

MAHENDRA PRATAP SINGH

V.

STATE OF U.P.

Criminal Appeal No. 34 of 2006

FEBRUARY 24, 2009

**[LOKESHWAR SINGH PANTA AND B. SUDERSHAN  
REDDY, JJ.]**

*Penal Code, 1860 – ss. 304 (Part II), 307 and 324 – Arms Act, 1950 – s. 25 – Single bullet shot by appellant causing fatal injuries to one and grievous injuries to others – Order of acquittal by trial court – Conviction by High Court – Correctness of – Held: Prosecution failed to prove its case beyond reasonable doubt – Evidence of eye-witnesses as also injured witnesses inconsistent with medical evidence and ballistic expert's report in regard to weapon of offence – High Court disregarded rule of prudence in converting order of acquittal to conviction – Hence, order of High Court set aside and that of trial court restored.*

*Criminal law – Administration of Criminal Justice – Held: If two views are possible one for acquitting the accused and other for convicting the accused, the rule of prudence should guide High Court not to disturb order of acquittal made by trial court.*

**The question which arose for consideration in this appeal was whether the High Court was justified in convicting and sentencing the appellants under sections 304 (Part II), 307 and 324 IPC and s. 25 of the Arms Act and setting aside the order of acquittal passed by the trial court.**

**Allowing the appeal, the Court**

**HELD: 1.1 The findings of the High Court in setting aside the order of acquittal of the appellant passed by the**

- A trial judge cannot be agreed. On independent analysis of the evidence of the material witnesses, the High Court failed to appreciate the same in proper perspective. The discrepancies coming on record in the evidence of PWs 4, 8, 9, 10 and 13 in no circumstances can be termed to be
- B minor in nature which, are vital for disbelieving and discrediting their evidence. The High Court discarded the important pieces of evidence on the basis of surmises and conjectures. It appears that the prosecution suppressed the genesis of the evidence. The discrepancy
- C and inconsistency in regard to the use and recovery of the weapon of offence from the possession of the appellant is very vital to discard the truthfulness of the prosecution case. The prosecution failed to prove that the same weapon of offence was sent to the Ballistic Expert
- D which allegedly was handed over by the prosecution witness to Head Constable in the Police Station. [Paras 21 and 22] [1053-A-B; 1054-H; 1056-E-F]

- 1.2 The High Court clearly fell in error while convicting the appellant under section 25 of the Arms Act without caring to go through the provisions of the Act.
- E Section 25 of the Act deals with punishment for manufacturing, selling, transferring, converting, repairing, possessing of any arms or ammunition in contravention of section 5 of the Act. As per the prosecution version the
- F appellant had used .315 bore rifle, which was owned by his father. Undisputedly, the appellant was charged and tried for the offence punishable under section 27 of the Act for using the said fire arm. The appellant could not have been convicted and punished by the High Court for
- G committing an offence under section 25 of the Act. [Paras 25 and 26] [1058-D-F]

- 1.3 Having regard to the entire evidence and having carefully and closely considered the judgments of the trial court and the High Court, it appears that the view taken
- H by the trial court was reasonable and plausible. If, on

appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible one as held by the trial court for acquitting the accused and the other for convicting the accused, in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial court. Unless the conclusion of the trial court drawn on the evidence on record are found to be unreasonable and perverse or unsustainable, the High Court should not interfere with the order of acquittal. The evidence of the eye-witnesses including injured witnesses does not at all inspire confidence and their evidence is running in conflict and contradiction with the medical evidence and ballistic expert's report in regard to weapon of offence, which was different from the one, sealed in the Police Station. The High Court disregarded the rule of judicial prudence in converting the order of acquittal to conviction. [Para 27] [1058-F-H; 1059-A-C]

1.4 In view of the facts and circumstances, the prosecution failed to prove its case beyond all reasonable doubt and the High Court committed error in interfering with the trial court's order of acquittal. The order of the High Court convicting the appellant is set aside, the order of the trial court is restored and the appellant is acquitted. [Paras 29 and 30] [1059-F-G]

*Awadesh & Anr. v. State of Madhya Pradesh* (1988) 2 SCC 557; *G. B. Patel Vs. State of Maharashtra* (1979) 2 SCR 94; *Sheo Swarup vs. King Emperor* AIR 1934 PC 227; *Mohinder Singh v. The State* (1950) SCR 821; *Inder Singh and Anr. v. The State (Delhi Administration)* (1978) 4 SCC 161; *Ram Narain Singh v. State of Punjab* (1975) 4 SCC 497; *Puran Singh v. State of Uttaranchal* (2008) 3 SCC 795; *Ram Kumar v. The State of Haryana* JT 1994 (6) S.C. 502; *Bharwada Bhoginbhai v. State of Gujarat* (1983) 3 SCC 217; *Rajesh Thakur v. State* (1988) CrI. J. 1477; *State of H.P. v. Lekh Raj and Anr.* (2000) 1 SCC 247 – referred to.

|   |                           |              |            |
|---|---------------------------|--------------|------------|
| A | <b>Case Law Reference</b> |              |            |
|   | (1988) 2 SCC 557          | Referred to. | Para 12    |
|   | (1979) 2 SCR 94           | Referred to. | Para 12    |
| B | AIR 1934 PC 227           | Referred to. | Para 12    |
|   | (1950) SCR 821            | Referred to. | Para 12.3  |
|   | (1978) 4 SCC 161          | Referred to. | Para 12.4  |
|   | (1975) 4 SCC 497          | Referred to. | Para 12.5  |
| C | (2008) 3 SCC 795          | Referred to. | Para 12.6  |
|   | JT 1994 (6) S.C. 502      | Referred to. | Para 12.7  |
|   | (1983) 3 SCC 217          | Referred to. | Para 12.8  |
| D | (1988) Cri. J. 1477       | Referred to. | Para 12.9  |
|   | (2000) 1 SCC 247          | Referred to. | Para 12.10 |

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal**  
No. 34 of 2006

E From the Judgement and Order dated 29.07.2007 of the High Court of Judicature at Allahabad in Government A. No. 142 of 1981.

