A STATE OF RAJASTHAN

v.

BHAWANI AND ANR.

JULY 31, 2003

B [S. RAJENDRA BABU, K.G. BALAKRISHNAN AND G.P. MATHUR, JJ.]

Penal Code, 1860/Arms Act, 1925—Sections 146, 302, 307 and 448/ Section 3/25—Prosecution for death of two and injuries to several persons caused by fire arms—Prosecution case supported by 11 witnesses—5 of the witnesses injured eye-witnesses—Their evidence corroborated by medical evidence—6 of the witnesses turned hostile—Conviction by Trial Court—Acquittal by High Court relying on the hostile witnesses and site plan prepared by investigating officer—On appeal held: Prosecution has succeeded in establishing its case beyond any shadow of doubt—Testimony of five injured witnesses sufficient to establish charge against the accused—Order of High Court liable to be set aside on account of infraction of Section 386 Cr.P.C. and the reliance on the site plan which is hit by Section 162 Cr.P.C.—Code of Criminal Procedure, 1973—Sections 162 and 386.

According to prosecution, respondents 1 and 2 and three others 'K', 'R' and 'A' each armed with gun and country made pistol reached the Nohara of PW1 and started firing with their respective weapons. Some other persons, armed with lathis and farsies were standing outside the Nohara. As a result of firing two persons died and several others received gunshot injuries. FIR was lodged and after investigation charge-sheet was submitted against 35 persons. Accused 'K', 'R' and 'A' were not prosecuted as they had absconded. During trial 11 witnesses supported prosecution case. Out of the 11 witnesses 5 were injured eye-witnesses. 6 of the witnesses had turned hostile. Trial Court held that it was proved beyond doubt that respondent-accused alongwith accused 'K', 'R' and 'A' had formed an unlawful assembly and in prosecution of their common object had trespassed into the Nohara and had caused death of the deceased and gunshot injuries to others. Respondents were convicted under Sections 148, 307, 302 and 448 IPC and respondent No. 1 was further convicted under Section 3/25 of Arms Act. 1925. Remaining accused

alleged to have been standing outside the Nohara, not having been assigned any specific role of causing any injury were acquitted. A

On appeal, High Court acquitted the respondent-accused relying on the hostile witnesses. It held that there was cross firing, that according to the site plan prepared by the Investigating Officer the place from where firing was alleged was not possible; and that recovery of empty cartridges of a 303 bore pistol rendered the prosecution case doubtful because according to eye-witnesses, none of the accused had 303 revolver. B

In appeal to this Court appellant-State contended that High Court did not properly appreciate the evidence of eye witnesses. Respondent-accused contended that on the evidence available on record two views were possible, and High Court, on appraisal of evidence found prosecution case to be doubtful, therefore this Court should not interfere in an appeal against acquittal. C

Allowing the appeal, the Court D

HELD: 1. The judgment of the High Court is wholly illegal and perverse. It is not a case where two views are possible. In fact, on the evidence available on record, the only conclusion which can be drawn is that the prosecution had succeeded in establishing its case beyond any shadow of doubt and accused-respondents are clearly guilty of the charges levelled against them. [1007-D-E] E

2. In a murder case based upon direct eye-witness account, it is absolutely necessary to thoroughly examine the testimony of the eye-witnesses in order to ascertain whether they had really seen the occurrence and whether the statement given by them appears to be natural and truthful and finds corroboration from the medical evidence on record. In the present case 11 eye-witnesses have fully supported the prosecution case. Out of these 11 witnesses 5 were injured witnesses who had received serious gunshot injuries. Their presence on the spot, therefore, cannot be doubted in any manner. These witnesses have consistently stated that 5 persons namely the two respondents, 'K', 'R' and 'A' came inside Nohara and repeatedly fired from the weapons which they were carrying. According to the eye-witness account the deceased received gunshot injuries and died on the spot. The injuries sustained by these persons have been proved by the statement of PW26 who conducted post-mortem F G H

A examination on their bodies. Amongst the non-injured witnesses are PW11 the wife and PW12 the daughter of one of the deceased and there is no reason to doubt their presence on the spot. Similarly, presence of PWs 13 and 14 on the place of occurrence cannot be doubted as their house is situated at the corner of Nohara. Their testimony finds complete corroboration from the medical evidence. In fact, the testimony of five B injured witnesses is more than sufficient to establish the charge against the accused-respondents. However, High Court did not at all advert to this important piece of evidence and has chosen to rely upon some trifling and insignificant circumstances to discard the prosecution case.

