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STATE OF U.P.

v.

GURU CHARAN & OTHERS

(Criminal Appeal No. 297-298 of 2002)

FEBRUARY 23, 2010

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[B. SUDERSHAN REDDY AND SURINDER SINGH NIJJAR, JJ.]

Constitution of India, 1950 – Article 136 – Appeal against
C *acquittal – Scope of interference – Allegation of murder of two and murderous assault on one – Conviction of two accused u/s. 302/34 and sentenced to death, and other u/s. 307 and sentenced to life imprisonment – Acquittal by High Court – Interference with – Held: Scope of interference under Article*
D *136 in an appeal against acquittal is rather limited – View taken by High Court was plausible and possible one – On basis of the evidence, High Court concluded that the prosecution failed to prove the guilt of assailants – Thus, the findings recorded by High Court does not warrant any*
E *interference –Penal Code, 1860 – ss. 302/34 and s. 307.*

According to the prosecution case, RN, his son-in-law J, VK-PW 1 and N-PW 2 were traveling in a private bus. RN was carrying his licensed double barrel gun and bandolier of cartridges. When the bus stopped on the
F **way, S, P, GC and BP armed with weapons boarded the bus. They fired several shots at RN, resulting in his death. J tried to run out of the bus but he was caught and killed by the assailants. When PW2 tried to save J, BP inflicted knife injuries on him. The driver of the bus was also**
G **attacked with a knife. Motive for the offence was the enmity between the two parties. The trial court convicted S, P and GC u/s. 302/34 and sentenced to death whereas BP was convicted u/s. 307 and sentenced to life imprisonment. The High Court acquitted all the accused**

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of all the charges and rejected the Reference made by the Sessions Judge for confirmation of death sentence awarded to S, P and GC. Hence the present appeals. A

Dismissing the appeals, the Court

HELD: 1. On examining the evidence as well as the findings recorded by the courts below, the view taken by the High Court is both plausible and possible. The scope of interference in Article 136 of the Constitution of India, 1950 in an appeal against acquittal is rather limited. Applying the principles with regard to the scope of interference by this Court under Article 136, to the facts and circumstances of the instant case, the findings recorded by the High Court does not warrant any interference. [Paras 26 and 30] [1129-F-G; 1132-F] B C D

State of Uttar Pradesh vs. Banne alias Baijnath and Ors. 2009 **(4) SCC 271**; *State of U.P. vs. Harihar Bux Singh and Anr.* **1975 (3) SCC 167**; *State of U.P. vs. Gopi and Ors.* **1980 Supp. SCC 160**; *State of Uttar Pradesh vs. Ashok Kumar and Anr.* **1979 (3) SCC 1, relied on.** E

2.1. In its well reasoned and detailed judgment, the High Court re-examined the entire evidence. While considering the evidence of PW 1-VK, it is noticed that GC who is said to be the main assailant did not have any motive to commit the murder of the deceased. He was simply a witness in the murder case against deceased RN. PW1 in the evidence had stated that GC armed with a licensed .315 bore rifle had entered the bus and fired 7-8 rounds on his uncle i.e. deceased RN; that due to the injuries his uncle died there and then, in the bus itself; that his brother-in-law J immediately got down from the bus and started running in order to save himself but the respondent fired upon him and he too was killed outside the bus; and that when PW 2 came forward to save G, F G H

A BP stabbed him with his knife. He emphatically stated that no other person received any injuries. But then it is stated that when the driver of the bus tried to move the bus he too was stabbed. It is noticed that according to the witness PW 1, he was sitting at the back of the bus. When
B his uncle was being shot at, he hid behind the seat. Every other person tried to get off the bus. Even people in the nearby fields ran away for fear of the assailants. The assault was so ferocious that two persons were killed, two were injured. The two injured had no enmity with the
C respondents. On the other hand, PW1 was a co-accused in the murder of V, yet he suffered no injury. He made no effort to save his uncle RN. His account of the incident is so graphical that he could only do this if he was visible to the respondents. In that case, he would not have been
D spared. Therefore, the High Court doubts his presence at the scene of the crime. On an analysis of his evidence, the High Court concluded that the evidence of this witness was unbelievable for a number of reasons. [Paras 16 and 17] [1125-C-H; 1126-A-C]

E 2.2. High Court noticed that even the inquest report was specially prepared to show the presence of PW1 at the place of occurrence, when the investigating officer visited the spot. But PW1, in his cross-examination stated that after handing over written report to the Head
F Constable at the police station, he went to sleep and did not know what happened after that. However, he admitted his signature on the inquest report of the deceased RN. He also stated that his signature was obtained at the police station. Thus, according to PW 1, he never went
G to the spot during the night after reporting the crime. On the other hand, the investigating officer states that he was present at the spot between 9-10 p.m. Thus, according to the High Court, the investigating officer has been over enthusiastic to ensure the presence of PW 1 which was,

