

State of U.P. Vs. Pheru Singh and ors.

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Court : Supreme Court of India

Decided On : Mar-16-1989

Reported in : AIR1989SC1205; 1989Supp(1)SCC288

Judge : B.C. Ray and; S. Ratnavel Pandian, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 193, 201, 218, 341, 342, 384, 388, 420 and 466; [Constitution of India](#) - Article 136

Appellant : State of U.P.

Respondent : Pheru Singh and ors.

Advocate for Def. : Mr. Goyal

Judgement :

S. Ratnavel Pandian, J.

1. These three appeals by grant of special leave under Article 136 of the [Constitution of India](#) arise out of the common judgment rendered by the High Court of Allahabad acquitting all these three appellants of various offences with which they all along with one Dr. R.V.S. Sharma stood charged, tried, convicted and sentenced for various terms of imprisonment. Dr. R.V.S. Verma, who was arrayed as accused No. 1 died during the pendency of the trial and as such the trial against him abated. Therefore, the trial went on as against R.P. Agarwal, Mahfooz

Ali Khan, Pheru Singh and Mohd. Ismail Khan (who were arrayed as accused Nos. 2 to 5).

2. The Trial Court framed as many as ten charges against all the accused persons put up for trial under various provisions of Indian Penal Code on the allegations, the gist of which we would presently mention, they being that all the five accused on or about 1.3.67 in Mainpuri city entered into a criminal conspiracy, by agreeing to hush up the offence of theft or criminal breach of trust in respect of shortage in Government cash to the tune of Rs. 9600/- in the office of the District Medical Officer of Health, Mainpuri and make up the same from the funds of B.D. Bhargava, who was the Head Clerk in the Department under threat of dire consequences, and in furtherance of the said conspiracy on the evening of 1.3.67, Dr. Verma took Bhargava to Kotwali, Mainpuri in a jeep bearing registration No. UPD 9461 driven by Mahfooz Ali and in collusion with Pheru Singh, Mohd. Ismail wrongfully confined Bhargava in the Police Station from 5 p.m. to 10 p.m., committed extortion by putting Bhargava in fear of injury to him and dishonestly induced him to deliver money and towards that end took Bhargava to Agra on the same night by the same jeep and wrongfully restrained him from 11 p.m. on 1.3.67 to 6 p.m. or 7 p.m. on 2.3.67; Dr. Verma, Pheru Singh and Mohd. Ismail alongwith one Constable took Bhargava to his house at Agra at 8.15 a.m. in the same jeep driven by Mahfooz Ali, induced him and his wife to deliver pre-mature fixed deposit receipts worth Rs. 9500/- and got them encashed from the State Bank of India at Agra on the same day for Rs. 9427.58. It is further stated that on 3.3.67, Dr. Verma in furtherance of the criminal conspiracy fabricated false evidence by preparing a report (Exh. Ka 6), the original of which was sent to Kotwali Police Station where it was entered in the general diary on Judgment dated March 16, 1989 in Criminal Appeal Nos, 132-133 & 531 of 1984 3.3.67 and that Agarwal and Mahfooz Ali Khan fabricated false evidence by making incorrect entries in Exh. Ka 11 and Exh. Ka 12 in the log book (Exh. 6) of the concerned jeep and that on the 2nd and 3rd of March 1967, Dr. Verma caused evidence of the commission of offence to disappear or criminal breach of trust with the intention of screening the offender from the legal punishment; and that Dr. Verma got the cash books (Exh. 1 to 3) back-dated 1.3.67 and prepared a report (Exh. Ka 6) knowing it to be incorrect and for this end R.P. Agarwal and Mahfooz Ali made false entries in Exh.

