A DHANAPAL

v.

STATE BY PUBLIC PROSECUTOR, MADRAS

(Criminal Appeal No. 987 of 2002)

SEPTEMBER 1, 2009

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[DALVEER BHANDARI AND HARJIT SINGH BEDI, JJ.]

Code of Criminal Procedure, 1973 – s. 378 – Appeal against acquittal – Power of appellate court to interfere – Held: C *Appellate court would interfere with the order of trial court only for 'very substantial and compelling reasons' – It can re-appreciate the entire evidence on record and review the trial court's conclusion – If two reasonable or possible views can be reached-one as regard acquittal, other of conviction, High* D *Courts/appellate courts must pass order in favour of accused – On facts, view taken by trial court in acquitting the accused of the offences punishable u/ss. 307 and 302 r/w s.34 was a possible or plausible view – High Court should not substitute the same by its own possible view – Order of High Court* E *convicting the accused u/s. 302/34 is set aside – Penal Code, 1860 – ss. 302, 307 and 34.*

Trial court acquitted the appellant and the other accused of the offences punishable u/ss. 307 and 302 r/ w s.34 IPC. High Court convicted the accused nos.1, 2 F **and 4 u/s. 302/34 IPC and imposed sentence of life imprisonment and accused no.3 u/s.307 IPC and imposed sentence of five years. Accused nos.2 to 4 died during the pendency of appeal. Hence, the present appeal by the appellant-accused no.1.**

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Allowing the appeal, the Court

HELD: 1 The accused is presumed to be innocent until proven guilty. The accused possessed this

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presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has 'very substantial and compelling reasons' for doing so. If two reasonable or possible views can be reached-one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused. [Para 41] [1137-A-F]

Sheo Swarup v. King Emperor **AIR 1934 Privy Council 227;** *Surajpal Singh and Ors. v. State* **AIR 1952 SC 52;** *Tulsiram Kanu v. The State* **AIR 1954 SC 1;** *Atley v. State of U.P.* **AIR 1955 SC 807;** *Balbir Singh v. State of Punjab* **AIR 1957 SC 216;** *M.G. Agarwal v. State of Maharashtra* **AIR 1963 SC 200;** *Khedu Mohton and Ors. v. State of Bihar* **(1970) 2 SCC 450;** *Bishan Singh and Ors. v. The State of Punjab* **(1974) 3 SCC 288;** *K. Gopal Reddy v. State of A.P.* **(1979) 1 SCC 355;** *Tota Singh and Anr. v. State of Punjab* **(1987) 2 SCC 529;** *Sambasivan and Ors. v. State of Kerala* **(1998) 5 SCC 412;** *Bhagwan Singh and Ors. v. State of M.P.* **(2002) 4 SCC 85;** *Harijana Thirupala and Ors. v. Public Prosecutor, High Court of A.P., Hyderabad* **(2002) 6 SCC 470;** *State of Rajasthan v. Raja Ram* **(2003) 8 SCC 180;** *State of Goa v. Sanjay Thakran and Anr.* **(2007) 3 SCC 755;** *Chandrappa and Ors. v.State of Karnataka* **(2007) 4 SCC 415;** *Ghurey Lal v. State of Uttar Pradesh* **(2008) 10 SCC 450,**

A relied on.

2.1. The High Court could not have shifted the burden of proof on the accused. According to the fundamental principles of the Evidence Act, it is for the prosecution to have proved its own case. The High Court was not justified in weaving out a different and new prosecution version. The Court is under the bounden duty and obligation to deal with the evidence as it is. No improvement or rewriting of evidence is permissible. In the instant case, P.W.1-eye witness and the complainant had turned hostile and P.W.3-another eye witness also did not support the prosecution case. The testimony of P.W.2 is also not wholly reliable. [Paras 20 and 21] [1124-H; 1125-A-B]

2.2. On careful consideration of the entire evidence, the documents on record and the reasoning given by the trial court for acquitting the accused and also the re soning of the High Court for reversal of the judgment of acq ittal, the view taken by the trial court is certainly possible or plausible view. If the trial court's view is possible or plausible, the High Court should not substitute the same by its own possible view. In the facts and circumstances of the instant case, the High Court in the impugned judgment was not justified in interfering with the well reasoned judgment and order of the trial court and the order of High Court is set aside. [Paras 22, 42 and 43] [1125-C-D; 1137-G-H; 1138-A-C]

Case Law Reference:

AIR 1934 Privy Council 227	Relied on.	Para 23
AIR 1952 SC 52	Relied on.	Para 24
AIR 1954 SC 1	Relied on.	Para 26
AIR 1955 SC 807	Relied on.	Para 27

AIR 1957 SC 216	**Relied on.**	**Para 28**
AIR 1963 SC 200	**Relied on.**	**Para 29**
(1970) 2 SCC 450	**Relied on.**	**Para 30**
(1974) 3 SCC 288	**Relied on.**	**Para 31**
(1979) 1 SCC 355	**Relied on.**	**Para 32**
(1987) 2 SCC 529	**Relied on.**	**Para 33**
(1998) 5 SCC 412	**Relied on.**	**Para 34**
(2002) 4 SCC 85	**Relied on.**	**Para 35**
(2002) 6 SCC 470	**Relied on.**	**Para 36**
(2003) 8 SCC 180	**Relied on.**	**Para 37**
(2007) 3 SCC 755	**Relied on.**	**Para 38**
(2007) 4 SCC 415	**Relied on.**	**Para 39**
(2008) 10 SCC 450	**Relied on.**	**Para 40**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 987 of 2002.

