

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CRM-A-657-MA-2016
Date of decision: 30.09.2022**

HARPREET KAUR

...Applicant

Versus

STATE OF PUNJAB & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.S. Malwai, Advocate for the Applicant.
Mr. Rajiv Verma, DAG, Punjab.
Mr. T.P. Singh, Advocate for Respondent No. 2.

SANDEEP MOUDGIL, J. (Oral)

1 This application has been preferred by the complainant-respondent raising a challenge to the judgment dated 23.12.2015 passed by the Judge Special Court, Sangrur, whereby accused-respondent No. 2 has been acquitted of the charges against her under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the case FIR No. 258 dated 11.09.2012, Police Station City Sangrur, District Sangrur.

2. A brief conspectus of the facts leading to filing of the instant application are numerated as under;

(i) On 11.09.2012 an order was received from the Senior Superintendent of Police, Sangrur through post in the Police Station, City Sangrur, for registration of case to the effect that

one application through memorandum dated 22.06.2010 was received by Superintendent of Police (Crime) Range Ludhiana from the office of Additional Director General of Police Crime, Punjab, Chandigarh for inquiry.

- (ii) Upon conducting the inquiry, Superintendent of Police (Crime) Range, Ludhiana sent his report dated 07.12.2010. After sending the report to Punjab Raj Scheduled Caste Commission, Chandigarh by the office of Additional Director General of Police, Crime Punjab, Chandigarh, the complainant lady Constable Harpreet Kaur filed objections on 26.02.2011 before the above Commission.
- (iii) After considering the said objections, Superintendent of Police (Crime), Ludhiana sent a report dated 28.04.2011 to the office of Additional Director General of Police (Crime), Punjab, Chandigarh, but again a fresh report was called after considering the objections of the complainant.
- (iv) Thereafter, Superintendent of Police (Crime) Range, Ludhiana again called both the parties and recorded their statements.
- (v) Complainant lady Constable Harpreet Kaur filed her objections before the Commission to the effect that on 04.07.2009, she was deputed as lady Munshi at Police Lines, Sangrur. There was need of lady constable at P.S. Lehra. She made a telephonic call to the accused and directed her to proceed to

Lehra City to join the duty over there, but accused started using indecent words against her caste.

- (vi) She-Complainant made the conversation to be heard by HC Joga Singh, MHC Kewal Krishan and HC Jasvir Singh by putting her mobile on speaker.
- (vii) HC Joga Singh had appended his signatures on the application which was to be moved by her against lady constable Balwinder Kaur, but she misplaced her application.
- (viii) She had again moved an application before SSP, Sangrur on which inquiry was conducted by DSO (H), Sangrur.
- (ix) In that inquiry, HC Joga Singh himself admitted that lady constable Balwinder Kaur had used indecent words against the caste of the complainant but lateron he resiled from his statement.
- (x) After considering the objections moved by complainant before Punjab Raj Scheduled Caste Commission, Chandigarh, statement was recorded before the Superintendent of Police (Crime) Range, Ludhiana, who found that accused lady Constable had used indecent words against the caste of complainant and then it was recommended to SSP, Sangrur for registration of case under Section 3 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against accused her.

- (xi) On the directions of SSP, Sangrur, FIR was lodged for offence under Section 3 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against accused lady Constable Balwinder Kaur.
- (xii) An investigation was conducted firstly by Swaran Singh, DSP and then by DSP Gurpreet Singh. Moreover, HC Joga Singh, HC Kewal Krishan and Lady Constable Harpreet Kaur had also joined the investigation and their statements were recorded.
- (xiii) On presentation of challan and appearance of the accused, copies of the documents were supplied to accused free of cost as envisaged under Section 207 Cr.P.C.
- (xiv) After hearing learned APP for the State, learned counsel for the accused and after going through the record, learned CJM, Sangrur concluded that accused has committed an offence punishable under Section 3 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which is exclusively triable by the Special Court. Accordingly, the case was committed to the Court of Session Sangrur, vide order dated 07.05.2013
- (xv) Finding a prima facie case under Section 3 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, charges were framed against the accused charges were framed, to which she did not plead guilty and claimed trial.

