



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 01st JUNE, 2023

+ CRL.REV.P. 365/2019

SHRI KRIPAL SINGH

..... Petitioner

Through: Mr. Ambar Tewari, Advocate.

versus

STATE & ORS.

..... Respondents

Through: Mr. Hitesh Vali, APP for the State with
SI Awadhesh Narayan, P.S. Rajender
Nagar.

Mr. Shishir Singh, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 397 of the Code of Criminal Procedure, 1973 ('CrPC') challenges the judgment dated 10.12.2018 passed by learned District and Sessions Judge, Special Judge, NDPS-02, Tis Hazari Courts, Central District, New Delhi in Criminal Appeal No. 401/2018, whereby the learned Additional Session Judge upheld the judgment dated 27.07.2018, passed by learned Metropolitan Magistrate-03, (Central), Tis Hazari Courts, Delhi.

2. Briefly stated, the facts of the present case are as under:

- i. It is the case of the petitioner that on 06.06.2007, at around 1:00 am, Mr. Kirpal Singh (petitioner) along with his deceased wife, Late Ms. Surender Kaur, on the pillion seat



were riding on their scooter bearing no. DL-6SK-4852, near Shankar Road, Gol Chakkar, Rajender Nagar, Delhi. Thereafter, respondent no. 2 driving a Maruti Zen car bearing no. DL-9CB-6186, at a very high speed hit the scooter of the petitioner in a rash and negligent manner allegedly under the influence of the alcohol. Due to the said impact, the appellant and his deceased wife suffered serious injuries.

- ii. The petitioner and his wife were immediately rushed to Sir Ganga Ram Hospital, New Delhi, with the help of 4-5 people in a private vehicle and thereafter were admitted in the hospital.
- iii. On 06.06.2007, the police registered an FIR bearing No. 148/2007, under Sections 279/337 of the Indian Penal Code, 1860 ('IPC'), registered at P.S. Rajender Nagar. On 18.06.2007, wife of the petitioner was declared dead, after undergoing few days of treatment at the aforesaid Hospital.
- iv. Subsequently, on 02.08.2007 chargesheet was filed *qua* respondent no. 2, herein, in FIR No. 148/2007, under Sections 279/338/304A of the IPC and Section 185 of the Motor Vehicle Act, 1988 ('MV Act'), registered at P.S. Rajender Nagar. Consequently, *vide* order dated 03.08.2010, charges were framed under Section 279/338/304A of the IPC and 185 of the MV Act.
- v. The learned Metropolitan Magistrate-03, (Central), Tis Hazari Courts, Delhi, *vide* judgment dated 27.07.2018, acquitted respondent no. 2, herein, in Criminal Case No. 300901/2016,



titled 'State v. Rahis Ahmed'. The learned Metropolitan Magistrate while acquitting respondent no. 2, recorded as under:-

"18. From the material on record, it is clear that prosecution witnesses PW1 Mr.Vishnu Sharma & PW3 Mr.Kirpal Singh have contradicted in respect of material aspects. Testimony of PW1 Mr.Vishnu Sharma is not free from doubts. Investigation is shoddy as other key witnesses were not examined and no photographs of the spot was taken. PW3 Mr.Kripal Singh stated that after the accident he became unconscious and was taken to the hospital. PW7/IO SI Om Prakash stated that he cannot say whether the accident occurred due to negligence of accused or Mr.Kripal Singh. The testimony of Mr.Kripal Singh is not corroborated by the other witnesses cited by the prosecution. The MLC of driver only mentions smell of alcohol but no blood test is conducted to ensure presence of alcohol. The investigation in respect of Section 185 M.V.Act is also remained unsatisfactory

19. From the evidence on record, it is clear that the prosecution has failed to establish its case against the accused beyond reasonable doubt. Hence, benefit of doubt given to the accused Rahis Ahmed S/o Sh.Zahoor ,Ahmed, and accused Rahis Ahmed S/o Sh.Zahoor Ahmed is acquitted in present FIR No.148/2007 PS Rajinder Nagar for the offence under Section 279/338/304-A IPC."

