

2 The case of the prosecution, in brief, can be stated thus :-

One Mr. Krishna Govind Choudhari, the Asstt Police Sub Inspector then attached to Aarey Sub Police Station, Moracha Pada Unit No.30, Aarey Colony, Goregaon (East) Mumbai 65, is the complainant. On the date of incident i.e. on 16/09/1998 at about 00.5 hrs in the night or so, he along with other police constables were on patrolling duty. They stopped their mobile van at Dinkarrao Desai Marg, Picnic Point near Aarey Colony Chowk and started checking and verifying in-coming and out-going cars in the street light. At that time, the complainant had seen one car coming from Unit No.25 towards Dinkarrao Desai Road. At that time the road was lonely and therefore he decided to stop the said car. Accordingly he stopped the said car for checking. It was a white colour Fiat car bearing No.MH-01-U-7457. The person who was sitting on the driver seat gave his name as Jayashankar Mishra and the person sitting on the rear seat gave his name as Ramraksha Chhatadhari Singh. On inquiry, both of them told the police that they had gone to their relatives. In the mean time police naik Mr.Rane brought to the notice of police officer Choudhari i.e. the complainant that there was blood on the floor of the rear side door of the said car. Therefore Police Officer Choudhari suspected and asked both the persons to get down from the car. They got down. At that time, the complainant had seen blood stains on the shirt of Ramraksha Singh, who was sitting on the rear side of the car, so also he had seen the blood lying on the floor of the car. Therefore, the complainant passed on a message to North

West Control Room. Accordingly Station House Officer of Aarey Sub Police Station Mr. Desai and Night Asstt. PI Mr. Pathan came to the spot i.e. Picnic spot. The said police officers made detailed inquiry with both the persons. They told the police officers that they had murdered one person by name Shinde and they had thrown away the dead body of Shinde in the forest of Aarey colony. Thereafter police called two panchas and recorded memorandum of Ramraksha Singh (Accused No.1) in the presence of panchas. Thereafter, accused No.1 led police party and panchas to the spot and pointed out a dead body lying on the left side of the road on western side in the bushes. A clutch wire of the motor-cycle was seen around the neck of the dead person by police officer Mr. Desai. He had also seen blood stains on the mouth and clothes of the deceased. Thereafter police removed the body of the said person Shinde and sent to Cooper Hospital where the doctor on duty declared the said Shinde as dead after examining him before admission. Therefore, the complainant passed on a message regarding the death of said Shinde to North West Control Room and asked them to send police officers to Cooper Hospital. The then police sub Inspector Mr. Rajendra Laxman Desai (PW-10) was on duty as a station house officer in the intervening night of 15/09/1998 and 16/09/1998. Upon receiving the telephonic message from North West Control Room, he had gone to Picnic Point along with police officer Pathan, and after the injured Shinde was sent to Cooper Hospital in mobile van with the police officer choudhari (PW-1), he had drawn the spot cum seizure panchanama.

Thereafter he along with police officer Pathan came to police station. At that time he received a phone from Cooper Hospital that the injured succumbed to the injuries before he was admitted to the hospital. Thereafter he and API Pathan went to Cooper Hospital, where he recorded the complaint of Police Officer Choudhari (PW-1) as per his Say. The said complaint is at Exhibit 12. Thereafter Police Officer Desai (PW-10) had drawn inquest panchanama in presence of panchas. The dead body was sent for post mortem. The crime was registered as CR No.97/98 under Sections 302, 201 r/w 34 of the IPC. Thereafter both accused were arrested, and clothes on their persons were sized under seizure panchanama. Thereafter further investigation of the case was marked to API Pathan (PW-11).

3 During the course of investigation, he recorded the statement of witnesses, and sent all the seized articles along with the car to CA. Thereafter identification parade was conducted and both the accused were identified by witness Jaisingh Ramchandra Salvi. After completion of investigation PW-11 Pathan submitted the charge-sheet against both the accused in the court of 43rd Metropolitan Magistrate at Borivali. The learned Metropolitan Magistrate committed the case to the Court of Sessions as the offences levelled against both the accused are triable by the Court of Sessions.

