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HEMRAJ AND ANR.

v.

STATE OF PUNJAB

SEPTEMBER 9, 2003

B

[N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

Criminal Trial :

C

Conviction—Appeal against—Evidence adduced by prosecution inconsistent—Truthfulness of prosecution case doubtful—In such circumstances trial court acquitted accused—However, High Court reversed order of acquittal—Correctness of—Held : If on the basis of the same evidence two views are reasonably possible and the trial court takes the view in favour of the accused, the appellate court, in an appeal against acquittal, will not be justified in reversing the order of acquittal, unless it comes to the conclusion that the view taken by the trial court was wholly unreasonable or perverse—Penal Code, 1860, Ss. 302/34.

D

Code of Criminal Procedure, 1973 :

E

Section 154—First Information Report—Requirements of—Held : FIR must disclose the commission of cognizable offence to set the investigating machinery into motion—It is neither necessary for the person lodging the report to witness the commission of the offence nor all details about the manner of occurrence, the participants in the crime, the time and place of occurrence etc. need be mentioned.

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The appellant-accused were acquitted by the trial court for an offence under Section 302 read with Section 34 of the Penal Code, 1860. However, High Court reversed the judgment of the trial court and convicted the appellants. Hence this appeal.

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According to the prosecution, the appellants-accused had assaulted the members of the prosecution party killing one and injuring PWs 2 and 3 and some other persons. Subsequently a first information report was lodged.

H

According to the defence, another occurrence had taken place on the same day and at the same time, in which members of the prosecution party had injured DW-2 and on the report of DW-2, a criminal case had been registered and after investigation, PW-2 was facing prosecution. It was the further case of the defence that the prosecution had not referred to the injuries sustained by DW-2 and that the father of the deceased, an injured witness, was not examined by the prosecution.

The trial court concluded that the case of the prosecution was doubtful and that there was considerable doubt about the time when the FIR was lodged.

Allowing the appeal, the Court

HELD : 1. The view taken by the trial court is also a possible, reasonable view of the evidence on record. The evidence adduced by the prosecution is rather inconsistent and creates a serious doubt about the truthfulness of the prosecution case. Even if it may be possible to take a different view, it cannot be said that the view taken by the trial court is not a reasonable view of the evidence on record. If on the basis of the same evidence two views are reasonably possible and the trial court takes the view in favour of the accused, the appellate court, in an appeal against acquittal, will not be justified in reversing the order of acquittal, unless it comes to the conclusion that the view taken by the trial court was wholly unreasonable or perverse and it was not possible to take the view in favour of the accused on the basis of evidence on record. [482-B-D]

2. It is not correct that unless the manner in which the occurrence took place is stated in the report, the same cannot be treated as First Information Report (FIR). The law is very clear and well settled that a report, which discloses the commission of a cognizable offence, must be treated as FIR under Section 154 of the Code of Criminal Procedure. It does not matter whether the person lodging the report had witnessed the commission of the offence or not, nor is it necessary that all the details should be mentioned in the report about the manner of occurrence, the participants in the crime, the time and place of occurrence etc. The requirement of Section 154 Cr. P.C. is only that the report must

A disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action. [474-C, D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 702 of 2002.

B From the Judgment and Order dated 8.4.2002 of the Punjab and Haryana High Court in CrI. A. No. 302-DBA of 1993.

R.K. Jain, Ranji Thomas, Ms. Bharti Upadhyay and V.N. Raghupathy for the Appellants.

C Sudhir Walia and Bimal Roy Jad for the Respondent.

The Judgment of the Court was delivered by

D **B.P. SINGH, J.** The appellants have preferred this appeal under Section 379 of the Code of Criminal Procedure read with Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 impugning the judgment and order of the High Court for the States of Punjab & Haryana at Chandigarh in Criminal Appeal No. 302-DBA of 1993 whereby the High Court reversed the judgment of acquittal recorded by the Additional Sessions Judge, Ludhiana in Sessions Case No. 92 of 1992.

