A LAL BAHADUR & ORS.

v.

STATE (NCT OF DELHI)

(Criminal Appeal No. 1794 of 2008)

APRIL 8, 2013

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[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

Penal Code, 1860 – ss.147/149/449/436/302/395/396 – Assassination of the Prime Minister of India – Communal riots C *– Violent mob attacks on Sikh community – Mob killing husband and father-in-law of PW1 and also looting articles – Acquittal of accused-appellants – Reversal of acquittal by High Court – Justification – Held: Justified –The witnesses consistently deposed with regard to the offence committed by* D *the appellants and their evidence remained unshaken during their cross-examination – Mere marginal variation and contradiction in their statements not a ground to discard the testimony of the eye-witness who was none else but widow of one deceased – Further, relationship not a factor to affect* E *credibility of a witness – Discovery of dead body of the victim not the only mode of proving the corpus delicti in murder – In fact, there are very many cases of such nature like the present one where the discovery of the dead body was impossible, especially when members of a particular* F *community were murdered in such a violent mob attack on Sikh community in different places and the offenders tried to remove the dead bodies and also looted articles – High Court correctly appreciated the evidence and reversed the findings of the trial court.*

G *Criminal Trial – Evidence – Appreciation – Assassination of the Prime Minister of India – Communal riots – Mob killing husband and father-in-law of PW1 – Delay in filing of FIR and in recording of the statements of witnesses*

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by the police – Held: Did not affect the prosecution case – Instant incident was not solitary, such incidents took place in almost all parts of the country – Circumstances of the case were extraordinary – The city was in turmoil and persons having witnessed crimes would naturally be apprehensive and afraid in coming forward to depose against the perpetrators, till things settled down; the State machinery was overworked; and in such circumstances, delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it – Further, witnesses prior to the incident were residents of the same area and knew the assailants and it was not the case of the appellants that the delay could have resulted in wrong identification of the accused – Penal Code, 1860 – ss.147/149/449/436/302/395/396.

Appeal – Appeal against acquittal – Power of the appellate Court to re-appreciate evidence – Held: The appellate court has full power to review the evidence upon which the order of acquittal is founded – High Court is entitled to re-appreciate the entire evidence in order to find out whether findings recorded by the trial court are perverse or unreasonable.

Riots followed the assassination of late Prime Minister Indira Gandhi on 31st October, 1984. A mob including appellant No. 1 alongwith appellant No. 2 allegedly attacked the house of PW1 and looted household articles. PW1 alongwith her husband and father-in-law took shelter at the residence of PW-5. On 3rd November, 1984, a mob of more than 500 persons, including and led by the appellants, came and attacked the house of PW-5. The appellants allegedly broke the windowpane and entered the house and set the house on fire. PW1's husband and father-in-law were burnt alive and their half burnt bodies were put in gunny bags. PW1's house was also burnt.

A The trial court held that the prosecution failed to prove the charges levelled against the appellants beyond all reasonable doubt and acquitted them. The State preferred appeal before the High Court which reversed the findings of the trial court and convicted the accused-
B appellants under Sections 147/149/449/436/302/395/396, IPC, and therefore the present appeal.

Dismissing the appeal, the Court

HELD:1. The instant incident as alleged is not the
C solitary incident, but such incidents took place in almost all parts of the country, especially in Delhi where many innocent persons of one community had been murdered and their properties had been looted because of the assassination of the Prime Minister of this country, which
D took place on 31st October, 1984. After hearing the shocking news of assassination of the Prime Minister, thousands of people forming a mob in different areas and localities committed atrocities to the Sikh communities and they were murdered and set ablazed. Therefore, the
E evidence has to be appreciated carefully without going into the minor discrepancies and contradictions in the evidence. [Para 11] [758-D-F]

2. The High Court on the issue regarding delay in
F filing of FIR held that the circumstances of the present case are extraordinary as the country was engulfed in communal riots, curfew was imposed, Sikh families were being targeted by mobs of unruly and fanatic men who did not fear finishing human life, leave alone destroying/ burning property. As regards recording of the statements
G of witnesses by the police on 30th November, 1984 after a delay of 27 days, the High Court observed that the city was in turmoil and persons having witnessed crimes would naturally be apprehensive and afraid in coming forward to depose against the perpetrators, till things
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settled down; that the State machinery was overworked; and in such circumstances, delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it. The High Court further found that the witnesses prior to the incident were the residents of the same area and knew the assailants and it was not the case of the appellants that the delay could have resulted in wrong identification of the accused. The view expressed by the High Court is affirmed. [Paras 12, 13] [758-G-H; 759-A-C; 760-D]

