

Ram Ratan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-02-1985

Reported in : 1985(2)WLN639

Judge : Kishan Mal Lodha and; Shyam Sunder Byas, JJ.

Appeal No. : D.B. Criminal Appeal Nos. 286 and 376 of 1979

Appellant : Ram Ratan;state of Rajasthan

Respondent : State of Rajasthan;ram Ratan

Disposition : Appeal dismissed

Judgement :

Shyam Sunder Byas, J.

1. Since these two criminal appeals are directed against one and the same judgment of the learned Sessions Judge, Bikaner dated April 25, 1979, they were heard together and are decided by a single judgment. By the judgment aforesaid, the respondents Banwari, Kishna Ram Chadra s/o Moti Ram, Ram Kishan and Ram Lal were acquitted of the offences under Sections 148, 452 and 302/149 IPC while accused Ram Ratan was convicted under Sections 302 and 452 IPC and Section 25(a) of the Arms Act and was sentenced to imprisonment for life and rigorous imprisonment for one year and four months on the respective counts.

Sentences were directed to run concurrently. Accused Ram Ratan has come up in appeal to challenge his convictions and sentences while the State has come against the acquittal of the aforesaid five respondents. It is in this way that we have two appeals before us.

2. Succinctly stated, the prosecution case runs as under. The deceased victim Laluram was the brother of PW 4 Hetram and husband of PW 8 Mst. Rameshwari. They are residents of village Mukam Police Station Nokha District Bikaner. Accused Ram Ratan and the five acquitted accused, who are closely related inter se, are also residents of the same village. There was deep seated enmity between these two factions. Various criminal cases were instituted by them against each other, in which some of them were convicted and sentenced. The deceased Laluram was also one of those persons who were convicted. Four or five months before this occurrence (March 24, 1977), Laluram was released on bail. This further annoyed the members of the accused party.

3. In the night of March 24, 1977, Laluram was sleeping on a cot on the Chowki (Plat-form) situate contiguous to the Kotha of his house. His wife Mst. Rameshwari was sleeping in the Kotha while his brother Hetram was sleeping on the roof of Kotha. At about 11.00 p.m., the accused persons (the appellant Ram Ratan and the acquitted accused) along with one Ram Chandra s/o Hamira Ram (who was also a close relative of the accused persons) went together to the house of Laluram. Accused Ram Ratan had a pistol with him, accused Ram Chandra s/o Hamira Ram had a gun, accused Ram Chandra s/o Motiram and accused Kishna Ram had accused Ram Lal and accused Banwari had Shailas. Accused Ram Kishan had a Lathi. The accused stood around the cot of Laluram. Ram Ratan fired the pistol on the chest of Laluram. Laluram instantly got up but immediately fell down of the Chowki. Accused Ram Ratan took out the spent cartridge from his pistol and dropped it down there. Accused Ram Chandra s/o Hamira Ram fired his gun in the air. Mst. Rameshwari raised cries. The accused persons threatened her with dire consequences in case she dared to come out. Hearing her out cries, Murliram (PW 2), whose house is situate nearby, came there. Seeing him, the accused persons ran away. When the accused went away, Hetram (PW 4) came down from the roof. There was profuse bleeding from the wounds of Laluram and

the clothes he was wearing got drenched with the blood of his wounds. Hetram (PW 4) went to the Dhani where his father resided. From there, both of them went to Police Station, Nokha where Hetram verbally lodged a report Ex. P. 1 of the occurrence at about 5.30 A.M. On March 25, 1977. The police registered a case and proceeded with investigation. The Station House Officer Nichhetar Singh arrived on the scene of occurrence and prepared the site plan and inquest report Ex. P.2. The empty cartridge-case lying on the spot was seized and sealed. The blood-stained soil and the blood-stained blanket, with which the deceased was covering himself at the time of the incident, were seized and sealed. The post-mortem examination of the dead body of Laluram was conducted on March 25, 1977 by PW 7 Dr. Dhanraj Chhalani the then Medical Officer Incharge. Primary Health Centre Nokha Dr. Chhalani found the following ante-mortem injuries on the dead body of Laluram:

- (1) Lacerated irregular wound of entrance of bullet or chharra 3-1/2' cm. x 3 cm. on dorsum of left palm just below left little finger. The direction of the wound was upward;
- (2) Multiple five wounds of exit of Chharra nearly 3/4 cm. x 3/4 cm. on left palm;
- (3) Terminal phalanx of little and ring finger of left hand crushed;
- (4) There were multiple, redish black burn maroon dorsen of left palm, vertically half of ulna side;
- (5) There were five gun shot wounds of about 1/3 cm. x 1/3 cm. on chest left side, 1 cm. away from border of sternum as shown in figure;
- (6) The area about 15 cm. x 10 cm. as shown in figure was having redish black burn spot.

He also found five pellets in the dead body of Laluram. These five pellets were seized and sealed. One of the wounds contained woollen fibre and two round pieces of card-board. They were also seized and sealed by the doctor. Dr. Chhalani was of the opinion that the cause of death of Laluram was severe internal haemorrhage due to the laceration of heart and lungs by gun shot

injuries. The report of the post mortem prepared by him is Ex. P. 19. Accused Ram Ratan was arrested on April 5, 1977 and in consequence of the disclosure statement made by him on the same day, one 12 bore pistol and two live cartridges were recovered lying concealed in the soil. The other accused persons were also arrested. The various articles were sent for scientific examination to the State Forensic Science Laboratory, Jaipur. The 12 bore pistol recovered at the instance of the accused was found in working order. The cartridge-case found on the spot, as per the opinion of the Forensic Science Laboratory could have been fired from the 12 bore pistol recovered at the instance of the accused. After when the investigation was over, the police submitted a challan against accused Ram Ratan, Banwari, Kishnaram and Ram Chandra s/o Motiram in the Court of the Chief Judicial Magistrate, Bikaner. PW 4 Hetram made a request to the Chief Judicial Magistrate to take cognizance against Ram Kishan, Ram Lal and Ramchandra s/o Hamira Ram. His request was disallowed. PW 4 Hetram thereupon lodged a complaint against the aforesaid three persons in the Court of Munsif and Judicial Magistrate, Bikaner. Ramchandra s/o Hamira Ram meanwhile passed away. The police also submitted a challan against Ram Ratan for an offence under Section 25(a) of the Arms Act in the Court of Judicial Magistrate (1), Bikaner. All these three cases were committed for trial, to the Court of Sessions Judge, Bikaner by the respective Magistrate. The learned Sessions Judge amalgamated all the three cases and conducted a joint trial. Charges under Sections 302, 148 and 452 IPC and Section s under Sections 147, 452 and 302/149 IPC were framed against the remaining five accused Banwari, Kishna Ram, Ramchandra s/o Moti Ram, Ramkishan and Ramlal. All of them pleaded not guilty and faced the trial. According to them, they were falsely implicated on account of deep seated enmity existing between the two factions. In support of its case, the prosecution examined nine witnesses and filed some documents. In defence, no evidence was adduced by the accused. Out of nine witnesses, PW 4 Hetram and PW 8 Mst. Rameshwari had claimed to have seen the occurrence. PW 2 Murli Ram claimed to have seen the accused persons leaving the scene of occurrence. On the conclusion of trial, the learned Sessions Judge held PW 2 Murliram, PW 4 Hetram and PW 8 Mst. Rameshwari as witnesses of truth as against accused Ramratan. Accused Ramratan was consequently convicted and

sentenced as mentioned at the very outset. The learned Sessions Judge accepted the presence of the five acquitted accused persons, but was of the opinion that their mere presence on the place of occurrence was not sufficient to seek their conviction. They were consequently acquitted. The grievance of the accused Ramratan is that he has been wrongly convicted while the State has the grievance that the five accused respondents have been wrongly acquitted.

