A RAJESH SINGH & ORS.

v.

STATE OF U.P.

(Criminal Appeal No. 1160 of 2005)

B MARCH 28, 2011

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

C *Appeal against acquittal – Scope of – Held: While upsetting the judgment of acquittal, the appellate court must show the perversity in the judgment of the trail court – Appellate court also must record the finding that the view taken by the trial court was not possible in law at all – In the instant* D *case, the judgment of the appellate court very clearly records a finding that the acquittal recorded by the trial court was based on flimsy grounds and was wholly unjustified – High Court has given very good reasons to set aside the findings arrived at by the trial court – Penal Code, 1860 – s. 302/34.*

E *PENAL CODE, 1860:*

*s. 302/34 – Murder – An eleven year old boy beaten and hanged to death by three ccused – Acquittal by trial court – Conviction by High Court – Held: The evidence of eye-*F *witnesses clearly established that the boy was beaten by three accused in public gaze – Thereafter the accused dragged the boy inside the room and when they opened the door and fled away, the boy was found hanged and dead – Medical evidence established that death was homicidal – It is clear* G *that all the three accused had taken part in beating the victim and they all dragged him into the room and closed the door- It was for the accused to explain as to how the victim died – It is very clear that all the three accused had acted with common intention of causing the death – High Court rightly*

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convicted and sentenced them to imprisonment for life u/s 302 with the aid of s. 34 – The reasons given by trial court for acquittal are wholly unacceptable and can safely be called perverse – High Court having noted the defects in the judgment of the trial court and its casual approach, was justified in reversing the acquittal – Code of Criminal Procedures, 1973.

The three accused-appellants (A-1, A-2, A-3) were prosecuted for causing death of an eleven year old boy. The prosecution case was that on the day of incident at about 5 PM, when PW-1 and his brother were going to have 'paan' at the 'paan' shop near Pico Centre, belonging to A-1, they saw the three accused beating the son of PW-1. On being asked, the accused told that the boy had stolen some money. PW-1 requested the accused to spare the child but the accused dragged him inside the house and shut the door. PW-1 and others kept on shouting from outside. After about half an hour the three accused opened the door and ran away. When PW-1 and others went inside, they saw the boy hung with a hook in the ceiling and he was dead. PW-1 informed the Police and lodged the FIR. The trail court acquitted the accused. However, the High Court convicted all the three accused u/s 302/134 IPC and sentenced each of them to imprisonment for life.

Aggrieved, the accused filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1. It is settled law that while dealing with the judgment of acquittal, unless the reasoning by the trial court is found to be perverse, the acquittal cannot be upset; and that where two views are possible even then the judgment of acquittal should not be upset in the sense that the court while dealing with the judgment of

A **acquittal must see as to whether the trial court has taken a possible view. [Para 7] [1079-B-C]**

1.2. It is a well settled position and is reiterated that while upsetting the judgment of acquittal, the appellate
B **court must show the perversity in the judgment of the trial court and further the appellate court also must record the finding that the view taken by the trial court was not possible in law at all. [Para 8] [1079-D-E]**

1.3. In the instant case, the appellate court's
C **judgment very clearly records a finding that the acquittal recorded by the trial court was based on flimsy grounds and was wholly unjustified. The High Court has also given very good reasons to set aside the findings arrived at by the trial court. [Para 9] [1079-F-G]**

D **2.1. The first finding by the trial court was that the FIR was ante-timed on the ground that as per the evidence of PW-4, the Investigating Officer, the dead body of the deceased was dispatched from the spot after being sealed at 9 p.m. for the police lines. However, in the**
E **record of the police lines, it was shown to have been r0eceived at 10 a.m. on 12.4.1993. Trial court also observed that there was no evidence offered by the prosecution to suggest that the special report of the crime was sent to the higher authorities. The High Court**
F **has found that the FIR was lodged by PW-1 on 11.4.93 itself at 6.40 p.m. Thus, if the incident happened at about 5 O'Clock in the evening, the recording of the FIR at 6.40 p.m. in a police station which was 8 Kms. away from the spot of occurrence could not be said to be late reporting.**
G **The High Court has also relied upon the evidence of PW-4. Merely because the copy of FIR was received in the office of the Circle Officer on 13.4.1993, it should not lead to the conclusion that the FIR was ante-timed. The High Court has also found that if the dead body reached the**
H **police lines late at mid night and if it was shown in the**

record that it was received at 10 a.m. the following day, there was nothing significantly doubtful. Though the timing is slightly irregular, that alone would not be sufficient to reach a conclusion that the FIR was ante-timed. This circumstance cannot be taken to be of such a nature so as to throw the whole prosecution story which was proved by two eye witnesses, one of them being the father of the boy. [Para 10 and 11] [1079-H; 1080-A-H]