[1003-D-H]

C

3. Since in the present case, High Court has reversed the finding recorded by the trial Court without considering and taking into account the testimony of eye-witnesses, there is a clear infraction of Section 386 Cr.P.C. and the order of acquittal passed by it is likely to be set aside on account of this serious error. [1004-H; 1005-A]

D

Amar Singh v. *Balwinder Singh and Ors.*, JT (2003) 2 SC 1, relied on.

4. High Court has accepted the testimony of the hostile witnesses as gospel truth for throwing overboard the prosecution case which had been E fully established by the testimony of several eye witnesses, which was of unimpeachable character. The fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness, no doubt furnishes no justification for rejecting *enbloc* the evidence of the witness. But the Court has at least to be aware that *prima facie,* a witness who makes different statements at F different times has no regard for truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. The Court should be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence. [1005-H, F-G]

G

5. Relying upon the testimony of PW4, PW8 and PW9, High Court has held that there was cross-firing. These witnesses had not supported the prosecution case and had been declared hostile. PWs 8 and 9 did not belong to the concerned village and had clearly stated that they did not know or identify the accused-respondents and also the three absconding H accused. These witnesses having stated that they did not know or identify

the five accused who are alleged to have been armed with fire arms and are alleged to have caused injuries to the injured and deceased, their testimony to the effect that there was a cross firing is absolutely meaningless. Such a statement that there was cross firing can only be given by a person who knows and identifies both the parties namely the accused and also the complainant party (the injured and the deceased). High Court has wrongly placed great reliance upon the circumstance of cross firing for doubting the prosecution case. [1005-B-E] A B

6. High Court has extensively relied upon the site plan prepared by the investigating officer, drawing an inference that the place wherefrom the accused are alleged to have fired upon the deceased, the shot could not have hit the houses on the eastern side of the Nohara. Many things mentioned in the site plan have been noted by the investigating officer on the basis of the statements given by the witnesses. Obviously, the place from where the accused entered the Nohara and the place from where they resorted to firing is based upon the statement of the witnesses. These are clearly hit by Section 162 Cr.P.C. What the investigating officer personally saw and noted alone would be admissible. Therefore, the findings recorded by the High Court on the basis of the site plan prepared by the investigating officer whereby it discarded the prosecution case is clearly illegal being based upon inadmissible evidence and has to be set aside. [1006-B-C, H] C D E

Tori Singh and Anr. v. *State of U.P.*, AIR (1962) SC 399, relied on.

7. The eye-witnesses have consistently deposed that accused 'H' and 'A', were armed with country-made pistols and in such cases it is difficult to visualize what was the nature of the cartridges or bullets used. Therefore, even assuming that some empty cartridges of 303 bore were recovered, it could not affect the prosecution case in any manner. [1007-B-C] F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 421 of 1996. G

From the Judgment and Order dated 31.1.1991 of the Rajasthan High Court in D.B. Crl. A. No. 282 of 1988.

Manish Singhvi, K.V. Bharati Upadhyay, Ranji Thomas and V.N. Raghupathy for the Appellant. H

A Yunus Malik, Vani Singh and Gopal Singh, for the Respondents.

M/s. L.P. Aggawalla & Co. (NP) for Respondent.

The Judgment of the Court was delivered by

B **G.P. MATHUR, J.** 1. State of Rajasthan has preferred this appeal by special leave against the judgment and order dated 31.1.1991 of Jaipur Bench of High Court of Rajasthan by which the appeal preferred by the respondents against their conviction and sentence was allowed and they were acquitted. The learned Additional Sessions Judge, Kishangarh (Alwar) had convicted the respondents under Sections 148, 307, 302 and 448 IPC and had sentenced C them to one year RI, 7 years RI and a fine of Rs. 1000, imprisonment for life and a fine of Rs.100 and one month RI respectively under each count. The respondent No.1 Bhawani had been further convicted under Section 3/25 of the Arms Act and had been sentenced to one year RI and a fine of Rs.500.

