

(228)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2320-MA-2018 (O&M)

Date of Decision: 18.01.2023

HAKIM

... Applicant/Appellant

Versus

HURMAT & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

JASJIT SINGH BEDI, J.

The applicant/appellant has filed the present application for grant of leave to appeal against the order of acquittal dated 10.01.2018 passed by Sub Judicial Magistrate, Hathin, whereby the accused-respondents have been acquitted of the charges under Sections 148, 149, 323, 326, 452, 307, 506 of IPC.

2. The brief facts of the case are that on 14.02.2008, an altercation took place on account of some controversy between their children and the applicant-appellant/complainant (hereinafter known as the complainant) protested to Hurmat. On this, Hurmat got infuriated, started to hurl abuses at him and threatened to teach him a lesson. When the complainant returned to his house, then on the same day at around 10:00 AM while he was at home, all the accused came there being armed with Pharsas, Lathis and Paltas, trespassed into his house and raised a lalkara to finish them. Jakir gave a pharsa blow on the head of the complainant. The accused Kala gave a lathi blow on the elbow of his left hand. When Juber, brother of the complainant

tried to protect him, then Hurmat caught hold of Juber and Sheru gave a lathi blow on his right shoulder. Siraj gave a lathi blow on his left arm, Manna gave a lathi blow on the right hand of Juber. When Jaibuna wife of Juber tried to rescue them, Lilli gave an iron palta blow on the head of Jaibuna and she fell unconscious. On raising an alarm, Babuddin and Fajar co-residents reached there and rescued them from the clutches of the accused.

3. Vide order dated 08.09.2016 the accused were summoned under Sections 148, 323, 452, 506 read with Section 149 of the Indian Penal Code, 1860.

4. Thereafter, pre-charge evidence was led by the complainant and the accused were charge-sheeted under Sections 148, 323, 452, 506 read with Section 149 of The Indian Penal Code, 1860.

5. To prove its case, complainant examined himself as CW1 and in his examination-in-chief deposed that on 14.02.2008 some altercation took place between their children and the children of Hurmat. When he went to the house of Hurmat, then Hurmat started abusing them. At 10:00 AM when he, Juber and Jaibuna were present at home, in the meanwhile all accused persons namely Jafar, Hurmat, Kala, Sheru, Manna, Siraj and Lilli forcibly entered in their house and gave a lalkara to punish them. Jakir gave a farsa blow on his head. Kaley gave a lathi on his right elbow. In the meanwhile his brother came to rescue them and Hurmat caught him from behind. Sheru gave a lathi blow on the right hand of Juber. Manna gave a lathi blow on the right hand and to save them his sister-in-law Lilli came there. She was hit by a sharp iron weapon on her head due to which she received injuries on her head and she became unconscious. In the meanwhile Babuddin and Fajar came and

rescued them. They had been taken to Mandi Kheda and their sister-in-law was taken to Kosi to a private hospital. After 4/5 months of the injuries their sister-in-law died in Kosi Kalan Hospital. He proved his complaint Ex.C1.

CW2 Dr. Satish Arora, B.A.M.S. Hari Milap Hospital, Kosi Kalan, District Mahtura (UP) deposed that he had seen the name of the complainant on the file but he had not treated them nor treated Jaibuna wife of Juber and he did not know Juber and he did not have any record of them.

CW3 Babuddin son of Mallu Khan deposed that on 14.02.2008 they were going on the way. There was noise due to the quarrel of Hakim and Hurmat. They saw that Hakim, Juber, Jaibuna, Ali Mohammad were laid on the floor and they were unconscious and they also saw that Jakir was having a farsa and Leelay was having an iron palta. Manna, Lilli, Karu, Kaley were having lathis. Hurmat while going away had threatened that this time they had been saved but not next time. Thereafter, they went to Police Post Uttawar where three persons of the accused party were found who had not let the report be lodged. Thereafter, they took Jaibuna to Government Hospital. The doctor had given an MLR to them when mother of Jaibuna reached there. Thereafter, they took them to a village in Hodal.

CW4 Mohd. Akram, Record Keeper, Mandi Kheda Hospital, Nuh Mewat deposed that he had brought the summoned record and had seen the carbon copy of the MLR of Hakim son of Ali Mohd. The same had been prepared by Dr. S.K. Malhotra, a copy of which is Ex.CW6/A. He could recognize the signatures of Dr. Malhotra. He had seen the MLR of Jaibuna wife of Juber which was Ex.CW6/C which had been prepared by Dr. S.K.

