

Neutral Citation No. - 2025:AHC:112120-DB

Court No. - 44

Case :- GOVERNMENT APPEAL No. - 1299 of 1984

Appellant :- State

Respondent :- Indra Pal Singh And Others

Counsel for Appellant :- Alok Kumar

Dubey,G.S.Chaturvedi,P.C.Chaturvedi,Saumitra Dwivedi

Counsel for Respondent :- M.P. Singh,Shashi Prakash Rai

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Anil Kumar-X,J.

1. Heard Ms. Archana Singh, learned A.G.A. for the appellant, Sri Shiva Singh, Advocate, holding brief of Sri Shashi Prakash Rai, learned counsel for the respondents and perused the records.

2. The present government appeal has arisen from the judgment and order of acquittal dated 25.01.1984 passed by Sri Dharam Pal, II Additional Sessions Judge, Rampur in S.T. No.13 of 1982 (State Vs. Inderpal Singh and others). By that order, the learned court below has acquitted three accused persons charged with offence under Section 302 read with Section 34 I.P.C.

3. Briefly, it may be noted that all three accused persons were charged with an occurrence dated 19.05.1981, wherein the first informant Rajendra Jeet Singh (P.W.-1) alleged that accused Kartar Singh armed with a Kripan (a small sword) and his sons Kabul Singh and Inderpal Singh, armed with a gun and a rifle respectively confronted Santosh Singh and Mohan Singh and tried to stop them from drawing water from an irrigation canal - with a diesel pumping set. At that time, Kapur Singh, Pritam Singh and Surjeet Singh were also present with him. On challenge thus offered by the appellants, Surjeet Singh intervened and he tried to persuade Kartar Singh and others to not obstruct Santosh Singh and

Mohan Singh. At that point, Kartar Singh asked the informant, Surjeet Singh, Kapur Singh and Pritam Singh not to intervene and to leave. Since, the informant side did not relent and they did not withdraw, at the instigation of Kartar Singh, Kabul Singh and Inderpal Singh fired at the informant side, wherein Kapur Singh received a bullet injury and fell down to the ground. He died. The incident took place at about 8:30 P.M. on 19.05.1981. FIR was lodged on the same day i.e. 19.05.1981 at about 10:30 P.M., at Police Station Bilaspur, District Rampur.

4. The investigation was carried out wherein besides the recovery of blood-stained earth, only one empty of a bullet of 315 bore was recovered from the place of occurrence. That recovery is Ex. Ka.-7 at the trial. Besides that, no other empty was recovered.

5. Also, in the autopsy report, Dr. J.P. Saxena, who conducted autopsy on 31.05.1983, found the following ante-mortem injuries on the person of the deceased:

“1. Circular gun-shot wound of entry 2cms X 2cms X 20cms deep on inner aspect of the right thigh, upper part, 21cms above right knee-joint. Margins were lacerated and inverted. Scorching and blackening was present around the wound.

2. Gun shot wound of exit 10cms X 6cms X bone deep on outer aspect of right thigh 10cms above right knee joint. Margins lacerated and everted. No scorching or bleeding was present around the wound.

3. Wound nos.1 and 2 were communicating into each other. Right femur bone was fractured in its middle under injury no.1 and 2 Femoral vessels were also lacerated with big clotting of blood present at the site of blood vessels under injury nos.1 and 2.”

6. The doctor opined death was caused by shock and haemorrhage as a result of gun-shot injury suffered on the right thigh of the deceased.

7. At the trial, besides the documentary evidence, the prosecution relied on three eye-witnesses account. First Rajinder Jeet Singh (P.W.-1), second Surjeet Singh (P.W.-2) and third Mohan Singh (P.W.-3) were examined. While all three witnesses claimed that they had seen the

occurrence and broadly supported the FIR narration of that occurrence, during their cross-examination, all eye-witnesses maintained that the deceased was shot dead by the appellants Inderpal Singh and Kabul Singh who were armed with a rifle and a gun respectively, standing one to one and half foot lower to the ground where the deceased was standing.

8. Referring to the autopsy report and the nature of injury, it has been submitted, there was a single bullet injury. In that, the entry wound had been caused about 20 cm above the right knee whereas the exit wound was caused about 10 cm above the right knee, therefore, undeniably, the bullet injury was caused and it travelled downwards, from the entry wound towards the exit wound.

9. That being the prosecution story, it was submitted by the defence that the same is wholly unbelievable. The deceased may not have been shot dead by a person standing on ground, one to one and half foot lower to the ground where the deceased was standing. Both the appellants and the victim were proven to be standing at the time of the occurrence. Therefore, the nature of the occurrence described by the three prosecution witnesses, was not believable. Clearly, none had seen the occurrence. In any case, it may never have been caused, as narrated by the prosecution.

