

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

CRIMINAL APPEAL NO.888 OF 2003

The State of Maharashtra)Appellant/Complainant

V/s.

1. Bajarang Shamrao Jadhav	)	
Age : 33 years	)	
R/o. Potekarwadi (Kumbhargaon)	)	
Taluka – Patan, District – Satara	)	
2. Shamrao Bhaguji Jadhav	)	
Age : 66 years	)	
R/o. Potekarwadi (Kumbhargaon)	)	
Taluka – Patan, District – Satara	)	
3. Sou. Shevanta Shamrao Jadhav	)	
Age : 61 years	)	
R/o. Potekarwadi (Kumbhargaon)	)	
Taluka – Patan, District – Satara	)	Respondents/Accused

Ms. Pallavi Dabholkar, APP for appellant.

Mr. Rahul Kate a/w. Mr. Digvijay S. Patil for respondents.

CORAM : K.R.SHRIRAM, J.

DATE : 13th DECEMBER 2019

ORAL JUDGMENT :

1 The accused, who are three respondents, were facing trial for offences under Section 306 (*Abetment of suicide*), Section 498 (A) (*Husband or relative of husband of a woman subjecting her to cruelty*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2 One Sunanda Bajarang Jadhav (deceased) was residing with her husband and in-laws and three children, two daughters and a son in village Potekarwadi, Taluka – Patan, District – Satara, Maharashtra. According to prosecution, deceased was married for about 7 years. It seems

deceased was well looked after for about 6 years but thereafter, her problems started. Deceased had five brothers, one of whom was in the village looking after the agricultural land and other four were living in Mumbai doing various jobs. It is alleged that the accused told deceased to get Rs.5,000/- each from each of the brothers, i.e., Rs.25,000/- in all, for purchase of a tractor. It is not clear when this demand was made but as per the prosecution witnesses, it was five or six months before the date deceased set herself on fire. As deceased's brothers were unable to fulfill the demand of the accused, harassment started and that is the time when according to prosecution, deceased was harassed by the accused by telling her that she did not know any household work, agricultural work or even to cook. It is also alleged that deceased was made to starve and accused subjected deceased to physical and mental cruelty. It will be necessary to note here itself that the postmortem report (Exhibit 14) states that deceased appeared to be well built and well nourished. Postmortem report does not indicate any injuries or marks to the body of deceased to suggest that deceased was being subjected to physical cruelty. According to prosecution, because deceased was fed up with ill-treatment by the accused, on 29th May 1997 at about 7.30 p.m., when she was in the matrimonial home in the cattle shed, she poured kerosene on herself and set herself on fire by igniting a match stick. Thereafter, deceased started shouting hearing which, the accused and others rushed to her and tried to extinguish the fire. Thereafter, deceased was taken in a jeep by her husband and brought to Krishna Charity Hospital,

Karad. Deceased's husband, i.e., accused no.1, was accompanied by one Balkrishna Laxman Dhumal, the father of deceased, who though listed as a witness, has not been examined and Suresh Laxman Dhumal (PW-6). Admittedly, on 30th May 1997, dying declaration of deceased was recorded by DW-2, who was an Executive Magistrate (Exhibit 49), in which it is recorded that Sunanda's body caught fire because when she was cooking food for her children, there was an explosion in the stove. The dress that she was wearing, admittedly, has not been sent for chemical analysis. Moreover the prosecution has also taken charge of the stove to examine whether it had exploded and have also not examined the kitchen where deceased was cooking, for alleged fire marks. This was very important for prosecution to have done because at Exhibit 25, there is another dying declaration dated 2nd June 1997, where the story allegedly stated by deceased is different. It is recorded that deceased stated that because her brothers could not give Rs.5,000/- each, i.e., Rs.25,000/-, to the accused to buy a tractor, the accused started harassing deceased, stopped her food and were also beating her and tired of the harassment, deceased poured kerosene on herself and set herself on fire by igniting match stick. It is also noted that because deceased was scared of her in-laws, deceased stated in her first statement to the Executive Magistrate (Exhibit 49) that there was an explosion in the stove when she was cooking food for her children. In such a situation, for the prosecution to prove its case beyond reasonable doubt, prosecution ought to have sent the stove for forensic analysis/tests and examined the

kitchen to drive home the point that what is stated in Exhibit 25 (suicide) is more accurate than what is stated in Exhibit 49 (stove explosion).

