Mritunjoy Biswas

v.

Pranab @ Kuti Biswas & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE K.S.P. RADHAKRISHNAN HON'BLE MR. JUSTICE DIPAK MISRA

Criminal Appeal No. 378 Of 2007 | 08-08-2013

Dipak Misra, J.

1. Assailing the judgment of acquittal dated 25.9.2006 passed by the High Court of Calcutta in Criminal Appeal No. 558 of 2004 whereby the judgment of conviction and order of sentence dated 12.8.2003 and 13.8.2003 respectively passed in Sessions Case No. 52 of 2001 by the learned Third Additional Sessions Judge, Nadia, convicting the accused-respondent No. 1 under Section 302 of the Indian Penal Code (for short "IPC") and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default, to suffer further imprisonment for one year, has been reversed, the instant appeal has been preferred by special leave.

2. The factual score that needs to be exposited is that on 20.4.2001 about 8.25 p.m. Gnanendra Nath Biswas, PW-8, the husband of the deceased, was lying on a cot in the bedroom with his wife Ashalata Biswas who was reading a "Panchali" and he was listening to the radio. A lamp was burning near the cot as the house did not have any electric light. All on a sudden a miscreant fired at the deceased Ashalata Biswas through the eastern window of the room as a result of which she sustained severe injuries. Hearing the scream of the husband, their nephew, Mritunjoy Biswas, PW-1, along with others came inside and took Ashalata Biswas to the Krishnaganj Hospital. The doctors, after primary treatment, advised them to take her to Shaktinagar Hospital and, accordingly, PW-1 along with Sujit Kumar Biswas, PW-10 and one Lakshmi Biswas took her to Shaktinagar Hospital. Thereafter, PW-1 went to Krishnaganj Police Station and lodged a written complaint, Ext.-1, and returned home. On the basis of the complaint ASI Kohkan Chandra Roy, PW-11, registered P.S. case No. 32 of 2001 dated 20.4.2001 under Section 326 IPC and Sections 25/27 of the Arms

Act, 1959 and, eventually, the case was endorsed to S.I. Anupam Chakraborty, PW-13, for investigation.

3. On 21.4.2001 when the victim succumbed to his injuries, the case was converted to one under Section 302 of I.P.C. Accused Pranab, who was absconding, was arrested on 24.4.2001. The Investigating Officer sent the dead body for post mortem, examined the witnesses and after collecting all the evidence submitted the chargesheet to the competent Court which in turn transmitted the case to the Court of Session for trial.

4. The plea of the accused was that he was innocent, and had been falsely implicated due to animosity.

5. The prosecution, in order to bring home the charge against the accused, examined 14 witnesses and brought number of documents on record. The main witnesses are Mritunjoy Biswas, PW-1, the nephew of the deceased, Subhash Biswas, PW-2, a witness to seizure, Kamal Krishna Biswas, PW-3, who had deposed that at the time of occurrence the accused was not in the house, Dr. Ajit Kumar Biswas, PW-5, who had conducted the post mortem, Shantiranjan Samadar, PW-6, and Bishnu Pada Kritania, PW-7, who had seen the accused running and on a query being made did not give any reply, Gnanendra Nath Biswas, PW-8, the husband of the deceased and Anupam Chakraborty, PW-13, the Investigating Officer. The defence chose not to adduce any evidence.

6. After conclusion of the trial, on appreciation of the evidence on record, the learned trial Judge came to hold that the accused was guilty of the offence punishable under Section 302 IPC and, accordingly, convicted him and imposed the sentence as has been stated hereinbefore.

7. On an appeal being preferred the High Court found certain flaws in the case of the prosecution and opined that the learned trial Judge had fallen into error in appreciation of evidence on record and, accordingly, came to hold that the accused was entitled to benefit of doubt. Being of this view it reversed the judgment of conviction and acquitted the accused.

