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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 151/2013**

% *Judgment dated 28th January, 2016*

PAWAN KUMAR Appellant

Through : Mr. Shishir Mathur, Advocate.

versus

VIKAS RANA & ORS. Respondents

Through : Mr. Javed Hashmi and Mr. Aman Khan,
Advocates for respondents no.1 to 6.

Ms. Aashaa Tiwari, APP for the State
with SI Madan Meena,
P.S. Kapashera.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. The present appeal has been filed by the victim under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 20.11.2012.
2. Learned counsel appearing on behalf of the appellant submits that the judgment passed by the Trial Court is liable to be set aside as the same is decided in a pre-determined manner causing grave injustice and irreparable damage to the appellant.
3. Counsel contends that the Trial Court has failed to take into account the testimonies of the witnesses who are highly reliable including the testimony of the victim who has suffered grievous injuries.
4. It is also the case of the appellant that the incident was reported to the police without undue delay while the Trial Court has laid great stress on the fact that the victim did not make a statement to the police at earliest opportunity. Counsel contends that the victim PW-1 in his testimony has

given cogent reasons for the delay and he has explained that he was suffering from acute pain which explanation is logical and cogent and explains why he did not make a statement to the police soon after the incident.

5. It is also contended by Mr. Mathur that merely because the FIR was not registered by the police soon after the incident by itself cannot be the ground for acquitting the six respondents.
6. Counsel submits that in addition to the victim, PW-2 the brother of the victim and PW-3 the father of the victim were also eye witnesses who have testified truthfully and explained that on account of quarrel the respondents had with the help of a dangerous weapon caused injuries to the appellant. Counsel also submits that the eye witnesses had carried the deceased to the hospital. The history of the patient has been recorded in the MLCs prepared at Columbia Asia Hospital on 28.10.2009 and at Safdarjung Hospital on 01.11.2009.
7. It is also submitted that '*Kassi*' was recovered from the house of Vikas from behind the grinder which also points towards the guilt of the respondents.
8. Learned counsel appearing on behalf of respondents no.1 to 6 submits that the Trial Court has examined the testimonies of various witnesses and passed an order of acquittal. Counsel further submits that the counsel for the appellant has failed to point out substantial, compelling or sufficient grounds for this Court to disturb the finding of acquittal recorded by the Trial Court. Counsel contends that the respondents having been acquitted, the presumption of their innocence is further reinforced and strengthened by the Trial Court and in the appeal no interference is called for. Counsel submits that there is no explanation as to why the victim did not give a statement to the police despite being fit for making a statement. Counsel

contends there is also no reasonable explanation for the delay in registration of the FIR. Counsel submits that the testimony of PW-4 would show that the father and brother of the victim, who claimed to be eye witness but were not present at that place of the incident. The Trial Court has also taken into account the fact that the weapon of offence was neither sent to FSL for examination and was produced in court in an unsealed condition and moreover the injuries as per the MLC of Safdarjung Hospital were dangerous and could not have been caused by a 'Kassi' which is not as sharp as a knife or a sword. It is also contended that PW-4 is an independent witness and according to him he alone had removed the injured to the hospital in his car which would clearly establish that PW-2 and PW-3 are only planted witnesses.

9. We have heard the learned counsel for the parties.
10. Before the rival submissions can be considered, we deem it appropriate to notice the case of the prosecution as set up :

“ As per the prosecution case, an information was received in P. S. Kapashera on 28.10.2009 at 10.35 p.m. from the Control Room that a quarrel is taking place between two groups near Seema Hospital, Palam Vihar Road, Village Bijwasan. The information was recorded as DD No.37A and it was entrusted to ASI Surat Singh for suitable action. ASI Surat Singh alongwith Const. Dhan Singh reached the spot where they did not find any quarrel. They, however, came to know that a quarrel had taken place between two groups wherein a person suffered injuries, who has been taken to some unknown hospital by his family members. They neither found any eye witness at the spot nor could get the names and particulars of the assailants. Hence the DD was kept pending.

