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(247)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AS-89-2022 (O&M)
Date of Decision: 28.04.2023

RAM KISHAN

... Applicant/Appellant

Versus

STATE OF HARYANA & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

CRM-18042-2022

The present application has been filed by the applicant-petitioner for condonation of delay of 55 days in filing the present appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 55 days in filing the present appeal is hereby condoned.

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The present appeal has been filed against the judgment of acquittal dated 20.02.2019 passed by the Sessions Judge, Bhiwani, whereby the accused-respondents have been acquitted of the charges framed against them.

2. The prosecution case, as contained in the complaint Ex.P4 given by PW3-Ram Kishan (appellant) to the SHO of Police Station, Sadar

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Bhiwani was that he (PW3- Ram Kishan) son of Shri Hari Ram was a resident of village Dinod. He had five sons and two daughters. The marriage of his son Amarjeet (deceased) was performed on 09.02.2003 with Mamta daughter of Ram Kumar, resident of New Roshanpura, Najafgarh as per Hindu rites and ceremonies. It was a marriage without dowry. Mamta had gone to the house of her parents from his house without disclosing anything to anyone on 14.02.2011. His son was employed in the army. When he (son of the complainant) used to come on vacations, he used to go to his in laws family for bringing his wife back. However, they would not send her back. Mamta had filed a maintenance case in the Court against his son. His son was harassed and tortured a lot by his (Amarjeet's) wife Mamta, father-in-law, Ram Kumar and mother-in-law. He (Amarjeet) used to say time and again to him (complainant) that he (deceased) was being harassed and disturbed a lot and that he (deceased) would end his life and would commit suicide. On 10.01.2016, at about 03.30 p.m., in the evening he (complainant) and his son Amarjeet (deceased) were present in the house and his son Amarjeet was vomiting, at which he (complainant) asked his son as to what was the matter. His son (deceased) replied that fed up of his wife, mother-in-law and father-in-law, he was committing suicide by ingesting a poisonous substance. Thereafter, he (complainant) was bringing his son to General Hospital, Bhiwani but he died on the way. He (complainant) accordingly presented his complaint to the SHO of Police Station, Sadar Bhiwani. Legal action was sought.

3. On the basis of the complaint Ex.P4, the FIR was registered. After registration of the FIR, the investigation was carried out by ASI Satya Narayan. He inspected the place of occurrence and recorded the statements of witnesses. The suicide note and the handwriting of the deceased were taken into police possession and were sent to the FSL Madhuban for comparison. After receiving the FSL report, further investigation was carried out by SHO Udmi Ram. The accused Ram Kumar was arrested in the said FIR on 11.05.2016. On completion of the investigation in the case, the final report under Section 173 Cr.P.C. was prepared and was presented against him before the concerned Magistrate. On 12.08.2016, the accused Bimla Devi was arrested in the present case. Accused Mamta who had been granted anticipatory bail by this Court was formally arrested. On completion of investigation against the accused Bimla Devi and Mamta, a supplementary report under Section 173(8) of Cr.P.C. was submitted against them. After compliance of Section 207 Cr.P.C. in respect of the accused Bimla Devi and Mamta, the Magistrate committed the said report to the Trial Court. Vide order dated 31.08.2016 passed by the Additional Sessions Judge, Bhiwani, the said supplementary report was ordered to be put up with the main case titled as 'State Vs. Ram Kumar' on 08.9.2016.

4. On 08.09.2016, the prosecution and the defence were heard on the issue of framing of charges against the accused. All the accused were charge-sheeted in the case in question under Section 306 read with Section 34 of the Code. However, they did not plead guilty to the said charge and claimed trial.

5. In support of its case, the prosecution examined the following witnesses:-

PW-1	Inderjeet Singh son of Shri Ram Kishan (brother of the deceased Amarjeet)
PW-2	EASI Mange Ram (Witness of the disclosure statement Ex.P3 of the accused Ram Kumar)
PW-3	Ram Kishan son of Sh. Hari Ram (complainant of the case)
PW-4	Dharmender Draftsman (Witness of preparation of scaled site plan).
PW-5	HC Dalip Singh (Witness with whom the case property was deposited)
PW-6	SHO (retired) Udmi Ram (Part Investigating Officer of the case)
PW-7	SI Jai Singh (Witness of preparation of final report under Section 173 Cr.P.C against the accused Mamta Devi and Bimla Devi).
PW-8	ASI Satya Narayan (Investigating Officer of the case).
PW-9	Constable Narender Kumar (witness of deposit of the case property with Chemical Examiner Karnal and FSL Madhuban).
PW-10	SI Dalip Singh (witness of registration of FIR)
PW-11	Lady Constable Santosh (Witness of the disclosure statement Ex.P18 of the accused Bimla Devi).
PW-12	Rohtash (friend of the deceased Amarjeet Singh)
PW-13	Dr. Pulkit Sharma, MO CHC Purkhas (Witness of post mortem of the accused)
PW-14	HC Deepak Kumar (witness of recovery memos Ex.P5 and Ex.P14)
PW-15	ASI (retired) Ram Kishan (witness of preparation of final report under Section 173 Cr.P.C against the accused Ram Kumar and also conducting investigation against the accused Bimla Devi and Mamta)

