

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

CRA-AD-572-2019 (O&M)
Date of Decision: 03.05.2024

MADAM 'X'

...Appellant

Versus

KULDEEP AND ANOTHER

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Himmat Singh Sidhu, Legal aid counsel
for the appellant.

Mr. S.K. Verma, Advocate
for respondent No.1.

Mr. Manish Dadwal, A.A.G., Haryana
for respondent No.2-State.

HARSH BUNGER, J.

To respect the privacy of the appellant/victim, who is a young girl of 24 years old, it is imperative to keep her identity secret and accordingly, the Registry to take appropriate steps to delete her name from the appeal wherever it appears by pasting Madam 'X' at all those appropriate places.

2. The instant appeal is preferred against the judgment dated 20.03.2019 passed by the learned Additional Sessions Judge, Kaithal, whereby respondent No.1 has been acquitted of the charges framed against him under Sections 376(2)(n) and 506 of the Indian Penal Code in case FIR No.534 dated 02.12.2017, registered at Police Station City Kaithal.

3. Vide order dated 02.11.2022, the lower Court record was called for and the same was received in this Court.

4. The prosecution case is that on 02.12.2017, the prosecutrix moved an application in the police station alleging therein that her date of birth is 06.09.1995 or 1996. She further stated that the talks of her marriage with respondent No.1-Kuldeep son of Ishwar Chand (respondent No.1) resident of Village Songri, Police Station Rajaund, District Kaithal, were going on and within last six months, Kuldeep violated her person 14-15 times forcibly and on her resistance, he threatened to kill her and her mother. It was alleged that on 28.07.2017 at around 5:00 p.m., Kuldeep and his cousin brother Parmod son of Satbir, resident of Kaithal molested her. It was further alleged that on 28.11.2017 at around 5:00 p.m., she along with her mother were standing in the street to go to the market when said Kuldeep passed obscene gesture to her, upon which, her mother gave 2-4 slaps to him. It was yet further alleged that on 29.11.2017 at around 11:00 p.m., one Ankesh son of Roshan Lal entered their house forcibly by breaking the door and he firstly put his hand on her breast and then tried to commit rape upon the mother of the prosecutrix. On raising the noise, Ankesh fled away from the spot. Accordingly, action was sought against Kuldeep, Parmod, Ankesh and one Gourav.

5. On the basis of these allegations, the case was registered under Sections 376, 354, 506 and 511 read with Section 34 of Indian Penal Code, 1860. The prosecutrix and her mother were medico-legally examined and were counseled by a lady Advocate. Their statements under Section 164 Cr. P.C were recorded.

6. During the investigation, Ankesh, Gourav and Parmod were found innocent and Sections 354 and 511 read with Section 34 of IPC, 1860 were deleted and accused Kuldeep was arrested. The accused is stated to

have suffered a disclosure statement and confessed his guilt. He also got the place of occurrence of crime demarcated.

7. On completion of investigation, challan was prepared and presented before the Court for trial of the accused Kuldeep. The case was, thereafter, committed to the Court of Sessions vide order dated 26.03.2018 after compliance of Section 208 Cr.P.C.

8. Finding a *prima facie* case against the accused person under Sections 376(2)(n) and 506 of the Indian Penal Code, he was charge sheeted, to which, he pleaded not guilty and claimed trial.

9. To prove its case, the prosecution/complainant examined following witnesses :-

<i>Sr. No.</i>	<i>Name of the witness</i>	<i>Examined as</i>
1	Prosecutrix	PW1
2	Krishana (Mother of the prosecutrix)	PW2
3	ESI Ram Partap	PW3
4	HC Prabhat	PW4
5	Constable Sandeep	PW5
6	EHC Rajesh Kumar	PW6
7	Inspector Ramesh Chander	PW7
8	Rishipal Draftsman	PW8
9	SI Darshana Devi (Investigating Officer)	PW9
10	Dr. Rakesh Mittal	PW10
11	Dr. Hamita Gupta	PW11