F The High Court has found Hem Raj, A-1, guilty of an offence under Section 302 IPC while Gian Chand, A-2 and Baldev Raj, A-3 have been found guilty under Section 302 read with Section 34 IPC. All of them have been sentenced to undergo life imprisonment. All the appellants have been found guilty of the offence under Sections 323/34 and 324/34 IPC for which they have been sentenced to six months and one year imprisonments respectively. All the accused were also charged of the offence under **G** Section 120 B IPC and have been acquitted of that charge both by the trial court as well as by the High Court. Apart from the three appellants, who have been convicted by the High Court, the acquittal of Hans Raj, A-4 was affirmed by the High Court. Hem Raj, A-1 and Gian Chand, A-2 are the appellants in this appeal. Baldev Raj, A-3, though convicted, has not **H** preferred an appeal.

It is not in dispute, that Hem Raj, A-1, Baldev Raj, A-3 and Hans Raj, A-4 are brothers. Gian Chand, A-2, is their brother-in-law being the husband of their sister. In the occurrence giving rise to this appeal one Rajesh @ Toni is alleged to have been killed by the appellants while PW-2, Parshotam Lal and PW-3, Bikram @ Vicky are said to have sustained injuries.

Similarly the members of the prosecution party are also inter related. Toni, the deceased, was the son of Ram Lal. PW-2, the informant is the son of the brother of Ram Lal, and Rajinder is his brother. PW-3 the other eye witness is the cousin of PW-2, being the son of his mother's sister. Ram Lal, though an injured eye witness, and Rajinder another eye witness have not been examined as witnesses.

The case of the prosecution is that at about 9.00 p.m. on May 1, 1989, Parshotam Lal, PW-2, Bikram @ Vicky, PW-3, Rajesh @ Toni, deceased, Ram Lal @ Nikku Ram, father of Rajesh @ Toni and Rajinder were standing in front of the shop known as Bobby Cassettes located in Nali Mohalla, Ludhiana. Hem Raj, A-1, armed with a knife, Baldev Raj, A-3, armed with a kirpan and Gian Chand, A-2, armed with a hockey stick appeared on the scene and they attacked Rajesh @ Toni, deceased. While Gian Chand, A-2 and Baldev Raj, A-3 caught hold of Toni, Hem Raj, A-1, stabbed Toni in his abdomen with his knife. Gian Chand, A-2, assaulted him on his face with his hockey stick while Baldev Raj, A-3, caused an injury on his right hand with his sword. Toni slumped on the road whereafter his father Ram Lal and Rajinder Kumar (both not examined) rushed him to C.M.C. Hospital, Ludhiana. The case of the prosecution is that after the occurrence, the accused smashed the doors and windows of several houses in the vicinity.

The motive for the offence was that during diwali the accused used to indulge in gambling which was opposed by the deceased Toni. That is why, they assaulted him in the manner alleged. It was also the case of prosecution that Hem Raj, A-1, was really behind this murder.

The further case of the prosecution is that soon after the occurrence Bikram @ Vicky rushed to Officer Incharge of the Police Station Kotwali, Ludhiana, namely, Sub Inspector Tek Singh, PW-6, who was then present

A in front of Society Cinema on routine patrolling duty. He informed him about the assault on Toni and informed him about Toni having been taken to C.M.C. Hospital. When the police party reached the hospital, it found that deceased Toni was lying dead.

B The case of the prosecution is that PW-6, Tek Singh, recorded the statement of PW-2, Parshotam Lal, in the hospital and sent the information given by PW-2, Parshotam Lal, to the Kotwali Police Station where on its basis the formal First Information Report was drawn up. The case of the Prosecution is that the special report reached the Magistrate at 2.30 a.m. on May 2, 1989. PW-6 further deposed to the fact that he had held inquest over the dead body of the deceased and thereafter sent the body for post mortem examination. He had inspected the place of occurrence and took other steps in the course of investigation. On interrogation, Hem Raj made a disclosure statement pursuant to which a knife was recovered. Similarly, Baldev Raj also made a disclosure statement leading to the recovery of a kirpan.

D Dr. Inderjit Singh Kochhar, PW-1, performed post mortem examination on the dead body of deceased Toni and from his report it appears that the following injuries were found on the person of the deceased :

E 1. An abraded contusion 2" x ½" on the right side of nose.

