PETITIONER:
MOOL CHAND ETC. ETC.

Vs.

RESPONDENT:
JAGDISH SINGH BEDI AND ORS. ETC. ETC.

DATE OF JUDGMENT31/03/1992

BENCH:
FATHIMA BEEVI, M. (J)
BENCH:
FATHIMA BEEVI, M. (J)
PANDIAN, S.R. (J)

CITATION:
1992 SCR (2) 425 1993 SCC Supl. (2) 714
JT 1992 (2) 376 1992 SCALE (1)741

ACT:
Indian Penal Code:
Sections 120B, 302, 307, 324-High Court meticulously examining evidence-Recording its own finding on credibility of witnesses-Reasonable doubt as to circumstances under which victim received fatal shot-Held no interference with High Court order called for.

HEADNOTE:
Kashmiri Lal, Madan Lal, Babu Ram, Jagdish Singh Bedi and Prem Pal were tried by the Additional Sessions Judge on charges under sections 120(B), 302, 307 and 324 read with sections 147 and 149 I.P.C. on the ground that they entered into criminal conspiracy on 17.11.1972 to commit the murder to Ramesh Chand and others.

The prosection case was that Kasturi Lal and Madan Lal were brothers, that the three others Jagdish Singh Bedi, Prem Pal and Babu Ram were friends and associates of these brothers. Mool Chand and Jagdish Chand were brothers. Ramesh Chand, the deceased was the son of Jagdish Chand. Kashmiri Lal on the one hand and Mool Chand on the other hand were enemies and there had been complaints and counter-complaints and other litigations between these two groups. Kashmiri Lal was provided with a bodyguard Jaipal Singh, PW-17.

Kiran Prabha, daughter of Kewal Kishore, another brother of Mool Chand was getting married on 17.11.72 and the marriage party had come from Delhi. Mool Chand, Amrit lal, Subhash Chand, Ramesh Chand and Agya Ram were accompanying the party. Ramesh Chand and Amrit Lal were heading the marriage procession.

When the barat party reached the tonga stand near the residence of Dharamvir Singh Sehrawat, an Advocate, Prem Pal and Jagdish Singh Bedi came there on a motorcycle driven by Prem Pal and stopped the

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motorcycle on the roadside in front of the marriage procession. Simultaneously, an ambassador car in which Kashmiri Lal, Babu Ram and Madan Lal were sitting also stopped behind the motorcycle. Kashmiri Lal and Babu Ram fired with his gun and Ramesh Chand got injured. Babu Ram fired simultaneously causing injury to Amrit Lal. Both

Ramesh Chand and Amrit Lal fell down, and injury was caused to Subhash Chand and Mool Chand. Ramesh Chand died in the hospital on 18.11.1972 and Mool chand and Subhash Chand were treated at the District Hospital.

The police party on receiving telephonic message from P.W.5 Balbir Singh reached the scene. They recovered the motorcycle with a bag hanging on its handle, a bag of cartridges and two empty cartridges lying on the ground. Investigation took place and the accused were arrested and sent for trial.

At the trial, 20 witnesses were examined by the Prosecution. Mool Chand (PW.1) Subhash Chand (PW.4), Agya Ram (PW.6) and Jai Pal Singh (PW.7) were examined as eye witnesses. They supported the prosecution and narrated the prosection version.

The accused set up their version on the incident in their statement. According to them Madan Lal was going in a rickshaw at 9.00 P.M. and when he reached near the house of the Advocate, Ramesh Chand abused him and fired a number of shots at him. Kashmiri Lal happened to reach there at that time. The deceased and others tried to assault him with a danda. He fired at them in the exercise of the right of private defence.

The trial court accepted the prosecution evidence, rejected the defence version and recorded conviction.

The accused appealed to the High Court, which set aside the findings of the Trial Court and acquitted the accused. The High Court was not prepared to believe that Madan Lal would have been accidentally hit by as many as two or three shots fired by two of his companions as it appears to be highly unnatural and improbable. It held that if the accused had conspired to commit the murder and all of them had proceeded to

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the place of occurrence from the house of Kashmiri Lal, it is difficult to understand why Kashmiri Lal and Babu Ram who were armed with gun did not immediately fire at Ramesh Chand who was admittedly in front of the marriage procession.

