



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 71 of 2009
Decided on: October 3, 2017

Inder Verma alias Raju **.....Appellant**

Versus

State of Himachal Pradesh **.....Respondent**

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ yes.

For the appellant : Mr. Naresh K. Gupta, Advocate.

For the respondent : Mr. M.L. Chauhan, Additional
Advocate General.

Sandeep Sharma, Judge (Oral)

Instant appeal under Section 374 CrPC, is directed against judgment of conviction dated 26.3.2009, passed by learned Sessions Judge, Chamba, in Sessions Trial No. 6 of 2008, whereby learned Court below, while holding accused guilty of having committed offence punishable under Section 304 IPC, convicted him to undergo rigorous imprisonment for five years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo imprisonment for six months.

2. Briefly stated the facts of the case, as emerge from record are that, one Shri Vijay Kumar, got recorded his statement

¹ Whether the reporters of the local papers may be allowed to see the judgment ?

under Section 154 CrPC, alleging therein that deceased Rajinder Kumar was a mason as well as a contractor, and he was constructing house of accused, Inder Verma, at village Udaypur on contract basis. On 5.6.2006, labourers employed by deceased Rajinder Kumar did not turn up for construction and, on that day, Rajinder Kumar was in the shop of PW-1 Vijay Kumar i.e. complainant, at Udaypur. Accused alongwith 5-6 persons, including his father, came to the shop of Vijay Kumar and asked Rajinder Kumar as to why the labourers did not turn up to carry out construction work at the site. Deceased told accused that since payment was not made to labourers, they did not turn up for work. Accused, after having heard aforesaid explanation rendered by deceased, started giving beatings to deceased Rajinder Kumar. Accused gave 2-3 blows with his head on the head of deceased, as a result of which, Rajinder Kumar fell unconscious on the spot. Complainant, Vijay Kumar, provided water to deceased, but it was not taken by him. Thereafter, accused alongwith other persons, took deceased to Satyam Hospital, Sultanpur in his vehicle, but unfortunately, he was declared brought dead. Doctors at Satyam Hospital, informed police telephonically with regard to death of Rajinder Kumar, whereafter, Inspector Jatinder Kumar reached the hospital to verify the fact. On the basis of aforesaid statement of

Vijay Kumar, recorded under Section 154 CrPC, (Ext. PW-1/A), formal FIR Ext. PW-6/A came to be registered at Police Station, Sadar, Chamba, under Section 302 IPC, against the accused. On the request of police i.e. Ext. PW-5/A, a team of doctors conducted post-mortem examination of deceased at Zonal Hospital, Chamba. Since the team of doctors at Zonal Hospital, Chamba, was unable to find out the exact reason of death of deceased Rajinder Kumar, dead body was sent to Dr. Rajinder Prasad Government Medical College, Tanda, for expert opinion. Doctor Chanderdeep Sharma, posted as Junior Resident, after having conducted post-mortem examination, on the dead body of deceased Rajinder Kumar, gave his report stating therein that deceased died due to neurogenic shock due to ante mortem injury.

3. After completion of investigation, police presented *Challan* under Section 302 IPC against the accused before the Chief Judicial Magistrate, Chamba, who further committed the case to the learned Sessions Judge, Chamba. Learned Sessions Judge, Chamba, on being satisfied that prima facie case exists against accused, framed charge against accused for having committed offence punishable under Section 302 IPC, to which he pleaded not guilty and claimed trial.

4. Prosecution, examined as many as ten witnesses to prove its case. Accused in his statement recorded under Section 313 CrPC, denied the case of prosecution in toto and claimed himself to be innocent. Learned Sessions Judge, after having perused evidence collected on record by prosecution, held accused guilty of having committed offence punishable under Section 304 IPC, for causing death of Rajinder Kumar and accordingly convicted and sentenced him, as noticed above.

5. Accused being aggrieved and dissatisfied with the judgment of conviction passed by learned Court below, has come before this Court, by way of instant proceedings seeking therein his acquittal after setting aside judgment of conviction recorded by the learned Court below.

