

State of Himachal Pradesh Vs. Rakesh Kumar and ors.

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Court : Himachal Pradesh

Decided On : Sep-04-1998

Reported in : 1999CriLJ564

Judge : Lokeshwar Singh Panta and; Surinder Sarup, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149, 302, 307, 325, 364 and 452; ;Punjab Police Rules, 1934; ;Code of Criminal Procedure (CrPC) - Sections 154, 161 and 313

Appeal No. : Criminal Appeal No. 192 of 1991

Appellant : State of Himachal Pradesh

Respondent : Rakesh Kumar and ors.

Advocate for Def. : Jagdish Vats, Adv.

Advocate for Pet/Ap. : B.P. Sharma, Addl. Adv. General and; J.K. Verma, Asstt. Adv. General

Disposition : Appeal dismissed

Judgement :

Lokeshwar Singh Panta, J.

1. This appeal at the instance of State is directed against the judgment dated 22-5-1990 and learned Sessions Judge, Shimla passed in Sessions Trial No. 27-S/7 of 1988 whereby the accused-respondents were acquitted of the charges under Sections 452/302/147/148 and 149 of the Indian Penal Code.

2. Briefly stated the prosecution case was as under:

In the year 1988 there were two factions of students unions functioning in H.P. University Campus. Shri Nasir Khan was the General Secretary of National Students Union of India (N.S.U.I.), H. P. University and the respondents were members of Students Federation of India (S.F.I.) a wing of a Communist Party. On 7-8-1988 late at night, Shri K. C. Malhotra (P.W. 34) Vice-Chancellor of H.P. University informed telephonically to Police Station, Boileauganj that some quarrel had taken place amongst the students and requested the police to reach the spot immediately in order to maintain law and order. This information was recorded in daily diary register, a copy of which was placed on record and exhibited PW-47/A and as a consequence thereof, SHO of Police Station, Boileauganj along with SI, Jiwa Ram (P.W. 47), Head Constable Jodhamal (P.W. 45) and other Constables left the Police Station at about 10-30 at night and went to the University campus in a Jeep. They reached Administrative Block of the University where one Shri Dadwal, Security Supervisor along with other Security Guard was present who informed the Police party that some students of S.F.I. had given beatings to N.S.U.I. student Shri Nasir Khan in new boys hostel and Shri Nasir Khan had been taken to Snowdon Hospital, Shimla in the University Ambulance. They also informed that they had no particular knowledge about the alleged assault. Thereafter, according to the prosecution, the SHO, deputed P.W. SI Shri Jiwa Ram to Snowdon Hospital in order to record the statement of the injured. P.W. S.I. Shri Jiwa Ram was accompanied by Shri Chuni Ram Constable No. 733 and Bhoru Ram Constable No. 174. The SHO, himself contacted through telephone the Vice-Chancellor and Shri S. N. Sharma (P.W. 8) another security officer in order to get more information about the occurrence. The said officers expressed their inability to reach new boys hostel at that odd time on account of heavy rain. The SHO, went to the spot along with other police officials where he noticed that in Block Nos. A to F of new boys hostel, there was no person available and he found

that in all the rooms the electricity was switched off. Thereafter, the SHO contacted Medical Officer, H.P. University dispensary who informed that Nasir Khan had through telephone informed him that he was assaulted by S.F.I, students and thereafter ambulance was sent to bring the injured. The SHO was also informed by the doctor that the condition of Nasir Khan was serious and accordingly, the injured was referred to Snowdon Hospital and was sent in an ambulance. According to the doctor, Nasir Khan had not disclosed him the names of the alleged assailants and according to the prosecution, the SHO tried his best to get the detailed information about the occurrence, but it was not available to him from the students or from the employees of the University. Further case of the prosecution was that P.W. S.I. Jiwa Ram at about 2-55 at night through telephone informed the SHO that H.C. Balbir Singh (P.W. 12), Police Post, Lakkar Bazar had procured the medico-legal certificate pertaining to Nasir Khan and S.I. Jiwa Ram had submitted an application to the doctor on duty for opinion whether the statement of the injured could be recorded or not. The doctor opined that the injured was not in a fit condition to make the statement. SHO, thereafter informed S.I. Jiwa Ram that the statement of the injured shall have to be recorded when he came to his senses.

3. According to the prosecution, the SHO had been enquiring about the occurrence at the spot and till 12 noon on 8-8-1988, no student of N.S.U.I. was available at the spot and also the injured could not make any statement by that time. Thereafter, Shri Arun Sharma (P.W. 7) President of N.S.U.I., H. P. State Unit made a statement before the Police on 8-8-1988 at about noon which was so recorded by the Police under Section 154, Cr. P.C. (Ext. PP). He had stated that he was a student of Foreign Language Department of H.P. University and was a student of Russian language. He stated that on 7-8-1988 at about 9 at night, Nasir Khan telephoned to him at his residence at Sanjauli that S/Shri Kapil Palsara, Rakesh Walia, Mohinder Negi, Yash Pal Dhaulta and other S.F.I, activists had given him severe beatings as a consequence of which he was injured. Shri Arun Sharma has also stated that Nasir Khan further informed that he was having danger to his life from S.F.I, students and he also requested to make arrangement for his defence and further inform the police. He also added that after informing the police he reached in Summer Hill at the place of occurrence, but by that time,

Nasir Khan had been removed to Snowdon Hospital for treatment. Thereafter, he searched for N.S.U.I. students in the hostel and noticed that all the rooms occupied by N.S.U.I. students in the hostel were left open, the luggage in the rooms was in broken condition. He also informed the police that he could not trace S/Shri Madan Lal, Ramesh Sankhian and Sher Singh in their respective rooms in the hostel. On the morning on 8-8-1988 at about 6 a.m. Shri Yadavinder Gupta (P.W. 15) informed him through telephone that last night, the N.S.U.I. students were chased by Jasbir Katoch, Suresh, Vijay Kaushal and CR. Dogra under the leadership of Yashpal Dhaulta and those N.S.U.I. students had gone towards Dr. Parmar Hostel side Shri Arun Sharma suspected that his colleagues might not be thrown away after giving assaults by S.F.I, students. He also informed the police that Nasir Khan had received serious injuries on various parts of his body and until that time he was not in a position to give statement. He requested the police that necessary legal action be taken against the aforesaid S.F.I, students from whom he suspected danger to his life and other students of N.S.U.I.

4. On the basis of the statement (Ext. PP), formal FIR (Ext. P.W. I/A) came to be registered in Police Station, Boileauganj under Sections 452,364, 325 and 34, IPC and S.H.O. Shri Birpal (P.W. 48) of Police Station, Boileauganj went to the spot in order to investigate the case. He inspected room No. 13-B where Nasir Khan used to reside. He also inspected room Nos. 9-B to 12-B, 14-B to 16-B in the same block. All the rooms were found by him locked. Room No. 13-B being occupied by Nasir Khan was got opened through Shri K. S. Sirikot (P.W. 35) Chief Warden of new boys hostel. In that room, a cotton 'Chadder' and 'Buniyan' were found stained with blood and under the cot, an iron rod stained with blood was also found. Various blood-stains were noticed in the room which were taken into possession through blotting papers and the SHO thereafter sealed the iron pipe, cotton 'Chadder' and 'Buniyan' in separate parcels. P.W. Shri Arun Sharma produced blood-stained Pant and a Shirt to the police at the spot which he brought from the hospital belonging to Nasir Khan and these wearing apparels were also sealed in separate parcels.

5. SI Shri Jiwa Ram produced medico-legal certificate (Ext. PY/2) issued by Dr. Nirdosh Gupta (P.W. 13). Thereafter, SHO converted the offence under Sections

307,147, 148 and 149, IPC.

6. The physical condition of Nasir Khan deteriorated and on that account, he was referred to PGI, Chandigarh on 8-8-1988 at night and the injured was admitted, in PGI, Chandigarh on 9-8-1988, but his condition did not improve and in a senseless state Nasir Khan breathed his last on 11 -8-1988 and thus the case was again converted under Section 302, IPC against the respondents. Dr. Inderjit Diwan (P.W. 1), Emeritus Professor of Anatomy and Forensic Medicine, PGI, Chandigarh performed post-mortem on the dead body of the deceased.

