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Court No. - 46

Case :- GOVERNMENT APPEAL No. - 1035 of 1984

Appellant :- State of U.P.

Respondent :- Prag Singh And Others

Counsel for Appellant :- A.G.A., Kamal Krishna

Counsel for Respondent :- ,A.C. Chaturvedi,J.S.

Kashyap,P.S.Jadon,S.K.Tripathi,Shashi Prakash

Sharma,Sushil Kumar,Sushil Kumar Singh,Vijendra Singh

Hon'ble Rajiv Gupta,J.

Hon'ble Subhash Chandra Sharma,J.

(Delivered by Hon. Rajiv Gupta, J)

1. Heard Sri Purshottam Upadhyaya, learned A.G.A for the State, Sri S.K. Tripathi assisted by Sri Abhinav Trivedi, learned counsel for the sole surviving accused respondent no. 2 - Santosh Kumar and perused the record.
2. The instant Government Appeal under Section 378 Cr.P.C. seeks to challenge the judgment and order dated 19.12.1983 passed by Vith Addl. Sessions Judge, Mainpuri in Sessions Trial No. 46 of 1983 (State Vs. Parag Singh and others) arising out of Case Crime No. 329 of 1982, Police Station- Bewar, District- Mainpuri, whereby the accused-respondent Nos. 1 to 4 have been acquitted of the charges under Sections 302 read with Section 34 IPC and Section 307 read with section 34 IPC.
3. During the pendency of this Government Appeal before this Court, accused-respondent No. 1 Parag Singh had passed away and, therefore, the instant appeal qua the Respondent No.

1- Parag Singh has been abated by this Court vide order dated 3.2.2012. Consequently, accused-respondent Nos. 3 and 4 Brij Kishore and Rakesh Kumar had also passed away and therefore, the instant appeal qua Brij Kishore and Rakesh Kumar has already been abated by this Court vide order dated 12.5.2023.

4. Now, the appeal survives only on behalf of accused-respondent No. 2- Santosh Kumar.

5. Prosecution story in brief is that in July, 1982, there has been a Pradhani Election in the village. The said election was contested by first informant Surajpal Singh, Parag Singh and Vijaypal Singh, in which, Suraj Pal Singh was declared elected. Parag Singh had been the elected Pradhan of the village for the last about 26 years. After being defeated in the said election, Parag Singh started bearing animosity against the first informant Surajpal Singh and after election, he had threatened him that he would not let him remain alive. On the day of incident at about 8:15 p.m., his son Ravindra Kumar boarding a tractor was returning back to his village and at the relevant time when he reached in the lane in front of the baithaka of Parag Singh, the accused Parag Singh and his son Santosh Kumar and nephew Brij Kishore and Rakesh Singh were present there, who stopped his tractor and enquired from Ravindra Kumar as to why he was taking away the tractor from the lane lying in front of their house, whereupon Ravindra Kumar told the accused that the lane was a

throughfare (public way) and, as such, nobody can restrain him from passing through the said lane. This incident resulted in verbal-spat between them. Consequently, Parag Singh asked Santosh Kumar, Brij Kishore and Rakesh Singh to bring the gun from their house and to put an end to the life of his son, however, somehow he escaped from the place of incident and revealed the entire incident to him. The first informant Surajpal Singh then advised his son Ravindra Kumar to keep away from accused-persons as they are dangerous persons and in future not to ply the tractor in front of their house.

6. It is further alleged that on the relevant date and time at about 8.30 p.m., while he was sitting in front of his door and his son Ravindra Kumar after parking his tractor started repairing the ball bearings of the front wheel of the tractor, where electric bulb was lighting at his doorstep and sufficient source of light was also available from the nearby houses. Meanwhile Parag Singh armed with gun and Santosh Kumar, Brij Kishore and Rakesh Singh armed with country made pistol reached at the place of incident, where Parag Singh exhorted to kill Ravindra Kumar to teach him a lesson for taking out the tractor from the lane lying in front of his house. Consequent thereto, Santosh Kumar fired a shot from his country made pistol upon Ravindra Kumar, which hit him on his left armpit, who tried to escape and fell down at the doorstep and died instantaneously. On alarm being raised by Surajpal, Parag Singh stated to eliminate him also to teach him a lesson for winning the Pradhani Election, consequent to which,

Brij Kishore and Rakesh Singh chased him with country made pistol in their hands and fired one shot each, however, he ran away towards his house and escaped unhurt.

7. The said incident is alleged to have been witnessed by Rajendra Singh son of Taley Singh, Harish Chandra Singh son of Jhabbu Singh and Vijaypal Singh son of Sarnam Singh, who were present at the scene of incident. The assailants retrieved back to their house saying that they had already killed Ravindra Kumar, however, Surajpal Singh somehow escaped unhurt, who would soon be killed.

