
(1992) 09 AHC CK 0034
In the Allahabad High Court
Case No : Criminal Appeal No. 1677 of 1985

Ramesh Chandra Verma and Another APPELLANT
Vs
State RESPONDENT

Date of Decision : 01-09-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116
Penal Code, 1860 (IPC) — Section 148, 149, 161, 165, 224

Citation : (1992) 4 AWC 248 Supp

Hon'ble Judges : Surya Prasad, J

Bench : Single Bench

Advocate : P.N. Mishra and P.C. Verma, for the Appellant;

Final Decision : Allowed

Judgement

Surya Prasad, J.—The Criminal Appeal No. 1677 of 1985 has been filed against the judgment and order dated 17-6-85 passed by Sri Brahma Singh, the then Special Judge, Shahjahanpur in Special Case No. 5 of 1990 State v. Ramesh Chandra Verma convicting the Appellant Ramesh Chandra Verma u/s 161 IPC and Section 5(2) of the Prevention of Corruption Act and sentencing him to one year's Rigorous Imprisonment for each offence, while convicting the Appellant Banwari Lal under sections 161/165A IPC and sentencing him to six months Rigorous Imprisonment. The sentences of the Appellant Ramesh Chandra Verma were directed to run concurrently with further direction that the sentences of the Appellant awarded in the aforesaid present case would run concurrently with the sentences - awarded in Session Trial No. 466 of 1980. Criminal Appeal No. 1678 of 1985.

2. This appeal has been filed by Ramesh Chandra Verma and 15 others against the judgment and order dated 17-6-85 passed by Sri Brahma Singh, the then learned III Additional Sessions Judge, Shahjahanpur in Session Trial No.466 of 1980 State v. Ramesh Chandra Verma and others, convicting all these Appellants under sections 148 IPC, 332/149 IPC, 307/149 IPC 323/149 IPC and 395/397

IPC and sentencing each of them to six months Rigorous Imprisonment, one year's Rigorous Imprisonment, three years Rigorous Imprisonment, six months Rigorous Imprisonment and three years Rigorous Imprisonment, respectively and further convicting the Appellant Ramesh Chandra Verma u/s 224 IPC and sentencing him to one year's Rigorous Imprisonment thereunder, while convicting the remaining Appellants u/s 225/149 IPC and sentencing each of them to one year's Rigorous Imprisonment with the direction that all the sentences of the Appellants for all the offences would run concurrently.

Criminal Appeal No. 1705 of 1985

3. This appeal has been filed against the aforesaid judgment and order dated 17-6-85 in Session Trial No. 466 of 1980 State v. Ramesh Chandra Verma convicting the Appellants under sections 148 IPC 332/149 IPC, 307/149 IPC, 323/149 IPC, 395/397 IPC and sections 225/149 IPC and sentencing each of them to six months Rigorous Imprisonment, one year's Rigorous Imprisonment, three years Rigorous Imprisonment and one year's Rigorous Imprisonment thereunder respectively with the direction that all the sentences would run concurrently.

Criminal Appeal No. 1722 of 1985.

4. This appeal has also been filed against the aforesaid judgment and order dated 17-6-85 in Session Trial No. 466 of 1980 State v. Ramesh Chandra Verma convicting the Appellant under sections 148, 332/149, 307/149, 323/149, 395/397 and 225/149 IPC and sentencing him to six months Rigorous Imprisonment one year's Rigorous Imprisonment, three years Rigorous Imprisonment one year's Rigorous Imprisonment, three years Rigorous imprisonment and one year's Rigorous Imprisonment thereunder respectively with the direction that all the sentences would run concurrently.

Criminal Appeal No. 1760 of 1985.

5. This appeal has been filed against the aforesaid judgment and order dated 17 -- 6-85 passed by Sri Brahma Singh, the then learned III Additional Sessions Judge, Shahjahanpur in Session Trial No. 466 of 1980 State v. Ramesh Chandra Verma convicting the Appellant u/s 448 IPC, 332/149 IPC, 307/149 IPC, 323/149 IPC, 395/397 IPC and section 225/149 IPC and sentencing him to six months Rigorous Imprisonment one year's Rigorous Imprisonment, three years Rigorous Imprisonment, six months Rigorous Imprisonment, three years' Rigorous Imprisonment and one year's Rigorous Imprisonment thereunder respectively with the direction that all the sentences would run concurrently.

