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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 658 OF 2008

State of Haryana ...Appellant
Versus
Shakuntla & Ors. ...Respondents

WITH

CRIMINAL APPEAL NO. 1005 OF 2008
AND
CRIMINAL APPEAL NO. 1707 OF 2008

JUDGMENT

Swatanter Kumar, J.

1. We may notice the case of the prosecution in brief at the very outset of this judgment. On 3rd July, 1994, Manohar Lal (deceased) who had retired from service as Subedar in the Indian Army, had taken his wife, Smt. Sushila (deceased) to Delhi for her treatment as she was complaining of pain in the chest. Naresh Kumar, PW-4 is

the eldest son of Manohar Lal. All were residents of Village Nandrampurbas, Haryana.

2. In the evening, when PW-4 was putting earth on a ditch in front of his house, accused Matadin and Rajender came there and abused and beat him. However, PW-4 did not lodge any police report in this regard. On 5 th July, 1994, Manohar Lal and his wife Sushila returned from Delhi at about 9 AM. At that time PW-4, his sister Rajesh, PW-5 and their brother Suresh were sitting at the gate of their house. When Manohar Lal and Sushila were enquiring about the incident that had taken place on 3rd July, 1994, all the nine accused, namely, Matadin, Rajender, Krishan, Bhim Singh, Shakuntla, Premwati, Kailash, Sarjeeta and Laxmi came there armed with lathis and other deadly

weapons. Laxmi opened the assault by giving an iron rod blow which hit Sushila at her leg. Thereafter, Matadin gave a Jaily blow on the head of Manohar Lal but Manohar Lal took it at his hand. To save themselves, Manohar Lal and Sushila started running towards the house of Guwarias but the accused chased them. Then Krishan gave a Jaily blow which hit Manohar Lal at his back as a result of which

Manohar Lal fell down. Bhim Singh gave a Kasola blow at his head and then they all started beating Manohar Lal. Thereafter, all the accused opened attack on Sushila and beat her mercilessly. Ultimately, considering both of them dead, all the accused persons ran away towards village Silarpur. When the children of Manohar Lal went near their parents, they found that Manohar Lal had died on the spot, but Sushila was still alive and unconscious. Krishan, son of Richpal, took Sushila to the Civil Hospital, Rewari in a Maruti Van, but she was declared brought dead by the doctors there.

3. PW-4 who had left for the Police Station, Dharuhera, leaving behind PW-5 and his younger brother near the body of Manohar Lal. On the way near village Alawarpur, he met Subey Singh, Sub-Inspector who recorded the statement of PW-4 vide Ext. PH. After making endorsement to the Police Station, an FIR vide Exh. PH/1, was registered in the Police Station, Dharuhera. The process of criminal law was set into motion against the accused persons on the basis of the statement, Ext. PH.

4. It has come on record that the deceased Manohar Lal had, after retirement, been working in the Indian Army in the Defence Supply Corps (DSC) at Defence Colony, Delhi. As afore-noted, he had taken his wife for medical treatment to Delhi. In the evening, the accused Matadin

and Rajender had beaten up PW-4. Moreover, in the year 1986 also, Rajender and Matadin had beaten up Manohar Lal and his wife Sushila, for which they were also facing criminal trial.

5. In furtherance to registration of the above-mentioned FIR, on 10th July, 1994, all the accused were produced before the Investigating Officer and were arrested. Upon interrogation, they made disclosure statements on the basis of which weapons of offence were recovered. Then, the investigation was handed over to Udai Singh, SHO (PW-17), who after completion of investigation submitted the report to the court of competent jurisdiction under Section 173 of the Code of Criminal Procedure, 1973 (for short 'the CrPC'). Having been committed to the Court of Sessions, the accused were charged with the offences punishable under Sections 148, 302 read with Section 149, of the

Indian Penal Code, 1860 (for short "the IPC") and Section 325 read with Section 149 IPC, to which they pleaded not guilty and claimed trial. They were tried in accordance with law and, finally, vide judgment of the Trial Court dated 22nd August, 1997, all the nine accused were held guilty for commission of the offence punishable under Sections 148 as well as the offence punishable under Section 325/302 both read with Section 149 IPC. The accused were awarded the following sentences, which were to run concurrently:

> "2. After going through the statements of the accused persons and also the submissions made by their counsel and also the submissions made by the learned PP for the State, I sentence all the accused persons to undergo rigorous imprisonment for a period of one year also to pay a fine of Rs. 500/- each and in default of payment of fine the accused shall undergo RI for a period of three months, for the commission of offence punishable under section 148 Indian Penal Code. I again sentence all the

accused persons to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs. 500/- each and in default of payment of fine, the accused shall undergo further rigorous imprisonment for a period of three months, for the commission of offence punishable under section 325 read with

section 149 Indian Penal Code. I also sentence all the accused persons to "imprisonment for life" and also to pay a fine of Rs. 10,000/- each in default of payment of fine, the accused shall undergo rigorous imprisonment for a period of 2 years, for the commission of offence punishable under section 302 read with section 149 Indian Penal Code. All the sentences to run concurrently. Case property stands confiscated to the State and be disposed of after the period of limitation. File be consigned to records."

6. Aggrieved from the judgment of the Trial Court, the accused preferred an appeal before the High Court. The High Court, vide its judgment dated 26th July, 2007, upheld the conviction and sentence of accused Nos. 1 to 4 and 9 while acquitting the accused Nos. 5, 6 and 8 i.e. Shakuntla, Premwati and Sarjeeta. It also upheld the conviction and order of sentence in relation to the accused no. 7 Kailash.

7. The present three appeals have been filed against the said judgment of the High Court.

8. Criminal Appeal No. 658 of 2008 has been preferred by the State of Haryana against the order of acquittal of three accused namely Shakuntla, Premwati and Sarjeeta,

Criminal Appeal No. 1005 of 2008 has been preferred by five convicted accused namely, Matadin, Rajender, Krishan, Bhim Singh and Laxmi and Criminal Appeal No. 1707 of 2008 has been preferred by the accused, Kailash against dismissal of their respective appeals by the High Court. As all the three appeals are from one and the same judgment, therefore, these appeals shall be disposed of by a

common judgment.

9. The contentions raised on behalf of the accused/ appellant before this Court are :

a) Taking the facts and circumstances of the case and the evidence cumulatively, an offence under Part I or Part II of Section 304, IPC is made out and not an offence punishable under Section 302 of the IPC.

b) There was neither common intention amongst the members of the assembly to cause death of the deceased persons nor any common object.

c) The witnesses examined by the prosecution are witnesses related to the deceased and, as such, the

Court could not have relied upon the testimony of such interested witnesses in convicting the accused.

d) In fact, there was no assembly, much less an unlawful assembly, so as to attract the provisions of Section 149 IPC and the accused persons have been incorrectly charged and convicted for the said offences.

e) The Courts have erred in law in not giving the same weightage and significance to the defence witnesses as has been given to the prosecution witnesses. Relying upon the defence witnesses, the Court ought to have accepted the plea of alibi put forward by the accused. Upon the correct application of principles of appreciation of evidence, the accused should have been given the benefit of doubt keeping in view the fact that the other three accused had been acquitted by the High Court.

f) In Criminal Appeal No. 1707 of 2008, accused No. 7, Kailash was neither named in the FIR nor was alleged to have caused any injury. There existed no common

object and the material witnesses had not been examined. Being young boy of 23 years, he had been falsely involved in the crime and, thus, was entitled to acquittal.

10. While refuting these contentions, the State has made the following contentions in the appeal preferred by it against the acquittal of three accused :

a) There was no provocation, but still, the accused persons together assaulted the deceased persons and continued to assault them till they were certain that the victims were dead.

b) In fact, Manohar Lal had died on the spot while Sushila died on the way to the hospital. The number of injuries found upon the bodies of the deceased i.e. 30 and 33, respectively, clearly show that the intention was to kill and not to merely hurt or cause injury to the deceased persons.

c) From the evidence of PW-4 and PW-5, it is clear that the accused persons constituted an unlawful

assembly and they had the common intention and object of killing the deceased.