7. During the investigation on 21-8-1988, respondent Suresh Kumar produced a towel and 'Buniyan' from room No. 2-B, new boys hostel and respondent-Ramesh Kumar produced a pillow cover from room No. 2-C to the police and these articles were observed to be stained with blood and taken into possession in sealed parcels. Shri Prag Sotha (P.W. 39) and Shashi Pal (P.W. 16) disclosed to the police that on the day of occurrence, all the respondents had given beatings to them also. They disclosed that on 7-8-1988, they along with P.W. Arun Sharma, de-ceased-Nasir Khan, Ramesh Sankhyan (P.W. 28) P.W. Yadavinder Gupta and Sher Singh (P.W. 42) had gone to Rivoli Cinema for seeing the feature film in matinee show and when the show was over, Arun Sharma left to his house at Sanjauli while others went to the hostel. It was also disclosed that Sh. Shashi Pal (P.W. 16), P.W. Prag Sotha and deceased-Nasir Khan went to room No. 13-B where they changed their clothes and thereafter PW Prag Sotha went to common room of the hostel to see T.V. film, while Nasir Khan asked P.W. Shashi Pal to bring water who brought the same and thereafter, Nasir Khan asked PW Shashi Pal that he would like to take rest as he was tired and also asked PW Shashi Pal to lock the door of his room from outside as PW Shashi Pal wanted to go to the common room. It was also revealed during the investigation that PW Shashi Pal locked the door and kept the key with him and he then went to the common room and after the interval of the picture he along with PW Prag Sotha came from the common room and went to room No. 15-B where two boys, namely, Suresh Kumar and Rajiv were present and when they started some discussions, some boys came there who were the respondents being led by respondent Yashpal Dhaulta armed with iron rods. Those persons gave beatings to them and thereafter they

proceeded towards room No. 13-B. As per the prosecution case all the four students, namely, P.Ws Shashi Pal, Prag Sotha, Suresh Kumar and Rajiv were taken by the respondents towards the jungle side where they were made naked and given beatings and thereafter, in the injured state, they were kept in a room in upper storey of G. H. Hostel and ultimately on 8-8-1988 they were allowed to go. They were again threatened that in case they were seen in Shimla by 10 a.m., their dead bodies would be dispatched to their respective houses.

8. It was also revealed during the investigation that PWs Yadavinder Gupta, Sher Singh, Ramesh Sankhyan and Madan Lal (P.W. 41) after taking their dinner, went to room No. 12-F occupied by Yadavinder Gupta and Sharwan Kumar (P.W. 29), Mess Manager also reached there and it was about 8 at night when those persons were talking about their personal matters, at the relevant time respondent Yashpal Dhaulta entered the room and asked P.W. Sharwan Kumar to leave the room and thereafter respondents Rakesh Walia, Suresh-Kapil Palsara along with other respondents entered the room and respondent Yashpal Dhaulta asked other respondents to give beatings to the aforesaid persons and consequently these persons were given beatings by the respondents. Respondent Yashpal Dhaulta asked his companions to bring rods and threatened that they would teach lessons to Nasir Khan and started proceeding towards his room. They bolted room No. 12-F from outside. All the aforesaid witnesses alleged to have disclosed that respondent Yashpal Dhaulta at that time had stated that they would definitely break the legs of N.S.U.I. students as they had managed on 6-8-1988 to give beatings to their colleagues in Sanjauli. All these persons came out of the room opening the window and went towards the jungle and while they were going towards the jungle, they heard some weeping and crying sounds coming from new boys hostel. During the investigation, blood-stained articles taken into possession were sent to the Chemical Examiner and according to his report, human blood was found on some articles. The police arrested the respondents on different dates. Thus, on the premises of the aforesaid allegations, charge-sheet was prepared by the Police and submitted in the Court.

9. The respondents denied the allegations levelled against them and claimed to be tried. The prosecution in order to prove the charges against the respondents

examined as many as 48 witnesses and one Court witness Shri Virbhadra Singh (P.W. 49), Ex-Chief Minister of Himachal Pradesh was also examined. The respondents in their statements recorded under Section 313, Cr. P.C. denied the circumstances appearing against them and stated that they have been falsely implicated in the case due to their political affiliation with S.F.I. They pleaded that they were innocent and may be acquitted. However, they led no defence evidence. The learned Sessions Judge after scrutinizing the oral and documentary evidence of the prosecution concluded that the prosecution had failed to establish the charges against the respondents beyond all reasonable doubt and acquitted them after giving them benefit of doubt. Feeling aggrieved, the State of Himachal Pradesh has filed the present appeal assailing the impugned judgment of the learned Sessions Judge.

10. The learned Addl. Advocate General have vehemently urged that the prosecution has proved its case beyond reasonable doubt by leading cogent and convincing evidence and the learned Sessions Judge has erred in not properly appreciating the evidence of injured witnesses, namely, Prag Sotha and Shashi Pal and informant Shri Arun Sharma corroborated by the medical evidence. He also contended that the learned Sessions Judge has again erred in not giving credence to the dying declaration of the deceased recorded by Head Constable Balbir Singh in the Snowdon Hospital and unnecessary importance was attached to the infirmities in recording the dying declaration. According to the Addl. Advocate General, the judgment of acquittal is based upon surmises and conjectures.

11. Per contra, Mr. Jagdish Vats, learned counsel for the respondents has contended that the FIR was recorded by the Police at the instance of Shri Arun Sharma, President of N.S.U.I. after due deliberation and consultation. He also contended that there is delay in recording the statements of material witnesses and the respondents were admittedly known to Nasir Khan who had not disclosed their identity to the doctor of University dispensary and to Shri Arun Sharma when the latter was contacted by the former on telephone giving detail of the occurrence. He next contended that the alleged statement made by the deceased to Head Constable Balbir Singh could not be termed as dying declaration since

according to the doctor Nasir Khan was not fit to make any statement till he remained admitted in Snowdon Hospital.

12. We have given our thoughtful consideration to the entire evidence and contentions of the learned counsel.

13. Admittedly, there are no eye-witnesses of the occurrence. The entire evidence is a circumstantial evidence. The prosecution on the basis of the evidence on record had relied upon the following circumstances :

(i) The circumstance as to how the police came into action and how the FIR was lodged;

(ii) Medical evidence of the deceased and injured persons;

(iii) Narration of the occurrence by the deceased to the witnesses (dying declaration);

(iv) Deposition made by the witnesses about the incident which took place in Room No. 12-F on 7-8-1988;

(v) Deposition by the witnesses with respect to the incident which took place in Room No. 15-B on 7-8-1988;

(vi) Recoveries of the blood-stained clothes and other articles from Room No. 13-B being occupied by the deceased and other witnesses;

(vii) Motive;

(viii) Evidence of other non-official witnesses;

(ix) Evidence of police officials and

(x) Chemical Examiner's report.

14. The learned Sessions Judge in his judgment has extracted the guidelines and conditions laid down by their Lordships of the Supreme Court in *Sharad Birdhi Chand Sarda v. State of Maharashtra*, 1984 Cri LJ 1738 : (AIR 1984 SC 1622) to

be borne in mind by the Court while appreciating the circumstantial evidence brought on record. In that case, their Lordships have settled five conditions which shall be established by the prosecution against the accused if a case hinges on circumstantial evidence and further it was held that it was well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits the accused, the accused was undoubtedly entitled to the benefit of doubt. In the present case, the evidence of circumstantial nature relied upon by the prosecution has to be analysed and appreciated in the light of the aforesaid decision of the Apex Court.

