

CRA-D-914-DB-2015(O&M)
Date of decision :21.10.2022

Versus

State of Punjab and others Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. P.S. Ahluwalia, Advocate for the appellants.

Mr. Arjun Sheoran, DAG, Punjab.

Mr. Mohit Thakur, Advocate for
Mr. G.S. Sidhu, Advocate for respondent No.2.

JAGMOHAN BANSAL, J.

1. The instant appeal filed by the brothers of Prabhbir Singh (deceased) is directed against the judgment dated 09.02.2015 of learned Additional Sessions Judge, Amritsar (for short 'trial court') whereby the trial Court has acquitted the respondents who were arrayed as accused in FIR No.53 dated 08.07.2011 registered at Police Station Kathunangal, Amritsar(Rural) under Sections 302, 364, 201, 34 of IPC.

Brief Facts:

2. The necessary facts emerging from the record are that Prabhbir Singh @ Rummy (deceased) was a resident of village Kathunangal. He was married to Rajwinder Kaur @ Raj (respondent No. 3). He was having two brothers namely Gurpreet Singh and Khushbir Singh who are appellants in this appeal. The deceased

was having a minor daughter namely Samanpreet Kaur. The sister of deceased was married to Kuwinderjit Singh who was resident of Ranjeet Avenue, Amritsar. Kuldip Singh son of Kirpal Singh, an Advocate and former Sarpanch of village Kathunangal happened to be cousin of the deceased whose father was a former MLA.

3. In the intervening night of 16/17.06.2011, Prabhbir Singh went missing under suspicious circumstances. Gurpreet Singh-appellant No.1 visited police station and got registered rapat No.18 dated 26.06.2011, the relevant extracts of which read as:

“Rapat No.18 dated 26.06.2011, time 5:30 PM, it is recorded that Gurpreet Singh son of Harjinder Singh, Caste Jat, resident of Kathunangal, has come to the police station and reported that his brother Prabhbir Singh son of Harjinder Singh, Caste Jat, resident of Kathunangal, on 17.06.2011 had gone from his house to the fields at 3:30 AM to run the motor, but he did not return to his house. Enough search was made to find him but he could not be found. He was wearing vest of white colour, capri of red colour and slippers in his feet, who was aged 42 years, having height of 5’6”, wheatish complexion, keeping mulla fashion. A report be registered in the Roznamacha.”

4. On 08.07.2011, Kuldip Singh son of Kirpal Singh lodged FIR against Navinderjit Singh @ Sunny (respondent No.2) and Rajwinder Kaur-(respondent No.3) alleging that respondent No.2, a resident of village Aliwal, Patti Pakivan was in illicit relations with respondent No.3 and inspite of attempts of the family to make Rajwinder Kaur (respondent No.3) to understand not to maintain

relations with Navinderjit Singh, she continued her illicit relations with respondent No. 2. He was confident that respondents have abducted the deceased and in order to remove the obstacle coming in their way, they have killed the deceased. The deceased was wearing a gold chain with a locket and his name 'Rummy' was engraved thereon in the English. The deceased was carrying his voter identity card and currency notes of Rs.200 in his wallet.

On the complaint of Kuldeep Singh, an FIR No.53 dated 08.07.2011 was registered under Sections 302, 364, 201, 34 of IPC at Police Station Kathunangal, Amritsar (Rural) against respondents who came to be arrested on 12.07.2011. The police completed investigation and filed its report under Section 173 Cr.P.C. arraying respondents as accused for commission of an offence punishable under Sections 302, 364, 201, 34 of IPC.

(i) The prosecution, in order to prove its case examined 17 witnesses which included private and official witnesses. The accused-respondents were examined under Section 313 of Cr.P.C. who denied the charges of prosecution and pleaded that they have been falsely implicated. The respondent No.2 pleaded that complainant was inimical with his Fuffar-Balwinder Singh (husband of sister of his father) because Balwinder Singh used to oppose Kuldeep Singh in the elections and he used to help his Fuffar-Balwinder Singh. The respondent No.3 submitted that complainant and her close relatives have kept her daughter in their custody and implicated her in this case just to usurp costly property of her husband who used to take intoxicants.

5. Learned trial Court vide judgment and order dated 09.02.2015 acquitted all the accused/respondents and the appellants have filed present appeal seeking setting aside of aforesaid judgment passed by the trial Court. The appellant at the first instance did not move an application under Section 378(3) seeking leave to appeal, however, on being pointed out by this Court, appellants moved required application on 27.08.2016.