2.2. A close examination of PW-1, the father of the deceased boy shows that he and his brother had gone near the Pico Centre to have *paan*. That pico centre was in the house No. 128/22. According to this witness, he saw crowd in front of the Pico centre and saw that three accused were beating his 11 year old son. On being asked, A-1 replied that the victim had stolen his money. This incident was seen by three other persons also. However, in their presence, the accused persons dragged the victim inside the nearby house and shut the door. It was after about half an hour that the accused persons opened the door and fled away. When the witnesses entered the room, they found the victim hanging with the rope and was dead. There was nothing unnatural for the witness to choose his *Paan* shop and merely because he did not go to the nearest *Paan* shop, no fault could be found with the witness. Further, it has come in the evidence that the residence of PW-1 is hardly 300-350 steps away from the Pico Centre where the incident was happening, therefore, to call this witness a chance witness is a perversity. [Para 11 and 12] [1081-A-F; 1082-G-H; 1083-A]

2.3. The other reason given by the trial court was that PW-2 was present at the time of writing the FIR and his name was bound to have been mentioned in the FIR, but it did not mention his name and, therefore, PW-2 also appeared to be a chance witness. The trial court also

A observed that his claim that he saw the incident when he was going to fetch ice near the Pico centre was false, as "*according to this witness, normally he drinks fresh water of hand pipe.*" The High Court has found this reasoning in respect of PW-2 to be perverse. PW-2 is a literate witness. B He is MA LLB and had practiced law for two years. He also claimed that he knew and recognized the three accused persons. He had given a correct and graphic picture of what happened. It was really a matter of importance that there are no prevarications or inter se C contradictions in the evidence of these witnesses. He has also given the correct picture of what each accused was doing. It was to be realized that PW-1, the author of the FIR had seen his son being killed by three bullies of the locality. Under these circumstances, to expect each and D every detail including the names of the witnesses, would be totally unnatural when both these witnesses faced their cross examination extremely well. There was nothing brought in their cross examination which could falsify their claim of having seen the ghastly incident. E [Para 12-13] [1082-G-H; 1083-A-G]

2.4. The trial court has also found fault with the fact that none of the witnesses tried to stop the accused persons when they fled. That is hardly any reason to disbelieve the prosecution case. One of the accused F persons was already facing a murder case. PW-1 has also spoken about that. It should be seen that the accused were viewed as bullies and, therefore, nobody might have tried to apprehend them. Further, the trial court has found fault with the fact that the other witnesses like 'SK' was G not examined. That would be hardly a circumstance in favour of the defence, particularly, when the two other witnesses were offered. It is not the quantity but the quality of the evidence which matters. After perusing the whole evidence, this Court is convinced that the

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approach of the trial court, while appreciating the evidence of the two eye witnesses was extremely perverse. [Para 14-15] [1084-F-H; 1085-A-B]

2.5. The trial court did not take into consideration the evidence of the doctor who wholeheartedly supported the prosecution case. It is obvious from the post-mortem report that there were ante-mortem injuries. The injuries described were also serious injuries for an 11 year old child. His hyoid bone was also found fractured. Therefore, the fact that death of the victim was homicidal death was obvious. He had suffered the contusion on the back of left side below scapula and contusion on back of legs below knee etc. which were in perfect unison with the evidence of the two eye witnesses. The High Court has taken note of the medical evidence in a correct manner. At least the injuries of the deceased read with the evidence by the eye witnesses should have put the trial court on guard. The trial court had acquitted the accused persons in a very casual manner. [Para 16] [1085-B-E]

2.6. The most important circumstance in this case is the recovery of the dead body from the house of one of the accused persons. It is clear that all the three accused persons had taken part in the beating of the victim and all the accused persons dragged him in the room and closed the door. Therefore, it was up to the accused persons to explain as to how the victim died. There was absolutely no explanation from the accused persons, more particularly, A-1, as to how the body was found in a hanging position in the house of one of the accused. All the witnesses are unanimous on the point that all the three accused persons went inside the house dragging the victim with them. This important circumstance was completely lost sight of by the trial court. That also can be said to be a perversity on the part of the trial court. [Para 17 and 18] [1085-G-H; 1086-A-C]

A **2.7. After examining the evidence closely, this court is of the firm opinion that the acquittal in this case was completely out of the question. It is very clear that all the three accused persons had acted with common intention of causing the death and, therefore, the High Court has**
B **rightly held them guilty with the aid of s. 34, IPC. The reasoning given by the trial court was wholly unacceptable and can safely be called perverse. The High Court having noted these defects in the judgment of the trial court and the casual approach of the trial court**
C **was justified in reversing the acquittal. [Para 18 and 19] [1086-B-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1160 of 2005.