3 On 4th June 1997, Sunanda unfortunately died. Thereafter, prosecution conducted spot panchnama and the spot was allegedly shown by accused no.3 and spot was the cattle shed. In the cattle shed, it was noticed, there were some burnt pieces of clothes and some pieces were attached to artificial hair and also kerosene can, which were all seized in presence of panchas. PW-1, the panch, who was there when the spot panchnama was prepared, in his examination in chief, has stated that there was fodder on the Kadipat and deceased had poured kerosene on herself and suffered 65% burn injury. In the panchnama, the witness does not say that in the cattle shed there was smell of kerosene. Also for the first time he has deposed that pieces of nylon sari and petticoat were smelling of kerosene. This shows that there is improvisation by him. PW-1 also admits in the cross examination that it is the Police who brought a tin and showed it to him. Therefore, this statement in his examination in chief, that in the cattle shed there was one empty kerosene tin can, cannot be believed.

4 On 19th Deceased 1997, the Learned Judicial Magistrate First Class, Patan, committed the case of accused to the Court of Sessions. On 27th February 2002, the Sessions Court framed the charges against the accused for offences punishable under Section 498 (A), 306 read with Section 34 of the IPC. The accused pleaded not guilty and claimed to be tried.

5 To drive home their case, prosecution led evidence of 10 witnesses as against 20 witnesses listed in the charge sheet. PW-1 – Sunil Ishwara Potekar, a panch witness; PW-2 – Yashoda Balkrishna Dhumal, sister-in-law of deceased; PW-3 – Shivaji Laxman Dhumal, brother of deceased; PW-4 – Jainuddin Abdul Shaikh, a Police Constable; PW-5 – Dr. Rutwik Devidas Kamble; PW-6 – Suresh Laxman Dhumal, brother of deceased; PW-7 – Tukaram Laxman Dhumal, brother of deceased; PW-8 – Keshav Baburao Kajkar, the then A.P.I. and Investigating Officer; PW-9 – Ramchandra Shamrao Shevale, the then Head Constable on duty and PW-10 – Rajendra Pandurang Yadav, the then P.S.I. and Investigating Officer.

6 On 19th June 2002 the Court recorded the statement of the accused under Section 313 of the Code of Criminal Procedure. The accused denied the charges and evidence against them. Their defence is of total denial. Accused have examined two defence witnesses, viz., DW-1 - Vinayak Chandrakant Bhilavade, Bank Manager of Karad Janata Sahakari Bank and DW-2 - Executive Magistrate – Dattatraya Ramchandra Deo, who recorded the dying declaration on 30th May 1997.

7 After hearing the counsel and considering the evidence, the Court of Sessions delivered the judgment dated 29th June 2002, which is impugned in this appeal. It is rather an elaborate judgment in which the Court has listed various omissions and contradictions. For the sake of brevity, I do not wish to go into such details but would only highlight certain points, which itself are enough to dismiss this appeal.

8 Section 498 (A) and Section 306 read as under :

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. *Explanation.*—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

What is abetment and who is an abettor can be found in Section 107 and Section 108, respectively of IPC and the same read as under :

107. Abetment of a thing.—A person abets the doing of a thing, who— (1) Instigates any person to do that thing; or (2) Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (E) Intentionally aids, by any act or illegal omission, the doing of that thing.

108. Abettor. —A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

9 In this case, we are concerned with only instigation. It is settled law that the offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who was being abetted. When is the person said to instigate another has

been discussed by various High Courts and the Apex Court of India in plethora of judgments. All these have been culled out by a Learned Single Judge of this Court in ***Shivaji Shitole and Ors. V/s. State of Maharashtra and Anr***¹. Paragraph 11 to 19 of the said judgment read as under :

11. Here, the case is of abetment by instigation; and other two modes of abetment, viz.: by conspiracy and by aiding, as contemplated under the clause 'secondly' and 'thirdly' of Section 107 are out of question. The issue then comes to this : when a person is said to 'instigate' another? The word 'instigate' literally means to goad, or urge, forward, or to provoke, incite, urge, or encourage, to do an (evil) act. It is well settled, that in order to amount to abetment, there must be mens rea or community of intention. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute 'abetment by instigation', there must be a direct incitement to do the culpable act.

12. The concept of 'abetment' in the context of abetment of suicide, which is punishable under Section 306 of the IPC, has been often discussed by the High Courts and also by the Apex Court in their pronouncements. A reference to some of them would illustrate the correct legal position.