From the Judgment & Order dated 11.6.2002 of the High Court of Judicature at Madras in Criminal Appeal No. 217 of 1993.

Altaf Ahmad, M.A. Chinnasamy, K.K. Kumar and Preetam for the Appellant.

R. Nedumaran for the Respondent.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. This appeal has been filed under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgment

A and order dated 11.6.2002 passed by the High Court of Judicature at Madras in Criminal Appeal No. 217 of 1993.

2. Brief facts which are necessary to dispose of this appeal are recapitulated as under:

B The appellant herein along with the other accused were acquitted by the Sessions Judge, Thanjavur in Sessions Case No. 36 of 1989 of offences punishable under sections 307 and 302 read with section 34 of the Indian Penal Code (for short 'IPC').

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3. The High Court in the impugned judgment set aside the acquittal recorded by the Sessions Judge and allowed the appeal filed by the State. The High Court held accused nos.1, 2 and 4 guilty for an offence punishable under section 302 read D with section 34 IPC and imposed sentence of life imprisonment and held accused no.3 guilty for the offence punishable under section 307 IPC and imposed sentence of five years. It may be pertinent to mention that accused respondent Nos.2 to 4 died during the pendency of appeal before the High Court. The E only surviving appellant herein (who was accused no.1 before the High Court) has filed the present appeal against the impugned judgment and order of the High Court.

4. The motive for the occurrence as per the prosecution is that P.W.1's sister was living with the appellant and F subsequently died six months prior to the occurrence. The other women folk of the house abused the appellant and his relatives. The appellant told the same to Sebastiraj P.W.1. P.W.1 consoled him stating that they were abusing him only because of frustration and everything would be alright after a lapse of G time.

5. The appellant and other accused and the deceased belonged to the Burma colony, Thanjavur. Sebastiraj P.W.1 and Karunanidhi P.W.2 were friends of deceased Jambu. On 8.5.1988 at about 12.00 noon when P.W.2 was talking to Jambu H

near the railway gate, Sebastiraj P.W.1 invited Jambu to go to Sebastiar temple. Jambu requested Karunanidhi P.W.2 to accompany him. All of them went to the temple and came out at 2.00 p.m. after worshipping and taking food from the temple. Outside the gate, they saw the appellant Dhanapal and other accused. Dhanapal shouted, Sebastiraj has come, cut (kill) him. The crowd before the temple dispersed and people started running. Accused no.3 Loganathan threw an aruval on Sebastiraj P.W.1 After receiving the injury, Sebastiraj P.W.1 managed to run. Then accused no.2 Sekar gave cut injury to Jambu on his head and back. Dhanapal stabbed Jambu on his chest. Accused no.4 Somu stabbed Jambu on his back. Thereafter, all the accused ran away with their weapons. The deceased was attacked near the house of one Subramania Thevar by the side of a light post in 19th Street, Burma Colony. Selvaraj P.W.3 at about 2.00 pm on 8.5.1988 saw the deceased lying dead at the scene of crime.

6. Sebastiraj P.W.1 who ran away after receiving injury at the hands of accused no.3 went to Thanjavur South Police Station and gave Ex.P2 report at about 4.00 p.m. on 8.5.1988 and the same was received by P.W.4 the then Sub Inspector of Police who registered a case in Cr. No.311/88 for the offences punishable under sections 302 and 307 IPC and prepared Ex.P3 printed First Information Report and sent the same to the Court.

7. Inspector of Police P.W.10 took up investigation, went to the scene of crime at about 6.30 p.m. and on account of lack of sufficient light, he did not hold the inquest, but went and searched for the accused after posting two constables to protect the body of the deceased. He also stayed there and on 9.5.1988 at about 6.00 a.m., in the presence of panchayatdars, he started inquest and completed by 8.00 a.m. and prepared Ex.P.16 inquest report. He examined P.Ws. 1 to 3 and others. He also prepared Ex.P4 Observation Mahazar and drew a rough sketch Ex.P17. He seized material objects

(for short 'M.O.') including M.O.1 blood stained earth; M.O.2 sample earth and M.O.3 shirt of the deceased under Ex.P5 Mahazar. At about 3.00 p.m. on that day he went to the house of the deceased and when he was searching for the accused, he noticed M.Os. 4, 5, 6 and 7 weapons in the backyard of the third accused and seized them under Ex.P6 Mahazar. After inquest, he forwarded the body for autopsy.

8. Dr. Vijayalakshmi P.W.8 Tutor in Forensic Medicines, Government Medical College, Thanjavur received the body of the deceased at about 10 a.m. on 9.5.1988 and commenced the postmortem. She found 21 injuries and according to her the cause of death was due to hemorrhage and shock due to injuries received.