8. On the basis of said written report, the first information report was lodged at police station- Bewar, District- Mainpuri, which was registered vide Case Crime No. 329 of 1982, under Sections 302, 307 IPC, which has been marked and proved as Exbt. Ka-1. The said report was drawn by Narendra Singh (P.W.-1) and its corresponding G.D. Entry was prepared, which has been proved and marked as Exbt. Ka-2.

9. After registration of the said first information report, the investigation of the said case was entrusted to Brijraj Singh (P.W.-5), who recorded the statement of the first informant Surajpal Singh and thereafter reached the place of incident and recorded the statement of other eye witnesses. The Investigating Officer then conducted the inquest on the person of the deceased at 7 a.m. in the morning and thereafter prepared the relevant documents including challan-lash, photolash, letter to

the R.I. and letter to the C.M.O. and thereafter wrapped the body in a cloth and sent it for post-mortem. The Investigating Officer thereafter made the spot inspection and prepared the site-plan and also made the necessary recoveries and prepared the recovery memos, which have been duly proved.

10. An autopsy was conducted on the person of the deceased on 2.12.1982 at 2:15 p.m. by Dr. R.P. Pumboo, Medical Officer, who has been examined as P.W.-4, who had noted the following injuries on the person of the deceased:-

(i). Firearm wound of entry 1 cm. x 1 cm. x muscle deep over outer aspect on left upper arm 3 cm. above left elbow joint. Margins inverted. No blackening, scorching and tattooing present.

(ii). Firearm wound of entry 1 cm. x 1 cm. x cavity deep left side chest in mid axillary line 14 cm. Outer to left nipple in between 3'o clock and 4'o position and 10 cms. Below left armpit. Margins inverted. No blackening, scorching and tattooing present.

(iii). Firearm wound of entry 1 cm. x 1 cm. x cavity deep left side chest in mid axillary line 14 cm. Outer to left nipple in between 3'o clock and 4'o position and 10 cms. Below left armpit. Margins inverted. No blackening, scorching and tattooing present.

The doctor found spinal cord not exposed, left pleura lacerated, left lung lacerated, heart empty, thoracic cavity containing blood, peritoneum lacerated, cavity containing blood and semi digested food material, oesophagus diaphragm lacerated, stomach lacerated cantoning semi digested food. He found one big metallic

pellet in the left upper arm and one pellet in the thoracic cavity in the right thoracic wall between 8th and 9th rib.

11. The doctor has noted the cause of death to be shock and haemorrhage as a result of ante-mortem injury.

12. After concluding the investigation, the Investigating Officer submitted charge sheet against accused-persons, which has been proved and marked as Ext. Ka-14. On the basis of said charge sheet, learned Magistrate has taken cognizance, however, since the case was exclusively triable by the court of Sessions, it was committed to the court of Sessions for trial, where it was registered as Sessions Trial No. 46 of 1983 (State Vs. Parag Singh and others). The trial court thereafter framed the charges against the accused-respondents under Sections 302 read with section 34 IPC and section 307 read with section 34 IPC, however, they denied the charges and insisted to be tried.

13. Trial started and during the course of trial, the prosecution has produced as many as 5 prosecution witnesses. One Sone Lal was examined as Court Witness. In addition to this, the prosecution also produced number of documents, which have been duly exhibited and proved.

14. After conclusion of the prosecution evidence, incriminating evidence and circumstances were put to the accused in their statements under Section 313 CrPC. The accused alleged the prosecution evidence to be false and fabricated. D.W.-1 to D.W.-8 were examined as defence witnesses to show the innocence of

the accused in the matter. The trial court after thrashing the evidence and critically analysing it acquitted the accused from all the charges framed against them and he was set at liberty.

15. Aggrieved with the said judgement and order, the instant Government Appeal under Section 378 (3) Cr.P.C. on behalf of the State has been preferred.

16. In order to establish its case, the prosecution has adduced documentary as well as oral evidence and also produced relevant documents, which has been duly exhibited and proved.

17. Learned State Counsel relying upon the prosecution witnesses has submitted that the trial court has failed to appreciate the evidence in its true perspective and acquitted the accused respondent by misinterpretation and mis- appreciation of the evidence available on record. Findings recorded by the trial court in the impugned judgment and order are perverse and against the record warranting interference by this Court.

18. The said submissions were vehemently countered by the learned counsel for the accused respondents, who supported the impugned Judgement and submitted that there is no perversity or illegality in the impugned Judgement and order, as such, the same to be affirmed by this court.

Testimony of the prosecution witnesses:

19. Narendra Singh (P.W.-1) is a formal witness, who on the basis of the written report, has drawn the chik FIR vide Case

Crime No. 329 of 1982 and prepared the corresponding G.D. Entry, which has been proved and marked as Exbt. Ka-1 and Exhibit. Ka-2.