D 2. According to the prosecution, the incident took place at about 5.30 p.m. on 21.12.1985 in village Bhajnawas when PW1 Daya Ram was cutting fodder in his Nohara. The respondents Bhawani armed with gun, Hari Singh armed with country-made pistol and three others namely Kishanlal armed with gun, Ramjilal armed with pistol and Amilal armed with country-made pistol suddenly came there and after giving abuses, started firing from their E respective weapons. It is said that some other persons who were armed with lathis and farsies were standing outside the Nohara. As a result of firing, two persons, namely, Deshraj and Hoshiar died on the spot and several others received gunshot injuries. An FIR of the incident was lodged by PW1 Daya Ram, brother of Deshraj, deceased, at 8.00 p.m. on 21.12.1985 at P.S. Mundawar, which is 17 kilometers from the place of occurrence in which 16 F persons were named as accused. The motive for the assault is said to be a litigation regarding the Nohara which was pending between the parties in the Court of SDM, Kishangarh. On the basis of the FIR, a case was registered and usual investigation followed. Three accused, namely Kishanlal, Ramjilal and Amilal were not prosecuted as they had absconded. The prosecution, G however, submitted charge-sheet against 35 accused. The learned Additional Sessions Judge held that from the evidence on record it was proved beyond doubt that Bhawani, Hari Singh, Kishanlal, Ramjilal and Amilal had formed an unlawful assembly and in prosecution of their common object they had trespassed into the Nohara and had caused death of Deshraj and Hoshiar and gunshot injuries to others by firing at them. The remaining accused who were H alleged to have been standing outside the Nohara and were alleged to have

been armed with lathis and farsies and had not been assigned any specific role of causing any injury to anyone, were acquitted. The respondents Bhawani and Hari Singh preferred an appeal against their conviction and sentence which has been allowed by the High Court by the judgment and order which is under challenge in the present appeal.

3. Before we deal with the submissions made by learned counsel for the parties, it will be advantageous to briefly take note of the evidence which has been adduced by the prosecution. PW1 Daya Ram has stated that a litigation regarding Nohara was going on with Kishanlal (absconding accused) in the Court of SDM, Kishangarh, due to which the accused bore enmity with him. At about 5.30 p.m. on the date of the incident, he was cutting fodder in the Nohara, when Bhawani and Kishanlal armed with guns, Hari Singh and Amilal armed with country-made pistols, Ramjilal armed with pistol and 11 other accused armed with lathis and farsies came there. Kishanlal gave abuses and thereafter all the five accused armed with fire arms started firing from their respective weapons. Deshraj, Leela, Daulat, Ratan, Makhan and Babulal who were sitting in the Baithak came outside, after hearing the abuses and sound of gunfire. The accused also fired upon them due to which they received gunshot injuries. The sound of gunfire also attracted Bholu, his wife Santosh and Hoshiar to the Nohara, but they also fell victim to the shots fired by the accused and fell down after receiving injuries. The remaining 11 accused who were armed with lathis and farsies had surrounded the Nohara and did not allow anyone to escape. Deshraj and Hoshiar died on the spot as a result of the injuries received by them. He has further stated that thereafter he went to the Police Station Mundawar on the jeep of Babulal Vaidya, where he lodged a written report of the incident at 8.00 p.m. Similar statements have been given by PW5 Bholu Ram (brother of Hoshiar, deceased), PW6 Leela Ram, PW10 Babulal, PW11 Dhanni, PW12 Lali, PW13 Sajana, PW14 Sarwan, PW15 Patori, PW16 Santosh and PW17 Bharpai. Out of these 11 eye witnesses PW1, PW5, PW6, PW10 and PW16 had received gunshot injuries and are, therefore, injured witnesses. PW26 Dr. Srichand Sharma, who was posted at Public Health Centre, Mundawar, conducted post-mortem examination on the bodies of deceased Deshraj and Hoshiar Singh on 22.12.1985. Deshraj had received 22 gunshot wounds on chest in 7" diameter, 10 gunshot wounds on abdomen, epigastric and umblical region besides number of gunshot wounds on left forearm, right arm and face. The internal examination showed that sternum and third, fourth, fifth and sixth ribs of both sides were punctured and plura was perforated. Hoshiar Singh had sustained 12 gunshot wounds on chest central part in 6" diameter, two gunshot wounds on epigastric region,