The State aggrieved by the order of acquittal preferred three appeals, to this Court, and the complainant, Mool Chand filed an appeal by Special Leave.

In the appeals it was contended : (1) The eye witness account of the incident was fully corroborated by the medical evidence on record and that their evidence had been discarded on the bald ground that they did not give satisfactory explanation of the fire arm injuries on accused Madan Lal. (2) The explanation of the fire-arm injuries of accused Madan Lal was contained even in the first information report which was promptly lodged by PW.1 Mool Chand. (3) The incident took place in a barat procession consisting of over 100 persons on account of melee and confusion, no one can be expected to give a graphic account of the encounter as well as the exact number of shots fired. (4) The three eye witnesses are natural witnesses, and they have given a consistent account which had received corroboration from other materials in evidence, and that the evidence was sufficient to sustain the conviction. (5) The High Court proceeded on conjectures having lost sight of the normal human conduct especially when it found that the accused had come to the place of occurrence on a car and a motorcycle before the incident and four of them were arrested soon after the incident.

On the question: Whether the approach of the High Court was wrong or the view taken by the High Court was

unreasonable.

Dismissing the appeals, this Court,

HELD: 1. The prosecution has not proved the case beyond reasonable doubt. The High Court has rightly acquitted these accused.

[438F]

2. The High Court had very meticulously examined the evidence and recorded its own finding as to the credibility of the same. It is rather a matter of appreciation of evidence. If the evidence is of such a nature that two

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views are possible and the view in favour of the accused weighed with the High Court in acquitting them, this Court will be slow to interfere with the order of acquittal.[434D]

3. Only when the High Court has committed grave error in the appreciation of the evidence and misdirected itself by ignoring legal principles or misreading the evidence and arrived at the conclusion, the decision can be characterised as perverse or illegal requiring the interference by this Court under Article 136 of the Constitution of India. The judgment of the High Court if supported by cogent reasons has to be sustained. [434E-F]

4. Even though the eye witnesses corroborated each other on material particulars and the presence of Mool Chand, Agya Ram and Subhash Chand was quite probable and PW-7 Could be considered as independent eye witness, the intrinsic worth of their version has been carefully weighed. In the light of the inherent infirmity in that gun shot injuries sustained by one of the accused has not been properly explained and the explanation offered by the prosecution is unacceptable, the High Court entertained serious doubt regarding the truth and credibility of the prosecution case. [437H-438B]

5. Amrit Lal one of the injured persons has not been examined. The account given by Subhash Chand is inconsistent with the narration given by Mool Chand and Agya Ram and cuts at the root of the prosecution case. The prosecution version is wholly unbelievable. There is suppression of material evidence. The prosecution case has therefore been rightly discarded by the High Court and no interference is called for.

[438D-E]

6. The testimony of PW.7 appears to be highly artificial and does not fit in with human probabilities. The eye-witness account of the incident as rightly pointed out by the High Court does not reveal the truth and the genesis of the incident which is shrouded in mystery. Material part of the incident relating to the attack of th e accused person is twisted or suppressed and reasonable doubt arises as to the circumstances under which the victim received the fatal shot. No interference with the judgment of the High Court is therefore called for. [438G-439A]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 688-691/1979.

From the Judgment and Order dated 20.4.1979 of the Allahabad High Court in Crl. Appeals Nos. 1850, 1851 and 1852 of 1974.

K.G. Bhagat, Pramod Swarup, R.K. Singh, Anil Kumar Sangal, A.S. Pundir and Prashant Chaudhary for the Appellants.

R.K. Garg, U.R. Lalit, V.J. Francis, N.M. Popli and Dr. B.S. Chauhan for the Respondents.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. These appeals by special leave are directed against the judgment and order dated 20.4.1979 of the Allahabad High Court passed in Criminal Appeals No. 1851 of 1974, 1850 of 1974 and 1852 of 1974 whereby the High Court allowed the appeals and set aside the conviction of the respondents.