20. Surajpal Singh (P.W.-2) is the first informant and father of the deceased-victim. He, in his testimony, has deposed that deceased Ravindra Kumar was his son, who was killed on 1.12.1982 at about 8:30 p.m. He further stated that he is presently the village Pradhan and prior to him, accused Parag Singh was the Pradhan. Accused Parag Singh had contested the Pradhani Election against him and he won the election. After being defeated in the election, Parag Singh had threatened him that he would not let him remain alive and started bearing political enmity with him. On the day of incident, his son Ravindra Kumar was returning from his field boarding a tractor, however, on the way he was intercepted by Parag Singh, his sons Santosh Kumar and Brij Kishore and one Rakesh Singh, who asked him not to pass through the lane in front of their house, which resulted in verbal-spat between him and his son, who pointed out to them that the said route is a throughfare, and as such, no one can stop him to pass through the said lane and reached his house at about 8.30.p.m. and disclosed him the factum of verbal-spat between him and the accused persons and thereafter started repairing the ball bearing of his tractor, whereupon the accused persons armed with gun and country made pistol reached at the place of incident, where electric bulbs were lit. At

the relevant time Parag Singh was armed with gun while Santosh Kumar, Rakesh Singh and Brij Kishore were armed with country made pistol and he alongwith Rajendra Singh, Harish Chand and Vijaipal were present there sitting on the chabutra in front of his house when the accused persons reached there, Parag Singh exhorted to kill Ravindra Kumar to teach him a lesson for taking out his tractor. Consequent thereto, Santosh Kumar fired a shot upon Ravindra Kumar, which hit him on his left armpit. After receiving the said injury, his son tried to escape and ran towards his house, where he fell down at the doorstep and died. Following him he tried to rescue his son, however, he was also fired upon by Brij Kishore and Rakesh Singh, on the instigation of Parag Singh but he escaped unhurt through the fire hit the walls.

21. During cross examination, the said witness has corroborated the prosecution story in all material particulars. He, in his cross examination, has further stated that all the witnesses, who were present at the time of incident, had reached his house and he was in conversation with them and were sitting on a wooden takhata. The incident has taken place in winter season and in the said winter season, he was sitting in the open chabutara as he had emerged to go out for easing when the witnesses Rajendra Singh, Harish Chandra Singh and Vijaypal Singh reached there and started conversing with him, consequent to which, they sat there.

22. He has further categorically stated that when Ravindra

Kumar came, all the witnesses were present there. He further deposed that when assailants reached there, his son was repairing the ball bearing of his tractor. He further categorically stated that Santosh Singh fired upon his son standing towards north and when the assailants suddenly opened fire and his son tried to escape running towards his house then he came to know about the assailants. He followed his son and he was also fired upon. The place near the tractor, where his son was hit, was shown to the Investigating Officer, however, the Investigating Officer did not find any blood there as negligible blood had fallen there. In between the place near the tractor and doorstep, no trail of blood was found but it was found where his son had fallen and died. He, in his testimony, has categorically stated that at the relevant time and place of incident, electric bulbs were lit. He, in his testimony, has categorically denied that at the relevant time there was no supply of electricity and categorically deposed that the electric light was available at the relevant time. He further denied the factum that the incident has taken place in the dark hours of night and the witnesses were not present, at the relevant time.

23. Rajendra Singh (P.W.-3) is another witness, who entered the witness box as P.W.-3. He, in his examination in-chief, deposed that he knows Ravindra Kumar son of Surajpal Singh, who has been murdered about eight months back. He further stated that at about 8:30 p.m. on the date of incident, he was

sitting at the chabutara of Surajpal Singh, where Harish Chandra, Vijaypal Singh and Surajpal Singh were also present and were in conversation with each other. In the meantime, Ravindra Kumar boarding the tractor reached the said place and parked the tractor and stated that while he was passing through the lane of Parag Singh, he was intercepted and questioned as to why he was taking out the tractor from the said lane, which resulted in verbal-spat between them. Consequently, while Ravindra Kumar was repairing his tractor, Parag Singh, Santosh Kumar, Rakesh and Brij Kishore Singh reached. Parag Singh was armed with gun while others were armed with country made pistol. After reaching there, Parag Singh stated to teach a lesson to them for taking out the tractor from his lane whereupon Santosh fired a shot upon Ravindra Kumar. On being hit by the fire, Ravindra Kumar tried to escape towards his house and fell at his doorstep. As soon as Ravindra Kumar tried to run, Surajpal Singh also followed to rescue him. Meanwhile Parag Singh ordered to kill him also so as to teach him a lesson, whereupon Brij Kishore Singh and Rakesh Singh fired upon Surajpal Singh, however, it missed the target. Surajpal Singh entered in his house and his wife bolted the door. The said witness also stated that the said incident was witnessed by him in electric light and moon light. The assailants, who killed Ravindra Kumar are present in the Court.

24. During cross- examination, the said witness reiterated the

prosecution story. He further stated that at the relevant time, Parag Singh was armed with double barrel gun and on his instruction, Ravindra Kumar was fired upon and at the relevant time, they were sitting on the wooden takhata. He further stated that the entire incident was narrated by him to the Investigating Officer. He further stated that Santosh was fired from a distance of 4-5 paces. He further stated that he had not seen any blood near the tractor but blood was seen by him at the doorstep. He further categorically denied that since he is related to Surajpal Singh, as such, he is falsely deposing.