A two gunshot wounds on right and left forearms. Sternum and third, fourth and fifth ribs of both sides were fractured and plura was perforated. In the opinion of the Doctor, the ante-mortem injuries sustained by both the deceased were sufficient in the ordinary course of nature to cause death. PW21 Dr. P.N. Aggarwal, who was posted in General Hospital, Alwar on 22.12.1985, medically examined PW1 Daya Ram and found gunshot injuries on his jaw, B left side of neck, chest, shoulder and left arm. He also examined PW10 Babulal and found gunshot injuries on his right hip, thigh and left hand. PW23 Dr. Gopal Maheshwari, who was posted as Medical Officer at Government Hospital, Kot Putli on 22.12.1985, medically examined PW5 Bholu Ram, PW6 Leela Ram, PW7 Makhan Ram, PW8 Daulat Ram, PW9 C Ratan Lal and PW16 Santosh on that day and found gunshot injuries on their person. Leela Ram had sustained pellet injuries on chest, abdomen, chin and below right eye. Bholu Ram had sustained multiple pellet injuries on chest, abdomen, arms and thighs and Smt. Santosh had sustained pellet injuries on abdomen and right auxilliary fold. PW22 Mahesh Chand Dube was posted as Station House Officer at P.S. Mundawar on 21.12.1985. In his deposition, he D has given details of the various steps taken by him during the course of investigation of the case.

4. PW2 Raja Ram, PW3 Babulal, PW4 Ram Singh alias Radheyshyam, PW7 Makhan, PW8 Daulat Ram and PW9 Ratan did not support the case of E the prosecution and were accordingly declared hostile.

5. Learned counsel for the appellant has submitted that the High Court has not properly appreciated the evidence adduced by the eye-witnesses and has completely ignored their testimony which fully established the prosecution case. He has urged that out of 11 eye-witnesses who supported the prosecution F case in their statement in Court, 5 were injured witnesses who had all received serious gunshot injuries and as such there could not even be slightest doubt regarding their presence on the site. The remaining 6 eye witnesses were also resident of the same place and their houses were nearby and, therefore, they were the best witnesses of the incident. However, the High Court chose to place reliance upon the testimony of some of the witnesses who had been G won over and had turned hostile and on the basis of their statements has discarded the prosecution case. Learned counsel has further submitted that the High Court has discarded the testimony of the eye-witnesses relying upon inadmissible evidence and as such the judgment of acquittal recorded in favour of the respondents is wholly illegal and deserves to be set aside. H Learned counsel for the accused-respondents has, on the other hand, submitted

that the FIR of the incident was actually not lodged at 8.00 p.m. on 21.12.1985 but was lodged much later and the same has been ante-timed. He has further submitted that the eye-witnesses examined by the prosecution were all related to the deceased and were, therefore, interested witnesses whose testimony could not be relied upon. He has also assailed the evidence adduced by the prosecution regarding recovery of gun from the possession of Bhawani accused which actually belonged to one of the accused himself. Lastly, he has urged that on the evidence available on record two views were possible and since the High Court had, on appraisal of evidence, found the prosecution case to be doubtful, this Court should not interfere in an appeal against acquittal. In support of this submission, learned counsel has placed reliance on *Ashok Kumar* v. *State of Rajasthan,* AIR (1990) SC 2134, *Arun Kumar and Anr.* v. *State of U.P.,* [1989] Supp. 2 SCC 322 and *Bharwad Jakshibhai Nagjibhai and Ors.* v. *State of Gujarat,* [1995] 5 SCC 602.