10. Besides the above, other doubts were raised by the defence referring to the witnesses as chance witness. Also, it was stressed that there was no pre-meditation or intention to cause death. The prosecution itself had started the quarrel, wherein the deceased was described to have intervened, though he had no issues with the accused persons. In such facts, the learned court below had acquitted the accused appellants.

11. Today, it has been stressed by Ms. Archana Singh, learned A.G.A. representing the appellant-State that the learned court below has erred in law in disbelieving the ocular account on the strength of medical evidence. She would submit, once a credible ocular account was available

as was wholly consistent (between three ocular witnesses), it was duly proven that the appellants had shot at the deceased without any provocation. The learned court below may not have relied on the medical evidence to disbelieve such ocular evidence. To the extent the learned court below has disbelieved the ocular account, by relying on medical evidence, manifest error has been committed by the learned court below. Relying heavily on the ocular evidence noted above, it has been submitted that the only conclusion that may have been drawn by the learned court below - that of guilt of the present appellants. In support of her submission, she relied upon a judgment of the Supreme Court in ***Baban Shankar Daphal & Ors. Vs. The State of Maharashtra, reported in 2025 INSC 97.***

12. On the other hand, learned counsel for the acquitted accused would submit that this is not a fit case where the appeal court may exercise its discretion against the order of acquittal. Though, it is true that the ocular evidence was led by the prosecution in support of its case, at the same time that evidence itself was deficient to the extent, it did not establish beyond reasonable doubt that the occurrence had been caused in the manner narrated by the prosecution. He seeks to draw a distinction between plea of disbelieving the ocular account on the strength of medical evidence and ocular evidence being not free from reasonable doubt, on its own. To that extent, he would submit unimpeached medical evidence corroborates that pre-existing/independent doubt as only one gun-shot injury was caused to the deceased. It travelled downward from 20 cm above right knee to 10 cm above the right knee. That injury was caused on a non-vital body part, in circumstances not proven by the prosecution beyond reasonable doubt. Therefore, the order of acquittal may not be interfered with by this Court.

13. Having heard learned counsel for the parties and having perused the records, it is a settled principle of law that the appeal court may not

interfere with an order of acquittal unless the learned court below may have erred to the point of its order being vitiated by manifest error of law and/or perversity. If two views are possible, the appeal court may not simply reverse an order of acquittal, unless it is satisfied on the first count. Third, even then, interference may be offered if the evidence received at the trial leads to a singular inference of guilt of the accused persons.

14. In the first place as to the principle in law on which interference may be offered by the High Court, in an appeal against acquittal, there is no quarrel. In ***Sheo Swarup and others v. Emperor, 1935 VOL 1 CRLJ 786***, in the context of similar statutory provision, the Privy Council observed as under :

"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, 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."

15. Then, in ***Dhanna v. State of M.P., 1996 VOL 10 SCC 79***, it was observed as under :

"Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the appellate court has to bear in mind: first, that there is a general presumption in favour of the ignorance of the person accused in criminal cases that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him. He would retain that benefit in the appellate court also. Thus, appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of

acquittal is liable to the interfered with or disturbed. (Durgacharan Naik and ors. v. State of Orissa, AIR 1966 SC 1775, Caetand Piedade Fernandes & Anr. v. Union Territory of Goa, Daman & Diu, Panaji. Goa, AIR 1977 SC 135, Tota Singh and Anr. v. State of Punjab, AIR 1987 SC 1083, Awadhesh and Anr. v. State of M.P., AIR 1988 SC 1158, Ashok Kumar v. State of Rajasthan, AIR 1990 SC 2134)."

16. Next, in ***Shailendra Pratap and another v. State of U.P., 2003 VOL 2 CRLJ 1270***, the Supreme Court observed as under :

"Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

(emphasis supplied)

17. In ***Samghaji Hariba Patil v. State of Karnataka, 2007 VOL 1 SCC Crl. 113***, the Supreme Court observed as under :

"Had the High Court been the first court, probably its view could have been upheld, but it was dealing with a judgment of acquittal. We have taken notice of the depositions of the main prosecution witnesses only to show that the view of the learned Trial Judge cannot be said to be perverse or the same was not possible to be taken. While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible. The appellant had no axe to grind. The prosecution had not proved that he had any motive. He was only said to be the friend of accused No.1. If the accused had gone there with six others to assault the deceased and his family members, it is unlikely that accused would take with him for the said purpose, a hammer to an agricultural field. The hammer is not ordinarily used for agricultural operations. Even if we assume that accused No.1 had been nurturing any grudge against the deceased, it is unlikely that accused would be involved therein."

