Latest HLJ 2025 (HP)(1) 197 In the High Court of Himachal Pradesh, Shimla.

Cr. Appeal No.220 of 2015

Indian Penal Code, 1860 Sections 195,196,467,471 and 120B– Forgery–Using forged documents as genuine–Producing false evidence before the Court–Perjury–Appeal against acquittal–Scope of interference–Held–In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal–Further held–Perjury is a concomitant of a court of law, the question always being one of degree–Every incorrect or false statement does not make it incumbent on the court to order prosecution–The provisions of Section 340 are more or less procedural–Before directing a complaint to be lodged the court must form an opinion on being satisfied and come to the conclusion on such satisfaction that the person charged has intentionally given false evidence and that for the eradication of the evils of perjury and

in the interest of justice, it is expedient that he should be prosecuted- Court below has not complied with the mandatory provisions of

Section 340 of the Code and filed the complaint while passing the order dated 29.09.2006 without the requisite satisfaction–Trial Court has rightly acquitted the accused–No merit in the appeal–Appeal dismissed. (Paras 14, 25 and 34)

Cases referred:

(1) Muralidhar alias Gidda & another vs. State of Karnatka, (2014)5 SCC 730.

(2) H.D. Sundara & others vs. State of Karnataka, (2023) 9 SCC 581.

(3) Chajoo Ram vs. Radhey Shyam and Anr. AIR 1971 SC 1367.

(4) K.T.M.S. Mohd. & Anr. vs. Union of India, 1992 (3) SCC 178.

(5) Iqbal Singh Marwah & Another vs. Meenakshi Marwah & Another, 2005 (4) SCC, 370.

(6) Narendra Kumar Srivastava vs State of Bihar, (2019) 3 SCC 318.

(7) Ashok Kumar Aggarwal vs. Union of India & Others, 2013 (15) SCC, 539.

Parties represented by:

For the Appellant/State: Mr. I.N. Mehta, Senior Additional Advocate General with Mr. Navlesh Verma, Ms. Sharmila Patial, Additional Advocates General, Mr. Raj Negi and Mr. J.S. Guleria, Deputy Advocate General.

For the Respondents: Mr. Ajay Kochhar, Senior Advocate, with Mr. Anubhav Chopra, Advocate for R-1 and R-2&3 in person. Sushil Kukreja, Judge:- The instant appeal has been preferred by the appellant/State under Section 378 of the Code of Criminal Procedure against the impugned

judgment dated 17.11.2014, passed by learned Additional Sessions Judge-I, Solan, District Solan, H.P., in Sessions Trial No. 17-S/7 of 2007, whereby the accused persons, namely Dr. Ajay Kumar Sethi (since deceased), Dr. Kuldeep Dhawan, Sanjay Bhardwaj and Dev Varat Sharma (respondents No. 1 to 3,herein) were acquitted for the offences punishable under Sections 195,196, 467, 471 and 120B of the Indian Penal Code (for short “IPC”).