Sushil Kuma, J.C. Gupta, Rajesh, Dharam Singh, Aditya Kumar, Anmol Thakral, for the Appellant.

F Ratnakar Dash, Fuzail Khan, Anil Kumar Jha, for the Respondent.

The Judgement of the Court was delivered by

G **LOKESHWAR SINGH PANTA, J.**

H 1. This appeal is filed by Mahendra Pratap Singh- appellant herein under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the final judgment and order dated 29.07.2005 passed by the High Court of Judicature at Allahabad in Appeal No. 142 of 1981. By the

impugned judgment, the High Court has set aside the order of acquittal dated 09.10.1980 of the appellant passed by the Sessions Judge, Jhansi, in Sessions Trial No. A-135 of 1975 under Section 304 Part-II, under Section 307 and Section 324 of the Indian Penal Code (for short the "IPC") and under Section 25 of the Arms Act and as a result thereof he has been sentenced to undergo rigorous imprisonment for 10 years under Section 304 Part-II, 7 years R.I. under Section 307 IPC, 6 months R.I. under Section 324 IPC and 2 years R.I. under Section 25 of the Arms Act.

2.1] The incident leading to the prosecution of the appellant occurred on 12.02.1975 at about 1.00 P.M. at bus stand Lalitpur. According to the prosecution case, on the day of the incident one passenger Bus No. MPR 5393 on its route from Madanpur to Jhansi was stopped by its driver Sukhnandan (CW-3) at bus stand Lalitpur. The departure time of the said bus from the bus stand Lalitpur was 1.00 P.M., but it remained parked till 1.10 P.M. beyond schedule time fixed by the Road Transport Authority. One more Bus No. USG 5519 came from Jammi Dem and reached bus stand Lalitpur at about 1.15 P.M. as per schedule time which was to proceed from Lalitpur bus stand at 1.20 P.M. for Jhansi. Matin Khan (PW-8) driver of Bus No. USG 5519 stopped the vehicle at bus stand Lalitpur at 1.00 P.M. Laxman Dass (PW-4) and his brother Prahlaad Babu (PW-9) the owners of the said bus reached at bus stand Lalitpur for settlement of fare accounts with PW-8 Matin Khan-Driver. They noticed some passengers boarding Bus No. MPR 5393 in place of their bus. They asked Sukhnandan (CW-3) driver of Bus No. MPR 5393, to drive his vehicle out of the parking place in order to provide halting place for their bus. The appellant allegedly was standing behind the bus armed with a rifle and was supervising his luggage being unloaded by the conductor from the bus-roof top. PW Prahlaad Babu told the appellant that he would lose his passengers and the appellant could get the luggage unloaded after the bus moved ahead of the halting place. On this, the appellant allegedly threatened to shoot PW Prahlaad Babu with

- A his rifle if such request would be repeated. PW Prahlad Babu retorted saying that like the appellant, he has seen many shooters in his lifetime. The case of the prosecution further was that the appellant raised his rifle and fired single bullet shot causing injuries to four persons, namely, PW Prahlad Babu, B Dhanna Lal (CW-1), Ram Ratan Joshi (CW-2) and Devendra Singh (Deceased) who allegedly were all standing behind PW Prahlad Babu. The appellant tried to re-load the rifle, but was over-powered by the passengers present at the place of occurrence. In the melee, someone hurled a stone which hurt C the head of PW Laxman Dass.

- 2.2] The prosecution proceeded to allege that PW Laxman Dass handed over the appellant on spot to the custody of PW Matin Khan, Vimal Kumar Tewari (PW-10) and Shikhar Chand Naik (PW-13), etc. asking them to wait at the spot till his return. D PW Laxman Dass carried injured PW Prahlad Babu, CW-1 Dhanna Lal and Devendra Singh on a *Thela* to the adjoining District Hospital at Lalitpur. CW-2 injured Ram Ratan Joshi walked himself to the hospital. Dr. S.P. Singh (PW-3) who medically examined the injured persons between 2.00 P.M. and E 3.15 P.M. requested Shri B.D. Sharma (PW-19) Sub- Divisional Magistrate of District - Lalitpur to reach at the hospital where PW-19 recorded the statements of the injured. PW Vimal Kumar Tiwari left the place of occurrence and went to the hospital to take PW Laxman Dass with him to the police station. PW Vimal F Kumar Tiwari recorded the statement (Ex. Ka-22) of PW Laxman Dass and handed over the same to the Police at Police Station; on the basis of the said statement, First Information Report came to be registered. PW Vimal Kumar Tiwari and other persons took the appellant to the Police Station. Constable Sukhram G Singh (PW-15) lodged the appellant in police lock up. He sealed the rifle and four live cartridges found inside it. PW Prahlad Babu and Devendra Singh were taken to the Medical College, Jhansi, but on the way Devendra Singh died. PW Prahlad Babu remained indoor patient in the Medical College for more than H three weeks.

2.3] The investigation of the case was conducted by K.P. Singh (PW-17), Station Officer, Police Station Girwar, District Lalitpur. He recorded the statement of PW Constable Sukhram Singh. He also recorded the statement of PW Vimal Kumar Tiwari at the Police Station and then left to the scene of occurrence where statement of PW Laxman Dass was recorded and Site Plan (Ex. K-42) of the spot was prepared. He collected blood-stained earth and plain earth from the spot and sealed them in separate packets (Exs. 16 and 17). He recorded the statements of CW Ram Ratan Joshi and CW Dhanna Lal, injured persons. On 15.02.1975, he handed over the investigation of this case to Shri Chottey Lal Tewari (PW-18) who, at the relevant time was Station Officer at Kotwali, Lalitpur.

