CASE NO.:
Appeal (crl.) 829 of 1996

PETITIONER:
State of Punjab

RESPONDENT:
Vs.
Karnail Singh

DATE OF JUDGMENT: 14/08/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

State of Punjab is in appeal questioning the legality of judgment rendered by the Punjab and Haryana High Court directing acquittal of the respondents Karnail Singh and Nirmal Singh. Learned Sessions Judge, Jalandhar, had found both the accused persons to be guilty of offence punishable under Section 302 of Indian Penal Code, 1860 (for short 'IPC'). Life sentence was imposed on each, with fine of Rs.1,000/-. Additionally, accused Karnail Singh was convicted for offences punishable under Section 307 read with Section 34 IPC while accused Nirmal Singh was convicted for offences punishable under Section 307 IPC. Each of them was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- each. During pendency of appeal before this Court, accused-appellant Nirmal Singh expired. Since no application in terms of Section 394 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') has been filed, the appeal abates so far he is concerned.

In a nutshell the prosecution version is as follows:

Gurdial Singh @ Kala (hereinafter referred as 'the deceased') had five brothers, namely, Piara Singh, Swaran Singh, Charan Singh, Dev Singh and Kewal Singh. Piara Singh and the deceased used to reside in a Dera in their fields, where they had installed a tubewell. Accused Karnail Singh and Nirmal Singh belong to their village. They also used to reside in a Dera close to the Dera of Piara Singh and deceased. As deceased was having illicit relationship with Sito, wife of accused Karnail Singh, there was enmity between the accused persons and the deceased. On 26.1.92 in the night Piara Singh and deceased were taking rest at the Dera after taking meals. Their brother Swaran Singh also came there in order to irrigate his fields by using their tubewell. At about 11.00 p.m., Swaran Singh asked deceased to have a round and to check up if the fields were properly irrigated. Deceased went out to check up the fields. After some time, Piara Singh and Swaran Singh (PWs. 1 and 2 respectively) heard the cry for help made by the deceased. Immediately they went out and saw both accused persons armed with weapons dragging the deceased towards their Dera. At that time there was an electric bulb lighting their Dera. When they tried to help the deceased, Nirmal Singh fired at the deceased with his gun, as a result of which he fell down on the ground while accused Karnail Singh was assaulting the deceased with the Kirpan. When Piara Singh (PW 1) raised alarm pleading that the deceased should not be assaulted, the accused persons threatened them. Being frightened they ran away to

their village. On the following morning, they told about the incident to Gurdip Singh, Sarpanch. They went to the place of occurrence, and found the headless body of the deceased with injury on the right side of the chest lying in the field near the Dera of accused Karnail Singh. They searched for the head of the deceased and found the same lying in the tubewell at the Dera of accused Karnal Singh. Piara Singh left Swaran Singh (PW 2) and Kewal Singh to guard the dead body and lodged the information at the police station. Investigation was undertaken and on completion charge sheet was placed. Accused persons pleaded innocence and false implication.

Learned Trial Judge found the prosecution version to be credible and placing reliance on the evidence of PWs. 1 and 2 convicted the accused persons and sentenced them as above stated. The judgment of conviction and sentence was assailed before the High Court. Main challenge before the High Court was that there was unexplained delay in lodging the FIR and dispatch of the same to the concerned Magistrate. It was also submitted that the conduct of the witnesses who were brothers of the deceased was unusual and instead of coming to his rescue they claimed to have fled away. The five brothers of the deceased did not take any step in the night and remained content. They informed the Sarpanch on the next day, and though they claimed to have told the Lambardar in the night itself, there was no evidence adduced during trial to that effect. Accepting the contentions of the accused the High Court directed acquittal as aforenoted. The High Court also noted that the presence of PWs 1 and 2 was extremely doubtful and a false case after due deliberation was cooked up and FIR was prepared at about 2.00 p.m. and that being the position, the accused persons were entitled to acquittal.