3. The High Court re-appreciated the evidence of the witnesses in detail and meticulously examined the facts and circumstances of the case in its right perspective and recorded a finding that the prosecution has proved the case against the appellants. In an appeal against acquittal, the appellate court has full power to review the evidence upon which the order of acquittal is founded. The High Court is entitled to re-appreciate the entire evidence in order to find out whether findings recorded by the trial court are perverse or unreasonable. [Paras 16, 17] [762-E-F, G-H; 763-A]

Sanwat Singh & Ors. vs. State of Rajasthan **AIR 1961 SC 715: 1961 SCR 120 – relied on.**

4. The evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy. Not only that, the witnesses have consistently deposed with regard to the offence committed by the appellants and their evidence remain unshaken during their cross-examination. Mere marginal variation and contradiction in the statements of the witnesses cannot be a ground to discard the testimony of the eye-witness who is none else but the widow of the one deceased. Further,

A **relationship cannot be a factor to affect credibility of a witness. [Para 19] [763-G-H; 764-A-B]**

State of Uttar Pradesh vs. Naresh & Ors. **(2011) 4 SCC 324: 2011 (4) SCR 1176 – relied on.**

B **5. Much stress has been given on behalf of the appellants on the non-recovery of the dead-bodies and the looted articles when the allegation is that after killing the persons they put the dead bodies into gunny bags. The aforesaid plea cannot in any way improve the case** C **of the appellants. Discovery of dead body of the victim has never been considered as the only mode of proving the *corpus delicti* in murder. In fact, there are very many cases of such nature like the present one where the discovery of the dead body is impossible, specially when** D **members of a particular community were murdered in such a violent mob attack on Sikh community in different places and the offenders tried to remove the dead bodies and also looted articles. In a murder case to substantiate the case of the prosecution it is not required that dead** E **bodies must have been made available for the identification and discovery of dead body is not *sine qua non* for applicability of Section 299 of IPC. [Paras 14, 20, 21] [760-E-F; 765-C-D; 766-E-F]**

F *Delhi Administration vs. Tribhuvan Nath and Ors.* **(1996) 8 SCC 250: 1996 (1) Suppl. SCR 184 – relied on.**

Govindaraju vs. State of Karnataka **(2009) 14 SCC 236;** *Lokeman Shah & Anr. vs. State of West Bengal* **(2001) 5 SCC 235: 2001 (2) SCR 1095;** *Ramanand & Ors. vs. State* G *of H.P.* **(1981) 1 SCC 511: 1981 (2) SCR 444 and** *Ram Bahadur @ Denny vs. State* **1996 Crl.L.J. 2364 – referred to.**

6. The finding of guilt recorded by the High Court has H **been challenged mainly on the basis of minor**

discrepancies in the evidence. So far the instant case is concerned, those minor discrepancies would not go to the root of the case and shake the basic version of the witnesses when as a matter of fact important probabilities factor echoes in favour of the version narrated by the witnesses. [Para 22] [766-G-H]

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Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat **(1983) 3 SCC 217: 1983 (3) SCR 280 and** *Leela Ram (dead) through Duli Chand vs. State of Haryana & Anr.* **(1999) 9 SCC 525 1999 (3) Suppl. SCR 435 – relied on.**

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7. On re-appraisal of the entire evidence of the prosecution witnesses including the eye-witnesses, namely, PW-1, PW-4, PW-5, PW-6, PW-7 it is found that their testimonies remained unshaken except some minor discrepancies which have to be ignored. On analysis of the facts and evidence on record, it is clear that the High Court correctly appreciated the evidence and reversed the findings of the trial court. [Paras 23, 24] [769-B-D]

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Case Law Reference:

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(2009) 14 SCC 236	**referred to**	**Para 9**
2001 (2) SCR 1095	**referred to**	**Para 9**
1981 (2) SCR 444	**referred to**	**Para 9**
1996 (1) Suppl. SCR 184	**relied on**	**Para 9**
1996 Crl.L.J. 2364	**referred to**	**Para 9**
1961 SCR 120	**relied on**	**Para 18**
2011 (4) SCR 1176	**relied on**	**Para 19**
1996 (1) Suppl. SCR 184	**referred to**	**Para 20**
1983 (3) SCR 280	**relied on**	**Para 22**
1999 (3) Suppl. SCR 435	**relied on**	**Para 22**

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1794 of 2008.

From the Judgment and Order dated 27.08.2008 of the High Court of Delhi at New Delhi in Criminal Appeal No. 6 of
B 1992.

Prasoon Kumar, Kshitij Kumar, Deepak Chanderpal, V.K. Sidharthan for the Appellants.

