

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1074 OF 2003

The State of Maharashtra

.. Appellant
(Orig. Complainant)

Vs.

1) Khurshid Ahmed alias Lallu
Dada Haji Khairuddin Ansari;

2) Shabbir Ahmed Haji Khairuddin
Ansari;

.. Respondents
(Orig. Accused
Nos.1 to 3)

3) Rafique Ahmed Abdul Latif

.....
Mr. Arfan Sait, Addl. P.P. for Appellant – State.
Mr. A.R. Shaikh, Advocate for Respondent Nos.1 to 3.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 2, 2017.

ORAL JUDGMENT :

The appellant – State have challenged the judgment and order dated 23rd May, 2003, passed by the Judicial Magistrate First Class, IV Court, Malegaon, acquitting the respondents. The respondents were prosecuted for the offences punishable under Sections 323, 325, 504, 506 read with Section 34 of the Indian Penal Code (“IPC”, for short) and Sections 37(1) and 135 of the Bombay Police Act.

2 The brief facts of the prosecution case are as follows:

- (a) On 13th May, 1997 at about 11.30 p.m. when the complainant was present at his residence situated at Rounakabad Takiya Area, Malegaon, accused Lallu came to his house and questioned him as to why he has purchased the house of Quadir Baba. He also abused and threatened him. However, the persons in the vicinity separated the quarrel.
- (b) On 14th May, 1997 at about 3.30 p.m., the complainant had visited his house for taking lunch and after that he proceeded to carry out his hawking business. At that time, the accused intercepted him and was assaulted by wooden dandas.
- (c) Accused nos.1 and 2 are brothers and and accused no.3 is their servant. All of them assaulted the complainant. The wife of the complainant intervened, however, she was also assaulted by the accused. The complainant then went to the police station and lodged the First Information Report ("FIR", for short).

3 On completing the investigation, charge-sheet was filed against the respondents-accused before the competent Court. Charge was framed against the accused on 24th October, 2002 for the offences punishable under Section 325 read with Section 34 of IPC, 323 read with Section 34 of IPC, Section 504 read with Section 34 of IPC, Section 506 read with Section 34 of IPC and Section 37 (1) along with Section 135 of the Bombay Police Act. The accused pleaded not guilty.

4 The prosecution examined eight witnesses in support of its case. P.W.1 Rashid Gani is the complainant/injured person. P.W.2 Ms. Banobi Sayyed, the wife of the complainant, P.W.3 Mrs. Fatima Bee is the sister of the complainant, P.W.4 Mobin Ansari and P.W.5 Noorkha Shamsheerka were the panch witnesses for the spot panchanama. P.W.6 Bharat Wagh is the medical Officer who had examined the complainant and issued the medical certificate at Exhibit-31. P.W.7 Baby Shaikh is a hawker in the area and neighbour of the complainant. P.W.8 Ravindra Pawar is the investigating officer. The prosecution relied upon the oral evidence of the said witnesses as well as the documents in support of the charge framed against the respondents-accused. The said witnesses were cross-examined at the instance of the

accused. The accused did not examine any witness in their defence. The trial Court after recording the evidence and statement of the accused under Section 313 of the Code of Criminal Procedure delivered the impugned judgment acquitting the respondents- accused of all the charges. The trial Court after analyzing the evidence concluded that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and, therefore, the accused are entitled to get the benefit of doubt.

5 Against the judgment and order of acquittal, the State has preferred this Appeal by invoking Section 378(1) of the Code of Criminal Procedure.

6 Mr. Arfan. Sait, learned APP for the appellant - State made the following submissions:-

- (a) The trial Court has committed an error in acquitting the accused;
- (b) The prosecution has established the case beyond doubt on the basis of the ocular evidence of the witnesses as well as

the documents which were exhibited in evidence;

- (c) The trial Court has overlooked the evidence of the witnesses which clearly prove the offence being committed by the accused persons;
- (d) P.W.1, P.W.2, P.W.3 and P.W.7 are the eye witnesses to the incident and their evidence was genuine which ought to have been considered by the trial Court;
- (e) The prosecution qua the evidence of the witnesses had established the presence of the accused at the scene of offence and also proved the overt-act committed by the said accused persons;
- (f) The witnesses have categorically stated that the respondents - accused had assaulted the complainant and two witnesses and the said evidence has not been shaken by way of cross-examination conducted by the defence. Hence, the trial Court has erroneously acquitted the accused. Although P.W.4 and 5 appears to be the panchs to the spot panchanama, they did not support the prosecution

case and turned hostile, they have admitted their signatures in the cross-examination conducted by the prosecutor and P.W.4 has given certain admissions while supports the prosecution;

