

CRM-A-631-MA-2018 (O & M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-631-MA-2018 (O & M)

Date of decision: 12.12.2022

Naval Kishore

....Applicant/Appellant

V/s

Vinod Kumar and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Suvir Kumar, Advocate, for the applicant/appellant.

JASJIT SINGH BEDI, J. (Oral)

The applicant/appellant has filed the present application for grant of leave to appeal against the impugned judgment of acquittal dated 28.11.2017 passed by the Judicial Magistrate Ist Class, Patiala whereby the accused-respondents No.1 to 3, namely, Vinod Kumar Kapoor, Jatinder Kumar and Pankaj Kumar have been acquitted of the charges under Sections 199, 200, 209, 210, 427, 447 and 34 IPC.

2. The brief facts of the case are that the complainant/applicant-appellant along with Vinod Kumar son of Kidar Nath, Ashok Kumar and Vinod Kumar sons of Baldev Singh and Krishan Kapoor purchased 8 Bighas of land as detailed in the complaint in village Baran, Tehsil and District Patiala, Vinod Kumar son of Baldev Krishan Kapoor accused no.1 (respondent No.1) and Ashok Kumar were real brothers and the complainant was a relative of Vinod Kumar son of Kidar Nath. In January 2011, the complainant came to know from a property dealer that accused no. 1 had sold his share from the joint land of 8 Bighas. On enquiry from the Halqa Patwari, the

CRM-A-631-MA-2018 (O & M)

cused no.1. From a perusal of the sale deed, it came to the notice of the complainant that accused no. I had obtained an ex parte order in a partition case from the Court. Subsequently, the complainant obtained certified copies of the proceedings/order from the Court of Assistant Collector. The complainant came to know that accused no.1 had given an incorrect address of the complainant in the proceedings of the Court and obtained orders from the Court by misleading and by playing fraud upon the Court. On 18.02.2011, all the accused with the common intention damaged the crop of wheat of the value of Rs.5,000/- sown by the complainant and other co- sharers on the land and with the intention to take illegal possession of the same started raising a wall by trespassing upon the land. When the complainant tried to prevent them from doing so, all the accused extended a threat of life to the complainant. He moved an application before PS Tripur Patiala on 18.02.2011 against all the accused. However, the police did not take any action Subsequently, on 11.3.2011, he moved an application before the SSP, Patiala, However, the police let the accused go without taking any action by saying that the matter is a civil dispute. He also moved an application in April 2012 before the Deputy Commissioner, Patiala which remained pending. Therefore, it was alleged that accused be tried for committing offences U/s 199,200,209,210,427,447,34 IPC.

Based on the preliminary evidence led the accused/respondents came to be summoned to face Trial for having committed offences under Sections 199, 200, 209, 210, 427, 447, 34 IPC.

3. In order to prove his complaint, the complainant/appellant-applicant Naval Kishore himself stepped into the witness box as CW1. He also examined CW2 Harinder Pal Singh.

CRM-A-631-MA-2018 (O & M)

4. Statements of the accused under Section 313 Cr.PC were recorded and all the incriminating evidence was put to them. Accused Vinod Kumar pleaded that he was innocent and the complainant had filed the complaint due to enmity. He filed an application for partition of land in the Court of A.C Grade II, Patiala, but the complainant failed to appear, and therefore, exparte partition was ordered and Sanad Takeseem was prepared. The complainant did not file any application to set aside the exparte order before the A.C. Grade II, Patiala and filed the present complaint to settle his score with the accused. The accused had not concealed any fact from the Court of A.C. Grade II. Accused Jatinder Kumar and accused Pankaj Kumar pleaded that they were innocent and had been falsely implicated in the present case. All the allegations as alleged in the complaint were false and frivolous as no such incident had occurred on 18.02.2011. He had purchased land to the extent of the share of Vinod Kumar son of late Baldev Krishan, as such, he was owner in possession of land of his share measuring 2 Bigha from the total land measuring 8 Bigha, vide registered sale deed dated 20.12.2010 bearing Vasika no.15391. No offence had been committed by them. However, no witness was examined by the accused in their defence and closed the same.