Kashmiri Lal, Madan Lal Babu Ram and Jagdish Singh Bedi and Prem Pal were tried in Sessions Trial No. 133 of 1973 by the Ist Addl. Session Judge on the charges under sections 120-B, 302, 307, 324 read with section 149, I.P.C., Babu Ram and Kashmiri Lal were separately charged under section 147, I.P.C., as well.

The charges are that the accused persons on 17.11.1972 entered into a criminal conspiracy to commit murder of Ramesh Chand and others. Babu Ram and Kashmiri Lal armed with guns along with the other three formed themselves into an unlawful assembly with a common object of murdering Ramesh Chand, Amrit Lal and Subhash Chand and causing injuries to them. In prosecution of the common object of the assembly, they committed the murder of Ramesh Chand caused gunshot injuries to Amrit Lal and Subhash Chand at about 9.30 P.M. on 17.11.1972 at Bhopa Tonga stand in front of the house of Shri Dharamvir Singh Sehrawat, Advocate, Muzaffarnagar, and thereby committed the aforesaid offences.

The learned Addl. Sessions Judge by judgment dated 29.7.1974 convicted Kashmiri Lal and Babu Ram under Sections 148, 120-B, 302, 307 and 324, I.P.C., all read with Section 149, I.P.C., and sentenced them to undergo imprisonment for life under Section 302, R.I. for 7 years under Section 307, R.I. for 2 years under Section 148. Learned Judge also convicted Jagdish Singh Bedi, Prem Pal and Madan Lal under Sections

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147, 120-B, 302, 307 and 324, I.P.C., read with section 149, I.P.C., and sentenced them to undergo imprisonment for life under Section 302, R.I. for 2 years under Section 147 and no separate sentence was imposed on any of the accused under Sections 120-B and 324, I.P.C.

The prosecution case relevant for the purpose of the appeals briefly stated thus:- Kashmiri Lal and Madan Lal are real brothers. The other three i.e. Jagdish Singh Bedi, Prem Pal and Babu Ram are friends and associates of these brothers. Mool Chand and Jagdish Chand are brothers. Ramesh Chand, the deceased, was the son of Jagdish Chand. Subhash Chand (PW-4) and Amrit Lal, injured, are the sons of Mool Chand. The family of Mool Chand and the accused had strained relationship, since there had been complaints and counter-complaints and other litigation between these two groups, Kashmiri Lal accused was provided with a shadow of Jaipal Singh (PW-17).

Kiran Prabha, daughter of Kewal Kishore, another brother of Mool Chand was getting married on 17.11.1972. The marriage party had come from Delhi and was staying at Barat House in Gandhi Colony. The party started for the bride's house at about 9.00 P.M. Mool Chand, Amrit Lal, Subhash Chand, Ramesh Chand And Agya Ram were accompanying the party. Ramesh Chand and Amrit Lal were heading the marriage procession. At about 9.30 P.M. when the barat party reached Bhopa Tonga Stand near the residence of Shri Dharamvir Singh Sehrawat, Advocate, adjacent to police lines, Prem Pal and Jagdish Singh Bedi came there on a motorcycle driven by Prem Pal and stopped the motorcycle on

the roadside in front of the marriage procession. Simultaneously, an ambassador car in which Kashmiri Lal, Babu Ram and Madan Lal were sitting also stopped behind the motorcycle. Kashmiri Lal and Babu Ram were armed with guns while Jagdish Singh Bedi was armed with cudgel. The accused got down from the car and the motorcycle. Prem Pal, Madan Lal and Jagdish Singh Bedi went near Subhash, Amrit Lal and Ramesh Chand and started abusing them. Jagdish Singh Bedi gave blows to them with his cudgel. Madan Lal excited Babu Ram to fire. Kashmiri Lal fired with his gun and Ramesh Chand got injured. Babu Ram fired simultaneously causing injury to Amrit Lal. Both Ramesh Chand and Amrit Lal fell down. Kashmiri Lal and Babu Ram each fired another round causing injury to Subhash Chand and Madan Lal accused, and all the accused escaped leaving the motor-

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cycle and the car on the spot.