2. An abrasion 2" x ½" on the left cheek.

F 3. A stab wound ½" x 2" in the midline of abdomen 2" above the umbilicus. Omentum was coming out of the wound. There was a corresponding cut on the shirt and Banian. On exploration of this injury, the wound was going downward backward and towards right side after piercing through the muscles. Spurring the peritoneum and anterior and posterior walls of stomach and rupturing the right kidney and small intestines. The stomach was ill of clotted blood mixed with food material. Peritoneal cavity was full of blood.

G 4. Lacerated wound 1/3' x 1/5" on the tip of the right middle finger.

H All the injuries were found to be ante mortem in nature and in the opinion of Dr. Kochhar, death was due to shock and hemorrhage as a result of injury No. 3, which was sufficient in the ordinary course of nature to cause death.

All the four accused were arrested in due course and put up for trial. The prosecution examined two eye witnesses to prove its case, namely, Parshotam Lal, PW-2, and Bikram @ Vicky, PW-3. For reasons best known to the prosecution, the prosecution gave up two other eye witnesses who were admittedly present when the occurrence took place, namely, Ram Lal, father of the deceased and Rajinder Kumar. It appears that Ram Lal, the father of the deceased was also injured in the course of the said incident and the trial court, in its judgment, has made a comment about it. We shall, however, refer to this fact later.

The defence of the accused was one of total denial and they alleged that they had been falsely implicated. According to the defence, another occurrence had taken place on the same day and at the same time in which Anil Kumar, DW-2, had been injured by members of the prosecution party and he had to be admitted in the hospital with incised injuries. On the report of Anil Kumar, DW-2, a criminal case had been registered and after investigation Parshotam Lal, PW-2, and Inder Mohan (since deceased) put up for trial. The defence examined Anil Kumar, who is the son of Gian Chand, A-2, as DW-2 while it examined Dr. Amandeep Singh, DW-1, to prove the medico legal report recording the injuries suffered by DW-2 in that other occurrence.

The trial court on a critical scrutiny of the evidence on record came to the conclusion that the case of the prosecution was doubtful and the eye witnesses examined by the prosecution not worthy of credence. It recorded several reasons for its conclusion.

The trial court held that PW-2 had attempted to improve the prosecution case by adding new facts in the course of his deposition. Though, a charge was framed under Section 120 B IPC, it was only in the course of his deposition that he stated about the accused having been heard talking to each other, behind a kiosk near Society Cinema. According to him, they were talking about organising gambling in the mohalla during the diwali festival and in case Toni raised objection, they would eliminate him. Hans Raj, A-4 (since acquitted) assured them that he would take the responsibility for their defence in case they were prosecuted. Such a statement is not to be found in the report lodged to the Police by PW-2. In fact, he admitted that he never told Toni or even his father Ram Lal about

A it so that they could be cautious. He never reported this matter to the police or to anyone else.

B It further held that in the First Information given to the police, PW-2 did not mention about any injury caused to him or to PW-3. In the course of his deposition, he stated that he was assaulted by Gian Chand, A-2, with his hockey stick on his left arm. It, however, appeared from a perusal from Ex. P.J., the intimation slip prepared by the doctor, that he had two injuries on his person, namely, a cut injury on the left fore arm (dorsal) and the other was a blunt trauma in the abdomen.

C There was considerable doubt about the time when the First Information Report was lodged by PW-2. According to PW-2, he made his statement before PW-6 at about 10.00 p.m. The evidence of PW-6, however, gave a different picture. According to him he had inquired from the doctor about the fitness of PW-2 and thereafter he recorded the statement of PW-2. The evidence on record clearly discloses that the doctor certified PW-2 to be fit for making a statement at 9.00 a.m. on May 2, 1989. Similarly, Bikram @ Vicky, PW-3, was declared fit to make a statement at 10.00 a.m. on May 2, 1989. If what was stated by PW-6 was true, then the report could not have been lodged at about 10.00 or 10.30 in the night of May 1, 1989, but must have been recorded sometime after 9.00 a.m. on May 2, 1989.