4. We have heard Shri Doongar Singh learned counsel appearing for accused Ramratan, Shri Niyazuddin Khan the learned Public Prosecutor and Shri V.N. Mathur and Shri B. Advani the learned counsel appearing for the acquitted accused respondents. We have also gone through the case file carefully.

5. Before proceeding further, it may be pointed out that the opinion of PW 7 Dr. Dhanraj Chhalani relating to the cause of death of Laluram has not been challenged before us by the learned counsel appearing for the accused persons. We have gone through the statement of Dr. Chhalani and we find no reason of what so ever nature to distrust his opinion relating to the cause of victim's death. According to Dr. Chhalani, Laluram died on account of the gun-shot injuries. The doctor was also of the opinion that all the injuries found on the victim's dead body could be caused by a single gun-shot. The reason is that the cartridge which was fired from the pistol contained the pellets. When the cartridge comes out of the barrel of the pistol, the pellets of the cartridge, hit the body and thus caused multiple injuries. Thus, the shot may be one but the wounds may be more due to the pellets of the cartridge. There is thus, no room for doubt that Laluram was shot dead. His death was not natural but homicidal.

6. In assailing the conviction of accused Ramratan, Mr. Doongar Singh made a scathing criticism of the judgment of the court below and contended that the whole approach of the learned Sessions Judges was erroneous. The learned Sessions Judges crept into an error in placing reliance on the testimony of PW 2 Murliram PW 4 Hetram and PW 8 Mst. Rameshwari. It was argued that they were not the witnesses of truth. There was no reason for PW 4 Hetram to be on the roof of the Kotha in that night. It was further argued that in case PW 8 Mst. Rameshwari was there in the Kotha, she would not have been spared by the culprits because

leaving her alive was to keep the evidence intact against them. It was argued that all these three persons have been falsely introduced by the prosecution. It was further argued that the FIR Ex. P. 1 is not a genuine document. It was brought into existence later on and was moulded to suit the purpose. The opinion received from the State Forensic Laboratory furnishes no incriminating material against the accused. It was urged that when the testimony of these three witnesses was not accepted as against the acquitted accused-respondents, it should not have been accepted also against accused Ramratan. No hue and cry was raised by PW 4 Hetram and PW 8 Mst. Rameshwari and that is sufficient to indicate that they were not present on the spot.

7. It was, on the other hand, contended by the learned Public Prosecutor that the FIR was lodged within a few hours of the occurrence. The essential details of the occurrence have been mentioned therein. Mst. Rameshwari (PW 8) was the wife of the deceased and as such her presence in her own house was quite natural. Since she was inside the Kotha, she remained safe. PW 4 Hetram, looking to the delicacy of the situation thought it proper not to raise the cries. In case he raised cries, he would not have been spared by the culprits. We have bestowed our thoughtful consideration to the rival submissions.

8. Admittedly, the prosecution case rests squarely on the testimony of PW 2 Mudiram, PW 4 Hetram and PW 8 Mst. Rameshwari. The learned Sessions Judge has accepted their testimony as true and sufficient to seek the conviction of accused Ramratan. The pertinent question before us, therefore, is whether these three persons are witnesses of truth and can be safely relied upon. It would be proper to read briefly what they deposed.