Prosecution further alleges that on 29.10.2009 it came to be known that injured Pawan S/o Sh. Daryao Singh is undergoing treatment at Columbia Asia Hospital, Palam Vihar, Gurgaon. Accordingly, ASI Surat Singh reached the hospital where he found Pawan admitted vide MLC No. 161 dated 28.10.2009. The doctor declared the injured fir for

statement but he did not make any statement despite repeatedly asked to do so by ASI Surat Singh. ON 30.10.2009, ASI Surat Singh again came to the hospital and this time, injured gave his statement wherein he stated that accused Vikas, on the exhortation of accused Mukesh, attacked him with a 'Kassi' on his head which hit him on the neck whereas accused Kuldip, Mahesh and Tita had caught hold of him and beaten him by fists and kicks. He further stated that his brother, his father and his friend Sanjay got him admitted in Columbia Asia Hospital. Since by that time, the nature of injuries had not been mentioned in the MLC, the matter was kept pending. It is further alleged that on 31.10.2009, the doctor noted on the MLC as "sharp injury" after cutting the words "blunt injury" mentioned initially on the same. In view of the said cutting/overwriting and on the directions of the SHO, the injured was got examined in Safdarjung Hosptial on 01.11.2009 vide MLC No. 240883 where the doctor opined that injuries to be grievous in nature. On the basis of the said opinion of the doctor, FIR was registered U/s 326/34 IPC and the investigation was started by ASI Surat Singh himself. He recorded the statements of witnesses U/s 161 Cr.PC and also prepared the site plan of the place of incident. Accused Vikas Rana came to be arrested on 05.11.2009. He is stated to have made a disclosure statement and also got recovered the 'Kassi' used in the commission of offence. Other five accused had obtained the anticipatory bail and accordingly were formally arrested."

11. In this case the Trial Court has acquitted the respondents primarily on the following grounds :
- (i) Despite the victim being declared fit for making a statement, he did not make a statement between 28.10.2009 up to 30.10.2009.
 - (ii) The FIR was registered only on 01.11.2009.
 - (iii) PW-4 being an independent witness has testified that he alone removed the injured to the hospital.
 - (iv) The weapon of offence was not shown to the doctor neither the same was sent to the FSL for examination to ascertain whether

there was blood on the 'Kassi' and if yes did it match with the blood of the injured.

12. The Trial Court also acquitted the respondents as the injured has suffered a 3" deep sharp injury on his neck which was termed as dangerous by the second MLC of Safdarjung Hospital whereas the 'Kassi' is a spade like instrument used for digging purpose. Its edge is not so sharp as to cause a 3" deep injury.
13. Before the rival submissions of learned counsel for the parties can be considered, three dates in this case are very relevant. The first date is the date of the incident, *i.e.*, 28.10.2009. Information was received at Police Station Kapashera at 10:35 p.m. The second important date is 30.10.2009 when the statement of the injured was recorded in the hospital and the third date is 01.11.2009 when the FIR was registered.
14. PW-1 has deposed that after sustaining injuries, he became unconscious. He regained consciousness only on 29.10.2009. The explanation rendered by the victim for not making a statement in his testimony is that he was not in position to make a statement. He has testified "*I regained my consciousness in the morning of 29.10.2009 and found myself in Asia Columbia Hospital, Palam Vihar, Gurgaon. Police had come to record my statement but I was not in position to give my statement. My statements was thereafter recorded on 30.10.2009*".
15. PW-11, the IO has testified, *inter alia*, as under:

“On 29.10.2009, information was received in the Police Station that the injured in the incident has been admitted in Columbia Hospital, Palam Vihar, Gurgaon. On receipt of the said information, I alongwith Constable Dhan Singh reached Columbia Hospital and found injured Pawan Kumar s/o Daryao Singh admitted there vide MLC No.161/11. On my oral request, the doctor declared the injured fit for statement vide an endorsement made on the MLC in this regard. On my repeated asking, the injured did not make any statement. Since the MLC

was incomplete, I left the same in the hospital and returned to the police station.