Ramesh Chand died in the hospital on 18.11.1972. Mool Chand and Subhash Chand were treated at District Hospital.

The Police party on receiving telephonic message from P.W.-5 Balbir Singh reached the scene. They recovered the motorcycle with a bag hanging on its handle, a bag of cartridges and two empty cartridges lying on the ground. Sub-Inspector arrested accused Kashmiri Lal, Madan Lal, Babu Ram and Prem Lal at about 10.00 P.M. at the Roorkey Octroi Post while they were boarding the truck. Two guns were recovered from the possession of Kashmiri Lal and Babu Ram. From Kashmiri Lal empty cartridges and gun licenses were also recovered.

Written report given by Mool Chand at the police station Kotwali at 10.25 P.M. was treated as the first information and the investigation was carried on.

Amrit Lal was examined by Dr. Manocha at 10.15 P.M. He had six injuries on his person including a gunshot wound. Subhash Chand had besides the gunshot would two abrasions. Ramesh Chand was first examined by Dr. Jai Deo Sharma (PW-11) at 11.00 P.M. He had multiple gun pellet wounds 25 in number in an area of 17 cm x 12 cm with alacerated wound 3 cm x 0.5 cm (depth not probed) in the centre and lower part of chest as recorded in Ex. Ka-14 medical report. The post-mortem examination on the dead-body of Ramesh Chand was conducted by Dr. R.N. Pathak (PW-15) on 19.11.1972 and that revealed about the presence of about 86 gun-shot wounds on the right side of th abdomen and extending to back upper part of the abdomen. On internal examination, the doctor found pellets present in the abdominal wall. Eight pellets were recovered. The death had occurred due to haemorrhage and shock as a result of gun-shot in injury.

Kashmiri Lal, Madan Lal, Babu Ram, and Pram Pal were medically examined by the Jail Doctor. Dr. K.C. Pandey, on 18.11.1972. As per injury reports Ex. Ka-4 to 7, Kashmiri Lal and multiple contusion on right hand, left hand small finger, right shoulder and back upper third caused by some blunt weapon about a day before. Madan Lal and multiple small gun pellet wounds scattered in different parts caused about a day before. Prem-Pal

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had two small scabbed abrasions caused by friction against hard substance about a day old and Babu Ram had four simple injuries of blunt weapon with traumatic swelling on left hand fingers, duration could not be ascertained.

Twenty witnesses were examined by the prosecution. Mool Chand (PW-1), Subhash Chand (PW-4) Agya Ram (PW-6) and Jai Pal Singh (PW-7) were examined as eye-witnesses. They supported the prosecution and narrated the prosecution

version.

The accused had set up their version of the incident in their statement. According to them Madan Lal was going on a rickshaw from Gandhi Colony to City at 9.00 P.M. on 17.11.1972. When he reached near the house of Dharamvir Singh Sehrawat, Advocate, Ramesh Chand abused him and fired a number of shots at him. Kashmiri Lal happened to reach there at that time. The deceased and the others tried to assault him with a danda. He fired at them in the exercise of the right of private defence.

Jagdish Singh Bedi and Prem Pal stated that they were returning from village on a motorcycle at the time of the incident and when they reached near the police lines, they found a crowd and barat procession. Prem Pal who was driving the motorcycle attempted to clear the crowd. Some persons attacked him and both ran away leaving the motorcycle. Prem Pal claimed that he went to the police station to lodge a report but he was arrested.

PW-17, Radhey Shyam Mishra, the ballistic expert, affirmed that the two cartridges were fired from the two guns recovered from the possessions of Kashmiri Lal and Babu Ram. The trial court accepted the prosecution evidence, rejected the defence version and recorded conviction. The High Court on appeal by the convicted persons set aside the findings and acquitted them.