6. Mr. Naresh K. Gupta, learned counsel representing the accused, while referring to the impugned judgment of conviction recorded by the learned Court below, vehemently argued that impugned judgment passed by the learned Court below is not sustainable in the eye of law, as the same is not based upon correct appreciation of evidence adduced on record by the prosecution and as such deserves to be set aside. Learned counsel representing the accused while inviting attention of this Court to the impugned judgment of conviction, strenuously argued that bare perusal of impugned judgment suggests that

the learned Court below, while holding accused guilty of having committed offence punishable under Section 304 IPC, has not dealt with evidence in its right perspective, as a result of which, erroneous findings have come on record to the detriment of the accused, who is an innocent person. To substantiate his aforesaid arguments, Mr. Gupta, made this court to travel through the evidence led on record by the prosecution to demonstrate that prosecution was not able to prove beyond reasonable doubt that deceased Rajinder Kumar had died due to injuries allegedly inflicted upon his body by the accused, rather, there is ample evidence available on record, suggestive of the fact that deceased suffered injury after having fallen from stair case. Mr. Gupta, further contended that all the material prosecution witnesses i.e. PW-1, PW-2 and PW-3, who could be termed as spot witnesses, nowhere supported the case of prosecution, because, all of them categorically stated that deceased Rajinder Kumar, suffered injury while attempting to pick up a stone from the ground. Mr. Gupta, further contended that both the material prosecution witnesses i.e. PW-1 and PW-2, turned hostile and nowhere supported the case of the prosecution, save and except the factum with regard to quarrel, if any, between accused and deceased. Mr. Gupta, while making this Court to read the statement of PW-3, contended that no

reliance, if any, could be placed upon version put forth by this witness, especially in view of material contradictions in her statement. While concluding his arguments, Mr. Gupta, contended that though there was no requirement at all for the police to get the re-post mortem done from Dr. RPGMC, Tanda after having received a conclusive report from Zonal Hospital, Chamba, but even otherwise, second report given by Dr. Rajinder Prasad Government Medical College, Tanda, could not be read in evidence, especially in view of the fact that the Doctor, who gave that opinion was not an expert on the subject. With the aforesaid submissions, Mr. Gupta, prayed that accused be acquitted of the charge framed against him under Section 304 IPC, after setting aside impugned judgment of conviction recorded by learned Court below.

7. Mr. M.L. Chauhan, learned Additional Advocate General, while refuting aforesaid submissions having been made by Mr. Gupta, learned counsel representing the accused, supported the impugned judgment of conviction recorded by the learned Court below and contended that there is no scope of interference with the judgment of court below, which is based upon correct appreciation of evidence adduced on record, as such, present appeal deserves to be dismissed. Mr. Chauhan, while referring to the statements of PW-1, PW-2 and PW-3, refuted the

contentions of Mr. Gupta, that there are material contradictions in the statements of prosecution witnesses with regard to beatings given by accused. Mr. Chauhan, while referring to the statement of PW-3, strenuously argued that, all the prosecution witnesses categorically stated that there was a quarrel between the deceased and the accused, who, on the issue of payment of wages, gave head blow on the head of deceased, as a result of which, he (deceased) died. Mr. Chauhan, further contended that since doctors of Zonal Hospital, Chamba, were unable to give specific reason for death of deceased, dead body was sent for further examination to Dr. Rajinder Prasad Government Medical College, Tanda. Mr. Chauhan, further contended that PW-10 Dr. Chanderdeep Sharma, may not be an expert in the field of forensics, but it has specifically come in his statement that he remained posted as Registrar, Department of Forensic Medicines, Dr. RPGMC, Tanda from April, 2005 to January, 2008, as such, it can not be said that he did not have the sufficient experience in the field of forensic science. Lastly, Mr. Chauhan, contended that if statements of prosecution witnesses are read in conjunction, it clearly suggests that prosecution successfully proved on record, beyond reasonable doubt, that deceased died due to the injury caused to him by the accused,

who admittedly, caused blow of head on the head of deceased, who later on died due to neurogenic shock.

8. I have heard the learned counsel for the parties and gone through the record carefully.

9. As per prosecution story, on 5.6.2006, accused picked up quarrel with deceased Rajinder Kumar since labourers did not turn up for construction work. Accused gave 2-3 head blows on the head of deceased Rajinder Kumar, as a result of which, Rajinder Kumar, suffered severe injuries and fell unconscious on the spot. Prosecution, with a view to prove its case also placed on record, medical evidence in the shape of FSL report, Ext. PW-8/H, dated 11.8.2008, wherein, it was opined that deceased died due to neurogenic shock, due to ante mortem injury, whereas, accused, in his statement, under Section 313 CrPC, stated that no quarrel took place between him and deceased, rather, husband of PW-3 Raj Kumari had quarreled with him and he had pushed him out of shop. He further stated that on the date of alleged occurrence, he was in his shop at Udaypur. After having heard the noise of quarrel, he went to the place. He further stated that when quarrel had taken place, deceased Rajinder Kumar, went to lift a big stone and lost his balance, as a result of which, he fell on the stairs and became unconscious. He further stated that 8-10 persons were

quarrelling at that time, and he could not state that who were those persons. In nutshell, case of the accused before the learned Court below was that deceased suffered injuries after having fallen on cemented stairs.