4 Thereafter the learned Additional Sessions Judge framed charge

against the accused. The charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. In their statement recorded under Section 313 of the Criminal Procedure Code, both the accused have stated that they have not committed any offence as alleged and they have been falsely implicated in this case at the hands of the police.

5 To bring home the guilt of the accused, during the trial the prosecution has examined in all 11 witnesses in support of its case. The Trial Court has recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Sessions Judge, after considering the entire evidence available on record, came to a conclusion that prosecution has miserably failed to prove the charges levelled against the accused under Section 302 r/w 34 of the IPC beyond all reasonable doubt, and therefore, as stated herein above, acquitted both the accused by the impugned judgment and order. Hence this Criminal Appeal filed by the State against the said order of acquittal.

6 We have heard the learned APP for the Appellant – State and the learned counsel for the Respondents – Accused. With their able assistance perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, the material produced on record, and the reasons recorded by the

learned Sessions Judge in the impugned judgment.

7 It is submitted by the learned APP that the learned Additional Sessions Judge did not consider the evidence led by the prosecution in proper perspective. He further submits that by the evidence of PW-4 Dr. Sanup, the prosecution has proved that the death of Vikram Shinde is homicidal death. The prosecution has led sufficient evidence to constitute the offence under Section 302 r/w 34 of the IPC against both the accused. The apprehension of both the accused by the police officers with the car and finding of blood having Group "A" in the car, on the articles seized under panchanama, on the clothes of the accused as well as on the clothes of the deceased supports the case of the prosecution that the accused have committed the offence. In the identification parade, witness Jaisingh Salvi had identified both the accused. The evidence of PW-7, who deposed that he had seen the accused in the company of deceased in the said car before the incident, supports the case of the prosecution. He further submits that though there is no eye witness to the incident and there is no evidence to prove that the deceased was seen lastly in the company of accused when accused No.2 was driving the car of accused No.1, the aforesaid circumstances and the evidence and material brought on record by the prosecution are sufficient and conclusive in nature which establish the complete chain, and therefore, the prosecution has proved the charges levelled against both the accused. He lastly submits that the impugned

judgment and order passed by the Additional Sessions Judge, Mumbai dated 08/10/2002 in Sessions Case No.1382 of 1998 is not legally sustainable and the same is liable to be quashed and set aside.

8 The learned counsel appearing for the Respondents/Accused submits that there is no eye witnesses to the alleged incident and therefore the sole evidence of the police persons cannot be relied upon as a gospel truth, because the prosecution did not examine any independent witness to show the involvement of the Respondents/Accused in the alleged crime. The prosecution has miserably failed to prove the motive of the accused persons to eliminate Vikram Shinde. The case of the prosecution is based on circumstantial evidence, and the prosecution has not led cogent and corroborative evidence to complete the chain so as to draw a conclusion that the offence as alleged has been committed by the Respondents. He further submits that mere finding the blood of "A" group on the clothes of the accused persons, which happens to be a blood group of deceased, alone circumstance cannot be made a basis to sustain the conviction of both the accused and that too in a serious offence without any positive and substantive evidence on record from the independent witness. He further submits that the prosecution has not examined witness Jaisingh Salvi, who had identified the accused persons in the identification parade. The prosecution has also not examined any independent panchas witness in support of the evidence of Investigating

Officer PW-11 Mr. Pathan. He lastly submits that the prosecution has miserably failed to prove the charges levelled against both the accused beyond all reasonable doubts. He, therefore, prays that the Appeal of the State against acquittal of the Accused may be dismissed.

9 Before scrutinizing the evidence led by the prosecution, it would be apt to record certain admitted and undisputed facts. The room located in Omkar Co-operating Housing Society bearing No.32 was owned by the deceased Vikram Shinde and it was given on rent to Accused No.1 for a period of 11 months, and the documents to that effect had been executed by the deceased and Accused No.1. Even the wife of deceased Savitri (PW-3) has also supported the said fact in her evidence before the court. There is no eye witnesses to the alleged incident. The case of the prosecution is based on circumstantial evidence. The prosecution has not examined the person Jaisingh Salvi who identified the accused in identification parade.