The State being aggrieved by the order of acquittal has preferred three appeals. Mool Chand, the defacto complainant, has no special leave granted filed separate Criminal Appeal No. 688 of 1979. The grounds urged ar these:-

> The eye-witness account of th incident was fully corroborated
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> by the medical evidence on record. The evidence of the eye-witnesses have been discarded on the bald ground that it was difficult to accept their evidence as they did not give satisfactory explanation of the fire-arm injuries on Madan Lal, accused.
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> The explanation of the fire-arm injuries of accused Madan Lal was contained even in the first information report which was promptly lodged by PW-1, Mool Chand, one of the eye-witnesses. The injuries are skin deep.
>
> The incident took place in a barat procession consisting of over 100 persons on account of melee and confusion no one can be expected to give a graphic account of the encounter as well as the exact number of shot fired. It was impossible for the eye-witnesses to notice every detail in a graphic manner.
>
> The three eye-witnesses are natural witnesses. Subhash Chand is an injured person. When deceased, Ramesh Chand, was undoubtedly in the marriage procession, the presence of these witnesses is also established. They have a consistent account and received corroboration from other materials on evidence. The evidence was sufficient to sustain the conviction.
>
> Jai Pal Singh (PW-7) was admittedly the own shadow of Kashmiri Lal. He has given a detailed account of movements of the accused. It is fully corroborated by the various recoveries apart from the eye-witnesses account. No reason whatsoever has been given to discard the evidence.

The High Court has proceeded on conjectures having lost sight of the normal human conduct. The High Court has found that the accused have come to the place of occurrence on a car and a motorcycle before the incident and four of them were arrested soon after the incident, and both Babu Ram and Kashmiri Lal had fired at the complainants party but this cannot lead to the inference that the prosecution version of the incident is correct as it is quite possible that a sudden quarrel took place at the place of the occurrence and the appellants were fired at first by the complainants' party as a result of which Madan Lal, appellants, received gun-shot injuries. It is argued

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that on one will spoil his own marriage procession by indulging in shooting at such a time on his enemy whereas an enemy would indulge in shooting to spoil the marriage of his enemy. The inference was irresistible from the appearance of the accused at the spot in a car and a motorcycle that they intended to spoil the marriage procession and to indulge in violence. The arrest of the accused and the recovery immediately after the occurrence lend assurance of the truth of the prosecution version and there is no scope for any doubt that the prosecution version is true.

Shri Bhagat, the senior counsel, elaborated these grounds referring to the evidence on record.

In these appeals against the order of acquittal by the High Court, we have to consider whether the approach by the High Court is wrong or the view taken by the High Court is unreasonable. The High Court had very meticulously examined the evidence and recorded its own finding as to the credibility of the same. It is rather a matter a appreciation of evidence. If the evidence is of such a nature that two views are possible and the view in favour of the accused weighed with the High Court in acquitting them, this Court will be slow to interfere with the order of acquittal. If only the High Court has committed grave error in the appreciation of the evidence and misdirected itself by ignoring legal principles or misreading the evidence and arrived at the conclusion, the decision can be characterised as perverse or illegal requiring the interference by this Court under Article 136 of the Constitution of India. The judgment of the High Court if supported by cogent reasons has to be sustained.

To appreciate the arguments, it may be necessary to briefly outline the gist of the prosecution evidence. The case projected by the prosecution is that Kashmiri Lal on the one hand and Mool Chand on the other were arch enemies. The accused had conspired to commit the murder of Ramesh Chand and all of them had proceeded on the car and motorcycle from the house of Kashmiri Lal and Madan Lal to the place of occurrence. Jai Pal Singh (PW-7) has assumed charge of shadow only the previous day. He was in the car along with the accused and he was asked to get down when they reached near the scene. Jai Pal Singh got down from the car

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about fifty paces from the place of occurrence from where he witnessed the encounter. The other three eye-witnesses were heading the procession. There had been lantern street lights. The genesis of the incident as spoken by these witnesses is that the assault was started by the accused and