10. In support of its case, the prosecution had also produced evidence in the form of Exhibits, which are as under :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
1	PA	Application moved by Prosecutrix through telephonic message about the offence
2	PB	Statement of Prosecutrix- Appellant under Section 164,CrPC
3	PC	Copy of MLR of Prosecutrix, one parcel containing swab slides, one Parcel of

Sr. No.	Exhibit/s	Document
		<i>clothes of Prosecutrix and her mother Krishana</i>
4	PD	<i>Statement of Krishana- Mother of Prosecutrix under Section 164, CrPC</i>
5	PE	<i>Affidavit by PW-3 ESI Ram Partap in his evidence</i>
6	PF	<i>Arrest memo of accused</i>
7	PG	<i>Disclosure statement of accused</i>
8	PH	<i>Memo of articles taken into possession by SI Darshana</i>
9	PJ	<i>Demarcation of Place of Occurrence by accused in pursuance of disclosure statement</i>
10	PK	<i>FSL Report</i>
11	PL	<i>Scaled site plan of place of occurrence as demarcated by Prosecutrix</i>
12	PM PM/1	<i>FIR; Endorsement</i>
13	PR	<i>Carbon copy of Statements of Prosecutrix and her mother under Section 164 CrPC</i>
14	PW	<i>Affidavit by Dr. Rakesh Mittal in his evidence</i>
15	PY	<i>Computerized copy of MLR of Accused Kuldeep</i>
16	PAA	<i>MLR of Prosecutrix</i>
17	PBB	<i>MLR of Mother of Prosecutrix</i>
18	MO/1 MO/2 MO/3	• <i>Undergarment of Accused.</i> • <i>Cotton wool Swab in a vial</i> • <i>Bunch of Pubic hair of Accused</i>
19	PZ	<i>Affidavit by PW11- Dr. Hamita Gupta in her evidence</i>
20	MO/4 MO/5 MO/6 MO/7 MO/8& MO/9	• <i>Undergarment of Prosecutrix</i> • <i>Salwar of Prosecutrix</i> • <i>Shirt of Prosecutrix</i> • <i>Undergarment of Prosecutrix</i> • <i>Two Vaginal Swabs</i>
21	MO/10 MO/11	• <i>Shirt of Mother of Prosecutrix</i> • <i>Salwar of Mother of Prosecutrix</i>

11. Thereafter, the statement of the accused under Section 313 of the Code of Criminal Procedure, was recorded, wherein the entire incriminating evidence was put to him. He denied the same and pleaded his innocence and false implication.

12. In defence, the accused examined the following witnesses :-

<i>Sr. No.</i>	<i>W. No.</i>	<i>Name of the Witness</i>
<i>1</i>	<i>DW-1</i>	<i>ASI Sunita</i>
<i>2</i>	<i>DW-2</i>	<i>Amit Kumar Ahlamad</i>
<i>3</i>	<i>DW-3</i>	<i>SI Bhagirath</i>

13. The defence produced the evidence in the form of Exhibits, which are as under :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
<i>1</i>	<i>DA</i>	<i>Counselling report of Prosecutrix</i>
<i>2</i>	<i>DB</i>	<i>Statement of mother of Prosecutrix under Section 161 CrPC</i>
<i>3</i>	<i>D1 to D20</i>	<i>Letters</i>
<i>4</i>	<i>D21</i>	<i>CD</i>
<i>5</i>	<i>D1</i>	<i>FIR no.5 dated 08.01.2019 under Sections 313, 376, 452 IPC</i>
<i>6</i>	<i>D2</i>	<i>FIR no. 529 dated 29.11.2017 under Section 148, 149, 323, 452, 506 IPC</i>

14. After conclusion of the trial, the learned trial Court vide impugned judgment has acquitted respondent-Kuldeep. The grounds considered by the learned trial Court for acquitting respondent are as under-

- 1. Ankesh, Gourav and Parmod are not facing trial as they were found innocent during investigation*
- 2. It is apparent from the examination-in-chief of prosecutrix that she did not utter a word about rape upon her by accused Kuldeep but in cross- examination by public prosecutor, she admitted that application (Ex. PA) was moved by her to SHO Police Station City Kaithal, wherein she had alleged that accused Kuldeep had committed forcible rape with her for 14-15 times. Trial Court observed that it was unbelievable that victim of such crime whose person was allegedly violated not*

for once or twice but for 14-15 times, would forget such incident.