25. R.P. Pumboo (P.W.-4) is the Medical Officer, who had conducted an autopsy on the person of the deceased and has noted the injuries and the cause of death has been noted to be shock and haemorrhage as a result of ante-mortem injury. He further stated that the death of the deceased could have been caused on 1.12.1982 at 8:30 p.m. and the injuries suffered by him may be caused when a person may be repairing the tractor by a single shot and it is quite possible that after receiving the injury, the deceased fell down covering the distance of 17-18 paces.

26. Biriraj Singh Bhadauriya (P.W.-5) is the Investigating Officer of the instant case. He further stated that he had recorded the statement of Surajpal Singh at the police station and that of Head Moharrir Narendra Singh and thereafter reached the place of incident and recorded the statement of other witnesses. After

conducting the inquest, he prepared the relevant documents and thereafter sent the dead body for autopsy. The place of incident was inspected by him and its site-plan was prepared and thereafter the relevant recoveries were made and its fard recovery was prepared and after concluding the investigation has submitted the charge sheet.

27. During cross examination the said witness stated that he reached the place of incident at 12 p.m., however, prepared the inquest report on the next morning. On being questioned about the lighting of bulb at the place of incident, he has categorically stated that he made the mention of the same in the case diary and in the site-plan. At point 1- PB and 1-B, the presence of light has been shown. On specific question being put to him regarding source of light at point 1-PB and 1-B, he has categorically stated that lighting of the bulb has been pointed out to him.

To quote:- “प्रश्न- मौके पर आपने कहीं बल्ब लगे होने का जिक्र केस डायरी में या नक्शा नजरी में किया अथवा नहीं?

उत्तर- किया है।

प्रश्न- किस जगह किया और क्या?

उत्तर- मौका मुआइना में 1/पी/बी, 1-बी खसरा में बल्बों का इंदराज है तथा केस डायरी में भी यही लिखा है।

प्रश्न- 1/पी/बी, व 1-बी पर बल्बों का जलना आपको बताया गया था?

उत्तर- जी हाँ। “ however, he stated that in the site-plan, there is no mention of wooden takhata being present at the place of incident.

28. He further stated that in the sahan, he had recovered two pellets but had not noted the pellets mark on the wall. He has further pointed out that except at the doorstep, he had not found any blood. He has further stated that regarding the supply of electricity, he has not recorded the statement of any of the employee of the Electricity Department, however, Officer of the Electricity Department has given him in writing that at the relevant time, there was supply of electricity.

To quote:- “जमानत की दस्खस्त में बिजली घटनास्थल पर न होने की बाबत जो लिख गया, वह उस वक्त मेरी जानकारी में आगई थी। मैं बिजली के संबंध में किसी बिजली विभाग के कर्मचारी का बयान नहीं लिखा। लेकिन बिजली अधिकारी ने लिखकर दिया था कि बिजली जल रही थी।”

29. C.G. Shiv Charan Lal (P.W.-6) is the constable, who stated that from 15.8.1982 to 10.9.1983 he remained posted at the police station- Bewar and had taken the mall-mukadma for chemical examination.

30. Sone Lal (C.W.-1) is the Head Master, Primary School, Janaura, who had proved the absence of accused respondent Brij Kishore Singh, who was a teacher, which has been proved and marked as Exbt. C-1.

31. After recording the said testimony, the statement of the accused persons under Section 313 Cr.P.C. has been recorded, in which, surviving accused respondent Santosh Kumar has categorically denied the incident and stated that he has been falsely implicated.

32. The statement of defence witnesses has thereafter been

recorded. Sone Lal, Head Master, Primary School, Janaura has been examined as D.W.-1, who has proved the presence of Brij Kishore on 2.12.1982 in the school from 9.30 a.m. to 1 p.m. and further stated that 1.12.1982 the day of incident was a holiday.

33. Girish Chandra Sharma (D.W.-2) is the Sub-Station Operator and Swami Dayal (D.W.-3) is the Lineman, who have produced the relevant documents regarding the supply of electricity.

34. Harish Chandra Vashist (D.W.-4) is the Junior Engineer, Ghaziabad, who has produced the relevant document in respect of the factum of supply of electricity at the relevant date and time.

35. Babu Ram Verma (D.W.-5) is the Routine Grade Clark, who has produced the relevant documents regarding supply of electricity.

36. Mohkam Singh (D.W.-6) is the Junior Engineer, employee of Electricity Department, whereas Arun Kumar Agarwal (D.W.-7) is the Junior Engineer posted at P.S. Bewar, District- Mainpuri, who had deposed about the supply of electricity in the village whereas Rameshwar Singh (D.W.-8) is the constable, who has proved the chik report, which has been marked as Exbt. Kha-4.

37. On the basis of aforesaid evidence adduced during the course of trial, the trial court has recorded the finding of acquittal against all the accused-respondents by giving them benefit of doubt, against which, the instant Government Appeal has been

preferred.