Ka 11 and Exh. Ka 12 in the log book (Exh. 6) and similarly Pheru Singh and Mohmad Ismail made false entries in GD and that Dr. Verma on 3.3.67 forged report (Exh. Ka 6) and got it entered in the despatch register (Ex. 4) by antedating the same as if the entry was made even on 1.3.67 and that Agarwal by making the false entries cheated the Government of Uttar Pradesh to the extent of Rs. 12/- in his TA bill (Exh. Ka 15) and Mahfooz Ali Khan cheated the Government to the extent of Rs. 3.75 through his TA bill (Exh. Ka 17) both of them thereby fraudulently claiming the TA bills.

3. We give the following table with reference to the penal provisions under which all the accused persons stood charged on the above allegations for proper understanding of the case :-

Sr. No.	Accused names	Section (s)
1.	Dr. RVS Verma	120-B I.P.C.
2.	RP Agarwal	
3.	Mahfooz Ali Khan	
4.	Pheru Singh	
5.	Mohd. Ismail Khan	
6.	Dr. RVS Verma	384 read with Mahfooz Ali Khan
7.	Section 120-B IPC	Pheru Singh Mohd. Ismail Khan
8.	-do-	Section 388 read with 120-B IPC
9.	Dr. RVS Verma	Section 342 read with Pheru Singh
10.	Section 120-B IPC	Mohd. Ismail Khan
11.	Dr. RVS Verma	Section 341 read with Mahfooz Ali Khan
12.	Section 120-B IPC	Pheru Singh Mohd. Ismail Khan
13.	Dr. RVS Verma	Section 193 read with RP Agarwal
14.	Section 120-B IPC	Mohd. Ismail Khan
15.	Dr. RVS Verma	Section 201 read with RP Agarwal
16.	Section 120-B IPC	Mahfooz Ali Khan Pheru Singh Mohd. Ismail Khan
17.	-do-	Section 218 read with Section 120-B IPC
18.	-do-	Section 466 read with Section 120-B IPC
19.	-do-	Section 420 read with Section 120-B IPC

4. The Trial Court convicted and sentenced A-2 to A-5 namely RP Agarwal, Mahfooz Ali, Pheru Singh and Mohd. Ismail under respective charges for varying and varied terms of imprisonment as found in the Order of the Judgment which we reproduce below :-

Accused persons RP Agarwal, Mahfooz Ali Khan, Pheru Singh and Mohd. Ismail Khan are convicted under Sections 120-B, 384, 388, 342, 341, 193, 201, 218, 466 and 420 all read with Section 120-B of the Indian Penal Code.

Accused persons Pheru Singh and Mohd. Ismail Khan are hereby sentenced to undergo rigorous imprisonment for two months under Section 120-B; six months under Section 384/120-B two years under Section 388/120-B; four months under Section 342/120-B; one month under Section 341/120-B, one year under Section 193/120-B, one year under Section 201/120-B, two months under Section 218/120-B two months under Section 466/120-B, and one month under Section 420/120-B of the Indian Penal Code.

Accused persons RP Agarwal and Mahfooz Ali Khan are hereby sentenced to undergo rigorous imprisonment for two months under Section 120-B, one month under Section 384/120-B, two months under Section 388/120-B, one month under Section 342/120-B, fine of Rs. 50/- each and in default simple imprisonment for one week under Section 341/120-B, rigorous imprisonment for one year under Section 193/120-B, two months under Section 201/120-B, four months under Section 218/120-B, two months under Section 466/120-B, and six months under Section 420/120-B of the Indian Penal Code.

The sentences of all the accused persons shall run concurrently.

5. On being aggrieved by the above judgment, the convicted accused namely Mohd. Ismail (Accused No. 5), Pheru Singh (Accused No. 4), Mahfooz Ali (Accused No. 3), and RP Agarwal (Accused No. 2) preferred Criminal Appeal Nos. 333/76, 354/76 357/76 and 374/76 respectively questioning the correctness and legality of their convictions. The High Court by a re-appraisal of the evidence adduced by the prosecution concluded that the prosecution has not decisively proved the case and the evidence inclusive of the circumstantial evidence are inconsistent with the presumption of innocence of the accused and as such the appellants/accused are entitled to the benefit of doubt. Consequently for the reasons mentioned in the judgment, the High Court allowed all the appeals by its common judgment by setting aside the convictions and sentences recorded by the trial Court.