15. In support of the first circumstance, the prosecution placed on record formal FIR Ext. P.W. 21/A, dated 8-8-1988 registered at Police Station, Boileauganj, Shimlaat about 1 PM which was so recorded on the basis of statement (Ext. PP) made by P.W. Sh Arun Sharma under Section 154, Cr. P.C. P.W. Shri K. C. Malhotra, Vice-Chancellor of the University deposed that on 7-8-1988 at about 9-15 at night, Doctor Rakesh Khanna (P.W. 6) who was posted in the University Dispensary, informed him on telephone that Nasir Khan had been hurt because of some clash in the hostel who was bleeding from his leg and sent to Snowdon hospital after providing him first aid. He stated that on his inquiry from the doctor as to why he did not accompany Nasir Khan to the hospital, Doctor informed that he anticipated some more injured to visit the dispensary who could get medical help. He also stated that at about 10-30 p.m., the same night, P.W. Sh K. S. Shrikot, Chief Warden of the hostel came personally to his residence and informed that Nasir Khan received injuries as a result of some clash and he had been sent to Snowdon Hospital. He also informed that Nasir Khan had been assaulted by some students. He categorically stated that he thereafter immediately gave a telephonic call to Police Station, Boileauganj and asked the Police to come to the University Campus and take charge of the situation so that no further unexpected incident would occur and the police had reached the University campus at night. In these facts and circumstances, the police came into action.

16. Shri Birbal Ram, SHO (P.W. 48) deposed that on 7-8-1988 at about 10-25 at night, he received telephonic information from P.W. Shri K. C. Malhotra, Vice-Chancellor, H. P. University informing him that some quarrel had taken place

amongst the students in boys hostel and the Vice-Chancellor asked him to send police force to the spot for maintaining the law and order. He recorded this information in daily diary report (Ext. P.W. 47/A) and thereafter he along with P.Ws. S.I. Jiwa Ram, Head Constable Jodhamal, Constable Chunni Lal, Constable Bhoru Ram, Driver Roshan Lal, Constable Prithvi Singh (P.W. 21), Constable Manohar Lal, Constable Hari Nand and H. C. Lila Dhar went to the spot in a jeep at 10-30 at night. He further stated that he went to Administrative Block H. P. University Campus where Shri Dadhwal, Security Supervisor on inquiry disclosed that some quarrel had taken place between S.F.I, and N.S.U.I. students and he also informed that S.F.I, students had given beatings to Nasir Khan who had been removed to Snowdon Hospital in University Ambulance. He stated that when he asked the place of occurrence from Shri Dadhwal, he showed his ignorance and thereafter he sent P.W. SI Jiwa Ram along with Constable Chunni Lal and Constable Bhoru Ram to Snowdon Hospital, Shimla for the purpose of recording the statement of Nasir Khan injured. Thereafter he made enquiries about the occurrence from Shri K. C. Malhotra, Vice-Chancellor and Shri S. N. Sharma (P.W. 8) Security Officer through telephone and they informed that Nasir Khan had been given beatings in new boys hostel and thereafter he requested the Vice-Chancellor to depute some officer of the University to accompany him to new boys hostel. He further stated that the Vice-Chancellor and the Security Officer informed him that in case the police will visit the hostel at night, there was likelihood of the students becoming violent and he also stated that he talked to Dr. Rakesh Sharma on telephone and enquired from him why the matter was not reported to the police and the Doctor informed that as he was not authorised to issue medico-legal certificate and, therefore, he did not inform the police. Doctor also informed him that on the receipt of telephone from Nasir Khan he sent ambulance to new boys hostel through the road adjacent to the dispensary where he checked Nasir Khan who was having injuries on his leg and that the condition of Nasir Khan was not good, therefore, he was removed to Snowdon Hospital. Thus, from reading the entire evidence of SHO Shri Birbal Ram, it is very much clear that he had the information about the occurrence on 7-8-1988 during night time though he could not gather full detail of the occurrence and the names of the accused involved in giving the beatings to Nasir Khan.

17. SI Shri Jiwa Ram in his statement deposed that on 7-8-1988 a telephonic message was received from Shri K. C. Malhotra, Vice-Chancellor, H.P. University at 10-25 at night which was recorded in daily diary copy of which was Ext. P.W. 47/A. He along with SHO went to the University Campus at about 11-30 at night and there Shri S. S. Dhadhwal, Security Supervisor informed them that Nasir Khan in an injured state had been removed to Snowdon Hospital. Thereafter, he was directed by SHO to record the statement of Nasir Khan at Snowdon Hospital. He went to Snowdon Hospital at about 12 at night and met Head Constable P.W. Shri Balbir Singh in Casualty Department who handed over him a carbon copy of application which he had submitted for the medical examination along with medical certificate of Nasir Khan and carbon copy of the application was Ext. PX and medical certificate Ext. PY-2. He also deposed that he submitted an application (Ext. P.W. 13/A) to Medical Officer, Casualty Department seeking his opinion whether Nasir Khan was in a fit condition to make statement or not and an endorsement Ext. P.W. 13-A/I was made by the doctor stating that Nasir Khan was unfit for making statement and this fact was brought to the notice of SHO at 2.22 at night by him. Application (Ext. PX) and medical certificate (Ext. PY-2) was handed over by him to SHO at 8-30 on the following morning. From the evidence of Inspector Birbal Ram and S.I. Jiwa Ram the occurrence had come to their knowledge and the names of some of the respondents were disclosed to Head Constable Balbir Singh by Nasir Khan and mentioned in Ext. PX, no steps were taken by the SHO to register formal FIR immediately. It has come in the evidence of SI Jiwa Ram that he did not record the statement of Head Constable Balbir Singh nor he prepared the recovery memo of Ext. PX and PY-2 when these documents were handed over to him by Head Constable Balbir Singh.

18. Dr. Rakesh Khanna (PW. 6), Medical Officer, H.P. University Dispensary stated that he was on night duty in the Dispensary when he received telephonic message from Dispensary Chowkidar that ambulance was required for taking Nasir Khan who had been assaulted, to the dispensary. He examined Nasir Khan in the ambulance itself and noticed that he was bleeding from his right leg and a fracture was physically observed on the right leg. Nasir Khan was in pain and was having an injury on his arm also. He without examining Nasir Khan in detail gave first aid to him and thereafter he was referred to Indira Gandhi Medical College,

Shimla in the company of Dhanni Ram, Chowkidar. He has categorically stated that he asked Nasir Khan who had assaulted him but he did not name any person but nodded his head in the affirmative that he had been assaulted. He also informed telephonically the Vice-Chancellor about the aforesaid facts. According to the testimony of this witness Nasir Khan was fully conscious when he was medically examined by him but was feeling severe pain on his body.

19. Dhanni Ram (P.W. 10) posted as Chowkidar in new boys hostel deposed that on 7-8-1988 he was on duty at night and was attending telephone calls of the hostel and that at about 8-30 at night a telephonic call for Nasir Khan was received locally and he went to call Nasir Khan at his room No. 13-B and at that time, Nasir Khan was out of the room near the railings. He informed about his telephone call on which Nasir Khan asked him that he (Nasir Khan) should be taken to the dispensary. He enquired Nasir Khan about the ailment but Nasir Khan did not tell him anything nor Nasir Khan disclosed the names of the persons who had assaulted him. He carried Nasir Khan and took him towards dispensary while in the way, he met Hira Lal Chowkidar and both of them took Nasir Khan to the Electricity complaint as Nasir Khan wanted to telephone somebody from that place. Nasir Khan sent a telephonic message from Electricity sub-station to dispensary and thereafter in the ambulance he was taken to the dispensary where doctor gave him first aid and thereafter he was removed to Snowdon Hospital.

20. Shri Joginder Kumar (P.W. 11) who was posted at Summer Hill Sub-Station H.P. SEB on the day of occurrence stated that the Sub-Station was situated near the University boys hostel and on 7-8-1988 he was on night duty and at about 9-15 at night Nasir Khan accompanied by two persons came to the sub-station and his right leg was bleeding and he was nervous. He stated that Nasir Khan telephoned for ambulance and second telephone call was made to a person to whom he was telling about some occurrence. He categorically stated that Nasir Khan did not at that time disclose the names of any person connected with the alleged quarrel. This witness turned hostile to the prosecution and he was cross-examined at length by the learned Public Prosecutor. He had denied to have made statement portion A to A of Ext. P.W. 1 I/A to the Police to the effect that Nasir Khan informed that person whom he was talking on telephone the names of respondents Kapil

Palsara, Yashpal, Suresh Kumar, Mohinder, Jasbir Singh and other students who entered into his room.