Rakesh Khanna, ASG, J.S. Attri, Rashmi Malhotra,
C Sadhana Sandhu, Harsh Prabhakar, Seema Rao, Priyanka Bharihoke, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. The present appeal has been filed
D under Section 379 of the Criminal Procedure Code, 1973 read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgment and order dated 27th August, 2008 passed by the Delhi High Court in Criminal Appeal No. 6 of 1992 reversing the order of acquittal
E dated 31st October, 1990 passed by the Additional Sessions Judge, Delhi in Sessions Case No. 12 of 1988 and convicting the appellants under Sections 147/149/449/436/302/395/396 of the Indian Penal Code, 1860 and sentencing each of them to undergo rigorous imprisonment and fine under different
F sections of IPC.

2. During the pendency of this appeal, appellant No. 4 Ram Lal is stated to have died on 23rd May, 2011. Therefore, the appeal stands abated so far as he is concerned.

G 3. The case of the prosecution in brief is that Harjit Kaur (PW-1), a resident of House No. RZ-1/295, Geetanjali Park, West Sagarpur, New Delhi, apprehensive of harm to her family because of riots which followed the assassination of late Prime Minister Indira Gandhi on 31st October, 1984, had sent both
H her daughters and a son to her father Govind Singh's house at

BE-7, Hari Nagar, New Delhi. In her typed complaint (Ex. PW1/ A) lodged on 7th November, 1984, she stated that a mob including appellant No. 1 Lal Bahadur *alias* Lal Babu along with appellant No. 2 Surender P. Singh and Charan, who lived in her neighbourhood, had attacked her house and looted household articles on 1st November, 1984 at about 9/9.30 a.m. Fearing threats of communal violence, the complainant Harjit Kaur and her family had taken shelter at the residence of Dr. Harbir Sharma (PW-5) who had his house opposite to that of the complainant and had remained there with her husband (Rajinder Singh) and father-in-law (Sardool Singh) for 2-3 days. On 3rd November, 1984, the appellants came to the house of Dr. Harbir Sharma in the morning and protested for having given shelter to the complainant's family and threatened that if the complainant and her family to whom shelter had been given were not handed over to them, they would burn the house. Thereupon, Dr. Harbir Sharma went out to get help from the Military. At about 9.00 a.m., a mob of more than 500 persons, including the appellants, came and attacked the house of Dr. Harbir Sharma where the complainant was hiding with her husband and father-in-law. The appellants were having one cane of oil and iron *sabbal* and were leading the mob. As per the complainant, her husband and father-in-law had taken shelter in one of the room on the ground floor and locked themselves, while the family of Dr. Harbir Sharma and she herself had gone upstairs to the roof. At the time the mob was assembling, the complainant was present on the roof of one of the neighbours of Dr. Harbir Sharma whose house was in the same row. As per complainant's testimony, the mob was armed with *sabbals, ballams, sariyas* and *lathis*. She stated that the appellants hit the door of the house with iron *sabbals* but the door could not be broken open. They thereupon broke the windowpane and entered the house and set the house on fire. The complainant's husband and father-in-law were burnt alive and their half burnt bodies were put in gunny bags. The complainant's house was also burnt. It is the prosecution's case that Sushil Kumar (PW-4) (brother-in-law of Dr. Harbir Sharma),

A Dr. Harbir Sharma (PW-5), Jagdish (PW-6) and Mohar Pal (PW-7) also saw the house being set on fire and the deceased Rajinder Singh and Sardool Singh were being attacked with *sabbals*, burnt and their mortal bodies put into gunny bags. Sushil Kumar, on first seeing Dr. Sharma's house being put on B fire, had rushed to call Dr. Sharma who had gone to call the police. Both of them rushed back to find the house being burnt by the appellants and Sardoor Singh as well as Rajinder Singh were killed. They saw the appellants using *dandas* to put the bodies of the deceased in gunny bags. However, some C persons gathered there saved Dr. Sharma and his family members and he lodged the report on 5th November, 1984. As per the deposition of the complainant, after the mishap, with the help of one boy she went to Hari Nagar at her father's house and also to police station Janakpuri and after the help of Gorkha D Regiment was provided she returned to Sagarpur on 3rd November, 1984 but she could not get the dead bodies of her husband and father-in-law and her entire house was burnt and the house of Dr. Sharma was also entirely burnt along with household articles. On 7th November, 1984, she made a complaint in Police Station Delhi Cantt. The FIR was registered E on 9th November, 1984. On completion of the investigation, challan was filed against the accused-appellants and they were charged of having committed offences under various sections of IPC. In support of its case, the prosecution examined as many as nine witnesses. Each of the accused denied the F incriminating circumstances put to them and stated that they have been falsely implicated because Dr. Harbir Sharma had enmity with them. However, none of the accused led any evidence in defence.