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to say the least, doubtful. The High Court also found the evidence of PW 1 about injuries on VR, bus driver, was contrary to the medical evidence. PW 5-doctor stated that VR had suffered a lacerated wound caused with a blunt weapon, whereas PW 1 stated that he was stabbed with the knife. [Para 18] [1126-D-H; 1127-A]

2.3. PW 1 stated that GC caught hold of J and made him fall down. Then P and S fired at him from a distance of about two feet. There is no mention of any knife injury but the post mortem report shows that J had sustained one incised wound 3.5 x 12.5 cm on right side of the chest. Thus, the version is contradicted by medical evidence. Then PW 1 stated that GC had fired a number of shots at his uncle RN deceased from his licensed .315 bore rifle. The empty cartridges had fallen in the bus. These were collected by the Investigating Officer. The licensed rifle of GC was taken into possession. The empty cartridges recovered from the spot and the rifle of GC was sent to forensic Science laboratory for comparison. The test report shows that the cartridges were not fired from the licensed gun of GC. [Paras 19 and 20] [1127-B-D]

2.4. High Court noticed that PW 2 who had been seriously injured and was in need of urgent medical attention was not taken in the jeep when VR and VK PW 1 proceeded to the police station. This casts a doubt on the version given by PW 1. PW 2 claims to be in the bus. He stated that RN was shot dead by all the accused, who fired at him from their respective weapons; that J was pulled down to the ground and being shot; and that when he tried to intervene, BP caused injuries on him with a knife. He still carries the marks of the injuries. His version of when he got the injuries is not supported by the medical examination. High Court noticed the evidence

A given by P.W.6-doctor who had examined the injuries of PW 2 at place A at 3.50 a.m. PW 6 in his evidence stated that it was a fresh case of stab injuries and injuries were fresh in duration and by fresh injuries he meant the injuries caused within 6 to 10 hours. He also found that B injuries 1 and 3 were bleeding and caused by one weapon. Fresh injuries are the injuries which are caused within 6 hours. No doubt there may be variation of two hours on either side. Thus the fresh injuries could be termed injuries within 4 to 8 hours and not more than 8 C hours. On the basis thereof, the High Court was of the opinion that since PW 2 was examined about 12 hours after the injuries were caused, they could not be described as fresh injuries. [Paras 21, 22 and 23] [1127-E-H; 1128-A-C]

D 2.5. High Court noticed the claim of P.W.2 that after the occurrence he was brought to the police station. He was medically examined at place S and thereafter shifted to place E. From place E he was further shifted to place A. But P.W.6-doctor who had examined PW 2 at place A E stated that no reference slip was shown to him. The prosecution also did not file any injury report on the reference slip prepared at place S or place E. Although PW 2 claims to have been brought to the police station by the police personnel he did not identify any particular F police officer who helped him. In fact, the investigating officer-BS in his evidence stated that PW 2 did not meet him on the date of the occurrence. High Court also noticed that although PW 2 had stated that appellant GC had fired at RN from his licensed .315 bore rifle, the empty G cartridges recovered from the bus had not been fired from the licensed rifle of GC. High Court noticed that PW 2 failed to explain the circumstances in which J sustained knife injuries, as according to PW 2, the respondents P,S and GC had fired at J. [Para 24] [1128-E-H; 1129-A]

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2.6. Upon the thorough examination of the entire witness, the High Court concluded that the evidence of PW 2 is falsified by the evidence of PW 6-doctor. Consequently, PW 2 was held to be unreliable witness. After examination of the eye witnesses who testified for the prosecution, the High Court noticed another relevant omission in the case of the prosecution. According to the prosecution witnesses, the driver sustained injuries in the same incident and by the same assailants. He was also an eye witness. He was alleged to have taken P.W.1 to the police station. Yet he was not examined by the prosecution. The witnesses stated that there were numerous other passengers in the bus. These passengers were said to have quickly got off the bus. Although there was sustained firing by the assailants in the bus, none of the other passengers were injured. The prosecution also did not care to examine any other passenger who would have been the eye witness to the whole transaction. In this state of the evidence, the High Court concluded that the prosecution miserably failed to prove the guilt of the respondents for the murder of RN and J and the murderous assault of PW 2. [Para 25] [1129-A-E]

Case Law Reference:

2009 (4) SCC 271	**Relied on.**	**Para 26**
1975 (3) SCC 167	**Relied on.**	**Para 27**
1980 Supp. SCC 160	**Relied on.**	**Para 28**
1979 (3) SCC 1	**Relied on.**	**Para 29**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 297-298 of 2002.