6. The State on being dissatisfied, filed Special Leave Petitions in respect of each of the accused. The Special Leave Petition filed by the State in respect of acquittal of RP Agarwal was dismissed by this Court. However, special leave was granted

in respect of Mahfooz Ali Khan, Mohd. Ismail and Pheru Singh and as such by grant of special leave, these three appeals are before us i.e. Criminal Appeal : Nos. 132-133/1984 132-133/1984 and 531/1984 in respect of acquittal of Pheru Singh, Mohd. Ismail and Mahfooz Ali respectively.

7. As these three appeals arise out of a common judgment we are reddening a common judgment in all the three appeals.

8. For the sake of convenience, we would like to refer in this judgment Mahfooz Ali Khan, Pheru Singh and Mohd. Ismail Khan as respondents Nos. 1, 2 and 3 (R-1, R-2 and R-3). The brief facts of this case which led to this prosecution are stated as follows :-

9. During the relevant period of the alleged commission of offence in the year 1967, Dr. RVS Verma was the District Medical Officer of Health in Mainpuri district working in the family planning. At that time Shri BD Bhargava was the Head Clerk of Health Department. Respondent No. 1 was working as driver in the office of the District Health Officer and used to drive the departmental vehicle. RP Agarwal who was arrayed as accused No. 2 before the Trial Court and in respect of whom the special leave petition preferred by the State was dismissed, was the District Family Planning Extension Officer. During that period, respondent No. 2 Pheru Singh and respondent No. 3 Mohd. Ismail Khan were the Inspector and Sub-Inspector respectively of Mainpuri Police Station.

10. On 27.2.1967, Dr. Verma was on leave and so Shri B D Bhargava was incharge of the Departmental cash, which was used to be kept in a safe in the office, the key of which used to be with the Head Clerk namely Shri Bhargava. The duplicate key of the safe used to be under the seal in the Treasury Office. As usual at 8.30 p.m. Shri Bhargava got the safe closed and returned home. On the the next day i.e. on 28.2.67 while Bhargava was starting ready to go the office from his house, he realised that his bunch of keys was not available. He went to the office and made enquiries from his Colleagues about the bunch of keys and searched for the same but it could not be traced. Then he wrote a report addressed to the District Health Officer stating that the keys were missing. After sending the report to Dr. Verma, Shri Bhargava returned home as he became perturbed on account

of the loss of the keys. On the next day i.e. on 1.3.1967, a written report was handed over to Dr. Verma and thereafter with the duplicate key brought from the Treasury the safe was opened and it was found that a sum of Rs. 9600/- was missing from the safe. It is said that Bhargava wrote a report to Dr. Verma in respect of the theft of money and requested him to inform the matter to the Collector or the Police. On the same day at about 5.30 p.m., Dr. Verma took Bhargava to the residence of the Collector and after some discussion Dr. Verma took Bhargava to Mainpuri Police Station where he had some conversation with R-2. Bhargava was kept in the Police Station by R-2 and R-3. Thereafter on the same night, Dr. Verma, R-2 and R-3 brought Bhargava to Agra by the departmental jeep bearing Registration No. UPD 9461 driven by R-1, Mahfooz Ali Khan. They all reached the Police Club at Agra where Bhargava was confined till 8 O'clock in the next morning (2.3.67). Then they all took Bhargava to his house where his wife Smt. Savitri Bhargava (PW-8), daughter Smt. Asha Lata Bhargava (PW-2) and other children were staying. Bhargava was put under threat in various ways and pressurised to make good the missing sum of money. PW-8 was compelled to give fixed deposit certificates to the value of Rs. 9500/- which were issued by the State Bank of India. Bhargava took those certificates to the bank, encashed both the certificates and handed over a sum of Rs. 9500/- to Dr. Verma. Then they all came to the house of Bhargava from where they including Bhargava left by jeep to Mainpuri. Dr. Verma made some corrections in the cash book etc. On 3.3.67 when the pay was distributed to the employees of the department, a sum of Rs. 100/- was cut from the pay of Bhargava. This Sum of Rs. 100/- and the sum of Rs. 9500/- obtained from Bhargava at Agra were used to make good the loss of Rs. 9600/- from the safe. The report of Shri Bhargava dated 1.3.67 with regard to the missing of money was destroyed. Only the second report mentioning the fact of missing of the bunch of keys was sent to the Police Station. Bhargava went on leave. The said jeep driven by R-1 and used by R-2 and R-3 for going to Agra from Mainpuri and coming back was shown to have been used by RP Agarwal (Accused No. 2-acquitted by the High Court) for his Government tours and by this way false documents were prepared by RP Agarwal. It is said that Bhargava was assured by Dr. Verma, R-2 and R-3 that the amount paid by him would be returned after the missing money had been traced.