(xvi) In order to prove the case, the following witnesses appeared before the Court. Additionally, various documents were also produced and exhibited. The details of same are tabulated as under:-

List of Witnesses:-

SR. NO.	PW NO.	NAME OF THE WITNESS
01.	PW-1	ASI Gurtej Singh
02.	PW-2	Pritpal Singh, Head Clerk O/O SSP, Sangrur
03.	PW-3	DSP Gurpreet Singh
04.	PW-4	ASI Kewal Krishan
05.	PW-5	HC Joga Singh
06.	PW-6	Lady HC Harpreet Kaur
07.	PW-7	Gurdial Singh, A.I.G. Intelligence, Ludhiana
08.	PW-8	ASI Rajwant Kumar
09.	PW-9	Gurpreet Kaur, employee in Suvida Centre, Payal, Ludhiana.
10.	PW-10	ASI Gurmeet Singh

List of Documents Exhibited:-

SR. NO.	EXHIBITED	PARTICULARS OF DOCUMENTS
01.	ExPW1/A	Statement of ASI Gurtej Singh
02.	ExPW1/B	First Inquiry Report of SP (HQ), Sangrur
03.	ExPW1/C	Second Inquiry Report of SP (HQ), Sangrur
04.	ExPW2/A	Letter dated 11.09.2012 of SSP, Sangrur
05.	ExPW2/B	Letter dated 12.03.2013 of SSP, Sangrur
06.	ExPW3/A	Personal Search Memo of Accused-Balwinder Kaur
07.	ExPW3/B	Arrest Memo-cum-Intimation of Accused
08.	ExPW3/C	Surety Bond
09.	ExPW3/D	Jamantnama
10.	ExPW3/E	Caste Certificate of the Complainant
11.	ExPW3/F	Copy of DDR No. 27 dated 12.04.2012
12.	ExPW3/G	Letter dated 11.09.2012 having signatures of the then SSP Sangrur
13.	Mark A	The Call Details
14.	Mark B	Proof of Mobile Phone of Accused
15.	ExPW3/H	Copy of FIR

- (xvii) The accused-respondent No. 2 denied the incriminating evidence put to her and pleaded her innocence and false implication.
- (xviii) In defence accused examined L.C. Kiran Rani as DW-1, C. Gaganveer Singh as DW-2 and after tendering documents ExD-1 to ExD-15 and Mark AX and AY, accused closed her defence evidence.
- (xix) Upon consideration of the rival submissions of the parties, the trial Court came to a conclusion that the complainant-applicant had failed to prove the charges against the accused beyond the shadow of reasonable doubt and accordingly acquitted the accused-respondent No. 2 of the charges framed against her.
3. Assailing the judgment passed by the trial Court, the learned Counsel for the applicant-appellant vehemently argued that the judgment passed by the trial Court suffers from perversity and non-appreciation of the material evidence. He laid much stress on the evidence of ASI Kewal Krishan/PW-4 and HC Joga Singh/PW-5 who deposed that the occurrence had taken place in the public view. He further claimed that the testimonies of the said witnesses have been completely disregarded by the trial Court.
- Learned State counsel submits that the prosecution has fully proved its case beyond reasonable doubt.
4. I have heard learned counsel for the applicant/appellant and have gone through the evidence of the case with his able assistance.
5. The following facts emerge upon consideration of the evidence:-