From the Judgment & Order dated 3.7.2000 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1795 and 2018 of 1999.

A Pramod Swarup, Prashant Chaudhary, Alka Sinha, Anuvrat Sharma for the Appellant.

H.C. Kharbanda, Jyoti Saxena, M.P. Shorawala, J.P. Dhanda, Vineet Dhanda, Raj Rani Dhanda, Amrendra Kumar
B Singh, N.A. Usdmani for the Respondents.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. These two appeals have been filed by the State of U.P. challenging the common
C Judgment of the High Court of Judicature at Allahabad in the Judgment in Criminal Appeal 1795/99 and Criminal Appeal No.2018/99 and Reference No.8 of 1999. By the aforesaid judgment, the two appeals by the convicts Guru Charan, Sunil and Pramod and Brahma Pal have been allowed and they have
D been acquitted of all the charges. At the same time the reference made by the Sessions Judge for confirmation of death sentence awarded to Guru Charan, Sunil and Pramod has been rejected.

2. We may notice here the relevant facts, culled out from
E the judgments of the Trial Court and the High Court and the evidence on record. On 20.7.1997 Ramesh Narain, deceased along with his son-in-law Jitendra alias Guddu deceased and Vijay Kumar (PW1) were returning to village Yakoot Ganj, Police Station Sahawar, district Etaah in a private bus No.PB-
F 12-0148. Ramesh Narain, deceased was having his licensed double barrel gun and bandolier of cartridges. Nathu (PW2) was also traveling in the same bus. Ramesh Narain was sitting in the third row in the front side of the bus. Vijay Kumar (PW1) was sitting towards the rear end of the bus. Jitendra alias Guddu
G deceased was sitting beside Ramesh Narain, deceased. Nathu (PW 2) was sitting on the seat beside the bonnet. At about 4.15 pm when the bus reached near Tali Village and made a temporary stop, Sunil, Pramod, Guru Charan and Brahma Pal boarded the bus. Sunil and Pramod were having

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country-made pistols. Guru Charan was having licensed rifle of 0.315 bore and Brahma Pal was having a knife. On entering the bus they fired several shots at Ramesh Narain. As a result of gun fire, he died on the spot. Other passengers in the bus started running helter-skelter due to fear. It is stated that even the people working in the fields nearby ran away from there due to fear of the assailants. Jitendra alias Guddu tried to run out of the bus. He was however caught, thrown on the ground and killed by the assailants by shooting at him from their unlicensed arms. It is further the case of the prosecution that when PW2 tried to save Jitendra alias Guddu, Brahma Pal inflicted knife injuries on him. Similarly, when the driver of the bus namely Virendra tried to take the bus away he was attacked with a knife. It is further stated that while leaving the scene of the crime the assailants took away the double barrel gun and bandolier of cartridges of Ramesh Narain deceased.

3. The motive for the assault on the deceased is stated to be old enmity between the deceased and the assailants (hereinafter referred to as the respondents). According to the prosecution about two years prior to the date of the occurrence one Vinod Kumar brother of respondent No.1, Sunil, was murdered. Ramesh Narain, Vijay Kumar (PW1) and Vishwanath were accused of murdering Vinod. They were, however, acquitted in the murder trial. Therefore the respondents were having a grudge against the deceased as well as Vijay Kumar (PW1).

4. Some time after the incident, Vijay Kumar (PW1) along with the driver of the bus went to PS Sahawar in a jeep and lodged a written report Ex.Ka1 at 5.20 pm. On the basis of this, FIR (Ex.Ka16) was prepared by constable Brijesh Kumar, who made an endorsement of the same at GD Report (Ex.Ka17) and registered the case against the respondents u/s. 302, 307, 324, 404 IPC. The investigation was conducted by S.I. Bhagwan Sahai. The Investigation Officer prepared the inquest of deceased Ramesh Narain Upadhyay, Ex. Ka 3 and deceased

A Jitendra alias Guddu Ex. Ka. 3a at the site. He also prepared photo of the dead body Ex.Ka. 4, and photo of the dead body of deceased Jitendra alias Guddu Ex. Ka.9, wrote letter to C.M.O. Ex. Ka.7 and Ka.5 regarding deceased Ramesh Narain and deceased Jitendra, prepared challan of deceased B Ramesh Narain Ex. Ka.6, challan of deceased Jitendra alias Guddu Ex. Ka. 8, recorded statements of the witnesses, prepared site plan Ex. Ka. 10. The Investigation Officer collected blood stained and ordinary soil and prepared memos. Ex. Ka. 11. He prepared Ex. Ka. 12 for taking empty cartridge shells C and tickles, Ex. Ka. 13 for taking a blood stained piece of the bus seat and a stove which deceased Ramesh Narain was carrying with him from Sahawar after getting it repaired and left it in the custody vide memo Ex. Ka. 14. The Investigation Officer sent injured Nathu Singh (PW 2) and Virendra for D medical examination and their injury reports are Ex. Ka 18 and Ka.19 respectively. The Investigation Officer sent dead bodies of deceased Ramesh Narain and Jitendra alias Guddu duly sealed for postmortem and their postmortem reports are Ext. Ka.2 and Ka.3 respectively.