21. The next material witness is Dr. Nirdosh Gupta who was at the relevant time posted as Medical Officer in casualty ward, of Indira Gandhi Medical College and initially examined Nasir Khan injured on the night of the occurrence. He issued medico-legal certificate (Ext. PY-2) to Head Constable Balbir Singh. He deposed that Nasir Khan had stated to Head Constable Balbir Singh that when he was sleeping in his room in the hostel, some occurrence took place and whatever was stated by Nasir Khan to Head Constable, he was reducing that fact into writing and thereafter, that writing (Ext. PZ) was handed over to him. He stated that at about 10 at night, he requested Head Constable Balbir Singh to submit a written request for medical examination of Nasir Khan and categorically stated that whatever Nasir Khan disclosed to Head Constable Balbir Singh pertaining to the names of the assailants recorded in Ext. PX, that part was not heard by him. Head Constable Balbir Singh was in the Snowdon Hospital on 7-8-1988 in connection with medical examination of an accused of case FIR No. 161/8 8 pertaining to police Station Sadar. According to him at about 9-45 at night, Medical Officer Dr. Nirdosh Gupta informed him that one Nasir Khan had been admitted in the hospital in an injured state and the doctor asked him to submit an application for his medical examination. According to him, then he went to the Casualty Department where Nasir Khan was admitted and on his inquiry Nasir Khan disclosed that at about 8-25 at night he was sleeping in his room in Summer Hill and got his room locked from outside through Prag Sotha and Shashi Pal Chambial. He stated that Nasir Khan further disclosed that somebody from outside opened lock and thereafter opened the door and first of all respondent-Rakesh Walia entered into the room who said that Nasir Khan was there. This witness further added that Nasir Khan also disclosed that respondents-Kapil Palsara, and Mohinder. Negi accompanied by some boys entered the room and he was over powered by those persons and was inflicted injuries on his leg and arm with sharp-edged weapon. He prepared original statement (Ext. PZ) and carbon copy (Ext. PX) and the doctor handed over the medical certificate to him. Thereafter copy (Ext. PX) and medical certificate handed over by the doctor were handed over to S.I. Jiwa Ram at about 10-30 at night. He stated that his statement was not recorded by S.I. Jiwa Ram on 7-8-1988

but it was recorded by SHO Birbal Singh, Police Station, Boileauganj on 17-8-1988. He also stated that he had no time to record the statement of Nasir Khan under Section 154, Cr. P.C.

22. Hiralal (P.W. 13) was posted as Chowkidar in new boys hostel, H.P. University since 1988. On 7-8-1988 he was on duty till 8 at night. At about 8-15 p.m. when the film was still going on T.V., he went to the house of Shri K. S. Sirikot Warden to inform him that the police had come to the hostel on account of some occurrence which took place previous day. When he came back at about 8-30 or about 8-45 at night he saw Dhani Ram Chowkidar in the company of Nasir Khan who were coming from the side of B-Block. He saw Nasir Khan walking limping and his leg was bleeding. He enquired from Nasir Khan as to what had happened to him and in reply Nasir Khan stated that he should be taken to sub-station and thereafter he and Dhani Ram took Nasir Khan to the sub-station after giving him some assistance and in the sub-station he left them there and went to call Warden Shri Sirikot. He categorically stated that on his inquiry, Nasir Khan did not disclose the names of the persons who had given him beatings. Despite lengthy cross-examination by the P.P. he denied having made statement to the police that Nasir Khan had disclosed the names of respondents-Kapil Palsara, Jasbir Katoch, Yashpal Dhaulta, Rakesh Walia, Mohinder Singh Negi and other students of S.F.I. He also denied having made a statement that Nasir Khan gave telephone call to Arun Sharma.

23. Shri K. S. Sirikot(P.W. 35), -Was posted as Chief Warden-cum-Warden, H. P. University Hostel at the relevant time. He stated that at about 8.20 at night on 7-8-1988 when he was in his house Hira Lal Chowkidar came there and informed that during the day time some police people had come to the Campus and they were enquiring from him about some occurrence which took place in Govt. College, Sanjauli on previous day. Hira Lal left his house and after about 25 minutes he again came back and informed that Nasir Khan had suffered an injury on his leg. On his inquiry as to how Nasir Khan suffered injury, Hira Lal disclosed that injury might be the cause of some dispute amongst the students including the S. F. I. He also stated that Hira Lal did not disclose as to who gave beatings to Nasir Khan or which group of the students was responsible for causing those injuries to him. He

went to substation along with Hira Lal when they found that ambulance was already there and injured Nasir Khan was being removed in the ambulance at that time. Thereafter he went to the dining hall of the hostel where nobody was present and then went inside the kitchen where one student and the cook were present and on his inquiry they informed that nothing happened in their presence. He then went to University dispensary where Doctor Khanna was present who informed that he had referred Nasir Khan to Snowdon Hospital and thereafter he along with Doctor Khanna went to the house of Vice-Chancellor and informed him that Nasir Khan had suffered leg injury on account of some quarrel.

24. The material witness according to the prosecution is Shri Arun Sharma (P.W. 7) who was the President of N. S. U. I. and made statement under Section 154, Cr.P.C. on 8-8-1988 at 12 noon on the basis of which F.I.R. of the present case came to be registered. This witness was doing diploma in Russian language in August 1988 in H. P. University. Nasir Khan-deceased was the General Secretary of N.S.U.I. State Unit. He was residing in Sanjauli. He stated that on 7-8-1988 at about 9 at night he received a telephonic call from Nasir Khan informing that he had been assaulted by respondents Rakesh Walia, Kapil Palsara, Mohinder Negi, and Yashpal Dhaulta. He also stated that Nasir Khan told him that he had been injured seriously and that he was having danger to his life from the aforesaid persons and he requested to send ambulance and Police force in the University hostel. Thereafter, he arranged for ambulance and also informed Shri Sadhyal A. S. P. Shimla on telephone and thereafter he immediately went to University hostel in a vehicle and by the time he reached University, he came to know that Nasir Khan had been removed to Snowdon Hospital. On inquiry he came to know that students belonging to-N.S.U.I. group had also been given beatings and thereafter he visited one or two rooms occupied by the students of their organization and found that the articles were lying scattered and at that time, he could not meet any student of N.S.U.I. in the University. He tried to find out Shri Madan, Ramesh Sankhyan and Sher Singh who were not available there. Thereafter, he went to Snowdon Hospital and came back to his residence on the next morning. He received a telephonic message from P.W. Yadavinder Gupta that last night he along with Madan, Ramesh and Sher Singh was also given beatings by Yashpal Dhaulta, Suresh, Jasbir Katoch, Vijay Kaushal and C. R. Dogra and he was further

informed that they were beaten and taken towards Parmar hostel. According to him, their organisation and S.F.I, were not having cordial relations during the time of election and holding of examination. He stated that the doctor had asked the police to record the statement of Nasir Khan in Snowdon Hospital but the police present at Snowdon at that time, was from Lakkar Bazar Police Station and on that account they refused to record the statement of Nasir Khan. He also stated that Nasir Khan made statement to the police in his presence at Snowdon Hospital and this statement might have been given by him in between 10-11 at night on 7-8-1988 in the presence of 2-3 doctors but Nasir Khan did not affix his signatures to that statement. He made statement (Ext. PP) on 8-8-1988 at about 12.30 noon. He admitted that when he reached the University Campus on 7-8-1988 he did not inform the police that despite information police had not reached at the spot while there was a Police Post in Summer Hill. According to him he informed the Hon'ble Chief Minister about the occurrence but he could not give the date of giving the said information.