2.4] The second Investigating Officer sent the weapon of offence (rifle) and recovered bullets to Ballistic Expert for examination and comparison. He took the licence of the seized rifle from Raghunath Singh - father of the appellant and later on entrusted the same to him vide *supurdarinama* (Ex. K-46). He produced documents before the District Magistrate for initiating prosecution against the appellant for an offence under Section 25 of Arms Act. The requisite permission was placed on record as Ex. K-47. After completion of the investigation of the case, he prepared charge sheet against the appellant and filed the same in the Court of Chief Judicial Magistrate, Lalitpur, under Section 304 Part-II, 307 and 324 IPC and Section 25 of the Arms Act. The learned Chief Judicial Magistrate, Lalitpur, on 07.08.1975 committed the case to the Sessions Judge for trial. The trial of the case has been re-transferred by the High Court of Allahabad to the Court of Sessions Judge of Jhansi.

2.5] The appellant pleaded not guilty to the charges and claimed to be tried. The prosecution, in order to substantiate its case, examined as many as 19 witnesses, out of whom PW Laxman Dass, PW Matin Khan, injured Prahlad Babu, PW Vimal Kumar Tiwari and PW Shikhar Chand Naik are the eyewitnesses. PW Dr. S.P. Singh examined the injured at the Lalitpur Hospital and certified their mental fitness to enable them

A to make statements to PW Shri B.D. Sharma, Sub-Divisional  
Magistrate. Kashi Ram (PW-5) and Gaya Singh Chauhan (PW-  
7) are the formal witnesses who have produced time-table and  
the way bills dated 12.02.1975 in regard to the route of  
passenger Bus No. MPR 5393 and Bus No. USG 5519 plying  
B on Lalitpur-Jhansi road. Sh. Radhey Shyam Mishra (PW-11) is  
the Ballistic Expert of the Forensic Sciences Laboratory; U.P.  
Dr. Radha Mohan Aggarwal (PW-12) performed the autopsy  
on the dead body of Devendra Singh. PW K.P. Singh and PW  
Chotey Lal Tewari are the Investigating Officers. Dr. S.R. Gupta  
C (PW-1), Harnam Singh (PW-2), Dr. Kulbir Singh Handa (PW-  
6), Head Constable Raghuvansh Singh (PW-14), Head  
Constable Sukhram Singh (PW-15) and Chandrabhan (PW-16)  
are the formal witnesses. Besides, the oral evidence of the  
aforesaid witnesses, formal evidence was also tendered on  
D affidavits of compounder Uma Shanker Tewari (Ex.Ka-54), Head  
Constable R.S. Gautam (Ex.Ka-55), constable Gyan Singh (Ex.  
Ka-56), constable Ram Chhabila (Ex.Ka-57), Head Constable  
Mohammad Sabir Khan (Ex.Ka-58), constable Shyam Deo  
Upadhyia (Ex.Ka-59), Head Constable Virjan Rai (Ex.Ka-60),  
E Dr. Shiv Shanker Lal Agarwal, a reader in surgery at the Medical  
College, Jhansi (Ex.Ka-65), constable Bhika Prasad (Ex.Ka-  
68), S.I. Brij Raj Singh (Ex.Ka-69) and retired Head Constable  
Shital Singh (Ex.Ka-71). Reports of the Chemical Examiner  
(Ex.Ka-52) and the Serologist (Ex.Ka-53) were also tendered  
F in evidence. The prosecution had given up injured Dhanna Lal  
on the ground that he had joined hands with the appellant. Ram  
Ratan Joshi injured and Sukhnandan driver of Bus No. MPR  
5393 were also given up being unnecessary witnesses.  
However, later on, the Court examined Dhanna Lal, Ram Rattan  
and Sukhanandan as CW-1, CW-2 and CW-3 respectively.

G 2.6] The appellant in the statement recorded under Section  
313 of the Criminal Procedure Code (for short 'Cr.P.C') denied  
the incriminating evidence appearing against him. He examined  
Chandan Singh (DW-1) in his defence. His plea was that he  
H was not present at the scene of occurrence on the alleged day



of incident. He pleaded that at the relevant time his father Raghunath Singh was sitting MLA of Jansangh Party who did not have good relations with Shri Maurya the then Superintendent of Police, who was Ex-officio member of Nehru College Committee. He pleaded that two student leaders of Nehru College were got terminated by Shri Maurya the Superintendent of Police and were locked in jail under his order. He stood surety for those persons. Pamphlets of the said incident were also published against Shri Maurya, who was forced to withdraw the case against those boys and due to that reason Shri Maurya has implicated him in this false case. He pleaded that on the day of incident at about 2.00 or 2.30 P.M., the police arrested him from his house and also seized rifle and four bullets from there. The seized rifle was later on returned to his father and another rifle (Ex.2) was taken into possession by the Police.

3.] Before we proceed to deal with the evidence of the witnesses, it would be appropriate to extract the injuries found by Dr. S.P. Singh on the persons of PW Prahlad Babu, deceased Devendra Singh, Dhanna Lal (CW-1) and Ram Ratan Joshi (CW-2) which find recorded in the Statement of Injuries:

Prahlad Babu:

- (1) One gunshot wound  $\frac{1}{2}$ " X  $\frac{1}{4}$ " on the lower part of left side chest, 6- $\frac{1}{2}$  below the nipple. Wound was bleeding, margins were inverted. There was no blackening and tattooing around the wound. It was a wound of entry.
- (2) One gunshot wound  $\frac{3}{4}$ " X  $\frac{1}{2}$ " on left side of back, 2" away from the middle line wound was bleeding. Margins were averted no blackening or tattooing around the wound of exit.

Devendra Singh:

- (1) One gunshot wound  $\frac{3}{4}$ " X  $\frac{1}{2}$ " X abdominal cavity deep, on right side of abdomen, 2 $\frac{1}{2}$ " above the anterior superior iliac spine. Omentum was coming

A out of the wound. Blood was coming out of the wound. Margins were inverted. There was no blackening or tattooing around the wound. Wound of entry.

B (2) One wound of gunshot, 1½" X ¾", 1" below the anterior superior iliac spine, bleeding. Margins were averted. One piece of metal which was projecting from the wound was taken out and sent to S.P. Lalitpur under seal. This was exit wound.

Dhanna Lal:

C (1) One lacerated wound 7½" X 21½" X bone deep on the turn of right upper arm in the upper part with commuted fracture of humerus bone and severance of the blood vessels and nerves of the arm bleeding.

