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SURAJ SINGH

v.

STATE OF U.P.

(Criminal Appeal No.1072 of 2004)

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JULY 24, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Code of Criminal Procedure, 1973:

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s.378 – Appeal against acquittal – Powers of High Court – HELD: Both questions of fact and of law are open to determination by High Court in an appeal against acquittal – High Court has full power to reappraise, review and reconsider evidence at large, material on which order of acquittal is founded and to reach its own conclusion on such evidence – Penal Code, 1860 – s.302.

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Evidence:

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Eye witness account vis-à-vis medical evidence – Accused shot dead his cousin – Acquittal by trial court on grounds of medical evidence being at variance with other evidence, and discrepancies – High Court recorded conviction – HELD: It would be erroneous to accord undue primacy to hypothetical answers of medical witnesses to exclude eye witness account which was to be tested independently and not to be treated as “variable” taking the medical evidence as “constant”

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– On facts, High Court rightly held that trial court erroneously concluded ocular evidence to be at variance with medical evidence – Besides, there was no discrepancy in evidence of eye-witnesses – Merely because witnesses were close relatives of deceased, that would not affect credibility of their evidence – Penal Code, 1860 – s.302.

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– On facts, High Court rightly held that trial court erroneously concluded ocular evidence to be at variance with medical evidence – Besides, there was no discrepancy in evidence of eye-witnesses – Merely because witnesses were close relatives of deceased, that would not affect credibility of their evidence – Penal Code, 1860 – s.302.

The accused-appellant along with his wife was pros-

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ecuted for the murder of his cousin. The prosecution case was that altercation took place between the accused and the deceased over a land dispute, whereupon the former fired gunshots and his wife fired from a revolver at the deceased who died instantaneously. The trial Court acquitted both the accused. But the High court set aside the acquittal of the accused-appellant and convicted him u/s.302 IPC.

In the instant appeal filed by the convict, it was contended for the appellant that the High Court did not keep in view the parameters of an appeal against acquittal, and when two views were possible on the basis of evidence on record and the one favourable to the accused was taken by the trial court, the same should not have been disturbed.

Dismissing the appeal, the Court

HELD: 1. Section 378 of the Code OF Criminal Procedure, 1973, 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. In Chandrappa's case* this Court has called out the general principles regarding the ambit and scope of the power of an appellate court in an appeal against an order of acquittal. [Para 8 and 34] [296-E,F,G 310-F]

**Chandrappa and Ors. v. State of Karnataka* [2007] 2 SCR 630=2007 (4) SCC 415; *Prandas v. State* AIR 1954 SC 36; *Surajpal Singh v. State* (1952) SCR 193; *Atley v. State of U.P.* AIR 1955 SC 807; *Sanwat Singh vs. State of Rajasthan*

- A (1961) 3 SCR 120; *M.G. Agarwal v. State of Maharashtra* (1963) 2 SCR 405; *Shivaji Sahabrao Bobade v. State of Maharashtra* 1973 (2) SCC 793; *Ramesh Babulal Doshi v. State of Gujarat* (1996) 9 SCC 225; *Allarakha K. Mansuri v. State of Gujarat* (2002) 3 SCC 57; *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85; *Harijana Thirupala v. Public Prosecutor, High Court of A.P.* (2002) 6 SCC 470; *Ramanand Yadav v. Prabhu Nath Jha* (2003) 12 SCC 606; and *Kallu v. State of M.P.* (2006) 10 SCC 313 – relied on.

- C *Aher Raja Khima v. State of Saurashtra* (1955) 2 SCR 1285; *Ajmer Singh v. State of Punjab* (1953) SCR 418; and *K. Gopal Reddy v. State of A.P.* (1979) 1 SCC 355 - referred to.

Sheo Swarup vs. R. Emperor (1934) 61 IA 398; and *Nur Mohd. V. Emperor* AIR 1945 PC 151 - referred to.

- D 2.1 A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case.
- E [Para 35] [311-F,G]

“The Mathematics of Proof II”: *Glanville Williams, Criminal Law Review*, 1979, p.340 - referred to.