3. *Ex. PB is an observation made by learned Judicial Magistrate while recording statement of prosecutrix under Section 164 Cr.P.C. Learned Judicial Magistrate observed that complainant is not deposing true facts of the case and she is stating the contrary version of the incident and her statement does not appear to be the true version of the incident. Ex.PB shows the act and conduct of prosecutrix and further shows that she had not narrated true facts before learned Judicial Magistrate.*
4. *EX.PD is a statement of mother of prosecutrix recorded under Section 164 Cr.P.C. In Ex.PD, mother of prosecutrix levelled no allegation against accused Kuldeep. She only stated that on 28.11.2017 at 11.00 PM, Ankesh entered her house and made an attempt to violate her person and that he also put his hand on the breast of her daughter/prosecutrix.*
5. *The contradictions in the statements of prosecutrix and her mother have created a serious dent in their version.*
6. *Prosecutrix and her mother could not give date or time of the alleged incidents of rape. Their statements were also silent as to place of occurrence. Prosecutrix's statement is also silent with respect to the fact as to when she told her mother about the alleged incidents of rape. The prosecutrix has not divulged the details of the offence. All these facts and circumstances create doubt about the version of prosecutrix.*
7. *As per FSL report, Ex.PK, human semen was found on Salwar of mother, but no semen was detected on the clothes of accused.*
8. *As per DNA profile Report (Ex.PV), the DNA profile of seminal stains on Salwar of mother of prosecutrix did match with DNA profiling of accused Kuldeep, but it*

was not the case of prosecution that accused Kuldeep had ever violated her person.

9. *Ex.D1 to Ex.D20 are the letters written by prosecutrix to accused Kuldeep. Mark D1 is a detail of text messages sent from mobile phone nos.70820-64330 and 90342-22640. During cross-examination, prosecutrix admitted that letters Ex.D1 to Ex.D20 are in her handwriting and written by her. She also admitted the contents and voice of CD Ex.D21. She also admitted that mobile phone nos.70820-64330 and 90342-22640 belonged to them and used by her. Although, she denied above said text messages but she admitted that the above said mobiles were used by her, so, it can be safely said that these messages were sent by the prosecutrix.*
10. *From the contents of letters, text messages and CD, it has been proved that there was not only talks of marriage between the prosecutrix and accused but they also fell in love with each other and developed such intimacy that can go to any extent. It is found mentioned in Ex.D19 that “apke upar apni jan se jyada vishwas h. Apki Marji h jo ap krna chahey kar lena” (I have faith on you more than my life, it is your wish, you may do whatever you desire). It is further found mentioned that “Jo bi karna chahte ho wo krna lekin mujse dur mat jana” (Whatever you want to do, do it, but don’t ever leave me).*

From the afore-said facts and circumstances, trial Court held that there might be a consensual physical relation between them.

11. *The accused took a defence that on 28.11.2017, prosecutrix and her mother with 7-8 other persons gave beatings to him and he got lodged FIR No.529 dated 29.11.2017 (Ex. D2) against prosecutrix, her mother and 7-8 other persons.*

Prosecutrix and her mother admitted the factum of registration of FIR (Ex. D2) and further admitted that they have been facing trial in the said case.

PW-2 mother of prosecutrix deposed that on 28.07.2017, the prosecutrix told her that out of fear, she had not told the real facts that accused Kuldeep had committed rape upon her against her wishes for the last two years, meaning thereby, on 28.07.2017, the alleged offence of rape came in the notice of mother of prosecutrix.