10 Now coming to the evidence led by the prosecution. The prosecution has mainly relied upon the oral evidence of police witnesses viz. PW-1 Krishna Choudhary, who is the complainant, PW-9 Vidhyadhar Rane, Police Head Constable, PW-10 Rajendra Desai, the then PSI and PW-11 Mr. Pathan – the Investigating Officer, as also the evidence of PW-4 Mr. Rambhau Laxman Sanap – the then Medical Officer, and PW-3 Savitri Shinde - the wife

of deceased, and PW-7 Nivrutti Maruti Chaugule.

Firstly we would like to deal with the evidence of PW-3 Savitri Vikram Shinde – the wife of the deceased, who deposed that she married to Vikram. On 15-09-1998 around 12.00 noon her husband Vikram went for a duty and he was expected to return back around 11.30 pm but he did not return back, therefore, they enquired into the bank as to what had happened to him. Thereafter they were informed by Aarey Police Station that he was murdered. They went to the police station and identified the clothes and other articles of the deceased.

In her cross examination, PW-3 Savitri stated that she knows one Jaysinghrao Salvi who was working with her husband. Jaysinghrao accompanied her in the police station after the death of her husband. She further stated that in the police station they were informed by the police that these are the accused involved in the offence and they are arrested. After identifying the articles the police asked her to go. The police have recorded her statement and read over to her. She has no explanation why it is not mentioned in her statement regarding non-signing of Mr. Vikram on the cheques leaves.

11 The next witness is PW-4 Medical Officer Dr. Rambhau Sanup. He

deposed that on 17-09-1998 he was attached to Additional Coroner's Court Juhu as a Medical Officer. On that day he received a dead body of Vikram Sitaram Shinde, brought by the police of Aarey Sub Police Station. He further deposed that he started post mortem on the dead body of said Vikram Shinde on 16-09-1998 at about 4.30 pm and concluded it at about 5-30 pm. During the course of post-mortem, on external examination he found 14 injuries and on internal examination he found 3 internal injuries on the person of Vikram Shinde, which have been recorded by him in the post mortem notes. As per the opinion of Medical Officer (PW-4) the cause of the death of deceased Vikram Shinde is, "Asphyxia due to strangulation with subdural heamatoma (Unnatural)". In his evidence before court, PW-4 Dr. Sanup also opined that, "the incised wounds are possible by sharp cutting objects and abrasions can be caused while struggling."

In his cross examination, PW-4 Medical Officer Dr. Sanup deposed that Rigor Mortis means the stiffness of the body. As Rigor Mortis was not present means the death was occurred within 24 hrs of conducting of the post mortem. He admitted that the complete loss of Rigor Mortis may be attend in tropical climate within 24 hrs of death though in temperate climate this is more likely to be 36 to 48 hrs or even longer.

12 The prosecution has also examined PW-7 Nivrutti Chaugule to

show that deceased was on duty on 15-09-1998 from 2.00 pm to 10.00 pm. He deposed that he is watchman in State Bank at Fort, and on 15-09-1998 one Vikram Shinde, Salve, Gaikwad and he himself were on duty since 2.00 pm to 10.00 pm. At about 10.00 pm PW-7 went to his house by road as usual and Vikram Shinde boarded the white car and went towards his house at the direction of Churchgate.

In his cross he deposed that he did not give the number of the white car in which Vikram Shinde had boarded in his statement before police because he had not seen the same.

Considering the evidence of PW-7 Nivrutti Cahugule that deceased Vikram Shinde was on duty with him on 15-09-1998 since 2.00 pm to 10.00 pm and after duty hours deceased Vikram Shinde boarded the white car, it cannot be said that this evidence is sufficient to prove the theory of last seen the deceased in the company of the accused as PW-7 does not speak about the persons sitting the car along with deceased Vikram as also he did not give the number of the said car.