- F 2.2 Doubts would be called reasonable if they are free from a zest for abstract speculation. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. [Para 36] [312-C,D,E]

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2.3 The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. [Para 37] [312-E,F,G]

State of U.P. v. Krishna Gopal 1988 (4) SCC 302; *Krishnan and Anr. v. State represented by Inspector of Police* 2003 (7) SCC 56; and *Kamaljit Singh v. State of Punjab* 2003 (12) SCC 155 - relied on.

3.1 As regards the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitness account which had to be tested independently and not to be treated as the "variable" keeping the medical evidence as the "constant". [Para 40] [313-E,F]

3.2 It is trite that where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Eyewitnesses' evidence would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story, consistency with the account of other witnesses held to be creditworthy, consistency with

A the undisputed facts, the "credit" of the witnesses, their performance in the witness box, their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. [Para 41] [313-G,H 314-A,B,C]

B 3.3 The discrepancy in ocular and medical evidence vis-a-vis distance cannot affect the credibility of evidence. When there is direct evidence of eye witness available, the inconsistency relating to distance from which the gunshots were fired is of no consequence when the prosecution evidence pertaining to assault by guns and pistol substantially tallied with the medical evidence. The instant case belongs to that category. Additionally, there was no discrepancy pointed out in the evidence of eye witnesses. Merely because PW-1 and PW-2 were close relatives of the deceased, that cannot be a ground to affect credibility of their evidence. [Para 43] [314-D,E,F,G]

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E *Lila Ram (D) thr. Duli Chand v. State of Haryana and Anr.* JT 1999 (6) SC 274; and *State of U.P. v. Suhar Singh* AIR 1987 SC 191 - relied on.

F 3.4 The trial Court erroneously concluded that the medical evidence was at variance with the ocular evidence. The oral testimony is not at variance with the medical evidence as rightly observed by the High Court. [Para 42] [314-C]

Case law reference

AIR 1945 PC 151 referred to [para 11]

G AIR 1954 SC 36 relied on [para 16]

(1952) SCR 193 relied on [para 18]

(1953) SCR 418 relied on [para 19]

H AIR 1955 SC 807 relied on [para 21]

(1955) 2 SCR 1285 referred to. [para 22]

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(1961) 3 SCR 120 relied on [para 23]

(1963) 2 SCR 405 relied on [para 24]

1973 (2) SCC 793 relied on [para 25]

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(1979) 1 SCC 355 referred to [para 27]

(1996) 9 SCC 225 relied on [para 28]

(2002) 3 SCC 57 relied on [para 29]

(2002) 4 SCC 85 relied on [para 30]

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(2002) 6 SCC 470 relied on [para 31]

(2003) 12 SCC 606 relied on [para 32]

(2006) 10 SCC 313 relied on [para 33]

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[2007] 2 SCR 630 relied on [para 34]

1988 (4) SCC 302 relied on [para 37]

2003 (7) SCC 56 relied on [para 38]

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2003 (12) SCC 155 relied on [para 39]

1999 (6) SC 274 relied on [para 43]

AIR 1987 SC 191 relied on [para 43]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1072 of 2004

From the final Judgment and Order dated 23.10.2003 of
the High Court of Judicature at Allahabad in Government Ap-
peal No. 283 of 1998

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Chirag Jamwal, Ajay Kumar Upadhyay and Shiva Pujan
Singh for the Appellant.

Dr. Indra Pratap Singh, Vandana Mishra, Anuvrat Sharma
and Alka Sinha for the Respondent.