- (g) The evidence of medical officer clearly establish that the complainant had sustained injuries which corroborates the ocular evidence of the eye witnesses to the incident;
- (h) The witnesses were knowing the accused persons and their identity is not doubted and the witnesses have clearly assigned the role to the accused person while committing the said crime and, therefore, the accused ought to have been punished for the said offences;
- (i) The judgment and order of acquittal is perverse as the trial Court has completely ignored the evidence of the witnesses which clearly establishes involvement of the accused in the said crime. Apart from the evidence of P.W.1, P.W.2 and P.W.3, the prosecution has strongly relied upon the evidence of P.W.7 who is an independent witness. The evidence of the said witness is not shaken in the cross-

examination by the defence and, therefore, the said evidence should have been relied upon by the trial Court. There is no reason to discard the evidence of the said independent witness;

- (j) Reliance was placed on the decision of the Supreme Court of India in the case of ***Manjit Singh & Anr. Vs. State of Punjab and Anr.***¹ and another decision of the Apex Court in the case of ***Jodhan Vs. State of Madhya Pradesh***² as well as the decision of the Supreme Court in the case of ***Rameshbhai Mohanbhai Koli & Ors. Vs. State of Gujarat***³.

7 Mr. A.R. Shaikh, learned advocate appearing for the respondents - accused made the following submissions:

- (i) The evidence of the witnesses does not inspire confidence and, therefore, the trial Court has rightly acquitted the accused;

- (ii) The evidence suffers from serious infirmities like omissions

1 2013 AIR SCW 6049

2 2015 Cr.L.J. 3291

3 AIR 211 SC Supp. 577

and contradictions which creates doubt about its genuineness and, therefore, there is no need to interfere with the decision of the trial Court;

- (iii) P.W.1, P.W.2 and P.W.3 has deposed before the Court about the occurrence of incident. However, on perusal of evidence of the said witnesses it can be seen that there is doubt about the veracity of evidence of said witnesses. Their depositions are contrary to each other and contradictory to their statement before the police;
- (iv) P.W.7 is purportedly independent witness is examined to support the prosecution case. It is not clear as to how the said witness was present at the scene of the offence, on the previous day as well as on the date of incident;
- (v) The medical evidence was not sufficient to convict the accused persons. In the cross-examination, the medical officer has stated that the major injuries could be possible as accidental injury by traffic or it is possible if the person falls on the rough surface;

- (vi) He submitted that the spot panchanam viz. P.W.4 and 5 has not supported the prosecution case. The recovery evidence is required to be discarded. He relied upon the decision of the Supreme Court of India in the case of ***C. Mangesh & Ors. Vs. State of Karnataka***⁴ and ***A. Shakher Vs. State of Karnataka***⁵;
- (vii) He also submitted that respondent no.3 has expired on 15th November, 2009. He tendered the death certificate issued by the Health Department, Malegaon Municipal Corporation on 31st May, 2017. The death certificate is taken on record and marked “X” for identification;
- (viii) Although, the incident had occurred in a crowded place, the prosecution has not examined any independent witness.

8 In the light of the submissions advanced by both the parties, it would be appropriate to analyze the evidence of the witnesses:

9 P.W.1 is the complainant and injured witness. He has

4 AIR 2768

5 2011 (4) Mh.L.J. (Cri.) SC 19

deposed that he knows all the accused. The incident took place prior to 4 to 5 years. On the date of incident, he was selling cucumber. He returned home to take lunch. At about 3.00 p.m. after having lunch when he was proceeding to resume his hawking business, there were 40 to 50 persons gathered in front of his house including the accused. All the accused and their associates assaulted him in front of his house. Accused had brought wooden danda from the timber mart and started assaulting him with the wooden danda. On account of the assault, his teeth became loose and the accused thought that he is dead and ran away from the place of incident. At that time, his sister and wife came to the spot. While they tried to rescue the complainant from the assault, accused also assaulted them. Thereafter, they went to the police station to lodge the complaint and on the basis of his statement FIR was recorded. He was treated at N.M.Wadia hospital. He further deposed that accused no.3 was having "Gupti" in his possession. He did not know the name of accused no.3, but he identified him before the Court.