2. The facts giving rise to the present appeal, as per the prosecution story, can be summarized as under:

2(a). The accused Sanjay Bhardwaj lodged FIR No. 170 dated 30.10.2000, at Police Station Barotiwala, under Sections 307, 364, 506 read with Section 34 IPC against Sarvsheel Mago, Aman Mago and Komal Mago but after conducting investigation, the police prepared cancellation report in the aforesaid FIR. However, on a private complaint filed by accused Sanjay Bhardwaj against the aforesaid Sarvsheel Mago, Aman Mago and Komal Mago, in respect of the same incident, disagreeing with the cancellation report, learned SDJM, Nalagarh, vide order dated 02.09.2002, took cognizance and committed the case for trial. The learned Presiding Officer, Fast Track Court, Solan, vide judgment dated 12.10.2004 acquitted the accused Sarvsheel Mago, Aman Mago and Komal Mago. 2(b). After about one and half years thereof, on 19.06.2006 Sarvsheel Mago filed a complaint under Section 340 Cr.P.C. before the Presiding Officer, Fast Track Court, Solan against Dr. Ajay Kumar Sethi (since deceased), Dr. Kuldeep Dhawan, Sanjay Bhardwaj and Dev Varat Sharma for taking appropriate proceedings against them as per provisions of Section 340 Cr.P.C. for committing perjury. The allegations against the accused persons were that all of them in conspiracy with one another committed perjury before Fast Track Court, Solan, during the trial of case titled State of H.P. vs. Sarvsheel Mago & others. On 29.09.2006,on the complaint filed by Sarvsheel Mago, the Court of learned Additional Sessions Judge (FTC), Solan, ordered to conduct an inquiry by forming an opinion that offences punishable under Section 195, 196, 467, 471 and 120-B IPC appeared to have been committed by the accused persons Dr. Ajay Kumar Sethi (since deceased), Dr. Kuldeep Dhawan, Sanjay Bhardwaj and Dev Varat Sharma in relation to the documents produced in evidence given in the Court during trial of case titled as State of H.P. vs. Sarvsheel Mago and others bearing no. 30/FT/7 of 2004/2003. The Court was further of the opinion that it was expedient in the interest of justice that an inquiry should be made into these offences. The relevant portion of the aforesaid order reads as under:

“In view of the above facts and circumstances this court is of the opinion that offences punishable u/s 195, 196, 467, 471 and 120B appear to have been committed by the respondents in relation to the documents produced and evidence given in this court during trial of case titled State of H.P. vs. Sarvsheel Mago and others 30FT/7 of 2004/2003 (file presently lying in Hon’ble High Court of H.P. in appeal). The court is further of the opinion that it is expedient in the interest of justice that an inquiry should be made into these offences.”

3. Thereafter a complaint was filed in writing by the Reader of the Court of learned Additional Sessions judge (FTC), Solan, before the Court of learned Chief Judicial Magistrate, Solan.

4. The said complaint was assigned to the Court of learned Judicial Magistrate 1st Class, Solan, and vide order dated 30.04.2007, after inquiring into the facts of the case, the case was committed to the Court of learned Sessions Judge, Solan, for trial, which was ultimately

assigned to the Court of learned Additional Sessions Judge-I, Solan (hereinafter referred to as trial court).

5. On consideration, the accused were charged for the commission of the offences punishable under Sections 195, 196, 467, 471 and 120B IPC. Statements of the accused persons under Section 313 Cr.P.C. were recorded, wherein they pleaded not guilty and claimed trial. The accused persons in their defense examined eight witnesses.

6. The learned Trial Court, vide impugned judgment dated 17.11.2014 acquitted all of them i.e. Dr. Ajay Kumar Sethi (since deceased), Dr. Kuldeep Dhawan, Sanjay Bhardwaj and Dev Varat Sharma (hereinafter referred to as the respondents) for the offences punishable under Sections 195, 196, 467, 471 and 120B IPC, hence the instant appeal preferred by the appellant/State.

7. The learned Senior Additional Advocate General contended that the impugned judgment passed by the learned Trial Court is wrong on facts as well as on law. He further submitted that the learned Trial Court appreciated the evidence in a slip-shod and perfunctory manner and failed to appreciate the evidence in its proper perspective, therefore, the instant appeal be allowed, by setting-side the judgment of the learned Trial Court and the accused persons/respondents be convicted.

8. Conversely, the learned Senior counsel for the respondent No. 1 as well as respondents 2&3 who appeared in person contended that the judgment passed by the learned Trial Court is the result of proper appreciation of the material on record and the same was passed after appreciating the evidence and law in its right and true perspective and the instant appeal, which sans merits deserves to be dismissed.

9. We have heard the learned Advocate General for the appellant/State, learned counsel for respondent No. 1 as well as the respondents No. 2 and 3 who are present in person and carefully examined the entire records.