G 4. The trial court on consideration of testimony of the witnesses held that the prosecution has failed to prove the charges levelled against the appellants beyond all reasonable doubt and acquitted the accused appellants.

5. The trial court held firstly that delay in lodging the FIR H

was not properly explained because the complainant (PW-1) had gone to Police Station Janakpuri on 3rd November, 1984 and sought military help from there with a view to recover dead bodies of her husband and father-in-law, but she had not lodged the report on 3rd November, 1984. Similarly, the court held that there was delay on the part of Dr. Harbir Sharma (PW-5) in making the complaint to the police on 5th November, 1984 for the incident of 3rd November, 1984. The trial court also noticed delay of 27 days in recording statements of PW-4, PW-6 and PW-7. Secondly, the trial court held that the complainant had made prevaricating statements regarding presence of two accused persons i.e. appellant No.2 Surender and appellant No. 3 Virender on 1st November, 1984 without any corroboration as also regarding putting of the half burnt dead bodies in the gunny bags on 3rd November, 1984, inasmuch as she had not named accused–appellant No. 4 (Ram Lal) and appellant No. 3 (Virender Singh) in her complaint (Ex.PW1/A), though they were identified in the court by her; and even in her statement recorded second time she had stated that she had not seen accused-appellant No. 2 Surender and appellant No. 3 Virender on 1st November, 1984 whereas in her first statement recorded on 21st April, 1986 she had stated that on 1st November, 1984 accused-appellant No. 1 Lal Bahadur, appellant No. 3 Virender and appellant No. 4 Ram Lal were amongst the persons who had looted her house. The trial court further noted that in her complaint (Ex. PW1/A), the complainant had mentioned that the half burnt bodies of her husband and father-in-law were put in gunny bags by the accused (Lal Babu, Surender and Charan) on 3rd November, 1984, whereas in her statement before the court she stated that she did not actually see the accused putting burnt dead bodies of deceased into gunny bags and she only heard saying the accused persons 'put half burnt dead bodies in the gunny bags'. Thirdly, the trial court noticed certain contradictions in the statements of eye-witnesses, namely, Sushil Kumar (PW-4), Dr. Harbir Sharma (PW-5), Jagdish (PW-6) and Mohar Pal (PW-7). The trial court noted that certain facts were not mentioned in the complaint

A (Ex.PW-5/1) by PW-5 and the names of two accused Ram Lal and Virender also did not find mention therein. The trial court further observed on the basis of contradictions pointed out in the statements that PW-5 had not come back and witnessed the burning of his house as well as the beating and killing of
B deceased persons as deposed by him. Fourthly, the trial court observed that the prosecution witnesses PW-4, PW-6 and PW-7 were not the actual witnesses to the occurrence because had it been so, PW-5 would definitely have mentioned their names in Ex. PW5/1 and held that the possibility of PW-4, PW-6 and
C PW-7 being procured or to have been made to depose for PW-5 cannot be ruled out. The trial court thus held:

> "..... all these circumstances that delay of 11 days of lodging FIR Ex. PW1/A, the delay of 2 days in lodging complaint Ex.PW5/1, non-mention of the names of two
D accused Virender and Ram Lal in the FIR as well as in the complaint along with the element of interestedness on the part of PWs, coupled with the fact that statements of PW4, PW6 and PW7 have been recorded after an unjustified and long delay of 27 days, cast a suspicion upon the wrap
E and woof i.e. texture in the prosecution story and in my opinion the prosecution has not been able to establish its case against any of the accused beyond reasonable doubt.
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> In view of my above discussion, I find that the
F prosecution has failed to prove its case beyond all shadows of doubt. Thus giving benefit of doubt, I acquit all the accused persons for the offences they have been charged. They are on bail, their bail bonds are cancelled. Sureties are discharged. ...."

G 6. Against the judgment of the trial court, the State preferred an appeal before the High Court. The Division Bench reversed the above findings of the trial court and convicted the accused-appellants under Sections 147/149/449/436/302/395/396, IPC and sentenced each of them for the offences
H committed under aforementioned sections of IPC.