The present case FIR was got lodged on 02.12.2017. Said facts indicate that the present case is a counter-blast of the said criminal case got lodged against the prosecutrix and her mother.

12. *That the prosecution failed to prove beyond shadow of doubt that accused Kuldeep repeatedly violated the person of prosecutrix against her wishes and threatened to kill her.*

15. Learned counsel appearing for the appellant, while assailing the judgment of acquittal passed by the trial Court, argued that the learned trial Court has erred in law and fact in passing the impugned judgment. It is submitted that there is sufficient material available on record which establishes the complicity of the respondent-Kuldeep in the crime. Learned counsel for the appellant further submitted that the learned trial Court failed to appreciate the fact that respondent-Kuldeep had suffered a disclosure statement wherein he admitted all allegations as correct. The learned counsel for appellant yet further submitted that the medical as well as scientific evidence on record, fully corroborated the version of the appellant; however, the said material evidence has been wrongly brushed aside and the learned trial Court has wrongly acquitted the accused persons by discarding the

prosecution case. It is, therefore, prayed that the impugned judgment being untenable in law, be set aside.

16. Learned counsel for respondent No.1-Kuldeep has opposed the submissions made on behalf of the appellant and submitted that there is no illegality or perversity in the impugned judgment, which may call for any interference by this Court. It is submitted that the trial Court has rightly appreciated the evidence available on record and has passed a well reasoned and justified order, acquitting the respondent-Kuldeep of the charges framed against him. Accordingly, it is submitted that the appeal lacks merit and prayer for dismissal of the same has been made.

17. We have heard learned counsel for the appellant and perused the paper book with his able assistance.

18. Upon considering the case in hand, the question that arises for consideration by this Court is:

“Whether the judgment dated 20.03.2019 passed by the Trial Court acquitting respondent-Kuldeep of the charges under Section 376(2)(n) and 506 Indian penal Code, requires any interference?”

19. In the instant case, as noticed above, complainant had levelled allegations of sexual assault/molestation against respondent-Kuldeep, his cousin Parmod and two other persons, namely, Ankesh and Gourav.

20. A perusal of the paper-book reveals that Ankesh, Gourav and Parmod were found innocent during investigation and they did not face trial. It appears from the record that even an application under Section 319 Cr.P.C. filed by prosecution for summoning the aforesaid persons namely, Ankesh, Gourav and Parmod, as additional accused, was also dismissed by trial Court on 06.08.2018.

21. In this backdrop of the matter, let us examine the prosecution case against respondent-Kuldeep. Prosecution has examined two witnesses i.e. prosecutrix and her mother as PW-1 and PW-2 respectively; who deposed as follows:

Deposition of Prosecutrix (PW1)

Stated that my date of birth is 06.09.1995. Talks of my engagement were started with accused Kuldeep son of Ishwar Chand resident of village Songri, District Kaithal. On 28.07.2017 at about 5 PM, I along-with my mother had gone to Chandana gate for supplying the milk. In the way, accused Kuldeep and his associate Parmod sexually teased me and molested me. They also tried to throw acid upon me and my mother. They had also extended threat to me that either I should agree for marriage with accused Kuldeep, otherwise they would ruin my face with acid. On 28.11.2017 at about 5 PM, accused Kuldeep had come near my house, he made obscene signal towards me. My mother saw him doing this. My mother gave two-three slap blows to him. Thereafter he left the spot. At about 10-11 PM, Ankesh and Gourav broke doors of our house. They also tress-passed our house, where my mother and I was sleeping. They also gave injuries to me and my mother. Ankesh Jain put his hand on my breast and he also attempted to commit rape with my mother. On raising alarm, Ankesh Jain left the spot. While leaving the spot, he extended threat to us as today you have been saved, in future he would kill us whenever he would get a chance. Ankesh and Gourav also hurled abuses to us in filthy language. On 28.03.2018, Ankesh Jain and Parmod threatened me to compromise the matter with accused Kuldeep. On my refusal, Ankesh and Parmod administered poisonous tablet to me with the intention to kill me. Ankesh and Parmod repeatedly harassing us and I have

apprehension of danger from them. Except this I do not know anything regarding the present case.