Contention of the Appellant:

6. Learned counsel for the appellants assiduously contended that trial Court has wrongly ignored testimony of daughter of the deceased who was minor at the time of alleged incident. Two mobiles, identity card of deceased and gold chain of deceased was recovered from the possession of respondent No.2 and police had effected recovery on the basis of disclosure made by respondent No.2. The good conscious prevailed upon accused and they made extra judicial confession before Malook Singh, a former Sarpanch of village Fattu Bill, Police Station Kathunangal and that extra judicial confession cannot be ignored. The dichotomy between Rapat dated 26.6.2011 lodged by brother of deceased and FIR lodged by cousin of deceased was on account of lack of knowledge of facts and figures. The daughter of deceased was the legal heir, thus, the claim of respondents that relatives of deceased are trying to usurp costly property of deceased is baseless and had no legs to stand. The last seen witnesses even though could not be blindly relied upon still these witnesses were completing the chain of events, and thus, their statements deserved to be considered.

Contention of the Respondent:

7. Learned counsel for the private respondents pleaded that there is no infirmity in the impugned judgment. The appellant with intent to grab the property of the deceased implicated the respondent. Kuldip Singh misusing his position lodged FIR even though he was not an aggrieved person. The appellants have taken over custody of the daughter of the respondent and she-respondent has been thrown out of property of the deceased. Kuldip Singh contested elections and Fuffa of Navinderjit Singh-respondent No.2 and Navinderjit Singh himself supported the opposite party. There was unexplained delay in lodging FIR and there was no reason to make extra judicial confession before Malook Singh (PW-6) as the respondents could approach and surrender either before police or court. There was nothing special in Malook Singh which compelled or persuaded them to approach Malook Singh. Kuldip Singh being former Sarpanch and an Advocate was aware of criminal law and he abusing his position had lodged FIR and police had acted in an unfair and unreasonable manner while conducting investigation.

Discussion & Findings:

8. We have perused the record, heard the arguments of counsel of contesting parties and find that appeal is bereft of merit and deserves to be dismissed on account of hereinafter assigned reasons.

9. Before adverting with the issues involved, it would be apt to notice that till date body of Prabhbir Singh has not been

recovered. The prosecution has examined 17 witnesses, however, in our opinion, six witnesses are material and relevant whose depositions are scrutinized as below:

(i) Kuldip Singh (PW-2) lodged the complaint to the police, on the basis of which the FIR was registered on 08.07.2011 i.e. after the expiry of three weeks from the date of missing of the deceased. The deceased went missing on 16/17.06.2011 and a rapar to this effect was registered on 26.06.2011. Kuldip Singh was cousin of deceased but the FIR was not lodged by brothers or sister of the deceased. As per rapar, the deceased was wearing white colour vest, capri of red colour and slippers in his feet when he left home in the morning of 17.06.2011. He had gone to switch on the motor installed in their field. Kuldip Singh who was cousin of the deceased was not staying in the village but authoritatively claimed that the deceased was wearing gold chain, carrying voter identity card and currency notes of Rs.200/- in his wallet. It is intriguing that police on the disclosure made by respondent No.2 recovered one gold chain and purse containing voter identity card of the deceased. The recovery was effected from the gate of the house of the respondent No.2.

Kuldip Singh was not residing with deceased. He was not even residing in the same village, nonetheless, he was competent to perceive that deceased was wearing gold chain and carrying voter card as well Rs.200/- in his wallet. It was statement of Kuldip Singh which put the criminal law into motion. The statement of

Kuldip Singh on account of following reasons is apparently and patently false as well unbelievable:

- (a) Kuldip Singh was not family member of the deceased still he opted to lodged complaint with the police.
- (b) Kuldip Singh was not residing in the village still he was aware that respondents had illicit relations with each other.
- (c) He was not residing with deceased, however, he was aware of articles which embellished the wallet of the deceased.
- (d) He is an advocate and former Sarpanch of the village and remained silent from 17.06.2011 to 07.07.2011 and on 08.07.2011, unknown sense prevailed upon him and compelled him to approach police.
- (e) As per cross examination, about 5-6 months prior to 16/17.06.2011, he came to know about the illicit relations of Rajwinder Kaur with Navinderjit Singh, however, he remained silent even though he was a former Sarpanch and was carrying courage to lodge FIR in a case to which he was a stranger.
- (f) As per cross examination, he never met Navinderjit Singh during his visit to village Kathunangal. He visited police station after about 10 days from the date of disappearance of deceased but did not disclose afore-stated facts to the police.
- (g) Kuldip Singh lodged complaint which culminated into registration of FIR and passing of impugned judgment, however, he

has opted to abstain from filing appeal and brothers of deceased have filed present appeal.