- vi. Aggrieved by the order of the learned Metropolitan Magistrate, the petitioner preferred an appeal, before the learned District and Sessions Judge (Central), Tis Hazari Court, New Delhi.
- vii. The learned Additional Session Judge *vide* judgment dated 10.12.2018, in Criminal Appeal No. 401/2018, bearing FIR No. 148/2007, registered at P.S. Rajinder Nagar, titled 'Shri



Kirpal Singh v. State & Ors.’, dismissed the appeal filed on behalf of the petitioner herein and upheld the order passed by the learned Metropolitan Magistrate.

viii. Aggrieved by the judgment passed by the learned Additional Session Judge and the learned Metropolitan Magistrate the petitioner has preferred the present revision petition.

3. The learned ASJ in the appeal filed by the petitioner against the aforesaid order of acquittal passed by learned MM, after carefully going through the aforesaid order as well as the evidence on record came to the conclusion that the order of acquittal dated 27.07.2018, passed by learned MM did not suffer from any infirmity.

4. While disposing of the aforesaid appeal, the learned ASJ held that the learned Trial Court had rightly discarded the testimony of PW-1/Sh. Vishnu Sharma, who was allegedly an eyewitness, on account to material contradiction in his testimony.

5. It was further observed by the learned ASJ that the present testimony of the petitioner who had examined himself as PW-3, was not corroborated by other evidence on record and that the statement of PW-1/ Sh. Vishnu Sharma and PW-3 (Petitioner), contradicted each other in material particulars. The learned ASJ further observed as under:

“6. As noticed above, case was registered on the statement of PW1 Vishnu Sharma. Accident took place at about 1a.m. during the night. This statement was sent from the spot at about 4.45 A.M. It led to registration of case at about 5a.m. As regards his statement Ex.PW1/E, proved by him in chief examination, the witness, once again, created doubt by stating in cross-examination that at the spot, when police arrived there, his name and address were noted down by the police, but his statement was recorded on the next day at Patel Nagar where he used to supply milk.



In view of the above deposition, learned Trial Court rightly discarded testimony of PW1, as rightly submitted by learned counsel for respondent No.2.

XXX

9. There is no evidence on record to suggest as to reported the matter to police from the spot. DD No.3 A recorded at P.S.Rajender Nagar at 1.40 a.m does not reveal particulars of the informant. No PCR form has been placed or proved on record to suggest as to who had informed the PCR.

No effort appears to have been made to collect evidence in this regard. Had it been so, it could be gathered as to whether the caller was an witness to the accident or he was merely a passerby who happened to inform the police. Even PCR staff, if joined in investigation, could throw light as to whether any witness to the accident was or was not present there. They could also give evidence as to whether Vishnu Ram was or was not present at the time they reached the spot and removed the injured from there.

So far as PW3 Kirpal Singh is concerned, his statement was recorded by the police for the first time on 25.06.2007. As per MLC initially he was declared to be unfit to make statement. But ultimately, as per note recorded by the doctor on this certificate Ex.PW2/A, he was given first aid and primary treatment and sent home. So, there was justification with the police for not recording of statement of PW3 at the hospital, when police initially visited there, but it remains unexplained as to why his statement was not recorded soon after 6.6.2007, when he had been sent home on that night. It was duty of the police to record his statement without any delay. But it was not recorded upto 24.6.2007. Court finds that SI Om Prakash (who has since retired from service and appeared as PW7) was at fault in not recording statement of PW3 soon after 6.6.2007.

XXX

11. In a case of motor vehicle accident, rough site plan of the place of accident is generally prepared at the pointing out of eye witness, in case anyone is available. Herein, plan Ex.PW7/B pertains to the place of accident. But this document does not show as to at whose instance or pointing out the same was prepared.

PW3 Kirpal Singh stated that he never visited the spot after the accident. This goes to show that he never pointed out to the police the place of accident. When it is so, it remains unexplained as to who pointed out to the police the place of accident or the directions in which the vehicles were moving at the time of accident.



PW1 Vishnu Sharma nowhere deposed that it was prepared at his instance. Kirpal Singh injured was removed to the hospital immediately after the occurrence. It is not case of prosecution that it was prepared at the pointing out of Kirpal Singh. In this situation, no reliance could be placed on the rough site plan which depicts the place of accident and directions in which the vehicles were moving at the given time.