9. PW 4 Hetram deposed that in the night of occurrence, he was sleeping on the roof of the kotha, Laluram was sleeping on a cot lying on a Chowki situate contiguous to the Kotha. Mst. Rameshwari (PW 8) was sleeping inside the Saal. At about 11.00 p.m., accused Ramratan accompanied by six more persons (acquitted accused) came where Laluram was sleeping. Accused Ramratan had a pistol while Ramchandra s/o Hamiraram (no more alive) had a gun. Others had Farshies, Shailas and Lathi. The culprits stood around the cot of Laluram. Accused

Ramratan fired a shot from his pistol on the chest of Laluram. Laluram got up and instantly fell down. He passed away instantaneously on the spot. Laluram's wife (Mst. Rameshwari) raised cries. Murliram (PW 2) came from his house and he challenged the culprits. Accused Ramratan and his companions thereafter ran away. Before leaving the place. Ramchandra s/o Hamiraram fired a shot in the air. The culprits thereafter ran away. The witness further stated that he came down from the roof and went to his father who was at their Dhani. From there, he went to Police Station, Nokha where he lodged FIR Ex. P 1 at about 5.30 a.m. on March 25, 1977 i.e. within five or six hours of the incident. The same version of the occurrence was given by PW 8 Mst. Rameshwari. She deposed that in the night of the occurrence, she was sleeping in the Saal-which has two doors and both the doors have shutters. Her husband Laluram was sleeping on a cot lying on the Chowki situate contiguous to this Saal described as Kotha. Some where, her husband's brother Hetram (PW 4) was sleeping on the roof of the Saal. At about 11-00 p.m. accused Ramratan accompanied by six more persons (acquitted accused) came where Laluram was sleeping. Accused Ramratan had a pistol while accused Ramchandra s/o Hamiraram had a gun. Accused Ramratan fired a shot on the chest of Laluram. Laluram, got up but instantly fell down and passed away. She raised cries. Murliram (PW 2) came out from his house and he challenged the culprits. Accused Ramchandra s/o Hamiraram fired a shot in the air. The accused thereafter ran away. Hetram came down from the roof of the Kotha and went to police Station, PW 2 Murliram deposed that at about 11.00 p.m. in the night of the occurrence, he heard a shot from the house of Laluram. He also heard the cries of his wife Mst. Rameshwari. He got up and went towards the house of Laluram. In the way, he heard another shot being fired. When he proceeded further and went to the house of Laluram, he saw the accused Ramratan with a pistol in his hand and six other persons. Ramchandra s/o Hamiraram had a gun. Laluram was lying in the chowk with gun shot injuries on his body. Blood was oozing out from those wounds. The witness stated that when he asked who were there, the culprits ran away. When he went near, Hetram came down from the roof of the Kotha. Laluram passed away instantaneously on the spot. Hetram immediately left the place to go to the police station. The site plan Ex. P. 10 shows that the house of this witness is situate contiguous to the house of the deceased-

victim Laluram.

10. It is true that PW 4. Hetram is the real brother and PW 8 Mst. Rameshwari is the widow of the deceased Laluram. PW 2 Murliram also happens to be their relative in some distance. The testimony of these three witnesses cannot be dismissed right out only on the ground of the close relationship with the deceased. But this relationship requires that their evidence should be scrutinized and evaluated with extreme care and caution, specially because there is deep-seated enmity between the two factions. Now, PW 8 Mst. Rameshwari is the widow of the deceased-victim. As such, her presence in her own house is most natural. The suggestion of the accused that due to Gangaur festival she was at her parents' house, has no foundation. There is nothing on the record to support this suggestion that Rameshwari was at her parents' house in some other village in the night of the occurrence. PW 4 Hetram is the real brother of the deceased-victim Laluram. As such, his presence on the spot is, also, quite natural. There is again no material on record to show that he was at some other place in that night of the occurrence. The house of PW 2 Murliram is situate contiguous to the house of the deceased-victim Laluram. Murliram (PW 2) came to the place of occurrence on hearing the gun firing and cries of Mst. Rameshwari. Before he could reach the place of occurrence, the incident had already taken place. He did not state that he had seen accused Ram-ratan firing the shot. His reaching the place of occurrence on hearing the cries and gun shots is quite natural and is not open to any suspicion. It may be mentioned that the names of all these witnesses-Murliram and Mst. Rameshwari have been mentioned in the FIR (Ex. P. 1) which was lodged within a few hours of the occurrence by PW 4 Hetram. All these three witnesses were examined by the Investigating Officer on March 25, 1977 just after when the case was registered, vide Ex. D 1:, Ex. D. 2 and Ex. D. 4. These witnesses were subjected to lengthy cross-examination but no thing could be elicited from them which may make their testimony unworthy of belief or credence. The learned Sessions Judge accepted their testimony as against accused Ramratan. They have given a consistent version that it was accused Ramratan who had fired a shot from his pistol on the chest of Laluram and thereby caused his death. On a careful scrutiny of what they deposed, we are unable to take a view different from that taken by the learned Sessions Judge.