D

E This also created a doubt about the special report reaching the Magistrate at 2.30 a.m. on May 2, 1989.

F While, it is the case of the prosecution that PW-2 was admitted in the hospital for two or three days, the relevant documents were not produced to prove this fact. Moreover, according to the case of the prosecution, he was admitted in the hospital at 10.30 p.m. on May 1, 1989, but the deposition of PW-2 was to the effect that he was with the police near the dead body till about mid night. He was thereafter medically examined and admitted.

G If what is stated by Vicky is taken to be true, it was he, who gave the first information to the Investigating Officer, when he immediately went and reported the occurrence to him, while he was on patrolling duty in front of the Society Cinema. Moreover, PW-3 did not even mention the presence of PW-2 at the time of occurrence in his statement recorded in the

H course of investigation.

Ram Lal, the father of the deceased, was not examined as a witness as he was given up as unnecessary, but gave evidence on record which disclosed that he was also injured in the occurrence and was admitted in the C.M.C. Hospital. Similarly, Rajinder Kumar was also not examined by the prosecution. It appeared that both of them in their statements recorded during the course of investigation had excluded the presence of PW-2 at the place of occurrence and that appeared to be a reason why they were not examined as eye witnesses. It, therefore, appeared doubtful that PW-2 was present when the occurrence took place. There was also considerable doubt as to whether the First Information Report was lodged at the time and place as stated by PW-2.

The evidence adduced by the defence showed that another occurrence took place at the same time on the same day in which Anil Kumar, DW-2, was injured and an injury was caused to him by a sharp cutting weapon, which was proved by production of medico legal report by Dr. Amandeep Singh. It was also not disputed that in connection with that occurrence, PW-2 and another had been put up for trial before the court charged under Section 324 IPC.

In view of the above findings, the trial court held that the prosecution had failed to prove its case beyond reasonable doubt and that the accused were entitled to acquittal. Accordingly, it acquitted all the accused persons of the charges levelled against them.

The State of Punjab preferred an appeal against the order of acquittal. The High Court by its judgment and order has found the appellants herein as well as Baldev Raj, A-3, guilty, but it upheld the acquittal of Hans Raj, A-4, against whom there was a charge of conspiracy. The appellants were also acquitted of the charge of conspiracy. The High Court after noticing the evidence on record and the submissions advanced by the parties, firstly considered the correctness of the finding of the trial court as to whether the statement Ex. PC, made by PW-2, was the First Information Report, or whether the report earlier made by Vicky, PW-3 to PW-6 in front of Society Cinema must be treated to be the First Information Report. The High Court observed that the first information as to the manner in which the occurrence had taken place was given by PW-2 and not by Vicky, PW-3, and, therefore, the trial court was not justified in holding that the

A First Information Report was really the report made earlier by PW-3 to PW-6 as nothing had come on record to show that Vicky, PW-3, had told PW-6 about the manner in which the occurrence had taken place. In our view, since it is not clear from the record as to what was the nature of information given by PW-3 to PW-6, since the same was not recorded, it is not possible to hold categorically that the information given by PW-3 must be treated as the First Information Report. However, we must observe that the reasoning of the High Court in this regard cannot be accepted as correct, namely, that unless the manner in which the occurrence took place is stated in the report, the same cannot be treated as a First Information Report. The law is very clear and well settled that a report which discloses the commission of a cognizable offence must be treated as the First Information Report under Section 154 Cr. P.C. It does not matter whether the person lodging the report had witnessed the commission of the offence or not, nor is it necessary that all details should be mentioned in the report about the manner of occurrence, the participants in the crime, the time and place of occurrence etc. The requirement of Section 154 Cr. P.C. is only this that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action. In this case, since the report to PW-6 made by PW-3 was not recorded, and the endorsement made by PW-6 indicates that PW-3 had told him that a quarrel had taken place a little earlier and that Toni, injured, had been taken to the C.M.C. Hospital, it is not possible to say in the absence of evidence on record, as to whether the report related facts disclosing the commission of a cognizable offence. We, however, do not attach much significance to this aspect of the case and we shall proceed on the basis that the report made by Parshotam Lal, PW-2, is the First Information Report.