11. On a proper appreciation of the evidence placed on record, it is clear that in the circumstances, one could hardly expect any other evidence to be available. It would only be the family members who would be present at the place of occurrence of the crime and only such interested

persons could depose with regard to commission of the crime. The statements of these witnesses are trustworthy and offer the graphic eye account of the exact events, during the course of occurrence. Clearly, there was common object among the members of the unlawful assembly to somehow do away with Manohar Lal and his wife Sushila.

12. It is a settled principle of the law of evidence that it is not the quantity, but the quality of evidence that has to be taken into consideration by the Court while deciding such matters. As already noticed, even in the year 1986, Rajender and Matadin had beaten Manohar Lal and his wife, for which they were also facing criminal trial. Again,

they had abused and beaten Naresh, PW-4 on 3rd July, 1994, when he was putting earth in the street in front of his house. Thereafter, on 5 th July, 1994, this unfortunate incident had taken place. When on 5 th July, 1994, Manohar Lal and his wife returned from Delhi, even before they entered their house and when they were discussing the incident that took place on 3rd July, 1994 with their teenage children, the accused persons, armed with weapons, came there and started assaulting Manohar Lal and his wife. This clearly shows that Matadin and the other accused had been looking for an opportunity to fight with Manohar Lal and his family members, on one pretext or the other. Matadin exhorted the others to ‘finish them’, upon which the accused persons started assaulting the victims and continued till both Manohar Lal and his wife Sushila died. The circumstance deserving the attention of this Court is that, even when Manohar Lal fell on the ground as a result of a blow on his spine, still none of the accused person showed any mercy, they instead continued with the assault. The statements of Dr. G.S. Yadav, PW-1

and Dr. Kamal Mehra, PW2, and the post mortem reports of

the deceased, Ext. PA and Ext. PC clearly demonstrate the intentional brutality and intent of the accused to kill the victims. They caused as many as 30 injuries on the person of Manohar Lal and 33 injuries on the person of Sushila, resulting in the death of both of them.

13. Both the deceased had tried to run away, but were chased by the accused. While Manohar Lal exhorted the others, all accused persons, particularly accused No. 7, Kailash, effectively participated in inflicting injuries on the bodies of the deceased. Thus, a common intention came into existence at the spur of the moment, even if the same was not pre-existing. The existence of common object and intent is not only reflected from the circumstantial evidence, but is also clearly demonstrated in the statement of PW-4 and PW-5, respectively. The offenders, if have no common intention or object to kill the victim, they would normally stop assaulting the victim and leave him in the injured condition when he falls down on the ground. On the contrary, in the case in hand, all the accused, except those acquitted by the High Court, had participated with a common mind to cause fatal injuries upon both Manohar

Lal and Sushila. PW-4, in his statement, has clearly and definitely explained the occurrence, by attributing specific role to each one of the accused. According to him, Rajender inflicted Jaily blow on the legs of Manohar Lal. Matadin gave Jaily blow on the head of Manohar Lal, which the deceased deflected with his hands. Krishan gave Jaily blow on the back of Manohar Lal, whereafter the victim fell on the ground. Thereafter, Bhim inflicted Kasola blow on the head of the deceased Manohar Lal and finally, all the other accused started mercilessly inflicting blows on the

person of the deceased Manohar Lal.

14. The statement of PW-4 also shows that the accused persons had also inflicted injuries on the body of Sushila, with an intention to kill her. The version put forward by this witness is fully supported by that of PW-5 and from other documentary evidence placed on record. The medical evidence completely corroborates the story advanced by this witness for the prosecution. Once, the statement of a witness is found trustworthy and is duly corroborated by other evidence, there is no reason for the Court to reject the statement of such witness, merely on the ground that it

was a statement of a related or interested witness. The learned counsel appearing for the accused relied upon the judgments of this Court in the case of Waman & Ors. v. State of Maharashtra [(2011) 7 SCC 295], Jalpat Rai & Ors. v. State of Haryana [JT 2011 8 SC 55] and State of Haryana v. Ram Singh [(2002) 2 SCC 426], to contend that the statement of a related or interested witnesses should not be relied upon and made the sole basis of conviction by the Court.