6. Criminal Appeal No. 1677 of 1985, Ramesh Chandra Verma y. State of U.P. thus relates to the Special Case No. 5 of 1980 State v. Ramesh Chandra Verma whereas the aforesaid four criminal appeals relates to the Session Trial No. 466 of 1980 State v. Ramesh Chandra Verma. All these appeals have been consolidated one another and therefore, they are taken up together for disposal.

Both the aforesaid Special Case No. 5 of 1980 and the Session Trial No. 466 of 1980 were initiated on the basis of one and the same First Information Report, which was lodged in respect of the one and the same incident.

7. The prosecution case briefly stated is that Bharat Lal Sharma PW 1 was posted as Vigilance Inspector in District Shahjahanpur. Shiv Deen PW 2, who is a resident of Mohalla Arakpur, P.S. Shahbad District Hardoi, made a complaint to the District Magistrate, Shahjahanpur, Sri Babu Ram P W 11 on 13-1-79 that his brother Munna PW 7, who was detained in the District Jail, Shahjahanpur in connection with an offence under Sections 395/397 IPC was bailed out. His release order was received in the Jail in the evening of 22-1-79. But Sri R.G. Verma, the then Assistant Jailor District Jail Shahjahanpur did not release him. Sri R.C. Verma received Rs. 15/- as illegal gratification and demanded Rs. 35/- more. As such he would not release him (Munna) unless he received Rs. 35/- more. Therefore, the District Magistrate Sri Babu Ram PW 1 sent for Bharat Lal Sharma PW 1 and directed him to lay a trap. Consequently Bharat Lal Sharma P W 1 along with Shiv Deen PW 2, Subedar Singh PW 3, Shiv Ram son of Asharfi Lal, S.I.M.L. Pushkar, Constables Awadh, Ram Prakash and Raghubir Singh proceeded towards the Jail. It was at about 3.15 P.M. that the Assistant Jailor R.C. Verma came out of the jail and proceeded towards his quarter. Shiv Deen saluted him saying "Ram-Ram". They held conversation with each other. In the course of conversation Sri R.C. Verma asked Shiv Deen, if he had brought the remaining sum of Rs. 35/-, Shiv Deen replied in the affirmative. He took out the said sum from his pocket and handed it over to Sri R.C. Verma, who counted it. Sri R.C. Verma told him that he would now get his brother Munna released. Bharat Lai Sharma PW 1 and others had seen all that had happend between Sri R.C. Verma and Sheo Deen. Therefore, all of a sudden Bharat Lal Sharma proceeding further along with others and introducing himself as Vigilance Inspector surrounded Sri R.C. Verma and caught hold of his (Sri R.C. Verma's) right hand with the currency notes of Rs. 35/-. Bharat Lal Sharma recovered the said currency notes, which were given by Shiv Deen to Sri R.C. Verma as illegal gratification. These notes had already been treated with phenolphthalein powder. There occurred scuffle between Sri R.C. Verma and Bharat Lal Sharma. Sri R.C. Verma was trying to snatch away the said currency notes from Bharat Lal Sharma in the course of scuffle. Consequently, with a view to getting support from others Sri R.C. Verma raised alarm, hearing which other Assistant Jailor, Warders and others, numbering 25-30 in all from the jail and the quarters happened to reach the scene of occurrence. They were all armed with lathis Dandas and rifles. They pounced upon Bharat Lal Sharma and other members of the raiding party, despite the fact that he (Bharat Lal Sharma) and others introduced themselves at the top of their voice. They belaboured them (Bharat Lal Sharma and others) and rescued Sri R.C. Verma. Not only this, but they also snatched away the aforesaid currency notes and wrist watch of Bharat Lal Sharma. They dragged Bharat Lal Sharma and others near the jail gate, where they obtained the signatures of Bharat Lal Sharma and those of his companions