The High Court further held that merely because PW-2 has stated before the Police that the accused had caused injuries to Toni at the instance of Hans Raj was no ground to brush aside the evidence of Parshotam Lal, PW-2. It therefore, came to the conclusion that the manner of occurrence, as deposed to by PW-2, could not be discarded only on the ground that PW-2 had named Hans Raj as the person at whose instance the other three accused had committed the murder of Toni.

Having carefully considered the evidence on record, we are of the opinion that the High Court was not justified in making the above

observation. The trial court noticed that in the First Information Report made by PW-2, there was no mention about any conspiracy to commit the offence, though there was a bald statement at the end of the report that Hans Raj was behind the occurrence. In the course of his deposition, however, PW-2 made a statement that only three days before the occurrence the accused were heard talking to each other behind a kiosk near the Society Cinema and they were saying that they will again organize gambling in the Mohalla during the diwali festival and if Toni objected he will be done away with. Hans Raj (since acquitted) took the responsibility of dealing with the consequences that may follow. The trial court was justified in adversely commenting on this part of the deposition of PW-2, because no such story had been disclosed in the First Information Report. PW-2 had to admit in the course of his cross-examination that he had not disclosed this fact to the police when he lodged the report and the reason given by him is that he had also come to know of this fact only after the 12th of July, 1989. Obviously, therefore, what is stated by PW-2 was not based on his knowledge. In case he had himself heard the conversation between the accused while they were planning in this manner, he did not say so when he lodged the First Information Report. This aspect of the prosecution case must, therefore, be rejected and the courts below have rightly rejected the case of conspiracy set up by the prosecution resulting in acquittal of Hans Raj.

It was, then, observed by the High Court that even though Parshotam Lal, PW-2, had not stated specifically about the injuries suffered by him in the course of the incident, that by itself would not be a ground to discard the testimony of PW-2 because he had stated that injuries had been caused to other persons. In our view, the fact that PW-2 while lodging the First Information Report did not mention about the injuries caused to him, even though simple in nature, was certainly a relevant fact to be taken into consideration while appreciating the evidence on record and judging the credibility of the witness. It is difficult to believe that a person injured in the course of the same incident would fail to mention to the Police Officer in his report that he was also injured. Apart from this omission, he also failed to mention that Vicky, PW-3, had also suffered injuries. These omissions certainly reflect on the credibility of the witness. Moreover, the High Court failed to notice that according to the evidence produced by the prosecution itself, Ram Lal, the father of Toni, though not examined as a

A witness, was also injured in the same occurrence and was also medically examined at the C.M.C. Hospital where PWs. 2 and 3 were medically examined. The fact that injuries suffered by PWs. 2 and 3 were simple in nature is no ground to discard this omission, particularly, when according to PW-2, he had to remain admitted in the hospital for three days while according to PW-3 he had to remain admitted in the hospital for about fifteen days.

The High Court then brushed aside the defence, namely, that an occurrence took place in which Anil Kumar, DW-2, was injured. The High Court observed that Dr. Amandeep Singh, DW-1, who was examined in defence to prove the medico legal report, issued by Dr. Yoginder Gupta, had not himself examined DW-2. DW-1 stated that Dr. Gupta had left the job and was not traceable. The medico legal report disclosed that DW-2 had been admitted in the Daya Nand Hospital, Ludhiana at 10.30 p.m. on May 1, 1989 with profusely bleeding injury on the occipital region of the skull and the wound was 3" in length with ragged and irregular margins. It was a fresh injury caused by a sharp edged weapon like kirpan. DW-1 stated that he was conversant with the hand writing of Dr. Gupta with whom he had worked and the report which he produced before the court was in his hand writing. DW-2 also appeared as a witness in defence and stated that on the day of occurrence at about 9.00 p.m., when he heard some noise outside, he rushed out and found PW-2, his brother Inder Mohan and Rajesh @ Toni present near the shop of Bobby Cassettes. PW-2 was armed with a kirpan and Inder Mohan was armed with a Dang. On seeing him, they caught hold of him and PW-2 dealt a kirpan blow on the back of his head. In the meantime, 15-20 persons came from both the sides and there was a free fight between them. He had become unconscious and he regained consciousness only the next day in the hospital. He had also lodged the report to the Police and PW-2 was facing trial on a charge under Section 324 IPC. The evidence of DWs. 1 and 2 certainly discloses that an occurrence had taken place at the same place and at the same time in which Anil Kumar, DW-2, was assaulted and according to Anil Kumar, PW-2 as well as deceased Toni along with Inder Mohan (since deceased) caught hold of him and assaulted him. It was also not denied by PW-2 that he was facing a trial on the report made by Anil Kumar, DW-2. The High Court observed that even if Anil Kumar, DW-2, sustained a simple injury in the course of occurrence, that was not enough to throw away the case