15. Firstly, none of these judgments state this principle as an absolute proposition of law. Each judgment deals with its own facts. In the case of Waman (supra), the Court clearly held that if the evidence of the related witnesses is found to be consistent and true, the same cannot be discarded. Similarly, in the case of Jalpat Rai (supra), the Court noticed that the presence of the witnesses at the time of incident would not guarantee their truthfulness. The question to be examined by the Court is whether their testimony is trustworthy and reliable insofar as complicity of the appellants in the crime is concerned, or

whether they have tried to implicate the innocent along

with the guilty.

16. In the case of Ram Singh's (supra), the circumstances were totally different. In that case, the interested and related witnesses were not only examined as witnesses to the incident but they were also witnesses to the arrests and in view of these facts, the Court felt that there existed a doubt about the trustworthiness of these witnesses, which must go to the benefit of the accused.

17. All these cases, in fact, would have no application to the present case. In the present case, it is more than clear that PW-4 and PW-5 were both present at the time of the incident. The prior animosity and clashes between the two families has come on record. In the cross-examination, no material was brought out to the contrary. On the other hand, there seems to be no challenge to vital facts. The facts of the cited cases being different and there being hardly any challenge to the vital aspects of the present case, ratio decidendi of those judgments would hardly further the case of the accused.

18. A Bench of this Court in the case of Mano Dutt & Anr. v. State of U.P. [(2012) 4 SCC 79], (to which one of us, Hon. Swatanter Kumar, J. was a member), while dealing with the issue of credibility of testimony by interested witnesses, held as under :

> "19. Another contention raised on behalf of the accused/appellants is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving

family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person

known to the affected party. There can be cases where it would be but inevitable to examine such witnesses, because, as the events occurred, they were the natural or the only eye witness available to give the complete version of the incident. In this regard, we may refer to the judgments of this Court, in the case of Namdeo v. State of Maharashtra, [(2007) 14 SCC 150]. This Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with the law. This Court, in the said judgment, held as under:

"28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness,

therefore, has no force and must be negatived.

29. It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the

deceased. He was, therefore, "highly interested" witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as "interested". The term "interested" postulates that the witness has some direct or indirect "interest" in having the accused somehow or the other convicted due to animus or for some other oblique motive."

20. It will be useful to make a reference of another judgment of this Court, in the case of Satbir Singh & Ors. v. State of Uttar Pradesh, [(2009) 13 SCC 790], where this Court held as under:

"26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon. Furthermore, as

noticed hereinbefore, at least Dhum Singh (PW 7) is an independent witness. He had no animus against the accused. False implication of the accused at his hand had not been suggested, far less established."

21. Again in a very recent judgment in the case of Balraje @ Trimbak v. State of Maharashtra [(2010) 6 SCC 673], this Court stated that when the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same."

19. When we examine the facts of the present case in

light of the above principles, it is clear that the presence of PW-4 and PW-5 at the place of occurrence was natural and their statements, are trustworthy, corroborated by other evidence and do not suffer from the vice of suspicion or uncertainty. The Court has to give credence to their

statement as they have lost their close relations and have no reason to falsely implicate the accused persons, who are also their relations. Thus, we find no merit in this contention of the learned counsel for the accused.

20. Again, while relying on the judgment of Waman (supra) the learned counsel has contended that the accused persons were not members of unlawful assembly and they had neither knowledge nor intention to commit any crime in prosecution of a common object.

> "40. Even otherwise, A-12 was also charged under Section 149 IPC as a member of unlawful assembly with the requisite common object and knowledge. Inasmuch as the prosecution evidence insofar as women accused is not cogent, their acquittal cannot be applied to A-12 who was in the company of A-1 to A-6. As mentioned above, apart from conviction under Section 302 Dilip, A-12 was convicted under Section 149. Section 149 creates a specific offence and deals with punishment of the offence. The only thing is that whenever the court convicts any person or persons of any offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence disclosed must show not only the nature of the common object but also that the object was unlawful. In order to attract Section 149 it must be shown that the
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> incriminating act was done to accomplish the common object of unlawful assembly. It must be within the knowledge of the other members as one likely to be committed in prosecution of common object. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of a common object, they would be liable for the same under Section 149."