13 Now coming to the evidence of police witnesses. PW-1 Krishna Govind Choudhary – the complainant has deposed that on 15-09-1998 he was attached to Wireless of Aarey Colony. On 15-09-1998 at about 20 hrs he came

for a night duty on Wireless Vehicle. He was to be on duty till 8.00 am on next day. On 16.09.1998 when they were on patrolling at about 0.5 hrs, they stopped at Picnic Point Dinkar Desai Marg. They saw one car coming from Unit No.25 bearing No.MH-01-7457. There was a driver and one person was sitting behind. They stopped the vehicle. The driver told his name as Daya Shankar, resident of Gaodevi and the person who was sitting behind told his name as Ramraksha Singh. They took the search of the vehicle and saw blood stains on the door, and there were blood stains on the seat on the back side. They sent message to duty officer of Aarey Police Station. PI Pathan and Duty Officer Desai came there. After getting the information from these two persons they went to Road No.25. They walked that distance. There was a wire to the neck of a person lying there. Then as per the directions PI Pathan, he took that person to the hospital. The Doctor examined him and declared him to be dead. The duty officer recorded his FIR. PW-1 deposed that he does not remember to have signed the FIR.

In the cross examination, PW-1 stated that he was on patrolling duty on entire Aarey Colony Area and it is the forest area. He admitted that while entering into the Aarey colony area a pass is required to be taken at the entrance by making necessary payment. Official contractor is appointed to collect those entry fees for the government. He stated that nobody is allowed to enter that area from 12.00 midnight.

14 The next witness is PW-9 Mr. Vidyadhar Murari Rane. He deposed that on 15-09-1998 he was on duty on a wireless Van Aarey-1 for night shift from 8.00 pm to 8.00 am on 16-09-1998. He and other police personnel were doing patrolling in Aarey area. On 16-09-1998 at about 12.05 midnight they came to picnic point, stopped there and observed coming and going vehicles. Thereafter at Unit No.25 he had seen one light of the vehicle, within a spur of moment, a light was off. They stopped that car. It was a white coloured Fiat Car bearing No.MH-01-U-7457. It was driven by one Jaishankar Mishra. On its rear seat accused No.1 Ramraksha Singh was sitting. After both of them came out of the car, they had seen the rear seat of the car, at that time, it was wet with blood. Thereafter immediately they called police officer Desai and Pathan to the spot. Both of them came immediately. They made enquiries with the accused. Thereafter both the accused were taken in charge of by the police officers. Both the accused pointed out the place where the deceased was lying in an injured condition before his death. Thereafter the injured Vikram Shinde was put in the wireless van and removed to Cooper Hospital for the treatment. He was admitted there and he was declared as dead. Police recorded his statement.

 In his cross examination, PW-9 stated that he had stated before the police in his statement that within a spur of moment the light was off and

thereafter again it was on, however, he cannot assign any reason as to why the said fact is not mentioned in his statement before the police. PW-9 further stated that he cannot assign any reason as to why the police officer did not mention the fact that, they had seen the red coloured stripe below the back door of the car, in his statement. He admitted that after 12.00 midnight, the private vehicles are not allowed to enter in Aarey Colony. There was no light where the car was stationed. PW-9 further stated that he was standing by the driver side at that time. PW-9 further stated that he does not remember as to whether he had stated or not in his statement before the police that "Accused No.1 Raraksha Singh by pointing out his finger told that he has received the bleeding injury.