E 5. The Special Judge (Dacoits Infested Area) Etah, framed charges u/s. 302 read with 34, 307 read with 34, and 392 I.P.C. against the respondents Sunil, Pramod, Brahma Pal and Guru Charan on 10.2.1998. All the accused pleaded not guilty and they were sent up for trial.

F 6. The prosecution examined PW1, Vijay Kumar, PW2 Nathu, both injured eye-witnesses, PW3, Dr. Narendra Babu Katiyar, Radiologist, who conducted the post mortem on the deceased persons, PW4, sub-Inspector Bhagwan Sahai, Investigation Officer. PW.5 Dr. Girish Chandra, Medical Officer, G CH.C. Sahawar, who examined the injured persons, PW.6 Dr. Ram Babu, Medical Officer, casualty department, Sarojini Naidu Medical College, Agra.

7. We may now notice the medical evidence. It appears H that, Virendra Singh driver of the bus, had been sent to the

Community Health Centre, Sahawar where he was medically examined on 20.7.1997 at 5.40 pm by Dr. Girish Chandra PW5. The doctor (PW5) found the following injuries on the driver, Virendra:

> Lacerated wound 2.5 cm x 5 cm on the top of skull 11 cm above from the ear and 18 cm from bridge of nose. Deep bone uncoverage.
>
> General condition of the patient was poor advised X-ray and referred to District Hospital, Etaah for treatment. The injury was kept under observation, caused by blunt and hard object and was fresh in duration.

Autopsy on the dead body of Ramesh Narain deceased was conducted on 21-7-1997 at 11.30 A.M. by Dr. Narendra Babu Katiyar (PW.3) who found following ante mortem injuries on his person:-

1. Gun shot wound through and through lacerated on front of head and middle of head 17 cm x 3 cm x brain cavity deep (brain matter coming out) 4 cm above left ear, 12 cm above right ear from base of nose and including both eye brows. Bleeding present.

2. Gun shot wound of entry 1 cm x 1 cm x left lateral abdomen cavity (through) lacerated, margins inverted with blackening and tattooing in area of 5 cm x 4 cm, on left iliac crest, 19 cm from umbilicus.

3. Gun shot wound of exit 1 cm x 1 cm x communicating to injury No.2 on right lateral abdomen 18 cm from umbilicus at 10 'O' clock. Lacerated. Direction left to right.

4. Gun shot wound of entry 1.5 cm x 1 cm left chest cavity deep. Margins lacerated and inverted 10 cm from nipple at 7 'O' clock position. Tattooing

present, direction downward to right.

5. Gun shot wound of entry 1 cm x 1 cm x right back (Abdomen) 4 cm from mid line, 8 cm above right iliac crest. Lacerated inverted. Blackening present.

6. Gun shot wound of entry 1 cm x ½ cm x through on outer aspects of left knee lacerated, inverted.

7. Gun shot wound of entry 1 cm x 1 cm x communicating to injury No.6 on front and upper part of left knee. Lacerated, inverted.

On internal examination brain matter was found coming out. Peritoneum was lacerated. Cavity contained 2 liters clotted blood. Stomach contained about 15 ounce pasty food in process of digestion. Small intestine and large intestine, gall bladder and right kidney were lacerated.

Two yellow colored bullets were recovered from abdomen.

According to the opinion of Doctor, cause of death was due to coma and shock as a result of injuries noted above. The Doctor prepared post mortem report. (Ext. Ka2)

Autopsy on the dead body of Jitendra alias Guddu was conducted on same day at 12.00 noon by Dr. Narendra Babu Katiyar (PW.3), who found following ante mortem injuries on his person:-

1. Gun shot wound of entry 1.5 cm x 1.5 cm x left chest cavity deep on left chest, 3 cm from left nipple at 2 'O' clock position. Lacerated, inverted. Blackening present. Direction left to right.

2. Gun shot wound of entry 2.5 cm x 2.5 x left chest cavitydeep on left upper chest below mid end of left clavicle. Lacerated inverted. Blackening present. Direction left to right.

3. Gun shot wound of exit (pellets) four in no. 0.5 cm x 0.5 cm x communicating to injury No.2 on right lateral chest, 4 cm below axilla in an area of 5 cm x 3 cm. Lacerated inverted, two wad pieces and one Gatta (wad) recovered from right lateral wall of chest below axilla with pellets 15 in number.