From the perusal of allegations of Kuldip Singh (PW-2), cross-examination, sequence of events, it transpires that Kuldip Singh being an Advocate, former Sarpanch of the village was aware of the nitty gritty of the legal system. He misusing his position and past experience of being Sarpanch fabricated a story wherein two persons were implicated. The police never attempted to trace source of information of Kuldip Singh and proceeded blindly relying upon him.

(ii) Bir Singh (PW-8), a Block Samiti member and Gurinderjit Singh @ Dimple (PW-5) tendered their statements on 10.07.2011 and claimed that on the intervening night of 16/17.06.2011, they had seen both the respondents together in an Indica Car.

From the perusal of their statements and cross-examination, it comes out:

(a) Both of them left their village on the next day i.e. 17.06.2011.

(b) Both of them returned back after 15-20 days from the date of leaving village on 17.06.2011.

(c) Both of them opted to remain silent till 09.07.2011 and all of sudden on 10.07.2011 unknown forces compelled them to make statement before police.

(d) Both of them did not disclose the facts seen on the night of 16.06.2011 to family members of the deceased.

(e) Both of them failed to disclose name of the relative to whom they visited during 17.06.2011 to 09.07.2011.

From the statement of aforesaid witnesses and their cross-examination, it is quite evident that both the witnesses have made identical story and they have joined hands with appellants and Kuldeep Singh. Nothing has come on record in the investigation showing where both of them stayed for 15-20 days after 17.06.2011. Apparently, they were introduced by the police because the police due to unknown reasons was more interested to implicate the respondents.

On being confronted with these material contradictions and facts compelling to disbelieve the aforesaid witnesses, learned counsel for the appellant expressed his inability to rely upon these witnesses.

(iii) Samanpreet Kaur (PW-7), who is daughter of the deceased & respondent No.3, in her statement dated 17.07.2011 (Ex. DX), disclosed that her mother was keeping two mobile numbers i.e. 9781885757 and 8437936555. She slept with her parents on the night of 14.06.2011 and during the night she woke up and did not find her mother on the bed. She came out and switched on the light and found that her mother was with Navinderjit Singh (respondent No.2). Her mother came to the room and Navinderjit Singh went to the kitchen. Out of fear, she did not

ask any question from her mother. On 15.06.2011, she was left at the house of her Aunt and brought back to home on 19.06.2011. On being asked, she was told by her mother that her father had gone somewhere. She later on came to know that her mother and Navinderjit Singh had pushed her father into canal and killed him.

(iia) Kulwinderjit Singh (PW-1), husband of the sister of the deceased in his statement dated 08.07.2011 deposed that on 15.06.2011, Rajwinder Kaur in his absence left her daughter Samanpreet Kaur at their home. Rajwinder Kaur never came back to take her daughter and Samanpreet Kaur was still with them. He was confident that due to her illicit relations, Rajwinder Kaur left her daughter in their home so that she might finish her husband (deceased). In his cross-examination, he admitted that Gurpreet Singh, brother of the deceased was staying in a house having gap of one plot with the house of deceased. He visited village Kathunangal on 18.06.2011 and came to know after 15-20 days that deceased was not traced out. He had discussed about missing of deceased with Kuldeep Singh and Gurpreet Singh on 18.06.2011, however, they did not report the same to the police.

From the perusal of statements of above witnesses, their cross-examination and sequence of events, following facts emerge:

(a) Rajwinder Kaur (respondent No.3) left her daughter at the residence of Kulwinderjit Singh on 15.06.2011 and Kulwinderjit Singh came to village Kathunangal on 18.06.2011 and discussed

with Kuldip Singh and brother of the deceased about the missing of deceased, however, they did not report the matter to police.

(b) Kulwinderjit Singh claimed that he came to village on 18.6.2011 whereas Samanpreet had claimed that she alongwith her uncle and aunt came back to her village on 19.6.2011. It is further apt to notice that Kulwinderjit before police as well trial court did not disclose his visit on 19.6.2011.