on certain blank papers. In the mean time Station House Officer Banshi Dhar Sharma PW 5, District Magistrate Sri Babu Ram P W 11 and City Magistrate Sri U. K. Mittal PW 8 happened to reach there. On the direction of the District Magistrate bugle was horned, whereupon jail employees assembled. Bharat Lal Sharma and others identified Chandra Pal, Assistant Jailor, Sheo Pal Singh, Assistant Jailor, Banwari Lal, Warder Pooran Lal Asstt. Warder Baij Nath Asstt. Warder, Doodh Ram Head Warder, Rush Pal Head Warder, Bhoj Raj Asstt. Warder, Murli Manohar Asstt. Warder, Intzar Ali Asstt. Warder, Rajendra Swarup Asstt. Warder, Sukhdeo Head Warder Nathu Lal Warder, Ghanshyam Warder, Jitendra Prasad Asstt. Warder, Baldeo Prasad Waider, Ram Nath Asstt. Warder, Ghan Shyam Asthana Asstt. Warder, Radhey Shyam Asstt Warder Shyam Behari Asstt. Warder, Ulfat Singh Asstt. Warder, Mahendra Pal Singh Warder, Jagdish Singh Warder, Indra Prakash Warder and Shiv Raj Singh Warder. It was all these jail employees, who had rescued Sri R.C. Verma and had snatched trap papers and also the wrist watch of Bharat Lal Sharma, Jailor Sri Hari Har Saran Saxena had also come to the scene of occurrence. Many other persons had seen the occurrence Siya Ram and others had received the injuries in the course of making efforts to save Bharat Lal Sharma and others. It is further alleged that immediately after the above incident, but before the advent of the police and other officers, Munna was taken out of the jail and made run away from it by the jail employees. It is further alleged that Bharat Lal Sharma received Lathi, Danda, Rifle Butt and Sangin injuries on his person in the course of the incident.

8. Bharat Lal Sharma got the report written by the SHO Shiv Charan Singh on his dictation about the incident at the place of occurrence itself. On that basis a case was registered at the police station and the investigation ensued and on its completion a chargesheet was submitted against the accused.

9. The prosecution examined in Special Case No. 5 of 1980 (State v. R.C. Verma) Trap Inspector Bharat Lal Sharma P W 1 Shiv Deep PW 2, Subedar- Singh PW 3, Constable Ram Shanker Sharma PW 4, Head Constable Banshi Dhar Sharma PW 5, Om Prakash PW 6, Munna PW 7, City Magistrate Sri U. K. Mittal PW 8, Dr. M. L. Tandon PW 9, Ahlmad Sudhakar Misra PW 10, District Magistrate, Shahjahanpur Sri Babu Ram PW II, Dr. R. R. Dwivedi PW 12, Commissioner Sri Har Swarup Saxena PW 13, Om Prakash Singh PW 14, Ram Prakash PW 15, the then Inspector Incharge, Police Station Sadar Bazar Shiv Charan Singh PW 16, the then Dy. S.P. Sri S. P. Jain PW 17, the then Inspector C. B. I. Bareilly M. L. Ghai PW 18, the then Deputy Jailor Iqbal Ali Khan PW 19 and relied upon certain documents in support of its case

10. The accused pleaded not guilty. They pleaded ignorance about many of the facts relating to the incident. They have stated that all the allegations levelled against them are wrong and incorrect. They have further stated that they have been falsely implicated on account of enmity. The accused Ramesh Charan Verma has further stated that as soon as he came out of the jail, 5-7 person standing across the road, pounced upon him consequently, he raised alarm, hearing which

Banwari Lai, Pooran, Baij Nath, Ram Nath and certain others reached there. Those 5-7 persons assaulted them also. He and others, however, saved themselves. He and others also got themselves medically examined. They also lodged the First Information Report against the complainant and others.

11. The accused examined the then Medical Officer, District Hospital, Shahjahanpur Dr. Brij Pal DW 1 and relied upon certain documents in support of their contentions.

12. The prosecution in Sessions Trial No. 466 of 1980 State v. R.C. Verma, examined the same witnesses as have been examined in Special Case No. 5 of 1980 State v. R.C. Verma.

13. The accused pleaded not guilty. They have stated that they have been falsely implicated in this case on account of enmity. They have examined Medical Officer Dr. Brij Pal DW 1 and relied upon certain documents in support of their contentions.