10 P.W.2 is the wife of the complainant. She has stated that on the previous day of the incident of assault, the accused had visited her residence. The accused asked them as to why

they have purchased the house of one Kadir Baba. The persons in the vicinity came and pacified the accused no.1 and his assailants and, thereafter, they left the spot. She deposed that on the next date at about 3.30 p.m. all the accused came and intercepted her husband. Accused no.1 brought a stick of Babhool and assaulted the complainant. All the accused assaulted the complainant mercilessly and took away him by catching his two legs pulling towards public toilet. The accused assaulted the complainant by using Babhool stick. Due to assault, he sustained bleeding injury and was unconscious. She snatched the wooden dandas from the hands of the accused and went to the police station. During the panchanama, she handed over the said wooden danda to the police. She also identified the said article in the Court.

11 P.W.3 is the sister of the complainant. She stated that she knows all the accused. On the previous day of assault she was present in the house of the complainant. Accused no.1 told her brother to vacate the plot which had been purchased by him from Kadir Baba. The persons in the vicinity separated the quarrel and, thereafter, the accused left the said place. On the next date at about 3.00 p.m., while the complainant was proceeding somewhere for his business, the accused and their

assailants assaulted the complainant in the lane due to which he fell down. Thereafter, the accused took her brother towards public toilet. The accused assaulted the complainant by means of wooden danda of Babhool. When she intervened in the quarrel, she was also assaulted.

12 P.W.4 is the panch witness for the spot panchanama. He did not support the prosecution case and was declared hostile. In the cross-examination conducted by the prosecutor, he stated that the complainant's house is situated in front of the timber mart of Hasan Sheth. He also stated that he is acquainted with the accused. However, other factual aspects put forth by the prosecutor in the cross-examination were denied by him. P.W.5 is another panch witness who also did not support the prosecution case and was declared hostile. In the cross-examination, however, he has stated that he is acquainted with the accused.

13 P.W. 6 is the medical officer who had examined the complainant and had issued the medical certificate Exhibit-31. He deposed that he had noted several injuries on the person of the complainant. He has deposed that injury no.2 viz. Detachment of nail of right middle finger, swelling and deformity over finger

clinically fracture phalangeal bone is grievous and other injuries were simple in nature.

14 P.W.7 stated that complainant is her neighbour. The accused are conducting video business. Prior to the incident of assault, on the previous day there was a quarrel between the accused and the complainant. The accused were abused the complainant and the persons from the locality had intervened. On the next day, the accused came to the house of the complainant, the accused assaulted the complainant. They caught hold of him and took him towards public toilet. The accused assaulted the complainant by means of stick. They had brought wooden dandas from timber mart. Due to pulling of the complainant by the accused, he had sustained scratches on his body. The complainant was assaulted all over his body by the accused. The wife of the complainant and his sister had intervened and they separated the quarrel. Thereafter, police came to the spot and took away the injured persons to the hospital.

15 P.W.8 is ASI who has conducted the investigation. He stated that after completion of investigation, charge-sheet was

filed against the accused. During the investigation, he recorded the statements of the witnesses and collected the documents including the injury certificate of the complainant. He stated that the charge-sheet was filed against the accused on the ground that the accused had assaulted the complainant and his wife by means of wooden danda due to which he had sustained grievous injuries. He deposed that on account of the said injury, he added the charge under Section 325 of the IPC.

16 I have perused the evidence on record. P.W.1 has referred to the incident of assault. He has attributed the overt-act by the accused. In the substantive evidence, however, he has not referred to the incident which was purportedly occurred on the previous day. The said incident of previous quarrel had been referred to by P.W's. 2,3 and 7 in their evidence. In his evidence he also stated that there were about 40-50 persons gathered in front of his house. He had also stated that the accused and their associates assaulted him. In the cross-examination of the said witness, several omissions were brought on record which are as follows:

- (i) 40-50 persons had gathered and came to assault him;
- (ii) All the accused had brought wooden danda from the timber

mart;

- (iii) On account of assault his teeth became loose;
- (iv) The accused ran away after the assault under the impression that he is dead;
- (v) Accused no.3 was having Gupti in his possession;
- (vi) His sister came on the spot to rescue him.