(c) Samanpreet Kaur was 13 years old on 17.06.2011 and as per her statement, she on the night of 14.06.2011 saw her mother with Navinderjit Singh. It is surprising and unbelievable that she did not disclose this fact to her father, grandmother or uncle (Fufa).

(d) As per statement dated 8.7.2011 of Kulwinderjit Singh (PW-1), Samanpreet Kaur was staying with them whereas before trial court Samanpreet Kaur (PW-7) stated that she came back to her own house on 19.06.2011.

(e) Samanpreet Kaur came back to her home on 19.06.2011 and asked her mother about her father. In spite of having seen her mother with Navinderjit Singh at late hours of 14.06.2011, she opted to remain silent about the illicit relations of her mother with Navinderjit Singh. It was quite natural, had she seen her mother with Navinderjit Singh, she must have disclosed the fact of illicit relations of her mother to everyone as soon as she came to know about missing of her father and at-least registration of FIR. She tendered her statement on 17.07.2011 i.e. after arrest of her mother.

(f) Before police Samanpreet Kaur disclosed that her mother was having mobile numbers i.e. 9781885757 and 8437937555. In her cross examination, she totally denied the fact of disclosure of phones before police. The police arrested both respondents on 12.7.2011 as both surrendered together. At the time of arrest on 12.7.2011, during personal search police vide Ex. PW6/D recovered mobile phone from Rajwinder Kaur with a sim carrying number 8437936555. Similarly, vide Ex. PW6/C mobile phone carrying Number 8437936555 was recovered from Navinderjit Singh. The police collected call details record but there is not even single reference that during 14-17/6.2011 location of mobiles was showing presence of Navinderjit Singh at the residence or at-least in the village of the deceased. Rather findings of trial court qua mobile numbers are telling a totally different story. Trial court has held to the extent that prosecution has failed to establish use of disclosed mobiles numbers by the respondents.

(g) In the name of statement of a child, two mobile phones were disclosed whereas child denied even disclosure of one mobile phone. Two phones were mentioned in statement so that it might be shown that she was carrying one phone which was used to maintain illicit relations.

From the statements of above witnesses, their cross-examination and sequence of events, it is quite evident that both the above-stated witnesses have attempted to support the story cooked by Kuldip Singh and appellants. Samanpreet Kaur made her first statement on 17.07.2011 i.e. after arrest of her mother. It is

quite natural that being 13 years old, she had been brain washed by relatives who had joined hands, to depose against her mother. The contradiction qua mobile phones in the statement made before police and court is quite stark. The call details and mobile company's record is one of the best piece of evidence to find out the location of accused, his communication with others and proof of residence used by him to procure sim from the mobile operator. In the present case, the mobile numbers were disclosed by witnesses, police effected recovery of those very mobile numbers, nonetheless, neither location of accused was traced as alleged by witnesses nor communication between both the respondents was established. It is apt to notice here that prosecution even could not establish ownership and usage of alleged mobile numbers by alleged accused.

On being confronted with the dichotomy between statement of witnesses especially star witness Samanpreet Kaur qua mobile numbers and actual facts and figures, learned State counsel fairly conceded that call details record is neither establishing relations between both accused nor connecting them with alleged crime. Learned counsel for the appellant also conceded the same fact and expressed his inability to controvert the findings returned by learned trial Court. It would be appropriate to notice that a child though 13 years old cannot be expected to memorise wrong mobile number of her mother. This fact becomes more important when a child is disclosing not one but two mobile numbers of her mother. It shows that Samanpreet Kaur was a tutored witness who at the behest of her relatives made a false

statements against her mother who (mother) at that point of time was having no contact with her daughter as she was behind the bars.

(iv) Malook Singh (PW-6) is a former Sarpanch of Fattu Bill, Police Station Kathunangal. As per his statement, on 12.07.2011 both the respondents came to his house and disclosed that for last one year they are having illicit relations with each other. They on the intervening night of 16/17.06.2011, with intent to remove the deceased from their way, took away the deceased in their Indica Car and threw him into running water of canal from the bridge of the canal. The deceased was in a state of intoxication at that point of time. Both requested him (Malook Singh) to produce them before the police and he asked them to come in the evening. They again came back to him and while he was going to the police station to hand them over to the police, a police party met them on the way and he produced both the respondents before Inspector Rajbir Singh.

