four accused persons Naseem Ahmad, Sahab Singh, ·Man Singh, then said Man Singh, Shyam Singh in the police station. <u>One sealed bundle of Rifle and one sealed bundle of cartridges and sample seal were also filed at the police station and filed one recovery memo of rifle and cartridge. On the basis of the Memo filed case FIR no.34/97 u/ s 25 Arms Act registered against Sahab Singh and case FIR No.35/97 u/ s 27 Arms Act registered against Ashok Chandel.</u> The filed articles with sample seal kept in the malkhana…."

159. Constable Aftab Ali, PW-11 in his evidence stated that:

"…Four persons namely Sahab Singh, Naseem, Mansingh, Shyamsingh were about to go out from the door there that we surrounded and caught them. When we asked the name-address then one told his name as Naseem, second told his name Shyam Singh, third one told his name as Bhansingh and fourth one told his

name as Sahab Singh. When the SHO took the personal search of all four then one rifle and green colour cartridge belt recovered from the possession of Sahab Singh, which had 10 cartridges and nothing recovered from any other. Ramsakal Tiwari wrote the Seizure memo at the spot on the dictation of Lalman Verma and read out the same and our signatures were obtained and he also signed the same. Ramfal sealed the cartridges and belt separately. He made the sample seal. No public person got ready to give statement due to their well-being. Copy of memo given to Sahab Singh, who had torn and threw it…."

160. Investigating Officer, Lalman Verma, PW-12 in his evidence stated that:

"….While walking from the riverbank of Betwa when we reached before the back door of Naseem's house then we saw that four accused came out from the back door and on the signal of the Informant we arrested all four accused persons on dated 27.1. 97 at 6.30 PM. When we asked their name-address then first told his name as Naseem S/ o Hameed, other told his name as Shyam Singh s / o Birbal, third told his name as Bhan Singh s / o Man Singh and fourth one told his name as Sahab Singh s/ o Dalgajan Singh. When personal search of above three accused persons made as per rules then nothing recovered from the possession of · ·the accused Naseem, Shyam Singh. But a rifle N.P. (illegible) No.20260 got recovered from the possession of Sahab Singh R/ o Kaloli Jaar Bhag Lalpura Dist. Hamirpur and then said that 10 brass cartridges got recovered from the belt tied in the waist, which was taken into police possession and a memo was written got written from S.S.I Sh. R.S. Tiwari in the torch light. On inquiry accused Sahab Singh told that this is of Ex.MLA Ashok Chandel, which was sealed. Signatures of the witnesses taken after reading out the memo, no public witness got ready because of considering their well-being. Memo of this is exhibited as Ex.A-24. Copy of which was given to the accused…."

161. In view of the above, we are of the opinion that the recovery of the 8x60 bore rifle from Sahab Singh (A8) and the arrest of the rest of the accused, A6,

A7 and A10, have been successfully proved by the prosecution. The clear, consistent and categorical evidence adduced by the prosecution to prove the recovery of the weapon, bullets as well as arrests could not have been ignored by the Trial Court. The conclusions drawn by the Trial Court were, therefore not only wrong but glaring mistakes. These were substantial and compelling reasons for the High Court to reverse the decision of the Trial Court.

162. An additional argument is raised with respect to the variation in the number of bullets recovered from the green belt worn by Sahab Singh. It is argued that while PW-12 states in his testimony that he recovered ten bullet cartridges from the belt, PW-14 mentions in his testimony that PW-12 stated in his statement before the CBCID that he recovered 18 bullets (10 from the belt and eight from the butt of the rifle) from Sahab Singh.

163. We consider this to be a minor variation. In any event, PW-14 is only stating what PW-12 supposedly mentioned in the statement to the CBCID. The variation in the number of bullets recovered cannot have a direct bearing on the recovery itself, particularly when all other witnesses have spoken about the recovery.

164. As the prosecution has established the occurrence of the incident through the evidence of PW-1 and PW-2, and we are in agreement with the judgment of the High Court that these are credible ocular witnesses whose statements are corroborated by other contemporaneous evidence, certain minor

variations, such as non-recovery of blood-stained clothes, certain other weapons etc. will not be fatal to the case of the prosecution. This principle is well established in cases where there are credible injured eye-witness testimonies. In *Lakshman Singh* v. *State of Bihar*[43], this Court held:

> "***9.*** *In Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] , it is observed and held by this Court that "the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly". It is further observed in the said decision that "minor discrepancies do not corrode the credibility of an otherwise acceptable evidence". It is further observed that "mere non-mention of the name of an eyewitness does not render the prosecution version fragile".*
> ***9.1.*** *A similar view has been expressed by this Court in the subsequent decision in Abdul Sayeed [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] . It was the case of identification by witnesses in a crowd of assailants. It is held that "in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him". It is further observed that "when incident stood concluded within few minutes, it is natural that exact version of incident revealing every minute detail i.e. meticulous exactitude of individual acts, cannot be given by eyewitnesses". It is further observed that "where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone". It is further observed that "thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein".*
> ***9.2.*** *The aforesaid principle of law has been reiterated again by this Court in Ramvilas [Ramvilas v. State of M.P.,*

43 (2021) 9 SCC 191.