On 30.10.2009, I again went to the Columbia Hospital and found that the MLC was still incomplete. On that day, injured Pawan gave a statement, which I recorded and which is already Ex.PW1/A bearing my signatures at point B. I kept the case pending as the MLC was still incomplete.

I again visited the hospital on 31.10.2009. Injured had already been discharged from the hospital. The MLC was complete on that day and I found some cutting against the column “nature of injuries” in the same. I apprise the SHO about the said situation. SHO instructed me to get the injured medically examined in a Govt. Hospital. On the same day, injured Pawan Kumar had come to the Police Station for getting the FIR registered. I asked him to come again on the next day, i.e. 1.11.2009 for fresh medical examination.”

(underlines added)

16. It would also be relevant to notice the cross-examination of this witness as under:

“Injured Pawan was admitted at the first floor of the hospital. It is correct that endorsement at point X was made by the doctor on the MLC Ex.PW8/A in my presence at 3.15 am. He had made this endorsement after examining the patient Pawan. The relatives of injured Pawan including his father Daryao Singh, brother Raj Kumar and uncle etc. were present in the hospital at that time. About 10 to 12 persons were present there including the aforesaid relatives of Pawan. These persons also refused to make any statement. Injured Pawan even did not mention the name of any assailant. At that time the column “name of injuries” was blank in the MLC. This column was blank when I visited the hospital second time on 30.10.2009.

(underlines added)

.....

At the time of recovery of *Kassi* from the house of accused Vikas, his wife and his mother were present in the house. I did not seal the *Kassi* before taking it into the possession. No blood stains were found on the *Kassi*. For that reason, I did not send the same to FSL.

On 29.10.2009 I stayed in Columbia Hospital for about two to three hours. I had made inquiries about the incident from the

relatives of Pawan present in the hospital at that time i.e. his father, brother and uncle but they also refused to make any statement.”

(underlines added)

17. The Trial Court has closely examined the testimony of PW-1, the victim and PW-11, the IO in this case. Having regard to the testimony of PW-11, it is clear that the victim was declared fit for making a statement by the concerned doctor on 29.10.2009 at 3:15 a.m. (Endorsement on the MLC Ex.PW8/A). The testimony of the IO would show that he was present in the hospital, but the victim had refused to record his statement. Cross-examination of PW-11 would also reveal that the relatives of the injured including his father Daryao Singh, brother Raj Kumar and uncle were present in the hospital at that time, but these persons also refused to make any statement. The injured Pawan did not mention the name of any assailant at the time of filling the MLC. The MLC would also show that PW-1 was conscious and oriented when brought to the hospital, but was bleeding and his wound was stitched. PW-1, injured, in his testimony has deposed that he was not in a position to give his statement. This statement of PW-1, in our view, seems to be an extremely guarded statement for the statement does not clarify or shed any light as to why he was not in a position to give the statement although he admitted that he was repeatedly asked to give statement but he did not do so. It is only in cross-examination did the witness say that he was not in a position to give statement on account of intense pain.
18. We find the conduct of PW-1, the victim, as also his close family members being father and brother to be highly unusual. Even if it is assumed that the victim was in great pain, the doctor was not cross-examined nor any suggestion was made that a wrong endorsement was made on the MLC to show that he was fit to make a statement. We also find the conduct of the

victim to be unusual in not disclosing the names of his assailants as in case he was in acute pain, he would certainly want the person who attacked and gave the pain to be arrested. The Trial Court, in our view, hence has drawn a correct conclusion that despite being fit to give a statement on 29.10.2009, the victim deliberately ignored to make a statement. There is no explanation as to why the close relatives of the victim did not make a statement despite claiming themselves to be eye witness.