From the statement of this witness and his cross-examination following facts can be culled out:

(a) Malook Singh was not a resident of Kathunangal where deceased and his wife were staying.

(b) Malook Singh did not produce respondents in the morning and without reason asked them to come present in the evening. They again came in the evening and without any reason accompanied him to surrender before police at Police Station.

(c) Malook Singh did not call police at his residence even though he was a former Sarpanch and his wife had also remained Sarpanch of the village. The police party was on the way and he handed over both the respondents then and there to Inspector-Rajbir Singh.

(d) As per Malook Singh respondents were produced at about 5-6 PM whereas as per Sub Inspector Subhash Chander (PW-9), they were produced at 4 PM and as per Inspector Rajbir Singh (PW-15), they were produced at about 1-2 PM.

An extra judicial confession is a weak form of evidence and conviction cannot be recorded on the basis of extra judicial confession which does not inspire confidence.

In the case in hand, there was no convincing reason for respondents to approach Malook Singh, who was resident of a different village to confess before him especially when he was not a close relative of anyone of the respondents. If the respondents were of such strong opinion that they have committed an offence and should confess before a person, who is neither police officer nor judicial officer, there was no reason for the respondents to seek trial and plead innocent. They would have admitted their fault before the Court at the first available time. It is also pertinent to notice that they did not confess before the registration of FIR but they asked Malook Singh to produce them before police after the same had been lodged. They could have gone to the police and surrendered and there is no convincing reason to believe which compelled them to confess before Malook Singh and asked him to produce them

before police. All these facts collectively indicate that Malook Singh joined the cartel of the appellants and played the role assigned to him.

It is further important to notice that there is no possibility that two accused having an illicit relation would go together to a person to make extra judicial confession and they would further carry their mobiles while they are going to surrender before police. Once there are allegations of illicit relations, in every probability, every accused tries to avoid each other. There is no possibility that such accused would join hands to make extra judicial confession and together surrender before police.

10. From the scrutiny of evidence of above noted witnesses, documentary evidences on record and findings of learned Trial Court, this Court finds:

(a) Brother of the deceased had lodged rapat with police on 26.06.2011 and blamed no one and he did not opt to lodge FIR. Kuldeep Singh, who was neither sibling of the deceased or one of the parents or spouse or child of the deceased was introduced to lodge the FIR after the expiry of three weeks from the alleged incident of murder of the deceased.

(b) Kuldeep Singh was not having source of knowledge about the apparels the deceased was wearing still he disclosed with conviction that deceased was wearing gold chain with locket with his name "Rummy" engraved on the locket at the time of watering of the fields in the wee hours of the morning. He further disclosed that

deceased was carrying voter identity card and Rs.200/- in his wallet. Kuldip Singh disclosed about articles of deceased as if he was shadow of the deceased. The dressing of deceased disclosed by Kuldip Singh and in the rapat was altogether different. It is intriguing that police from the residence of respondent No. 2 effected recovery of gold chain and purse carrying identity card.

(c) The recovery of articles of deceased was effected after 27-28 days from the date of alleged incident and respondent who was allegedly having illicit relations with a married woman and could dare to kill a man, was so stupid or innocent that he was possessing identity card of deceased at his residence though it was totally meaningless for him. Had he been in possession of voter identity card, he at-least after commission of offence would have destroyed it.

(d) Mobile numbers as disclosed by daughter of the deceased were recovered from the possession of respondent No.3, however, record of mobile company narrated a totally different story qua call details record, use of mobiles etc.

(e) The call details record was collected by police but nothing was brought on record to show location of respondents on the alleged places. Neither it was brought on record that Navinderjit Singh was in the village during 14.06.2011 to 17.06.2011 nor any communication between both respondents was found. It is unbelievable that two persons having illicit relations and carrying

more than one mobile are not contacting with each other through mobile phone.

(f) The respondent instead of directly approaching police or judicial officers decided to approach a person with whom they have no family or otherwise relations to produce them before police.

(g) Both the last seen witnesses left their village on 17.06.2011 and came back after 15-20 days. Both of them failed to disclose name and place of their relative where they stayed during 15-20 days period and the police did not try to find out their location during 15-20 days. Both of them were so introvert that they remained silent for 20 days and came not only when FIR was registered against respondents.

(h) All the witnesses were aware for last 06 months that respondents are in illicit relation but none of them raised objection in the form of calling parents of respondents or informing police or calling Panchayat or taking any other appropriate legal action.