- 5.1 Insofar as reliance upon the testimonies of PW-4, PW-5 and PW-6 is concerned, the said witnesses do not inspire much confidence as their deposition regarding sequence of events was non-consistent.
- 5.2 ASI Kewal Krishan/PW-4 and HC Joga Singh/PW-5 deposed that the complainant had called her once whereas Lady HC Harpreet Kaur/PW-6 deposed that she first called Balwinder Kaur and she narrated the whole conversation to PW/5 and he asked her to again call her and she called her again.
- 5.3 In her examination-in-chief, the complainant had deposed that she remained perturbed for 2/3 days. After the said occurrence, she and accused remained present at the time of counting in the evening. Accused again spoke the words against her caste and in these 2/3 days accused leveled allegation against her character as well. However, regarding these incidents also the deposition of PW/6 was totally incompatible as neither any specific date and day had been referred to nor any witness of these incidents had been cited by the prosecution.
- 5.4 The credence of ASI Kewal Krishan/PW-4 was also shaken during cross-examination as he had categorically deposed in his statement recorded by the SP (H) that he did not state that the accused had uttered derogatory words against the caste of the complainant. Further, he had never seen the accused uttering any such derogatory words against the caste of the complainant in his presence. He cannot say if the derogatory words spoken by the accused were recorded. He further

deposed that he cannot tell the name of the company of the mobile set on which the complainant had heard the accused using derogatory words.

- 5.5 The credibility of HC Joga Singh/PW-5 was also shaken for the reasons that he had deposed in his cross-examination that ***“his statement was recorded by DSP, Sunam where again he did not mention that the accused used derogatory words against the caste of the complainant, volunteered he orally told the DSP about the occurrence. He has got recorded his examination in chief voluntarily and not on the asking complainant Harpreet Kaur. He did not witness the accused using derogatory words against the caste of the complainant and he had heard her using such words on the telephone.”***
- 5.6 The mobile phone of both, i.e., the complainant and the accused had been produced in evidence which was serious lapse on the part of prosecution.
- 5.7 Even regarding DDR no evidence had been placed on record. HC Joga Singh/PW-5 had categorically deposed that ***“it is correct that in the police line a DDR register is maintained. No entry of any other occurrence has been recorded in the DDR of the police lines. That area of police line falls within the jurisdiction of police station City, Sangrur nor any entry was made in the record of the Police Station City, Sangrur regarding the occurrence dated 04.07.2009”***
- 5.8 Even complainant-Lady HC Harpreet Kaur/PW-6 herself admitted that DDR register was maintained in the office where

she was posted but no entry regarding misbehaving and abusing by accused against her case was made in the register.

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

6. The same now leads to the scope of interference by the Court while hearing appeal against acquittal. The Hon'ble Supreme Court has held in the matter of ***M. G. Aggarwal Versus State of Maharashtra, AIR 1963 SC 200***, the relevant part is extracted as under;

“(16) Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittal and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial

Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasized, while on other accessions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasized, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. The King Emperor and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) Some of the earlier decisions of this Court, however, in emphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, “the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for (1) (1934) L.R. 61 1. A. 398. (2) A.I.R. 1945 P.C. 151, very substantial and compelling reasons”; vide Surajpal Singh V. The State (1). Similarly in Ajmer Singh v. State of Punjab (2), it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so.” In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In

appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended to introduce an additional condition in clause (a) of Section 423 (1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Shoo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial.” Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan (2) and Harbans Singh v. The State of Punjab (4)’ and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the (1) (1952) S.C.R. 193, 201. (2) (1953) S.C.R. 418 (3) (1961) 3 S.C.R. 120. (4) (1962) Supp. I.S.C.R. 104, prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of evidence.

7. The Hon'ble Supreme Court in "**C. Antony Versus K.G. Raghavan Nair, 2002 (4) R.C.R. (Criminal) 750**" also has held as under:-

6. *This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. See Bhim Singh Rup Singh v. State of Maharashtra (1974(3) SCC 762) and Dharamdeo Singh & Ors. v. The State of Bihar (1976(1) SCC 610).*

[Emphasis supplied]

8. Further, the Hon'ble Supreme Court has held in the matter of **Nagbhushan vs. The State of Karnataka, (2021) 5 SCC 212**, as under;

"5.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered. 5.2.1 In the case of Babu v. State of Kerala, (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. 1973 In paragraphs 12 to 19, it is observed and held as under:-

12. *This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama VS. Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445).*

13. *In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (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.”