14. Having heard the learned Counsel for the parties and having considered the evidence on record, the learned Special Judge/III Additional Sessions Judge, Shahjahanpur convicted and sentenced the Appellants accused in respect of the aforesaid offences vide his impugned judgments and orders referred to above. Aggrieved, the Appellants-accused have filed their respective appeals against the same.

15. Heard the learned Counsel for the parties and perused the evidence on record.

Criminal Appeal No. 1677 of 1985 Ramesh Chandra Verma v. State of U.P.

16. Munna PW 7 son of Manshu resident of Allahpur P. S. Shahbad, District Hardoi was confined in District Jail, Shahjahanpur in connection with case crime No. 111/77 under sections 395 and 397 IPC, P. S. Cantt District Shahjahanpur. He was granted bail in that case. His release order was prepared by Sudhakar Misra PW 10, who was then posted as Ahalmad in the Court of J.M. II on 11-1-79. The release order is Ex. ka-12.

17. The question which arises for consideration is as to when Munna was actually released from the jail. Release order could not be sent to jail on 11-1-79 as bail bonds were submitted at 4.00 P.M. Release order (Par-wana) was sent to the District Jail on 12-1-79. Munna PW 7 has stated that his release order reached District Jail on 12-1-79, on which date he went to the Court and remained there till 4.30 P.M. when he was sent back to the jail. In the jail he met Sri R.C. Verma, Assistant Jailor and Banwari Lai Warder, who demanded bribe for his release soon. They suggested that he (Munna) should inform his relation within ten minutes time, otherwise he would have to stay in the jail for 15 days or a month. He met Om Prakash PW 6 an under trial to whom he narrated his talks with Sri R.C. Verma. Om Prakash PW 6 at his request wrote a letter Ex. Ka-3 (on the file of Sessions Trial No. 466 of 1980). He gave this letter to Banwari Lai (accused)

with the request that the same be given by him to his brother Sheo Deen when he came Munna PW 7 has further stated that on 13-1-79 at 3.30 P.M. Lala Ram Numberdar called him (Munna) saying that his relation had come. He took him to the office before Sri R.C. Verma. His thumb impression were taken. He was subsequently taken out of jail by Banwari Lal and Sheo Raj Singh by dragging towards Islamia School near railway line, from where he went home. He met his brother Sheo Deen on 14-1-79 at 8.00 P.M. when his brother informed him of the occurrence of Marpit. His brother gave him the said letter, which was handed over by him on 15-1-79 to the Commissioner.

18. Om Prakash PW 6 has stated that the letter Ex. Ka-9 dated 13-1-79 was written by him at the behest of Munna PW 7. He came out of jail with that letter, searched for Sheo Deen, who was, however, not found and therefore, he took the letter at the Kutchary Hawalat at 12.30 P.M. on 13-1-79. At the Kutchary he met Munna, who told him that he had been released from jail. Munna took the letter Ex. Ka-9 from him and enquired about his brother Sheo Deen and told him (Om Prakash) that if he met his brother Sheo Deen, he should tell him that Munna had gone home.

19. Prakash Singh PW 14 has stated that he along with Swayamber Singh, Bhoop Singh and Mahipal Singh were confined in District Jail in connection with a case u/s 107/116 CrPC. All of them were released from jail on 13-1-79 at 12.00 or 12.30 P.M. and none else. He has stated in his cross-examination that he does not know and cannot say whether Munna was released before him a minute or two minutes earlier.

20. Bharat Lal Sharma PW 1 in Criminal Appeal No. 1677 of 1985 and PW 2 in Criminal Appeal No. 1678 of 1985, is the Vigilance Inspector, who organised the raid. He has stated that the incident of the giving of bribe took place at 3.15 P.M. on 13-1-79. He has further stated that after the Marpit was over and when he was at the jail gate, he saw one man being pushed brought from the jail by 2-3 persons and that man was pushed out of the jail. Seeing that man Sheo Deen said that he was Munna, his brother for release of whom Sri R.C. Verma took the bribe.

21. Sheo Deen PW 2 in Criminal Appeal No. 1677 of 1985 and PW 1 in Criminal Appeal No. 1678 of 1985 has stated that he pointed out to the Inspector Sahib that Warders were taking his brother Munna and soon a police Van came.

