

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1271 OF 2001

State of U.P.

..Appellant

versus

Dinesh

..Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Questioning correctness of the judgment of a Division Bench of the Allahabad High Court directing acquittal of the respondent, this appeal has been filed by the State of Uttar Pradesh. Learned IV Additional Sessions Judge, Lakhimpur, Kheri, had convicted the respondent for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'IPC') and sentenced him for life imprisonment in Sessions Trial No.469/92.

2. The prosecution version in a nutshell is as follows:

Complainant Sita Saran (PW 3) filed a written report Ex. Ka-1 on 24.5.1991 at P.S. Kotwali, stating that he is a resident of Mohammadpur, P.S. Kotwali, and his sister is married to Amritlal, Amkotwa (hereinafter referred to as the 'deceased') resident of village Amkotwa. Today on 24.5.1991 he was going with his brother-in-law (sister's husband) on a bicycle from village Saherua at Amkotwa after delivering milk to Amebarati Lal at village Saherua. He was accompanied by Ram Lakhani of Amkotwa and his nephew Rajesh. When they reached near Habib's field from village Saherua, two persons named Dinesh, the respondent and Vinod, belonging to village Amkotwa, and armed with

country made pistol and knife came out of said field. They caught the complainant's brother-in-law, Amrit Lal with his bicycle, took him into Habib's field saying they would take revenge by murdering him. Vinod and Dinesh fired from the country made pistols at his brother-in-law who got struck and fell down. Thereafter Dinesh assaulted him with a knife. When the complainant raised an alarm, Ramadhar, Prakash and others from village Baheiya came and challenged the assailants, who ran away towards Pachkotwa. On being pursued by the people, they threatened them. Thereafter the complainant and others gave up the chase. These persons murdered his brother-in-law because his brother-in-law's brother Radhey shyam had brought a tractor which was needed by Vinod, but his brother-in-law would not allow Vinod to use it. It is for this reason that the murder was committed. The dead body was lying in the field. The incident took place at 10.30 a.m. On the basis of the above written report, F.I.R. was written at P.S. Kotwali on 24.5.1991 at 11.20 a.m. Thereafter the investigations in the case began. Sub-Inspector Vishwa Nath Pandey prepared the inquest Ex. Ka-2 at the site, photo of the dead body Ex. Ka-10

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was taken, specimen of the seal Ex. Ka-11. Memo for recovery of the bicycle at the site, Ex. Ka-12, Memo Ex. Ka-13 for collecting ordinary and blood stained soil from the site. After completing investigations, charge sheet Ex. Ka-6 was filed against accused Vinod and Dinesh.

Since the accused persons pleaded innocence, trial was held.

During the pendency of the trial, accused Vinod died on 7.2.1994. Eight persons were examined to further the prosecution version. PWs. 1 to 4 were stated to be eye-witnesses to the occurrence. During trial Om Prakash (PW 1) and Ram Dhan (PW 2) resiled from their statements made during investigation and, therefore, prosecution with the permission of the court, cross-examined them. The trial Court found the evidence of Sita Saran and Rajesh Kumar (PWs. 3 and 4) to be cogent and directed conviction as noted above. The respondent filed an appeal questioning the conviction as recorded. The High Court noticed discrepancies in the

evidence of PWs. 3 and 4. PW 3 was related to the deceased while PW4 was his son who was aged about 10 years at the time of occurrence. The High Court noticed that motive is not of much importance when credible evidence is available. If found that the motive highlighted was too feeble to be of any consequence. Apart from that the High Court found presence of PW3 to be highly improbable. It noticed that there was no sign of dragging at the place of occurrence as was stated by PWs. 3 and 4 and also there was no injury which could be co-related with dragging. All the injuries noticed were either incised injuries or on account of firearm. The High Court found