10. It is well settled by the Hon’ble Apex Court in a catena of decisions that an Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Further, if two reasonable views are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

11. The scope of power of appellate court in case of appeal against acquittal has been dealt with by the Hon’ble Apex Court in case titled Muralidhar alias Gidda & another vs. State of Karnatka reported in (2014)5 SCC 730, which read as under:

"10. Lord Russell in Sheo Swarup[1], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, "... the High Court should and will

always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed:

"7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu[3], Madan Mohan Singh[4], Atley[5] , Aher Raja Khima[6], Balbir Singh[7], M.G. Agarwal[8], Noor Khan[9], Khedu Mohton[10], Shivaji Sahabrao Bobade[11], Lekha Yadav[12], Khem Karan[13], Bishan Singh[14], Umedbhai Jadavbhai[15], K. Gopal Reddy[16], Tota Singh[17], Ram Kumar[18], Madan Lal[19], Sambasivan[20], Bhagwan Singh[21], Harijana Thirupala[22], C. Antony[23], K. Gopalakrishna[24], Sanjay Thakran[25] and Chandrappa[26]. It is not necessary to deal with these cases individually.

Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re- evaluation of the evidence is inclined to take a different view,

interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

12. The Hon'ble Supreme Court in Rajesh Prasad vs. State of Bihar & another, (2022) 3 Supreme Court Cases 471, observed as under: "31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal

charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunchalam v. P.S.R. Sadhanantham (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana vs. Lakhbir 1991 Supp (1) SCC 35

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarized as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse:

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. vs. Shanker 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. [State of U.P. v. Hakim Singh (1980) (c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam vs. P.S.R. Sadhanantham (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of

“proof beyond reasonable doubt” and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the

said case, there was strong direct evidence establishing the guilt of the accused, thereby making it necessary on the part of the prosecution to establish “motive”. [State of A.P. v. Bogam Chandraiah (1990) 1 SCC 445] 31.2.2. Where acquittal would result is gross miscarriage of justice;

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh 1989 Supp (1) SCC] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu (1983) 3 SCC 502]

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]”

13. In H.D. Sundara & others vs. State of Karnataka, (2023) 9 Supreme Court Cases 581, the Hon’ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. The relevant portion of the above judgment is as under:

“8. In this appeal, were are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

9. Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After reappreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken."

14. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. Further, if two views were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

15. By applying the abovesaid principles, reverting back to the case on hand. The case of the prosecution mainly rests upon the MLC Ex. PW-2/P, of Civil Hospital Nalagarh, operation reports Ex. PW-2/R and Ex. DY, treatment chart Ex.

PW-2/S, prescription detail Ex. PW-2/T, Medico Legal Summary Ex.PW-2/U, out- patient ticket Ex. PW-8/D and out-patient record Ex. PW-8/C.

16. A perusal of FIR No. 170, dated 30.10.2000, Ex. DW5/A, reveals that it was registered at Police Station, Barotiwala, at 02:40 a.m., on 30.10.2000. Head Constable Sewa Singh completed all the formalities of recording the statements etc on 30.10.2000. Perusal of the statement of respondent no.2 Sanjay Bhardwaj, Ex. PW-2/H, recorded during the trial of FIR No. 170 reveals that the incident had taken place on 29.10.2000, at about 06:15 p.m., while he was walking in Sector-2, Panchkula. Respondent No. 3, Dev Varat Sharma, in his statement, Ex. PW2/J, stated that he went to Nalagarh Hospital, where he reached at about 01:00 a.m. on 30.10.2000 and he saw his son lying on a bed/examination table. DW-7, Rahul, deposed that Sanjay Bhardwaj was in a critical condition and his intestines were coming out from stomach. Blood was also oozing out and the bed-sheet was having blood stains. Respondent no.3 Dr.

Kuldeep Dhawan, while appearing as

DW-8 deposed that according to the record of PGI, Ex. PW-8/D, the patient, i.e., Sanjay Bhardwaj, was brought in emergency of PGI at 03:10 a.m. on 30.10.2000. DW-8 further stated that as per Ex. PW-8/D, there was alleged history of sustaining stab injury of abdomen on 29.10.2000, around 09:00 a.m., near Baddi, during a fight between some persons. In statement of Dr. Ajay Sethi, Ex. PW-2/M, it has come that clean incised wound size 2 inch 1?2 inch over abdomen mid portion. Omentum was coming out from the wound.