22. Subedar Singh PW 3 has stated that soon after the incident of Marpit 2 or 3 employees of the jail were seen pushing a convict out of the jail gate and Sheo Deen said that he was his brother Munna.

23. Iqbal Ali Khan PW 19 was Assistant Jailor at the District Jail, Shahjahanpur. On the date of occurrence, Munna was confined in the District Jail on 12-1-79 in connection with crime No. 111/77 u/s 395/397 IPC. According to the Circular Letter prisoners should be released in the morning. Release order of Munna was received in the jail on 12-1-79 at 4.42 P.M. The prisoners are released next day

in these cases, where the, release order is received after 4.30 P.M. According to the diary dated 12-1-79 at; serial no. 193 there is a note of Sri Hari Har Saran Saxena Jailor, which gives the reason for late release of Munna due to the late receipt of the release order. He has stated that without the order of the Jailor, Assistant Jailor can neither release nor detain any prisoner. Entries of release of Munna have been confirmed by the Jailor Sri Hari Har Saran Saxena. He has further stated that according to rules the prisoner is released after mid day i.e. between 11.00 A.M. to 1.00 P.M. He has specifically stated that Munna was released on 13-1-79 at 10.02 P.M.

24. Har Swarup Sharma PW 13 was the then Commissioner, Bareilly Division. He has stated that in connection with release of Munna, he inspected the jail Register in which it was noted that Munna" was released on 13-1-79 at 12.00 P.M.

25. According to the prosecution case, occurrence of Marpit took place on 13-1-78 at 3.15 P.M. or soon thereafter. Munna PW 7 has stated that he was released on 13-1-79 at 3.30 P.M. Had this statement of his been correct, he would have certainly been a witness to the incident of Marpit. Not only this but he would have also met his brother Sheo Deen and other injured persons of the raiding party. He would have also told the police or C.I.D. that he was dragged by the persons out of his barrack. But he did not tell them anything as such. The statements of Munna and Sheo Deen would have been consistent with each other on the point that they had seen or met each other. But there is nothing as such in their statements. According to Munna, his brother Sheo Deen met him on 14-1-79 at 8.00 P.M. at home and informed him of the occurrence of Marpit. Had Munna actually been present at the time of the occurrence of Marpit, there would have been no necessity or reason for Munna to receive any information about the occurrence of Marpit from his brother at home. Similarly Sheo Deen would not have told anything to Munna about the incident for the aforesaid reason. Therefore, the statements of Munna and Sheo Deen both to this effect do not inspire confidence.

26. On the other hand, statements of Har Swarup Sharma PW 13 and Iqbal Ali Khan PW 19 combined with the entry made in the jail Register prove beyond doubt that Munna was actually released on 13-1-79 at 12.02 P.M. and not at 3.30 P.M. as alleged by the prosecution. No amount of oral evidence to the contrary can lead to a different conclusion. Therefore, the question of demand or taking of the bribe long after the release of Munna does not arise and the incident of Marpit appears to have taken place entirely under different circumstances. The contention of the learned Counsel for the Appellant-accused to this effect does not appear to be without substance.

27. The statements of Sheo Deen PW 2. Om Prakash PW 6, Munna PW 7, Bharat Lal Sharma PW 1 and Subedar Singh PW 3 have to be considered more carefully in respect of other aspect of the prosecution case in Order to ascertain their credibility.

28. Sheo Deen PW 2 is the complainant himself. He was prosecuted in 1979 in a case under sections 395 and 397 IPC by the police of P. S. Khudaganj, in three cases by the police of P. S. Pasgawan, District Kheri in a case under sections 395, 397, 307 and 332 IPC and in another case under sections 396, 395 and 397 IPC. He has stated that all these cases ended in his acquittal. He has, however, further admitted that he was prosecuted in other 4-5 cases consisting of murder and 2-3 dacoity cases. He has also admitted that his two brothers were killed in police encounter. In view of all this, it can unhesitatingly be said that his antecedents are not good.

29. Sheo Deen PW 2 has further stated that if the C.I.D. and the Commissioner did not note in his statement that Sri R.C. Verma snatched "currency notes" and papers, he cannot give any reason for the same. He could not be able to explain the injuries of the accused persons. He has made material improvements in his statement on oath. Therefore, his statement cannot be implicitly relied upon.