(i) All the witnesses during 14.06.2011 to 17.06.2011 came to know about illegal acts of respondents still they remained silent and all of sudden became active as soon as FIR was registered.

Delay in registration of FIR

11. Hon'ble Supreme Court in plethora of judgments has held that delay in registration of FIR is not fatal in every case. Trial Court is supposed to look into facts and circumstances which delayed registration of FIR. If the reasons explained for delay are

cogent, delay can be ignored and prosecution story cannot be brushed aside simply on the ground that there is delay in registration of FIR.

In the present case, the incident took place on 16/17.06.2011 and brother of deceased lodged rapat No.18 on 26.06.2011. The brother of deceased lodged aforesaid rapat and has filed present appeal, however, he abstained from lodging FIR. Kuldeep Singh, who in any manner was not aggrieved from missing of Prabhbir Singh, however acting as an over vigilant citizen, lodged FIR on 09.07.2011. Kuldeep Singh is an Advocate as well a former Sarpanch of the village. He is son of a former MLA. As per witnesses, Kuldeep Singh was aware of missing of deceased on 18.06.2011. Being an Advocate, former Sarpanch and son of a MLA, he was well versed of criminal law which he put into motion even though he was not an aggrieved party. Kuldeep Singh was not an aggrieved party is further conspicuous from the fact that he has opted not to file appeal against impugned order. Therefore, we find that there was unexplained delay in filing FIR against the accused which was fatal to the case of prosecution as the complainant and the appellants had sufficient time to involve two persons and thus kill two birds with one stone.

Presumption of Innocence

12. The Hon'ble Supreme Court has repeatedly held that the benefit of doubt has to ensue to the accused and if two views are possible, the benefit of doubt must be granted to accused. It has

been further held that if two views are possible, the order of acquittal should not be set aside by High Court because there is double presumption of innocence.

On the question of innocence before appellate court, in **Upendra Pradhan v. State of Orissa, (2015) 11 SCC 124** :, the Hon'ble Supreme Court has held:

*14. Taking the first question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In **Narendra Singh v. State of M.P.** [**Narendra Singh v. State of M.P., (2004) 10 SCC 699 : 2004 SCC (Cri) 1893**] , this Court has recognised presumption of innocence as a human right and has gone on to say that: (SCC pp. 708 & 709, paras 30-31 & 33)*

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

*31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a higher court (see **Dhanna v. State of M.P.** [**Dhanna v. State of M.P., (1996) 10 SCC 79 : 1996 SCC (Cri) 1192**], **Mahabir Singh v. State of Haryana** [**Mahabir Singh v. State of Haryana, (2001) 7 SCC 148 : 2001 SCC (Cri) 1262**] and **Shailendra Pratap v. State of U.P.** [**Shailendra Pratap v. State of U.P., (2003) 1 SCC 761 : 2003 SCC (Cri) 432**]), which had not been adhered to by the High Court.*

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimlabai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.”

*15. The decision taken by this Court in the aforementioned case, has been further reiterated in **State of Rajasthan v. Raja Ram** [**State of Rajasthan v. Raja Ram, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965**], wherein this Court observed thus: (SCC pp. 186-87, para 7)*

“7. ... Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of 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. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See Bhagwan Singh v. State of M.P. [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736]) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”

16. Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of the appellant-accused stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the appellant-accused has to be considered and we discard the opposite view which indicates his guilt.

The Apex Court in **para 39 in Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401** while dealing with scope of interference at appellate stage has held:

“39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court’s conclusion with

respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has “very substantial and compelling reasons” for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”

Conclusion :

13. There is always presumption of innocence and in the case of acquittal, there is double presumption. There was unexplained delay in registration of FIR. In every criminal trial, it is duty of prosecution to prove its case beyond reasonable doubt to hold anyone guilty. In the case hand, as found by trial court, evidence of witnesses including last seen is doubtful, thus, there is no reason to believe the statement of witnesses.

The learned trial Court has passed a detailed, reasoned and speaking order which does not suffer from any perversity and we find no infirmity in the said order. There is no manifest error, illegality or non-application of mind or non-appreciation of evidence which could compel us to form an opinion different from the opinion formed by the learned Trial Court. Accordingly, finding no

merit in the present appeal, we are of the considered opinion that leave to appeal deserves to be declined and accordingly application seeking leave to appeal as well as appeal is hereby dismissed.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

21.10.2022

Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>