7. It is in these circumstances that the present appeal has been filed by the accused-appellants under Section 379 of the Code of Criminal Procedure read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgment and order of the Delhi High Court reversing the order of acquittal passed by the trial court. A B

8. Mr. Prasoon Kumar, learned counsel for the appellant-accused persons assailed the impugned judgment passed by the High Court as being illegal and perverse in law. Learned counsel firstly contended that the High Court has erred in law in appreciating the deposition of the eye-witnesses as the deposition of eye-witnesses is not above suspicion and is full of contradictions, inconsistencies and emblazonments and further the deposition made by the alleged eye-witnesses cannot be accepted as trustworthy and reliable. As per the observation of trial court, as regards the statements of eye-witnesses, namely, Dr. Harbir Sharma (PW-5), Sushil Kumar (PW-4), Jagdish (PW-6) and Mohar Pal (PW-7) it may be pointed out that there are certain contradictions in the statement of PW-5 and in his complaint Ex.PW-5/1. Learned counsel then contended that the High Court has not appreciated the contradictions in the deposition of PW-1 (Harjit Kaur). As per the complaint Ex. PW1/A and statement of PW-1, the incident had taken place on two dates i.e. on 1st November, 1984 and 3rd November, 1984. On 1st November, 1984, the accused Lal Babu, Surender and one Charan who has not been challaned by the police, having collected some other persons, came to her house and looted the household articles. In her statement, she has stated that she knew all the four accused persons as they were the residents of her locality and identified them in the deck, but she has not named accused Ram Lal and Virender in Ex.PW-1/A. PW-1 is the sole eye-witness regarding the incident which took place on 1st November, 1984 and other prosecution witnesses related to the incident dated 3rd November, 1984 as they have not testified to the incident dated 1st November, 1984. Besides this, PW- C D E F G H

A 1 has not named Ram Lal and Virender in her complaint to the police on the basis of which FIR was registered. She has also deposed that she furnished a list of articles looted by the mob from her house but the prosecution has neither placed any list of looted articles as alleged by PW-1 nor any recovery from any
B of the accused or from any place in respect of the looted articles has been effected by the Investigating Officer. Thus, there is no corroboration to the testimony of PW-1 regarding the incident of looting/dacoity, which took place on 1st November, 1984. Further, the High Court has failed to
C appreciate that ingredients of Section 390 IPC are not made out at all in the present case. The High Court did not appreciate the facts of the case because to convict a person in a case of dacoity, there must be a robbery committed in the first place. Further, the High Court erred in law by not appreciating the
D discrepancies/contradictions in the testimonies of Sushil Kumar (PW-4), Jagdish (PW-6) and Mohar Pal (PW-7), which were rightly appreciated by the trial court while passing the order of acquittal. PW-4 is co-brother (Sadhu) of PW-5. He has admitted in his cross-examination that he had worked as a compounder. According to PW-6, he saw all the accused persons putting the
E above mentioned two houses on fire, beating and killing the deceased and also putting the dead bodies of the deceased into gunny bags along with many other persons who were also present. He has stated that his statement was recorded within 4-5 days of the occurrence whereas in fact as per the statement
F of I.O. (PW-9) and as per record his statement was recorded on 30th November, 1984 i.e. after unexplained delay of about 27 days. Learned counsel submitted that there was no recovery of the dead bodies of deceased, namely, Rajinder Singh and Sardool Singh. Besides, the prosecution did not produce any
G vital/scientific piece of evidence on record before the trial court that any person was burnt alive on 3rd November, 1984 in the premises bearing No. RZ-3/295, Gitanjali Park, Sagarpur, New Delhi. The prosecution had ample opportunities to collect evidence from the place of alleged occurrence like ashes, blood
H stains etc. to prove the alleged killing and burning of two

persons alive. Learned counsel further contended that the High Court did not appreciate the fact that there was a delay of 07 days in lodging the FIR, as the alleged incident had taken place on two different dates i.e. 1st November, 1984 and 3rd November, 1984. As per the version of PW-1, Harjit Kaur, she went to call the police/military assistance on 3rd November, 1984 and she was present in Police Station Janakpuri, but it is an admitted fact that FIR was not lodged by her on 3rd November, 1984 itself. It was further submitted that the High Court also erred in not appreciating that the explanation as a reasoning for justification of delay is not only unjustified but also improper and imaginary one. The reason given by the High Court regarding delay in lodging the FIR is wrong and perverse to the facts and circumstances of the case. It is an admitted fact that PW-1 Harjit Kaur went to call the police and she came back from the police station in a military truck along with officials of Gorkha Regiment, she had enough time to narrate the whole incident to the police, so the denial of PW-1 that she did not narrate the whole incident to the police on 3rd November, 1984 is unbelievable and cannot be accepted in any manner whatsoever. Further contention is that the High Court failed to appreciate that the statement of eye-witnesses, PW-4, PW-6 and PW-7 were recorded after the unexplained delay of 27 days which is fatal to the prosecution case. This fact was meticulously considered by the trial court while acquitting the appellants from all the charges.