13. In *Manish Kumar Sharma Vs. State of Rajasthan* (1995 Criminal Law Journal 3066), the prosecution story was that the accused Manish Kumar had advanced some money to the victim Kusum Devi and that there were frequent quarrels between the said accused and the said Kusum Devi. Kusum Devi started living a life full of tension, which was accentuated on account of persistent demands made by the accused in respect of money. On the fateful day, the accused had, allegedly, demanded his money back and uttered the words " Randi tu marti ku nahi hai mere saath chal nahi to tujhe janase maar dunga"; whereupon Kusum Devi consumed some tablets of some poisonous substance and died. After carefully considering the legal position and the concept of 'abetment', Rajasthan High Court held that, it could not be said that accused wanted, or intended, Kusum Devi to commit suicide. There was no evidence to suggest or indicate that the accused knew or had reason to believe that Kusum Devi would commit suicide.

14. In *Vedprakash Bhajji Vs. State of Madhya Pradesh* (1995 Criminal Law Journal 893), the facts of the prosecution case were that the accused Vedprakash and others had advanced a loan to the deceased Ramesh Kumar and that on the day prior to the incident, the accused had filthily abused Ramesh Kumar and had demanded an amount of Rs. 30,000/ from him, threatening that otherwise he would be killed. Again, in the night of the same day, demand was made from Ramesh Kumar for the repayment of the loan advanced. Ramesh Kumar was abused and threatened repeatedly. On the next day, Ramesh Kumar

1. 2012 (3) Bom. C.R. (Cri.) 532

wanted to lodge a report in Police Station against the accused person; but instead committed suicide by consuming some poisonous substance. In the suicide note left by him, he blamed the accused persons, who were charged of an offence punishable under Section 306 of the IPC and were prosecuted. The Madhya Pradesh High Court, after considering the concept of 'abetment' in the light of certain previously decided cases, quashed the prosecution, holding that no case of abetting the commission of suicide had been made out.

15. In *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh* (2002 Criminal Law Journal 2796), the Supreme Court of India extensively dealt with the concept of 'abetment' in the context of the offence punishable under Section 306 of the Indian Penal Code. In that case, the allegation against the accused appellant before the Supreme Court was that he had abetted the commission of suicide of his sister's husbandone Chander Bhushan. The facts appearing in the reported judgment show that there were matrimonial disputes between Neelam sister of the appellant/accused and her husband and that, in connection with these disputes, the appellant had allegedly threatened and abused the said Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive language against said Chander Bhushan and had told him "to go and die". The appellant, who had been chargesheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. The petitioner had, therefore, appealed to the Supreme Court. While allowing the appeal, Their Lordships of the Supreme Court, inter alia, observed as follows :

"Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation." (Para 13 of the reported judgment).

16. A reference may also be made to a decision of the Kerala High Court in *Cyriac, S/o Devassia and another Vs. SubInspector of Police, Kaduthuruthy and another* (2005 Criminal Law Journal 4322), in which the concept of abetment to commit suicide was dealt with extensively by the Learned Single Judge, after referring to a number of pronouncements including the decision of the Supreme Court of India in *Ramesh Kumar vs. State of Chattisgarh* (2001 Criminal Law Journal 4724). The facts of that case, as appearing from the reported judgment, were that the deceased Joseph owed Rs.200/- to one of the accused and was not able to pay back the money. The accused had called Joseph to the bakery of accused, wrongfully restrained him and abused him in public. One of the accused also beat Joseph on his face. Joseph felt insulted. On reaching home, he divulged his embarrassment to his wife and on the same night, committed suicide by consuming poison. According to the prosecution, it was because of the words uttered by the accused persons and the manner in which the

deceased was dealt with by them in public, that the deceased had committed suicide. The accused were being prosecuted for an offence punishable under Section 306 of the Indian Penal Code and had approached the Kerala High Court for quashing the proceedings initiated against them.

17. The Learned Single Judge ultimately summarized the legal position as follows :

"17. From the discussion already made by me, I hold as follows : The act or conduct of the accused, however, insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide. Even if the words uttered by the accused or his conduct in public are sufficient to demean or humiliate the deceased and even to drive him to suicide, such acts will not amount to instigation or abetment of commission of suicide, unless it is established that the accused intended by his acts, consequence of a suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide.

18. An indirect influence or an oblique impact which the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or an illfated thought of the deceased, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 IPC. In short, it is not what the deceased 'felt', but what the accused 'intended' by his act which is more important in this context."