25. Shri K. C. Sadhyal (P.W. 37) was posted as Additional S. P., Shimla, at the relevant time. He stated that on 7-8-1988 at about 9 at night he received a telephonic call from Arun Sharma, from Sanjauli who informed that S.F.I, boys had badly beaten up Nasir Khan who had received serious injuries. This message was received by him at his residence and he directed the police officials at the reporting room to rush to Govt. College, Sanjauli because there had been some clash in the College. He received a message from the reporting room Mall Road through telephone that police officials had gone to Sanjauli College and they did not find any clash occurred there. He stated that he did not remember whether Arun Sharma-conveyed him that the clash had taken place in the University as his mind was preoccupied with the incident which took place on 6-8-1988 at Sanjauli. He was specific by deposing that the message from Arun Sharma was that a clash had taken place and Nasir Khan had received serious injury. He stated that Arun Sharma did not inform him the exact time and place of occurrence nor the place where Nasir Khan was kept at the relevant time. He deposed that he did not try to know about the place of occurrence, but later on, somebody on the telephone informed him that the occurrence had taken place in the University Hostel. He very specifically deposed that the names of the assailants and the time of occurrence

were not informed to him. He admitted that a show cause notice was issued to S. I. Jiwa Ram pertaining to the present case who was also placed under suspension for lapses of not registering the case in time and took pretty long time to reach Snowdon Hospital. He also admitted that Head Constable Balbir Singh could not record the statement of injured Nasir Khan when he was in senses, but his statement was recorded which was meant for conducting medical examination of the injured and Head Constable Balbir Singh was negligent in not recording an elaborative statement and he did not get signatures of the injured on the said statement. Superintendent of Police, Shimla took departmental action against Head Constable Balbir Singh for these lapses.

26. ASI, Shri Kanshi Ram (P.W. 25) was posted at Police Control Room, The Mall, Shimla who deposed that he received a telephonic message of Shri K. C. Sadhyal, Addl. S. P. at 9.15 at night on 7-8-1988 informing that in Govt. College, Shimla some fights had taken place between the students and asked him to visit the spot. He went to the spot but did not find anything there and informed Shri Sadhyal in this respect.

27. Shri Vir Bhadara Singh, Ex-Chief Minister of Himachal Pradesh appeared as CW-1. During his cross-examination conducted by Special P.P., he deposed on oath that on 7-8-1988 at about 9 at night he received a telephonic call from Arun Sharma who informed that Nasir Khan telephonically told him from the University that he was given beatings by some S.F.I, activists in his room. On his asking, Arun Sharma disclosed that Nasir Khan had named Yashpal Dhaulta, Mohinder Singh, Rakesh Walia and some other persons to be the alleged assailants. Arun Sharma also informed him that information was already given to Addl. S. P., Shimla. In the testimony of Shri Vir Bhadara Singh some improvement has been made as Arun Sharma had simply disclosed that he had informed the Hon'ble Chief Minister about the occurrence but could not give the time, date when he informed the Hon'ble Chief Minister. In his deposition Arun Sharma has not stated that he had named the alleged assailants of Nasir Khan when he contacted the Chief Minister on telephone informing him about the occurrence. It has come in the evidence of CW. that he had noted down that full information supplied by Arun Sharma to him on telephone directory which he could not produce when he was

examined in the Court.

28. Thus, it is on the basis of the aforesaid evidence that the police came into action and F.I.R. in the present case came to be registered against the respondents. From analyzing the entire aforesaid evidence of the witnesses, it is crystal clear that the police, the witnesses, the concerned officials and even CW-I had full knowledge of the occurrence much prior to 8-8-1988 at 12.30 P.M. when statement of Ext. PP made by Shri Arun Sharma was recorded on the basis of which formal F.I.R. had been registered. There is admittedly considerable delay in lodging the FIR and making proper investigation about the alleged occurrence and knowing the names of the assailants who were involved in giving beatings to Nasir Khan.

29. The prosecution examined as many as eight doctors to prove the second circumstance of medical evidence about the injuries and death suffered by Nasir Khan and injuries suffered by P.Ws. Shashi Pal and Prag Sotha. Dr. Underlet Duane (P.W. 1) who conducted the post-mortem on the dead body of the deceased-Nasir Khan on 12-8-1988 when a written request Ext. PA was made to him by S. I. Jiwa Ram. The doctor observed various injuries on the person of deceased-Nasir Khan which were incorporated by the learned Sessions Judge in paragraph-42 of his judgment and we do not consider it necessary to reproduce them for burdening the record. All the injuries mentioned therein, were ante-mortem and were caused by blunt weapon(s). Dr. Underlet Duane of P.G.I., Chandigarh opined that the injuries referred-in the medico-legal certificate and post-mortem report Ext. P.B. could be caused by iron rod (Ext. P-1) and the cause of death in this case 'post-mortem findings were consistent with those seen in cases of fat embolism following fracture of long bones.' He examined the brain fully and found that this was definitely a case of 'fat embolism'. Doctor was specifically mentioned that all the injuries observed by him and referred in the post-mortem report could not have caused the death of the patient in ordinary course of nature, but in this case, the patient developed fat embolism which occurs rarely but when it occurs it usually kills the patient.

30. Dr. D. V. Krishana Rao (PW-2) was posted as Junior Resident in General Surgery in P.G.I. since July 1,1988. He stated that Nasir Khan was admitted in P.G.I, on 9-8-1988 in I.C.U. under treatment of doctor S. N. Mathuriya, consultant Neuro-Surgery. He also stated that Nasir Khan died on 11-8-1988. He recorded the death summary of the deceased which was Ext. PE and sent a written information Ext. PF to SHO, Police Post P.G.I., Chandigarh.

31. Dr. Anup Kaul (PW-3) Medical Officer, Ripon Hospital, Shimla had examined P. W. Shashi Pal and observed some simple injuries on his person and also issued medico-legal certificate Ext. P.G. in this behalf. He also examined P.W. Prag Sotha and issued medico-legal certificate (Ext. PH). He observed various injuries on the person of both these witnesses which were of simple nature and could be caused by a danda or a iron rod. According to the doctor, the probable duration of the injuries was found to be within 24 hours and he deposed that both these witnesses had come to Hospital at their own without any reference being made by the police for their medical examination.

32. Dr. K. C. Sharma (PW. 4) was posted as Medical Superintendent of I. G. Medical College, Shimla at the relevant time. He stated that he received a communication (Ext. PJ) from SHO, Police Station, Boileauganj on 7-11-1988 requesting him about the medical history/case of late Shri Nasir Khan. He sent this communication to Orthopaedics department and after getting the history he sent his reply (E.xt. PK). Shri S. R. Thakur, Associate Professor, Orthopaedics department made a report (Ext. PL) to Dr. K. C. Sharma and in that report the name of Nasir Khan was given and it was observed that it was a case of compound fracture right tibia with multiple lacerated wounds and was admitted under orthopaedic care in the Casualty Department on the night of 7-8-1988 at 11 P. M. and at the time of admission the patient was fully conscious. The patient was at once started with the necessary treatment and his fracture of right tibia was operated and P.O.P. cast was applied on right lower limb and the lacerated wounds in the body were cleaned and stitched and further treatment was given. It was also reported that on 8-8-1988 at about 3..30 p.m. the patient suddenly became confused and showed the signs of pulmonary embolism and he was shown to the medical specialist who gave necessary treatment and the case was

also seen by Professor V. Parkash, Head of the Orthopaedics department who advised the patient to be referred to P.G.I., Chandigarh for further treatment of fat embolism and thereafter the patient was shifted to P.G.I., at 11.15 p.m. on 8-8-1988 from Snowdon Hospital.

33. The version given by Dr. Rakesh Khanna, Medical Officer, H. P. University Dispensary has been referred to in the earlier part of the judgment. Dr. Nirdosh Gupta is PW. 13 whose statement has been partly referred earlier. On medical examination of Nasir Khan injured at 11 p.m. on 7-8-1988 Dr. Gupta found eight injuries on his person which have been detailed by the learned Sessions Judge in para-50 of the judgment. He opined that all the injuries were caused by blunt weapon within the duration of 3 to 5 hours. He stated that the final opinion regarding the nature of injuries was deferred till X-ray examination report was received and after examining the X-ray report it was reported by Shri Sanjeev Sharma, Radiology Department of Indira Gandhi Medical College Hospital that the injured was having comminuted fracture of middle 1/3rd of shaft of right tibia. According to the opinion of the doctor, injuries No. 1 to 3 were grievous in nature and this opinion was given by him on 12-8-1988 when the police reproduced the medical certificate before him. According to the opinion of the doctor, the injuries could be caused by iron pipe (Ext. P-I). He deposed that S.I. Jiwa Ram submitted an application (Ext. P.W. 13/A) to him for his opinion whether Nasir Khan was in a fit state to make statement and upon which he made an endorsement (Ext. PW-13/A) stating that injured was unfit for making statement. Dr. Sanjeev Sharma (P.W. 26) conducted the X-ray of left leg, right leg, left upper arm and left wrist of Nasir Khan at 12.30 midnight on 8-8-1988 and recorded his opinion (Ext. P.W. 26/A).