Prosecution witness No.2

Stated that I am blessed with two children one son namely Dev Raj and one daughter prosecutrix. My son is married and he is residing separately. My husband has expired 8 years above. Two years above my daughter (Prosecutrix) proposal for marriage was initiated with accused Kuldeep present in court today. But the marriage proposal was not finalized. Accused Kuldeep started our house frequently. I did not know about the antecedent of accused. On 28.7.2017 my daughter prosecutrix had gone out for supplying milk. Kuldeep accused and his cousin brother stop her way in the gali and started teasing her. Thereafter my daughter came back home and narrated the incident to me. My daughter told me that out of fear she had not told me the real facts that accused Kuldeep committed rape upon my daughter prosecutrix against her wishes for the last 2 year by putting her fear and my daughter not told me this fact due to family reputation. My daughter also told me that she was threaten by the accused that if she disclosed these facts to anyone she would be shot and accused could also kill me and he also threat he had some objectionable vide in his video which he would upload on the internet and defame her family. On 28.11.2017 at about 5:00 PM the accused Kuldeep was standing outside the house of Ankesh. I and my daughter were ready to go for shopping in the market. We were on scooty. Accused Kuldeep made some objectionable gestures towards my daughter prosecutrix, upon which I could not tolerate and in rage gave 2-3 slaps to accused Kuldeep. Thereafter the accused fled away from the spot. On 29.11.2017 at about 10:30 PM in the night, Ankesh son of Roshan, Parmod and Gourave came to our house and broken the main gate of our house. Thereafter Ankesh put

his hand on the breast of my daughter prosecutrix. My daughter rescue herself and ran away on the first floor of my house, Ankesh laid me down and put himself upon and tried to commit sexual assault with me. I raised alarm as a result of which my neighbourer gathered on the spot and the accused fled away. The matter was reported to the police on 2.12.2017 and due to fear we remained in our house. During the investigation, I and my daughter were got medically examined on 3.12.2017 and after the medical examination doctor handed over the parcels of clothes handed over to police which were taken in possession vide memo Ex.PC which bears my thumb impression at point A. Thereafter I and my daughter were also produced before the Magistrate where statement u/s 164 Cr.P.C of my daughter Ex.PB and my statement u/s Ex.PD were recorded which bears my thumb impression at point mark A. Accused is present in court today and I identify him.

22. A perusal of deposition of prosecutrix (PW-1) makes it evident that she has not uttered any word as regards rape upon her by respondent-Kuldeep; whereas according to her application (Ex. PA) submitted to SHO, Police Station Kaithal, she alleged that Kuldeep had committed forcible rape with her for 14-15 times against her wishes. It is, thus, evident that when prosecutrix appeared in the witness box, she levelled no allegation of rape against respondent-Kuldeep. Further, while recording statement of prosecutrix under Section 164 Cr.P.C., Learned Judicial Magistrate made an observation (Ex. PB), that complainant was not deposing true facts of the case and she was stating contrary version of the incident and her statement did not appear to be true version of the incident.

23. Coming to the deposition of PW-2 (Mother of the prosecutrix), a perusal thereof would show that she made no allegation of rape by respondent-Kuldeep. She only stated that her daughter told her that out of

fear she had not told the real facts that accused-Kuldeep had committed rape upon the prosecutrix against her wishes for the last two years by putting her into fear. Evidently, Prosecutrix (PW-1) in her deposition before the Court, has not uttered any word as regards rape upon her by respondent-Kuldeep. Further, PW-2 (Mother of the prosecutrix), while recording her statement under section 164 Cr.P.C. (Ex. PD), has made no allegation of rape by respondent-Kuldeep.