17 Apart from the aforesaid omissions, the said witness has stated that he had not stated the name of the accused no.3 to the police. He was not having knowledge about his name as Rafique. He does not know the names of the accused even today, but, identified them on the basis of their faces. He stated the name of accused "Lallu Radiowala" to the police and also the name of Shabbir to the police. He also stated that all the members in the crowd at the time of incident were the associates of the accused persons. He further deposed that accused no.3 is the servant of accused no.1. He had identified him at the police station. He has not stated the motive for the said crime. The previous quarrel which has been referred to by the other witnesses is not reflected in his evidence. The omissions which were brought on record at the instance of the defence creates doubt about the veracity of the evidence of this witness. The presence of P.W.3 is brought on record for the first time in the

substantive evidence by this witness. It is not clear as to why about 40 to 50 persons had been gathered at the scene of the offence to assault the complainant. The motive which has been put forth by the other witnesses was the previous quarrel on account of purchase of the house from one Kadir Baba. However, beyond that, it is not clear as to why several persons were gathered. All the accused and their associates assaulted him in front of his house. This fact is not corroborated by the other witnesses.

18 From the evidence of P.W.2, it is brought on record that he had tried to rescue the complainant from being assaulted. The complainant had stated in his evidence that after he being assaulted and when he fell down, the accused gathered an impression that he is dead and ran away. However, he further stated that his wife had intervened in the assault and she was beaten by the accused persons. The said two version appears to be contrary to each other which creates doubt about the version of P.W.1. P.W.2 has referred to previous day's quarrel which had occurred at the residence of the said witness. The said quarrel is not reflected in the evidence of P.W.1. She has also stated that the accused assaulted the complainant mercilessly and took him

by catching his two legs and pulled him towards the public toilet. The accused assaulted the complainant by means of Babhool stick. He became unconscious. The said deposition of P.W.2 that the complainant being dragged away towards the toilet and she being assaulted at the said place is not appearing in the evidence of the complainant who is the injured person. In the cross-examination, she admitted that the previous day incident is not appearing in the statement recorded by the police. She also stated that she did not know the name of the servant of accused no.1 Rafique. However, she stated that she had disclosed the name of accused "Rafique Ahmed" as "Kalya" to the police. She did not see whether 50-60 persons were present at the time of the incident. She has admitted that all the accused had assaulted her husband but the said fact is not appearing in her statement. Analyzing her evidence, it is apparent that her deposition is contrary to the evidence of P.W.1.

19 P.W.3 is the sister of the complainant. In her evidence, she has stated that on the previous day, accused no.1 had threatened the complainant by stating that he should vacate the plot which he had purchased from Kadir Baba. It is pertinent to note that presence of P.W.3 is neither stated by P.W.1 nor by P.W.2

on the previous day's incident or on the day of the incident of assault. The threat issued to the complainant as per her version is contrary to the one which is deposed by P.W.2. In the evidence of P.W.2, it is stated that previous day quarrel was on account of purchase of house belonging to one Kadir Baba. Thus, the evidence of P.W.3 is contrary to the evidence of P.W.1 and P.W.2. She has also stated that the complainant was dragged towards the public toilet and was assaulted by the accused at the said place which is not deposed by P.W.1. In the cross-examination, she had admitted that the version deposed by her in respect to the previous day's quarrel with regard to the fact that accused no.1 had threatened the complainant on account of purchase of plot of one Kadir Baba is not appearing in her statement. Thus, the quarrel which had purportedly occurred on the previous day of the incident is not reflected in her statement and therefore, the said deposition is in the form of omission. She further stated in the cross-examination that the fact that accused had pulled her brother towards public toilet is also not reflected in her statement before police. The evidence that after throwing her brother by the accused near the toilet, he was again assaulted is also not appearing in her statement recorded by police. Analysing the evidence of these three witnesses, it is apparent that it is

contrary to each other. The presence of P.W.3 at the scene of offence is under the shadow of doubt. She is residing separately as is appearing from the address mentioned in her evidence. It is not clear as to how she was present on the previous day in the house of the complainant and on the date of incident when the complainant was assaulted. In any case, her presence was not established clearly in the evidence of P.W.1 and P.W.2. It is further noted that although it is the case of P.W.2 and P.W.3 that they were also assaulted by the accused persons, there is no medical evidence to support the said fact. These three witnesses are purportedly the eye witnesses to the incident. Their evidence is not inspiring and, therefore, the trial Court could not have convicted the accused person on the basis of the such evidence. Although, the witnesses knew the accused nos.1 and 2, the fact remains that the overact attributed to them and the role in commission of crime has to be established beyond reasonable doubt. The nature of evidence of these three witnesses does not inspire confidence and, therefore, the benefit of doubt is given to the accused persons by the trial Court. I do not find that this is a case where this Court should interfere in the order of acquittal.