6. We have considered the submissions made by the learned counsel for the parties and have gone through the entire evidence which is available on record. The judgment of the High Court, with all respects, is most cryptic and highly unsatisfactory. In a murder case based upon direct eye-witness account it is absolutely necessary to thoroughly examine the testimony of the eye-witnesses in order to ascertain whether they had really seen the occurrence and whether the statement given by them appears to be natural and truthful and finds corroboration from the medical evidence on record. In the present case 11 eye-witnesses have fully supported the prosecution case. Out of these 11 witnesses 5 were injured witnesses who had received serious gunshot injuries. Their presence on the spot, therefore, cannot be doubted in any manner. These witnesses have consistently stated that 5 persons, namely, Bhawani, Hari Singh, Kishanlal, Ramjilal and Amilal came inside Nohara and repeatedly fired from the weapons which they were carrying. According to the eye-witness account Deshraj and Hoshiar received gunshot injuries and died on the spot. The injuries sustained by these persons have been proved by the statement of PW26 Dr. Srichand Sharma, who conducted post-mortem examination on their bodies. Amongst the non-injured witnesses PW11 Dhanni is wife and PW12 Lali is daughter of Hoshiar deceased and there is no reason to doubt their presence on the spot. Similarly, PW13 Sajana is daughter and PW 14 Sarwan is wife of Badlu and their presence on the place of occurrence cannot be doubted as their house is situate at the corner of Nohara. Their testimony finds complete corroboration from the medical evidence. In fact, the testimony of five injured witnesses is more than sufficient to establish the charge against the accused-respondents. However, the High Court did not at

A all advert to this important piece of evidence and has chosen to rely upon some trifling and insignificant circumstances to discard the prosecution case.

7. Chapter XXIX of the Code of Criminal Procedure deals with appeals and Section 385 deals with procedure for hearing appeals not dismissed summarily and Section 386 deals with power of the appellate Court. The B content and scope of these provisions was recently explained by a Bench to which two of us were parties in *Amar Singh* v. *Balwinder Singh and Ors.*, JT (2003) 2 SC 1 and relevant part of para 7 reads as under :

> "7. .....Section 385 Cr.P.C. lays down the procedure for hearing appeal not dismissed summarily and sub-section (2) thereof casts an C obligation to send for the records of the case and to hear the parties. Section 386 Cr.P.C. lays down that after perusing such record and hearing the appellant or his pleader and the Public Prosecutor, the Appellate Court may, in an appeal from conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be D re-tried by a Court of competent jurisdiction. It is, therefore, mandatory for the Appellate Court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eye-witness account the testimony of the eye-witnesses is of paramount importance and if the Appellate Court reverses the finding recorded by the Trial Court and acquits the accused without considering or E examining the testimony of the eye-witnesses, it will be a clear infraction of Section 386 Cr.P.C. In *Biswanath Ghosh* v. *State of West Bengal and Ors.*, AIR (1987) SC 1155 it was held that where the High Court acquitted the accused in appeal against conviction without waiting for arrival of records from the Sessions Court and F without perusing evidence adduced by prosecution, there was a flagrant mis-carriage of justice and the order of acquittal was liable to be set aside. It was further held that the fact that the Public Prosecutor conceded that there was no evidence, was not enough and the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the G accused. In *State of UP* v. *Sahai and Ors.*, AIR (1981) SC 1442 it was observed that where the High Court has not cared to examine the details of the intrinsic merits of the evidence of the eye-witnesses and has rejected their evidence on the general grounds, the order of acquittal passed by the High Court resulted in a gross and substantial H mis-carriage of justice so as to invoke extra-ordinary jurisdiction of

Supreme Court under Article 136 of the Constitution." A

Since in the present case, the High Court has reversed the finding recorded by the trial Court without considering and taking into account the testimony of eye-witnesses, there is a clear infraction of Section 386 Cr.P.C. and the order of acquittal passed by it is likely to be set aside on account of this serious error. B