D From the Judgment & Order dated 4.4.2005 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1554 of 1998.

Sanjay Jain for the Appellants.

E R.K. Dash, Pradeep Misra, Suraj Singh for the Respondent.

The Judgment of the Court was delivered by

F **V.S. SIRPURKAR, J.** 1. The judgment passed by the High Court allowing the appeal against acquittal and convicting the appellant for the offence under Section 302 read with Section 34, IPC is in challenge in this appeal.

2. The three appellants, Rajesh Singh (accused No.1), Najai Srivastav (accused No.2) and Mohan Singh (accused
G No.3) came to be tried by the trial Court on the allegation that they had committed murder of a young boy Deepak on 11.4.1993 in the evening at about 5 O'Clock. Deceased Deepak was the son of Virendra Kumar (PW-1). Virendra Kumar (PW-1) was a lawyer's clerk. When he and his brother
H S.K. Srivastav, an advocate, were going for having '*paan*' at

the *paan* shop near Pico centre belonging to accused No.1, Rajesh, they saw that the three accused persons were beating Deepak. Deepak was made to take the posture like a cock (*murga*) and two bricks were kept on his back. Rajesh was hitting him with those bricks and the hands and feet of the boy had been tied and accused Najai was hitting him with a can. When Virendra Kumar (PW-1) asked as to why his son was being beaten, it was told that Deepak had stolen some money. Virendra Kumar (PW-1) requested the accused persons to let the child go as they had already beaten him severely. However, Rajesh refused to leave him and threatened that if he does not go he would also be assaulted. This incident was seen by some others also. On this Virendra Kumar (PW-1) said that he would inform the police but waited. All the three accused persons dragged Deepak to house No.128/21, C-Block, Kidwai Nagar, Kanpur which was the house of accused No.3, Mohan Singh. They confined him inside and shut the door. Virendra Kumar (PW-1) and others kept on shouting from outside. After about half an hour, the three accused persons ran away. When Virendra Kumar (PW-1) and others went inside they saw that the boy was hung with a hook in the ceiling. His feet were dangling at the height of 4-5 feet from the floor and he was dead. Virendra Kumar (PW-1) then informed the police by lodging an FIR.

3. The investigation was taken up by Chandra Shekhar Yadav (PW-4). He reached the spot, did the necessary formalities and sent the body for autopsy. As many as five ante-mortem injuries were found on the dead body during the post-mortem which was conducted by Dr. Jugal Kishore Sharma (PW-3). These injuries were in the nature of large abraded contusions. On internal examination his hyoid bone was found fractured. As per the opinion expressed, the boy died due to asphyxia as a result of throttling. After the investigation, charge sheet was filed. The prosecution examined Virendra Kumar (PW-1), Shyam Ji Pandey (PW-2) as eye-witnesses while Dr. Jugal Kishre Sharma who had conducted autopsy on the dead

A body of deceased was examined as PW-3. In addition to this, police witnesses were also examined. The accused abjured the guilt. The trial Court, however, acquitted the accused persons dis-believing the eye witnesses and held that their presence was doubtful. He also held that the conduct of Virendra Kumar
B (PW-1) was unnatural. The trial Court also observed that the prosecution had failed to examine S.K. Srivastav advocate, another eye witness.

4. The State filed an appeal against this judgment and the
C High Court allowed the appeal convicting the three accused persons of the offence under Section 302 read with Section 34, IPC. That is how the appeal has come before us.

5. It was vehemently argued by Shri Sanjay Jain, learned counsel for the appellants that this was a case where the
D medical evidence was contradictory with the evidence of eye witnesses. He also pointed out that the trial Court had given sound reasons and the High Court had not exercised the caution while upsetting the finding of acquittal handed out by the trial Court. The learned counsel also urged that it not was
E found that the judgment of the trial Court was perverse and the inferences were not possible at all. The appellate Court could not have upset the judgment and convicted the accused persons. We were also taken through the evidence of the witnesses which was severely criticized by the learned counsel.
F Lastly, the learned counsel claimed that all the accused persons could not be held guilty, particularly, when it was not certain as to which accused had caused the murder by throttling deceased Deepak.