38. Before examining the validity of the judgment in question, it would be apt to discuss the legal position in respect of an appeal under Section 378(3) Cr.P.C.

Legal Position

39. Before pondering into the niceties of the judgment of acquittal under challenge in the proceedings under Section 378(3) Cr.P.C. at the instance of the State, this Court has to re-memoirise itself the fact that the present proceedings are in a form of appellate jurisdiction occasioning scrutiny of a judgment of acquittal wherein there are certain limitations provided therein which needs to be recognised before delving in the issue.

40. Broadly speaking until and unless the judgment under challenge is perverse and there are substantial and compelling reasons followed by miscarriage of justice to be meted by the parties, this Court should not in routine manner interfere with the judgment of acquittal as the accused is possessed with double presumption of innocence.

41. To put it otherwise as a matter of right, this Court cannot at the instance of the appellant, who happens to be State exercise the jurisdiction while converting the judgment of acquittal into conviction.

42. The aforesaid principle of law has already been crystallized by Hon'ble Apex Court in plethora of decisions and just for the sake of illustration reference may be made to the judgment of Rajesh Prasad Vs. State of Bihar (2022) 3 SCC (471) wherein the Hon'ble Apex Court wherein the following was observed.-

“21. Before proceeding further, it would be useful to review the

approach to be adopted while deciding an appeal against acquittal by the trial court as well as by the High Court. Section 378 CrPC deals with appeals in case of acquittal. In one of the earliest cases on the powers of the High Court in dealing with an appeal against an order of acquittal the Judicial Committee of the Privy Council in Sheo Swarup v. King Emperor² considered the provisions relating to the power of an appellate court in dealing with an appeal against an order of a acquittal and observed as under: (SCC OnLine PC)

"16. It cannot, however, be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

"..... 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. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

It was stated that the appellate court has full powers to review and to reverse the acquittal.

22. *In Atley v. State of U.P.*³, the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in *Sanwat Singh v. State of Rajasthant*: (*Sanwat Singh case 4, AIR pp. 719-20, para 9*)

"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup² afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

The need for the aforesaid observations arose on account of observations of the majority in Aher Raja Khima v. State of Saurashtra⁵ which stated that for the High Court to take a different view on the evidence "there must also be substantial and compelling reasons for holding that the trial court was wrong".

23. M.G. Agarwal v. State of Maharashtra is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as his Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial".

24. In Shivaji Sahabrao Bobade v. State of Maharashtra, Krishna Iyer, J., observed as follows: (SCC p. 799, para 6).

"6. ... In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

25. This Court in Ramesh Babulal Doshi v. State of Gujarats, spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows: (SCC p. 229, para 7)

"7. ... While sitting in judgment over an acquittal the

appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can and then only reappraise the evidence to arrive at its own conclusions."

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of the guilty or a conviction of an innocent person.

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] d 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. [Arunachalam v. P.S.R. Sadhanantham]. 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."

43. Recently, the Hon'ble Supreme Court in **Babu Sahebagouda Rudragoudar and others Vs. State of Karnataka 2024 (8) SCC 129** the Apex Court had flagged a note of caution in the matters of exercise of appellate jurisdiction when the Appellate Court is confronted with an order of acquittal, the following was observed:-

"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 Vs. State of Bihar 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, 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 power to review, reappreciate 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 read 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 Vs. State of Karnataka* this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C. as follows: (SCC p. 584, para 8)

“8. ... 8.1. The acquittal of the accused further strengthen the presumption of innocence;

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

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising 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.”

44. Bearing in mind the principles of law so laid down by the Hon’ble Apex Court as referred to above, the present case is to be proceeded with while giving it a logical end.

45. Having carefully gone through the impugned judgment and order, we find that the trial court in the backdrop of the evidence and material brought on record, has held that the prosecution has failed to prove the guilt of the accused persons for the offences charged with and by extending benefit of doubt to the accused-respondents, has acquitted the accused-respondents of all the charges framed against them.

46. Now, when we recapitulate the evidence recorded during the course of trial, we find that the trial court has not analysed the evidence in a judicious manner and by recording reasons based on surmises and conjectures has illegally acquitted the accused-respondents. Analysing the reasons recorded by the trial court for acquitting the accused-respondents, we are of the opinion that the said findings cannot be sustained and are liable to be reversed in the backdrop of the evidence adduced during the course of trial.

47. When we go through the testimony of the eye witnesses of the incident, particularly the testimony of P.W.-2 and P.W.-3, whose presence at the time of incident is quite natural, we find that except minor contradictions in their statements, which do not go to the root of the case, they have supported the prosecution story in all material particulars.