18. Mr.Niteen Pradhan has also brought to my notice the decision of the Supreme Court of India in *Madan Mohan Singh vs. State of Gujarat* (2010) 8 Supreme Court Cases 628. The facts of the said case as appearing from the reported judgment were that the appellant before he Supreme Court was facing prosecution in respect of the offences punishable under Sections 306 and 294(b) of the IPC. The prosecution against him had been initiated on the basis of the FIR lodged by one Harshidaben, widow of Deepakbhai Joshi. The substance of allegation against the accused was that her husband Deepakbhai was serving as a driver in Ahmedabad Bharat Sanchar Nigam Ltd., in the Microwave Project Department. He had undergone bypass surgery and was advised by the doctor to avoid lifting heavy weights. The accused – Madan Mohan Singh, who was the superior of Deepakbhai, used to tell his private errands to Deepakbhai and had been harassing him. Though Madan Mohan Singh was transferred, he kept on continuously using the services of Deepakbhai. Madan Mohan Singh was then again transferred in the Microwave Project department. On the very first day, he told Deepakbhai to keep the keys of the vehicle on the table. Deepakbhai however, did not listen to him and took the keys, on account of which Madan Mohan Singh was angry and had threatened him of suspension. He had also threatened Deepakbhai that if he had not listen to him, he would create

difficulties for him. Madan Mohan Singh had said to Deepakbhai, as to how he was still alive, inspite of the insults. On 21.2.2008, Deepakbhai had left his house as usual, but did not return back in the evening. A missing report was lodged with the police. Ultimately, Deepakbhai's dead body was found lying in a vehicle. His wife Harshidaben then lodged a report with the police, alleging that Deepakbhai had been harassed by Madan Mohan Singh and that he had been insulted in front of the staff several times; and that because of this, Deepakbhai was depressed and had committed suicide. A suicide note was allegedly left by the said Deepakbhai, blaming Madan Mohan Singh for his acts and stating that he was committing suicide due to his functioning style. Madan Mohan Singh approached the High Court at Gujarat for getting the prosecution against him quashed, but his petition was dismissed by the High Court of Gujarat. That is how, he had approached the Supreme Court of India. The matter was extensively examined by the Supreme Court of India, in the light of various contentions raised before it, with respect to the applicability of the provisions of Section 306 of IPC. It was observed as under :

“In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC.”(paragraph 12 of the reported judgment).

The Supreme Court set aside the order of the High Court, by allowing the petition filed by the appellant and quashed the proceedings in question.

19. The legal position that emerges from the above discussion is as follows :

Even if a person would commit suicide because of the torments of an accused, the accused cannot be said to have abetted the commission of suicide by the deceased, unless the accused would intend, while causing torments to the victim/deceased, that he should commit suicide. Even if the rigour of this proposition is diluted, still, the least that would be required is, that it should be shown that the accused could reasonably foresee that because of his conduct, the victim was almost certain or at least quite likely to commit suicide. Unless that the victim should commit suicide, is either intended, or can be reasonably foreseen and expected a person cannot be charged of having abetted the commission of suicide, even if the suicide has been committed as a result of some of the acts committed by the accused. A perusal of the reported judgments show that even in cases where the accused had uttered the words such as "go and die", in abusive and humiliating language, which, allegedly, led to the committing of suicide, it was held that it would not amount to instigation and that consequently, there would be no offence of abetment of suicide.

10 Therefore, the accused still cannot be said to have abetted the commission of suicide by the deceased, unless the accused would have intended, while allegedly harassing the deceased, that the deceased should commit suicide. It is nobody's case that the accused intended, while harassing deceased that Sunanda (deceased) should commit suicide. None of the witnesses have stated that deceased ever told them before their meeting with her in the hospital that the accused were harassing her. I am unable to accept, in any event, that after six years of marriage and delivering three children, the accused would tell deceased that she did not know how to cook, she did not know how to run the household or she did not know how to do agricultural work or starve her. I have to note once again that in the postmortem report, it is noted that Sunanda (deceased) was well built and well nourished, which would not be the case had she been made to starve. Even the general and bald allegations of mental and physical cruelty also cannot be accepted. I have to also note that three of the witnesses, who were her brothers, have stated that they had not even gone to the house of deceased in last five or six years even for bhaubeej. Bhaubeej is a festival celebrated by many in India as the day when brothers visit their sisters.