6. As regards this, the learned Senior Counsel appearing
G on behalf of the State supported the judgment passed by the High Court and pointed out that this was the most foul murder and the reasoning given by the trial Court was extremely perverse. Shri R.K. Dash, learned Senior Counsel pointed out by reference to the judgment of the trial Court that the trial Court
H was extremely casual in appreciating the evidence and had

rejected the important evidence of the eye witnesses for no reasons. A

7. On this backdrop, it is to be seen whether the appellate Court was right in convicting the accused persons. There can be no dispute about the principles which are now more or less settled while dealing with the judgment of acquittal. There can be no dispute with the proposition argued by Shri Jain that unless the reasoning by the trial Court is found to be perverse, the acquittal cannot be upset. There can also be no dispute of the other proposition argued by Shri Jain that where two views are possible even then the judgment of acquittal should not be upset in the sense that the Court while dealing with the judgment of acquittal must see as to whether the trial Court has taken a possible view. B C

8. It is a well settled position now and we reiterate the same that while upsetting the judgment of acquittal, the appellate Court must show the perversity in the judgment of the trial Court and the appellate Court's judgment must show that the Court was alive to the fact that it was dealing with the judgment of acquittal and further the appellate Court also must record the finding that the view taken by the trial Court was not possible in law at all. D E

9. Testing the judgment from these angles, it has to be said that the appellate Court's judgment very clearly records a finding that the acquittal recorded by the trial Court was based on flimsy grounds and was wholly unjustified. The High Court has also considered the benefit of doubt awarded by the trial Court and has observed that it should not become a fetish. The High Court has also given very good reasons to set aside the findings arrived at by the trial Court. F G

10. The first such finding by the trial Court was that the FIR was ante-timed on the ground that as per the evidence of Chandra Shekhar Yadav (PW-4), the investigating officer, the dead body of deceased Deepak was dispatched from the spot H

A after being sealed at 9 p.m. for the police lines. However, in the record of the police lines, it was shown to have received at 10 a.m. on 12.4.1993. The FIR was also criticized by the trial Court and the defence counsel here on the ground that there was no evidence offered by the prosecution to suggest that the B special report of the crime was sent to the higher authorities. The High Court has found that this criticism was not justified. The High Court has given the reasoning that the FIR was lodged by the witness Virendra Kumar (PW-1) on 11.4.93 itself at 6.40 p.m. Thus, if the incident happened at about 5 O'Clock in the C evening, the recording of the FIR at 6.40 p.m. in a police station which was 8 Kms. away from the spot of occurrence could not be said to be late reporting. The High Court has also relied upon the evidence of Chandra Shekhar Yadav (PW-4) that the FIR had been lodged in the police station when he was not present D there and he was informed about it only on wireless and, therefore, he happened to reach the spot directly with ASI and started the investigation of the case and was busy there in drawing of *Panchnama* etc. right up to 11 p.m. and merely because the copy of FIR was received in the office of the circular officer on 13.4.1993, it should not lead to the conclusion E that the FIR was ante-timed. The High Court has also found that if the dead body reached the police lines late at mid night and if it was shown in the record that it was received at 10 a.m. on 12.4.93, there was nothing significantly doubtful. We have also gone through the record as well as the evidence of the F investigating officer Chandra Shekhar Yadav (PW-4) and though the timing is slightly irregular, that alone would not be sufficient to reach a conclusion that the FIR was ante-timed. After all nothing was going to be gained by the prosecution by ante-timing the FIR. Had the FIR been ante-timed, the G *Panchnama* could not have been commenced at 7.30 p.m. We do not find any significant cross examination of the *Panchas* and the police officers, particularly, on the aspect of timing thereof. We do not find this circumstance to be of such a nature so as to throw the whole prosecution story which was proved H by two eye witnesses, one of them being the father of the boy.