48. Going through their testimony adduced during the course of trial, we find that the incident in question has occurred in the backdrop of the fact that there has been an election rivalry

between the accused Parag Singh and Surajpal Singh, the first informant of the case. It is evident from the prosecution story that Parag Singh have been the elected Pradhan of the village for the last 26 years, however, in the recent election, he was defeated by the first informant Surajpal Singh and he was declared elected, consequent to which, accused Parag Singh started bearing animosity against him and on the date of incident when his son Ravindra Kumar was passing through the way lying in front of the house of Parag Singh, his tractor was intercepted by Parag Singh and his son Santosh Kumar and he was asked as to why he was taking away his tractor from the said route, which lies in front of their house and this incident resulted in verbal-spat between the parties, consequent to which, Parag Singh asked the other accused-respondents Santosh Kumar, Brij Kishore and Rakesh Singh to bring their fire-arms and to eliminate Ravindra Kumar and consequent to the said evil intention they visited the house of the victim, where Surajpal Singh was sitting alongwith the other witnesses and was in conversation with them. Reaching the said place Parag Singh exhorted to kill Ravindra Kumar son of the deceased to teach him a lesson for taking out his tractor from the lane lying in front of their house, consequent to which, Santosh Kumar opened fire upon him causing his instantaneous death.

49. The prosecution story further states that when first informant Surajpal Singh raised alarm then Parag Singh further

exhorted to eliminate him also, consequent to which, assailants Brij Kishore and Rakesh Singh opened fire from their respective country made pistol, however, he escaped unhurt and ran towards his house. The said incident has taken place at the house of Surajpal Singh and being his house, his presence at the time of incident is quite natural.

50. Furthermore, in his evidence, he has categorically stated that at the time of incident he was going to ease when the other witnesses P.W.-3 Rajendra Singh and Harish Chandra Singh and Vijaypal Singh were in conversation with him. To corroborate the prosecution story, the testimony of Rajendra Singh has also been recorded as P.W.-3, who in his testimony has also completely corroborated the prosecution story in all material particulars and prosecution has not been able to point out any material contradiction in his statement, which goes to the root of the case, however, the trial court by misinterpreting and misreading their testimony has illegally held them to be unreliable witnesses though they have corroborated the prosecution story in all material particulars. Thus, in our opinion, the said finding recorded by the trial court that their testimony cannot be relied upon is wholly illegal and perverse and against the material on record and is liable to be reversed.

51. Furthermore, when we go through the testimony of P.W.-3 Rajendra Singh, we find him also to be a reliable witnesses, whose presence at the time of incident is quite natural and that

he in all material particulars have corroborated the prosecution story and, therefore, his testimony can also not be brushed aside by holding him to be related and chance witness. The contradictory finding recorded by the trial court in this respect is against the material on record and therefore, cannot be sustained in the eyes of law.

52. Now, coming to the findings of the trial court regarding the source of light at the time of incident, is also not based on correct appreciation of evidence. Right from the beginning, the source of light in the form of electricity bulb has been clearly mentioned in the F.I.R. Even in the testimony of P.W.-2- Surajpal Singh and P.W.-3- Rajendra Singh, the factum of lighting of bulb is clearly and categorically mentioned. Even the Investigating Officer in his testimony has categorically stated that he has mentioned the factum of source of light in the case diary.

53. Even while preparing the site plan, the Investigating Officer has pointed out the source of light in the form of bulb at point 1-PB and 1-B, which is evident from the site-plan itself. He, in his testimony, regarding the source of light has categorically stated though he has not recorded the statement of any employee of the Electricity Department regarding source of light but the Officers of the Electricity Department has given him in writing that at the time of supply, the source of light was available. To quote :-

“मैंने बिजली के संबंध में किसी बिजली विभाग के कर्मचारी का बयान नहीं लिखा। लेकिन बिजली अधिकारी ने लिखकर दिया था कि बिजली जल रही थी।”

The factum of source of light being present at the place of incident has been categorically stated by the two witnesses P.W.-2 and P.W.-3 also, which also has not been seriously challenged by the defence.

54. It is further germane to point out here that when we go through the testimony of defence witness, who belongs to Electricity Department, we find that none of the said witnesses has stated that at the relevant time, there was no supply of electricity.

55. Thus, the factum of source of light at the time of incident has been clinchingly established by the prosecution, however, the trial court ignoring the said evidence has illegally held that there was no definite supply of electricity at the time of incident, which makes the prosecution story doubtful is also incorrect. Thus, we hold that the said finding recorded by the trial court is against the material on record and is also liable to be reversed.

56. So far as the finding of the trial court regarding the fact that no blood was found at the place, where the victim Ravindra Kumar was shot at but was found only at the doorstep where the deceased fell down and died, is concerned, we find that the trial court has not considered, even this aspect of the matter in right perspective and recorded an erroneous finding.