4. Incised wound 3.5 cm x 3.5 cm x right chest cavity deep on right chest 13 cm above right iliac crest lateral. Margins clean cut.

On internal examination 4th, 5th, and 7th ribs on left side and 5th, 6th and 10th ribs on right side were fractured. Pleura was lacerated. Both lungs were lacerated. Thoracic cavity contained about 1 liters fresh and clotted blood. Peritoneum was lacerated. Cavity contained about 1 liters of clotted blood. Stomach contained about 1.15 ml of semi digested food. Large intestine contained gasses and faecal matters. Gall bladder was lacerated.

One yellow colour pellet recovered from right back of chest. One Gatta (wad) and two wad pieces and 15 pellets were recovered from right lateral chest wall.

In the opinion of Doctor, cause of death was shock and haemorrage as a result of injuries noted above. The doctor prepared postmortem report (Ext. Ka3).

Nathu Singh (PW.2) was shifted to S.R.N. Medical College, Agra and his injuries were examined on 21-7-1997 at 3.50 A.M. by Dr. Ram Babu (PW.6) who found the following injuries on his person:-

1. One stab wound elliptical in shape 1-1/2" x ½" x abdominal cavity deep 1-1/2" away from left umbilicus at 11 'O' clock position. Loop of intestine coming out, bleeding present.

2. One horizontal elliptical wound 1" x ½"x depth not

probed. 3" away left to umbilicus at 3 'O' clock position.

3. One elliptical wound present 6" away at 10 'O' clock position in right A.S.I. spine. Placed vertically.

4. One stab wound on scalp over occipital are ½" x ¼" x not proven size ½" x ¼" x not proven. Bleeding present.

Margins of all wounds were clear. The doctor opined that it was fresh case of stabbed injuries. All injuries were kept under observation and fresh in duration. Patient admitted and police informed for dying declaration.

8. On 22.7.1997 Guru Charan, respondent was arrested at 12.10 pm in village Jamalpur near Temple. At that time he was carrying .315 bore rifle and six cartridges which were taken into possession. Thereafter Bhagwan Sahai was transferred and remaining investigation was conducted by SO Rajpal Singh who on completion of investigation submitted chargesheet (Ex.Ka15) against the respondents. Fired cartridges recovered from the spot and licensed gun of Guru Charan, respondent was sent to Joint Director Forensic Science Laboratory, Lucknow, Uttar Pradesh for comparison and report. Report dated 23.12.1997 (Ex. Ka.20) was submitted by the Asst. Director of the laboratories.

9. The Trial Court on examination of the evidence came to the conclusion that the evidence given by the Vijay Kumar (PW1) cannot be brushed aside only on ground of the enmity against the respondent. He was present in the bus at the time of the incident. He filed the report against the accused at the Police Station immediately after the incident. He was cross-examined at length but nothing favourable to the accused could be elicited from him. Trial Court also came to the conclusion that Vijay Kumar (PW1) has given consistent evidence without any material contradiction. He had no motive to depose falsely

against the respondents as he along with his uncle Ramesh Narain, deceased were in fact acquitted of the murder charge in the earlier case. The Trial Court further holds that the evidence of Nathu (PW2) fully supported the prosecution version. He was an injured eye-witness. He was neither a friend of the prosecution nor an enemy of the accused. He was an independent and impartial witness and there was no reason to disbelieve his evidence. The Trial Court did not accept the suggestions of the defence that Vijay Kumar (PW1) and Nathu (PW2) were procured witnesses. The injuries suffered by the witnesses were self-inflicted. Numerous contradictions in the evidence of PW1 Vijay Kumar and PW 2 Nathu were held to be not material. The Trial Court also found that the version of injuries given by PW1 and PW2 is corroborated by the medical evidence as well as the ocular evidence given by PW3, PW5 and PW6. PW3 Dr. Narendra Babu Katiyar had conducted the post moriem on the deceased Ramesh Narain He had found 6 fire arm injuries on his body. He had also conducted post mortem on Jitendra who had three fire arm injuries on his body. PW5, Dr. Girish Chandra had examined the injuries on Virendra and found an incise wound on his body. Similarly PW6, Dr. Ram Babu examined Nathu (PW 2) and found the knife injuries on his stomach. The cross examinations of these doctors proved totally ineffective for the respondents.

10. Upon consideration of the entire evidence, the Trial Court held that the prosecution has successfully proved that the respondents Sunil, Pramod and Guru Charan in furtherance of their common intention committed murder of Ramesh Narain and Jitendra alias Guddu. It was further held that respondent Brahma Pal committed murderous assault on Nathu Singh (PW2). Accordingly respondents Sunil, Pramod and Guru Charan were convicted u/s. 302 read with Section 34 IPC whereas Brahma Pal was convicted under Section 307 IPC. Upon conviction Sunil, Pramod and Guru Charan were sentenced to death whereas Brahma Pal was sentenced to life imprisonment.