11. The learned counsel severely criticized the evidence of Virendra Kumar (PW-1) on the ground that the behaviour of Virendra Kumar (PW-1) was extremely unnatural and that his presence on the spot was extremely doubtful. We have seen the evidence of Virendra Kumar (PW-1) very closely. We have also seen the reasons given by the trial Court for rejecting his evidence. According to this witness, he and his brother S.K. Srivastav had gone near Rajesh Pico Centre to have *paan*. That pico centre was in the house of 128/22, C-Block, Kidwai Nagar, Kanpur. According to this witness, he saw crowd in front of the Rajesh Pico centre and saw that three accused beating his 11 year old son. He was made to take posture of a cock (*murga*) and he was being hit by accused Najai with a can. While Rajesh was pressing bricks and Mohan was slapping his son which he did twice. On being asked, the accused Rajesh replied that Deepak had stolen his money and even after requests by the witness, Deepak was not being released and, therefore, Virendra Kumar (PW-1) made hue and cry that the would inform the police. This incident was seen by Brij Bhan Singh, Shyam Ji Pandey and Dinesh Kumar also. However, in their presence, the accused persons dragged Deepak inside the nearby house at 128/22, C-Block, Kidwai Nagar, Kanpur and shut the outside door. It was after about half an hour that the accused persons opened the door and the three accused persons fled away towards a square known as Chalis Dookan Chauraha. When the witnesses entered the room, they found Deepak was hanging with the rope and was dead. His legs were dangling at 4-5 feet above the floor. It was on this basis that the First Information Report was given in their hand writing after it was prepared. The trial Court then noted the topography of the area as also the houses of the witnesses. Thereafter, the trial Court observed that there were 3-4 *paan* shops including one Pandit Ji's *Paan* shop. The trial Court also noted that the witness did not have *paan* at Pandit Ji's *Paan* shop and proceeded towards the *paan* shop which was near the shop of the accused Rajesh. The trial Court also noted that there were about 100-150

A persons gathered when the door was shut by the accused persons and that when the accused persons escaped by opening the door nobody tried to catch them. He also noted that this witness had taken the name of Shyam Ji Pandey to be present in the crowd. While considering the evidence of this B witness, who was an eye witness and father of the unfortunate boy, the trial Court held that Virendra Kumar (PW-1) and Dinesh Kumar who were the clerks of the advocate as also SK Srivastav the brother of Virendra Kumar (PW-1) and Shyam Ji Pandey who himself was an advocate were residents of C different places. The trial Court then observed:

> "the presence of many advocates and clerks is natural in the court but the presence of these four at the spot of occurrence on a holiday does not seem more probable."

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The trial Court then further observed:

> "the betel shop of Pandit Ji is situated near the house of witness Virendra Kumar (PW-1) before Pico centre but witness did not eat the betel on the aforesaid shop but E came to eat betel near Pico centre where the incident was happening. These circumstances make the presence of this witness on the spot of occurrence at the time of incident doubtful and this witness appears to be a chance witness."

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12. It is on the basis of this that the trial Court has dis-believed the evidence of Virendra Kumar (PW-1). We do not find any other reason having been given to dis-believe his evidence. That we are surprised by this finding would be an G understatement. There was nothing unnatural for the witness to choose his *Paan* shop and merely because he did not go to the nearest *Paan* shop, no fault could be found with the witness. Further, it has come in the evidence that the residence of Virendra Kumar (PW-1) is hardly 300-350 steps away from the H Pico centre where the incident was happening, therefore, to call

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this witness a chance witness is a perversity. The High Court has noted this perversity and has adversely commented on the finding reached by the trial Court. The other reason given by the trial Court was that one Shyam Ji Pandey was present at the time of writing the FIR and his name was bound to have been mentioned in the FIR, but it did not mention the name of Shyam Ji Pandey and, therefore, Shyam Ji Pandey also appeared to be a chance witness. As regards Shyam Ji Pandey, the Sessions Judge said that his claim that he saw the incident when he was going to fetch ice near the Pico centre was obviously false and the trial Court has mentioned "*according to this witness, normally he drinks fresh water of hand pipe. The incident is of 11th April at 5 p.m. At that time it is not hot worth drinking cold water especially when the witness used to drink hand pipe water daily.*"

13. Again, this reason for rejecting the evidence of Shyam Ji Pandey, to say the least, is perverse. There is no law saying that merely because one is used to drink water from hand pipe, he should not purchase ice. The High Court has found this reasoning in respect of Shyam Ji Pandey to be perverse. Again the Sessions Judge found that Shyam Ji Pandey who was present was not mentioned in the FIR. It was bound to be realized that Virendra Kumar (PW-1), the author of the FIR had seen his own son being killed by three bullies of the locality. It has also come in the evidence that accused No.1, Rajesh was already facing a murder case and was on bail. Under these circumstances, to expect each and every detail including the names of the witnesses, would be totally unnatural when both these witnesses faced their cross examination extremely well. There was nothing brought in their cross examination which could falsify their claim of having seen the ghastly incident.