D (2) A lacerated wound 4½" X 1½" on the posterior side of the right arm. Wound is through and through and communicating with injury no.1. Bleeding

Ram Ratan Joshi:

E (1) A gunshot wound ¼" X 1/8" lower 1/3<sup>rd</sup> portion on right arm lateral side 1" above the elbow. Margins inverted. Bleeding. Wound of entry.

F (2) A gunshot wound ¼" X 1/8" 1½" below the injury no. 1 on the lateral side in the upper 1/3<sup>rd</sup> right fore arm. Bleeding. Margins inverted wound of entry.

(3) A gunshot wound ¼" X 1/8" on the left fore arm middle 1/3<sup>rd</sup> 5" below the elbow in the posterior part lateral side. Margins inverted. Wound of entry.

G (4) A gunshot wound ½" X ¼", 1½" above the highly part of iliac crest left side abdomen, margins inverted. Wound of entry.

H 4. According to Dr. S.P. Singh, all the injuries were found fresh and without any blackening and tattooing. The injuries were caused from fire arm. Dr. S.P. Singh examined PW-Laxman

Dass and found injury on his head caused by a blunt weapon like a stone. He stated that on 14.02.1975 at about 6.00 P.M. injured Ram Ratan Joshi (CW-2) slipped away from the hospital without informing him or any other staff member of the hospital. It is his evidence that when PW-Prahlad Babu, Devendra Singh (deceased) and Dhanna Lal (CW-1) were brought to the hospital, their physical conditions were serious. Dhanina Lal's arms had to be amputated on the same day. On their request, PW-Prahlad Babu and Devendra Singh (deceased) were referred to the Medical College of Jhansi at about 4.30 P.M. and 9 P.M. respectively.

5.] It is the evidence of Dr. Kulbir Singh Handa (PW-6) that on 12.02.1975 at about 11.45 P.M. Devendra Singh was brought dead to Medical College, Jhansi. Dr. S.L. Aggarwal in his affidavit (Ex.Ka-65) proved that PW-Prahlad Babu had to suffer two abdominal operations at the Medical College where he remained as indoor patient from 12.02.1975 to 26.02.1975 and for the second time from 30.07.1975 to 27.08.1975.

6.] Dr. Radha Mohan Agarwal (PW-12) on 13.02.1975 at about 3.45 P.M. performed autopsy on the dead body of Devendra Singh at Medical College of Jhansi. He noticed the above-extracted *ante mortem* injuries on his body. Damage was detected by him to the omentum and to the intestine and the fourth lumbar vertebrae. Two metal pieces (Exts. 10 and 11) embedded in the vertebrae were extracted. As per the opinion of the doctor, the cause of death of the deceased was due to shock and haemorrhage as a result of injuries to the intestine and fracture to the vertebrae.

7.] On examination of the oral and documentary evidence produced on record, the learned Sessions Judge by his order dated 09.10.1980 found the appellant not guilty of the charges under Section 304 Part-II, 307 and 324 IPC and Section 25 of the Arms Act and accordingly acquitted him. The findings and reasonings of the trial court can be summarized thus:

- (i) That the incident did not occur in the manner as alleged by the prosecution,

- A (ii) That the very foundation of the prosecution story that  
the firing was made because Bus No. MPR 5393  
had over-stayed beyond its scheduled departure time  
to the detriment of the vehicle of PW-4 and PW-9,  
B who insisted that the bus should leave Lalitpur, was  
liable to be thrown over-board as any incident of  
shooting before 1.00 P.M. could neither be related to  
Bus No. MPR 5393 nor had taken place in the manner  
as alleged by prosecution witnesses and real facts  
have been concealed.
- C (iii) That the identity of the accused was not established  
beyond doubt because:-
- D (a) The Magistrate who was present in the hospital  
recorded the statements Ex. Ka17, Ka18 and  
Ka19 as Dying Declarations truthfully and they  
cannot be ignored wherein the accused was  
not named.
- E (b) The prosecution assertion of the visit of the  
S.D.M to the police station was fictitious and  
the Dying Declarations were recorded without  
being influenced by any body.
- F (c) There were vital inconsistencies in the  
statements of the witnesses, which led to the  
inference that the accused named by PW-  
Prahlad Babu and Dhanna Lal (CW-1) in the  
court was an innovation and an after thought on  
which no reliance could be placed.
- G (d) The accused was not named in the statements  
recorded as Dying Declarations although the  
accused was known to the injured eye-  
witnesses much before the incident.
- H (iv) That the prosecution story that Sukhnandan (CW-3)  
actually moved the bus was an innovation and should  
be rejected and consequently it must be held that

there was no objection from the accused against the movement of Bus No. MPR 5393. A

- (v) That the evidence of Sukhanandan (CW-3) would cut at the very root of the prosecution story.
- (vi) That it was doubtful that the accused was arrested during the course of the incident of shooting. B
- (vii) That it could not be said with certainty as to what were the circumstances or the exact facts of this incident, but if it did not take place in the manner and under the circumstances suggested by the prosecution or even if it was doubtful that it took place in such manner and circumstances, the benefit thereof must go to the accused. C
- (viii) That the time wasted in the alleged wait at the bus stand after the injured had been taken to the hospital and the delay in inviting the police to the scene of occurrence also assume importance for making the story of the prosecution suspicious. D
- (ix) That it could not be ruled out that the accused was apprehended on some misplaced suspicion and then involved in this case. E

8.] Being aggrieved against the order of acquittal, the State of Uttar Pradesh filed appeal before the High Court. The High Court allowed the appeal by the impugned judgment holding the appellant guilty of the charged offences. The High Court sentenced the appellant 10 years R.I. under Section 304 Part-II, 7 years R.I. under Section 307 IPC, 6 months R.I. under Section 324 IPC and 2 years R.I. under Section 25 of the Arms Act respectively. F G

9.] Feeling aggrieved thereby and dissatisfied with, the appellant has filed this appeal.