5. Based on the evidence led, the accused came to be acquitted vide judgment dated 28.11.2017, against which the present appeal has been preferred.

6. The learned counsel for the applicant-appellant contends that the respondent/accused No.1 has fraudulently sold the property to the respondents No.2 and 3 by obtaining an ex parte order of partition from the Court of Assistant Collector Grade I. The same was done by accused No.1 i.e. Vinod Kumar Kapoor by giving the incorrect/wrong addresses of the

appellant-complainant in the proceedings before the Court. Therefore,

CRM-A-631-MA-2018 (O & M)

respondent No.1-Vinod Kumar Kapoor had obtained the orders from the Court by misleading the Court and playing fraud upon it. He then sold the property to respondents No.2 and 3 vide sale deed dated 20.12.2010. He contends that respondent No.1 had cheated the other co-sharers as the property was, in fact, in joint possession and being cultivated by other co-sharers also. All the co-sharers of the property including Naval Kishore son of Kedaar Nath, Ashok Kumar and Vinod Kumar son of Baldev Krishan Kapoor had been jointly cultivating the land comprising of 8 bighas. The same had been proved on record by Jamabandis, Girdawaris, etc. He contends that in the partition application filed by respondent No.1-accused, the address of the applicant-appellant as well as other co-sharers was given as village Baran, Tehsil and District Patiala, though, he had been residing in District Ambala since the year, 1987. The wrong address was given intentionally so as to obtain benefit in the partition application. As per his contention, the Lower Court had not appreciated the fact that the mere action of the respondents of getting an ex parte order by stating false facts before the Court of Assistant Collector Grade I, and giving fake addresses amounted to playing fraud not only upon the complainant-appellant but also upon the Court for which they ought to be convicted.

7. I have heard the learned counsel for the applicant-appellant at length.

8. In the present case, Naval Kishore-applicant was examined as CW-1 and Harinder Pal Singh as CW-2. The record and the photographs placed on record, do not in any manner, establish the commission of any offence by the respondent-accused. No eye-witness has been examined to corroborate the version of the complainant that the accused had come into

the land in order to damage crops or that the crops were sown on the land at

CRM-A-631-MA-2018 (O & M)

all by the complainant. No J Form has been produced on record by the complainant to prove any purchase of any seeds for the purposes of cultivation.

Further, the question of an offence under Sections 427 and 337 IPC being committed does not arise. A co-sharer cannot be held guilty of criminal trespass as the land is jointly possessed by a co-sharer as every co-sharer is deemed to be in possession of the entire joint holding.

With respect to the Sanad Takseem being illegal on the basis of a false claims of the accused, the same pertains to a challenge before an appropriate revenue Court. Admittedly, the Sanad Takseem remained unchallenged before the Financial Commissioner (Revenue). The stay order is dated 11.05.2011 whereas the occurrence took place on 18.02.2011. Therefore, no illegality has been established by the complainant-appellant/applicant.

9. As regards the legal position in an appeal against acquittal and the scope of interference called for by the Court, the Hon'ble Supreme Court in the matter of M.G. Aggarwal Versus State of Maharashtra, AIR 1963 SC 200", held 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 acquittals 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 a 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 occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, 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, (1934) L.R. 61 I.A. 398: AIR 1934 PC 227 and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) In 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 very substantial and compelling reasons": vide *Surajpal Singh v. The State* 1952-3 SCR 193 at p.201 AIR 1952 SC 52. Similarly in *Ajmer Singh v. State of Punjab*, 1953 SCR 418: AIR 1953 SC 76, 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, and should not be read to have intended- to introduce an additional condition in clause (a) of section 423(1) of the Code. All that the said observations are intended to emphasise 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 *Sheo 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*, AIR 1961 SC 715 and *Harbans Singh v. The State of Punjab*, AIR 1962 SC 439; and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the 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 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 oral evidence.