30. Om Prakash PW 6 has not supported the prosecution case and therefore, he was declared hostile. He has however, admitted that Bharat Lal Sharma PW 1 is his relation.

31. Munna PW 7 has stated that he was prosecuted in certain dacoity cases. Therefore, his antecedents are not good. He has told a lie about the time of his release from jail. He has admitted that he did not tell the C.I.D. and the police that he was dragged out of the barracks by two persons.

32. Bharat Lal Sharma PW 1 had himself organised the raid and therefore, he is said to be interested in the success of the raid. This is so also because he has admitted that people get reward on success of the trap. It has already been held that Munna was released at 12.02 P M. Therefore, his statement that Munna was released at 3.15 P.M. i.e. after the Maroit, is wholly wrong and incorrect.

33. Bharat Lal Sharma PW 1 has further stated that he might not have told Commissioner that one man was being taken out of the jail while two persons were pushing him and that at that time Sheo Deen had said that man was his brother Munna. There is nothing as such in his statement before the Commissioner. He could not assign any reason for the same.

34. Bharat Lal Sharma PW 1 has admitted in reply to the specific question put to him that he went to organise the trap without any identification card and that he was in plain dress. In view of all this the statement of Bharat Lal Sharma does not deserve to be believed.

36. Subedar Singh PW 3 has told a lie on the point the Munna was forcibly taken out of jail after the incident of Marpit. He has stated that he had received 5-6-7 blow with Danda and Butt of rifles. But there is no medical corroboration. Therefore, his statement cannot be relied upon.

36. "Sheo Deen PW 2 has stated that the Inspector (Bharat Lal Sharma) was standing at a distance of 4-5 paces. He has, however, not assigned any reason

why the Commissioner has written in his statement that the Inspector Sharma his constable and police men were sitting at a distance of 8-10 paces. However, it is improbable that the bribe would have been taken in the public place where number of people and raiding party were present.

37. No recovery of "currency notes" and recovery etc were made even when the police and the District Magistrate arrived soon after. The notes were treated with powder. And yet the hands of the accused Sri R C Verma or Sheo Deen were not washed in order to check the presence of phenolphthalein powder with which the notes were treated. Their hands were not washed even after the arrival of the District Magistrate. This is clear from the statement of Bharat Lal Sharma himself. There is therefore, not an iota of reliable evidence to prove that Sheo Deen had actually given the currency notes in question to Ramesh Chandra Verma or that Ramesh Chandra Verma had actually received them from Sheo Deen at the place and time and in the mode and manner as alleged by the prosecution. He has further stated that he did not mention in the First Information Report what were the papers of trap. No search of quarters of the accused was made. These circumstances speak a lot against the prosecution case.

38 Iqbal Ali Khan PW 19 has stated that the appointing authority of the Appellant-accused is I.G. Prison. No sanction appears to have been obtained to prove in the instant case.

39. After having considered the evidence on record I arrive at the irresistible conclusion that the prosecution has failed to establish its case against the Appellants-accused as set out in the Special Case No. 5 of 1980 State v. Ramesh Chandra Verma.

Crl Appeal No. 1678 of 1985 R.C. Verma v. State.

Crl. Appeal No. 1705 of 1985 Ravindra Swarup, v. State.

Crl. Appeal No. 1722 of 1985 Murli Manohar v. State.

Crl. Appeal No. 1760 of 1985 Ram Nath v. State.

40. The First Information Report was written after the arrival of the police and holding of the identification parade inside and outside the jail in full view of the people. This is clear from the statement of Sheo Charan Singh PW 16 Inspector Incharge of P. S. Sadar Bazar. Sri U. K. Mittal PW 8, who is alleged to have held the identification parade, was confronted with his earlier statement wherein he has admitted that the District Magistrate held the identification parade and he noted it on a piece of paper. A perusal of his statement would show that no procedure was followed in holding the identification parade.