8. Mr. Rauf Rahim, learned counsel appearing for the appellant, has submitted that the High Court has fallen into grave error by opining that the non-mentioning of the name of the accused in the FIR by the informant was fatal to the case of the prosecution which is against the settled principle of law. The conclusion on this score, as the learned counsel would contend, is based on conjecture that PW-1, who has stated to have arrived at the spot immediately, had the occasion to know the name of the accused from PW-8 though the circumstances and the material brought on record project a different picture. It is further urged by him that the High Court has failed to appreciate the evidence in a reasonable manner by recording a finding that the deceased, while being carried in the van to the hospital, despite being conscious, did not mention that it was the accused who had fired a gunshot through the window. The non-examination of Lakshmi Biswas who had accompanied the deceased to the hospital, has been given undue emphasis by the High Court which has resulted in an erroneous perception both in fact and in law. It is canvassed by him that there was no reason on the part of the High Court not to accept the testimonies of PW-1, PW-2 and PW-8 who were the most natural witnesses and further the High Court has totally ignored the other obtaining circumstances which make the judgment of reversal totally unsustainable. Therefore, it is urged that the appeal deserves to be allowed and the judgment of acquittal being untenable requires to be lancinated.

9. Ms. Rukhsana Choudhury, learned counsel appearing for respondent No. 1, supporting the judgment of the High Court, has contended that the appreciation of the evidence by the learned trial Judge being absolutely unacceptable, the High Court has appropriately disturbed the findings and, hence, the judgment of acquittal does not warrant any interference by this Court. It is her further submission that the High Court has rightly reached the conclusion that on the basis of such sketchy evidence it was inapposite to convict the accused and has justifiably extended the benefit of doubt. The learned counsel would also lay emphasis on the fact there had been no recovery of gun from the accused and, therefore, the prosecution version does not inspire confidence and on that bedrock alone the verdict of the High Court deserves to be treated as impeccable. The learned counsel would further contend that when the material witnesses, namely, Lakshmi Biswas and the treating doctor at the primary hospital have not been examined, the High Court is correct in its approach to record an acquittal and the view being not an implausible one should be allowed to stand. That apart, it is argued that the material omissions and discrepancies in the evidence of witnesses create an incurable dent in the case of the prosecution

and the High Court has taken note of the same in a sound manner and, hence, the conclusion resulting in acquittal cannot be flawed.

10. Mr. Chanchal Kumar Ganguli, learned counsel appearing for the State, supporting the stand and stance put forth by the learned counsel for the appellant, submitted that while treating the testimonies of PWs-1, 2, 7 and 8 as incredible and unacceptable, the reasons given by the High Court are absolutely unreasonable and, therefore, the reversal of conviction is vulnerable; that the deceased, as she was conscious, could have divulged the name of the deceased shows total incorrect approach inasmuch as the deceased was in a painful condition and she has told, as deposed by PW-3, that she would not survive; that the non-mentioning of the name of the accused in the FIR cannot be treated as fatal to the case of the prosecution when the entire evidence brought on record prove the guilt of the accused; that non-examination of the two witnesses and non-recovery of the weapon used are absolutely immaterial, for the prosecution may choose not to examine a witness and, in any event, their non-examination and non-recovery of the weapon cannot belie the version of the prosecution; that PW-2, Subhas Biswas, who had identified the accused fleeing way from the house of the deceased in the focus of the torch has been commented upon on the ground that the torch was not seized by the police but the same may be a lacunae in the investigating agency and cannot be a ground to discard the unimpeachable evidence of PW-2; and that the approach of the High Court is manifestly erroneous inasmuch as it has considered certain circumstances and opined that they are weak pieces of circumstantial evidence with the aid of which the accused cannot be convicted though there is direct evidence of natural witnesses pertaining to the role played by the accused. The emphasis on the fact that independent witnesses have not been examined is inconsequential as the witnesses examined are most natural witnesses and they have no reason to implicate the accused in the crime. The High Court, Mr. Ganguli would contend, has laid immense stress on some minor discrepancies which are not vital for which the view expressed cannot be regarded as irreproachable.