of the prosecution. The non-explanation of the injuries on Anil Kumar, DW-2, could not be treated as fatal to the case of the prosecution, and it could not be said that the prosecution had failed to come out with the true genesis of the occurrence. In our view, the High Court committed an error in this regard as well. The case of the defence was that the occurrence had taken place in a different manner altogether. The real occurrence that took place was triggered by PW-2 and his companions including the deceased Toni assaulting DW-2. When such an assault took place, members of both sides assembled and there was a free fight in which injuries were caused on both sides. It was not the case of the defence that the occurrence took place in the manner alleged by the prosecution and that in that occurrence Anil Kumar had suffered injuries which were not explained.

While on this aspect of the matter, we may notice that in the First Information Report the motive alleged was that the accused persons used to run a gambling den during diwali and that Toni, deceased, had prevented them from doing so which resulted in an assault on Toni, who had suffered injuries. It was on account of this hostility that the occurrence had taken place. However, we find that even on this aspect of the matter, the prosecution has not come out with the true story. The prosecution case is belied by the documents produced by the prosecution itself. In the course of his deposition, PW-2 stated that there was a fight at the time of diwali last year, on account of the fact that Hem Raj, A-1, was organising a gambling den in front of the house of Rajesh @ Toni to which they had objected. However, the said matter was later compromised.

Ex. PD is a report lodged by PW-2 on November 9, 1988. From this report, it appears that PW-2 along with several others reported to the police that Hem Raj used to organise gambling in front of his own house and when he and others requested him to stop that, he refused to do so. In the meantime, Anil Kumar, DW-2, nephew of Hem Raj came there with others and assaulted him. When he raised an alarm, his brother, Inder Mohan and his wife Rajni came to the place of occurrence and they were also assaulted and the ornaments of his sister-in-law were snatched. The female members of the family of the accused also came there and entered the house and beat his mother and sister. The compromise application has been marked as PD/1 and is dated November 12, 1988. From the said application it appears that the parties had settled the dispute with the intervention of the

- A** people of the locality and they did not want the police to take any further action. These Exhibits disclose that an incident took place earlier on account of Hem Raj organizing a gambling den in front of his own house and that an occurrence took place in which female members of the family of PW-2 were assaulted by female members of the family of the accused.
- B** Adverting to the allegations in the First Information Report, it is apparent, there is a false statement therein that Toni, deceased had prevented the accused from running the gambling den during diwali. In fact, Toni is nowhere mentioned in Ex. PD and this fact is also admitted by PW-2 in the course of his deposition. Moreover, the gambling den, if any, was in front of the house of Hem Raj, but PW-2, in his deposition, stated that the gambling used to be conducted in front of the house of Rajesh @ Toni.
- C** He has further stated that when they objected, an occurrence took place in which Anil Kumar, DW-2, had caused injuries to his mother and sister. These statements appear to be untrue because in Ex. PD the allegation was that the gambling was conducted in front of the house of Hem Raj himself
- D** and that the assault on the female members of the family of PW-2 was by the female members of the family of the accused and not by Anil Kumar. Rajesh @ Toni deceased was nowhere in the picture.