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that both PWs 3 and 4 stated that respondent Dinesh and co-accused Vinod, who died, during trial fired one shot each from the guns held by them. The doctor who conducted post-mortem found that there was only one fire arm injury. To make up discrepancy PWs. 3 and 4 stated that certain empty cartridges and two live cartridges were found at the place of occurrence by the Investigating Officer. But the Investigating Officer stated that he did not find either any empty cartridge or live cartridge at the scene of occurrence. It is to be further noted that both PWs 3 and 4 stated that while the deceased was being restrained by one hand each by the two accused persons, they shot him from the other hand. In other words, their version was that the accused persons fired at the deceased from a very short distance. The doctor's evidence clearly ruled out this aspect. He noticed that only skin deep injury was there and not any penetrating wound. PW.3 had stated that all the knife injuries were inflicted when the deceased was in a lying posture and according to Rajesh Kumar (PW.4) even at that time both the accused persons were catching hands of the deceased. The doctor found that all the injuries found on the deceased were incised wounds and not a single puncture wound was found on the deceased. The doctor further stated that there was no possibility of the incised injuries Nos.1 to 13 being caused to the deceased while he was lying on the ground.

To add to the vulnerability, the High Court pointed out that according to SI PW.7 Vishwanath Pandey inquest was completed around

noon time and the dead body was sent to the Mortuary at 1.45 p.m. on 24.5.1991. According to PW.3 Sita Saran, she had accompanied the dead

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body to the mortuary. The post-mortem examination was, however, conducted at about 3.00 p.m. on 25.5.1991. From the perusal of the records the High Court noticed that the papers were received at the mortuary on 25.5.1991 around 12.30 p.m. The High Court found it improbable that only the dead body was purportedly sent but no documents were sent.

The High Court further found that there were several circumstances which belied prosecution claim that the FIR was lodged on 24.5.1991.

3. Learned counsel for the appellant submitted that the discrepancies highlighted by the High Court are not very material to discard the prosecution version and the trial court's judgment should have been upheld.

4. It would be appropriate 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 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

5 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),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an Appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) 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 an acquittal passed by any Court other than a High Court [not being an order under clause (a)] 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, 3 [the Central Government may, subject to the provisions of sub-section (3)], also direct the Public Prosecutor to present an Appeal--

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(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).

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5. Whereas Sections 379-380 cover special cases of appeals, other Sections lay down procedure to be followed by appellate courts.

6. 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.

7. Bare reading of Section 378 of the 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 reappreciate, 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.

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8. 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.

9. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point.

10. The first important decision was rendered by the Judicial Committee of the Privy Council in *Sheo Swarup v. R. Emperor* (1934) 61 IA 398). In *Sheo Swarup* the accused were acquitted by the trial court and the local Government directed the Public Prosecutor to present an appeal to the High Court from an order of acquittal under Section 417 of the old Code (similar to Section 378 of the Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal

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from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some perversity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the Code of any limitation or restriction on the High Court in exercise of powers as an Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

11. Lord Russel summed up the legal position thus:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result."

12. His Lordship, then proceeded to observe: (IA p.404)

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

13. The Committee, however, cautioned appellate courts and stated:

(IA p.404)

"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, 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. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

(emphasis supplied)

14. In *Nur Mohd. v. Emperor* (AIR 1945 PC 151), the Committee reiterated the above view in *Sheo Swarup* (Supra) and held that in an appeal against acquittal, the High Court has full powers to review and to reverse acquittal.

15. So far as this Court is concerned, probably the first decision on the point was *Prandas v. State* (AIR 1954 SC 36) (though the case was

decided on 14-3-1950, it was reported only in 1954). In that case, the accused was acquitted by the trial court. The Provincial Government preferred an appeal which was allowed and the accused was convicted for offences punishable under Sections 302 and 323 IPC. The High Court, for convicting the accused, placed reliance on certain eyewitnesses.

16. Upholding the decision of the High Court and following the proposition of law in Sheo Swarup (supra), a six-Judge Bench held as follows:

"6. It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice."
(emphasis supplied)

17. In Surajpal Singh v. State (1952 SCR 193), a two-Judge Bench observed that it was well established that in an appeal under Section

417 of the (old) Code, the High Court had full power to review the evidence upon which the order of acquittal was founded. But it was equally well settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons.