A 11. The respondents-convicts, aggrieved by the judgment of the Additional Sessions Judge, challenged the same in separate appeals before the High Court.

12. The High Court re-examined the entire evidence and
B came to the conclusion that the prosecution story is unbelievable. Consequently, Criminal Appeal 1795/99 and Criminal Appeal No.2018/99 by the convicts Guru Charan, Sunil and Pramod and Brahma Pal have been allowed and they have been acquitted of all the charges and Reference No.8 of 1999
C made by the Sessions Judge for confirmation of death sentence awarded to Guru Charan, Sunil and Pramod has been rejected.

13. Mr. Pramod Swarup, learned senior counsel for the appellant submitted that the High Court has erred in accepting
D the appeals filed by the respondents. He has taken us through the evidence, as well as the judgments of both the courts below. He submits that the evidence given by P.W.1 Vijay Kumar and P.W.2 Nathu Singh, could not be discarded, as they are injured witnesses. Nathu Singh, P.W.2, had no reason to falsely
E implicate the respondents, being an independent witness. The medical evidence is consistent with the oral testimony. Therefore, few minor discrepancies would not be material to discredit the testimony of the eye witnesses. According to the learned counsel, this is a case of pre- planned assault, by one
F group on the other. It is a clear case of revenge killing. Therefore, the trial court verdict as well as sentence were legal and ought to be restored.

14. On the other hand, Mr. H.C. Kharbanda, learned counsel for the respondents submits that this is a clear case
G where an incident of dacoity has been twisted to falsely involve the respondents in a crime they did not commit. He emphasized that the presence of Vijay Kumar (P.W.1) is very doubtful. Nathu Singh (P.W.2) also can not be believed, in view of the medical evidence, as well as the statement of Dr. Ram Babu (P.W.6).
H Enmity existed between the two parties. He further emphasized

that Vijay Kumar (P.W.1) has given a fabricated version. Driver of the bus Virendra, though injured, has been deliberately withheld by the prosecution. He submitted that such firing in a bus was bound to injure some other passengers. He submits that the High Court has correctly disbelieved the prosecution version. According to the learned counsel, the State has failed to make out any exceptional case to warrant interference with the judgment of the High Court.

15. We have considered the submissions of the learned counsel.

16. In its well reasoned and detailed judgment, the High Court has re-examined the entire evidence. While considering the evidence of Vijay Kumar (P.W.1), it is noticed that Guru Charan who is said to be the main assailant did not have any motive to commit the murder of the deceased. He was simply a witness in the murder case against deceased Ramesh Narain. Vijay Kumar (PW1) in the evidence had stated that Guru Charan armed with a licensed .315 bore rifle had entered the bus and fired 7-8 rounds on his uncle i.e. deceased Ramesh Narain. He further stated that due to the injuries his uncle died there and then, in the bus itself. He further stated that his brother-in-law Jitendra alias Guddu immediately got down from the bus and started running in order to save himself but the respondent fired upon him and he too was killed outside the bus. This witness further stated when Nathu (PW 2) came forward to save Guddu, Brahma Pal stabbed him with his knife. Vijay Kumar (PW1) emphatically stated that no other person received any injuries. But then it is stated that when the driver of the bus tried to move the bus he too was stabbed. On an analysis of his evidence, the High Court concluded that the evidence of this witness was unbelievable for a number of reasons. We may notice here only the prominent reasons given by the High Court.

17. It is noticed that according to the witness Vijay Kumar (PW 1), he was sitting at the back of the bus. When his uncle

A was being shot at, he hid behind the seat. Every other person tried to get off the bus. Even people in the nearby fields ran away for fear of the assailants. The assault was so ferocious that two persons were killed, two were injured. The two injured had no enmity with the respondents. On the other hand, Vijay
B Kumar (PW1) was a co-accused in the murder of Vinod. Yet he suffered no injury. He made no effort to save his uncle Ramesh Narain deceased. His account of the incident is so graphical that he could only do this if he was visible to the respondents. In that case, he would not have been spared. The
C High Court, therefore, doubts his presence at the scene of the crime.