41. Sheo Deen PW 2 has stated that at the time of the identification parade, witnesses went inside one by one, but nothing was noted nor was his signature taken. M. L. Ghai PW 18 has stated that it is correct to say that identification memo is neither signed by witnesses nor by any accused. Shiv Charan Singh PW

16 has stated that Sub-Inspector Jafri was present with a slip at the time of the writing of the First Information Report by him (Shiv Charan Singh) on the dictation of Bharat Lal Sharma. That slip contained the names of the accused. Sri Jafri was telling the names of the accused one by one to Bharat Lal Sharma PW 1, who in his turn told the same to him (Sheo Charan Singh) who then noted the same in the F.I.R. Bharat Lal Sharma PW 1 has stated that he had not got the names of the accused written in the First Information Report after ascertaining the same from S. I. Jafri. This statement of his is inconsistent with the statement of Sheo Charan Singh. Moreover, Jafri was not examined nor slip containing the names of the accused was produced. Prosecution witnesses other than Sheo Deen, did not know Sri R.C. Verma or Banwari Lal. Subedar PW 3 did not know Sri R.C. Verma from before. In view of all this, it is abundantly clear that the prosecution has not succeeded in proving the very basis of the names of all these accused being written in the First Information Report.

42. Accused R.C. Verma, Banwari Lal, Ram Nath, Pooran Lal and Baij Nath also received injuries. Banwari Lal received grievous injuries, for which there is no plausible or reasonable explanation from the side of the prosecution. It is on this basis that the learned Counsel for the Appellants-accused have argued that the Appellants accused are entitled to the benefit of doubt. For this purpose, they have relied upon State of Rajasthan Vs. Madho and another, Supreme Court, wherein it has been, inter-alia, held as under.

If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the Respondents herein it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. The High Court was, therefore, of the opinion that having regard to the fact that they have failed to explain the injuries sustained by the two Respondents in the course of the same transaction, the Respondents were entitled to the benefit of the doubt as it was hazardous to place implicit reliance on the testimony of the injured...

43. The accused also lodged the First Information Report and a cross case was registered. This is clear from the statement of C. B. I. Inspector M. L. Ghai PW 18. There is no specific role to any of the accused. Therefore, it cannot be said who exceeded his defence. It is not out of place to mention that the stealing of wrist watch even if it is true, would be an individual act of that accused. There is, however, no evidence to establish who actually snatched the watch. The accused Sri R.C. Verma raised alarm, hearing which the other accused are said to have assembled at the place of occurrence to save him and the incident of Marpit suddenly took place. The story of bribe has already been held to be "doubtful". Therefore, the arrest of the accused R.C. Verma was illegal. This being so the object of the other accused was not to assault or cause injury. Consequently the question of forming any unlawful assembly by them with a common object does not arise. None of the accused persons can be held constructively liable to invoke

the aid of section 149 IPC vide "Puran y. State of Rajasthan 1975 ACC 334, wherein it has been, inter-alia observed as under :

In a case of sudden mutual fight there could be no question of invoking the aid of section 149 for the purpose of imposing constructive liability on the accused.

44. Reliance has also been placed upon "State of U.P. v. Niyamat 1987 CAR 119 (SC), wherein it has, inter-alia, been observed that "when the arrest itself was illegal, Respondents who assembled to rescue him cannot be said to be members of unlawful assembly"

45. Iqbai Ali Khan PW 19 has admitted that prior to the present incident, 5-6 other incidents had already taken place in the jail and in those incidents miscreants had beaten the jailor and Warders. It may be mentioned in this connection that Munna and Sheo Deen cannot be treated as foreigners to the District Jail, Shahjahanpur. Their antecedents are not good as mentioned earlier. They are also associated With other prisoners/ under trials. Therefore, the possibility of the present incidents having taken place in such circumstances as have not been disclosed by the prosecution, cannot, altogether, be ruled out. The contention of the learned Counsel for the Appellants-accused to this effect does not appear to be without substance.

46. After giving my anxious consideration to the pros and cons of the prosecution case, I arrive at the irresistible conclusion that the prosecution has not succeeded in proving its cases as set cut respectively in Special case no. 5 of 1980 and Sessions Trial No. 466 of 1980 beyond reasonable doubt. Consequently all the five appeals are allowed and the impugned judgment and orders in both the cases are set aside. All the Appellants-accused are acquitted of the respective offences with which they have been charged. They are on bail. The bail bonds are cancelled and sureties stand discharged. They need not surrender.