Madan Lal sustained the gun shot injury when the accused themselves fired. The High Court has said that the most damaging feature of the prosecution case is the unsatisfactory explanation of the gun shot injuries found on the person of Madan Lal. The High Court pointed out that Mool Chand and Jai Pal Singh have offered no explanation regarding the gun shot injuries found on the person of Madan Lal. Agya Ram (PW-6) only stated that he heard Madan Lal had also received injuries. He does not depose at to how the gun shot injuries were received by him. Subhash Chand depose that only three shots were fired by the accused at the time of the incident. The first shot was fired by Kashmiri Lal at Ramesh Chand; the second shot was fired by Babu Ram at Amrit Lal; and the third shot was fired by Kashmiri Lal at Subhash Chand and this also caused gun shot injuries to Madan Lal who was near Subhash Chand.

Dr. K.C. Pandey who examined the injuries of Madan Lal has stated that the injuries found on his person were caused by more than one shot. Shri B. Rai, ballistic expert, was examined by the High Court as a court witness to determine the number of shots which could have caused the injuries found on the person of Madan Lal and whether they could have been caused by the same shot which caused the injuries to Ramesh Chand, Amrit Lal and Subhash Chand. This witness deposed that the injuries found on the person of Madan Lal could not have been caused by the gun shots which caused injuries to Ramesh Chand and these appear to have been caused by three shots. Considering the location and the number of injuries found on the person of Madan Lal, the High Court said that they appear to have been caused by at least tow shots if not three. The High Court was not prepared to believe that Madan Lal would have been accidentally hit by as many as two or three shots fired by two of his companions as it appears to be highly unnatural and improbable. The number of gun shot injuries found on Madan Lal are very much larger than the gun shot injuries found on Subhash Chand. The possibility of their being caused by shots fired by the party of complainant in the opinion of the High Court cannot be excluded. It is quite possible that the sudden

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quarrel could have taken place at the place of occurrence when the appellants (accused) were fired at first by the complainant's party as a result of which Madan Lal received gun shot injuries. The High Court said that version of the incident given by the four eye-witnesses cannot be implicitedly relied upon and the possibility of Babu Ram and Kashmiri Lal having caused injuries to the deceased, Subhash Chand and Amrit Lal in the exercise of the right of private defence cannot be excluded.

The story narrated by Jai Pal Singh, a body guard of Kashmiri Lal as to what transpired before actual encounter is uncorroborated. He was appointed his body guard on 16.11.1972. He went to their house the same evening and remained there till night. At about 9.00 P.M. on 16.11.1972 Babu Ram came to the house of Kashmiri Lal with his gun and bandoleer of cartridges and he stayed there. Jagdish Singh Bedi and Prem Pal came on a motorcycle. Babu Ram was also present at that time. All the five accused sat inside a room and PW-7 was asked to sit in the varandah. The accused talked to each other for about an hour and they came out. Prem Pal and Jagdish Singh Bedi went away. Kashmiri Lal went to meet some persons at about 2.00 P.M. Babu Ram and Madan Lal went somewhere else. PW-7 and Kashmiri Lal returned to the house at about 7.00 P.M. Babu Ram and Madan

Lal were present there. At about 8.00 P.M. Jagdish Singh Bedi and Prem Pal came on the motorcycle. All the five talked to each other inside the room. Jagdish Singh Bedi had a small cudzel with him. At about 8.30 P.M., Madan Lal left the house and returned in half an hour and informed Kashmiri Lal that the barat party had started and all were present. Kashmiri Lal then directed Jagdish Singh Bedi and Prem Pal to bring a car and they went on their motorcycle form the house of Kashmiri Lal. Kashmiri Lal took his gun and a bag of cartridges. They started in the car that was brought and when it reached near the soldier board, the marriage procession was seen coming from the side of the police lines. Kashmiri Lal stopped the car and PW-7 was asked to get down and take tea in the nearby shop. PW-7 got down and went towards Bhopa Tonga Stand in order to take tea. Jagdish Singh Bedi and Prem Pal and the others proceeded toward the marriage procession. When they reached in front of the kothi of Shri Dharamvir Singh Sehrawat, Advocate, the accused got down from the car and motorcycle. They began to quarrel and assaulted three boys of the marriage party. PW-7 rushed towards them but Kashmiri

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Lal and Babu Ram began to fire towards the three boys and all to them fell down on receiving gun shot injuries and the third also received gun shot injuries. This is the narration given by PW-7.