11. On 4.3.1967 Bhargava was in bad condition of health, and so he went to Agra on 5.3.67. However, he came back to Mainpuri alongwith his wife on 8.3.67 and met Dr. Verma, Collector and Superintendent of Police in this regard. He also contacted R-2 and R-3. Dr. Verma, R-2 and R-3 kept giving false assurances to Bhargava. Sensing that the money would not be returned, Bhrgava along with his wife went to Lucknow and gave a petition to the Director, Medical Health on 10.3.1967 narrating the entire facts. The Health Department got a departmental inspection done regarding this by a Senior Accounts Officer, who submitted his report alongwith the statement recorded by him from the concerned persons. On 30.3.1967, Bhargava sent a petition through his wife by registered post to higher authorities. Bhargava expired on the night of 30/31.3.1967.

12. By the order of the higher authorities, the matter was entrusted to CID. PW-35, CID Inspector who investigated the matter filed the charge-sheet against all the five accused.

13. Before advertng to the arguments advanced by the learned counsel, Mr. Prithvi Raj, we would first of all like to mention certain salient features and the scope of appellate power of this Court vested under Article 136 of the [Constitution of India](#) and its interference in the order of acquittal passed by the High Court.

14. The occurrence in the present case is said to have been committed on the 1st March of 1967 i.e. to say about 22 years before. The first accused Dr. Verma who is said to have played major role died during the pendency of the trial and as such the charges as against him abated. SLP filed against the acquittal of A-2 (RP Agarwal) has been dismissed by this Court. Therefore, the accused RP Agarwal is not before us in these batch of appeals. Bhargava who was the main witness and from whom the amount was extorted died on the midnight of 31.3.67. The charges in this case were framed by the learned Additional District Magistrate (Judl.), Mainpuri on 4.7.73 on which date the case was committed to the Court of Session. As these offences were committed earlier to the introduction of new Code of Procedure namely Central Act 2 of 1974 the case was tried under the old 'Code'. However, the trial commenced only in October 1974. Thus there was a gap of 7 years from the date of occurrence of the alleged offences and the date of

commencement of the trial.

15. Admittedly, there was no test identification parade for PW-2 Smt. Asha Lata, D/o BD Bhargava and PW-3 Savitri Bhargava wife of BD Bhargava to identify the accused who are said to have come to her house on 2.3.67 and got the two fixed deposit certificates.

16. Now coming to the principle of law with regard to the powers of the Supreme Court to interfere with the order of acquittal under Article 136 of the [Constitution of India](#), there are several authoritative pronouncements of which we shall refer a few.

17. The Court in Balak Ram v. State of U.P. in : 1974 CriLJ1486 observed thus :

The powers of the Supreme Court under Article 136 are wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.