10.] Mr. Sushil Kumar, Senior Advocate appearing on behalf of the appellant vehemently contended that the judgment H

A of the High Court reversing the order of acquittal passed by the trial court is erroneous in law being against the well-established principles with regard to interference in appeal under Section 378 of the Criminal Procedure Code. He then contended that the trial court on appraisal of the evidence and consideration of  
B circumstances has recorded well-reasoned order which cannot be regarded as preferably wrong or perverse; therefore, the interference by the High Court in the order of acquittal of the appellant is wholly unwarranted and unjustified. He next contended that testimony of the injured eye-witnesses is totally  
C inconsistent with the medical evidence and report of the Ballistic Expert in regard to the use of the weapon of offence, which is the most fundamental defect in the prosecution case and it is sufficient ground to discredit the entire case of the prosecution. Lastly, he contended that as the evidence of the prosecution is  
D not satisfactory and consistent, therefore, the benefit of doubt has to be given to the accused, but in the present case the High Court has failed to appreciate this basic principle and convicted the appellant on surmises and conjectures. In support of the contentions, reliance has been placed on some decisions of this Court, which shall be referred to and dealt with hereinafter  
E in later part of the judgment.

11.] Mr. Ratnakar Dash, Senior Advocate appearing on behalf of the State, has canvassed correctness of the views taken by the High Court in the impugned judgment. He submitted that  
F the approach of the High Court in re-appreciating the evidence led by the prosecution cannot be found faulty. He then contended that the evidence of the eye-witnesses PW-Laxman Dass; PW-Matin Khan; injured Prahlad Babu; PW-Vimal Kumar Tiwari; PW-Shikhar Chandra and injured Dhanna Lal (CW-1) is concise,  
G cogent and satisfactory on the point that it was the appellant alone, who fired a single bullet shot from a rifle hitting Prahlad Babu; Dhanna Lal (CW-1); Ram Ratan Joshi (CW-2) and Devendra Singh, as a result thereof Devendra Singh later on succumbed to the injuries sustained by him and if some minor  
H discrepancies have come in the evidence of the witnesses, they

are all of insignificant nature and immaterial and the case of the prosecution, which is otherwise proved beyond reasonable doubt, cannot be disbelieved and discredited on such discrepancies. In support of the submissions, reliance is placed on the decisions of this Court.

12.] Before considering the evidence and rival contentions of the learned counsel for the parties, we may consider the ratio of law laid down in the cases relied upon by the appellant.

12.1] In **Awadesh & Anr. v. State of Madhya Pradesh** (1988) 2 SCC 557], this Court held that if on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible, one as held by the trial court for acquitting the accused and the other for convicting the accused, in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial court. The judgment proceeded to hold that unless the conclusions of the trial court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal. In *G. B. Patel Vs. State of Maharashtra* (1979) 2 SCR 94; (1978) 4 SCC 371; AIR 1979 SC 135, this Court quoted with approval the principles laid down by Privy Council in *Sheo Swarup Vs. King Emperor* [AIR 1934 PC 227], wherein it was held that although in an appeal from an order of acquittal the power of the High Court to reassess the evidence and reach its own conclusions, yet, as a rule of prudence, it should – to use the words of Lord Russel of Killowen – “always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.”

A 12.2) It was further observed [Para 13 SCC p.376]:

"Where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the court below. In other words, if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal."

C 12.3) In ***Mohinder Singh v. The State*** (1950) SCR 821: AIR 1953 SC 415, this Court observed:

D "In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle."

F 12.4) In ***Inder Singh & Anr. v. The State (Delhi Administration)*** (1978) 4 SCC 161, this Court while dealing with the appreciation of evidence in a criminal case, held that creditability of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect.

H 12.5) In ***Ram Narain Singh v. State of Punjab*** (1975) 4 SCC 497, it was held that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most



fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. Further, it was observed that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence.

12.6) In *Puran Singh v. State of Uttaranchal* (2008) 3 SCC 795, the relevant question for consideration was whether the weapon used by the accused for causing death of the deceased Rajpal Singh and two empty cartridges were the same which were recovered from the accused. The mudamal gun as also empty cartridges were sent to the Forensic Science Laboratory, Lucknow, which were examined in the laboratory. On the basis of the examination, a conclusion was given which is in the form of result which reads as under:

"Result.- (A) The cartridge in question EC1 was not fired from the single-barrelled 12 bore no. 319 marked 1/79 gun.

(ii) The cartridge in question EC 2 has no comparative feature with shot fired from Gun No. 1319 12 bore marked 1/79.

(B) On the chemical examination of fouling matter from the gun the nitrate was found from the gun so it is concluded that after last shot the gun was not cleaned but on 03.08.1979 whether or not shot was fired from gun designative scientific opinion is not a possibility." (emphasis supplied)

12.7) On the basis of the ballistic expert's opinion, cartridge EC1 was not fired from the single-barrelled 12 bore no. 1319 said to have been used by the accused. In that view of the matter, it was held that the appellant-accused was entitled to benefit of doubt. In *Ram Kumar v. The State of Haryana* [JT 1994 (6) S.C. 502], it is held:

"It is settled law if the main ground on which trial court has

- A based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. Interference is only when the conclusions recorded by the trial court are such which
- B could not have been possibly arrived at by any court acting reasonably and judiciously, which may in other words be characterized as perverse or devoid of force."

- 12.8) In ***Bharwada Bhoginbhai v. State of Gujarat*** (1983) 3 SCC 217, relied upon by the learned counsel for the State,
- C this Court while dealing with the case of accused who was found guilty by the trial court as well as by the High Court for committing sexual intercourse with a minor girl, held that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be annexed with undue
- D importance. More so, when the all important 'probabilities factors' echoes in favour of the version narrated by the witnesses. Further, it was observed that it was neither appropriate nor permissible to enter upon a re-appraisal or re-appreciation of the evidence in the context of the minor discrepancies in exercise of the power
- E under Article 136 of the Constitution of India.