34. Dr. S. R. Thakur (P.W. 27), Associate Professor Orthopaedics, Indira Gandhi Medical College Hospital, Shimla deposed that Nasir Khan was admitted on the night of 7-8-1988 in the Casualty Department and he examined him at 1 a.m. on 8-8-1988. He stated that at the time of admission Nasir Khan was in his Senses and he was fully conscious when he was medically examined. He noticed five injuries on his person which have been detailed by the learned Sessions Judge in para 54 of the judgment. However, when he examined Nasir Khan at 9.30 a.m. on 8-8-

1988 the patient was fully conscious but at about 3.30 p.m. on further examination he found the patient delirious and confused and his pulse rate had gone to 100 per minute and B. P. was 120/90 mm of Hg. and that he suspected that the patient was going for fat embolism. According to the doctor, the condition of the patient went on deteriorating and at 11.15 p.m. on 8-8-1988, the doctor attending on the patient decided to refer him to P.G.I., Chandigarh. According to the opinion of the doctor, the crushing of the bone was the cause of fat embolism which was quite fatal. He stated that the Medical Superintendent of the I. G. Medical College had asked his report regarding the medical history of Nasir Khan which was submitted by him. He further stated that Nasir Khan was in his full senses to answer questions put to him as he was answering the questions being put to him.

35. Third circumstance on which the reliance has been placed by the prosecution was dying declaration alleged to have been made by the deceased. The evidence examined during the trial was the statements of P. Ws. Arun Sharma, Head Constable Balbir Singh, Shashi Kant and C. W. Shri Vir Bhadara Singh. In the evidence of P.W. Arun Sharma it has come that Nasir Khan made statement to the police in his presence at Snowdon Hospital in between 10-11 at night on 7-8-1988 and at that time 2-3 doctors were present, but Nasir Khan did not affix his signatures to that statement. Head Constable Balbir Singh alleged to have recorded the statement (Ext. PX) of the deceased in the presence of P.W. Dr. Nirdosh Gupta. Dr. Nirdosh Gupta has said that Ext. PZ was basically an application requesting for conducting the medical examination of the injured preferred by Head Constable Balbir Singh. This statement cannot be legally termed as dying declaration as it was not made to a Gazette Officer. Under Punjab Police Rules, 1934 Vol. III. 25.21 it is provided that dying declaration is normally recorded by a Magistrate in the first instance and in case the dying declaration is not recorded by the Magistrate or by any Gazetted Officer of the Police, it can be recorded by any other Police Officer present, but in such a situation, the dying declaration shall be recorded by such a police officer in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case. A perusal of this document would go to show that it was only an information alleged to have been given by the injured that has been recorded by the witness in an application (Ext. PZ). Even if the aforesaid

information amounted to dying declaration, it was not so recorded as provided under the Punjab Police Rules and this document creates doubt in the manner in which it was executed. It has come in the evidence of Dr. Nirdosh Gupta that Head Constable Balbir Singh was enquiring from the injured but he did not hear all about what was the statement made by the injured. He has specifically deposed that he did not hear the name of alleged assailants alleged to have been conveyed by the injured to Head Constable Balbir Singh whereas the statement was recorded by Head Constable Balbir Singh in the presence of the doctor. Dr. Nirdosh Gupta has not corroborated the version of Head Constable Balbir Singh. S. I. Jiwa Ram has not recorded the statement of Head Constable Balbir Singh on the basis of Exts. PX and PZ. Shri Shashi Kant (PW 17) accompanied P.W. Arun Sharma to the Hospital. His version cannot be accepted for the reason that he did not inform the police when the police was present in the Hospital and his statement was recorded on 8-8-1988, therefore, delay in examining such an important witness during the investigation, definitely makes the version given by him not to be free from doubt.

36. CW Shri Virbhaddara Singh, Ex-Chief Minister of Himachal Pradesh stated that he had gone to hospital on 8-8-1988 and had talked to Nasir Khan. After inquiry Nasir Khan told him that S.F.I, activists had given him beatings and he was in his senses at that time and thereafter he started crying out of emotion. He has categorically stated that Nasir Khan did not disclose him the name of any S.F.I. activists who had given him beatings. He also stated that the police did not approach him as to what transpired between him and Nasir Khan as S. P. was also with him in the hospital and he did not think it necessary to inform the police about the talk he had with Nasir Khan. Accumulative effect of the assessment of all the circumstances touching the reappraisal of the statements of these witnesses is that dying declaration in this case is not at all worthy reliable and this piece of evidence is, therefore, liable to be rejected and the learned Sessions Judge has rightly disbelieved the said dying declaration.

37. In support of the fourth circumstance, the prosecution relied upon the evidence of P.Ws. Yadavinder Gupta, Ramesh Sankhya, Sarwan Kumar and Madan Lal about the incident which alleged to have taken place in room No. 12-F. It has come in the evidence of P.W. Yadavinder Gupta that respondent Yashpal Dhaulta

entered room No. 12-F and thereafter about eight persons followed him. He specifically stated that he could not tell whether all the respondents present in the Court entered the room. He stated that somebody gave a leg blow on his head. He has not supported the prosecution case and was allowed to be cross-examined by the P.P. He admitted that all those persons who entered the room left his room and thereafter they bolted the door from outside. He further stated that he did not remember whether respondent Yashpal Dhaulta at that time threatened that on that day they would definitely break the legs of N.S.U.I, students as they had managed to give beatings to their colleagues in Sangauli on 6-8-1988. He stated that his statement was recorded by the police on 19-8-1988. He knew respondents Vijay Kaushal and C. R. Dogra. He also stated that he along with his companions were not medically examined by the police nor did he make any report about the incident to the police which took place in his room. PW Ramesh Sankhyan stated that PWs Sashi Pal and Prag Sotha were residing with Nasir Khan in room No. 13-B as they had not been allotted hostel accommodation by that time. He turned hostile to the prosecution and was cross-examined by the P.P. and deposed that he did not know whether respondents-Kapil Palsara, Jasbir Katoch, C. R. Dogra and Vijay Kaushal were also accompanying respondent-Yashpal Dhaulta when he entered in room No. 12-F along with other companions. According to his version respondent-Yashpal Dhaulta said that Nasir Khan would be taught lesson and also said they would break the legs of students of N.S.U.I. He also stated that when the door of room No. 12-F was bolted from outside, out of fear he, Yadavinder Gupta, Madan Lal and Sher Singh came out of the room through the back window and ran towards the jungle. According to him he spent night in the jungle and at about quarter to nine or nine when the atmosphere was a little calm, he went to Sanjauli to his uncle. He also stated that they were given beatings by those persons by hands and they slapped them but he did not receive any external injury and they did not raise any alarm as they were under fear. He also stated that there were about 250 students residing in new boys hostel and about 100 students residing in Y. S. Parmar hostel and both the hostels were situated near to each other. Sarwan Kumar (P.W. 29) stated that respondents-Yashpal Dhaulta, Rakesh Walia and Suresh Kumar entered into room No. 12-F and respondent Rakesh Walia asked him to vacate the room as they had some personal matter to be discussed and

thereafter he went to the mess. This witness was also declared hostile and cross-examined by the P. P. He denied the suggestion of the P. P. that respondents-Yashpal Dhaulta, Suresh Kumar and Rakesh Walia did come to room No. 12-F in his presence. P.W. Madan Lal deposed that on 7-8-1988 at about 7.45 at night, some boys came to room No. 12-F and out of them he knew only Rakesh Walia and some of the boys were standing outside. 6-7-8 boys entered the room and they were not carrying anything in their hands. In his cross-examination conducted by P.P. he stated that he knew all the respondents present in the Court, but he could not say whether apart from respondent Rakesh Walia, the other respondents also entered into room No. 12-F on the alleged day of occurrence. His statement was recorded by the Police after about one month of the aforesaid occurrence. From the evidence of all these witnesses it is clear that they have contradicted themselves about the identity of the respondents and have resiled from the statements made to the Police. Their testimony is not cogent and convincing raising guilt finger towards respondents, they were all members of N.S.U.I. Organisation and were definitely interested witnesses.