18. In Arunachalam v. P.S.R. Sadhanantham : 1979 CriLJ875 this Court has stated as follows :

Before proceeding to discuss the evidence and the findings of the High Court we remind ourselves of the confines of our jurisdiction to deal with appeals by special leave against judgments of acquittal by the High Court. Article 136 of the [Constitution of India](#) invests the Supreme Court with a plenitude of plenary, appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact making no distinction between judgment of acquittal and conviction, if the High Court, in arriving at those findings, has acted 'perversely or otherwise improperly'.

(See State of Madras v. Vaidyanath Iyer, : 1958 CriLJ232 and Himachal Pradesh Administration v. Om Prakash : 1972 CriLJ606 . In dealing with an appeal against acquittal, the Court will, naturally keep in mind the presumption of innocence in favour of the accused, reinforced as may be, by the judgment of acquittal. But, also the Court will not abjure its duty to prevent violent miscarriage of justice by hesitating to interfere where interference is imperative. Where the acquittal is based on irrelevant ground, or where the High Court allows itself to be deflected by red herrings drawn across the track, or where the evidence accepted by the trial court is rejected by the High Court after a perfunctory consideration, or where the baneful approach of the High Court has resulted in vital and crucial evidence being ignored, or for any such adequate reason, this Court may feel obliged to step in to secure the interests of justice, to appease the judicial conscience, as it were.

19. See also State of U.P. v. Boota Singh, 1979 (1) SCC 731, State of U.P. v. Ashok Kumar, : 1979 CriLJ905 , State of J & K v. Hazara Singh and Anr. 1980 Suppl. SCC 641, Mohan Lal and Anr. v. Ajit Singh and Anr. : 1978 CriLJ1107 , State of U.P. v. Lalla Singh and Ors. : 1978 CriLJ359 , State of U.P. v. Sugher Singh and Ors. : 1978 CriLJ141 .

20. In State of U.P. v. Pussu, : 1983 CriLJ1356 this Court pointed out that although ordinarily Supreme Court should not interfere with judgments of acquittal on a mere reappreciation of evidence...but if there are glaring infirmities in the judgment of the High Court resulting in gross miscarriage of justice, it is the duty of this Court to interfere.

21. In State of U.P. v. Hakim Singh and Ors. : AIR 1980 SC184 , it has been ruled by this Court that Supreme Court would interfere where High Court instead of dealing with the intrinsic merits of the evidence of eye witnesses, had brushed it aside on surmises, conjectures and preponderance of improbabilities which, in fact, did not exist.

22. Bearing the above proposition of law laid down in the above decisions, we shall now deal with these appeals with reference to the findings of the High Court.

23. The High Court for not accepting the case of the prosecution has given the following reasons among others :

1. That the prosecution has not taken any step to hold a test identification parade with reference to R-2 and R-3 to be identified by PWs 2, 8 and 34 despite the fact that R-2 and R-3 had requested SP, CID Lucknow by submitting an application (Exh. Ka 17) stating that the witnesses of Agra did not know them and that a test identification parade if held, would prove that both of them did not go to Agra.

2. That the witnesses who have deposed that Bhargava had gone to Agra by a jeep have not specifically mentioned the registration number of the jeep and the names of the accused persons who accompanied to Agra.

3. No documentary evidence is produced from the Agra Police Club to substantiate the allegation that Bhargava was kept in the Police Club on on the night of 1.3.67 till 8.15 p.m. on 2.3.67.

4. Bhargava himself had not mentioned in the report (Exh. Ka 10), given by him on 10.3.67 to the Director of Medical Health Services either about his illegal confinement or restraint in the Police Club, Agra or the number of the jeep or the name of the driver of the jeep.

5. The number of the jeep said to have been used by Dr. Verma and the Police officials has been made mention of only in the complaint sent by PW-8 on 31.3.67.

6. PW-8 has not spoken in her evidence as how she came to know the number of the jeep and the name of the driver.

7. There was no test identification parade in respect of R-1 also.

8. There is no entry at the check-post at the entry of the bridge in Agra. It shows that the jeep bearing Regn. No. UPD 9461 did not cross the bridge.