In support of the appeal learned counsel for the appellant-State submitted that the time of occurrence was around 11.00 p.m. The FIR was lodged next day around 9.35 a.m. First the information was given at the police chowk around 8.00 a.m., and the FIR was registered at the Police Station at about 9.35 a.m. The FIR reached the Magistrate around 3.00 p.m. Undisputedly the police chowk was at a distance of 3 kilometers from the place of occurrence, while the police station was at a distance of 7 kilometers, and the distance of the court from the police station was 10 kilometers. Considering the distance there was no reason to discard the prosecution version. Further the conclusion of the High Court that there was unusual conduct in not informing the police or co-villagers at the night does not appear to be correct. Factual position as noted by the Trial Court is that that area was a terrorist infected area and terrorism was at its peak during the period. The post-mortem was conducted at 3.15 p.m. There was no explanation as to how the dead body was found in the field of the accused Karnail Singh and the severed head was found near his tubewell. Acting on mere surmises, credible prosecution evidence has been discarded.

Per contra, learned counsel for the accused Karnail Singh submitted that the prosecution has failed to establish its accusations, and the High Court has noted the infirmities in details and no interference is called for considering the limited scope of interference in an appeal against acquittal. The PWs 1 and 2 are close relatives of the deceased and, therefore, their evidence should not have been acted upon. Their evidence is also not consistent with regard to motive for the crime.

There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence

adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh (JT 2002 (3) SC 387)]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra (1973 (2) SCC 193), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225) and Jaswant Singh v. State of Haryana (JT 2000 (4) SC 114).

On consideration of the rival submission, we are of the view that the High Court is not justified in directing acquittal of the accused persons. It proceeded on an erroneous impression that the FIR was lodged at 2.00 p.m. after deliberations and discussions. No material has been indicted for coming to this conclusion. On the contrary, evidence on record clearly shows that the information was lodged at 8.00 a.m. at the police chowk, and the FIR was registered at the police station at 9.35 a.m. and it reached the Magistrate at 3.00 p.m. It is baffling as to how and on what material High Court came to the conclusion that the FIR came into existence at 2.00 p.m. Additionally considering the distance between the place of occurrence, police chowk, police station and the court of the Magistrate, it cannot be said that there was any unexplained delay so far as registration of FIR and dispatch to the Magistrate are concerned. Merely because the information was not lodged at the police chowk or the police station in the night, that cannot be a suspicious circumstance in view of the factual position noted by the Trial Court. From the evidence it is clear that the area was a terrorist infected area and terrorism was its peak during the period. These factors weighed with the Trial Court, and in our opinion rightly. The High Court did not attach any importance to this vital factor, and came to presumptuous conclusions. It is to be noted that there was no dispute by the accused regarding the presence of the dead body and the severed head in the field and in the tubewell of accused Karnail Singh. Though the prosecution has to lead evidence to substantiate its accusations, if factors within the special knowledge of the accused are not satisfactorily explained it is a factor against the accused. No explanation was given by the accused during examination under Section 313 of the Code except making bold denial. Though this factor by itself cannot be sufficient to fasten the guilt of the accused, while considering the totality of the circumstances this is certainly a relevant factor. The evidence of PWs 1 and 2 is clearly cogent and without even properly analyzing their evidence the High Court came to the conclusion that their presence was doubtful.

We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two

eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in â\200\223 'Rameshwar v. State of Rajasthan' (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

Again in Masalti and Ors. v. The State of U.P. (AIR 1965 SC 202) this Court observed: (p. 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76). As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. (AIR 1981 SC 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in Krishna Mochi and Ors. v. State of Bihar etc. (JT 2002 (4) SC 186).

Merely because one of the witnesses stated that he was unaware of the illicit relationship, that does not in any way dilute the evidentiary value of the evidence of other witnesses who have spoken about it.

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See: Gurbachan Singh v. Satpal Singh and Others [AIR 1990 SC 209]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. v. Ashok Kumar Srivastava [AIR 1992 SC 840]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to

eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Anr. v. State (Delhi Admn.) (AIR 1978 SC 1091)]. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U.P. v. Anil Singh (AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. (See: Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra (1974 (1) SCR 489), State of U.P. v. Krishna Gopal and Anr. (AIR 1988 SC 2154), and Gangadhar Behera and Ors. v. State of Orissa (2002 (7) Supreme 276).

Keeping in view the legal principles and the factual scenario in our view the inevitable conclusion is that the High Court was not justified in directing acquittal of the accused persons. Accordingly the judgment of the High Court is set aside and that of the Trial Court restored.

Accused Karnail Singh is directed to surrender to custody to serve the balance of the imprisonment as ordered by the Trial Court. The appeal is allowed.