11. As regards the acquitted accused persons, the learned Sessions Judge found some material contradictions in the statements of these three witnesses given during investigation and trial. He was also of the opinion that as no overt-act was attributed to these acquitted accused, their mere presence on the spot is not sufficient to make them members of unlawful assembly. It was strenuously argued by Mr. Doongarsingh that when the testimony of these three ocular witnesses was not accepted as true against the acquitted accused persons, their testimony as against accused Ramratan should, also not, be accepted and relied upon. We are unable to accept the contention advanced by Mr. Doongarsingh. There are some contradictions and discrepancies in the evidence of these three ocular witnesses in their police statements given during trial. It was on account of these discrepancies and contradictions that the evidence of these three eye witnesses was not taken reliable and dependable against the acquitted accused persons. Their evidence as against accused Ramratan cannot be rejected or dismissed or disbelieved only on the ground that their evidence as against the acquitted accused persons was not accepted. The primary duty of the trial court is to properly scan and evaluate the evidence. In discharging this duty, the Court has a right to accept the testimony of a witnesses in part and to reject the rest. In *Modin and Ors. v. The State of Haryana : 1976 CriLJ1895* , their Lordships of the Supreme Court held that the mere fact that the out of many accused persons some are acquitted is not sufficient to entitle the rejection of the entire prosecution case. The court should make every effort to disengage the truth from the falsehood and separate the grain from the chaff rather than take the easy course of rejecting the entire prosecution case merely because there are some embellishment. The same view was expressed in *Ramjanan v. State of Utter Pradesh : 1980 CriLJ830* , *Jagdeep and Ors. v. State of Haryana 1974 Cr.L.J 1378* *Shri Satkumar v. State of Haryana : 1974 CriLJ345* . Thus, the position is that part of the testimony of a witness may be accepted and part of it may be rejected in a process of evaluating it. The fact that where the evidence of a witness is not believed in regard to some of the accused persons, it is no reason to reject his whole testimony which implicates the other accused persons. As stated above, the three eye witnesses in the instant case have given a consistent version that it was the accused Ramratan who had fired a shot on the chest of Laluram. These

three witnesses have attributed no overt act to the acquitted accused persons. They simply-stated that the acquitted accused persons were with accused Ramratan who had fired the shot. In view of these facts and circumstances, we are unable to accept the contention of Mr. Doongarsingh that the entire testimony of these three eye witnesses should be discarded simply because their testimony in respect of the acquitted accused persons is not acceptable. To us, it appears to be a case of over implication where some persons were falsely dragged in along with the real culprit Ramratan.

12. It was next contended that the first information report Ex. P. 1 is not a genuine document. It was later on brought into existence to suit the purpose of the prosecution. It was argued that FIR Ex. 1 was received in the Magistrate's court on March 28, 1977 whereas it was lodged at about 5.30 a.m. on March 25, 1977. It was argued that this late receipt of Ex. P 1 by the Magistrate casts a heavy doubt on its authenticity. It suggests that it was later on manufactured. The late receipt of Ex. P 1 by the Magistrate has not been explained. The submission of the learned Public Prosecutor is that the FIR Ex. P 1 was despatched by post from the Police Station. It was Sunday on March 27, 1977. The police station was at Nokha whereas the court was at Bikaner. It is, thus, not a case of late receipt of FIR by the Magistrate. The delay stands self explained.