19. It may also be noted here that as per the deposition of PW-2 and PW-3, the brother and father respectively of PW-1, they alongwith one Sanjay (PW-4) had taken PW-1 to Asia Columbia Hospital. PW-2 has deposed that he remained in the hospital till the discharge of PW-1 on 30.10.2009. According to PW-3, he was present in the hospital when police reached there at 3:00 a.m. on 29.10.2009. He further deposed that police was present in the hospital when Pawan regained consciousness. According to prosecution, PW-2 and PW-3 were eye witnesses to the incident. Therefore, it is not understandable as to why they did not get their statements recorded by police in the hospital, if it is assumed that PW-1 was not in a position to make a statement. They have deliberately remained silent, did not disclose the incident to police and did not reveal the names of the assailants to the police at the earliest possible opportunity. It is apparent, no effort has been made by them to offer their statements to the police throughout the day on 29.10.2009. They just waited till 30.10.2009 when the statement of PW-1 was recorded. Their conduct appears to be utterly unnatural and smacks of malafides. More intriguingly, they had even not disclosed the names of the assailants to the doctor at the hospital which is manifest for the MLC Ex.PW8/A.
20. Having regard to the conduct of PW-1, PW-2 and PW-3 and taking into consideration that neither of the three informed the names of the assailants

when the victim was admitted to the hospital after the victim was declared fit to make a statement on 29.10.2009 at 3:15 a.m. till the time the FIR was registered their conduct smacks of *mala fide*.

21. PW-2 is Raj Kumar Rana, the brother of PW-1. He has deposed that on 28.10.2009 at about 10/10.15 p.m., he had gone out of his house for a stroll after dinner, when all the six accused, whom he knew by their names as well as their faces even before the incident, came to him and started abusing him. On hearing the noise, his younger brother Pawan Kumar came to the spot and tried to prevail upon the accused. However, the accused did not pacify him and accused Kuldeep, Mahesh and Tita caught hold of his brother and started beating him by blows and kicks. In the meanwhile, accused Devender brought a *Kassi* and gave it to accused Vikas. Accused Mukesh exhorted Vikas to hit Pawan on the head with the *Kassi* and to kill him. Accused Vikas hit Pawan on his head with the *Kassi*, but the *Kassi* landed on the neck of Pawan, who fell unconscious on the road. Thereafter, his friend Sanjay brought his car and he alongwith Sanjay and his father took Pawan to Columbia Asia Hospital, Palam Vihar, New Delhi. He identified *Kassi* Ex.P1 when shown to him. In the cross examination, the witness stated that Pawan was bleeding at that time when he took him to hospital. They had seated him on the rear seat of the car and he also sat alongwith Pawan on the rear seat. He had held the bleeding head of Pawan on his head and had also got some blood stains on his clothes. He did not handover those clothes to the police as he was not asked to do so. He did not recollect whether blood had fallen on the seat of the car also. According to him, they had reached the hospital in five or seven minutes after the incident and he stayed in the hospital alongwith his father for the whole night as well as for the whole day on 29.10.2009. His father used to come and go from the hospital. He remained in the hospital alongwith Pawan till

Pawan was discharged on 30.10.2009. He deposed that his statement and that of his father were recorded by the police at their residence in the evening of 01.11.2009. He was confronted with his statement under Section 161 Cr.P.C. wherein he had not mentioned that accused Mukesh exhorted Vikas to kill Pawan. He denied the suggestion that his brother Pawan is involved in about a dozen criminal cases and is a bad character of the area. He further admitted that Pawan was involved in a petty criminal cases about 15 to 20 years back.