24. Mr. Prithvi Raj, learned counsel on behalf of the appellant (State of U.P.) made a scathing attack on the above reasonings of the High Court contending that those reasonings are perverse based on irrelevant grounds and on a perfunctory consideration of the evidence. According to him, the crucial evidence connecting

these respondents with the crime in question have been completely ignored by the High Court. The High Court, according to the learned counsel, has over-looked the important circumstances which have been fully established by the prosecution and that the High Court was not justified in rejecting the cogent reasons given by the Trial Court which has examined the evidence in the proper perspective and recorded the convictions. Finally, it has been submitted that the reasons given by the High Court are erroneous resulting in serious miscarriage of justice and as such this is a fit case for interference by this Court under Article 136 of the [Constitution of India](#).

25. The fact that a sum of Rs. 9600/- was missing from the safe on 28.2.67 and the said amount was not traceable cannot be disputed. For the sake of argument even assuming that Bhargava was taken to his house at Agra and that two five deposit receipts were obtained and encashed, the question would be whether the amount was extorted from Bhargava after being subjected to fear of injury. If Bhargava himself had voluntarily took Dr. Verma accompanied by R-1 to R-3 and handed over the fixed deposit certificates so that he could be relieved of any criminal proceedings that might be initiated against him, then the prosecution cannot be said to have established its case that there was a conspiracy and in pursuance of that the money was extorted from Bhargava by putting him under fear of injury.

26. Now we shall examine the intrinsic and probative value of the evidence, adduced by the prosecution. In the present case, there is no approver. The material witness namely Bhargava unfortunately died much earlier to the commencement of the investigation. Therefore, we have to rely on the circumstances and mainly on the evidence of PWs 2 and 8 as to what had happened at Agra.

27. It is the well-settled principle of law in criminal jurisprudence that no finding can be rendered either on mere surmise or conjecture and every finding should be based on satisfactory and acceptable evidence. Now we shall approach the evidence, available on record, bearing in mind the above principle. Firstly, coming to the failure of the prosecution to produce the record, kept at the check-post of

the bridge at Agra, Mr. Prithvi Raj would urge that the persons who were authorised to make the entry of the vehicle passing through the bridge might have omitted to register the number of the jeep and allowed the jeep to pass through since it was a departmental jeep in which Police officials were travelling and hence no adverse influence could be drawn against the prosecution on that ground. If this submission is to be accepted at this stage, it can be only on a presumption; because in the normal course, the register, kept at the check-post should contain the registration numbers of all the vehicles passing through. Therefore, this Court while exercising its jurisdiction under Article 136 of the [Constitution of India](#) will not be justified in taking a contrary view to that of the High Court on mere presumption. Secondly, the defence counsel has vehemently urged that the evidence of PW-25, the owner of the petrol pump RD Gupta showing that at 7.00 p.m. on 1.3.67 R-1 purchased 35 litres of petrol under the petrol coupon (Exh. Ka 39) which contains the signature of the driver (R-1) marked as Exh. Ka 50 and the petrol vouchers (Exh. Ka 57 to 59) showing sale of petrol to the said vehicle (jeep) which the High Court had conveniently omitted to consider would establish that large quantity of petrol for the particular vehicle was purchased for going to Agra. This circumstantial piece of evidence, according to the learned counsel, would establish the prosecution case of the jeep having been taken to Agra and also preparation of forged documents. This circumstance, in our considered opinion, will not lead to any conclusion in favour of the prosecution. The petrol pump is at Mainpuri. This witness (PW 25) was examined only on 26.12.70 by the CID Police i.e. to say 3 years and 9 months after purchase of the petrol under Exh. Ka 49. PW-25 in the cross examination has stated that since he was in the cabin of the petrol pump, the number of the vehicle was not visible, and he could only guess the time of taking the petrol by any customer as time of sale of petrol is not noted anywhere. On a careful examination of PW-25, we are of the view that no reliance can be placed on PW-25 except for the limited purpose that petrol was purchased on 1.3.67 (Exh. Ka 49) and not beyond that.