57. The trial court in this regard has held that some blood would have certainly fallen down on the place of occurrence where the victim deceased Rajendra was hit but the Investigating Officer did not find any blood near the tractor (alleged place of occurrence), however, when we go through the evidence particularly the site-plan prepared by the Investigating Officer, we find that the victim-deceased is said to have been fired upon at point 'A' while he was repairing the tractor and on being hit by firearm, he ran towards his house, however, fell down at the doorstep and died. The Investigating Officer though have noted the blood at point 'B' where the deceased fell down and died but no blood was noted by him at point 'A' where the victim had received gun shot injury. In our view the said circumstance does not in any way effects the otherwise reliable prosecution story. The Investigating Officer on his own observation has noted the blood at point 'B', where the victim fell down and died and may have not noted the blood at point 'A' , where he was shot at, however, this discrepancy being of trivial nature in any case do not make the prosecution story doubtful.

58. It is well settled principle of law that lapse in investigation by the Investigating Officer cannot be a valid ground for acquitting the accused persons if otherwise the prosecution story inspires confidence as in the present case.

59. Furthermore, P.W.-1 Surajpal Singh, in his testimony, has clearly stated that he had shown the place where the fire hit his

son to the Investigating Officer but he did not note the blood fallen there as only a negligible amount of blood had fallen there. Thus, in the said backdrop also the finding of the trial court recorded in this respect is not sustainable in the eyes of law and liable to be reversed.

60. Another reason pointed out by the trial court for acquitting the accused is the fact that there was no adequate source of light at the place of incident, consequent to which, the first informant and the witnesses have not noted the accused-persons entering the varandha and had noted their presence only when the accused-persons had fired upon the deceased as stated by the witnesses, and as such in view thereof, also the prosecution story is rendered doubtful.

61. In this regard, it is pointed out that as per the prosecution own case, at the time of incident, the first informant as well as other witnesses were present in the varandha outside their house and were conversing when the deceased riding a tractor had reached there and informed the first informant about illegal act and conduct of the accused persons, who had intercepted his tractor asking him not to pass through the said lane lying in front of their house. The first informant, who is father of the deceased, on being apprised of the said fact, asked his son to avoid the accused persons as they are dangerous persons and not to ply his tractor through the said lane, however, in the meantime when the victim-deceased Ravindra Kumar started repairing his tractor,

the assailants, who were four in number armed with deadly weapons like gun and country made pistols with a common intention to kill the deceased reached at the place of incident and in furtherance of their common intention Parag Singh exhorted to kill Ravindra Kumar so as to teach him a lesson for taking out the tractor from the lane lying in front of their house, consequent to which, accused-respondent Santosh Kumar fired upon the deceased causing his instantaneous death.

62. Admittedly, even as per the prosecution own case, the said incident has taken place in a sudden manner and the witnesses as well as the first informant had not even imagined that the assailants, on such trivial matter, would enter his house and in a high handed manner cause the death of his son and, as such, could not note the assailants while entering his house but when they reached there and on exhortation opened fire, they were specifically noted by the witnesses as well as first informant as narrated in the first information report as well as in their testimony recorded during the course of trial, therefore, in our opinion this circumstance also does not in any manner taints the prosecution story for extending benefit of doubt to the accused assailants as recorded by the trial court, which finding also is palpably unsustainable and is liable to be reversed.

63. Another finding recorded by the trial court to doubt the prosecution story is that as per the prosecution story, the first informant Surajpal Singh had seen the accused Santosh Kumar

firing upon the deceased, which hit his son, who thereafter in order to rescue himself ran towards his house but fell down at the doorstep and died. The assailants Brij Kishore and Rakesh Singh thereafter are also said to have fired upon the first informant Surajpal by their respective country made pistol on the instigation of accused Parag Singh, however he escaped unhurt and entered in his house and the doors were bolted by his wife, however, the said factum also does not in any way effect the otherwise reliable prosecution story, though in view of the said aspect, the trial court further doubts the veracity of the prosecution story and states that had the first informant being present at the scene of incident at the relevant time and fired upon, then he could not have escaped unhurt.

64. In the backdrop of the facts and circumstances of the case, non receiving of any injury on the person of the first informant Surajpal Singh will not have any adverse effect on the veracity of the prosecution story and rule out possibility of his presence at the time of incident, which is otherwise clearly established from his testimony as narrated by him in the first information report as well as by means of the evidence adduced during the course of trial. The contrary finding recorded by the trial court in this regard is also unsustainable and cannot be a good ground to extend the benefit of doubt to the accused assailants.

65. Another finding recorded by the trial court to the extent

“had all the accused-persons made attack at the house of complainant, they would not have gone back without completing murder of the complainant, who was being considered an obstacle in their way for getting the office of Pradhan” also in our opinion does not stand to reason at all. Infact the said finding of the trial court is based on surmises and conjectures and thus cannot be sustained in the eyes of law particularly in view of the fact that from the entire evidence adduced during the course of trial, it is evident that just before the incident of committing the murder of Ravindra Kumar, there has been a verbal-spat between the accused-assailants and the victim Ravindra Kumar over taking out his tractor from the lane in front of their house. Consequent thereto the assailants with a common intention to teach him a lesson joined together armed with firearms and reached the house of the complainant and Parag Singh the erstwhile Pradhan, exhorted to kill Ravindra Kumar so as to teach him a lesson for taking out his tractor from the lane lying in front of their house and on his exhortation, Santosh Kumar opened fire upon the deceased Ravindra Kumar and killed him instantaneously. Further when an attempt was made by the Surajpal to raise alarm and rescue his son, he was also shot at by Brij Kishore and Rakesh Singh, however, he miraculously escaped unhurt.