22. Sh. Daryao Singh, father of PW-1, has been examined as PW-3. He has deposed in his examination in chief that on 28.10.2009 at about 10:15 p.m. when he was taking rest in his house, he heard some noise outside. He went out of his house and found that accused Kuldeep, Virender, Vijender, Vikas and one more person were quarrelling with and abusing his son Raj Kumar. The quarrel was taking place about 20 to 25 yards away from the house. When he reached there, his younger son Pawan also reached there on hearing the noise. Accused Virender, Mahesh and Kuldeep grappled with Pawan and started kicking him. Thereafter, Vijender brought one *Kassi* and handed over the same to Vikas. Accused Mukesh exhorted Vikas to hit Pawan with the *Kassi* and to kill him. Accused Vikas hit Pawan with the *Kassi* on his neck and Pawan fell down unconscious. Thereafter, all the assailants left the spot. Meanwhile, Sanjay came alongwith his vehicle and he as well as Raj Kumar put Pawan in the vehicle and took him to Columbia Asia Hospital, Palam Vihar. Raj kumar as well as some other persons called police several times, but police did not reach the spot or the hospital. He remained in the hospital for the whole night and police reached the hospital at about 3:00 a.m. According to him, Pawan regained consciousness at about 4:00 a.m. He identified the *Kassi* Ex.P1 when shown to him. In the cross-examination, he deposed that the police was

present in the hospital when Pawan regained consciousness but police did not talk to Pawan. He stated that the police had made inquiries from him as well as from Raj Kumar. He alongwith his son Raj Kumar and certain villagers had gone to the police station on 01.11.2009. He denied the suggestion that they did not try to contact police on 29th, 30th and 31st October, 2009. According to him, they had submitted an application to the police but police did not pay any heed to the same. However, they had not retained any copy of the said application. They also did not send any telegram to the ACP or DCP of the area. He further deposed that they could not intervene and save Pawan as he was hit suddenly with *Kassi*. He had not received any blood stains on his clothes. He admitted that before the incident, no quarrel had taken place between his son and accused persons. His statement was recorded at his residence after three or four days of the incident. He pointed out the spot of occurrence to the police and police prepared site plan in his presence. He was confronted with his statement under Section 161 Cr.P.C., wherein he had not stated that accused Mukesh had exhorted Vikas to kill Pawan.

23. According to prosecution, Sanjay Rana, PW-4 in whose car the injured PW-1 was taken to hospital, has also witnessed the occurrence. However, he turned hostile and did not support the prosecution case. He deposed that on 28.10.2009 at about 10:15 p.m. when he was standing in front of his house, he saw a crowd at a distance of ten meters from his house. He reached that place and saw Pawan in an injured condition. He came back to his house, took out his car, put injured Pawan on the rear seat of his car with the help of some persons and took him to Columbia Asia Hospital and got him admitted there. He further deposed that family members of Pawan reached hospital after about 15 to 20 minutes. He remained in the hospital for about two hours and then returned home. He was cross-examined by the

learned APP wherein he denied having made any statement to the police. He denied all the suggestions given to him by learned APP. He specifically denied that Raj Kumar (PW-2) and Daryao Singh (PW-3) had accompanied him to the hospital.

24. PW-4, Sanjay Rana is the person in whose car the injured was taken to the hospital. As noticed hereinabove, he turned hostile and did not support the case of the prosecution, but he has admitted that he had seen Pawan in an injured condition. He put Pawan in his car on the rear seat and took him to Columbia Asia Hospital and got him admitted there. This witness has testified that the family members of Pawan reached the hospital after about 15-20 minutes. We find no reason for him to depose falsely, but his testimony makes it clear that PW-2 and PW-3 were not present at the place of the incidence in which PW-1 suffered injuries and he alone had taken the injured to the hospital. Not only the presence of PW-3 is doubtful, we also find the presence of PW-2 to be doubtful at the spot for the reason that had he been present and witnessed the incident, he would have immediately reported the matter to the police and also apprised the doctor about the manner in which PW-1 got injured by name the persons. He would not wait till 30.10.2009 till the statement of PW-1, injured was recorded and in case he was present in the car of PW-4 Sanjay Rana, his clothes would have been wrenched with blood and he would have handed over the clothes to the police.
25. There is also doubt with regard to weapon of offence. According to PW-1, he was hit by a *Kassi*, whereas the MLC revealed that the injuries on the neck were sharp and could have been inflicted by a *Kassi*, which was neither sealed after the same was recovered nor shown to PW-1 for identification, neither sent to FSL to seek an opinion whether there was any blood on it.

