

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

221

CRM-A-5812-MA-2018(O&M)

Reserved on: 10.03.2022

Pronounced on: 14.03.2022

SATPAL

....Petitioner

Versus

RAMPHAL AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. Ashwani Bhardwaj, Advocate
for the applicant/appellant.

VINOD S. BHARDWAJ. J.

The instant application seeks leave to raise a challenge to the judgement dated 08.06.2018 passed by the Judicial Magistrate First Class, Bhiwani in Case No. COMI-2289-2014 for offences under Sections 285, 352, 426, 429, 430, 452, 506 and 34 IPC vide which the Judicial Magistrate First Class, Bhiwani has acquitted the respondents of the charges framed against them.

FACTS:

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

2.1 The complainant claims to be an agriculturist and owner of land measuring 65 kanals 9 marlas situated in the revenue estate of village Rohnat, Tehsil Bawani Khera, District Bhiwani. The complainant claims that in an order to cause loss to the complainant, the respondent-accused persons set fire to the waste lying placed in the fields of the complainant. He claims to have been informed by his 'siri'-Satbir S/o Fateh Singh qua the mischief committed by the respondent-accused, who also set fire to 35-40 trees of the complainant. He further submits that upon receipt of the information,

when he reached at the place of occurrence, the fire had already set off. The photographs of the fields had been obtained. When the information was sent to the police, action was carried out only under Section 107/151 CrPC. He also alleges that the water course next to the fields of the complainant had also been dismantled.

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

List of witnesses:-

Sr. No.	PW No.	Name of the witness	Details of witnesses
1.	PW-1	Baljeet	Formal witness
2.	PW-2	Satbir	eyewitness
3.	PW-3	Rajender	eyewitness
4.	PW-4	MHC Rajesh Kumar	Official witness
5.	PW-5	Niranjan	Official witness
6.	PW-6	Satpal	complainant

List of documents Exhibited:-

Sr. No.	Exhibited	Name of documents	Name of witnesses who testified documents
1.	Ex. PW1/A to PW1/J	Photographs	Baljeet
2	Ex. PW4/A	Copy of application	MHC Rajesh Kumar
3	Ex. PW4/B	Copy of DDR No.38	MHC Rajesh Kumar
4	Ex. PW4/C	Copy of Calendra	MHC Rajesh Kumar
5	Ex. PW/D	Copy of memo of Jama-talasi	MHC Rajesh Kumar
6	Ex. PW4/E	Copy of conviction-slip	MHC Rajesh Kumar
7	Ex. PW5/A	Copy of application	Niranjan
8	Ex. PW5/B	Copy of site plan of Khal	Niranjan
9	Ex. PW5/C	Copy of parwana/notice	Niranjan
10	Ex. PW5/D	Copy of parwana/notice	Niranjan
11	Ex. PW5/E	Copy of parwana/notice	Niranjan

12	Ex. PW5/F	Copy of parwana/notice	Niranjan
13	Ex. PW5/G	Copy of warabandi	Niranjan
14	Ex. PW6/1 to Ex. PW6/6	Photographs	Satpal
15	Mark-PA to PD	Photographs	Satpal
16.	Mark-PE	Copy of application	Satpal

2.3 The respondent-accused denied the incriminating evidence put to them. They, however, did not lead any evidence in their defence but tendered the following documents to prove their innocence:-

Sr. No.	Exhibited	Name of the documents
1.	Ex. D1	Aksh-sijara
2.	Ex.D2	Copy of jamabandi for the year 2016-17
3.	Ex.D3 to 5	Copy of khasra-girdawaris
4.	Mark-DA	Copy of jamabandi for the year 2016-17

2.4 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 charge against the accused persons beyond the shadow of reasonable doubt and accordingly acquitted the respondents of the charge framed against them. The trial Court has considered the submissions made by the parties and has recorded its finding as under:-

16. It is the version of complainant that all accused conspired to commit mischief. On the other hand, it is the stand of accused that false complaint has been filed by the complainant. After careful perusal of evidence came on record, this court is of the view that Complainant is miserably failed to prove all allegations beyond the shadow of all reasonable doubts. PW2 Satbir is the person who gave information qua putting fire by accused on 03.05.2012. During his examination-in chief PW2 stated that on 03.05.2012, fields of complainant sustained fire.

Information was given to Satpal. The fire was put by Rampal, Vikas and Vishal. The facts deposed by this person have failed to repose any confidence. If this person i.e. Satbir was present at the time of commission of offence, he must have deposed categorically qua act and conduct of accused like in which manner fire was made and what was the role of each person present at the spot. Mere saying that accused put fire is not sufficient to bring them under the purview of guilt. The another allegation which also failed when it was tested on the touchstone of genuineness is dismantling of water course. If accused had dismantled the watercourse, in that eventuality, the Water Canal Authorities were the victims who would have sustained the loss but there is no complaint from the Water Canal Authorities, so, this allegation is also found to be baseless.