17. The case of the prosecution is that MLC, Ex.PW-2/P (Ex. PW-10/A), was prepared by Dr. Ajay Sethi in connivance with accused Sanjay Bhardwaj and other accused persons. Further the case of the prosecution is that there is no evidence that the patient Sanjay Bharwaj was referred to PGI from Civil Hospital, Nalagarh. However, the perusal of the statement of Head Constable Sewa Singh, Ex.PW-2/L, reveals that MLR was issued by Dr. Ajay Kumar Sethi on 30.10.2000 and injured Sanjay Bhardwaj was referred to PGI. DW-7, Rahul Prashar, deposed that the doctor on duty issued MLR and referred Sanjay Bhardwaj to PGI, Chandigarh, at about 01:40 a.m.. Sanjay Bhardwaj, in his statement, Ex.PW-2/H, also stated that at Nalagarh he was medically examined and he had also appended his signatures on MLC, Ex. PW-1/B. Respondent No. 3, Dev Varat, in his statement, Ex.PW-2/J, stated that the doctor at Nalagarh told him that matter was serious and the patient was referred to PGI, Chandigarh. Head Constable Sewa Singh, in his statement, Ex. PW-2/L, stated that he moved application, Ex. PW-7/A, for the medical examination of Sanjay Bhardwaj, whereupon he obtained MLC and the patient was referred by the doctor to PGI. Dr. Ajay Kumar Sethi, in his statement, Ex. PW-2/M, stated that he issued MLC, Ex. PW-10/A, and the patient was referred to PGI, Chandigarh, for further treatment.

18. Dr. Kuldeep Dhawan(Respondent no.3 herein) in his statement, Ex. PW-2/K, deposed that on 30.10.2000, around 03:10 a.m., Sanjay Bhardwaj, in a state of shock, came in the company of his friend Rahul. As per the record of PGI, Sanjay Bhardwaj came to PGI at 03:10 a.m. and Ex. PW-8/D is out patient ticket of Sanjay Bhardwaj. The perusal of Ex. PW-8/D reveals that Sanjay Bhardwaj was brought with the alleged history of sustaining stab injury abdomen on 29.10.2000 at 09:00 p.m. near Baddi, in a fight with some persons. Patient’s prior history is also mentioned about stab injury abdomen in December, 1999 for which he was hospitalized for 39 days. DW-7, Rahul Prashar, stated that on 30.10.2000, he alongwith Sanjay Bhardwaj, reached PGI around 03:00 a.m.. DW-4, Jeevan Kumar, Medical Record Technician, PGI, Chandigarh, deposed that according to the record, Sanjay Bhardwaj was admitted at PGI in emergency on 30.10.2000 at 03:10 a.m., vide RC No. 241034 as MLC case. Out-patient ticket, Ex. PW-8/D, also shows the same number, i.e., 241034. PW-8, Dr. Rajinder Singh, Professor and Head of Department of General Surgery, PGI, Chandigarh, deposed that as per Ex. PW-8/C and Ex. PW-8/D the patient was admitted at PGI at 03:10 a.m. on 30.10.2000.

19. New out-patient register, Ex. DW-4/A, having entry of patient Sanjay Bhardwaj on 30.10.2000, at 03:10 a.m., the registration No. of which is 241034. Likewise, Ex. DW-4/B, also reflects an entry of patient Sanjay Bhardwaj, vide registration No. 241034 on 30.10.2000, at 03:10 a.m., the registration No. of which is 90826. Ex.PW-8/D also shows that out-patient ticket was prepared and signed

by Dr. Raghunathan on 30.10.2000, at 03:10 a.m.. Therefore, as per the depositions of DW-4, DW-7, DW-8, PW-8 and Ex.DW-4/A, Ex. DW-4/B and Ex. PW-4/D, on 30.10.2000 patient Sanjay Bhardwaj reached PGI at 03:10 a.m..