14. It is true that the others like the brother of Virendra Kumar (PW-1) did not step into the witness box but that by itself will not make the evidence of two witnesses suspect in any manner. The witness was candid enough to say that he did not have any enmity with accused Mohan and he had heard that

A he was being tried under Section 302, Indian Penal Code. He was also candid enough to say that accused Mohan and accused Najai had not raised any accusation against deceased Deepak that he had stolen their belongings. It has come in his cross examination that when he was requesting the accused
B persons to spare his son, Brij Bhan Singh, Shyam Ji Pandey and Dinesh reached there on hearing the shouts thereby the presence of Shyam Ji Pandey was thoroughly established by him in his cross examination itself. In his cross examination, he gave a graphic description of what each accused was doing
C while beating Deepak. The tenor of his evidence was natural and even after closely examining the evidence we also feel like the High Court that the Sessions Judge was in error in rejecting the evidence on flimsy grounds. Same is true of the evidence of Shyam Ji Pandey and excepting that Shyam Ji Pandey was
D not expected to purchase ice and for that purpose come out on the spot, nothing has been found inconsistent with the evidence of Virendra Kumar (PW-1). Shyam Ji Pandey is a literate witness. He is MA LLB and had practiced law for two years. He also claimed that he knew and recognized the three accused persons. He had given a correct and graphic picture
E of what happened. Much of his cross examination was on the fringes without confronting him with any inconsistencies. It was really a matter of importance that there are no prevarications or inter se contradictions in the evidence of these witnesses. He has also given the correct picture of what each accused
F was doing. After seeing the whole evidence, we are convinced that the approach of the Sessions Judge, while appreciating the evidence of these two eye witnesses was extremely perverse. The trial Court has also found fault with the fact that none of the witnesses tried to stop the accused persons when
G they fled. That is hardly any reason to dis-believe the prosecution case. One of the accused persons was already facing a murder case. The witness Virendra Kumar (PW-1) has also spoken about that. It should be seen that the accused were viewed as bullies and, therefore, nobody might have tried to
H apprehend them.

15. Further the trial Court has found fault with the fact that the other witnesses like Shiv Kumar was not examined. That would be hardly a circumstance in favour of the defence, particularly, when the two other witnesses were offered. It is not the quantity but the quality of the evidence which matters.

16. The Sessions Judge did not take into consideration the evidence of the doctor who wholeheartedly supported the prosecution case. It is obvious from the post-mortem report that there were ante-mortem injuries. There were 10 abraded contusions on both sides of neck in front and just below chin. The injuries described were also serious injuries for an 11 year old child. His hyoid bone was also found fractured. Therefore, the fact that Deepak's death was homicidal death was obvious. He had suffered the contusion on the back of left side below scapula and contusion on back of legs below knee etc. which were in perfect unison with the evidence of the two eye witnesses. The High Court has taken note of the medical evidence in a correct manner. At least the injuries of the deceased read with the evidence by the eye witnesses should have put the trial Court on guard. We must say that the trial Court had acquitted the accused persons in a very casual manner.

17. The most important circumstance in this case is the finding of the dead body in the house of one of the accused persons. Surely, the dead body could not have walked inside the house of the accused person. There was absolutely no explanation from the accused persons, more particularly, accused Rajesh as to how the body was found in a hanging position in the house of one of the accused. All the witnesses are unanimous on the point that all the three accused persons went inside the house dragging Deepak with them. This important circumstance was completely lost sight of by the trial Court. That also can be said to be a perversity on the part of the trial Court.

18. As regards the argument of learned counsel for the

A defence that it was not certain as to which accused actually caused the murder and, therefore, all the three accused persons were bound to be given the benefit of doubt, it has to be said that the argument is without any substance. It is clear that all the three accused persons had taken part in the beating
B of deceased Deepak and all the accused persons dragged him in the room and closed the door. Therefore, it was up to the accused persons to explain as to how Deepak died. It is very clear that all the three accused persons had acted with common intention of causing the death and, therefore, all the three
C accused persons would be guilty with the aid of Section 34, IPC. The High Court has rightly held them guilty.

19. In short, after examining the evidence closely, we are of the firm opinion that the acquittal in this case was completely out of the question. The reasoning given by the trial Court was
D wholly unacceptable and can safely be called perverse. The High Court having noted these defects in the judgment of the trial Court and the casual approach of the trial Court was justified in reversing the acquittal. In our opinion, the appeal has no merits and must be dismissed. It is accordingly dismissed.

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R.P. Appeal dismissed.