- 12.9) In ***Rajesh Thakur v. State*** (1988) CrI. J. 1477, learned Single Judge of the Calcutta High Court found the story in the First Information Report regarding the time, place and manner of the occurrence, the name of assailant, the testimony
- F of eye-witnesses corroborated by medical evidence and the fact of apprehension of the accused by the people of the locality immediately after the occurrence with a knife in hand, recovery of blood-stained knife which was the likely weapon of offence and the blood-stained wearing apparel of the accused, coupled
- G with true and reliable testimony of eye-witnesses which could not be rejected merely because there were some discrepancies, deviations and embellishments in the prosecution case in some minor details. In that case, the accused was found guilty by the trial court and his conviction was affirmed by the High Court in
- H appeal.

12.10) In **State of H.P. v. Lekh Raj & Anr.**, (2000) 1 SCC 247], this Court while appreciating the evidence of the victim of rape who was widow aged about 55 years having two grown up children emphasizes that minor discrepancies or variance in evidence does not make the prosecution case doubtful and in such circumstances the duty of the Courts is to adopt a rational approach and hyper technicalities and figments of imagination should not prevent sifting and weighing of evidence.

13.] In the light of the above settled propositions of law, we have made independent scrutiny of the evidence in the present case to find out whether the High Court's order of conviction of the appellant can be sustained or not. PW-Laxman Dass and injured PW-Prahlad Babu are owners of Bus No. USG 5519 which on the day of incident, i.e. 15.02.1975, was going from Jammi Dem to Jhansi via Lalitpur. It is the evidence of PW-Laxman Dass that on the day of the incident Bus No. MPR 5393 was parked at bus stand Lalitpur beyond the schedule time which had caused obstruction to the parking of their bus at the allotted place and as a result thereof he could not carry the passengers on his vehicle. PW-Prahlad Babu asked the appellant to let Bus No. MPR 5393 move ahead so that the passengers of his bus could board the bus, but the appellant threatened Prahlad Babu that he would be killed if he again repeat the words of taking the bus out of the bus stand till the appellant's luggage was not unloaded. The appellant allegedly fired a single bullet shot from the rifle from a distance of about 5-7 steps which first hit PW-Prahlad Babu and the bullet passed through his body and then hit Dhanna Lal (CW-1) and in the same process the same bullet hit Ram Ratan Joshi (CW-2) and Devendra Singh one after the other. He stated that the appellant tried to reload the rifle and wanted to fire second shot, but he alongwith Shambu Dayal Chaurasia (not examined), PW-Vimal Kumar Tiwari; PW-Shikar Chand Naik, Mangal (not examined) and PW-Matin Khan driver, over-powered the appellant and snatched the rifle (Ex-2) from his hands. He clearly deposed that one more person, whose name he did not know caused stone injury on his head. The

- A appellant was handed over to the custody of PW-Matin Khan whereas he took injured PW-Prahlad Babu, injured Dhanna Lal (CW) and Devender Singh to Lalitpur hospital while Ram Ratan Joshi (CW) who had suffered lesser injuries, reached the hospital on foot. PW- Vimal Kumar Tiwari recorded report (Ex.-
- B Ka22) at his instance which later on was handed over to Police Officer at the Police Station, on the basis of which First Information Report was recorded. PW-Prahlad Babu was taken from Lalitpur Hospital to Medical College, Jhansi, whereas Devendra Singh was left in Lalitpur Hospital for getting treatment.
- C In cross-examination, this witness has admitted that one Kamaldin had filed a criminal case against him. One more case under Sections 147/323/504/506 IPC was pending in the court of C.J.M, Lalitpur, against him, Prakash Chand Lohia, PW-Vimal Kumar Tewari and his brother Ashok Kumar Tiwari.

- D 14.] PW Matin Khan driver of the Bus No. USG 5519 owned by PW-Laxman Dass and PW-Prahlad Babu has corroborated the testimony of PW-Laxman Dass. This witness also deposed that when PW-Shikhar Chand Naik, Shambhu Dayal Chaurasia (not examined), Mangal (not examined) were grappling with the
- E appellant, someone hit PW-Laxman Dass with a stone on his head. It is his evidence in the cross-examination that at the time of incident there were one or two more persons with the appellant who after collecting the luggage had left the place of occurrence. It is his evidence that from the scene of occurrence Shambhu
- F Dayal Chaurasia had carried the rifle and deposited the same in the Police Station.

- 15.] PW-Prahlad Babu narrated the same facts which were noticed in the evidence of PW-Laxman Dass. It is his evidence that the appellant fired single bullet shot from his rifle which first
- G entered into his abdomen and then came out from his back side and the same bullet thereafter hit Dhanna Lal (CW-1), Ram Ratan Joshi (CW-2) and Devendra Singh (deceased) one after the other in the same process. He stated that he did not notice whether the other three injured persons were standing behind
- H him nor he knew Devendra Singh prior to this incident. It is his

evidence that he did not notice whether the appellant on the day of occurrence had travelled by Bus No. MPR 5393 nor he saw him getting down from it, nor he came to know whether the Conductor was unloading the appellant's luggage from the rooftop of the bus. He admitted that PW Shri B.D. Sharma, Sub-Divisional Magistrate, recorded his statement (Ex.Ka-17) in the hospital in the presence of the doctor in which he did not mention the name of the appellant to be an assailant.

16.] PW-B.D. Sharma was posted as Sub-Divisional Magistrate, Lalitpur. On the day of the incident, he was called by the doctor, who medically examined injured Devendra Singh, to the District Hospital. He recorded dying declaration (Ex.-Ka18/1) of Devendra Singh after the doctor certified him to be fit for making the statement. In the dying declaration, deceased had not named the appellant to be an assailant. He recorded the dying declaration of PW-Prahlad Babu (Ex.-Ka17) and Dhanna Lal (Ex.-Ka19) on the same day. They too have not named the appellant who as per prosecution story fired single bullet shot from his rifle hitting all the four injured persons one after the other in the process.

17.] PW-Vimal Kumar Tiwari deposed that on the day of incident the appellant fired one single bullet shot, which first hit Prahlad Babu and then Dhanna Lal and the bullet came out of the body of Dhanna Lal and in the process hit two other persons whom he did not know. It has come in his evidence that he could not tell whether all the injured persons were standing in a queue when they received bullet shot.