38. The prosecution relied upon the evidence of P.Ws. Shashi Pal, Prag Sotha, Sher Singh,' Suresh Sharma (PW-43) and Rajiv Gautam (PW 40) to prove the fifth circumstance about the incident which took place in room No. 15-B. PW Shashi Pal was residing in that room. He stated that on 7-8-1988 after seeing the T. V, film in the common room of the hostel they went to room No. 15-B and were exchanging some discussions about their studies in the meantime some boys came there and at the first instance Yashpal Dhaulta entered the room who was accompanied by 10-15 persons armed with rods. He has not disclosed the names of other respondents except respondents Yashpal Dhaulta and Kapil Palsara. But in his cross-examination conducted by P. P. he stated that when those persons came out of room No. 15-B, from the sounds of their steps, he could infer that they went towards room No. 13-B and thereafter some persons came to room No. 15-B who took him and P.W. Prag Sotha towards the jungle but he did not remember the names of those persons. According to this witness, they were taken to Ripon Hospital by the aunt of Prag Sotha and both of them were given treatment there after depositing fee of Rs. 5/- each. He stated that he did not disclose to the police about the alleged occurrence before 25-8-1988 nor* he remembered whether the

police was in the Hospital on 8-8-1988 when he went to see Nasir Khan. PW. Prag Sotha who also tried to support the incident which took place in room No. 15-B on 7-8-1988 deposed that about 8-10 boys entered the room and about 15 boys remained out side the room. He disclosed the names of few respondents whom he knew by name and others he did not know by name. According to him all those 8-10 persons told that they would beat the witness in the same manner as their boys were beaten in Sanjauli and those persons gave beatings to him and PW. Shashi Pal and were also asking the whereabouts of Nasir Khan from them. This witness too was allowed to be cross-examined by P. P. He stated that next day he went to his aunt and thereafter he and Shashi Pal were medically examined. Statement of this witness was recorded by the police on 25-8-1988. Similarly, PWs Rajeev Gautam, Sher Singh and Suresh Sharma also narrated the incident which was alleged to have taken place in room No. 15-B. From close scrutiny of the evidence of these witnesses it was not established that which of the respondents or all of them had given beatings to PWs. Prag Sotha and Shahi Pal. All these witnesses have resiled from their earlier statements made to the police and they have not supported the prosecution case in material particulars nor the injured persons were got medically examined by the police during the investigation. This circumstance has not been proved by the prosecution by leading satisfactory and convincing evidence.

39. The prosecution examined Shri Rajnish Awasthi (PW. 5), PW. S. N. Sharma, Security Officer and Shri Kuldip Singh Rathore (PW. 36) in support of recoveries of various articles effected by the police during the investigation. PW. Rajnish Awasthi stated that on 8-8-1988 in his presence Arun Sharma produced blood stained Khaki Pant (Ext. P-16) and Khakhi shirt (Ext. P-17) to the police which were taken into possession. He also stated that Prag Sotha also produced certain garments to the Police including track suit, one shirt and some other garments, the identity of which he did not remember and those were taken into possession by the Police. He was the General Secretary of N.S.U.I. while Arun Sharma was its President. He deposed that in the year 1987 they had lodged a FIR against the respondents Yashpal Dhaulta and Vijay Kaushal who had threatened Nasir Khan to break his legs and put them around his neck. In the presence of S. N. Sharma, Security Officer, the police picked up- four spots through blotting papers looking

like blood stained and one iron pipe lying on the floor of room No. 13-B of AB-Block new boys hostel which was stained with blood. He identified iron-pipe (Ext. P-I) in the Court. In his presence one bed sheet (Ext. P-22) and Buniyan (Ext. P-23) which were blood stained were also taken into possession. He also stated that on 21-8-1988 in his presence respondent Suresh Kumar produced keys of room No. 2-B new boys hostel, while respondent Rakesh Kumar produced to the police the key of room No. 2-C which were taken into possession. After opening room No. 2-B, a towel (Ext. P-24) and Buniyan (Ext. P-25) stained with blood were also recovered besides pillow cover (Ext. P-26). In the presence of PW. Kuldeep Singh Rathore, Prag Sotha produced a shirt (Ext.P.-35), track suit (Ext. P-36) and other shirt (Ext. P-37) and two Pants (Ext. P-38) on 25-8-1988. All the articles including Pant, bed sheet, shirts, pillow covers and towel were found stained with blood by the Chemical Examiner vide report (Ext. PAA and PAB). Circumstance No. 10 will also stand covered under this circumstance as well.

40. The next circumstance relied upon by the prosecution was motive. As per the prosecution the motive for the commission of the alleged offence was the political rivalry between the two factions of the students unions. It has come in the prosecution evidence that the respondents were the S.F.I, activists while the deceased and other student witnesses examined were associated with N.S.U.I. It has come in the evidence of PWs. Rajnish Awasthi and Shri K. C. Malhotra, Vice Chancellor that both unions i.e. N.S.U.I. and S.F.I, were having strained relations and were opposing each other in University elections. PW. Rajnish Awasthi disclosed that respondent Yashpal Dhaulta was the prominent figure of the S.F.I, and that Shri Dhaulta and PW. Sri Arun Sharma opposed each other in the election for the post of general Secretary. He stated that in the last election held in the University, the alliance of S.F.I, and A.S.I.F. got the majority. According to Shri K. C. Malhotra, Vice Chancellor the S.F.I. students of the University wanted direct election to the Central Association and they had been representing to him in writing for direct election on several occasions and lastly they represented in writing on 3-8-1988 requesting him that the elections in the University should not be held in order to avoid un-pleasant situation. This is the entire evidence relied upon by the prosecution in support of motive.

The prosecution examined Shri Mohmad Iqbal (PW. 14), the father of the deceased who stated that he received telephonic message on 10-8-1988 at Chamba and went to P.G.I. Chandigarh in the morning of 12-8-1988 where he identified the dead body of his son late Nasir Khan. He received the dead body of his son. He stated that on 25-8-1988 when he was at Shimla, the police took into possession various articles lying in the room being occupied by his son in the University. Shri God Dev Chatterji (PW. 19) was posed as Security Officer, All India Radio, Shimla. He stated that he knew C. R. Dogra by name only and not by face. According to him on 7-8-1988 Shri C. R. Dogra came to All India Radio, Shimla for broadcasting Lahaul and Spiti Programme. According to him an entry was made in the register on 7-8-1988 about Shri Dogra's broad-casting who came at about 5.45 afternoon and left the Radio Station at 7.05 in the evening. Miss Kala Thakur (PW-20, Producer Dialect Programme, All India Radio, Shimla stated that on 7-8-1988 Shri C. R. Dogra came to All India Radio, Shimla at 5.45 in the afternoon and left the station at 7.05 in the evening as per their record maintained in All India Radio, Shimla. She also stated that on 4-8-1988 Shri Dogra came in the All India Radio, Shimla and took part in the programme. According to her Shri Dogra also gave programme on 9th and 11th August 1988. PWs. Shri God Dev Chatterji and Kala Thakur have only stated that Shri Dogra had come to All India Radio on 7-8-1988 from 5.45 p.m. to 7.15 p.m.

41. Besides other police officials witnesses whose statements have already been referred in the earlier part of the judgment, the prosecution produced other official witnesses, namely, ASI. Ram Swarup (PW-18), Constable Shri Prithvi Singh (PW-21), MHO. Govind Ram (PW-22), Constable Shri Jog Ram (PW-23), Constable Shri Gian Chand (PW-24), MHC. Shri Sita Ram (PW-31), Constable Shri Bir Singh (PW-32), ASI. Shri Jodha Mal (PW-45), ASI. Shri Mani Chand (PW-46) and Shri Yoginder Kumar Asstt. Engineer (PW-33). ASI. Shri Ram Swarup produced on record ruqua (Ext. PC) prepared at Police Post, P.G.I., Chandigarh. He made an application (Ext. PW. 18/A) to the doctor on duty at P.G.I., Chandigarh requesting him for opinion whether Nasir Khan was in a fit state to make statement or not. According to him, the doctor made the report (Ext. PW-18/B) that Nasir Khan was unable to speak being un-conscious. He stated that on the next day doctor reported that the patient had expired at 6 p.m. on 11-8-1988 vide report (Ext. PD).