6. The Public Prosecutor gave up PWs Duli Chand and Subedar Sukhwinder, as unnecessary and closed the prosecution evidence.

7. In addition to the examination of the said prosecution witnesses, the prosecution also proved and relied upon the following documents:-

Ex.P1	Copy of letter dated 26.09.2014 moved by the deceased Amarjeet Singh to the Hon'ble President of India, New Delhi,
Ex.P2	Alleged suicide note of the deceased Amarjeet,

Ex.P3	Disclosure statement dated 11.05.2016 of the accused Ram Kumar son of Sh. Rati Ram,
Ex.P4	Complaint dated 11.01.2016 moved by PW Ram Kishan to SHO, Police Station, Sadar Bhiwani,
Ex.P5	Recovery memo dated 11.01.2016 of suicide note,
Ex.P6	Receipt dated 11.1.2016 regarding handing over of dead body of Amarjeet to his legal heirs,
Ex.P7	Recovery memo dated 09.02.2016 regarding affidavit, form regarding Rehabilitation Project for Ex.Army Personnel, pass book of State Bank of India and an original application of Amarjeet,
Ex.P8	Recovery memo dated 02.04.2016 of handwriting dated 14.08.2012,
Ex.P9	Scaled site plan dated 05.07.2016,
Ex.P10	Endorsement made by ASI Satya Narayan on complaint Ex.P4,
Ex.P11	Copy of FIR,
Ex.P12	Endorsement dated 11.1.2016 made by ASI Satya Narayan on complaint Ex.P4,
Ex.P13	Proceedings dated 11.01.2016 under Section 174 Cr.P.C.,
Ex.P14	Carbon copy of application dated 11.01.2016 for conducting post mortem examination on the dead body of deceased Amarjeet
Ex.P14	Recovery memo dated 11.01.2016 of viscera and documents,
Ex.P15	Rough site plan dated 11.01.2016 prepared by ASI Satya Narayan,
Ex.P16	Copy of recovery memo dated 16.02.2016 of a letter dated 10.01.2005 of Amarjeet lamination, list of dowry articles, list of Istridhan and the articles which were given in the marriage of Mamta,
Ex.P17	Copy of FIR,
Ex.P17A	Endorsement of SI Dalip Singh dated 11.01.2016 on the complaint Ex.P4,
Ex.P18	Disclosure statement dated 12.08.2016 of the accused Bimla Devi,
Ex.P19	Carbon copy of post mortem report dated 11.01.2016 of the deceased Amarjeet,
Ex.P20	Application dated 2.08.2016 filed before Medical Officer, General Hospital, Bhiwani for obtaining report of viscera of the deceased Amarjeet,

Ex.P21	Opinion of the doctor dated 02.08.2016 on the back of application Ex.P20,
Ex.P22	Report dated 28.04.2016 of chemical examiner, Karnal,
Ex.P23	FSL report dated 20.04.2016,
Ex.P1 to Ex. P6	Photos,
Mark A	Application for Business Association With Corporate India (Post retirement),
Mark B	Affidavit of the deceased Amarjeet Singh,
Mark C	Copy of bank pass book of the deceased Amarjeet,
Mark D	Copy of application dated 26.09.2014 moved by the deceased Amarjeet Singh to the Hon'ble President of India,
Mark E	Mercy appeal dated 8.9.2014 filed by the deceased for help against the complaint lodged by Mamta,
Mark F	Copy of statement of the deceased Amarjeet,
Mark G	Copy of list of Istridhan which was not accepted (two leaves)
Mark H	Copy of list of articles which were given at the time of marriage of Mamta
Mark J	List of dowry articles (two leaves)

8. On completion of the prosecution evidence, the incriminating circumstances and evidence were put to the accused. However, they denied all such circumstances and evidence and stated that they were innocent and had been implicated in the case. They further stated that they had no connection whatsoever with the alleged incident. Accused Mamta had left the matrimonial home on 14.01.2011 due to a matrimonial dispute and since then she had been residing with her parents. Accused Mamta had never talked or met with the deceased after 14.01.2011 and accused Ram Kumar and Bimla Devi had never talked to or met the deceased for five years prior to the date of the incident.