9. *Per contra*, Mr. Rakesh Khanna, learned Additional Solicitor General, firstly contended that the findings of fact recorded by the trial court and the conclusion arrived at are perverse in law and, therefore, the High Court in exercise of appellate power has rightly reversed the findings of the trial court. Learned ASG drew our attention to the testimonies of the prosecution witnesses and submitted that except minor discrepancies the prosecution has been able to prove the guilt of the accused beyond all reasonable doubts. On the question of appreciation of evidence and the consequence of non-

A recovery of dead bodies, the learned ASG relied upon the decisions of this Court in *Govindaraju vs. State of Karnataka,* (2009) 14 SCC 236, *Lokeman Shah & Anr. vs. State of West Bengal,* (2001) 5 SCC 235 and *Ramanand & Ors. vs. State of H.P.,* (1981) 1 SCC 511. Learned ASG also put reliance on
B the decision of this Court in the case of *Delhi Administration vs. Tribhuvan Nath & Ors.,* (1996) 8 SCC 250 which case also related to the some instance of 1984 when Sikh communities were attacked and murdered, but the dead bodies were not recovered.

C 10. We have carefully considered the submissions of learned counsel on either side and analysed the testimonies of the witnesses. The various decisions relied upon by the counsel have also been considered by us.

D 11. At the very outset, we must take notice of the fact that the instant incident as alleged is not the solitary incident, but such incidents took place in almost all parts of the country, especially in Delhi where many innocent persons of one community had been murdered and their properties had been
E looted because of the assassination of the Prime Minister of this country, which took place on 31st October, 1984. After hearing the shocking news of assassination of the Prime Minister, thousands of people forming a mob in different areas and localities committed atrocities to the Sikh communities and
F they were murdered and set ablazed. Therefore, the evidence has to be appreciated carefully without going into the minor discrepancies and contradictions in the evidence.

12. The High Court on the first issue regarding delay in filing of FIR held that the circumstances of the present case are
G extraordinary as the country was engulfed in communal riots, curfew was imposed, Sikh families were being targeted by mobs of unruly and fanatic men who did not fear finishing human life, leave alone destroying/burning property. As regards recording of the statements of witnesses by the police on 30th
H November, 1984 after a delay of 27 days, the High Court

observed that the city was in turmoil and persons having witnessed crimes would naturally be apprehensive and afraid in coming forward to depose against the perpetrators, till things settled down; that the State machinery was overworked; and in such circumstances, delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it. The High Court further found that the witnesses prior to the incident were the residents of the same area and knew the assailants and it was not the case of the appellants that the delay could have resulted in wrong identification of the accused.

13. As regards contradictions in the testimony of various witnesses, the High Court observed as under :

> "19. ..... Harjit Kaur had mentioned that her house was looted by a mob comprising, inter alia, of Lal Babu and Surinder. Her subsequent mentioning of names of other respondents does not appear to be an improvement of such importance that her entire eye witness account which finds corroboration by other witnesses can be overlooked. At best here a doubt may arise only with regard to complicity of Virender and Ram Lal (it seems to have mistakenly typed as Surinder in ..... trial court judgment) because later she had identified the other respondents Virender and Ram Lal also as having participated in looting her house.
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> 23. It is no doubt true that the entire case of the prosecution hinges upon the neighbours and the widow of the victim, who may be interested in securing conviction of the accused persons but no rule of law prescribes that conviction cannot be based on the testimony of such witnesses. The only requirement of law is that the testimony of those witnesses must be cogent and credible. Here it

A is apposite to extract the substance of the testimony of PWs. .....

xxx xxx xxx

27. On reading of the evidence of above witnesses, we
B find that the testimonies of the witnesses are trustworthy. This we say so on account of the fact that their evidence has been consistent and they have also remained unshaken during their cross examination. Thus, we do not find any reason to discard the evidence of these witnesses in
C totality. They do not vary in any manner on any material fact and if there are any discrepancies, the same are trivial, immaterial and could not be made the basis of the acquittal."

D We fully endorse the view expressed by the High Court and reject the contentions raised by the appellants.

14. On the contention of the appellants that dead bodies were never recovered and found and as such there is no evidence with regard to the fact that they were ever killed and
E that too by the accused, the High Court referring to *Rama Nand & Ors. vs. State of H.P.*, (1981) 1 SCC 511 and *Ram Bahadur @ Denny vs. State,* 1996 Crl.L.J. 2364, observed that it is well settled law that in a murder case to substantiate the case of the prosecution it is not required that dead bodies must have
F been made available for the identification and discovery of dead body is not *sine qua non* for applicability of Section 299 of IPC.