E We have noticed the above facts not with a view to find whether the motive alleged by the prosecution is true or false, since the case of the prosecution rests on the evidence of eye witnesses. However, in assessing the credibility of a witness, these facts can be taken into account and it appears to us that PW-2 falsely and deliberately introduced the name of Toni in the earlier incident that took place in the preceding year during the diwali festival with a view to probabalise the targeting of Rajesh @ Toni

F by the appellants herein, otherwise there appears to be no reason why the appellants would have chosen Toni as their target and spared PW-2. The manner in which PW-2 has tried to improve the case of the prosecution by introducing false facts in the course of his deposition, certainly reflects on his credibility.

G Coming back to the First Information Report, we have noticed that PW-2 had not mentioned about the injuries caused to him or to PW-3. The High Court observed that since they had received injuries which were not serious, failure to state this fact was not very significant. That, however,

H is not the case of the prosecution. The High Court failed to notice that in

his examination-in-chief, PW-2 proved the First Information Report and affirmed it to be correct and stated that he had put his thumb impression on the same after hearing and admitting the contents thereof. He also affirmed the correctness of the same in the court. However, when questioned about his failure to mention the injuries caused to him and PW-3, he replied that the statement was not read over to him. This demonstrates the shifting stand of this witness. Moreover, in the course of his deposition, he, for the first time, introduced the story of conspiracy hatched by the accused three days before the occurrence. The other part of his deposition which deserves notice is that he denied that he said anything in the First Information Report regarding breaking of doors and windows by the accused after the occurrence. According to him, they ran away after the occurrence and he had not noticed them doing anything. In the First Information Report, however, he had stated that after the occurrence, the accused persons broke the doors of many houses. These facts do indicate that PW-2 is not a reliable witness.

We shall now consider the time when the First Information Report was recorded. The trial court took the view that the evidence on this aspect of the case was rather inconsistent. The High Court has set aside the said finding relying upon the testimony of PW-6, the Investigating Officer, after explaining away the inconsistencies. We have carefully perused the evidence on record. According to PW-2, the First Information Report was recorded in the hospital at about 10.00 p.m.. According to him, after lodging of the First Information Report, the inquest was held over the dead body of the deceased which was completed after mid night, whereafter the statements of other witnesses such as Ram Lal and Rajinder Kumar were recorded. He was then examined by the doctor and thereafter admitted in the hospital for treatment. He was discharged from the hospital after three days, and during this period he remained in the hospital. In the background of these facts, we shall consider the evidence of the Investigating Officer, PW-6, who stated that he recorded the statement of PW-2 in the hospital. As to when the evidence was recorded, the evidence of PW-6 found to be self contradictory. To begin with, he stated that on reaching the hospital he recorded the statement of PW-2. He then stated that on May 2, 1989 he made a request to the doctors concerned as to whether PWs. 2 and 3 were fit to make a statement and vide their opinions Exhibits PF/1 and PF/2, they were declared fit to make a statement. This was when the two

A opinions of the two doctors had been recorded at 9.00 a.m. and 10.00 a.m. whereafter he recorded their statement. He further clarified that he did not record any further statement of PWs. 2 and 3 thereafter. If the evidence of PW-6 is believed, he recorded the statement of PW-2 for the first time after 10.00 a.m. on May 2, 1989. His evidence therefore casts a considerable

B doubt about the First Information Report having been recorded earlier in the night at about 10.00 or 10.30 p.m.. If this was the only circumstance against the prosecution, we could have perhaps attributed the statement of PW-6 to some confusion in his mind, but we find that there are other circumstances which create a serious doubt in our mind as to the truthfulness of the witnesses. The Investigating Officer, PW-6, has stated

C that he prepared a rough site plan of the scene of occurrence at the pointing of PW-2. PW-2, on the other hand, denies that the rough site plan was prepared by PW-6 in his presence. He asserted that he was admitted in the hospital at 10.30 p.m. whereafter he did not go out of the hospital till he was discharged. It is difficult to reconcile the deposition of PWs. 2 and 6

D on this aspect of the matter. Again, PW-6 has stated that he prepared the inquest report in the presence of PW-2 and Ram Lal. The inquest report was completed after mid night in the presence of these two witnesses. If what PW-2 has stated is true, that after his statement was recorded he was admitted in the hospital at 10.30 p.m., in support of which the prosecution

E produced documentary evidence, it is difficult to believe that he was present with the Police Officer till after mid night when the inquest report was prepared.