21. To bring out this distinction somewhat more clearly, the learned counsel has relied upon the meaning given to the expression "assembly" and "assemble" in Black's Law Dictionary and Law Lexicon which reads as under:-

> Black's Law Dictionary, Sixth Edition:
> "Assembly" - The concourse or meeting together of a considerable number of persons at the same place. Also the persons so gathered.
> "Assembly, unlawful" - The congregating of people which results in antisocial bahavior of the group, i.e. blocking a sidewalk, obstructing traffic, littering streets; but, a law which makes such congregating a crime because people may be annoyed is violative of the right of free assembly.
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> Advanced Law Lexicon, 3rdEdition :
> "Assemble" - To bring together; to collect in one place or as one body; to convene; to congregate.

> "Assembly" - A company of persons assembled together in one place usually for a common purpose - generally, for deliberation, legislation, worship of social entertainment."

22. Besides relying on para 40 of the judgment of this Court in Waman (supra), reliance has also been placed on Sarman & Ors. v. State of M.P. [1993 Supp. (2) SCC 356] to argue that as all the appellants were armed with lathis, it was not clear from the statements of witnesses as to which injury had been inflicted by which accused. All the members of the unlawful assembly cannot be charged with offences under Sections 302 read with 149, IPC.

23. At the outset, we may notice that in the case of Sarman (supra), the Court had clearly noticed that on facts, the statement of PW-12 could not be accepted as it was not reliable. Secondly, it was not stated as to which of the accused had caused injuries to the deceased. In that case, only 17 injuries had been inflicted upon the body of the deceased. In contra-distinction thereto, in the present case, 30 and 33 injuries have respectively had been caused

on the bodies of the deceased, but still, PW-4 and PW-5

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have attributed specific role to each individual accused, particularly with regard to the grievous injuries caused by them.

24. In the case of Ramchandran & Ors. v. State of Kerala [(2011) 9 SCC 257], a Bench of this Court dealt, at some length, with the scope and object of Section 149 IPC. It was held that Section 149 IPC essentially has two ingredients, one, that the offence must be committed by any member of unlawful assembly consisting of five or more members and second, such offence must be committed in prosecution of the common object under Section 141 IPC of that assembly or such as the members of that assembly knew was likely to be committed in prosecution of the common object. Clarifying the expression "common object", the Bench further said that it is not necessary that there should be a prior concert in the sense of a meeting of minds of the members of the unlawful assembly. The common object may form on the spur of the moment. It is enough if it is then adopted by all the members and is shared by all of them.

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25. In the case of Waman (supra), the Court also stated that in order to attract Section 149 IPC, it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. It must be within the knowledge of other members that the offence is likely to be committed in prosecution of the common object, and if such requirement is satisfied, then they would be held liable under Section 149 IPC.

26. It is not possible to define the constituents or dimensions of an offence under Section 149 simplicitor with

regard to dictionary meaning of the words ‘unlawful assembly’ or ‘assembly’. An "assembly" is a company of persons assembled together in a place, usually for a common purpose. This Court is concerned with an "unlawful assembly". Wherever five or more persons commit a crime with a common object and intent, then each of them would be liable for commission of such offence, in terms of Sections 141 and 149 IPC. The ingredients which need to be satisfied have already been spelt out unambiguously by us. Reverting back to the present case, it is clear that, as per the case of the

prosecution, there were more than five persons assembled at the incident. All these nine persons were also convicted by the Trial Court and the conviction and sentence of six of them has been affirmed by the High Court. The members of this assembly had acted in furtherance to the common object and the same object was made absolutely clear by the words of accused Matadin, when he exhorted all the others to ‘finish’ the deceased persons.