15. As regards independence of witnesses or their
G procurement or their interestedness, the High Court observed that the factors pointed out by the trial court merely bring out a relation of doctor patient or pupil association but do not show that all witnesses had colluded against the accused with some ulterior motives. With regard to the allegation of enmity, no
H evidence was found to have been led. The High Court on this

issue found that "there is no suggestion of animosity or inimical relationship with Harjit Kaur. There would be no reason for Dr. Harbir Sharma to procure the witnesses for Harjit Kaur. The only interest of Dr. Harbir Sharma could have been to claim compensation for the burning of the house, which was available in any case as the burning of the house was an admitted position. Besides this, each one of them was resident of the same area and they were natural witnesses and not planted ones. The High Court while allowing the appeal of the State thus observed:

> "40. ..... we are of the view that the evidence of even one eye witness was sufficient in itself to implicate the respondents, namely, Surinder, Virender, Ram Lal and Lal Bahadur for the crime committed by them on 01.11.1984 & 03.11.1984. Here, we have four eye witnesses, who have seen, with their own eyes, the gruesome murder of the deceased persons.
>
> 41. We are also not convinced that the delay in filing FIR or delay in recording the statements of PW4, PW6 and PW7 has vitiated the trial. Mere delay in examination of the witnesses for few days cannot in all cases be termed to be fatal so far as the prosecution case is concerned when the delay is explained. There may be several reasons. Admittedly, the instant case relates to the riots, which took place on account of the assassination of late Mrs. Indira Gandhi, which led to the complete breakdown of the law and order machinery. Chaos and anarchy permeated every nook and corner of the city. In the above circumstances, we feel that the delay has been satisfactorily explained. Whatever be the length of delay, the court can act on the testimony of the witnesses if it is found to be reliable. Further, the allegations of non-independent witnesses and animosity of Dr. Sharma with the respondents cannot cast doubts on the eyewitness account of Harjit Kaur."

A xxx xxx xxx

43. It is not an ordinary routine case of murder, loot and burning. It is a case where the members of one particular community were singled out and were murdered and their
B properties were burnt and looted. Such lawlessness deserved to be sternly dealt with as has been said by the Supreme Court in *Surja Ram vs. State of Rajasthan,* 1997 CRLJ 51, the Court has also do keep in view the society's reasonable expectation for appropriate deterrent
C punishment confining to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused. The sentence has to be deterrent so as to send a message for future.

44. The crime's punishment comes out of the same root.
D The accused persons should have no cause for complaint against it. Their sin is the seed. The terrible terror created by them is a cause for concern for the society. Courts are empowered by the statute to impose effective penalties on the accused as well as even on those who are their
E partners in the commission of the heinous crime."

16. Thus it is clear that the High Court re-appreciated the evidence of the witnesses in detail and meticulously examined the facts and circumstances of the case in its right perspective
F and recorded a finding that the prosecution has proved the case against the appellants.

17. The contention of Mr. Kumar, learned counsel appearing for the appellants is that as the trial court after having appreciated the evidence in detail acquitted the appellants, the
G High Court normally should not have taken a different view. We are unable to accept the contentions made by the learned counsel. It is well settled proposition that in an appeal against acquittal, the appellate court has full power to review the evidence upon which the order of acquittal is founded. The High
H Court is entitled to re-appreciate the entire evidence in order

to find out whether findings recorded by the trial court are perverse or unreasonable.

18. The law has been well settled by a 3-Judge Bench judgment of this Court in the case of *Sanwat Singh & Ors. vs. State of Rajasthan* AIR 1961 SC 715 (para 9), wherein this Court observed:

> "The foregoing discussion yields the following results: (*1*) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (*2*) the principles laid down in *Sheo Swarup's case, 61 Ind. App 398: (AIR 1934 PC 227 (2),* afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (*3*) the different phraseology used in the judgments of this Court, such as, (*i*) "substantial and compelling reasons", (*ii*) "good and sufficiently cogent reasons", and (*iii*) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified".

19. So far as the contradictions and inconsistencies in the evidence of the prosecution witnesses, as pointed out by the counsel for the appellants, are concerned, we have gone through the entire evidence and found that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy. Not only that, the witnesses have consistently deposed with regard to the offence committed by the appellants and their evidence

A remain unshaken during their cross-examination. Mere marginal variation and contradiction in the statements of the witnesses cannot be a ground to discard the testimony of the eye-witness who is none else but the widow of the one deceased. Further, relationship cannot be a factor to affect B credibility of a witness.