66. Thus, from the said sequence of events, it is evident that the assailants at the relevant time had reached at the house of

the first informant in furtherance of their common intention to kill Ravindra Kumar in order to teach him a lesson for taking out the tractor from the lane lying in front of his house resulting in a verbal spat, and on reaching there they attained their immediate goal by killing Ravindra Kumar and, therefore, it cannot be said that since Surajpal Singh has not been done to death, who was their main target on account of political rivalry, the entire prosecution story would become doubtful.

67. It is further germane to point out here that at the relevant time when the incident had taken place, infact Ravindra Kumar was their main target as just before the incident there has been a verbal spat between them over taking away the tractor from the lane in front of their house. Thus, in our opinion, the said finding too recorded by the trial court is completely based on surmises and conjectures and, therefore, cannot be sustained in the eyes of law and is liable to be reversed.

68. Another reason recorded by the trial court to doubt the prosecution story and acquit the accused-respondents is that the presence of witnesses at the place of incident is doubtful in view of the fact that the date and time on which the incident has taken place is in the month of December at about 8:30 P.M. in the late evening and no one is expected to sit in the open varandha in such cold weather and, therefore, the presence of witnesses is doubtful, however, when we analyse the evidence in this respect, we find that P.W.-1, in his testimony, has clearly stated that

“मेरा मकान पक्का है और दुमंजिला है। घटना के वक्त जो उपरोक्त गवाहान मेरे पास मौजूद थे वह अकस्मात आए हुए थे। कुछ बातचीत हमलोग कर रहे थे मगर किस विषय की बातचीत थी, यह ध्यान नहीं है। काफी सर्दी के दिन थे। हम लोग तख्त पर बैठे हुए थे। सर्दी की शाम में खुले चबूतरे पर बैठने की वजह यह थी कि मैं टट्टी जाने को निकला था तो वे गवाहान राजेन्द्र सिंह, विजयपाल सिंह, व हरिश्चन्द्र सिंह अकस्मात आ गए थे कुछ बातचीत करने के लिए और फिर हम लोग बैठ गए थे बातचीत करने के लिए। गाँव के नाते से। क्योंकि थोड़ी देर ही बैठना था इसलिए बाहर ही बैठ गए थे। दो चार घंटे थोड़े ही बैठना था।”

69. Thus, from the aforesaid testimony of the P.W.-1, the presence of the first informant as well as his witnesses at the odd hours of the night has been clinchingly explained by the first informant, which appears to be quite natural and, therefore, the contrary finding recorded by the trial court in this regard that the presence of witnesses in the month of December at the place of incident is doubtful, does not stand to reason and is accordingly reversed.

70. The trial court further In its judgment has also held that the possibility of the instant case being one of “hit and run” done by others can also not be ruled out as suggested by the defence. In our view even the said finding recorded by the trial court is also bad in law. From the entire evidence adduced by the prosecution during the course of trial, it is quite evident that the incident has taken place in furtherance of a common intention of the assailants, who in the given facts and circumstances of the case with an intention to settle the personal score had reached the victim's house and committed the cold blooded murder of the deceased Ravindra Kumar son of the first informant and in our

opinion there is nothing on record to show that the instant case is one of “hit and run” as observed by the trial court in its judgment, which finding is also perverse and illegal and therefore, is liable to be set aside.

71. Thus, in the backdrop of the aforesaid circumstance when we go through the entire evidence and on analysing the same, we find that the prosecution has reasonably proved its case beyond all reasonable doubt against the surviving accused-respondent Santosh Kumar, however, the trial court by misinterpreting and mis-appreciating the evidence on record has illegally recorded the finding of acquittal against the accused-respondent, which in our view cannot be sustained in the eyes of law and is liable to be reversed by allowing the appeal.

72. In view of the aforesaid facts and circumstances, we are of the opinion that the judgment and order passed by the trial court acquitting the appellant is wholly perverse, illegal and bad in law, as such, cannot be sustained and is liable to be reversed by allowing the instant Government Appeal.

73. Consequently, the instant Government Appeal is allowed. The impugned judgment and order recording the acquittal of surviving accused-assailant Santosh Kumar is set aside. He is held guilty for the offence under Section 302 read with Section 34 IPC and awarded the sentence of life imprisonment and fine of Rs. 25,000/-. In default of payment of fine to further undergo six months rigorous imprisonment. Surviving accused-

respondent Santosh Kumar is directed to surrender before the trial court within three weeks from the date of this judgment to serve out the sentence as awarded by this Court.

74. Let a certified copy of this judgment and order be sent to the Court concerned alongwith trial court record for information and necessary compliance.

Order Date :- 10.4.2025
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