15 The next witness is PW-10 Mr. Rajendra Laxman Desai. He deposed that in the intervening night of 15-09-1998 and 16-0-9-1998, he was station house officer since 8.00 pm to 9.00 am. At about 12.20 am on 16-09-1998 he received a telephone message from north south control room that two persons had been apprehended with car at Picnic point Aarey colony on suspicion. Accordingly he went to the spot. In the meantime API Pathan of Aarey Police Station had also come there. They made enquiry. During the course of investigation both the suspects disclosed that they would point out the place where the dead body was lying. The memorandum of accused No.1 Ramraksha Singh was recorded in the presence of panchas at the picnic point

only. Accused No.1 pointed out one dead body lying in the bushes at some distance from the electric pole. Thereafter they came to the picnic point again. PW-10 observed the vehicle bearing No.MH-01-U-7457. They had seen that the blood was lying on the rear seat of the car. One screw driver was also lying there. It was stained with blood and one hair was stuck to it. One yellow coloured button was also lying there. One yellow coloured sandal of 7 number was also lying in the car and one black coloured brief case was also there in the car. One Identity card of Bharatiya State bank and one railway pass was also therein the car. One diary was also there. Bunch of 3 keys was there. The brief case was also containing Rs.12250/-. Two cheque books were there. One Stamp paper of Rs.100/- was there. Two stamp papers of Rs.20/- were there. One telephone diary was there. There were blood stains on the door of the car. PW-10 seized all the articles referred above before two panchas under the panchanama. Thereafter they came to police station where they received a phone from Cooper Hospital that the injured succumbed to the injuries before he was admitted in the hospital. Thereafter PW-10 and API Pathan went to Cooper Hospital and recorded the complaint of Police Officer Chaudhary (PW-1). It was treated as FIR. Thereafter inquest panchanama of dead body of the deceased drawn by PW-10 in the present of panchas. After he came to police station, PW-10 arrested both the suspects in this case and took in charge of the clothes from their persons. The further investigation of the case was marked to API Pathan.

In the cross examination, PW-10 stated that he drew inquest panchanama Ex.43 in Cooper Hospital in between 3.40 am to 5.40 am. He admitted that arrest panchnama Ex.42 was drawn in the police station. PW-10 stated that he reached at the spot i.e. picnic spot at about 00.35 hrs. Panchas were called at the spot while they were passing along the road. He denied the suggestion that the Aarey Area was closed for the pedestrians after 12.00 midnight at the time of incident. He also denied the suggestion that at the time of incident also the pedestrians were prohibited from going in Aarey area after 12.00 midnight. He denied the suggestion that no spot cum seizure panchanama at Ex.41 was drawn by him and therefore no panchas are produced in the court. PW-10 stated that he had put seal marks on article no.19 at the spot of its seizure. He admitted that there is no seal mark or label duly signed by the panchas on it. He also admitted that column no.15 of Ex.12 is blank and no date is mentioned in it. PW-10 voluntarily stated that the FIR was sent to the Court of M.M'z on 16-9-1998, but date is not mentioned in the FIR.

16 The last witness examined by the prosecution is PW-11 Mr. Anwar Rasool Pathan – the Investigating Officer. He stated that on 17-9-1998 the further investigation of CR No.97/98 was marked to him by Sr. PI of Aarey Sub Police Station. He recorded the statement of witnesses. PW-11 made enquiry

regarding the car bearing No.MH-01-U-7457 with the RTO regarding its ownership and it was told by the RTO that the said car was in the name of accused no.1 Ramraksha Singh. On 24-9-1998 he sent all the seized articles along with the car to C.A. On 28-9-1998 the identification parade in respect of both the suspects was arranged at the hands of SEO Pradeep Kamble in Arthur Road Jail and accordingly he conducted the same. After completion of investigation on 7-12-1998 he submitted the charge sheet against both the accused in the court.

In his cross examination PW-11 admitted that, PW-9 P. N. - Rane did not state before him in his statement that within a spur of moment the light of the car was off and thereafter again it was on. He stated that P.W.9 Rane did not state before him in his statement that after seeing the light of the car off and on, they suspected, and they had seen the red colour stripe below the back door of the car. This witness PW-11 also stated that PW-9 Rane did not state before him in his statement that accused No.1 Ramraksha Singh by pointing out his finger showed that he had received the bleeding injury. PW-11 denied the suggestion that he did not record the statement Jaisingrao Salvi and therefore he is not examined before the Court. He also denied the suggestion that no test identification parade was arranged at the hands of SEO and therefore question of identification of the accused by Jaisingrao Salvi does not arise and merely the test identification parade memo was prepared in the

police station. He also denied the suggestion given by the defence that he had prepared Ex.46 and Ex.47 without calling the panchas in the police station and therefore, the panchas have not been examined.