10. PW-1, Vijay Kumar deposed that deceased Rajinder Kumar was a mason, who was constructing house of accused on contract basis. On 5.6.2006, deceased came to his shop at Udaypur and apprised him about dispute pertaining to payment of wages by accused. He further stated that in the meantime, accused also came there and a brawl took place between accused and Rajinder Kumar, over the issue of payment of wages to the labourers. It has specifically come in his statement that both, accused and deceased, started exchanging blows on each other. As per PW-1, a few persons, present on the spot, made an attempt to stop the aforesaid persons, from fighting, but Rajinder Kumar fell unconscious in front of shop. Since aforesaid witness was not able to prove case of the prosecution, he was declared hostile and was allowed to be cross-examined by the Public Prosecutor. In his cross-examination, PW-1 admitted that deceased tried to lift a stone at the time of occurrence and he lost his control, and fell unconscious on the stairs. It has specifically come in his cross-examination that he

did not see accused giving blows to the deceased Rajinder Kumar.

11. PW-2, Durgi Devi, i.e. wife of PW-1, Vijay Kumar, also did not support the prosecution case. She stated that she was inside the house, when she heard noise of quarrel. It has also come in her statement that when she came out of house, she saw accused and deceased scuffling with each other. This witness like PW-1 stated that she did not see accused giving blows to the deceased. This witness was also declared hostile and was cross-examined by the learned Public Prosecutor. But, even her cross-examination nowhere suggests that prosecution was able to extract something contrary to what she stated in her examination-in-chief. This witness also stated that Rajinder Kumar, deceased, tried to lift a stone and lost his balance and fell on stairs.

12. PW-3 Raj Kumari, who was allegedly present on the spot at the time of occurrence, supported the prosecution story that deceased Rajinder Kumar, was constructing the house of accused on contract basis. This witness deposed before the learned Court below that on the date of alleged occurrence, she came to shop of Vijay Kumar, to receive wages, where accused also came with 5-6 persons, in a vehicle. As per this witness, accused and deceased started quarelling with each other over

the issue of payment of wages to the labourers. PW-3 further stated that accused gave head blows to the head of Rajinder Kumar and Rajinder Kumar fell unconscious on the spot. This witness, further deposed before the learned Court below that accused also gave knee blow on the ribs of deceased. As per this witness, water was provided to Rajinder Kumar, but he did not take the same since he was unconscious. Interestingly, this witness though denied that Rajinder Kumar fell on stairs, and became unconscious, but categorically admitted that Rajinder Kumar tried to lift stone but he could not lift the same.

13. Apart from PW-1, Vijay Kumar, PW-2 Durgi Devi, and PW-3 Raj Kumari, none of other prosecution witnesses were present on the spot, at the time of alleged occurrence, as such, their statements may not be very relevant to determine the correctness and genuineness of the story put forth by the prosecution especially as far as beatings allegedly given by accused to deceased are concerned.

14. Conjoint reading of statements having been made by PW-1, PW-2 and PW-3, certainly compels this Court to agree with the contentions of Mr. Gupta, learned counsel representing the accused that none of prosecution witnesses specifically stated that they saw accused giving head blows to deceased.

15. True it is, that perusal of aforesaid statements having been made by these prosecution witnesses though suggests that quarrel took place between deceased and accused but, definitely there is no positive evidence available on record suggestive of the fact that accused gave blows on the head of deceased, rather, aforesaid prosecution witnesses in one way or other, have admitted that deceased, while making an attempt to pick up stone, lost his balance and fell on the cemented stairs. If the version put forth by these material witnesses is analyzed/examined, juxtaposing statement made by accused under Section 313 CrPC, there appears to be force in the defence taken by accused that deceased suffered injury after having fallen from stairs.