26. Another aspect which is required to be considered is delay in registration of the FIR. While there can be no straight jacket formula about the time during which an FIR should be registered and would depend on the facts and circumstances of each case, but ordinarily an FIR should be registered at the earliest. The only exception can be in cases where a victim is prevented from registration of an FIR for the reason that the victim does not have access to the police station as in the case of an offence being committed in a remote village or in a case where the victim is under acute threat and in such like cases where the delay can be explained. However, in the present case we find that the incident took place on 28.10.2009 at 10:15 p.m. but the FIR was registered only on 01.11.2009. The victim was conscious and fit for making statement by 3:00 a.m. on 29.10.2009. Evidence is on record that his close family members who claimed to be witness were with him at the hospital after the incident. This delay creates a cloud of suspicion on the case of the prosecution and on the testimonies of the witnesses.
27. In *Thulia Kali v. The State of Tamil Nadu*, (AIR 1973 SC 501), it was held that the delay in lodging the first information report quite often results in embellishment as a result of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.
28. In *Ram Jag and Others v. The State of U.P.*, (AIR 1974 SC 606) the position was explained that whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay can be condoned if the witnesses have no motive for implicating the accused and/or when plausible explanation is offered for the same. On the

other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness or authenticity of the version of the prosecution.

29. In the case of *Dilawar Singh v. State of Delhi*, 2007 CrL.J. 4709, it was held as under:

“In the criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.”

30. The Supreme Court in the case of *Ganesh Bhavan Patel and Another v. State of Maharashtra*, AIR 1979 SC 135, held as under:

“Delay of a few hours, simpliciter, in recording the statements of eye witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye witnesses to be introduced. Thus under the facts and circumstances of the case delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. Criminal Appeal No.1492 of 1970, D/-2/4-12-1972 (Bom), Reversed. Normally, in a case where the commission of the crime is alleged to have been seen by the witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence over the evidence of other witnesses.”

31. Again in the case of *Ram Jag and others v. The State of U.P.*, AIR 1974 SC 606, it was held as under:

“Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety

of factors. Even a long delay can be condoned if the witnesses have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution. It is true that witnesses cannot be called upon to explain every hour's delay in filing information and a commonsense view has to be taken in ascertaining whether the First Information Report was lodged after an undue delay so as to afford enough scope for manipulating evidence.”

32. In the case of *Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore-cochin*, reported at [1954] CrIJ 102, wherein it was held as under:

“It cannot be disputed that the High Court even though it was hearing an appeal from an order of acquittal, had full powers to review the entire evidence on the record and reach its own conclusion that the acquittal order should be set aside. But as the Privy Council pointed out in *Sheosarup v. Emperor*, AIR 1934 P.C. 227 in exercising these powers the High Court should and will always give proper weight and consideration to such matters as: (1) the views of the trial court as to the credibility of witnesses; (2) presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he had been acquitted at the 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.”

33. It would also be useful to refer to *Shyamal Saha & Anr. v. State of West Bengal*, 2014(2) Scale 690, wherein it was held as under:

“18. Aggrieved by their conviction and sentence, Shyamal and Prosanta have preferred this appeal. The primary submission made on their behalf was to the effect that the High Court ought not to have interfered in the acquittal by the Trial Court particularly, in a case of circumstantial evidence. It was also submitted that the evidence on record points to the fact that they were made scapegoats by the prosecution. Of course, this was opposed by learned counsel for the State.