11. Before we scrutinize whether the High Court has appositely appreciated the evidence on record and whether the findings recorded on such appreciation by it are totally unreasonable or perverse leading to serious illegality, which would warrant interference by this Court, we would like to refer to certain authorities in the field that lay down the parameters for reversing a judgment of acquittal.

12. In Jadunath Singh v. State of U.P. [(1971) 3 SCC 577, (AIR 1972 SC 116)], a three-Judge Bench opined that in an appeal against acquittal, the appellate Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence, the order of acquittal should be reversed. The Bench referred to the principles laid down in Sheo Swarup v. King Emperor [AIR 1934 PC 227], Nur Mohammad v. Emperor [AIR 1945 PC 151], Surajpal Singh v. State [AIR 1952 SC 52] and Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715].

13. In Damodarprasad Chandrikaprasad v. State of Maharashtra [(1972) 1 SCC 107, (AIR 1972 SC 622)], it has been ruled that once the appellate Court comes to the conclusion that the view of the trial Court is unreasonable, that itself provides reason for interference. The learned Judges referred to the decision in State of Bombay v. Rusi Mistry [AIR 1960 SC 391] to come to the conclusion that if the finding shocks the conscience of the Court or the norms of legal process have been disregarded or substantial and great injustice has been done, the same can be interfered with.

14. In Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793, (AIR 1973 SC 2622)], a three- Judge Bench expressed the opinion that there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinize the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal, the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the finding without very convincing reasons and comprehensive consideration.

15. In Chandrappa v. State of Karnataka [(2007) 4 SCC 415, (AIR 2007 SC (Supp) 111 : 2007 AIR SCW 1850)], this Court has held that an appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded and the Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law. It has been further laid down therein that various expressions, such as, "substantial and compelling reasons", "good and suf

ficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

16. These principles have been reiterated in S. Ganesan v. Rama Raghuraman [(2011) 2 SCC 83 : (AIR 2011 SC (Cri) 419)], Jugendra Singh v. State of Uttar Pradesh [(2012) 6 SCC 297 : (AIR 2012 SC 2254 : 2012 AIR SCW 3178)] and State of Madhya Pradesh v. Dal Singh and Ors. [2013 (7) SCALE 513 : (AIR 2013 SC 2059 : 2013 AIR SCW 2978)].

17. Keeping in view the aforesaid principles, we are required to scrutinize the base on which the findings have been recorded by the learned trial Judge and the appreciation on which the High Court thought it appropriate to reverse the conviction. It is perceptible that the learned trial Judge, scanning the evidence on record, opined that PWs-1, 2, 7 and 8 were the most natural witnesses and their evidence deserved to be accepted; that PW-3 who had gone to the house of the accused at the time of occurrence but immediately thereafter he came inside and in a different tone enquired about disturbance caused outside which was significant in the context of the occurrence; that the testimony of PW-7 deserved credence and he had stated that the mother of the accused came to his house in search of the accused at 8.00 p.m. in the night of the incident and he also heard the sound of a gunshot after five minutes from the time of departure of the mother of the accused from his house; that it was quite natural that there would be some discrepancies in the evidence of the prosecution witnesses, for after passage of time a witness cannot recollect everything with precision; and that the post mortem report revealed that the deceased had suffered a gunshot injury; that the defective investigation would not affect the prosecution case and, accordingly, rested his conclusion on the said findings.

18. The flaws noticed by the High Court are that the informant had not mentioned the name of the accused in the FIR though he could have mentioned; that though the deceased who was conscious while being taken to the hospital in a van, yet she did not divulge the name of the person who had fired through the window; that Lakshmi Biswas, who had accompanied Mritunjoy Biswas, PW-1

and Sujit Biswas, PW-10, to the hospital was not examined; that the evidence of PW-2 and PW- 7, who saw the accused running away from the place of occurrence, was very weak piece of evidence to connect the accused with the crime; that the testimony of PW-3 that he had not found the accused in his house soon before the incident was inconsequential; that details of treatment of the deceased in the Krishnaganj Hospital had not been brought on record by the prosecution from which the condition of the deceased could have been known; that the prosecution should have, in all fairness, examined the treating doctor at the Primary Health Centre; and that the evidence on record did not establish the guilt of the accused beyond reasonable doubt and, hence, he was entitled to benefit of doubt.