18.] Radhey Shyam Singh (PW-11) a Fire Arms Expert, Forensic Science Laboratory, C.I.D., Lucknow, U.P., examined one rifle number 243 of 0.302 bore on 07.04.1975. He also scientifically examined three live cartridges and one missed fire round. It is his opinion that two pieces of metal marked EB2 and EB3 could have been fired from rifle number 243. He placed on record copy of the test report (Ex.K-29). In cross-examination this witness stated that he could not definitely point out whether

A pieces of metals i.e. EB2 and EB3 were the pieces of same bullet which was fired from rifle number 243. It is his opinion that rifle (Ex.2) was of .302 bore and not of .315 bore. He also categorically stated that one bullet could cause only one entry wound to a person.

B 19.] PW-Shikhar Chandra Naik also tried to support the version of PW Laxman Dass and PW Prahlad Babu. It is his evidence that it was Shambhu Dayal Chaurasia who had taken the rifle to the Police Station. He stated that PW-Prahlad Babu, on receiving the rifle shot, had fallen down on the spot. Head  
C Constable Sukhram Singh (PW-15), on the basis of the complaint (Ex.K-22) handed over to him by PW-Vimal Kumar Tiwari recorded the First Information Report. It is his evidence that rifle and cartridges were deposited by PW-Vimal Kumar Tiwari in the Police Station and memo (Ex.K-27) in this regard  
D was prepared by him and the seized articles were also sealed and deposited in the Malkhana. On 13.02.1975 he received information on telephone from Nawabad Police Station in regard to the death of injured Devendra Singh and thereafter Section 302 IPC was added in the First Information Report. This witness  
E categorically stated that rifle handed over to him by PW VimalKumar Tiwari and sealed by him was of .315 bore.

20.] PW K. P. Singh, Station Officer, visited the spot, prepared Site Plan (Ex.K-42) and collected blood-stained earth from the spot.

F 21.] The High Court has found the evidence of PW-Laxman Dass, PW-Matin Khan, PW-Prahlad Babu, PW-Vimal Kumar Tiwari and PW-Shikhar Chand Naik believable and satisfactory on all material aspects and observed that as few contradictions  
G appearing in their evidence were of very trivial nature, therefore, the appellant could not be given benefit of doubt on the basis of those minor contradictions. Three dying declarations recorded by Sub-Divisional Magistrate were rejected by the High Court on the ground that they were not recorded correctly and honestly.  
H We are afraid to agree with the findings of the High Court in

setting aside the order of acquittal of the appellant passed by the trial judge. On independent analysis of the evidence of the material witnesses discussed hereinabove, we find that the High Court has failed to appreciate the same in proper perspective. The discrepancies coming on record in the evidence of PWs 4, 8, 9, 10 and 13 in no circumstances can be termed to be minors in nature which in our view, are vital for disbelieving and discrediting the evidence of the eye-witnesses. The High Court discarded the important pieces of evidence on the basis of surmises and conjectures. On the day and time of the incident none of the eye-witness including injured witnesses had seen the appellant travelling on Bus No. MPR 5393. It is their evidence testimony that there were some more persons present at the bus stand, who took the luggage of the appellant after the same was unloaded from the rooftop of the bus. It has come in the evidence of these witnesses that one person hit PW-Laxman Dass. The Investigating Officer has not cared to find out the identity of those persons who were accompanying the appellant on the scene of occurrence and took his luggage or out of those persons who hit PW Laxman Dass with a stone. It appears that the prosecution has suppressed the genesis of the evidence. PW- Matin Khan, driver of the bus owned by PWs 4 and 9, clearly deposed that Shambhu Dayal Chaurasia handed over the rifle, the alleged weapon of offence to the police official at Police Station, Lalitpur. It is the evidence of PW-H.C. Sukhram Singh that rifle and cartridges were handed over to him by PW-Vimal Kumar Tiwari. The evidence of injured Prahlad Babu would show that he did not see the other three injured persons standing behind him nor he knew Devendra Singh (deceased) prior to the incident. His statement was recorded by the Investigating Officer in the Police Station after about 20-22 days from the day of incident. It is his evidence that on the day of incident he did not see the appellant travelling in Bus No. MPR 5393. He admitted that the dying declaration (Ex.Ka-17) was recorded by Sub-Divisional Magistrate at the hospital at about 1.38 P.M. on the day of the incident. The evidence of PW-Vimal Kumar Tiwari, the other eye-witness, does not support the testimony of

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- A PW-Matin Khan and injured PW-Prahlad Babu on material and vital aspects of the matter. It has come in the evidence of PW Vimal Kumar Tiwari that he went to the hospital where PW Laxam Das made statement (Ex.K-22) to him which was handed over to the Police for lodging the FIR. It is his evidence that by the
- B time he reached the Police Station, PW Matin Khan and Shambhu Dayal Chaurasia, etc. had already reached at the Police Station and it was Shambhu Dayal Chaurasia who handed over rifle (Ex.-2) to H.C. Sukhram Singh, but Sukhram Singh's version was that the weapon of offence, i.e. rifle of .315 bore and live cartridges, were handed over to him by PW-Vimal Kumar Tiwari which were sealed by him in the Police Station.
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- 22.] PW-Chhotey Lal Tripathi - Inspector, despatched rifle and bullets to Ballistic Expert for their comparison. It is the evidence of PW-11 Radhey Shyam Singh, Fire Arm Expert, that
- D he examined rifle no. 243 of .302 bore which was deposited with the Scientific Branch of the Forensic Science Laboratory on 07.04.1975 by Constable Ram Chhabile. It is clear from the evidence of the Ballistic Expert that the rifle of .302 bore was sent to him for scientific analysis and not rifle of .315 bore which
- E allegedly was used by the appellant at the time of commission of the offence and which later on was handed over to H.C. Sukhram Singh, who sealed the same in the Police Station. This discrepancy and inconsistency in regard to the use and recovery of the weapon of offence from the possession of the appellant
- F is very vital to discard the truthfulness of the prosecution case. The Prosecution has failed to prove that the same weapon of offence was sent to the Ballistic Expert which allegedly was handed over by PW-Vimal Kumar Tiwari or Shambhu Dayal Chaurasia to Head Constable in the Police Station. The
- G contentions of the learned counsel appearing for the State that such type of minor discrepancy has to be ignored from consideration cannot be accepted.