9. The accused did not adduce any oral evidence in their defence.

They only relied upon the following documents:-

Ex.D1	Statement dated 11.01.2016 of Inderjeet son of Sh. Ram Kishan,
Ex.D1	Copy of final report of FIR No.115/16 dated 30.6.2016,
Ex.D2	Certified copies of order dated 05.02.2016 and the statement of the accused Mamta passed/given in a petition under Section 125 Cr.P.C. titled as Mamta Vs. Amarjeet Singh,
Ex.D3	Certified copies of order dated 19.08.2016 and the statement of the accused Mamta passed/given in an application under Section 12 of the Protection of Women from Domestic Violence Act titled as Mamta vs. Amarjeet Singh,
Ex.D4	Certified copy of judgment and decree sheet dated 7.5.2018 passed by the court of Ms. Monika Khanagwal, Civil Judge (Junior Division), Bhiwani in a suit having CNR No.HRBH020006722013 titled as Smt. Mamta vs. Amarjeet Singh and others,
Ex.D5	Certified copy of order dated 16.05.2016, divorce petition titled as Amarjit Singh vs. Smt. Mamta and written statement filed in it (12 pages).

10. Based on the evidence led, respondent Nos.2 to 4 (accused) came to be acquitted vide judgment dated 20.02.2019 passed by the Sessions Judge, Bhiwani.

11. The aforementioned judgment is under challenge in the present appeal.

12. The learned counsel for the appellant contends that the prosecution case was clearly established against the respondents/accused, moreso, as the deceased had left a suicide note clearly inculcating all the accused.

Mamta wife of Amarjeet (deceased) did not bear a good character. She had also refused to join the deceased in the matrimonial home and this led to the deceased committing suicide. Thus, the offence under Section 306 IPC was clearly established.

He contends that multiple judicial proceedings had been initiated at the instance of the respondents/accused which led to the harassment of the deceased and his parents which was another factor which led the deceased to commit suicide.

He thus, contends that the evidence was sufficient to convict the respondents/accused who had wrongly been acquitted.

13. The learned State counsel has supported the case of the complainant contending that the offence was established in view of the evidence led including the suicide note left by the deceased which clearly showed that the accused had abetted his suicide. He therefore contends that the accused/respondents be convicted for having committed the offence in question

14. I have heard the learned counsel for the appellant and examined the record.

15. In the instant case, the original complaint by the father Ram Kishan (PW3) has not referred to the character of Mamta wife of the deceased. It only refers to the fact that Mamta had not come back to the matrimonial home and had filed cases against the deceased leading to the commission of his suicide. On the other hand, the suicide note of the deceased states that Mamta had a bad character. She had refused to come back to the matrimonial home which led him (Amarjeet author of the suicide note) to commit suicide. It does not stand to reason that on the one hand, it is the case of the prosecution that Mamta had a bad character whereas on the

other Amarjeet (deceased) wanted her back. Therefore, a significant doubt is created in the prosecution case in its entirety.

Taking the allegations to be true, the alleged cause of the suicide would be either the non-return of Mamta to the matrimonial home, her filing cases against the complainant party as also her bad character. None of these factors would constitute abetment in the absence of any evidence to suggest that Mamta or her parents (the other two accused) had done any such act which amounted to a positive incitement to the deceased to commit suicide. Quite to the contrary, Mamta had left the matrimonial home on 14.02.2011, whereas the deceased committed suicide in January, 2016. There is no evidence that during the said period, the accused party was in contact with the deceased so as to positively incite him to commit suicide.

It would also be pertinent to point out that there is no evidence that Mamta was of a bad character or a prostitute/porn film actress as has been sought to be made out by the prosecution.

Further, by availing her legal remedies of initiating judicial proceedings against the deceased, by no stretch of imagination can amount to incitement or abetment.

As regards respondent No.2-Ram Kumar and respondent No.3-Bimla Devi, the parents of Mamta, there is no specific evidence that they had not allowed their daughter to return to the matrimonial home. Even otherwise, it is unlikely that a mature adult like Mamta would obey the command of her parents and not return the matrimonial home. Quite to the

contrary, once Mamta had initiated proceedings against her husband, the question of returning to the matrimonial home would not arise.

16. 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]

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 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]

The Hon'ble Supreme Court has held in the matter 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 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 **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]

This Court **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]

17. 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 competent Court has acquitted the accused. 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.

18. In view of the detailed discussions hereinabove regarding the evidence lead by the prosecution 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 the

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record, cannot be said to be perverse and as such is not required to be interfered with.

19. Therefore, the present appeal is stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

28.04.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No