The Hon'ble Supreme Court in “C. Antony Versus K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750, 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]

CRM-A-631-MA-2018 (O & M)

The Hon'ble Supreme Court in “State of Rajasthan Versus Mohan Lal, 2009(2) R.C.R. (Criminal) 812, held as under:-

“5. In view of rival submissions of the parties, we think it proper to consider and clarify the legal position first. Chapter XXIX (Sections 372- 394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the present Code") deals with appeals. [Section 372](#) expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. [Section 373](#) provides for filing of appeals in certain cases. [Section 374](#) allows appeals from convictions. [Section 375](#) bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases ([Section 376](#)). [Section 377](#) permits appeals by the State for enhancement of sentence. [Section 378](#) confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

"378. Appeal in case of acquittal.--(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the [Delhi Special Police Establishment Act, 1946](#) (25 of 1946), or by any other agency empowered to make investigation into an offence under any [Central Act](#) other than this Code, the

CRM-A-631-MA-2018 (O & M)

Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

6. Whereas [Sections 379-380](#) cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

7. It may be stated that more or less similar provisions were found in the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") which came up for consideration before various High Courts, Judicial Committee of the Privy Council as also before this Court. Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of

acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

8. Bare reading of Section 378 of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to re-appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

9. It cannot, however, be forgotten 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 principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka, 2007(2) RCR (Criminal) 92: 2007(4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

(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.

[Emphasis supplied]

The Hon'ble Supreme Court in "Lunaram Versus Bhupat Singh

& others, 2010(5) R.C.R. (Criminal) 530, held as under:-

“6. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. 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 re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See [Bhagwan Singh v. State of M.P, 2003 \(3\) SCC 21](#)). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are substantial reasons for doing so. If the impugned judgment is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a substantial reason for interference. These aspects were highlighted by this Court in [Shivaji Sahabrao Bobade v. State of Maharashtra \(1973 \(2\) SCC 793\)](#), [Ramesh Babulal Doshi v. State of Gujarat \(1996 \(9\) SCC 225\)](#), [Jaswant Singh v. State of Haryana \(2000 \(4\) SCC 484\)](#), [Raj Kishore Jha v. State of Bihar \(2003 \(11\) SCC 519\)](#), [State of Punjab v. Karnail Singh \(2003 \(11\) SCC 271\)](#), [State of Punjab v. Phola Singh \(2003 \(11\) SCC 58\)](#), [Suchand Pal v. Phani Pal \(2003 \(11\) SCC 527\)](#) and [Sachchey Lal Tiwari v. State of U.P. \(2004 \(11\) SCC 410\)](#).

[Emphasis supplied]

CRM-A-631-MA-2018 (O & M)

The Hon'ble Supreme Court has held in the case of [Nagbhushan](#)

[V. State of Karnataka, \(2021\) 5 SCC 222](#), 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

CRM-A-631-MA-2018 (O & M)

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.PC 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]

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

CRM-A-631-MA-2018 (O & M)

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]

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]

8. The judgments of the Hon'ble Supreme Court and this Court are to the effect that while an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded, it is equally true that there is a double presumption in favour of the innocence of the accused, firstly on account of the presumption of innocence available to an accused and secondly on account of the fact that the

CRM-A-631-MA-2018 (O & M)

competent Court has acquitted the accused and therefore, if two reasonable conclusions were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court. However, where the judgment appealed against is totally perverse and the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant or inadmissible material, then the Appellate Court would be well within its powers to interfere with the said findings and set them aside.

9. In view of the detailed discussion hereinabove as also the law enunciated by the Hon'ble Supreme Court and this Court, the view taken by the Trial Court while acquitting the accused is a reasonable view based on the evidence on record, cannot be said to be perverse and as such is not required to be interfered with.

10. 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.

(JASJIT SINGH BEDI)
JUDGE

12.12.2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No