20. DW-6, Kulwant Singh, who had produced the record from PGI and also exhibited receipt No. 160026151 (Ex. DW-6/D), amounting to Rs.350/-, which was deposited as advance security on 30.10.2000 at 05:08:26 hours, deposed that Sanjay Bhardwaj deposited the advance security, vide Ex. DW-6/D.

21. Ex. PW-8/B, i.e., case file of PGI, reveals that Department of Blood Transfusion, PGI, Chandigarh, had issued blood O+ to patient Sanjay Bhardwaj, vide CR No. 241034, No. 583169/O+. Bill, dated 07.11.2000, Ex. DW-6/B, was issued by PGI, in the name of Sanjay Bhardwaj, which shows the date of admission as 30.10.2000 and date of discharge on 07.11.2000. PW-5 deposed that Sanjay Bhardwaj remained admitted in PGI till 07.11.2000 and DW-8 deposed that Ex.DY, i.e., copy of Ex. PW2/R, is in his hand and its back side in the hand of Dr. Amanpreet Singh. Medico legal case summary, Ex. PW-2/U, is available in case file, Ex.PW-8/B. PW-8 stated that in file, Ex.PW-8/B, there is an application of police, whereby request for issuance of treatment summary and opinion qua nature of injury was made and Dr. Kuldeep was directed to do the needful.

22. Duty rosters are Ex. PW-6/B and Ex. PW-6/C. The learned Senior Additional Advocate General strenuously contended that the duty roster of Senior Resident for performing night duty in emergency does not reflect the name of Dr. Kuldeep Dhawan, whereas the learned counsel for the accused persons (respondents herein) contended that duty roster of emergency and general surgery U-II are different. Dr. Kuldeep Dhawan deposed that according to Ex. CW-2/C he was not posted on emergency duty during intervening night of 29/30.10.2000, but he further explained that he was called on emergency call. He has also stated that he was called by emergency doctors, as such he came to give consultation under Professor S.M. Bose.

23. The prosecution examined PW-8 Dr. Rajinder Singh HOD General Surgery who explained in examination in chief and in cross examination that there is a difference between Doctors on emergency duty and the Doctors on emergency call and specifically stated that if it was a new case it would be attended by the Unit on call and would be discharged finally under Unit head name and if it happened to be an old patient (already treated in PGI) then it would be treated by the unit which had treated him earlier and those doctors would be informed and called for. Further in examination in chief he clarified that as per the case file of Sanjay Bhardwaj he was admitted under Professor S.M. Bose and the other treating doctors were Senior Residents i.e. Dr. Kuldeep Dhawan and others. He further stated that as per Ex. PW-8/C and PW-8/D the patient was admitted at 3.10 AM on 30.10.2000. In cross examination this witness clarified that the doctors on emergency duty would note down history of the patient and call/ inform the unit on call or the unit to which the patient belonged. He further admitted that as per the file Ext. PW-8/B Sanjay Bhardwaj was operated upon by Dr. Kuldeep Dhawan and team of doctors i.e. Dr. Amanpreet, Dr. Murti and Anaesthesia by Dr. Chuahan and

Dr. Pooja and nurse was Manchinder and proved the note Ex. DY in file Ext. PW- 8/B. Further in his cross examination he admitted that the patient was first

examined by Dr. P. Ranganathan Jr. Resident on 30.10.2000 at 3.10 AM and as per file, Ex. PW-8/B, patient was operated by Dr. Kuldeep and team of doctors since he was posted in General Surgery U-II and Sr. Resident of U-II.Thus, the record of PGI, Ex. PW-8/B, and the statement of PW-8 reveal that patient Sanjay Bhardwaj was admitted on 30.10.2000 at 03:10 a.m.. and as per the record of PGI, the patient Sanjay Bhardwaj was operated upon by Dr. Kuldeep and team of doctors namely, Dr. Amanpreet, Dr. Murti and anesthesia given by Dr. Chauhan and Dr. Pooja.