(2016) 16 SCC 316 : (2016) 4 SCC (Cri) 850] and it is held that "evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence". It is further observed that "being injured witnesses, their presence at the time and place of occurrence cannot be doubted"."

165. In the recent case of *M Nageswara Reddy* v. *State of AP*[44] it was held that:

"***16.*** *Having gone through the deposition of the relevant witnesses — eyewitnesses/injured eyewitnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eyewitnesses and injured eyewitnesses. All are consistent insofar as Accused 1 to 3 are concerned. As observed hereinabove, PW 6 has identified Accused 1 to 3. The High Court has observed that PW 1, PW 3 & PW 5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW 1, PW 3, PW 5 & PW 6 and even PW 7.*

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19. *Having gone through the reasoning given by the High Court, we are of the opinion that the High Court has unnecessarily given weightage to some minor contradictions. The contradictions, if any, are not material contradictions which can affect the case of the prosecution as a whole. PW 6 was an injured eyewitness and therefore his presence ought not to have been doubted and being an injured eyewitness, as per the settled proposition of law laid down by this Court in catena of decisions, his deposition has a greater reliability and credibility.*"

X. Ballistic Report

44 2022 SCC OnLine SC 268.

166. The last submission made on behalf of the Appellants is in two parts. Firstly, it is submitted that the ballistic report cannot be relied on as it is not authenticated and contrary to the requirements of Section 293 Cr.P.C under which the report is to be made only by the Director/ Deputy Director/ Assistant Director and not by a Scientific Officer. Secondly, it is argued that the prosecution only sent 8x60 bore rifle for the ballistic report but has failed to send the 0.315 bore rifle, which is said to have been recovered from Sahab Singh.

167. The second argument must straightaway be rejected in view of our finding that 8x60 bore rifle and 0.315 bore rifle are one and the same. On the first point, the requirement under Section 293 is in fact complied with as the report should be treated as under the hand of the Government Scientific Expert, being the "*Director [, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory*" as provided under Section 293(4)(e).

168. The Trial Court yet again took a super technical view of the matter and rejected the ballistic report, in spite of the fact that the report had come from the office of the Assistant Director bearing a seal. We may note the reasoning of the Trial Court here itself.

> *"….In reply to this the learned counsel for the prosecution has drawn my attention towards presence of the seal and signature of the Assistant Director in the end of the report. In this seal is put. On this seal it has been*

> *printed that "forwarded for further necessary ·action" and below that after leaving some space, by this seal Assistant Director has been imprinted and signatures are put thereupon. It is clear that this report is not a report selfsigned by an Assistant Director but this report is of some Scientific Officer, which has been merely forwarded by the Assistant Director. This report does not fulfil the objectives and conditions of Section 23 Cr.P.C…"*

169. After having noted that the report has emanated from the office of the Assistant Director and also having noted *the "presence of seal and signature of the Assistant director at the end of the report",* the Trial Court could not have rejected it. It was, therefore compelling for the High Court to have reversed the finding of the Trial Court. On this count, the High Court held as under:

> *"…Further he has also tried to discard the report of F.S.L. on the ground that Section 293 Cr.P.C. provides for an expert's report to be admissible only when it is signatured by the Director/Deputy Director/ Assistant Director of the said lab and not by any Scientific Officer. We do not subscribe to his view because it has come on record that the same was forwarded by the one of the Director/Deputy Director/Assistant Director of the said lab under the seal, therefore, it cannot be discarded and the same would be treated to be admissible and in this report, it is clearly found that E.C.-12 is found to have been fired by 8 x 60 bore rifle which could also addressed to be .315 bore rifle…."*

170. The decision of this Court in *State of Himachal Pradesh* v. *Mast Ram*[45] is a complete answer to this submission. In an identical situation, this Court held that there is no illegality in the way the prosecution has obtained the

45 (2004) 8 SCC 660.

ballistic report under Section 293. The relevant portion of the decision is as under:

> "***6.*** *Secondly, the ground on which the High Court has thrown out the prosecution story is the report of the ballistic expert. The report of the ballistic expert (Ext. P-X) was signed by one Junior Scientific Officer. According to the High Court, a Junior Scientific Officer (Ballistic) is not the officer enumerated under sub-section (4) of Section 293 of the Code of Criminal Procedure and, therefore, in the absence of his examination such report cannot be read in evidence. This reason of the High Court, in our view, is also fallacious. Firstly, the forensic science laboratory report (Ext. P-X) has been submitted under the signatures of a Junior Scientific Officer (Ballistic) of the Central Forensic Science Laboratory, Chandigarh. There is no dispute that the report was submitted under the hand of a government scientific expert. Section 293(1) of the Code of Criminal Procedure enjoins that any document purporting to be a report under the hand of a government scientific expert under the section, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Code, may be used as evidence in any inquiry, trial or other proceeding under the Code. The High Court has completely overlooked the provision of sub-section (1) of Section 293 and arrived at a fallacious conclusion that a Junior Scientific Officer is not an officer enumerated under sub-section (4) of Section 293. What sub-section (4) of Section 293 envisages is that the court is to accept the documents issued by any of the six officers enumerated therein as valid evidence without examining the author of the documents.*
>
> *xxx*
>
> ***13.*** *In our view, the consistent ocular testimony of PWs 1, 3 and 4 corroborated by the opinion of PW 2 Dr. Sanjay Kumar Mahajan and the ballistic expert report clearly established the prosecution case beyond all reasonable doubts and the High Court fell into grave error of law and facts, resulting in grave miscarriage of justice."*

171. In view of the fact that the ballistic report has come from the office of the Assistant Director bearing his seal and having considered the same in the context of Section 293(4) Cr.P.C., as explained by this Court in *State of Himachal Pradesh* v. *Mast Ram*[46] we are opinion that the Trial Court committed a serious error in rejecting the ballistic report and it was necessary and compelling for the High Court to reverse the finding of the Trial Court on this count also.

Special Leave Petition and Writ Petition filed by the Informant (PW-1):

172. PW-1 filed a Special Leave Petition against the judgment of the High Court seeking enhancement of the sentence awarded to the Appellants from life sentence to that of death. We quite appreciate the grievances and anxiety of the informant whose brothers were murdered in front of his eyes. He also saw his nephew (his brother's son) being murdered at the same place. PW-1 also lost two of his close friends and family associates. While we symphatise with PW-1, for the deprivation, we are not inclined to entertain the Special Leave Petition for enhancement of the sentence to death as this is a faction fight and certainly not a rarest of the rare case qualifying imposition of death sentence.

173. PW-1 also filed Writ Petition (Crl.) No. 57/2022 under Article 32 of the Constitution for a direction to transfer accused no. 5, Ashok Kumar Chandel to a jail outside Uttar Pradesh for serving out his sentence in view of his undue

46 *Ibid.*

influence in the State of Uttar Pradesh. The Writ Petition was filed when the criminal appeal of Ashok Kumar Chandel (A5) was pending adjudication before this Court. However, in view of the present judgment dismissing the criminal appeal and confirming the conviction and sentence of Ashok Kumar Chandel (A5) we are of the view that no further order needs to be passed in this writ petition. The Writ Petition is therefore dismissed.

Conclusions:

174. As this is an appeal against the decision of the High Court reversing an order of acquittal. We have examined each and every point raised by the Appellants. We have also noted the reasoning adopted by the Trial Court on each issue and contrasted it with the decision of the High Court to see if the reversal is based on, what this Court mandated as, very *substantial* and *compelling* reasons or *good* and *sufficient* grounds causing *grave miscarriage of justice*. Having examined the matter in detail, we are of the opinion that:

I. The High Court was justified in exercising its appellate jurisdiction in reversing the order of acquittal as there were certain glaring mistakes, and distorted conclusions in the decision of the Trial Court. The High Court was duty-bound to reverse the decision as there existed very substantial and compelling reasons to do so, failing which it would have caused a grave miscarriage of justice.

II. Even though the prosecution has placed material to establish the existence of a motive on the part of the accused party to murder five members of the Shukla family and associates, the motive part is treated

secondary in view of the fact that this is a case of direct evidence of injured eye-witnesses.

III. We have found that the *place of the incident* is not disputed. In fact, the Trial Court itself returned findings about the first as well as the second event of the incident. These findings were affirmed by the High Court. Therefore, the only question related to the persons involved and the manner of commission of the offence.

IV. Having examined the contentions relating to **(a)** discrepancies in the number of dead bodies brought to the hospital **(b)** improbability of the time taken to prepare the *tehreer* **(c)** alleged omissions in the FIR **(d)** and the discharge timing mentioned in the Bed Head Ticket, casting doubt on the time of lodging the FIR, we find that the prosecution has explained all the discrepancies beyond a reasonable doubt. We are convinced that the conclusions of the Trial Court were based on surmises and conjectures, and therefore, the High Court is justified in reversing the judgment of the Trial Court.