17 It is clear from reading of the evidence of the aforesaid police witnesses that there are material omissions and contradictions in their versions. Their evidence is not corroborative so as to draw a conclusion that the Respondents/Accused are the persons who committed the murder of Vikram Shinde.

18 The entire prosecution case rests upon the circumstantial evidence inasmuch as there is no direct evidence available on record in the nature of eye witnesses. As stated herein above, the prosecution has examined as many as 11 witnesses to prove its case. It is pertinent note that the prosecution has not examined panch witnesses to prove the inquest panchanama, seizure panchanama etc. which creates doubt about drawing of panchnama on the spot of incident in the presence of panchas. We have carefully perused the evidence adduced by the prosecution. There are omissions and contradictions in the evidence of police witnesses examined by the prosecution. The PW-1 Choudhary, who is a police personnel in the rank of ASI, deposed before the court that he does not remember to have signed the FIR. Even the Investigating Officer did not produce the station diary entry to substantiate the prosecution

story that, ASI Choudhary and other police staff were on patrolling duty during that relevant time and at that place, and that PW-1 had lodged the complaint (Ex.12). One important factor, which is required to be considered in the background of the prosecution case, is that the spot of alleged incident is in Aarey Colony Area which is a forest area, and as stated by PW-1 in his deposition that while entering into the Aarey Colony Area a pass is required to be taken at the entrance by making necessary payment and official contractor is appointed to collect those entry fees for the government, and nobody is allowed to enter in that area from 12.00 midnight. However, there is no material on record to show that any gate pass or any receipt of payment was seized by the police from the accused persons at that time. According to the Medical Officer Dr. Sanup (PW-4) Rigor Mortis means the stiffness of the body, and as rigor mortis was not present means the death was occurred within 24 hours. On the point of last seen of the deceased in the company of the accused, the evidence led by the prosecution in the form of PW-7 is also vague. He only stated that Vikram Shinde boarded the white car and went towards his house at the direction of Churchgate. He did not give the number of the white car in his statement before the police because he had not seen the same. Except the evidence of PW-7 there is no other material or evidence produced on record by the prosecution to prove the theory of last seen the deceased in the company of accused. So far identification parade is concerned, the prosecution did not examine the witness Jaisingrao Salvi, who identified the

accused in the parade. It is also important to note that in her cross examination, PW-3 Savitri, the wife of the deceased, has admitted that the said Jaysinghrao Salvi was working with her husband and, the said Jaysinghrao accompanied her in the police station after the death of her husband where police were informed that these are the accused involved in the offence and they were arrested. This itself creates the doubt about the identification parade. Though PW-4 Dr. Sanap opined that, the incised wounds are possible by sharp cutting objects, there is no recovery of any sharp object from the accused. So far motive is concerned, the prosecution did not bring on record any concrete material. If the entire evidence of the prosecution is taken into consideration, it appears that the prosecution has failed to bring on record the material showing that the accused had some motive in killing Vikram Shinde. Considering the evidence on record, particularly the evidence of police witnesses, the Trial Court has rightly observed that neither PW-1 Choudhary – complainant nor PW-9 Rane have supported the versions of PW-10 Police Officer Desai. Except Police Officers, the prosecution did not examine independent witness to prove the spot of incident i.e. either the incident has occurred in Aarey Colony Area or somewhere-else and then dead body was brought in Aarey Colony Area and same was thrown there. It was incumbent on the prosecution to bring on record the evidence in respect of whereabouts of the deceased from 10.00 pm till morning at 0.5 am.

19 In so far as test laid down for appreciating circumstantial evidence including theory of last seen together is concerned, a useful reference could be made to the judgment of Supreme Court in the matter of **Sharad Birdhichand Sarda v/s. State of Maharashtra**¹ the Apex Court in paragraphs 153 and 154 has observed as under :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the following observations were made.