18. It is then noticed by the High Court that even the inquest report has been specially prepared to show the presence of Vijay Kumar (PW1) at the place of occurrence, when the
D investigating officer visited the spot. But Vijay Kumar (PW1), in his cross-examination states that after handing over written report to the Head Constable at the police station, he went to sleep and did not know what happened after that. This report was handed over to the Head Constable at 5.20 p.m. He woke
E up only at about 9-10 p.m. By that time, the investigating officer had returned to the police station. He did not know whether the investigating officer had gone to the spot on the night of the occurrence. He did not know when or where documents were prepared regarding the dead body. However, he admitted his
F signature on the inquest report of the deceased Ramesh Narain. He also stated that his signature was obtained at the police station. Thus, according to Vijay Kumar (PW 1), he never went to the spot during the night after reporting the crime. On the other hand, the investigating officer states that he was
G present at the spot between 9-10 p.m. Thus, according to the High Court, the investigating officer has been over enthusiastic to ensure the presence of Vijay Kumar (PW 1) which was, to say the least, doubtful. The High Court also found the evidence of Vijay Kumar (PW 1) about injuries on Virendra, bus driver,
H was contrary to the medical evidence. Dr. Girish Chandra

(P.W.5) says that Virendra had suffered a lacerated wound caused with a blunt weapon, whereas Vijay Kumar (PW 1) says he was stabbed with the knife. A

19. Again Vijay Kumar (PW 1) states that Guru Charan caught hold of Jitendra alias Guddu and made him fall down. Then Pramod and Sunil fired at him from a distance of about two feet. There is no mention of any knife injury but the post mortem report shows that Jitendra alias Guddu had sustained one incised wound 3.5 x 12.5 cm on right side of the chest. Thus the version is contradicted by medical evidence. B C

20. Then Vijay Kumar (PW 1) says that Guru Charan had fired a number of shots at his uncle Ramesh Narain (deceased) from his licensed .315 bore rifle. The empty cartridges had fallen in the bus. These were collected by the Investigating Officer. The licensed rifle of Guru Charan was taken into possession. The empty cartridges recovered from the spot and the rifle of Guru Charan was sent to forensic Science laboratory for comparision. The test report shows that the cartridges were not fired from the licensed gun of Guru Charan. D

21. The High Court then noticed that Nathu (PW 2), who had been seriously injured and was in need of urgent medical attention was not taken in the jeep when Virendra and Vijay Kumar (PW 1) proceeded to the police station. This again casts a doubt on the version given by Vijay Kumar (PW 1). E F

22. Having virtually destroyed the credibility of Vijay Kumar (PW 1), the High Court then proceeds to examine the eye witness account of Nathu Singh(PW 2) (injured witness). Nathu (PW 2) also claims to be in the bus. He also talks of Ramesh Narain being shot dead by all the accused, who fired at him from their respective weapons. He also talks of Jitendra alias Guddu being pulled down to the ground and being shot. Then he says, when he tried to intervene, Brahma Pal caused injuries on him with a knife. He still carries the marks of the injuries. His version of when he got the injuries is not supported by the G H

A medical examination.

23. The High Court noticed the evidence given by Dr. Ram Babu (P.W.6) who had examined the injuries of Nathu Singh (P.W.2) on 21.7.1997 in S.N. Medical College, Agra at 3.50 a.m. Dr. Ram Babu (P.W.6) in his evidence stated that it was
B a fresh case of stab injuries and injuries were fresh in duration. He further stated that by fresh injuries he meant the injuries caused within 6 to 10 hours. He also found that injuries 1 and 3 were bleeding and caused by one weapon. Fresh injuries are the injuries which are caused within 6 hours. No doubt there
C may be variation of two hours on either side. Thus the fresh injuries could be termed injuries within 4 to 8 hours and not more than 8 hours. On the basis of the aforesaid, the High Court was of the opinion that since Nathu (PW 2) was examined about 12 hours after the injuries were caused, they could not be described as fresh injuries.
D

24. The High Court further noticed the claim of Nathu (P.W.2) that after the occurrence he was brought to the police station. He was medically examined in Sahawar and thereafter shifted to Etaah. From Etaah he was further shifted to Agra.
E But Dr. Ram Babu (P.W.6) who had examined Nathu (P.W.2) at S.N. Medical College, Agra stated that no reference slip was shown to him. The prosecution also did not file any injury report on the reference slip prepared at Sahawar or Etaah. Although Nathu Singh (PW 2) claims to have been brought to the police
F station by the police personnel he did not identify any particular police officer who helped him. In fact, the investigating officer Bhagwan Sahai (Sub Inspector) in his evidence stated that Nathu Singh (P.W.2) did not meet him on the date of the occurrence. The High Court also noticed that although Nathu
G Singh (PW 2) had stated that appellant Guru Charan had fired at Ramesh Narain from his licensed .315 bore rifle, the empty cartridges recovered from the bus had not been fired from the licensed rifle of Guru Charan. It is also noticed by the High Court that Nathu (PW 2) had failed to explain the circumstances in
H which Jitendra alias Guddu (deceased) sustained knife injuries,

as according to Nathu (PW 2), the respondents Pramod, Sunil and Guru Charan had fired at Jitendra alias Guddu. A