V. Having considered the four submissions in support of the contention that PW-1 and PW-2 are not the eyewitnesses to the incident, being **(a)** discrepancy on the bullets marks on the jonga, **(b)** bullet injuries on the deceased and eyewitnesses on the basis of PW-1 statement, **(c)** timing of the X-ray and Bed Head Ticket, and **(d)** evidence relating to the failure of electricity at the time of the incident, we have found that these submissions are contrary to evidence on record. The prosecution has

proved the presence of PW-1 at the place of occurrence and of him being an injured eye-witness to the incident. We conclude that the inferences drawn by the Trial Court were based on a misreading of the evidence, and therefore, the High Court was obliged to reverse the finding to prevent a grave miscarriage of justice.

VI. Having examined the alternative story of the defence based on the *fax*, said to have been sent from the office of the SP and introduced through the defence witness DW-3, we are of the opinion that the facts mentioned in the *fax* are not supported by any evidence. On the contrary, the facts narrated in the FIR are fully corroborated by much of the documentary evidence and are fully in consonance with the testimony of the prosecution witnesses. As there is no evidence to corroborate the events mentioned in the *fax* and the evidence of DW-3 does not inspire confidence, to say the least. The conclusion of the Trial Court that the prosecution could not prove the case is totally erroneous. Such a finding is a *glaring mistake* as held by this Court in *Chandrappa and Ors.* v. *State of Karnataka*[47] obligating the High Court to interfere with an order of acquittal.

VII. The legal submission that the prosecution has failed to prove that there was an unlawful assembly based on a common object is examined by us independent of the explanation and conclusions drawn by the High Court. We are of the opinion that the High Court has correctly

47 *Supra no.* 24.

appreciated the principle and rejected the submission that the prosecution has failed to prove a common object and the unlawful assembly. The decisions of this Court in *Amzad Ali* v. *State of Assam*[48], *Bhargavan* v. *State of Kerela*[49] as well as *Bhupendra Singh* v. *State of U.P.*[50] fully support the view taken by the High Court. The decision of the High Court on this issue is unexceptionable on fact and law.

VIII. We have also found that the conclusion of the Trial Court about the recovery of the weapon is based on a perverse finding as it misunderstood the 8x60-bore rifle to be distinct from a 0.315 bore rifle. We have perused and extracted the technical material to prove beyond doubt that there is no difference at all. The distinction is only in the measurement system, one being British and the other being the Continental system. In view of such a perverse finding, the High Court had *very substantial and compelling reasons* to reverse the findings of the Trial Court.

IX. We have also found that the arrests of Naseem (A6), Bhan Singh (A10), Shyam Singh (A7) and Sahab Singh (A8) were concurrently and consistently spoken by all the witnesses, PW-10, PW-11 and PW-12. The conclusion drawn by the Trial Court that the arrest and recovery were doubtful were glaring mistakes. The High Court was, therefore, completely justified in reversing the decision of the Trial Court.

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48 *Supra no*. 38.
49 *Supra no.* 39.
50 *Supra no*. 40.

X. The rejection of the FSL (ballistic) report is another grave mistake of the Trial Court. The conclusion of the Trial Court that the ballistic report is inadmissible as it is not in consonance with the requirement of Section 293 Cr.P.C. is entirely wrong. We have explained this in detail. In an identical situation this Court in *State of Himachal Pradesh* v. *Mast Ram*[51] has explained how the ballistic report is in complete compliance of the statutory provision. The High Court had to necessarily step in to prevent a grave miscarriage of justice.

175. For the reasons stated above, we dismiss Criminal Appeal Nos. 946-947/2019 filed by Ashok Kumar Chandel, Criminal Appeal Nos. 1030-1031/2019 filed by Ashutosh @ Dabbu, Criminal Appeal Nos. 1269-1270/2019 filed by Pradeep Singh and Uttam Singh, Criminal Appeal Nos. 1804-1805/2019 filed by Bhan Singh, Criminal Appeal Nos. 1980-1981/2019 filed by Sahab Singh, Criminal Appeal Nos. 1279-1280/2019 filed by Naseem, and affirm the judgment of the High Court of Judicature Allahabad in Government Appeal No. 5123/2002 dated 19.04.2019. We are informed that Appellant Raghuvir Singh died on 15.08.2022 pending disposal of these appeals, his Criminal Appeal No. 1046-1047/2019 stands abated. The SLP (Crl.) No. 10742/2019, filed by Rajiv Shukla, the informant (PW-1) for enhancement of the sentence is dismissed.

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51 *Supra no.* 45.

176. Writ Petition (Crl.) No. 57/2022, filed by the informant (PW-1), is dismissed.

177. There shall be no order as to costs.

…….CJI.
[UDAY UMESH LALIT]

…….J.
[S. RAVINDRA BHAT]

…….J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
NOVEMBER 04, 2022