When there is delay in recording statement of PW3 Kirpal Singh and no site plan was prepared by the police at his pointing out, it is difficult to believe the version narrated by PW3 Kirpal Singh regarding the manner in which accident took place.

XXX

13. In case of collision of two vehicles, generally, colour of paint is detectable on the bodies of the vehicles. Herein, at the time of mechanical inspection, the Inspector did not observe colour of paint of the scooter on the car or that of car on the body of the scooter. It is true that fresh damage was noticed by the Inspector on each vehicle, but it cannot be said that it was due to collision of the two. This fact creates doubt in the version narrated by PW3 that the car had hit his scooter from the left side resulting in fall of the scooter, his fall and that of his wife.”

6. The learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court as well as the learned Appellate Court have erred in not appreciating the evidence of the present petitioner, who was there at the spot of the incident. It was further submitted that the Courts below have also ignored the fact that the mechanical inspection of the offending vehicle belonging to respondent no. 2, showed damage and further that the car was not fit for road test after the accident therefore, the testimony of the present petitioner is corroborated. It was submitted that even if, PW-1/ Sh. Vishnu Sharma did not support the case of the prosecution in his cross-examination, his statement in examination in chief can be relied upon and in view of the aforesaid, it is submitted that the present petition may be allowed. Learned



counsel for the petitioner has relied upon a judgment passed by the Hon'ble Supreme Court in **Vinod Kumar v. State of Punjab, (2015) 3 SCC 220**.

7. *Per contra*, learned counsel appearing on behalf of respondent no. 2 submitted that two Courts have given concurrent findings, the present revision petition is a nature of second appeal. Both the learned MM and the learned ASJ have minutely and carefully examined the evidence on record and have accepted the defence of respondent no. 2 herein, that the accident took place on account of negligence of present petitioner.

8. The present revision petition challenges the judgment of the learned Appellate Court dismissing an order against acquittal passed by the learned Metropolitan Magistrate. It is well settled that in an appeal against acquittal, the scope of the learned Appellate Court is to the extent that the judgment of acquittal should not be ordinarily interfered with unless the findings in such judgment are shown to be arrived at by incorrect or perverse appreciation of material on record and the law. This settled position of law with respect to the scope of the learned Appellate Court *qua* an appeal against the acquittal has been considered in a catena of judgments by the Hon'ble Supreme Court. In **Basheera Begam v. Mohd. Ibrahim, (2020) 11 SCC 174** the Hon'ble Supreme Court has held:

“190. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be “not



guilty”. When there is circumstantial evidence pointing to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

191. In *Sadhu Saran Singh v. State of U.P.*, this Court observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.”

9. Recently, the Hon’ble Supreme Court in **Jafarudheen v. State of Kerala, (2022) 8 SCC 440**, made a detailed analysis of the precedents, with respect to the scope of an appeal against acquittal and recorded as under;

“Scope of appeal filed against the acquittal

25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

Precedents

26. *Mohan v. State of Karnataka* as hereunder : (SCC paras 20-23)

“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the appellate court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the appellate court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to



see the witnesses in person while they depose. The appellate court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty-bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the appellate court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role to undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An appellate court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, the trial court on the one hand and the appellate courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The appellate court is expected to maintain a degree of caution before making any remark.

23. This Court, time and again has laid down the law on the scope of inquiry by an appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this Court in *Anwar Ali v. State of H.P.* : (SCC pp. 182-85, para 14) '14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : (Babu case, SCC p. 199) "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, Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, Triveni Rubber & Plastics v. CCE, Gaya Din v. Hanuman Prasad, Arulvelu and Gamini Bala Koteswara Rao v. State of A.P.)”

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police, 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.

14.3. In the recent decision of Vijay Mohan Singh, this Court again had an occasion to consider the scope of Section 378 CrPC and the interference by the High Court in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under : (Vijay Mohan Singh case, SCC pp. 447-49)

“31. An identical question came to be considered before this Court in Umedbhai Jadavbhai. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappraisal 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 reappraise 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, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappraisal 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 Doshi case 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, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an



order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley*, 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 CrPC 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 has 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; Wilayat Khan v. State of U.P.) 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, 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 in original)

27. N. Vijayakumar v. State of T.N.as hereunder : (SCC pp. 695-99, paras 20-21 & 23-24)

“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under : (SCC p. 432)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(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.’