16. Otherwise also, if statements made by PW-1, PW-2 and especially that of PW-3 are read in their entirety, there appear to be major contradictions, which could not be ignored /brushed aside by the learned Court below, while determining the guilt of the accused.

17. True it is, contradictions minor in nature, can be overlooked by the Court while ascertaining correctness of story put forth by the prosecution, but major contradictions, if any, which create doubt with regard to correctness and genuineness of story of prosecution, can not be ignored and in that regard,

benefit of doubt, if any, is required to be extended to the accused.

18. In the instant case, though PW-1 and PW-2 turned hostile, but on the request of Public Prosecutor, opportunity was granted to the prosecution to cross-examine these witnesses, but, as has been noticed above, cross-examination conducted on these witnesses, nowhere suggests that prosecution was able to extract from them that injuries caused on the person of deceased were caused by the accused.

19. In the case at hand, bare perusal of judgment of conviction recorded by the learned Court below, suggests that the deposition made by PW-3 Raj Kumari weighed heavily with the Court below, while holding accused guilty of having committed offence punishable under Section 304 IPC. At the cost of repetition, it is stated that even PW-3 Raj Kumari nowhere supported the case of prosecution, because, there are material contradictions in her statement with regard to infliction of injuries on the body of the deceased by the accused. PW-3, in her examination in chief stated that accused gave two-three head blows on the head of deceased and deceased fell unconscious on the spot. In her cross-examination, she admitted that Rajinder Kumar (deceased) tried to lift a stone, but he could not lift the same. Though this witness denied that

the deceased Rajinder Kumar fell down from the stairs and became unconscious, but, if her statement recorded under Section 161 CrPC is perused, she has taken altogether a different stand before the learned Court below. PW-3, nowhere stated in her statement recorded under Section 161 CrPC, that she saw accused giving head blows to the head of deceased.

20. Similarly, she deposed before the learned Court below that she had got recorded in her statement given to the police that she was working in the house of accused in construction work but when confronted with the contents of her statement recorded under Section 161 CrPC, it was not recorded so. Similarly, she stated that she had got recorded in her statement given to the police that both, accused and deceased were quarrelling with each other, but it is not recorded so in her statement under Section 161 CrPC. Most importantly, she stated that she had got recorded in her statement given to the police that accused had given two head blows to the head of deceased, but nothing as such is recorded in her statement recorded under Section 161 CrPC. Similarly, in her statement before the Court below, PW-3 stated that accused gave knee blows on the ribs of the deceased, but no such statement was ever made by her to the police under Section 161 CrPC. In her cross-examination, she categorically admitted that no

conversation took place in her presence between Vijay Kumar and deceased. She further admitted that there are 8-10 stairs on the right side of the shop of Vijay Kumar and deceased fell down on the floor and not on stairs. She claimed that this fact was got recorded by her in her statement given to the police, but same was not recorded in her statement under Section 161 CrPC. Most importantly, in her cross-examination, she admitted that deceased tried to lift a stone but could not do so. She further admitted that it is correct to suggest that deceased fell down from 8-10 steps of stairs.

21. This Court, after having carefully perused the statement of PW-3, which has been heavily relied upon by the learned Court below, while holding accused guilty of having committed offence punishable under Section 304 IPC, is not inclined to agree with the contention of the learned Additional Advocate General, that the statement of PW-3 is cogent, reliable and confidence inspiring, rather, this Court, after having carefully gone through the records, has no hesitation to conclude that no reliance, if any, could be placed upon the statement of PW-3, but for material contradictions in her statement with regard to beatings allegedly given by the accused to deceased, Rajinder Kumar.

22. By now, it is well settled that in criminal trials, evidence of eye witnesses requires careful assessment and needs to be evaluated for its credibility. It has been repeatedly held by the Hon'ble Apex Court that fundamental aspect of criminal jurisprudence rests upon well established principle that, "*no man is guilty until proved so.*" Utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. It has been repeatedly held by the Hon'ble Apex Court that there must be a string that should join evidence of all the witnesses, thereby satisfying the test of 'consistency' in evidence amongst all the witnesses. In nutshell, it can be said that evidence in criminal cases needs to be evaluated on the touchstone of 'consistency'. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in **C. Magesh and others versus State of Karnataka** (2010) 5 SCC 645, wherein it has been held as under:-

"45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasis, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Surja Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286 has held:-(SCC p.704, para 14)

"14. The evidence must be tested for its inherent consistency and the inherent

probability of the story; consistency with the account of other witness is held to be creditworthy;..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that “no man is guilty until proven so,” hence utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistence in evidence amongst all the witnesses.