13. Section 157(1) Cr.P.C. lays down that when the Officer Incharge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156, Cr.P.C. to investigate, he shall forthwith send a report to the Magistrate empowered to take cognizance of such offence upon a police report. It, thus, casts a duty on the SHO to forthwith send the FIR in a cognizable offence to the concerned Magistrate. The use of word 'forthwith' has its own significance. It required that there should not be any delay in despatching the FIR to the Magistrate, Section 156, Cr.P.C. does not lay down that it should be sent through some special messenger to the Magistrate.

14. The FIR Ex. P 1 was received by the Magistrate on March 28, 1977. It was Sunday, on March 27, 1977 FIR Ex. P 1 was not sent by hand through any constable or special messenger. The pertinent question is whether the receipt of

Ex. P 1 by the Magistrate on March 28, 1977 casts a cloud on the prosecution story and makes it suspicious. The contention of Mr. Doongarsingh is that Ex. P 1 was brought into existence later on after when the Investigating Officer arrived on the scene of occurrence. We are unable to agree with him. FIR Ex. P 1 bears the number 41. The Investigating Officer Nichhatarsingh (PW 9) arrived on the place of occurrence and thereafter inspected the site, prepared the site plan and inquest report. He also seized and sealed the blood stained soil, blood stained blanket, seized the empty cartridge-case and the blood stained clothes of the deceased victim. These documents are Ex. P 2, Ex. P. 3, Ex. P 4. Ex. P 5 Ex. P 6, Ex. P 7, Ex. P 8 Ex. P 9 & Ex. P 10. In all these documents, the number of the First Information Report Ex. P 1 (No. 41) has been mentioned. This number of FIR in these nine documents could not have been mentioned until and unless FIR Ex. P 1 was drawn up earlier before these documents were prepared. The Investigating Officer PW 2 Nichhatarsingh was not cross-examined on the point whether FIR Ex. P 1 was brought into existence later on. No suggestion in this respect was put to him in cross-examination, The Investigating Officer PW 9 Nichhatarsingh and PW 4 Hetram the author of FIR Ex. P 1 categorically stated that it was prepared at 5.30 a.m. on March 25, 1977. There is no material on record to disbelieve them on this point. We are, therefore, of the opinion that FIR Ex. P 1 is not a spurious document. It is not an ante dated or post investigation document which was brought into existence later on during investigation.

15. A similar question arose in *Pratapsingh v. State of Rajasthan* 1975 RLW 428. The FIR in that case was received late in the court, but in documents, such as inquest report, site plan etc., the serial number of the First Information Report was mentioned. The late receipt of the FIR by the Magistrate was not taken as a sufficient ground to render the prosecution story suspicious. The learned Judges observed:

It is evident from these documents that each one of them contains a reference of the serial number of the First Information Report which was allotted to it by Shri Amarsingh while taking down the report in the register. This type of reference is possible only when the document Ex. P 9 had already been executed before the memos Ex. P1 to were prepared by him. In this view of the matter, it is difficult for

us to accept the contention of Mr. Mulla that the delayed submission of the report before the Magistrate should give rise to an inference that the report Ex. P 1 was post-investigation document and it leads to the conclusion that the investigating agency was unfair towards the accused person.

16. In *Kishan v. State of Rajasthan* 1980 RLW 610, the matter again came before a Division Bench of this Court. The FIR was received late in the court. The inquest report and other documents were prepared on the same day when the FIR was drawn up. In all those documents, the serial number of the FIR was mentioned. It was held that in these circumstances, the late receipt of FIR by the Magistrate does not make the FIR a suspicious document and it cannot be said that the FIR was prepared later on in the course of investigation or that it was ante-dated.