28. Therefore, these submissions made by learned counsel for the defence cannot in any way improve the case of the prosecution so as to compel this Court to interfere with the Order of acquittal.

29. So far as the allegation that Bhargava was illegally confined or restrained at the Police Club at Agra, we have absolutely no evidence either oral or documentary as pointed out by the High Court.

30. Regarding the petition sent by Bhargava namely Exh. Ka 10 dated 10.3.67 is concerned, we may straightway say that this document is inadmissible and as such no reliance can be placed on that. The defence counsel also admits this legal position with regard to the inadmissibility of Exh. Ka 10.

31. Now we shall examine the evidence of PWs 2, 8 and 34 who are the important witnesses in this case.

32. PWs 2, 8 and 34 are none other than the daughter, wife and son of Bhargava respectively. PWs 2 and 8 have stated that they were examined after 6 or 7 months of the death of Bhargava. PWs 2 and 8 were the inmates of the house at Agra. These two witnesses have deposed that Bhargava was brought to the house by Dr. Verma accompanied by R-2 and R-3, the police officials and that he was threatened and put under fear of injury to part with the two fixed deposit certificates to the value of Rs. 9500/- and that PW-8 gave the certificates to Dr. Verma on being asked by Bhargava. As pointed out by the Courts below, these two witnesses are highly interested witnesses, but nonetheless, their testimony cannot be rejected only on the ground of interestness, because if such an incident took place inside the house of Bhargava as spoken by PWs 2 and 8 only the inmates of the house (i.e. PWs 2 and 8) would be the proper witnesses. But the question is whether the evidence of these two witnesses inspire confidence and are free from any infirmity. According to the witnesses after Dr. Verma, R-2 and R-3 along with Bhargava returned from the bank after encashing the fixed deposit certificates, they all went to Mainpuri and Bhargava returned to Agra only on 5.3.67. PW-34 has stated in his evidence that he met his father at Mainpuri on the evening of 1.3.67 and came to know from his father as to what had happened. The evidence of PW-8 is that on 8.3.67 she accompanied by her husband, Bhargava met Dr. Verma and requested him to return the amount to which Dr. Verma said that he could not obtain the amount and that he would compensate the amount as soon as the amount was traced. She stated that after meeting some officials on

8.3.67, she and her husband went to Collector's office but the Collector was not available and that on 10.3.67 her husband, Bhargava gave a complaint to the Director which we have already rejected from consideration on the ground of inadmissibility. PW 8 sent a report by registered post to the Chief Minister with copies to Home Minister, Director of Medical and Health Services and the Inspector General of Police only on 31.3.67 which report is marked as Exh. Ka 19. After carefully going through the document (Exh. Ka 19) we are of the view that PW-8 could never be the author of this document because it contains every detail of the occurrence from beginning to end even with reference to date and time etc., the major portion of which was not within the knowledge of the author of this document. To illustrate it may be mentioned that while mentioning the number of the jeep in Exh. Ka 19 it is stated thus :

In the jeep belonging to the Family Welfare Planning (Temporary No 157-MRG-New Number UPD 9461) driven by Driver Mahfooz AH.

33. Similarly even the minute details of the alleged offences which could not have been within knowledge of PW-8 are made mention of in Exh. Ka 19. Therefore, it is evident that this document was prepared by someone else and PW-8 was only a mere signatory to that petition. Further, according to her on 31.3.67 on which date the petition is said to have been sent by PW-8, Bhargava was almost in the death-bed. In fact, Bhargava died on that night itself. Can it be imagined that in such a tragic circumstance, PW 8 could have prepared : this petition containing all the minute details which obviously would not have been within her knowledge and sent the same to the higher officials. The answer would be in negative. In spite of the fact that Bhargava returned to Agra on 5.3.67 no complaint was sent to any official. Under these circumstances, no reliance can be placed on : the evidence of PWs-2 and 8 for holding that Bhargava was put under fear of injury and threatened to part with the fixed deposit certificates.