24. As per the prosecution, MLC, Ex.PW-2/P, which was originally Ex. PW-10/A, in the previous case file, was forged, as there is overwriting qua mentioning of the date. The perusal of MLC, Ex.PW-2/P shows that there is overwriting qua the date but the doctor has explained qua that in his statement, Ex. PW-2/M. The prosecution has further alleged that there is change of year and time in order to secure conviction, however, this contention also is devoid of any force

in view of the evidence, as discussed hereinabove. No doubt Ex. PW-2/P (Ex.PW- 10/A) and Ex. PW-2/Q (Ex. DB) were not similar and expert had reported that there

are alterations, additions and interpolations in MLC, but on close scrutiny of the entire evidence, which has come on record, it is difficult to hold that all accused persons conspired to make forgery in the document or that the documents were tampered to secure conviction. MLR, Ex. PW-2/Q shows that doctor has even mentioned date as 30.11.2000 in the bottom and at the top the date is 30.10.1999. There is no cutting qua the mentioning of date 30.11.2000 in Ex. PW-2/P. It is not discernible that how such a document can be stated to be materially forged to secure conviction, especially when the date, i.e., 30.11.2000, if remained on record, speaks something else and the matter would have been different, if this date 30.11.2000 was changed.

25. It is a settled law that perjury is a concomitant of a court of law, the question always being one of degree. Every incorrect or false statement does not make it incumbent on the court to order prosecution. The provisions of Section 340 are more or less procedural. Before directing a complaint to be lodged the court must form an opinion on being satisfied and come to the conclusion on such satisfaction that the person charged has intentionally given false evidence and that for the eradication of the evils of perjury and in the interest of justice, it is expedient that he should be prosecuted.

26. A court directing prosecution for perjury is not vindicating the grievance of any party. The action is mainly to safeguard the prestige and the dignity of the court and to maintain the confidence of the people in the efficiency of the judicial process. What the court is mainly interested in is seeing that administration of justice and dignity of the court is not flouted. In the instant case these principles were not at all considered or followed by the court of Additional Sessions Judge (FTC) before deciding to launch the prosecution. The perusal of the order dated 29.09.2006 shows that the learned Additional Sessions Judge (Fast Track Court), Solan, has not complied with the mandatory provisions of Section 340 of the Code and filed the complaint while passing the order dated 29.09.2006 without the requisite satisfaction. In fact the material on record makes it clear that this was not a fit case where it was expedient in the interest of justice to have an enquiry under Section 340 of the Code much less a prosecution.

27. In the case of Chajoo Ram v. Radhey Shyam and Anr. AIR 1971 SC 1367 the Supreme

Court has held that indiscriminate prosecutions under Section 193, Indian Penal Code resulting in failure are likely to defeat the very object of such prosecution. It has been laid down as under: “7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonable probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge.” 28. In the case of K.T.M.S. Mohd. & Anr. v. Union of India, 1992 (3) SCC 178, the Apex Court has also held that it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice. The relevant para of the aforesaid judgment is as under: “35. In this context, reference may be made to Section 340 of the Code of Criminal Procedure under Chapter X X VI under the heading "Provisions as to certain offences affecting the administration of justice". This section confers an inherent power on a Court to make a complaint in respect of an offence committed in or in relation to a proceeding in that Court, or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, if that Court is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause (b) of sub-section (1) of Section 195 and authorises such Court to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of Section 340. The words "in or in relation to a proceeding in that Court" show that the Court which can take action under this section is only the Court operating within the definition of Section 195 (3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by this Section 340 of the Code should be used with utmost care and after due consideration. The scope of Section 340 (1) which corresponds to Section 476(1) of the old Code was examined by this Court in K. Kanunakaran v. T.V. Eachara Warrier and Another, [1978] 1 SCC 18 and in that decision, it has observed: (SCC pp. 25 and 26, paras 21 and 26) "At an enquiry held by the Court under Section 340 (1), Cr.P.C., irrespective of the result of the main case, the only question is whether a

prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action. ....The two pre-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 IPC."