ARGUMENTS:

3. Assailing the judgement passed by the trial Court, Sh. Ashwini Bhardwaj, Advocate vehemently argued that the judgement passed by the trial Court suffers from perversity and non-appreciation of the material evidence. He laid much stress on the evidence of PW-2 /Satbir and claimed that the testimony of the said eyewitness has been completely disregarded by the trial Court. He also alleged that there was no reason recorded by the trial Court for discrediting the said witness as well as the evidence of PW1-complainant/Satpal. It is argued that the non-consideration of the evidence of these two witnesses has occasioned failure of justice.

4. I have heard learned counsel for the applicant/appellant and have gone through the evidence of the case with his able assistance.

ANALYSIS:

5. The following facts emerge upon consideration of the evidence:-

5.1 Insofar as reliance upon PW-2/Satbir is concerned, the said witness

does not inspire much confidence in as much as the presence of the said witness at the time of occurrence is doubtful. The same can be discerned from the extract of the testimony of the said witness extracted for reference hereinbelow:-

(a) xxxxxx I cannot tell the time when the fire was set.

(b) xxxxxx I walked to the house of Satpal to inform him and came back with Satpal after 1-2 hour, when the fire had already extinguished.

(c) xxxxxxxx Only I and Satpal came to the fields and nobody else accompanied us.

(d) xxxxxxxxxx I stay in the field of Satpal with my family.

(e) xxxxxxxxxxxx I do not know at what time Satpal went back to his home.

5.2 Extract of the examination-in-chief shows that while the said witness is claiming to be residing in the fields of Satpal with his family, however, he does not know the time of the incident and none of the members of his family either took any steps to extinguish the fire or step into the witness-box or saw the respondents setting the field on fire.

5.3 Even though, house of the complainant is stated to be at a distance of about 1 KM from the field, however, there is no valid explanation as to why it would take the applicant/appellant and the said witness to come back in after about 02 hours, considering the fact that the applicant/appellant claims that he was at home.

5.4 Surprisingly, even when the complainant and the witness come after about 02 hours, yet no other member of the family either of the complainant or that of PW-2, who was working as a siri and had every interest in the field, accompanied them to extend any help.

The said witness could not inform about the time at which the

complainant left the field.

- 5.6 Besides, it does not appear probable that the accused persons would set fire to the waste material lying in the field of applicant/appellant in order to satisfy their vengeance. It would be highly improbable to perceive that the respondent would put fire to the waste in order to cause prejudice to the complainant.
- 5.7 It is also significant to point out that the complainant/applicant Satpal has stated that when he reached at the field, three accused persons were setting fire to the waste lying in the field. The said statement runs in contradiction to the averment made by PW-2/Satbir.
- 5.8 The accused are brother and nephews of the complainant and it is evident that the complainant had been making complaints against them to the Department of Agriculture as well as Department of Irrigation, but the said allegations were not found good enough for initiation of any action by the officials against the respondents. No further action on the same was taken by the applicant/appellant which *ex-facie* shows that the complainant did not have any grievance against the officials for not initiating any action against the respondent-accused. There is, thus, every possibility of the complaint being motivated.
- 5.9 The witnesses have failed to indicate any specific role or attribution to any accused, which becomes crucial considering that both the witnesses claimed to be the witness of the occurrence. It is highly improbable that the witnesses would not know the time of the incident and would not know anything about such material and fundamental primary details, that would be known to a person in case

he would have been a witness to the same.

5.10 The testimony of the witnesses does not inspire confidence as they are materially discrepant and the discrepancies go to the root of the matter.

5.11 The conduct of the witnesses in not making any attempt to extinguish the fire or to take appropriate swift action, as would be the normal reaction, renders their testimony suspicious and unreliable.

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 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 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 very substantial and compelling reasons": vide Surajpal Singh V. The State Similarly in Ajmer Singh V. State of Punjab, 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 and Harbans Singh v. The State of Punjab; 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 reason-able 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.

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

“7.2 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.

7.2.1 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. 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 v. S.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)

7.2.2 *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)

7.2.3 *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.*

7.3 *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. 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 reappreciate 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 reappraise 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)

8. 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 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 of irrationality.

CONCLUSION:

9. In view of the fact noticed above and the glaring discrepancies in the statement 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 is not sustainable based on the facts of the instant case. 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 judgement 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.
10. The present application for seeking leave to appeal is thus without any merit. The same is thus disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

March 14, 2022

S.Sharma(syr)

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*