8. Relying upon the testimony of PW4 Ram Singh, PW8 Daulat Ram and PW9 Ratan, the High Court has held that there was cross firing. These witnesses had not supported the prosecution case and had been declared hostile. PW4 has stated that there was exchange of brickbats in which he also received some injury and accordingly he took shelter inside a 'chappar' and C thereafter he heard two or three loud sounds like that of crackers. He further stated that he did not see any person firing from gun or pistol. The High Court has misread his testimony while observing that the witness has stated that there was cross firing. PW8 Daulat Ram is resident of village Kalyanpur, Tehsil Behrod. He says that he had gone to village Bhajnawas to purchase a D bullock. Similarly, PW9 Ram Ratan is resident of village Barod, Tehsil Behrod. Both of them do not belong to village Bhajnawas and have clearly stated that they do not know or identify the accused-respondents Bhawani and Hari Singh and also the three absconding accused. These witnesses having stated that they do not know or identify the five accused who are alleged to have been armed with fire arms and are alleged to have caused injuries to the E injured and deceased, their testimony to the effect that there was a cross firing is absolutely meaningless. Such a statement that there was a cross firing can only be given by a person who knows and identifies both the parties namely the accused and also the complainant party (the injured and the deceased). The High Court has placed great reliance upon the circumstance F of cross firing for doubting the prosecution case. The other reason given for acquitting the accused has, therefore, no basis at all.

9. The fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness, no doubt furnishes no justification for rejecting enbloc the evidence G of the witness. But the Court has at least to be aware that prima facie, a witness who makes different statements at different times has no regard for truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. The Court should be slow to act on the testimony of such a witness and, normally, it H

A should look for corroboration to his evidence. The High Court has accepted the testimony of the hostile witnesses as gospel truth for throwing overboard the prosecution case which had been fully established by the testimony of several eye witnesses, which was of unimpeachable character. The approach of the High Court in dealing with the case, to say the least, is wholly fallacious.

B 10. The High Court has extensively relied upon the site plan prepared by the investigating officer for discarding the prosecution case and for this purpose has referred to the place from where the accused are alleged to have entered the Nohara, the place from where they are alleged to have fired upon the deceased and also has drawn an inference that the place wherefrom the C accused are alleged to have fired upon the deceased, the shot could not have hit the houses on the eastern side of the Nohara. Many things mentioned in the site plan have been noted by the investigating officer on the basis of the statements given by the witnesses. Obviously, the place from where the accused entered the Nohara and the place from where they resorted to firing is based upon the statement of the witnesses. These are clearly hit by Section 162 D Cr.P.C. What the investigating officer personally saw and noted alone would be admissible. This legal position was explained in *Tori Singh and Anr.* v. *State of U.P.,* AIR (1962) SC 399 in following words :

> "A rough sketch map prepared by the sub-inspector on the basis of statements made to him by witnesses during the course of investigation E and showing the place where the deceased was hit and also the places where the witnesses were at the time of the incident would not be admissible in evidence in view of the provisions of S.162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that F the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S.162 of the Code of Criminal Procedure as it will be no more than G a statement made to the police during investigation. Therefore, such marks on the map cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map."

H

Therefore, the findings recorded by the High Court on the basis of the site plan prepared by the investigating officer whereby it discarded the prosecution case is clearly illegal being based upon inadmissible evidence and has to be set aside.

11. The High Court has also relied upon some very trifling and insignificant matters like recovery of some live and empty cartridges which the counsel for the accused before it submitted to be that of a 303 bore rivolver or gun. Relying upon this recovery, it has been held that as according to the eye-witnesses none of the accused had a 303 rivolver or gun, the prosecution case was rendered doubtful. The eye-witnesses have consistently deposed that Hari Singh and Amilal, accused were armed with country-made pistols and in such cases it is difficult to visualize what was the nature of the cartridges or bullets used. Therefore, even assuming that some empty cartridges of 303 bore were recovered, it could not affect the prosecution case in any manner.

12. Having given our careful consideration to the material on record, we are clearly of the opinion that the prosecution had succeeded in establishing its case against the accused-respondents beyond any shadow of doubt and the learned Additional Sessions Judge had rightly convicted and sentenced them. The judgment of the High Court, in our opinion, is wholly illegal and perverse. It is not a case where two views are possible. In fact, on the evidence available on record, the only conclusion which can be drawn is that the prosecution had succeeded in establishing its case beyond any shadow of doubt and accused-respondents are clearly guilty of the charges levelled against them.

13. In the result, the appeal is allowed and the judgment and order dated 31.1.1991 of the High Court is set aside and that of the Additional Sessions Judge is restored. The accused-respondents shall undergo the sentence imposed upon them. The CJM concerned shall take all steps available in law to take the accused-respondents in custody.

K.K.T. Appeal allowed.