He intimated the Shimla Police through a wireless message regarding the death of Nasir Khan. Constable Shri Prithvi Singh was present along with SHO. Shri Birbal Ram in the University Campus on 8-8-1988 and handed over the statement (Ext. Pp) made by Arun Sharma to Police Station, Boileauganj for recording the F.I.R. MHC. Shri Govind Ram recorded the F.I.R. (Ext. PW-21/A) on the basis of statement (Ext. Pp). Constable Jogi Ram took six sealed parcels of articles and handed over them - In the office of Chemical Engineer, Patiala on 27-9-1988. Head Constable Gian Chand took into possession the medico legal certificate handed over by PWs Shashi Pal and Prag Sotha about their injury. MHC. Shri Sita Ram produced summon record of F.I.R. (Exts. PW-3 I/A and PW-31/B) recorded in the Police Station Sadar, Shimla on 6-8-1988 on the basis of statements (Exts. PW-13/A and PW-13/B). He stated that the names of Yashpal Dhaulta, Mohinder Singh and Jasbir Katoch were mentioned in the F.I.R. (Ext. PW-13/A) who are the respondents in the present case. However, he has admitted that in his statement recorded Under Section 161 Cr.P.C. by the police he did not state that three persons, namely, Yashpal Dhaulta, Mohinder Singh and Jasbir Katoch were the accused in the present trial. ASI. Shri Jodha Mai stated that Nasir Khan - made a report (Ext. PW-45/R) on 24-11-1987 at Police Station, Boileauganj. The said report was sent to S. D. M., Shimla who directed that an inquiry be made and thereafter it was sent to Police Post, Summer Hill for necessary action. According to the contents of this report Nasir Khan had reported that he had some danger to his life from respondents Yashpal Dhaulta and Vijay Kaushal who had threatened to break his legs. He could not say what action was taken by the police on that report. ASI, Chander Mani was deputed on 24-8-1988 by Inspector Birbal Ram for effecting the search of the house of respondent Yashpal Dhaulta in order to recover the weapon of offence. He made search and nothing incriminating was recovered. He also stated that the report submitted to the Police Post, Summer Hill from Police Station, Boileauganj made by Nasir Khan had been lost and as such no inquiry could be conducted on that report.

42. After analyzing and re-appreciating the entire evidence on record referred to above, we are of the view that in the present case, there is delay of about 16 hours in lodging the F.I.R. Admittedly, the Police Station, Boileauganj is not far away from the place of occurrence and the delay has remained un-explained which

would be a circumstance against the prosecution. The learned Sessions Judge has rightly applied the law laid down by the Supreme Court in Thulia Kali v. State of Tamil Nadu, AIR 1973 SC 501 : (1972 Cri LJ 1296) while appreciating the evidence of the prosecution and taking into consideration the circumstance of unexplained delay of lodging the F.I.R. In the present case, the first information was given to the police regarding the occurrence by telephone call by Shri K. C. Malhotra, Vice Chancellor but no F.I.R. was lodged by the Police. Thereafter, the Investigating Officer, Shri Birbal Ram along with other police officials reached on the spot just after the occurrence and made inquiry into the matters whereby he was informed that Nasir Khan had been assaulted by S.F.I. students, but, again no F.I.R. was lodged by him. Again there is an evidence of Arun Sharma and Shashi Kant who went to the hostel and talked with the injured who according to the prosecution case alleged to have disclosed them the manner of occurrence along with the names of some of the alleged assailants. Both these witnesses have situated that the Police was present there but again their statements were not recorded and no F.I.R. was lodged even at that time. It has come in the evidence of Arun Sharma that the statement of Nasir Khan was recorded by the Police but was not signed by the police but that statement was not brought on record by the police. Even the alleged documents (Exts. PX and PZ) recorded by Head Constable Balbir Singh and handed over to S. I. Jiwa Ram were not made the basis for recording the F.I.R., nor the statement of Head Constable Balbir Singh to whom the alleged occurrence was conveyed by the injured was recorded so that it could be made the document of F.I.R. It has come in the evidence of Mr. Arun Sharma that he had narrated and informed the occurrence to ASI. Shri Sadhyal just after he received a telephonic message from Nasir Khan but Shri Sadhyal has stated that he received some telephonic message from Arun Sharma, but, that message was pertaining to some occurrence which took place in Govt. College, Sanjauli. Had the occurrence was rightly stated to ASP. Shri Sadhyal, the police definitely would have recorded that aspect of the matter in the record but it was not to be so. It appears that whatever Arun Sharma disclosed about the occurrence to Mr. Sadhyal, it was not a correct version and at least doubts were created in the prosecution story that Nasir Khan had not named any of the assailants when he talked to Arun Sharma on telephone immediately after the occurrence, otherwise

there was no reason for ASP. Sadhyal not to record the true version given to him by Arun Sharma. It is really very strange that neither Arun Sharma or any other person who had the knowledge of the alleged occurrence on 7-8-1988 at about 9 or 9.30 at night had not tried to inform the police pertaining to the alleged incident and naming the real culprits. The learned Sessions Judge has rightly observed that on the basis of the evidence led by the prosecution the possibility and likelihood of manipulations and improvement of the prosecution case could not be ruled out in so far as the inclusion of names of the assailants in the case when the respondents, victim and material witnesses were already under strained relations due to political rivalry. From the evidence of the prosecution witnesses, we find there is absolutely no plausible explanation rendered on behalf of the prosecution for recording the formal F.I.R. after prolonged delay and that too in a manner which not only appears to be unnatural and also does not appeal to reasoning at all. It has come in the evidence of ASP. Sadhyal that Head Constable Balbir Singh and S. I. Jiwa Ram had been dealt with under the departmental proceedings for their lapses which fact also created doubt true version of the prosecution case. The Investigating Officer had examined PW Head Constable Balbir Singh after ten days of the occurrence about the alleged execution of documents (Exts. PX and PZ). Both these documents had not been legally proved by the prosecution to be termed as dying declaration. The entire evidence discussed above produced by the prosecution does not inspire confidence and true version of the alleged incident was not brought on record by the prosecution. The evidence of PWs Shashi Pal and Prag Sotha injured witnesses is un-worthy of credence for the reason that if they had received injuries inflicted by the respondents or any one of them, they could have reported the matter to the Police and got medical examination conducted through the police. Both these witnesses were examined by the prosecution very late and other material witnesses were examined in the month of September or October, 1988 when the occurrence admittedly took place on 7-8-1988. This circumstance of the prosecution case is also doubtful. Otherwise also all these witnesses have not named all the respondents either to the Police or in the Court. They have made contradictory statements to the Police during the investigation and in their deposition in the Court. The learned Sessions Judge has meticulously analysed the entire evidence on record and recorded

findings based upon sound reasonings which according to us are in conformity with the facts and circumstances of the case and law relied upon in the judgment.

43. It is well settled law that in an appeal against acquittal there must be compelling reasons to disturb a fact finding made by the trial Court and that unless the view of the trial Court is perverse or at least unreasonable no interference shall normally be made. Their Lordships of the Supreme Court in *Dhanna etc. v. State of Madhya Pradesh* (1996) 6 JT (SC) 652:(1996 Cri LJ 3516) in paragraph 11 held as under :

11. Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate Court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the appellate Court has to bear in mind : first, that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial Court acquitted him, he would retain that benefit in the appellate Court also. Thus, appellate Court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed.

44. It is again well settled that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusion arrived at by it were wholly untenable. In the present case, the trial Court had given clear cogent and convincing reasons for disbelieving evidence of the prosecution witnesses and the findings of the trial Court are demonstratively

sustainable. The prosecution has failed to establish the above said circumstances of conclusive nature and tendency and the chain of evidence is not complete to show that in all account of probability, the act must have been done by the respondents and in the facts and circumstances of the case, the respondents are undoubtedly entitled to the benefit of doubt which has been rightly given by the trial Court.

45. For the foregoing discussion we unhesitatingly hold that the reasons given by the trial Court for recording the order of acquittal in favour of the respondents are cogent and convincing. The appeal is, therefore, dismissed. The respondents are discharged from their bail bonds.

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