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A The Judgment of the Court was delivered by

B **Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to
C the judgment of a Division Bench of the Allahabad High Court
D allowing the appeal filed by the State of U.P. questioning the
judgment of acquittal passed by learned Additional Sessions
Judge, Special Judge (E.C. Act), Mainpuri in Sessions Trial
No.169 of 1993. Two persons i.e. the present appellant and his
wife Smt. Kapoori Devi were tried for offence punishable under
Section 302 read with Section 34 of the Indian Penal Code,
1860 (in short the 'IPC') for the murder of one Jagat Singh (here-
inafter referred to as the 'deceased'). The trial Court directed
acquittal of the appellant primarily on the ground that there was
discrepancy between the ocular evidence and the medical evi-
dence, independent witnesses were not examined. In appeal
filed by the State, the High Court held that while the acquittal of
Smt. Kapoori Devi (A-2) was correct, the same was not sus-
tainable so far as the present appellant is concerned.

2. Background facts in a nutshell are as follows:

E The incident took place on 23.9.1992 at about 12.20 p.m.
at the house of the deceased Jagat Singh and the accused
persons situated in village Chhibkaria, P.S. Bhongaon, District
Mainpuri. The report was lodged on 23.9.1992 at 1.45 p.m. by
the eye-witness Jaivir Singh (PW-1-who was nephew of the
deceased). The accused are also close relatives of the de-
F ceased. Suraj Singh is son of Ram Sahai Yadav who was real
brother of father of the deceased. Suraj Singh was a police
constable and was posted at Aligarh. He was in shadow duty of
an Ex-M.L.A. On the day of incident, he was going from his house
to join his duty. The deceased Jagat Singh asked him to go
G after constructing the earth partition of the agricultural plot. Ac-
cused Suraj Singh abused him. His wife Kapoori Devi exhorted
him to go after finishing him. Suraj Singh and his wife then
climbed up their roof. Suraj Singh fired two shots from his gun
whereas his wife Kapoori Devi fired three shots from a revolver
H which hit Jagat Singh who died instantaneously. The incident

was seen by Sant Saran (PW.2) as also by Dafedar Singh, Gajraj Singh, Atar Sri- wife of Jagat Singh and other villagers. Consequent upon the registering of the case, investigation was taken up by S.S.I. S.K. Dixit (PW.5.) The postmortem over the dead body of the deceased was conducted by Dr. D.S.Rathore (PW.4) on 24.9.1992 at 1.45 P.M. The following ante-mortem injuries were found on his person who aged about 50 years.

1. Lacerated wound 0.5 cm x 0.3 cm x muscle deep on front aspect of left ear pinna middle part.
2. Firearm wound 0.5 cm x 0.3 bone deep on right and front aspect of upper part of nose 1.00 cm below root of nose, underlying nasal bone fractured. Margins charred.
3. Lacerated wound 1.00 cm x 0.4 cm x muscle deep on outer and front aspect of right upper arm, 11.00 cm above the right elbow joint.
4. Two firearm wounds 0.5 cm x 0.3 cm x skin deep anterior outer aspect of right upper, arm, placed 3 cm apart, just above the right elbow. Margins charred.
5. Firearm wound of entry 0.4 cm x 0.3 cm x muscle deep on front of neck 2.5 cm right to midline just above the clavicle. Margins inverted and charred.
6. Firearm wound of entry 0.3 cm. x 0.3 cm. x muscle deep on right side of neck 3.00 cm away from injury No.5 just 3.00 cm above the clavicle. Margins charred and inverted.
7. Multiple firearm wounds of entry 0.4 cm x 0.3 cm x chest cavity deep to 0.4 cm x 0.4 cm muscle deep in size in an area of 7.00 cm x 6.00 cm on front of chest midline on both sides in middle part of front chest. Margins charred and inverted.
8. Firearm wound of entry 0.4 cm x 0.4 cm x chest cavity deep on lower part front and outer aspect of right side of chest 11.00 cm away from right nipple, at 7 O'clock position. Margins inverted and charred.

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A On internal examination, two metallic pieces were recovered from the soft tissues of the neck, two from left ventricle, one pellet from right chest cavity and one from abdomen cavity. The death had occurred due to shock and haemorrhage owing to ante-mortem injuries.

B Apart from the medical and formal evidence including that of investigation, the prosecution relied upon the testimony of Jaivir Singh (PW-1) and Sant Saran (PW-2) as eye-witnesses. The defence was of denial.