(emphasis supplied)

18. Also, in ***Suryakant Dadasahab Bitale v. Dilip Bajranj Kale and others, 2014 VOL 5. SCC Crl. 728***, the Supreme Court further observed as below :

"In the present case the Session Court has not ruled out any evidence which was admissible. Both the dying declarations were considered in proper prospect. The material evidence has not been overlooked by

the Sessions Court, as apparent from the discussions made by Sessions Judge and quoted above. In these circumstances, the High Court was not justified in interfering with the order of acquittal in a revision."

(emphasis supplied)

19. In **Constable 907 Surendra Singh and another Vs. State of Uttrakhand, 2025 SCC Online SC 176**, the Supreme Court again revisited the law in point and observed as under :

"11. Recently, in the case of Babu Sahebagouda Rudragoudar v. State of Karnataka, (2024) 8 SCC 149 a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

"38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], SCC p. 432, para 42)

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 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.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient 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.

(4) An appellate court, however, 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.

(5) If two reasonable conclusions 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."

40. Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

"8. ... 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 a 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."

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

(emphasis supplied)

20. Thus, as to the principle to be applied by the High Court while dealing with an appeal against acquittal, though there is a statutory appeal wherein the High Court by virtue of its power as an appeal Court, may reappraise the evidence and reach a different fact conclusion, at the same time, before that exercise is entered into, the High Court must be satisfied that the finding recorded by the learned trial court suffers from the vice of perversity or defect of like nature. That guard rail exists and must be followed in exercise of appeal jurisdiction, against an order of acquittal.

21. If that satisfaction is reached, the High Court must further reappraise the evidence through a prism as may allow for a singular conclusion of guilt to arise as may not only discard the presumption of innocence that the accused enjoys at the beginning of the trial but as may dispel the confirmation of such innocence that is comented by the order of acquittal. It must also be consistent to the singular conclusion of guilt of the accused as may eliminate all other possible view as to innocence of the accused. Such conclusion must be free from any doubt. By very nature of such exercise to be undertaken, the High Court may remain vigilant

and slow in interfering with the findings recorded by the learned trial court.

22. As to what may be perversity, there is less or no doubt. Where a finding of fact may be recorded either dehors the evidence or contrary to the evidence or where conclusions may have been drawn contrary to the law, that finding and/or conclusion may be described perverse.

23. Even though, the order of acquittal may be converted to an order of conviction by the appeal court - on the strength of prosecution evidence, interference by the appeal court may arise only where a single conclusion of guilt of the accused persons may be reached. If any doubt continues to exit with the appeal court, the presumption of innocence with which the trial began and as was confirmed by the order of acquittal passed by the learned court below, may not be interfered with.

24. Tested on that anvil we find, that though submissions advanced by learned A.G.A. are attractive, those may not be sufficient to upturn the order of acquittal. The exact phraseology used by the learned court below while appreciating the evidence may not be relied to reach to the conclusion that the learned court below has disbelieved the ocular evidence by relying on the medical evidence.

25. As to the reasoning offered by the learned court below, we find that the learned court below while appreciating the evidence, has entertained a reason that the occurrence may not have been caused in the manner described as it was the own case of the prosecution that the injuries has been caused from upward to downward, with a margin of 10 cm between the entry and exit wounds.

26. In face of the ocular evidence led that the deceased was standing on a higher ground above or one and half foot higher than the assailants,

doubt has been entertained by the learned court below that such an injury may not have been caused in the manner described.

27. Additionally, we also note that the role of firing is assigned to accused persons namely Inderpal Singh and Kabul Singh. Only one firearm injury was received by the deceased and corroborative material (in the shape of empty of a bullet), was also one. No specific role assignment was made by the prosecution either in the FIR or at the trial with respect to the single firearm injury suffered by the deceased. Thus, it was never described or proven or even attempted to be proven by the prosecution as to which two assailants caused that single firearm injury.

28. Further, it is undisputed to the prosecution that the solitary injury was caused on a non-vital body part, in the heat of a quarrel that had erupted between the parties without any pre-meditation or intention.

29. So far as the judgment relied upon by the learned A.G.A., we find that the same is on a different footing, as discussed above. Here, the medical evidence does not form the basis to disbelieve the prosecution story, rather, the ocular evidence could not establish the occurrence as narrated.

30. For the above reasons, we find that there is no manifest error of law or element of perversity in the appraisal of evidence. It is another thing that a particular view has been taken by the learned court below resulting in the order of acquittal.

31. It is not for us to enter into a *de novo* exercise of appraisal of evidence when we are not convinced that there is any element of perversity or manifest error of law committed by the learned court below.

32. Since the exercise of re-appraisal of evidence may not be done routinely in appeal arising from acquittal, we are not inclined to disturb

the confirmation of innocence of the accused persons that arose on the strength of the order of acquittal.

33. The appeal lacks merits and is, accordingly, **dismissed**.

Order Date :- 14.7.2025

CS/-

(Anil Kumar-X, J.) (Saumitra Dayal Singh, J.)