29. Scope of Section 340 Cr.P.C. has already been dealt with in detail by the Constitution Bench of the Hon'ble Supreme Court in the case of Iqbal Singh Marwah & Another vs. Meenakshi Marwah & Another reported in 2005 (4) SCC, 370. Relevant paragraph of the aforesaid judgment is quoted herein as under:-

"23. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. ....."

30. In the case of Ashok Kumar Aggarwal vs. Union of India & Others reported in 2013 (15) SCC, 539, allegation of perjury was leveled against Investigating Officer who is stated to have filed a false affidavit with respect to completion of enquiry but subsequently it was found that some further enquiry was conducted with respect to the incident in question. Hon'ble Supreme Court has discussed the scope of Section 340 read with Section 195 of Cr.P.C. and came to the conclusion that there was no attempt at the part of the Investigating Officer to mislead the court. Relevant paragraphs are reproduced herein below: "8. In this context, reference may be made of Section 340 under Chapter XXVI of the Cr.P.C., under the heading of "Provisions as to Offences

Affecting the Administration of Justice". This Chapter deals with offences committed in or in relation to a proceeding in the court, or in respect of a document produced or given in evidence in a proceeding in the court and enables the court to make a complaint in respect of such offences if that court is of the view that it is expedient in the interest of justice that an inquiry should be made into an offence. Clause (b) of Section 195 (1) Cr.P.C. authorises such court to examine prima facie as it thinks necessary and then make a complaint thereof in writing after having recorded a finding to that effect as contemplated under Section 340 (1) Cr.P.C. In such a case, the question remains as to whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offences and whether it is also expedient in the interest of justice to take any action. Thus, before lodging a complaint, the condition precedent for the court to be satisfied are that material so produced before the court makes out a prima facie case for a complaint and that it is expedient in the interest of justice to have prosecution under Section 193 IPC. (Vide: Karunakaran v. T.V. Eachara Warrier & Anr., AIR 1979 SC 290; and K.T.M.S. Mohd. & Anr. v. Union of India, AIR 1992 SC 1831). "

31. The Hon'ble Apex Court in Narendra Kumar Srivastava Vs State of Bihar reported in (2019) 3 SCC 318, referring to the case in Santokh Singh Vs Izhar Hussain reported in (1973)2 SCC 406 held that: “19. In Santokh Singh Vs Izhar Hussain this court has held that every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the

question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of the private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution."

32. In the case in hand, it has been proved on record that accused Sanjay Bhardwaj came to PGI Emergency on 30.10.2000, at 03:10 a.m., with the alleged history of sustaining stab injury on his abdomen and was first examined by Dr. P. Raghunathan, Junior Resident. He was admitted under Professor S.M. Bose and other treating team members on 30.10.2000 at 03:10 a.m. During the relevant time Dr. Kuldeep Dhawan was not posted on emergency duty and he was posted in General Surgery U-II, but he was called on emergency call. As per the record of PGI, accused Sanjay Bhardwaj was operated upon by respondent No. 2, Dr. Kuldeep Dhawan, along with his team of doctors. He remained admitted in PGI w.e.f. 30.10.2000 and was discharged on 07.11.2000. The prosecution has failed to prove that the accused persons have intentionally fabricated the record and conspired with one another, in order to secure conviction of Sarvsheel mago, Aman Mago and Komal Mago. There is no material on record to suggest that the accused persons have misguided the Court and thus flouted the dignity of the Court or effected the administration of justice.

33. In the light of the aforesaid observations of the Supreme Court in the various decisions, we have gone through the evidence on record minutely and we are of the considered opinion that the view taken by the learned Trial Court, while acquitting the accused persons is a reasonable view, based on the evidence on the record and the same cannot be said to be perverse or contrary to the material on record.

34. In view of what has been discussed hereinabove, no interference in the judgment of acquittal, rendered by the learned Trial Court, is required, as the same is the result of proper appreciation of evidence and law. The appeal, which is devoid of merits, deserves dismissal and is accordingly dismissed. Pending application(s), if any, shall also stand(s) disposed of.