21. Further in the judgment in relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of “possible view” to “erroneous view” or “wrong view” is explained. In clear terms, this Court has held that if the view taken by the trial court is a “possible view”, the High Court ought not to reverse the acquittal to that of the conviction.

23. Further, in Hakeem Khan v. State of M.P. this Court has considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said judgment it is held that if the “possible view” of the trial court is not agreeable for the High Court, even then such “possible view” recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under : (SCC pp. 722-23)



‘9 . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact that he attended the Court at some distance and arrived by bus after the incident took place.’

24. By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a “possible view”. By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no



recordings were made and the appellant was not tested by PW 11 till 7.00 p.m.”

10. The petitioner had challenged the order of acquittal passed by the learned Metropolitan Magistrate before the learned Sessions Court, and the latter, after examining the records of the case found no anomaly in the impugned judgment and agreed with the view taken by the learned Trial Court. In these circumstances, the presumption of innocence *qua* the respondent no. 2 has been reinforced twice over.

11. The grounds taken in the present petition as well as during the course of the arguments are the same which were taken by the petitioner before the learned Appellate Court. The grounds raised before the learned Appellate Court were dealt by a detailed threadbare analysis of the prosecution evidence on record and finding of the learned Trial Court. It was for the petitioner to demonstrate the perverseness in the impugned judgment passed by the learned Appellate Court in order to cause interference by this Court with two concurrent findings of acquittal *qua* the present respondent no.2. The Hon’ble Supreme Court in **Manju Ram Kalita V. State of Assam, (2009) 13 SCC 330**, while dealing with the scope of reappreciation of evidence by higher court in criminal revision observed in paragraph 9 as under:

“9. ...It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse...”

Following the aforesaid judgment, the Hon’ble Supreme Court recently in **Malkeet Singh Gill Vs. State of Chattisgarh, (2022) 8 SCC 204**, has held as under:



“10. Before advertng to the merits of the contention, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

12. In the present case after perusal of the record, it is observed that the petitioner and his wife were brought to the hospital by one person namely, Sh. Gurnam Singh, who was never examined nor was cited as a witness in the present case. It was further observed that there is no evidence on record that suggests as to who reported the matter at Police Station. This was an important aspect of the investigation which could have led to some other eyewitnesses.

13. The statement of the present petitioner was recorded on 25.06.2007 whereas the accident took place in 06.06.2007. The petitioner in his cross-examination himself has stated that he was discharged from the hospital the very next day. It was further observed that the site plan i.e. Ex.PW-7/B, does not show as to whose instance of pointing out the same was prepared. It is admitted by the present petitioner that he never visited the spot after the accident and PW-1/Sh. Vishnu Sharma, the alleged eye-witness, does not say that the same was prepared at his instance. In view of the circumstances, the



learned Metropolitan Magistrate rightly did not place reliance on the said site plan.

14. Another important factor which has been recorded by the learned ASJ is the fact that in the inspection report, there is no mention of the colour of paint of scooter on the car or of the car on the scooter. In his cross-examination, PW-4/Sh. T.U. Siddiqui, Mechanical Engineer/Mechanical Inspector, deposes about the same and also states that the head light of the scooter was missing. It is pertinent to note that defence of the respondent no. 2 was that the petitioner was driving at a high speed without headlight and collided with the car of respondent no. 2.

15. Having perused the record, this Court finds that the learned Trial Court as well as the learned Appellate Court have carefully scrutinized the evidence on record and have dealt with each and every issue raised by the petitioner.

16. In view of the above, there is no ground made out to interfere with the judgment dated 27.07.2018, passed by learned Metropolitan Magistrate in Criminal Case No. 300901/2016 and the judgment of the learned Appellate Court dated 10.12.2018, in Criminal Appeal No. 401/2018, upholding the acquittal of the respondent no. 2 by the learned Trial Court. In view thereof, this court does not find any infirmity or illegality in the aforesaid orders.

17. The present petition is dismissed and disposed of accordingly alongwith the pending application(s), if any.

**AMIT SHARMA
JUDGE**

JUNE 01, 2023/sn