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18. In Ajmer Singh v. State of Punjab (1953 SCR 418) the accused was acquitted by the trial court but was convicted by the High Court in an appeal against acquittal filed by the State. The aggrieved accused approached this Court. It was contended by him that there were "no compelling reasons" for setting aside the order of acquittal and due and proper weight had not been given by the High Court to the opinion of the

trial court as regards the credibility of witnesses seen and examined. It was also commented that the High Court committed an error of law in observing that "when a strong 'prima facie' case is made out against an accused person it is his duty to explain the circumstances appearing in evidence against him and he cannot take shelter behind the presumption of innocence and cannot state that the law entitles him to keep his lips sealed".

19. Upholding the contention, this Court said:

"We think this criticism is well founded. After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the

circumstances appearing against him but only for very substantial and compelling reasons."

(emphasis supplied)

20. In *Atley v. State of U.P.* (AIR 1955 SC 807) this Court said:

"In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal Procedure Code 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."

(emphasis supplied)

21. In *Aher Raja Khima v. State of Saurashtra* (1955) 2 SCR

1285) the accused was prosecuted under Sections 302 and 447 IPC. He was

acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking

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for the majority (2:1) stated: (AIR p. 220, para 1) "It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong."

(emphasis supplied)

22. In *Sanwat Singh v. State of Rajasthan* (1961) 3 SCR 120, a three-Judge Bench considered almost all leading decisions on the point and observed that there was no difficulty in applying the principles laid down by the Privy Council and accepted by the Supreme Court. The Court, however, noted that appellate courts found considerable difficulty in understanding the scope of the words "substantial and compelling reasons" used in certain decisions. It was observed inter-alia as follows:

"This Court obviously did not and could not add a condition to Section 417 of the Criminal Procedure Code. The words were intended to convey the idea that an appellate court not only shall bear in mind the principles laid down by the Privy Council but also must give its clear reasons for coming to the conclusion that the order of acquittal was wrong."

The Court concluded as follows:

"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup* case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) 'substantial and compelling reasons', (ii) 'good and sufficiently cogent reasons', and (iii) 'strong reasons' are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court

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below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

23. Again, in *M.G. Agarwal v. State of Maharashtra* (1963) 2

SCR 405, the point was raised before a Constitution Bench of this Court.

Taking note of earlier decisions, it was observed as follows:

"17. In some of the earlier decisions of this Court, however, in emphasising 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. State* (1952 SCR 193). Similarly in *Ajmer Singh v. State of Punjab* (1953 SCR 418), 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 emphasize 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 *Sheo Swarup* the presumption of innocence in favour of the accused 'is not certainly weakened by the fact that he has been acquitted at his trial'. Therefore, the test suggested by the expression 'substantial and compelling reasons' should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in *Sanwat Singh v. State of Rajasthan* and *Harbans Singh v. State of Punjab* (1962 Supp 1 SCR 104) 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."

(emphasis

supplied)

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24. Yet in another leading decision in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973 (2) SCC 793) this Court held that in India, there is no jurisdictional limitation on the powers of appellate court. "In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."

25. Putting emphasis on balance between importance of individual

liberty and evil of acquitting guilty persons, this Court observed as follows:

"6. Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then breakdown and lose credibility with the community. The evil of acquitting a guilty person light-heartedly, as a learned author (Glanville Williams in Proof of Guilt) has saliently observed, goes much beyond the simple fact that just one guilty person has

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gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....' In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

(emphasis supplied)

26. In K. Gopal Reddy v. State of A.P (1979) 1 SCC 355, the

Court was considering the power of the High Court against an order of acquittal under Section 378 of the Code. After considering the relevant decisions on the point it was stated as follows:

"9. The principles are now well settled. At one time it was thought that an order of acquittal could be set aside for 'substantial and compelling reasons' only and courts used to launch on a search to discover those 'substantial and compelling reasons'. However, the 'formulae' of 'substantial and compelling reasons', 'good and sufficiently cogent reasons' and 'strong reasons' and the search for them were abandoned as a result of the pronouncement of this Court in Sanwat Singh v. State of Rajasthan (1961) 3 SCR 120. In Sanwat Singh case this Court harked back to the principles enunciated by the Privy Council in Sheo Swarup v. R. Emperor and reaffirmed those principles. After Sanwat Singh v. State of

Rajasthan this Court has consistently recognised the right of the appellate court to review the entire evidence and to come to its own conclusion bearing in mind the considerations mentioned by the Privy Council in Sheo Swarup case. Occasionally phrases like 'manifestly illegal', 'grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more as flourishes of language, to emphasise the reluctance of the appellate court to interfere with an order of acquittal than to curtail the power of the appellate court to

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review the entire evidence and to come to its own conclusion. In some cases (Ramaphupala Reddy v. State of A.P., (AIR 1971 SC 460) Bhim Singh Rup Singh v. State of Maharashtra (AIR 1974 SC 286), it has been said that to the principles laid down in Sanwat Singh case may be added the further principle that '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'. This, of course, is not a new principle. It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable."

(emphasis supplied)

27. In Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC

225, this Court said:

"While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions."

28. In Allarakha K. Mansuri v. State of Gujarat (2002) 3 SCC

57, referring to earlier decisions, the Court stated:

"7. The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from

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the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to reappraise the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding."

29. In *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85, the trial court acquitted the accused but the High Court convicted them. Negating the contention of the appellants that the High Court could not have disturbed the findings of fact of the trial court even if that view was not correct, this Court observed:

"7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case 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. Such is not a jurisdiction limitation on the appellate court but judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappraise the

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evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not".

30. In *Harijana Thirupala v. Public Prosecutor, High Court of A.P.* (2002) 6 SCC 470, this Court said:

"12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the

accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."

31. In Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606, this Court observed:

"21. 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 reappraise the evidence in a case where the

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accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

32. Again in Kallu v. State of M.P. (2006) 10 SCC 313, this Court stated:

"8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

(emphasis supplied)

33. From the above decisions, in Chandrappa and Ors. v. State of Karnataka (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.

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(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.

34. In the instant case the discrepancies highlighted by the High Court cannot be stated to be trival. The conclusions arrived at by the High Court clearly establish material infirmities and contradictions on the evidence of the two vital witnesses PWs. 3 and 4. It is true that PW.4 was a

child of about 10 years. But the court had found him to be in a position to

depose. But the High Court has found that the presence of PW.3 at the spot is highly improbable in view of certain aspects highlighted. One of them was his claim to have accompanied the deceased to the house of one Barati Lal for delivering milk in a Milk Can. In his cross-examination he admitted that he does not know where the house of the Barati Lal is. According to him, he and the deceased were returning after delivering the milk in a Can and the Can was tied to the cycle on which both of them were travelling. The Investigating Officer admitted that there was no Can lying at the place of occurrence and in fact no seizure of any Milk Can has been made. Apart from that the medical evidence clearly rules out the manner of infliction of injuries as deposed. Though ocular testimony of witnesses had greater evidentiary value vis-à-vis medical evidence, but when medical evidence totally improbablises the ocular testimony, that becomes a relevant factor in the process of evaluation of evidence. In the instant case the medical evidence totally improbablises the version regarding the manner of assault by both the accused persons as noted above.

35. Above being the position, we find no merit in this appeal, which is accordingly dismissed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
February 25, 2009

STATE OF U.P.

Appellant (s)

VERSUS

DINESH

Respondent(s)

Date:25/02/2009 This Appeal was called on for judgment today.

For Appellant(s)

Mr. G.V.Rao,Adv.

For Respondent(s)

Mr. Goodwill Indeevar,Adv.

Hon'ble Dr. Justice Arijit Pasayat
pronounced the judgment of the Bench comprising His
Lordship and Hon'ble Dr. Justice Mukundakam
Sharma.

The Appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[SHASHI BALA VIJ]
COURT MASTER

Signed Reportable judgment is placed on the file.