- 23.] It is the case of the prosecution that single bullet was fired by the appellant from rifle of .315 bore which caused injuries
- H to four persons. Dr. S.P. Singh - Medical Officer, Civil Hospital,



Lalitpur, medically examined injured Prahlad Babu on the day of incident, i.e. 12.02.1975 at about 2.00 P.M. and found one gun shot wound  $\frac{1}{2}$ " x  $\frac{1}{4}$ " on the lower part of left side chest,  $6\frac{1}{2}$ " below the nipple. It was wound of entry, whereas the wound of exit of the bullet was  $\frac{3}{4}$ " x  $\frac{1}{2}$ " on the left side back, 2" away from the middle line wound. On the same day he examined Devendra Singh who received gun shot wound  $\frac{3}{4}$ " x  $\frac{1}{2}$ " x abdominal cavity deep on right side of the abdomen,  $2\frac{1}{2}$ " above the anterior superior illiac spine which was stated to be entry wound, whereas the exit wound was  $1\frac{1}{2}$ " x  $\frac{3}{4}$ ", 1" below the anterior superior illiac spine. On the same day at about 3.00 P.M., he medically examined Dhanna Lal (CW-1) and on his person one lacerated wound  $7\frac{1}{2}$ " x  $2\frac{1}{2}$ " x bone deep on the front upper part of the right upper arm with commuted fracture of humerus bone and severance of blood vessels and nerves of the arms were found injured. The exit wound was  $4\frac{1}{2}$ " x  $1\frac{1}{2}$ " on the posterior side of the right arm through and through and communicating with injury no. 1. At about 3.15 P.M., he medically examined Ram Ratan Joshi (CW-2) and found as many as four above-extracted injuries on his person. Doctor prepared injury reports marked Ex. K-6 to K-10 respectively. The injury reports primarily revealed that the size of exit wounds were larger than entry wounds found on the person of each injured persons and the body of the deceased. Doctor's version is that he certified injured Prahlad Babu, Dhanna Lal (CW-1) and Devendra Singh to be mentally fit to make dying declaration before PW-Sub-Divisional Magistrate. It is his evidence that injured Prahlad Babu and injured Devendra Singh were taken to Medical College, Jhansi by their relatives from the hospital, whereas Ram Ratan Joshi (CW-2) left the hospital on 14.02.1975 at about 6.00 P.M. without informing anybody. This witness was put court question which reads as under:-

"Could the injuries be caused by one rifle shot if Dhanna Lal was standing behind Prahlad Babu, and Ram Ratan Joshi behind Dhanna Lal and after Ram Ratan Joshi, Devender Singh was standing by his side and the shot

A had first hit Prahlad Babu and then Dhanna Lal and their splinters hit Ram Ratan Joshi and Devendra Singh?

The answer to the above said question given by Doctor reads as under:-

B I am not a Ballastic Expert; therefore, I am not in a position to give any definite answer."

C 24.] It is the evidence of PW-Shikhar Chandra Naik that after receiving the bullet injury PW-Prahlad Babu had fallen down on the spot, whereas the other three injured persons had not fallen down. He stated that recovery memo (Ex.K-27) of rifle (Ex.-2) and cartridges were prepared and got signed from him by the Head Constable in the Police Station, but his statement was not recorded.

D 25.] The High Court clearly fell in error while convicting the appellant under Section 25 of the Arms Act without caring to go through the provisions of the Act. Section 25 of the Arms Act deals with punishment for manufacturing, selling, transferring, converting, repairing, possessing of any arms or ammunition in contravention of Section 5 of the Act.

E 26.] In this case as per the prosecution version the appellant had used .315 bore rifle, which was owned by his father. Undisputedly, the appellant was charged and tried for the offence punishable under Section 27 of the Arms Act for using the said firm arm. In that view of the matter, the appellant could not have been convicted and punished by the High Court for committing an offence under Section 25 of the Arms Act.

G 27.] Having regard to the entire evidence discussed above and having carefully and closely considered the judgments of the trial court and the High Court, it appears that the view taken by the trial court was reasonable and plausible. It is well settled that, if, on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible one as held by the trial court for acquitting the accused and the H other for convicting the accused, in such a situation the rule of

prudence should guide the High Court not to disturb the order of acquittal made by the trial court. Unless the conclusion of the trial court drawn on the evidence on record are found to be unreasonable and perverse or unsustainable, the High Court should not interfere with the order of acquittal. From the above discussion of the evidence of the eye-witnesses including injured witnesses, their evidence does not at all inspire confidence and their evidence is running in conflict and contradiction with the medical evidence and ballistic expert's report in regard to weapon of offence, which was different from the one, sealed in the Police Station. The High Court has, in our opinion, disregarded the rule of judicial prudence in converting the order of acquittal to conviction. It is pertinent to notice that the order of acquittal of the appellant was passed by the trial court on 09.10.1980. The appeal against the said order was filed by the State Government in the year 1981 which came to be allowed by the High Court by the impugned judgment dated 29.07.2005 meaning thereby that the appeal against acquittal of the appellant remained pending in the High Court for about 24 years.

28.] No other point has been raised by the parties. We, thus, find no merit and substance in any of the submissions made on behalf of the State. The ratio of the decisions relied upon by the State as referred to above, will be of no use to the facts and circumstances of the present case.

29.] In view of the aforesaid facts and circumstances, we are satisfied that the prosecution has failed to prove its case beyond all reasonable doubt and the High Court committed error in interfering with the trial court's order of acquittal.

30.] We, accordingly, allow the appeal, set aside the order of the High Court and the appellant's conviction and restore the order of the trial court and acquit the appellant. The appellant is in jail, he shall be set free to liberty forthwith, if his detention is not required in any other case.