19. The first ground of attack is non-mentioning the name of the accused in the FIR. Pyramiding the said submission, the learned counsel for the appellant would submit that once the name of the accused is not mentioned in the FIR, the prosecution version in entirety is bound to collapse. In this context, we may fruitfully refer to a three-Judge Bench decision in Pandurang and others v. State of Hyderabad [AIR 1955 SC 216] wherein it has been held that on the facts of the case that the first information report did not mention the name of any person as assailant though it was alleged that the names were known was of no consequence specially when their names were disclosed at the time of inquest and their absence did not make the prosecution version a concocted one and further it could not be said that it was a planned one to rope someone later on.

20. In Rotash v. State of Rajasthan [(2006) 12 SCC 64 : (AIR 2007 SC (Supp) 1765 : 2007 AIR SCW 44)] wherein the FIR did not contain the name of the appellant before this Court, a contention was advanced that the informant who was known to the accused and who could easily identify the assailant, yet he was not named in the FIR and, therefore, the prosecution case was not to be believed. The Court took note of the fact that the investigation had taken place in quite promptitude and the accused persons were arrested being named by the witnesses. After taking note of the fact situation the Court proceeded to observe as follows: -

"The first information report, as is well known, is not an encyclopedia of the entire case. It need not contain all the details. We, however, although did not intend to ignore the importance of naming of an accused in the first information

report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that PW 1 did not name him in the first information report, we do not find any reason to disbelieve the statement of Mooli Devi, PW 6. The question is as to whether a person was implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case."

21. In Mulla and another v. State of Uttar Pradesh [(2010) 3 SCC 508 : (AIR 2010 SC 942 ; 2010 AIR SCW 1194)], the accused persons were not named in the FIR. Taking into consideration the material brought on record, the Court observed that though none was named in the FIR, yet subsequently the names of the appellants had come into light during investigation and, hence, non-mentioning the names of the accused persons would not be fatal to the prosecution case.

22. In Ranjit Singh and others v. State of Madhya Pradesh [(2011) 4 SCC 336 : (AIR 2011 SC 255 : 2010 AIR SCW 6676)], after referring to authorities Rotash (supra), Rattan Singh v. State of H.P. [(1997) 4 SCC 161, (AIR 1997 SC 768 : 1997 AIR SCW 587)], Pedda Narayana v. State of A.P. [(1975) 4 SCC 153 : (AIR 1975 SC 1252)], Sone Lal v. State of U.P. [(1978) 4 SCC 302 (AIR 1978 SC 1142)], Gurnam Kaur v. Bakshish Singh [(1980 Supp SCC 567 : (AIR 1981 SC 631)] and Kirender Sarkar v. State of Assam [(2009) 12 SCC 342 : (AIR 2009 SC 2513 : 2009 AIR SCW 4391)], the Court opined that in case the informant fails to name a particular accused in the FIR, and the said accused is named at the earliest opportunity, when the statements of witnesses are recorded, it cannot tilt the balance in favour of the accused.

23. In Jitender Kumar v. State of Haryana [(2012) 6 SCC 204 : (AIR 2012 SC 2488: 2012 AIR SCW 3285)], it has been stated that an accused who has not been named in the FIR, to whom a definite role has been attributed in the commission of the crime and when such role is established by cogent and reliable evidence and the prosecution has also been able to prove its case beyond reasonable doubt, such an accused may be punished in accordance with law, if found guilty.