34 As rightly pointed out by the High Court, the prosecution should have taken steps for holding a test identification parade with reface to respondents 1 to 3 to be identified by witnesses PWs 2 and 8, but it has not been done so notwithstanding that respondents 2 and 3 requested the Investigating Officer to hold a test

identification parade.

35. Neither any one from the police club of Agra was examined nor any document from the said police club has been marked showing atleast the stay of Dr. Verma along with R-1 and R-3 and Bhargava on the night of 2.3.67. In addition to the above arguments advanced on behalf of the defence, Mr. Prithvi Raj took us through the evidence of some more witnesses namely PW-1, PW-5 and PW-7 and the Investigating Officers and pointing out certain portions of their evidence has submitted that the High Court has not considered those portions of the evidence. We have carefully gone through these pieces of evidence and we are unable to agree with the learned counsel that the alleged non-consideration of the evidence of certain pieces of evidence pointed out by him are not very material and they do not compel us to interfere, with the conclusion arrived at by the High Court. At this juncture, we would like to point out that PW-5 was suspected in connection with this case. PW-5 had admitted in his evidence that his house was searched by the Police in connection with this case and he was taken to Kotwali Police Station where he was kept. Then he advanced an argument on the evidence of some of the witnesses relating to the preparation of the report dated 3.3.67 signed by Bhargava and the entries made in certain documents. So far as the preparation of documents with the false entries is concerned, A-2, Agarwal is said to have played a major role. But this Court dismissed the SLP filed against the acquittal of Agarwal. Even if we accepted this part of the evidence it would be only as against Verma and Agarwal but not as against R-1 and R-3. According to prosecution, R-1 had filed a false TA bill. If R-1 had gone to Agra either under the direction of his superior Officers or Bhargava himself voluntarily taking the party, his claim of TA cannot said to be a false claim. Even if R-1 had claimed the TA bill otherwise, there is no clinching evidence, worth mentioning to incriminate him with the offence in question. However, that piece of evidence will not be sufficient in any way to implicate R-1 with the charges levelled against him.

36. Last but not the least, we are constrained to say that there is absolutely no evidence either oral or documentary or circumstantial to conclude that all the accused entered into a criminal conspiracy to commit the alleged offences, charged.

37. The learned counsel, Mr. Goyal appearing for respondents Nos. 2 and 3 made an attack on the prosecution case stating that Bhargava who was in a stringent financial condition having two establishments might have committed the offence of theft and pretended thereafter as if he had nothing to do with it. This argument was resisted by the counsel for the appellant that Bhargava was already having two fixed deposit certificates to the value of Rs. 9500/- even much earlier to this offence and hence he would not have even thought of committing this offence. Furthermore, his conduct of meeting the Collector and other officials would indicate that he was innocent. We see some force in the submissions made by the learned counsel for the appellant. The facts and the attending circumstances lead to an inference that someone else might have committed this foul play taking advantage of the failing health of Bhargava and Bhargava himself might have voluntarily agreed to meet good the loss of money fearing for any criminal prosecution.

38. Mr. A.K. Sanghi, learned counsel appearing on behalf of R-1 has alleged that there is no evidence to prove the conspiracy and the absence of identification parade is detrimental to the prosecution. We have already dealt with the similar argument in the earlier part of this judgment, and so it is unnecessary for us to reiterate the same.

39. For the reasons hereinbefore mentioned, we hold that the impugned order of acquittal passed by the High Court is neither erroneous nor perverse nor improper and unreasonable resulting in miscarriage of justice and this is not a fit case for interference in exercise of the powers of this Court vested under Article 136 of the [Constitution of India](#).

40. In the result, the appeals are dismissed.