27. In other words, the intention and object on the part of this group was clear. They had come with the express object of killing Manohar Lal and his family members. It might have been possible for one to say that they had come there not with the intention to commit murder, but only with the object of beating and abusing Manohar Lal and others, but in view of the manner in which Matadin exhorted all the others and the manner in which they acted thereafter, clearly establishes that their intention was not to inflict injuries simplicitor. Manohar Lal, admittedly, had fallen on the ground. However, the accused still continued inflicting heavy blows on him and kept on doing so till he breathed his last. They did not even spare his wife Sushila

and inflicted as many as 33 injuries on her body. Where a

person has the intention to cause injuries simplicitor to another, he/she would certainly not inflict 30/33 injuries on the different parts of the body of the victim, including the spine. The spine is a very delicate and vital part of the human body. It, along with the ribs protects all the vital organs of the body, the heart and lungs, etc. Powerful blows on these parts of the body can, in normal course, result in the death of a person, as has happened in the case before us. The way in which the crime has been committed reflects nothing but sheer brutality. The members of the assembly, therefore, were aware that their acts were going to result in the death of the deceased. Therefore, we find no merit in this contention of the accused also.

28. Then the next argument advanced on behalf of the accused is that accused Kailash has neither been named in the FIR nor has been attributed responsibility for any injury and also, no material witness has been examined to attribute any role to Kailash in the commission of the crime. Thus, he is entitled to acquittal. Kailash is also

related to the deceased as well as to PW-4 and PW-5. PW-4, in his statement, had clearly stated that accused Matadin, Rajender, Krishan and one of their other relations, who was later on identified to be Kailash, had reached there, armed with jailies. Even in the FIR, PW4 had made a similar statement that one other relative of his, whose name he did not know, had also come there. Thus, it was a case where PW-4 had duly identified that person, but did not know the exact name of that person. Further, it is true that the witnesses have not attributed any specific role to Kailash, but their statement is clear that all the accused persons had started inflicting injuries upon the body of the deceased. In other words, being members of the unlawful assembly, Kailash, along with others, had also

inflicted injuries upon the deceased, in furtherance to the common object and thus, would also be liable to be held guilty accordingly. Another important feature is that recovery of Ext. 11 Jaili was made at the behest of accused, Kailash and was taken into possession vide Ext. PUA/1.

29. Thus, it is not a case based on mere statements by the interested witnesses, but is also supported by other

evidence. Further, if we examine this case from another point of view, i.e, if three persons whose plea of alibi has been accepted by the High Court were indeed absent and as per plea of alibi of other accused, namely, Krishan and Rajender along with Kailash, they were also not present there, then it could hardly have been possible for the remaining three persons to inflict 63 injuries on the bodies of the deceased in a short spam. Not that this is a determinative factor, but this is a rational manner of looking at the events, as they appear to have happened in the present case.

30. The prosecution also has examined other witnesses who have deposed unambiguously involving Kailash also in the crime

31. Lastly, the learned counsel appearing for the appellant has contended that the plea of alibi of Rajender, Krishan and Kailash should have been accepted by the High Court. The accused have led their defence and produced defence witnesses to prove their plea of alibi. It is also their contention that the evidence of the defence

witnesses should be appreciated at par with the prosecution witnesses.

32. In this regard, reliance is also placed upon the

judgment of this Court in Munshi Prasad & Ors. v. State of Bihar [(2002) 1 SCC 351].

33. The Trial Court as well as the High Court have disbelieved the plea of alibi of accused Rajender, Krishan and Kailash.

34. In paragraphs 62 to 67 of the judgment, the Trial Court has discussed, at some length, the reasons for disbelieving the pleas of alibi raised by the accused. In fact, the Trial Court noticed the contradictions appearing in the statement of DW-2 and DW-3. It also noticed that either Ext. DB, the certificate, was not correct or DW-3 Khem Chand was deposing falsely before the Court. The Trial Court also examined the possibility that keeping in view the distance between the factory and the place of occurrence, which was nearly 5 kilometers or so, the possibility of the accused going to the factory after the occurrence could not be ruled out. These findings

recorded by the Trial Court have been accepted by the High Court. The High Court, keeping in view the evidence led by the defence witnesses accepted the plea of alibi as far as Shakuntla, Premwati and Sarjeeta are concerned. In respect of the other three accused, we see no reason to interfere with these concurrent findings, as they neither suffer from any perversity in law nor any error in appreciation of evidence. Thus, we also reject the plea of alibi of all these three accused.