evidence of these three witnesses clearly establishes the commission of the crime by the accused persons. The presence of the accused is established and the role assigned to them is also corroborated by each of the witnesses. He submitted that P.W.7 is an independent witness and he has no intention to falsely implicate the accused persons. Therefore, in the light of the evidence of P.W.7 and P.W.1 to 3, the trial Court should have convicted the accused persons. However, in the light of the observations made in the earlier paragraph, I am of the opinion that no reliance can be placed on the evidence of these witness. It is a cardinal principle of the criminal jurisprudence that the prosecution has to establish its case beyond all reasonable doubt. The benefit of doubt, if any, always go to the accused person. P.W.7 is allegedly an independent witness. According to the prosecution, he supports the prosecution case being independent witness. From the evidence of the said witness, it is disclosed that the complainant is her neighbour. From her evidence, it also appears that there is a common wall in between her house and the house of the accused. It appears that the deposition that the common wall in between the house of the said witness and the house of the accused has been wrongly recorded by the trial Court since the address of the said witness is reflected in the

evidence and the address of the other witnesses makes it clear that P.W.1 is neighbour of the complainant. It is also pertinent to note that the presence of this witness is not referred by P.W.1, P.W.2 and P.W.3 as a person was present near the place of incident. It is also stated in the evidence of P.W.1 that after the assault, he went to police station and lodged the complaint. This witness, however, states that after the incident of assault, police had arrived at the scene of offence and, thereafter, they took the complainant to the hospital. The presence of this witness at the scene of the offence appears to be doubtful. Also considering the fact that the evidence of P.W's.1 to 3 as observed hereinabove, is under the shadow of doubt, no reliance can be placed on the evidence of these witnesses.

21 In the case of ***Manjit Singh & Anr. Vs. State of Punjab & Anr. (Supra)*** relied upon by learned APP, the Supreme Court in paragraphs 24 and 25 has observed that it is not the number and quantity, but the quality that is material. It is the duty of the Court to consider the trustworthiness of the evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of

other witnesses. It is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution, it cannot be considered a material witness. This decision was relied upon by the learned prosecutor on account of the submissions made by the learned advocate for the respondents that incident had occurred in a crowded locality and the prosecution has not examined the independent witness. The learned prosecutor, therefore, submitted that the evidence which is brought on record is sufficient to hold the conviction, there need not be any other evidence. It is the quality of the evidence which is material and not the quantity. However, in the light of the observations made by me hereinabove, I am of the opinion that the prosecution has failed to establish its case.

22 In the case of ***Rameshbhai Mohanbhai Koli & Ors. Vs. State of Gujarat (Supra)***, the Supreme Court has considered the issue of hostile witness. In the said decision, it was observed that it is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and

cross-examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. The decision also refers to the importance of the evidence of the investigating officer. In paragraph 23 of the said decision, it was observed that the Courts of law have to judge the evidence before them by applying the well recognized test of basic human probabilities. *Prima facie*, public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. In the present case, it is noted that P.W's 4 and 5 have not supported the prosecution case. The learned APP, however, stressed upon the fact that P.W.4 in his evidence has referred the existence of timber mart. He, therefore, submitted that the prosecution case that accused had brought the wooden danda from the timber mart is established in the cross-examination of the said hostile witness. He further stated that both these panchas had deposed in the evidence that they are acquainted with the accused persons. In the light of the said deposition, the learned APP had submitted that the admission given by the said

witness and the fact that the investigating officer had proved the spot panchanama in his evidence clearly establishes the evidence of seizure of the articles which were purportedly used by the accused persons. It is pertinent to note that the said witnesses were declared hostile. The witnesses have stated that the wooden dandas were brought from the timber mart by the accused persons. It is also pertinent to note that the witnesses have also deposed that the accused had come armed with wooden dandas. The witnesses have also referred to this wooden danda as Babhool sticks. It is not clear as to how the Babhool sticks can be found in the timber mart. The prosecution has not examined the owner of the timber mart to support its case. It is also pertinent to note that the medical officer who was examined by the prosecution have not stated in his evidence that the injuries sustained by the complainant were possible by Babhool stick. Assuming that the seizure panchanama is proved, it does not establish the fact that the accused had assaulted the complainant with the said Babhool stick or that the said injuries were possible by use of the said article.