The High Court said that if the accused had conspired to commit the murder and all of them had proceeded to the place of occurrence from the house of Kashmiri Lal, it is difficult to understand why Kashmiri Lal and Babu Ram who are armed with gun did not immediately fire at Ramesh Chand who was admittedly in front of the marriage procession. Instead, three accused began to push them and Jagdish Singh Bedi assaulted them with a cudzel. The evidence of the eye-witnesses that Jagdish Singh Bedi armed with a cudzel wielded at the time of incident was not acceptable as this is not mentioned in the first information report. It was also difficult to believe that Prem Pal and Madan Lal could have gone to the place of occurrence empty handed if they were in fact members of an unlawful assembly the object of which was to commit the murder of Ramesh Chand.

The High Court observed thus:-

> "It is also difficult to believe that Kashmiri Lal and Babu Ram appellants would have fired at Ramesh Chand (deceased), Subhash Chand (PW-4), and Amrit Lal, while they being pushed by Madan Lal, Jagdish Singh Bedi and Prem Pal appellants as there was a great risk of causing injuries to the aforesaid three appellants. It is also difficult to believe that the appellants would have taken constable Jai Pal Singh (PW-7) with them from the house of Kashmiri Lal and Madan Lal appellants if their common object was to commit the murder of the deceased. It is also difficult to believe that Jai Pal Singh (PW-7) would have got down from the car about fifty paces from the place of occurrence on being directed by Kashmiri Lal appellant as his shadow and was thus not expected to leave him. The most damaging feature of the prosecution case, however, is the unsatisfactory explanation of the gun shot injuries found on the person of Madan Lal appellant which were admittedly received by him at the time of the incident."

The High Court has thus examined the broad features and the inherent improbabilities in the prosecution version.

Even though the eye-witnesses corroborated each other on all material particulars and the

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presence of Mool Chand, Agya Ram and Subhash Chand who was quite probable and PW-7 could be considered as independent eye-witnesses, the intrinsic worth of their version has been carefully weighed. In the light of the inherent infirmity in that gun shot injuries sustained by one of the accused has not been properly explained and the explanation offered by the prosecution is unacceptable, the High Court entertained serious doubt regarding the truth and credibility of the prosecution case.

The learned counsel appearing for the respondents while supporting the judgment of the High Court has also referred to several other relevant features which would support the conclusion that the incident has not happened in the manner alleged by the prosecution and that the true and correct account of what transpired and the circumstances under which the deceased as well as the injured persons sustained the injuries have not been clearly established. The learned counsel also referred to the fact that Amrit Lal, one of the injured persons, has not been examined in the case. The account given by Subhash Chand is inconsistent with the narration given by Mool Chand and Agya Ram and cuts at the root of the prosecution case. The leaned counsel had laid stress on the evidence of the ballistic expert which had very much turned the scale and maintained that the prosecution version is wholly unbelievable that there is suppression of material evidence and the prosecution case has been rightly discarded by the High Court and no interference is called for.

We have carefully considered these arguments and we agree that the prosecution has not proved the case beyond reasonable doubt. The High Court has rightly acquitted these accused and no interferences warranted.

It is not necessary for us to repeat the various infirmities pointed out by the High Court. The testimony of PW-7 appears to be highly artificial and does not fit in with human probabilities. The eye-witness account of the incident as rightly pointed out by the High Court does not reveal the truth and the genesis of the incident is shrouded in mystery. Material part of the incident relating to the attack of the accused person is twisted or suppressed and reasonable doubt arises as to the circumstances under which the victim received the fatal shot. We therefore, find ourselves unable to accept the contentions of appellant and to restore the

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conviction recorded by the trial court. In our view, no interference with the judgment of the High Court is called for.

In the result, the appeals are dismissed.

N.V.K. Appeals dismissed.

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