35. The learned counsel appearing for the State has not been able to bring to our notice any rationale as to why this appreciation of evidence was improper. In order to disturb the findings of fact arrived at by the High Court, this Court has to have certain compelling reasons.

36. The High Court has acquitted some accused while

accepting the plea of alibi taken by them. Against the judgment of acquittal, onus is on the prosecution to show that the finding recorded by the High Court is perverse and requires correction by this Court, in exercise of its powers under Article 136 of the Constitution of India. This Court

has repeatedly held that an appellate Court must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to such accused under the fundamental principles of criminal jurisprudence, i.e., that every person shall be presumed to be innocent unless proved guilty before the court and secondly, that a lower court, upon due appreciation of all evidence has found in favour of his innocence. Merely because another view is possible, it would be no reason for this Court to interfere with the order of acquittal.

37. In Girja Prasad (Dead) By Lrs. v. State of M.P. [(2007) 7 SCC 625], this Court held as under:-

> "28. Regarding setting aside acquittal by the High Court, the learned Counsel for the appellant relied upon Kunju Muhammed v. State of Kerala (2004) 9 SCC 193, Kashi Ram v. State of M.P. AIR 2001 SC 2902 and Meena v. State of Maharashtra 2000 Cri LJ 2273. In our opinion, the law is well settled. An appeal against acquittal is also an appeal under the Code and an Appellate Court has every power to reappreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is presumption of innocence in favour of

> the accused and that presumption is reinforced by an order of acquittal recorded by the Trial Court. But that is not the end of the matter. It is for the Appellate Court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence."

38. In Chandrappa v. State of Karnataka [(2007) 4 SCC 415], this Court held as under:-

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
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> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient

grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

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

39. In C. Antony v. K.G. Raghavan Nair [(2003) 1 SCC 1], this Court held :-

> "6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. (See Bhim Singh Rup Singh v. State of Maharashtra1 and Dharamdeo Singh v. State of Bihar.)"

40. The State has not been able to make out a case of exception to the above settled principles. It was for the State to show that the High Court has completely fallen in error of law or that judgment in relation to these accused was palpably erroneous, perverse or untenable. None of

these parameters are satisfied in the appeal preferred by the State against the acquittal of three accused.

41. Thus, in these circumstances, we are of the considered view that this is not a case where the offence with which the accused have been charged and punished can be converted to an offence under Section 304 Part I or Part II of the IPC.

42. For the reasons afore-recorded, we are unable to find any error of law or error in appreciation of evidence and therefore, we decline to interfere with the judgment of

the High Court.

43. The appeals filed by the accused, as well as the appeal filed by the State, against the judgment of conviction/acquittal are hereby dismissed.

35

.....,J.
[A.K. Patnaik]

.....,J.
[Swatanter Kumar]

New Delhi;
April 19, 2012

ITEM NO.1B Court No.9 SECTION IIB
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 658 OF 2008

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STATE OF HARYANA Appellant (s)

VERSUS

SHAKUNTLA & ORS. Respondent(s)

WITH CRL. APPEAL NO. 1005 of 2008
CRL. APPEAL NO. 1707 of 2008

Date: 19/04/2012 These Appeals were called on for pronouncement of judgment today.

For appearing parties:

Mr. V. Giri, Sr. Adv.
Mr. A.V. Palli, Adv.
Ms. Rekha Palli, Adv.
Mr. Anupam Raina, Adv.

Mr. Manjit Singh, AAG
Mr. Tarjit Singh, Adv.
Mr. Kamal Mohan Gupta, Adv.

Ms. Naresh Bakshi,Adv.
Mr. C.V. Subba Rao, Adv.
Dr. Kailash Chand, Adv.

UPON hearing counsel the Court made the following

O R D E R

Hon’ble Mr. Justice Swatanter Kumar pronounced the judgment of the Bench

comprising of Hon’ble Mr. Justice A.K. Patnaik and His Lordship.

The appeals filed by the accused, as well as the appeal filed by the State, against the judgment of conviction/acquittal are hereby dismissed in terms of the signed reportable judgment.

(O.P. SHARMA)
Court Master

(M.S. NEGI)
Court Master

(The Signed reportable judgment is placed on the file)