C Trial Court held that there were discrepancies and accusations have not been established. An appeal was filed by the State.

D The High Court found that there was no discrepancy so far as the medical evidence and the ocular evidence is concerned. It was also held that non examination of other persons did not adversely affect the credibility of the evidence tendered, and when there is direct evidence of eye witnesses the alleged inconsistency relating to distance from which the gunshots were fired is of no consequence particularly when the prosecution version relating to assault by guns and pistol substantially tallied with the medical evidence. Accordingly, appellant was found guilty of offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life.

F 3. In support of the appeal, learned counsel for the appellant submitted that the High Court had not kept in view the parameters of an appeal against acquittal. It is submitted that when two views are possible on the basis of the evidence on record and the one favourable to the accused is taken by the trial Court, same should not be disturbed.

G 4. Learned counsel for the State on the other hand supported the judgment and submitted that the conclusions of the trial Court were erroneous both on law and facts and, therefore, the High Court was justified in interfering with the order of the trial Court.

H 5. In view of rival submissions of the parties, we think it

proper to consider and clarify the legal position first. Chapter XXIX (Sections 372-394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the present Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376). Section 377 permits appeals by the State for enhancement of sentence. Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

"378. Appeal in case of acquittal.—(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to

A appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

B (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.

C (6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

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

D 7. It may be stated that more or less similar provisions were found in the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") which came up for consideration before various High Courts, Judicial Committee of the Privy Council as also before this Court. Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

F 8. Bare reading of Section 378 of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to reappraise, 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.

H 9. It cannot, however, be forgotten that in case of acquit-

tal, 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.

10. 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.

11. 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 present Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal 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.

- A 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
- B 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
- C Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

12. Lord Russel summed up the legal position thus:

- D “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’
- E 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.”

- F 13. His Lordship, then proceeded to observe: (IA p.404)

- G “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.”

14. The Committee, however, cautioned appellate courts and stated: (IA p.404)

- H “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)

15. 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.

16. 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.

17. 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

A *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)

B 18. 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
C 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*.

D 19. 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 con-
E tended 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
F 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".

G 20. 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
H the accused had failed to explain the circumstances

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

(emphasis supplied)

21. 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. B

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. C D

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. E F

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." G

(emphasis supplied)

22. 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 H

- A by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking 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*
- B *reasons for holding that the trial court was wrong.*"

(emphasis supplied)

23. 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"
- C used in certain decisions. It was observed inter-alia as follows:
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- "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."
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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
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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 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."

24. 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*

- A *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
B in every case. That is the effect of the recent decisions of
this Court, for instance, in *Sarwat 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*
C *judgment of acquittal, the High Court must necessarily*
characterise the findings recorded therein as perverse."

(emphasis supplied)

25. Yet in another leading decision in *Shivaji Sahabrao*
Bobade v. State of Maharashtra (1973 (2) SCC 793) this Court
D 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,
E by the weighty thought that the rebuttable innocence attributed
to the accused having been converted into an acquittal the hom-
age our jurisprudence owes to individual liberty constrains the
higher court not to upset the holding without very convincing rea-
sons and comprehensive consideration."

- F 26. Putting emphasis on balance between importance of
individual liberty and evil of acquitting guilty persons, this Court
observed as follows:

- G "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
H 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 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)

27. 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 present Code. After consider-
ing the relevant decisions on the point it was stated as follows:

"9. The principles are now well settled. At one time it was

A 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
B 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
C 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
D 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
E the appellate court to interfere with an order of acquittal
than to curtail the power of the appellate court to 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
F 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
G 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
H 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)

28. 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."

29. 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 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."

A 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
B made a basis to urge that the High Court under all
circumstances should not disturb such a finding."

30. 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
C 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
D 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
E 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
F 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
G 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
H ignoring the admissible evidence, a duty is cast upon the

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

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

"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." C D E

32. 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 F G H

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

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

C "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)

F 34. 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:

- G (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.
- H (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.

35. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another, a learned author says [see “The Mathematics of Proof II”: Glanville Williams, *Criminal Law Review*, 1979, by Sweet and Maxwell, p.340 (342)]:

A "The simple multiplication rule does not apply if the
separate pieces of evidence are dependent. Two events
are dependent when they tend to occur together, and the
evidence of such events may also be said to be dependent.
B In a criminal case, different pieces of evidence directed to
establishing that the defendant did the prohibited act with
the specified state of mind are generally dependent. A
junior may feel doubt whether to credit an alleged
confession, and doubt whether to infer guilt from the fact
C that the defendant fled from justice. But since it is generally
guilty rather than innocent people who make confessions,
and guilty rather than innocent people who run away, the
two doubts are not to be multiplied together. The one piece
of evidence may confirm the other."

36. Doubts would be called reasonable if they are free
D from a zest for abstract speculation. Law cannot afford any
favourite other than truth. To constitute reasonable doubt, it must
be free from an overemotional response. Doubts must be ac-
tual and substantial doubts as to the guilt of the accused per-
sons arising from the evidence, or from the lack of it, as op-
E posed to mere vague apprehensions. A reasonable doubt is
not an imaginary, trivial or a merely possible doubt, but a fair
doubt based upon reason and common sense. It must grow out
of the evidence in the case.

37. The concepts of probability, and the degrees of it, can-
F not obviously be expressed in terms of units to be mathemati-
cally enumerated as to how many of such units constitute proof
beyond reasonable doubt. There is an unmistakable subjective
element in the evaluation of the degrees of probability and the
quantum of proof. Forensic probability must, in the last analy-
G sis, rest on a robust common sense and, ultimately, on the trained
intuitions of the Judge. While the protection given by the criminal
process to the accused persons is not to be eroded, at the
same time, uninformed legitimization of trivialities would make
a mockery of administration of criminal justice. This position
H was illuminatingly stated by Venkatachaliah, J. (as His Lord-

ship then was) in *State of U.P. v. Krishna Gopal* (1988 (4) SCC 302). A

38. The above position was highlighted in *Krishnan and Anr. v. State represented by Inspector of Police* (2003 (7) SCC 56).

39. So far as discrepancy between ocular evidence and medical evidence is concerned, this Court in *Kamaljit Singh v. State of Punjab* (2003 (12) SCC 155) observed as under: B

“It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. (See *Solanki Chimanbhai Ukabhai v. State of Gujarat* (1983 (2) SCC 174). The position was illuminatingly and exhaustively reiterated in *State of U.P. v. Krishna Gopal* (1988 (4) SCC 302). When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well-merited interference. C D E

40. Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses’ account which had to be tested independently and not treated as the “variable” keeping the medical evidence as the “constant”. F G

41. It is trite that where the eyewitnesses’ account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewit- H

- A nesses' account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

42. In the instant case, the trial Court erroneously concluded that the medical evidence was at variance with the ocular evidence. The oral testimony is not at variance with the medical evidence as rightly observed by the High Court.

43. This Court in *Lila Ram (D) thr. Duli Chand v. State of Haryana and Anr.* (JT 1999 (6) SC 274) held that it was immaterial whether one or two gunshots were fired. Such contradiction does not travel to the root of the nature of the offence. The discrepancy in ocular and medical evidence vis-a-vis distance cannot affect the credibility of evidence. In *State of U.P. v. Suhar Singh* (AIR 1987 SC 191) it was observed that when there is direct evidence of eye witness available the inconsistency relating to distance from which the gunshots were fired is of no consequence when the prosecution evidence pertaining to assault by guns and pistol substantially tallied with the medical evidence. The present case, belongs to that category. Additionally, there was no discrepancy pointed out in the evidence of eye witnesses. Merely because PW-1 and PW-2 were close relatives of the deceased, that cannot be a ground to affect credibility of their evidence. Looked at from any angle there is no merit in the appeal which is accordingly dismissed.

R.P.

Appeal dismissed.