11 As regards the two dying declaration, one at Exhibit 49 and the other at Exhibit 25, the one at Exhibit 49 was recorded earlier in point of time on 30th May 1997 by an Executive Magistrate, whereas the second one was recorded on 2nd June 1997 by a Head Constable. In the first dying

declaration, it is recorded that Sunanda informed the Executive Magistrate (DW-2) that because of an explosion in the stove when she was cooking food for her children, she suffered burn injuries. Whereas, in the second dying declaration, which is before a Head Constable (Exhibit 49), Sunanda allegedly says that due to harassment by accused, she set herself on fire by pouring kerosene on her body and igniting it with a match stick. When there are these two versions available, I would, in a matter of this nature, give the benefit of doubt to the accused. Moreover, the two Constables, who went to record the statements on 2nd June 1997 are Jainuddin Abdul Shaikh (PW-4) and Ramchandra Shamrao Shevale (PW-9). PW-4 states that he asked questions and it was PW-9 who recorded. Whereas, PW-9 states in his evidence that he asked questions and it was he who recorded. PW-9 does not state that PW-4 asked questions and the answers were dictated by PW-4. The other grey area is the Executive Magistrate (DW-2), who could have been called as witness by prosecution when they were aware that he has also recorded her dying declaration as noted in Exhibit 49 itself.

Therefore, there is no evidence whatsoever to show that the accused abetted deceased to commit suicide.

12 Coming to Section 498 (A) of IPC, the witnesses state that when Rs.25,000/- was allegedly demanded for purchase of a tractor, accused no.1 did not even take that money and informed that they had already purchased the tractor. The prime witness for this is Suresh Laxman Dhumal (PW-6). In his cross examination, PW-6 admits that much before the incident, accused

no.1 already purchased a tractor and he also posed with the tractor for a photograph. PW-6 also admits that he never went to the house of deceased in the last five or six years before her death and he did not even attend the naming ceremony of her three children. PW-6 also admits that he has not stated to the Police when his statement was recorded that Sunanda informed him that accused no.1 demanded Rs.5,000/- each from her five brothers. PW-3, who is supposed to have gone to the house of deceased and asked the accused why they were asking for money and how much amount is required for purchase of tractor, the accused have informed him that they have purchased the tractor and they are not in need of any money. PW-3 also admits in his cross examination that he did not inform the Police when his statement was recorded that Sunanda was treated well for six years. PW-3 also says he has never visited his sister during bhaubeej. PW-3 admits that accused no.2, who is father of accused no.1, was financially very sound and accused no.1 was the only son. PW-3 also says that accused had already purchased the tractor five or six months prior to the incident. In the cross examination, PW-3 also admits that his father did not send him any message that any amount was required or he received any message from his own house about the need of money and he did not receive any letter from Sunanda (deceased) demanding money. PW-3 also states that he did not inform Police when his statement was recorded on 2nd June 1997 and 3rd June 1997 that when he met deceased in the hospital on 30th May 1997, she informed him about the harassment and pouring kerosene on herself

and that accused no.1 threatened them not to enter the room or trouble her.

13 Moreover, DW-1, who is an Officer, working in Janata Sahakari Bank, Branch at Kumbhargaoon, says that there was a fixed deposit of Rs.25,000/- in the name of deceased jointly with accused no.1 and the amount had been kept in fixed deposit on 5th January 1996 and which was due on 19th December 2000. If the amount of Rs.25,000/- was required when this fixed deposit was available, it could be reasonable to assume that the accused would have used this money also to purchase the Tractor. Moreover, DW-1 has in his cross examination by prosecution confirmed that accused no.2 had applied for Tractor loan and the loan was sanctioned by the Bank. DW-1 also offered to produce the extract of loan account of accused no.2 but the prosecution did not call for it.

14 It is settled law that in a case like this, the prosecution has to prove the guilt of the accused beyond reasonable doubt. Prosecution has failed.

15 Mr. Kate appearing for respondents through Legal Aid Services Authority wanted to discuss on the evidentiary value of the dying declaration at Exhibit 49. I do not think it is necessary to go into those details as what is stated above itself is enough to dismiss the appeal.

16 The Apex Court in *Chandrappa & Ors. V/s. State of Karnataka*² in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of

2. (2007) 4 SCC 415

acquittal. Paragraph 42 reads as under :

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

(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 emphasize 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 the accused. Firstly, the presumption of innocence 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 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.”

17 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused 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 acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

18 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

19 Appeal dismissed.

(K.R. SHRIRAM, J.)