24. It is further apparent from the above extracted statements of Prosecutrix (PW-1) and PW-2 (Mother of the prosecutrix), that they could not give the date(s) or time of the alleged incidents of rape or the place of occurrence. It is also not forthcoming as to when the prosecutrix (PW-1) told PW-2 (Mother of the prosecutrix), about the alleged incident of rape. Prosecutrix (PW-1) has also not divulged the details of the offence, which was expected of her. Trial Court has also noticed material contradictions in the statements of the prosecutrix (PW-1) and PW-2 (Mother of the prosecutrix).

25. Coming to the medical evidence, as per report (Ex. PK), human semen was detected on the Salwar of PW-2 (Mother of the prosecutrix), however, no semen was detected on the clothes of accused. Further, DNA profile report (Ex. PV) shows that DNA profile of seminal stains on the Salwar of PW-2 (Mother of the prosecutrix) is matching with the DNA profile of respondent-Kuldeep. It is nobody's case that respondent-Kuldeep violated the person of PW-2 (Mother of the prosecutrix) and therefore said DNA report cannot be used against respondent-Kuldeep.

26. It has also come on record that DNA profile of seminal stains on the underwear of the prosecutrix had matched with the DNA profile of

respondent-Kuldeep. However, as per deposition of prosecutrix (PW-1) before the Court, no allegation of rape has been made. On the other hand, the defence has led evidence in the form of letters (Ex. D1 to EX. D20) written by prosecutrix to respondent-Kuldeep; details of text messages (Mark M1) and CD (Ex. D21). Prosecutrix has admitted her handwriting on Ex. D1 to D20 and further admitted her voice in CD (Ex. D21). Upon considering the defence evidence, the Trial Court has recorded a finding that there might be a consensual physical relation between prosecutrix and respondent-Kuldeep.

27. Apart from the above, respondent-Kuldeep has led evidence that on 28.11.2017, prosecutrix and her mother with 7-8 other persons gave beating to him, whereupon he got lodged FIR No. 529 dated 29.11.2017 (Ex. D2) against the prosecutrix, her mother and 7-8 other persons. Prosecutrix and her mother have admitted the factum of said FIR (Ex. D2) and also admitted that they are facing trial in the said case. Evidently, the alleged offence of rape came in the knowledge of PW-2 (mother of the prosecutrix) on 28.07.2017, but the FIR in question was lodged on 02.12.2017. Trial Court while appreciating the aforestated facts and evidence on record, has concluded that the present case is a counter-blast of the criminal case lodged against prosecutrix and her mother by respondent-Kuldeep Singh.

28. Learned counsel for the applicant-appellant has failed to controvert/dislodge the aforesaid findings returned by the trial Court.

29. In criminal appeal against acquittal what the appellate court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the appellate court comes to the conclusion that the grounds on which the judgment is based is not perverse, the scope of appeal

against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of Mrinal Das versus State of Tripura, (2011) 9 SCC 479, it has been observed that :

“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If

the order is “clearly unreasonable”, it is a compelling reason for interference.....”

30. In the case of **Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450** in para no.75, the Hon’ble Supreme Court re-iterated the said view and observed as follows :

“75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

31. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

32. The Hon'ble Apex Court in "**Shivasharanappa & Ors. v. State Of Karnataka**", **JT 2013 (7) SC 66**, has held as under:

"That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

33. The Apex Court in **Samsul Haque v. State of Assam, (2019) 18 SCC 161** held that judgment of acquittal, where two views are possible, should not be set aside, even if view formed by appellate court may be a

more probable one, interference with acquittal can only be justified when it is based on a perverse view.

34. In the aforementioned facts and circumstances, we are of the opinion that the so called incriminating circumstances against the respondent-Kuldeep are falling too short to point out the authorship of the crime. We are unable to find either any illegality or perversity in appreciation of the evidence by Court below. Accordingly, the conclusion drawn by the learned Trial Court and thereby recording the order of acquittal needs no interference at the hands of this Court. The question of determination by this Court, is accordingly answered in negative.

35. Resultantly, the instant appeal is dismissed.

36. All pending application/s (if any) shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

May 03, 2024
gurpreet

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