23. Apart from above, this Court, after having carefully gone through the medical evidence led on record by the prosecution i.e. Ext. PW-10/B, finds substantial force in the arguments of learned counsel representing the accused that no reliance, if any, could be placed upon the medical opinion, rendered by PW-10, Dr. Chanderdeep Sharma, who was admittedly a Junior Resident /OBS, Gynaecology from PGI MER Chandigarh. Though, PW-10, in his statement stated that he remained posted as a Registrar, Department of Forensic Medicines, Dr. Rajinder Prasad Government Medical College, Tanda from April 2005 to January, 2008, but, admittedly, there is nothing on record suggestive of the fact that aforesaid witness

was an expert in the field of Forensic Science, rather, qualification described by him itself suggests that he was an expert in Gynaecology and not in forensic sciences.

24. In the case at hand, post mortem, at the first instance was conducted by a team of Doctors at Zonal Hospital, Chamba. PW-5, Dr. Subhash Chauhan, RH, Chamba, categorically stated that in the month of June 2006, he was posted as Medical Officer in Zonal Hospital, Chamba. On 6.6.2006, a Board of Doctors consisting of him and Dr. Devinder Kumar, conducted post-mortem examination on the body of deceased, after having received application from Police, Ext. PW-5/A. It would be appropriate to take note of the opinion rendered by him, which is as follows:

“An average built body measuring 5-6” wearing black Checkdar white shirt, white Banyan, light brown underwear black shocks and shoes. There was no any external injury on the body seen. There was slight swelling over left cheek. Small cut on the left angele of mouth (1x.05 cms.). No ligature marks or signs of injury seen on the back.

On examining Cranium and spinal card, no external injury was seen on the skull (skull vault) opened and no any injury to meninges, bran mater, blood vesells could not be ascertained. Body of the deceased was send for expert opinion to R.P. Medical College, Tanda. On examining thorax, the walls, ribs, cattilages, pleaurac, larynx, and trachea, right lung, left lung were found normal. Heard was found empty chamber. Abdomen. On examination of abdomen-walls, Pharanyx, mouth, harynx and oesophagus were found normal. Stomach and its contents, small intestines and their contents, liver spleen and kidney were sent for chemical examination. Bladder

was empty. Organs of generation external and internal were normal. Muscles, bones and joints were normal.

Opinion. After post mortem of the body of the deceased, the cause of death could not be ascertained and the body of the deceased was send to department of Forensic Medicines, Dr. R.P. MC College Tanda for expert opinion. The viscera also send for Chemical analyst. The probable time that elapsed between injury and death was half an hour and between the death and post mortem, within 24 hours. The body of the deceased alongwith clothing, viscera handed over to Constable Chaman Lal no. 361 for expert opinion from Forensic Department, Dr. R.P.MC Tanda in a sealed cover containing 15 seals. I issued PMR Ex. PW.5/B which bears my signatures.”

25. As per PW-5, cause of death could not be ascertained and accordingly, matter was referred to Dr. Rajinder Prasad Government Medical College, Tanda, for expert opinion. But, otherwise, perusal of report submitted by the aforesaid Doctor nowhere suggests that external injury, if any, on the skull of deceased was found by the team of doctors, rather, doctors at Chamba, categorically stated that on examination of cranium and spinal chord, no external injury was seen on skull and no injury was seen to the meninges, brain matter or blood vessels. Similarly, it was concluded that on examination of thorax, walls, ribs, cartilages, pleaurac, larynx and trachea, right and left lungs, they were found normal.

26. Once matter was referred to Dr. Rajinder Prasad Government Medical College, Tanda, post-mortem examination was expected to be conducted by an expert and not by a Junior

Resident, who had done OBS in Gynaecology from PGI MER Chandigarh. Though the opinion, if any, given by aforesaid doctor, PW-3, has no relevance, but even if read and examined, it nowhere connects the accused with the injury allegedly caused to the body of the deceased, Rajinder Kumar. PW-10, in his opinion, PW-10/B, categorically stated that the findings returned by the team of doctors at Chamba were consistent with the injuries mentioned in post-mortem report, dated 6.6.2006, except for the following injuries:

- “1. Reddish brown grazed abrasion right leg medial side 3 cm x 0.5 cms size.
2. Reddish brown grazed abrasions bilaterally on scrotum, 2 in no. each measuring 3 inch x 2 inch.
3. Contusion on right fronto tempo parietal region of scalp measuring 9 Cm x 8 Cms in size, reddish coloured.
4. Extradural haemorrhage 9 Cm. X 8 Cms size fronto tempo parietal region on right side, reddish coloured.
5. Intra Cerebral haemorrhage in mid frontal intra cerebral region 3 Cm X 3 Cms. size in midline of brain, reddish in colour.”