In the case of *State of Uttar Pradesh vs. Naresh & Ors.* (2011) 4 SCC 324, this Court observed:-

"**30.** In all criminal cases, normal discrepancies are bound C to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about D the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the E core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

F "*9.* Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." (Ed: As observed G in Bibhuti Nath Goswami v. Shiv Kumar Singh (2004) 9 SCC 186 p. 192.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the H same may be elaborations of the statement made by the

witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide *State* v. *Saravanan*, (2008) 17 SCC 587, *Arumugam* v. *State (2008) 15 SCC 590*, *Mahendra Pratap Singh* v. *State of U.P. (2009) 11 SCC 334*, and *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*. (2010) 13 SCC 657.]

20. Much stress has been given by the learned counsel on the non-recovery of the dead-bodies and the looted articles when the allegation is that after killing the persons they put the dead bodies into gunny bags. The aforesaid plea cannot in any way improve the case of the appellants. This Court in the case of *Delhi Administration vs. Tribhuvan Nath and Ors.*, (1996) 8 SCC 250, has considered the same issue as raised by the appellants herein. In that case, the accused were prosecuted for committing murder and throwing the dead body into drains or setting it ablaze. Their properties were looted and their houses were burnt because of the assassination of Prime Minister in 1984. After re-appreciation of the evidence, this Court held as under:-

> **"5.** If the evidence of the aforesaid PWs is read as a whole, which has to be, what we found is that on 1-11-1984, at first around 11 a.m., a mob of about 200 people came to Block No. P-1, Sultan Puri, which then had 30 to 35 jhuggies. Deceased Himmat Singh and Wazir Singh used to live in those jhuggies. The mob which came around 11 a.m. was said to have been armed with iron rods and sticks; but then it was not causing any damage. Rather, it was being advised by this mob that the persons staying in jhuggies should get their hair cut if they wanted to save their lives. The inmates felt inclined to accept this advice and they were in the process of cutting their hair. But then another mob came which, according to PW 11,

A consisted of 200-250 persons — this number has been given as 1000-1200 by PW 2. According to PW 4 the mob consisted of 100 persons. PW 8 did not give the number. We are really not concerned with the number as such. Suffice it to say that the mob was a big one. This mob
B caused havoc and the members of this mob too were armed with iron rods and sticks. It is at the hands of this mob that, according to the aforesaid PWs, Himmat Singh and Wazir Singh lost their lives. Not only this, to believe PW 4, her son Wazir Singh was burnt to death and thrown
C into the adjoining nullah. PW 2 also had stated about the mob throwing the murdered persons in the adjoining nullah. As thousands of persons have been so dealt with, it would be too much to expect production of corpus delicti. We have mentioned about this aspect at this stage itself
D because one of the reasons which led the High Court to acquit the respondents is non-production of corpus delicti. We are afraid the High Court misread the situation; misjudged the trauma caused."

21. It is well settled that discovery of dead body of the
E victim has never been considered as the only mode of proving the *corpus delicti* in murder. In fact, there are very many cases of such nature like the present one where the discovery of the dead body is impossible, specially when members of a particular community were murdered in such a violent mob
F attack on Sikh community in different places and the offenders tried to remove the dead bodies and also looted articles.

22. As noticed above, the finding of guilt recorded by the High Court has been challenged by the learned counsel mainly
G on the basis of minor discrepancies in the evidence. So far the instant case is concerned, those minor discrepancies would not go to the root of the case and shake the basic version of the witnesses when as a matter of fact important probabilities factor echoes in favour of the version narrated by the witnesses. This Court in the case of *Bharwada Bhoginbhai Hirjibhai vs. State*
H

of Gujarat, (1983) 3 SCC 217 held that much importance cannot be attached to minor discrepancies on the following reasons:- A

"(*1*) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. B

(*2*) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. C

(*3*) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another. D

(*4*) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder. E

(*5*) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person. F G

(*6*) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on. H

A (7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. B The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism C activated on the spur of the moment."

In the case of *Leela Ram (dead) through Duli Chand vs. State of Haryana & Anr.*, (1999) 9 SCC 525, this Court observed:-

D "**11.** The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, E conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern F is unproductive and a pedantic exercise.

12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment G and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view H of trustworthiness. If this element is satisfied, it ought to

inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same." A

23. We have re-appraised the entire evidence of the prosecution witnesses including the eye-witnesses, namely, PW-1 Harjit Kaur, PW-4 Sushil Kumar, PW-5 Dr. Harbir Sharma, PW-6 Jagdish Kumar, PW-7 Mohar Pal and found that their testimonies have remained unshaken except some minor discrepancies which have to be ignored. B

24. In view of the aforesaid analysis of the facts and evidence on record, we reach the inescapable conclusion that the High Court correctly appreciated the evidence and reversed the findings of the trial court. C

25. For the reasons aforesaid, we do not find any merit in this appeal which is accordingly dismissed. D

B.B.B. Appeal dismissed.