F According to PW-3 the police got him medically examined at the Hospital, between 11 p.m. and 12 midnight. The evidence of PW-6 on the other hand is to the effect that he did not get PW-3 admitted in the hospital or even asked for his medical examination. The versions of these witnesses are so inconsistent that it is difficult to find who is speaking the truth.

G The counsel for the appellants rightly submitted that the occurrence had taken place in a different manner altogether, and a false case was sought to be concocted by the prosecution, and that is why these inconsistencies have appeared in the evidence of the witnesses.

H It was then submitted that Ram Lal, the father of the deceased was also injured in the course of the same incident. He was also medically

examined in the same hospital and his injury statement is Ex. II which was produced by PW-7, the Medical Superintendent, CMC & Hospital, Ludhiana. In fact, he also produced the bed head ticket of Ram Lal. The said Ram Lal, though an injured eye witness and father of the deceased, was not examined as a witness in support of the case of the prosecution and was given up as unnecessary. Similarly, Rajinder Kumar, brother of PW-2 another eye witness was also given up as unnecessary though named in the First Information Report.

PW-3 was confronted with his earlier statement Ex. DA, made in the course of investigation, wherein he had not even mentioned about the presence of PW-2 at the place of occurrence, much less about his suffering any injury. However, in the course of his deposition, he sought to support the prosecution case regarding the presence of PW-2 and the manner in which he was assaulted. It is, therefore, difficult to place reliance upon PW-3.

We find the evidence on record to be very unsatisfactory and inconsistent. It is no doubt true that an occurrence did take place at about 9.00 p.m. In that occurrence Rajesh @ Toni was murdered. According to the prosecution, the accused persons assaulted the prosecution party and as a result, PWs. 2, 3 and Ram Lal were injured. According to the defence, the occurrence as alleged by the prosecution, did not take place and the occurrence took place in a different manner altogether. The members of the prosecution party were the aggressors and when they assaulted DW-2, people gathered from both sides and in the melee that followed, injuries were caused to the deceased and other prosecution witnesses. The appellants herein had no role to play. The evidence adduced by the prosecution does not make any reference to the injuries sustained by DW-2 and at the same time, it is a fact, that on the report of DW-2 relating to an occurrence which took place at the same time and place, PW-2 is facing a trial charged of the offence under Section 324 IPC for causing injury to DW-2. It also appears from the evidence of PW-7 that at the time of his admission in the hospital as per note on his bed head ticket, PW-3 had stated that he was involved in a fight between two rival groups at Nai Mohalla. Similarly PW-2 had stated that he was involved in a street fight near Deepak Cinema. PW-6 has stated that Deepak Cinema is about 200 yards away from the alleged place of occurrence. He also admitted that he

A did not find any blood at the place of occurrence. In view of these facts, it is not possible to outright reject the defence case as the High Court has done.

B In this state of the evidence on record, we find that the view taken by the trial court is also a possible reasonable view of the evidence on record. The evidence adduced by the prosecution is rather inconsistent and creates a serious doubt about the truthfulness of the prosecution case. Even if it may be possible to take a different view, we cannot say that the view taken by the trial court is not a reasonable view of the evidence on record.

C It is well settled that if on the basis of the same evidence two views are reasonably possible and the trial court takes the view in favour of the accused, the appellate court, in an appeal against acquittal, will not be justified in reversing the order of acquittal, unless it comes to the conclusion that the view taken by the trial court was wholly unreasonable or perverse and it was not possible to take the view in favour of the accused

D on the basis of evidence on record.

E We, therefore, allow this appeal and acquit the appellants of all the charges levelled against them. Accused Baldev Raj has not preferred an appeal before this Court, but we find that his case stands on the same footing as that of the appellants herein. We, therefore, order his acquittal as well and the said Baldev Raj shall be released forthwith, if not required in connection with any other case. The appellants herein are in jail. They are directed to be released forthwith unless they are required in connection with any other case. This appeal is accordingly allowed.

F V.S.S.

Appeal allowed.