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. They should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the

¹ (1984) 4 SCC 116

innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

In paragraph 143 of the said Judgment, the Supreme Court observed that it is vital that any circumstance adverse to the accused must be put to him in his statement under Section 313, CrPC 1973; otherwise it must be completely excluded from consideration because the appellant did not have any chance to explain them.

20 In aforesaid *Sharad Birdhichand Sarda's* case (supra) in paragraphs 162 and 613 the Supreme Court has also considered the aspect as to when the benefit of doubt can be given to the accused. In the said paragraphs 162 and 163 it is observed thus :-

"162 Moreover, in M.G. Agarwal's case (supra) this Court while reiterating the principles enunciated in Hanumant's case observed thus:

If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt.

"In Shankarlal's (supra) this Court reiterated the same view thus:

"Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment".

163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In *Kali Ram v. State of Himachal Pradesh*, this Court made the following observations.

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where the guilt of the accused is sought to be established by circumstantial evidence."

In the concluding paragraph 218, the Supreme Court observed as under :-

"218 In view of the fact that this is a case of circumstantial evidence and further in view of the fact that two views are possible on the evidence on record, one pointing to the guilt of the accused and the other his innocence, the accused is entitled to have the benefit of one which is favourable to him. In that view of the matter I agree with my learned brothers that the guilt of the accused has not been proved beyond all reasonable doubt."

21 The Hon'ble Supreme Court of India in the case of *Murlidhar @ Gidda vs. State of Karnataka*,² while considering criminal appeals, underscored the fundamental principles to be kept in mind by an appellate court while hearing an appeal against acquittal. Paragraphs 10, 11, and 12 are relevant and read thus:

"10. Lord Russell in *Sheo Swarup* [*Sheo Swarup*

2 2014 (5) SCC 730 : 2014 (2) SCC (Cri) 690

v. King Emperor, (1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] , highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said : (IA p. 404)“... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh [Surajpal Singh v. State, AIR 1952 SC 52 : 1952 Cri LJ 331] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed : (AIR p. 54, para 7)

“7. ... the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v.

State, AIR 1954 SC 1 : 1954 Cri LJ 225] , Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656] , Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426] , Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167] , Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820] , Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639] , Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914] , Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] , K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381] , Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355] , Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] , Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370] , C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2

SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence

must not result in the interference by the appellate court in the judgment of the trial court.”

[emphasis supplied]

22 The principles laid down in *Murlidhar @ Gidda (supra)* were reaffirmed by the Hon’ble Supreme Court of India in *Suman Chandra vs. Central Bureau of Investigation*,³ wherein the Apex Court held that the if the view taken by a trial court is a possible view, which was neither perverse nor unreasonable, then it ought not to be interfered with or reversed by an appellate court.

23 In the light of discussion in foregoing paragraphs, if the prosecution case is considered in its entirety, an irresistible conclusion is that the prosecution has not proved its case beyond reasonable doubt against the accused. The Trial Court has rightly come to a conclusion that the prosecution has failed to bring home the guilt of accused beyond reasonable doubt and therefore they deserve to be acquitted, and as stated herein above, has rightly acquitted the accused.

24 We are of the considered view that the findings of acquittal recorded by the trial Court are in consonance with the evidence brought on record and there is no perversity as such. The prosecution has utterly failed to

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prove the case against the Respondents/Accused. The view taken by the trial Court is plausible and therefore there is no reason to cause interference in the order of acquittal. Even if for a moment it is assumed that another view is possible on the strength of evidence brought on record by the prosecution, that is not a ground to interfere with the order of acquittal.

25 In the light of discussion in forgoing paragraphs, an inevitable conclusion is that the Appeal filed by the Appellant/State fails. There is no merit in the Appeal. Accordingly, the Criminal Appeal stands dismissed. Bail bonds, if any, shall stand cancelled.

(N. R. BORKAR, J)

(S. S. SHINDE, J)