24. In the case at hand, the High Court has taken serious exception to the non-mentioning of the name of the accused in the FIR on the ground that the informant had the occasion to know the name of the assailant from the husband of the deceased as he had told the name of the accused to his nephew who had lodged the FIR and further the deceased had not mentioned the name of the accused though she was conscious and was able to speak. On a studied scrutiny of the evidence on record we are disposed to think that the reasons ascribed by the High Court on this score are unacceptable, for they do not really stand to reason. The husband, PW-8, had screamed about the gun-shot and PW-1 had rushed to his house and thereafter immediately proceeded to get a vehicle to take the victim to a hospital. In such a situation, to expect that he should have heard PW-8 mentioning the name of the accused would be in the realm of hyper-technical approach. That apart, the evidence brought on record, as we find, the accused has been named at the earliest opportunity and there is nothing brought on record to suggest that he has been falsely implicated by way of an afterthought. Quite apart from the above, the exception taken to the fact that though the deceased was aware of the name of the accused and she was in a position to talk and further was administered an injection for amelioration of pain, yet she did not utter the name of the assailant and, therefore, the prosecution version does not inspire confidence, is inapposite. This approach, as we understand, is based on the principle that it is obligatory on the part of the prosecution to prove the guilt of the accused beyond reasonable doubt however complex and the intriguing may be the facts and circumstances of the case. Needless to say, the aforesaid test is not an absolute guidance in all circumstances for the court, for the doubts that are raised in the mind of the court must be reasonable. In this context, we may profitably refer to what has been stated by Sabyasachi Mukharji, J. (as his Lordship then was) in Gurbachan Singh v. Satpal Singh and others [AIR 1990 SC 209]: -

"The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.

5. The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment.

Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated."

25. In State of U.P. v. Krishna Gopal and another [(1988) 4 SCC 302 : (AIR 1988 SC 2154)], Venkatachaliah, J. (as his Lordship then was) has opined thus: -

"Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice."

26. The aforesaid principle has been reiterated in Krishnan v. State [(2003) 7 SCC 56 : (AIR 2003 SC 2978 : 2003 AIR SCW 3688)], Valson and another v. State of Kerala [(2008) 12 SCC 241 ; (AIR 2009 SC (Supp) 564: 2008 AIR SCW 5203)] and Bhaskar Ramappa Madar and others v. State of Karnataka [(2009) 11 SCC 690 ; (AIR 2009 SC (Supp) 1826 ; 2009 AIR SCW 2624)].

27. The bedrock of reasoning of the High Court is to be tested on the anvil of the aforesaid enunciation of law. On a careful and anxious scrutiny of the evidence on record it is difficult to accept the doubt expressed by the High Court in this regard. It is to be borne in mind that the deceased was being carried to the hospital after being shot on her back and, at that juncture, she had spoken few words but it is inappropriate to assume that she should have heard the name of the accused and further it was expected of her to mention the same to the others. The doubt expressed, as we perceive, is not a reasonable one and such a degree of exactitude should not have been emphasised upon. Hence, we are unable to persuade ourselves to accept the finding of the High Court on this score.

28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is worthy to note that the High Court has referred to the some discrepancies which we find are absolutely in the realm of minor discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See Leela Ram (dead) through Duli Chand v. State of Haryana and another [(1999) 9 SCC 525 : (AIR 1999 SC 3717 : 1999 AIR SCW 3756)], Rammi alias Rameshwar v. State of M.P. [(1999) 8 SCC 649 : (AIR 1999 SC 3544 : 1999 AIR SCW 3546)] and Shyamal Ghosh v. State of West Bengal [(2012) 7 SCC 646 : (AIR 2012 SC 3539 : 2012 AIR SCW 4162)].