25. Upon this thorough examination of the entire witness, the High Court has concluded that the evidence of Nathu Singh (P.W.2) is falsified by the evidence of Dr. Ram Babu (P.W.6). Consequently, Nathu Singh (PW 2) has also been held to be unreliable witness. After examination of the eye witnesses who testified for the prosecution, the High Court noticed another relevant omission in the case of the prosecution. According to the prosecution witnesses, the driver, Virendra, sustained injuries in the same incident and by the same assailants. He was also an eye witness. He was alleged to have taken Vijay Kumar (P.W.1) to the police station. Yet he has not been examined by the prosecution. It has also come in the evidence of the witnesses that there were numerous other passengers in the bus. These passengers were said to have quickly got off the bus. Although there was sustained firing by the assailants in the bus, none of the other passengers were injured. The prosecution also did not care to examine any other passenger who would have been the eye witness to the whole transaction. In this state of the evidence, the High Court has concluded that the prosecution has miserably failed to prove the guilt of the respondents for the murder of Ramesh Narain, and Jitendra alias Guddu and the murderous assault of Nathu Singh (PW.2). B C D E

26. With the able assistance of the learned counsel for the parties, we have carefully examined the evidence as well as the findings recorded by the courts below. We are of the considered opinion that the view taken by the High Court is both plausible and possible. The scope of interference in Article 136 in an appeal against acquittal is rather limited. The position with regard to circumstances in which the appellate court would interfere with an acquittal has been recently restated by this court in the case of *State of Uttar Pradesh vs. Banne alias Baijnath & Ors.* [2009 (4) SCC 271]. In this case, the settled legal position which has been crystallized in a number of F G H

A judgments has been reconsidered and reiterated. The principles emerging are restated in the following words:

"27. The following principles emerge from the aforementioned cases:

B *1.* The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's C conclusion with respect to both facts and law.

2. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The High Court's acquittal D bolsters the presumption that he is innocent.

3. There must also be substantial and compelling reasons for reversing an order of acquittal.

This Court would be justified in interfering with the judgment E of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court's decision.

28. Following are some of the circumstances in which F perhaps this Court would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive:

(*i*) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

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(*ii*) The High Court's conclusions are contrary to evidence and documents on record;

(*iii*) The entire approach of the High Court in dealing with

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the evidence was patently illegal leading to grave miscarriage of justice; A

(*iv*) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case; B

(*v*) This Court must always give proper weight and consideration to the findings of the High Court;

(*vi*) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." C

27. We may also notice here the observations made by this Court in the case of *State of U.P. vs. Harihar Bux Singh & Anr.* [975 3 SCC 167] with regard to the scope of interference by this Court under Article 136 of the Constitution. D It is observed as follows:-

"In an appeal under Article 136 of the Constitution, this Court does not interfere with the finding of acquittal recorded by the High Court unless that finding is vitiated E by some glaring infirmity in the appraisement of evidence. The fact that another view could also have been taken on the evidence on record would not justify interference with the judgment of acquittal. The judgment of the High Court in the present case has not been shown to suffer from any F such weakness as might induce us to interfere. The appeal consequently fails and is dismissed."

28. The same view has been reiterated by this Court in the case of *State of U.P. vs. Gopi & Ors.* [1980 Supp. SCC 160] wherein it is observed as follows: G

"There may be something to be said for this view of the High Court and, if we were sitting as a court of appeal, we may have taken a different view and may have accepted the statements of PWs 4 and 6. But that is no H

A reason to set aside the judgment of the High Court for after consideration of the various aspects of the case it cannot be said that the view taken by the High Court was not reasonably possible."

B 29. In the case of *State of Uttar Pradesh vs. Ashok Kumar & Anr.* [1979 (3) SCC 1], the same view has been again reiterated as follows:-

"The facts of the case have been set out in the judgment of the High Court and it is not necessary for us C to repeat them again. It is well-settled that this Court would not normally interfere with an order of acquittal in special leave unless there are cogent reasons for doing so or unless there is a gross violation of any procedure of law which results in serious miscarriage of justice. We have D heard Counsel for the parties and have gone through the judgment of the Sessions Judge and of the High Court. It is true that High Court has not made an attempt to discuss the intrinsic merits of the evidence of the eyewitnesses but having regard to the glaring defects appearing in the E prosecution case we are in agreement with the ultimate view taken by the High Court."

30. Applying the aforesaid principles to the facts and circumstances of this case, we are of the considered opinion that the findings recorded by the High Court do not warrant any F interference by this Court. In view of the above, the appeals are dismissed.

N.J. Appeals dismissed.