23 Learned APP has relied upon the decision in the case of ***Jodhan Vs. State of Madhya Pradesh (Supra)***. The said

decision is based on the principle to be followed by the Court while dealing with the Appeal against acquittal. In paragraph 12 of the said decision, the Apex Court has referred to the earlier decision of the Supreme Court in the case of ***Ramesh Babulal Doshi Vs. State of Gujarat***⁶. In the said earlier decision, the Supreme Court had taken a view that while considering the appeal against 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 and if the Court answers the above question in the negative, the acquittal cannot be disturbed. In the same paragraph, the Supreme Court has also considered its earlier decision in the case of ***Ganpat Vs. State of Haryana***⁷ wherein it was observed that the following principles have to be kept in mind by the Appellate Court while dealing with appeals, particularly, against an order of acquittal:

- (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.

⁶ (1996) 9 SCC 225 :

⁷ (2010) 12 SCC 59

- (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 as 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 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 reserve the decision of the trial Court depending on the materials placed.”

In the light of the aforesaid observations, the learned APP had submitted that the trial Court in the present case has misread or misinterpreted or overlooked the evidence on record. He, therefore, submitted that the impugned judgment of acquittal needs to be interfered in the light of the law laid down by the Apex Court. I have already made observations hereinabove that the infirmities in the evidence of the witness goes to the root of the matter and the prosecution has failed to establish its case and that the trial Court has rightly given benefit of doubt to the accused persons.

24 Learned advocate for the respondents had placed reliance upon the decision of the Supreme Court in the case of **A. Shankar Vs. State of Karnataka (Supra)** in which it was observed in paragraph 19 that it is settled legal proposition that in exceptional circumstances the Appellate Court under compelling circumstances should reverse the judgment of acquittal of the Court below if the findings so recorded by the Court below are found to be perverse, i.e., the conclusions of the Court below are contrary to the evidence on record or its entire approach in dealing with the evidence is found to be patently illegal leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of

the case. While dealing so, the Appellate Court must bear in mind the presumption of innocence of the accused and further that acquittal by the Court below bolsters the presumption of his innocence.

25 In another decision of the Supreme Court in the case of ***C. Mangesh & Ors. Vs. State of Karnataka (Supra)*** relied upon by the learned advocate for the respondent. In paragraph 39, it was observed thus:

“39 In an appeal preferred under Section 378 of the Cr.P.C., no doubt, it is true that High Court has ample powers to go through the entire evidence and to arrive at its own conclusion but before reversing the finding of acquittal, following conditions should be always kept in mind namely,

- (i) the presumption of innocence of the accused should be kept in mind;*
- (ii) if two views of the matter are possible view favourable to the accused should be taken;*
- (iii) the appellate court should take into account the fact that the trial judge had the advantage of looking at the*

demeanor of witness; and

- (iv) *the accused is entitled to benefit of doubt. But the doubt should be reasonable that is the doubt which rational thinking man with reasonable honesty and consciously entertained, more so, when the larger question with regard to treating Exh. P29 and Exh. P30 as dying declarations itself had become questionable."*

26 Taking into consideration the principles enumerated hereinabove in the said decision cited by both the parties, it is clear that the Appellate Court can interfere into the decision of the trial Court, if it is perverse or completely contrary to the evidence on record. It is also clear that even if two views are possible, the view favourable to the accused should be taken. It is also observed that the presumption of innocence of the accused should be kept in mind and that the accused is entitled to benefit of doubt. After scanning the evidence of the witnesses examined by the prosecution and in the light of the observations made hereinabove, I am of the opinion that the impugned judgment of acquittal has to be confirmed and does not require any interference by this Court. It is apparently stated hereinabove

that the evidence does not prove that the alleged crime is committed by the accused, beyond all reasonable doubt and the prosecution has failed to discharge its burden.

27 Although, the learned advocate for the respondents had placed on record the death certificate of respondent no.3, in the absence of verification of the said documents, I am not invoking provisions of Section 394 of the Cr.P.C. However, considering the fact that the impugned judgment does not require any interference by this Court, there is no necessity of going into the aspect of the abatement of the Appeal qua respondent no.3.

28 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Appeal No.1074 of 2003 stands dismissed;
- (ii) No order as to costs.

(PRAKASH D. NAIK, J.)