27. Save and except injury No.5, i.e. intra-cerebral haemorrhage in mid frontal intra cerebral region, none of the injuries is directly related to head injury. The aforesaid witness, in his cross-examination, categorically admitted that injury No.5 detailed in Ext. PW-10/B, is possible by fall and rolling over cemented stairs.

28. Though this Court, is of the clear view that no reliance, if any, could be placed upon the report, if any, rendered by PW-10, who was not a forensic expert, but, admission made by him in the cross-examination that injury at Sr. No. 5 could be caused due to fall and rolling over cemented stairs, lends support to the defence taken by the accused, who categorically stated that deceased suffered injury, after having fallen over cemented stairs.

29. At this stage, it may be appropriate to take note of the fact that PW-1, PW-2 and PW-3, all categorically stated before the Court below that deceased Rajinder Kumar, while making an attempt to pick up a stone, fell from the stairs and thereafter he had become unconscious.

30. After perusing the statements of the prosecution witnesses as well exhibits placed on record, two views are possible in the present case and as such, the petitioner-accused is entitled to benefit of doubt. The learned counsel for the accused has placed reliance on the judgment passed by Hon'ble Apex Court reported in **State of UP versus Ghambhir Singh & others**, AIR 2005 (92) Supreme Court 2439, wherein the Hon'ble Apex Court has held that if on the same evidence, two views are reasonably possible, the one in favour of the accused

must be preferred. The relevant paragraph is reproduced as under:-

“6. So far as Hori Lal, PW-1 is concerned, he had been sent to fetch a basket from the village and it was only a matter of coincidence that while he was returning he witnessed the entire incident. The High Court did not consider it safe to rely on his testimony because his evidence clearly shows that he had an animus against the appellants. Moreover, his evidence was not corroborated by objective circumstances. Though it was his categorical case that all of them fired, no injury caused by rifle was found, and, only two wounds were found on the person of the deceased. Apart from this PW-3 did not mention the presence of either PW-1 or PW-2 at the time of occurrence. All these circumstances do create doubt about the truthfulness of the prosecution case. The presence of these three witnesses becomes doubtful if their evidence is critically scrutinized. May be it is also possible to take a view in favour of the prosecution, but since the High Court, on an appreciation of the evidence on record, has recorded a finding in favour of the accused, we do not feel persuaded to interfere with the order of the High Court in an appeal against acquittal. It is well settled that if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred.”

31. The Hon'ble Division Bench of this Court vide judgment reported in **Pawan Kumar and Kamal Bhardwaj** versus **State of H.P.**, latest HLJ 2008 (HP) 1150 has also concluded here-in-below:-

“25. Moreover, when the occurrence is admitted but there are two different versions of the incident, one put forth by the prosecution and the other by the defence and one of the two version is proved to be false, the second can safely be believed, unless the same is unnatural or inherently untrue.

26. In the present case, as noticed hereinabove, the manner of occurrence, as pleaded by the defence, is not true. The manner of the occurrence testified by PW-11 Sandeep Rana is not unnatural nor is it intrinsically untrue, therefore, it has to be believed.

27. Sandeep Rana could not be said to have been established, even if the prosecution version were taken on its face value. It was pleaded that no serious injury had been caused to PW-11 Sandeep Rana and that all the injuries, according to the testimony of PW-21 Dr. Raj Kumar, which he noticed on the person of Sandeep Rana, at the time of his medical examination, were simple in nature.

32. Consequently, in view of detailed discussion made herein above, appeal is allowed and impugned judgment of conviction recorded by learned Court below is set aside. Accused is acquitted of the offence punishable under Section 304 IPC. Fine amount, if any, deposited by the accused, is ordered to be refunded to him. Bail bonds, if any, furnished by the accused are discharged.

Pending applications, if any, stand disposed of.

**(Sandeep Sharma)
Judge**

October 3, 2017
Vikrant