19. The crucial issue for consideration, therefore, relates to interference by the High Court in an acquittal given by the Trial Court. Recently, in *Joginder Singh v. State of Haryana*³ it was held, after referring to *Sheo Swarup v. King Emperor*⁴ that “Before we proceed to consider the rivalised contentions raised at the bar and independently scrutinize the relevant evidence brought on record, it is fruitful to recapitulate the law enunciated by this Court pertaining to an appeal against acquittal. In *Sheo Swarup* (supra), it has been stated that the High Court can exercise the power or jurisdiction to reverse an order of acquittal in cases where it finds that the lower court has "obstinately blundered" or has "through incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice" or has in some other way so conducted or misconducted himself as to produce a glaring miscarriage of justice or has been tricked by the defence so as to produce a similar result.” Unfortunately, the paraphrasing of the concerned passage from *Sheo Swarup* gave us an impression that the High Court can reverse an acquittal by a lower court only in limited circumstances. Therefore, we referred to the passage in *Sheo Swarup* and find that what was stated was as follows:

“There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has "obstinately blundered," or has "through incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.” The legal position was reiterated in *Nur Mohammad v. Emperor*⁵ after citing *Sheo Swarup* and it was held:

“Their Lordships do not think it necessary to read it all again, but would like to observe that there really is only one principle, in the strict use of the word, laid down there; that is, that the High Court has full power to review at large all the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed.” We are mentioning this only to dispel the possibility of anyone else getting an impression similar to the one that we got, though

nothing much turns on this as far as this case is concerned.

20. The entire case law on the subject was discussed in *Chandrappa v. State of Karnataka* [6] beginning with perhaps the first case decided by this Court on the subject being *Prandas v. State*.⁷ It was held in *Chandrappa* as follows:

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

(2) 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.

(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.”

21. The principles laid down in *Chandrappa* were generally reiterated but mainly reformulated in *Ganpat v. State of Haryana*[8] though without reference to *Chandrappa* and by

referring to decisions not considered therein. The reformulation of the principles in Ganpat is as follows:

“(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court’s conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. (Vide Madan Lal v. State of J&K [9] , Ghurey Lal v. State of U.P.[10] , Chandra Mohan Tiwari v. State of M.P.[11] and Jaswant Singh v. State of Haryana[12].)”

22. Undoubtedly, we are suffering from an overdose of precedents but be that as it may, from the principles laid down, it appears at first blush that the High Court is entitled to virtually step into the shoes of the Trial Court hearing submissions of learned counsel and then decide the case as a court of first instance. Perhaps this is not what is intended, notwithstanding the broad language used in Chandrappa and Ganpat. Otherwise, the decision of the Trial Court would be a meaningless exercise and this Court would become a first appellate court from a decision of the High Court in a case of acquittal by the Trial Court. Realistically speaking, although the principles stated are broad, it is the obligation of the High Court to consider and identify the error in the decision of the Trial Court and then decide whether the error is gross enough to warrant interference. The High Court is not expected to merely substitute

its opinion for that of the Trial Court only because the first two principles in Chandrappa and Ganpat permit it to do so and because it has the power to do so – it has to correct an error of law or fact significant enough to necessitate overturning the verdict of the Trial Court. This is where the High Court has to exercise its discretion very cautiously, keeping in mind the acquittal of the accused and the rights of the victim (who may or may not be before it). This is also where the fifth principle laid down in Chandrappa and Ganpat comes into operation.”

34. While appellate Court has full power of a review to appreciate and consider the evidences upon which an order of acquittal is founded and appellate Court would be free to reach its own conclusion. It is a fundamental principle of criminal jurisprudence that a person shall be presumed to be innocent unless proved to be guilty. Accordingly, an accused having secured his acquittal, the presumption of his innocence would be further strengthened by the Trial Court. The Supreme Court has held that if two views are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the Trial Court. In this case, we find that only one view is possible which has been taken by the Trial Court, which we endorse. The appellant has failed to prove substantial, compelling or sufficient grounds for us to take a view different than the view taken by the Trial Court.
35. We find no merit in the appeal; the same is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 28, 2016
sc/pst