29. It is noticeable that the High Court in its appreciation of evidence has really given unnecessary and undue emphasis on certain contradictions which really

do not affect the prosecution case. The testimony of PWs-1, 2, 3, 7 and 8 are credible and there is no reason to treat their testimony as untrustworthy. We have arrived at such a conclusion as we find that PW-8, the husband of the deceased has clearly deposed about seeing the accused in the light of the lamp to have fired at the back of his wife and PW-1, the nephew of the deceased, has stood by his earlier version. Nothing has been elicitated in the cross-examination to discard their testimony. On the contrary, they are the most natural witnesses and there is no earthly reason that they would falsely implicate the accused leaving the real culprit solely because some quarrel had earlier taken place. Be it noted, the other two witnesses have deposed about the accused running away from the place of occurrence immediately. That apart, the accused had absconded from the village. We are absolutely conscious that mere abscondence cannot from the fulcrum of a guilty mind but it is a relevant piece of evidence to be considered along with other evidence and its value would always depend the circumstances of each case as has been laid down in Matru Alias Girish Chandra v. State of Uttar Pradesh [(1971) 2 SCC 75 : (AIR 1971 SC 1050)], State of M.P. Through C.B.I. and Others v. Paltan Mallah and Others [(2005) 3 SCC 169 : (AIR 2005 SC 733 : 2005 AIR SCW 455)] and Bipin Kumar Mondal v. State of West Bengal [(2010) 12 SCC 91 : (AIR 2010 SC 3638 : 2010 AIR SCW 4470)]. In the instance case, if the evidence of the witnesses are read in a cumulative manner, the abscondence of the accused gains significance. The High Court, as we find, has read the evidence not as a whole but in utter fragmentation and appreciated the same in total out of context. It is to be kept in mind that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : (AIR 1985 SC 48)]). Tested on the anvil of the aforesaid principle, we have no shadow of doubt that the High Court has erroneously discarded the credible evidence by paving the path of totally hyper-technical approach.

30. The next aspect which has been highlighted by the High Court pertains to non-examination of Lakshmi Biswas and the treating doctor at Krishnaganj Hospital. As far as non-examination of the treating doctor at the Krishnaganj Hospital is concerned, we are of the view that the same does not even remotely affect the case of the prosecution. The High Court has taken exception to his non- examination solely on the base that his evidence in the court would have reflected the exact health condition of the deceased. Emphasis has been laid on the same as the appellate court has felt that the same could have been a pointer to find out whether the deceased was in a conscious state and why she did not mention the name of the accused. In our considered opinion when the testimonies of other witnesses are accepted on their own creditworthiness, this aspect has to melt into insignificance. As far as non-examination of Lakshmi Biswas is concerned, as per the prosecution version she had only accompanied the deceased. There is no denial of the fact that the deceased had not mentioned the name of the accused. In this backdrop, we really fail to appreciate how the non-examination of the said witness creates a concavity in the case of the prosecution and, accordingly, we are unable to concur with the reasoning of the High Court.

31. The learned counsel for the respondent has urged before us that there has been no recovery of weapon from the accused and hence, the prosecution case deserves to be thrown overboard and, therefore, the judgment of acquittal does not warrant interference. In Lakshmi and Others v. State of U.P. [(2002) 7 SCC 198 : (AIR 2002 SC 3119 : 2002 AIR SCW 3596)], this Court has ruled that undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder.

32. In Lakhan Sao v. State of Bihar and Another [(2000) 9 SCC 82 : (AIR 2000 SC 2063 : 2000 AIR SCW 1955)], it has been opined that the non-recovery of

the pistol or spent cartridge does not detract from the case of the prosecution where the direct evidence is acceptable.

33. In State of Rajasthan v. Arjun Singh and Others [(2011) 9 SCC 115 : (AIR 2011 SC 3380 : 2011 AIR SCW 5295)], this Court has expressed that mere non-recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place. Thus, when there is ample unimpeachable ocular evidence and the same has been corroborated by the medical evidence, non-recovery of the weapon does not affect the prosecution case.

34. In view of the aforesaid analysis, the appeal is allowed, the judgment of acquittal passed by the High Court being wholly unsustainable is set aside and the judgment of conviction of the trial Court is restored. The respondent is directed to surrender to custody to serve out the sentence.