17. The scope of Section 157, Cr.P.C. and the question of late receipt of the FIR by the Magistrate was also mooted in *Balkishan Singh v. State of Rajasthan* before a Division Bench of this Court. The learned Judges observed:

It is true that under Section 157 Cr.P.C. the First Information Report should be despatched forthwith. There is nothing on the record to show that there was any deliberate delay in despatching the First Information Report. The inquest report was admittedly made within a few hours of the occurrence also bears the number of the First Information Report No. 71. Beside that there is clinching evidence on the record to prove that Ex. P. 11 was recorded at the Police Station on the date and at the time mentioned therein. It is well settled that mere delay in despatch of the First Information Report is not a circumstance on the basis of which the entire prosecution case be thrown but.

18. As discussed earlier, the serial number of the First Information Report Ex. P. 1 has been mentioned in as many as nine documents which were prepared on March 25, 1977. There is categorical evidence of PW 4 Hetram and the Investigating Officer Nichhatarsingh (PW 9) that Ex. P 1 was drawn up at about 5.30 A.M. on March 25, 1977. This time 5.20 A.M. has been mentioned in Ex. P. 1 itself. As such, it cannot be said that FIR Ex. P. 1 was later on manufactured or fabricated to suit the purpose of the prosecution.

19. Pistol Ex. M. 5 was recovered in consequence of the Information made by accused Ramratan. As per report of the Forensic Science Laboratory, it was found in working order. The opinion of the Forensic Science Laboratory is also there that the cartridge Ex. 1 could have been shot from pistol Ex. M. 5. The recovery of pistol Ex. M. 5, thus affords a valuable corroboration to the prosecution story.

20. For the reasons discussed above it cannot be said that accused Ramratan was convicted on insufficient evidence or that his convictions are erroneous. We, therefore, maintain his convictions and sentences for the various offences. His appeal must fail.

21. Coming to the appeal of the State, it was argued by the learned Public Prosecutor that the acquittal of the five respondents was improper. When their presence was there at the scene of occurrence, Section 149. IPC should have been pressed into service against them. It was, on the other hand, argued by Mr. Mathur and Advani that the very presence of the acquitted accused persons on the scene of occurrence is doubtful. The evidence was thoroughly scanned and evaluated by the learned Sessions Judge. It, cannot be said that his approach was erroneous. In these circumstances, the verdict of acquitted should not be disturbed.

22. The learned Sessions Judge, while scanning and shifting the prosecution evidence, noticed major discrepancies and contradictions in the statements of the eye witnesses made by them during investigation and trial. It does not appear that the approach of the learned Sessions Judge as faulty or erroneous. In the FIR Ex. P 1, no overt act has been attributed to five acquitted accused persons. What has been mentioned in Ex. P 1 is their mere presence and nothing more. The appreciation of evidence made by the trial court should not, generally, be disturbed. The interference is possible when the approach of the Sessions Judge is manifestly erroneous or perverse or where there is misreading of the evidence. There should be cogent and compelling reasons to disturb the finding of fact recorded by the trial Judge. No such convincing and compelling, reasons are there in the instant case. As accused, under our criminal jurisprudence's presumed to be innocent and this presumption of innocence gets further strengthened and

reinforced by his acquitted in the trial court. The verdict of acquittal, therefore, should not be ordinarily interfered with. The interference should be only when the view taken by the Sessions Judge cannot be maintained on any ground. In the instant case, the learned Sessions Judge has properly scanned and evaluated the evidence of the three eye witnesses and concluded that it was not sufficient to seek the conviction of the five acquitted accused respondents find no perversity in his approach. As such, we decline to interfere in verdict of acquittal recorded by the Sessions Judge. The appeal of the State should, therefore, fail.

23. In the result, we maintain the convictions and sentences of accused Ramratan and the acquittal of the five accused-respondents (1) Banwari, (2) Kishna Ram, (3) Ram Chandra s/o Moti Ram, (4) Ram Kishaii and (5) Ram Lal. Both the appeals shall consequently stand dismissed.

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