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755).

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under (SCC P.432, para 42):

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

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be

innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) “20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)”

(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) *The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*

(iv) *The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*

(v) *This Court must always give proper weight and consideration to the findings of the High Court;*

(vi) *This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.*

"A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.

19. *Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."*

(emphasis supplied)

5.2.2 *When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:*

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn

(1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.(2009) 10 SCC 636)."

(emphasis supplied)

5.2.3 *It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.*

5.3 *In the case of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C., 1973 and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:*

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)"

10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to re-appreciate

the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1 *In Sambasivan v. State of Karala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)"*

8. *We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babula Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well*

considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. *In K. Ramakrishnan Unnithan v. State of Karala (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while*

acquitting the accused, the High Court, therefore, was fully entitled to re-appreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. *In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 809- 10).*

"5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.P.C. came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence. It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial

court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal. If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P. AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. *In K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."*

[emphasis supplied]

9. This Court in “**Karan Anand Versus Kamal Bakshi, 2015(4) R.C.R. (Criminal) 595**”, held as under:-

“5. In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not

interfere until it is shown conclusively that the inference of guilt is irresistible.

[Emphasis supplied]

10. This Court in ***“Rekha Versus State of Haryana & another, 2019(4) R.C.R. (Criminal) 294”***, held as under:-

“13. While granting the leave applied for, this Court is to bear in mind that in case of acquittal there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the Fundamental principles of criminal jurisprudence that every person is presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured acquittal, the presumption of his innocence is certainly not weakened but re-inforced, reaffirmed and strengthened by the trial Court. When two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.”

[Emphasis supplied]

11. This Court has time and again laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be a more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider that whether in arriving at a finding of fact, the trial court had failed to take into consideration admission of evidence and/or had

taken into consideration the evidence brought on record being contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. [Vide Balak Ram v. State of U.P. (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P. (2003) 1 SCC 761, Narendra Singh v. State of M.P. (2004) 10 SCC 699, Budh Singh v. State of U.P. (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama v. S. Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Samasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)]

12. Thus, the position which emerges from a perusal of the law as settled by the Hon'ble Supreme Court through its catena of judgments in the matters pertaining to appeals against acquittal can be summarized as under:-

- a) Powers of High Court in dealing with criminal appeals are equally wide whether the appeals are against conviction or acquittal.
- b) In dealing with appeal against acquittal, the High Court bears in mind that the presumption of innocence is strengthened.
- c) As an appellate Court, the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of

watching the demeanour of the witnesses who have given evidence.

- d) That the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”.
- e) The appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, even though the view of the appellate Court may be the more probable one.
- f) 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 the extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate Court to interfere with acquittal, than to curtail the power of the Court to review the evidence and to come to its own conclusion.
- g) The findings of fact recorded by a Court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the

finding so outrageously defies logic as to suffer from the vice or irrationality.

13. In view of the facts noticed above and the following discrepancies in the statements of the witnesses as also the law laid down by the Hon'ble Supreme Court, I do not find that the trial Court has committed any illegality, infirmity or perversity in the appreciation of the evidence. It cannot be held that the view adopted by the trial Court based on the facts of the instant case is not sustainable. It is also well settled that even though the Appellate Court has the power to re-appreciate the evidence, however, such appreciation is to be done where judgment of the trial Court shows glaring misreading of the evidence and reflects that the conclusions drawn by the trial Court are not sustainable upon a meaningful reading and interpretation of the evidence. It is also well settled that the view adopted by the trial Court cannot be superseded by the Appellate Court only for the reasons that other view is also possible.

14. Therefore, this Court sees no reason to interfere with the well reasoned judgment of the Trial Court and hence the application for grant of leave to appeal is hereby dismissed.

30th SEPTEMBER, 2022
Sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No