Malhotra and he had seen the carbon copy of MLR Ex.CW6/B which had been prepared by Dr. S.K. Malhotra. Dr. S.K. Malhotra had been transferred.

CW5 Juber son of Ali Mohammad deposed that on 14.02.2008 Hakim was present at home. An altercation took place between the children. Thereafter, the accused persons quarreled with Hakim and he was having food inside the house. When he came out, then Hurmat caught him from behind. Sheru gave a lathi blow on the left hand. Siraju gave a lathi blow on the left hand. Manna gave a lathi blow on the right hand. Thereafter, his wife Jaibuna came to rescue them. Then Leelu gave a sharp palta blow on the head of his wife and Jakir gave a lathi blow to Hakim. Kaley gave a lathi blow to Hakim and attacked inside the house. Hurmat threatened that now they had been saved but not next time. In Mandi Kheda they had been medically examined. They went to the police for lodging a report but no action had been taken. He could recognize the accused present in the Court.

6. The statement of the accused was recorded under Section 313 Cr.P.C. wherein they pleaded innocence and alleged false implication at the hands of the complainant. They preferred to lead evidence in defence.

7. Based on the evidence led, the accused/respondents came to be acquitted vide judgment dated 10.01.2018 passed by the Sub-Divisional Judicial Magistrate, Hathin.

8. The learned counsel for the applicant-complainant contends that the Trial Court has totally ignored the evidence of the applicant-complainant while acquitting the respondents. CW-1 Complainant-Hakim clearly described the manner in which the occurrence took place but the Trial Court ignored his evidence specifically regarding the nature of injuries suffered by

him. The medical evidence was also ignored as also the evidence of the eye-witness CW-3 Babuddin. In fact, specific allegations were levelled against the accused and the medical evidence was in consonance with the ocular account. It is therefore his contention that the accused-respondents were liable to be convicted for having committed the offences in question.

9. I have heard the learned counsel for the applicant.

10. In the present case, the occurrence allegedly took place on 14.02.2008 but the complaint came to be filed only on 11.04.2008. The explanation furnished for the delay that the complainant had initially approached the police but no action had been taken by them does not seem to be believable. In fact, there is absolutely no evidence available with the complaint that the complainant had initially approached the police or Superintendent of Police, Mewat regarding the occurrence.

As per the complaint, Jakir had given a Pharsa blow on the head of the applicant-complainant Hakim. The said Pharsa ought to have caused an incised wound on the head of the complainant. However, the complainant did not examine the doctor who prepared the MLR but instead examine the Clerk who had brought the record of the MLR. Therefore, the accused did not have an opportunity to cross-examine the doctor who had examined the injuries of the injured. In fact, as per the MLR of the complainant/Hakim (Ex.CW-6/A) injury No.1 is shown to be a lacerated wound, though the same has been allegedly caused by a Pharsa. This is simply not possible as a Pharsa would cause a incised wound whereas a lacerated wound would be caused by a blunt weapon. Therefore, a doubt is created in the case of the complainant.

In the MLR of Juber (CW-6/B) the duration of the injuries have not been mentioned by the doctor. Therefore, it cannot be said that the injuries caused are not ante-dated or ante-timed. This becomes relevant in view of the delay of 02 months in filing of the present complaint.

CW-3 is the alleged eye-witness of the occurrence and has stated that he had not seen the incident. He had gone to the spot later and at that time there was no one there except him. The evidence of this witnesses is also insufficient to prove that the accused/respondents had caused injuries to the complainant party.

There is no allegation of criminal intimidation as well in the examination-in-chief of the complainant. There is also contradiction regarding who accompanied the complainant to the hospital. As per the MLR of Hakim, one Iqbal accompanied him who is stated to be his uncle but the said Iqbal was not examined.

The aforementioned facts including the delay in filing of the complaint, the contradiction in the ocular and medical account as also the non-examination of the doctor who had issued the MLR certainly creates a doubt in the case of the complainant.

11. 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, reappraise 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]

12. 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.

13. In view of the detailed discussions hereinabove regarding the evidence lead by the complainant 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 record, cannot be said to be perverse and as such is not required to be interfered with.

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

(JASJIT SINGH BEDI)
JUDGE

18.01.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No