9. The appellant herein surrendered before the Judicial Magistrate, Thiruvaiyaru on 17.5.1988. The Investigating Officer P.W.10 after investigation gave the final report implicating the appellant.

10. After the evidence of prosecution was over, the Trial Judge questioned the accused under section 313 Cr.P.C. with reference to the incriminating circumstances appearing in evidence against them and they denied the offence. The learned Sessions Judge, considering the evidence recorded both oral and documentary, chose to acquit the accused.

11. The High Court on re-appreciation of the evidence convicted the appellant and other accused. According to the High Court, the learned Sessions Judge has not properly marshaled and evaluated the evidence on record.

12. The relevant findings of the High Court would be discussed in the later part of the judgment to avoid repetition, therefore, we do not deem it appropriate to reproduce the same at this juncture.

13. Brief analysis of the important evidence is as under:

(i) P.W.1, who is considered to be an eye witness and also lodged the first information report, has turned hostile.

(ii) P.W.2 has deposed that accused no.2 Sekar instigated the other accused to cut (kill) Jambu with an aruval on his head and back. Accused no.1 Dhanpal (appellant) repeatedly stabbed Jambu on his chest. Accused no. 4 Somu also stabbed Jambu on his back with 'sulukki'.

14. The finding of the learned Sessions Judge is that the evidence of P.W.2 has not been corroborated by any other acceptable evidence. The trial court also rejected the evidence of P.W.3, another eye witness. According to the trial court, even the medical evidence does not help the prosecution case.

15. According to P.W.2, the occurrence took place after deceased and the witnesses came to the temple and after worshipping and taking food they came out at 2.00 p.m. The stomach of the deceased must, therefore, contain food particles. Whereas, according to the doctor, who conducted the autopsy over the dead body of the deceased, found that the stomach was empty. This casts serious doubt on the veracity of the testimony of P.W.2. The trial court also rejected the testimony of another eye witness P.W.3.

16. P.W.10, Inspector of Police, took up the investigation and went to the scene of occurrence at 6.30 p.m. and on account of lack of sufficient light, he did not hold the inquest, but went and searched for the accused after posting two constables to guard the body of the deceased.

17. The trial court was of the opinion that the medical evidence also does not support the prosecution case. The trial court was of the view that on such quality of evidence it would not be safe to record the conviction and acquitted the accused.

A 18. The High Court, in the impugned judgment, has given an entirely new dimension to the testimony of P.W.2 and discarded the version of the trial court by observing that, "according to P.W.2, about 12.00 noon, they (deceased and his friends) went to the temple and then came out at about 2.00 B p.m. in the meantime, there is no evidence pertaining to the time when they had eaten the food. Though according to him, they came out at 2.00 p.m., he only says that after some time when they were standing outside there was a noise and accused no. 1 instigated other accused to cut (kill) Sebastiraj C P.W.1. The sense of time may vary from person to person unless one was able to look at the wrist watch at a given time."

19. The important findings of the High Court are set out as under:-

D I. Merely because P.W.1 turned hostile, it cannot be said that the accused who attempted to commit the murder of P.W.1 should be acquitted.

II. There is no specific evidence that the deceased took any food. When the friends have gone to the E temple and at temple, some Prasatham or food is provided, unless there is a specific evidence that the deceased took a particular type of food or a particular quantity, it cannot be said that the deceased ought to have taken food. F

III. This is not a case where death occurred during night time or the dead body was found long after the commission of the crime so that the courts have to depend upon the medical evidence to fix the time G of death.

20. There are conflicting judgments of the trial court and the High Court, therefore, we have carefully gone through the entire evidence *de novo*. The High Court, in our considered view, could not have shifted the burden of proof on the accused. H

According to the fundamental principles of the Evidence Act, it is for the prosecution to have proved its own case. A

21. The High Court was not justified in weaving out a different and new prosecution version. The Court is under the bounden duty and obligation to deal with the evidence as it is. No improvement or rewriting of evidence is permissible. In the instant case, P.W.1 had turned hostile and P.W.3 also did not support the prosecution case. The testimony of P.W.2 is also not wholly reliable. B

22. On proper evaluation of the trial court judgment, we hold that the view taken by the trial court was certainly a possible or a plausible view. It is a well settled legal position that when the view which has been taken by the trial court is a possible view, then the acquittal cannot be set aside by merely substituting its reasons by the High Court. In our considered view, the impugned judgment of the High Court is contrary to the settled legal position and deserves to be set aside. C D

23. The earliest case which dealt with the controversy in issue at length is of *Sheo Swarup v. King Emperor* AIR 1934 Privy Council 227. In this case, the ambit, scope and the powers of the appellate court in dealing with an appeal against acquittal have been comprehensively dealt with by the Privy Council. Lord Russell writing the judgment has observed as under: (at p. 230): E

> "..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.." F G

The law succinctly crystallized in this case has been consistently H

followed in subsequent judgments by this Court.

24. This Court in the case of *Surajpal Singh & Others v. State,* AIR 1952 SC 52, has spelt out the powers of the High Court. This Court has also reminded the High Courts to follow well established norms while dealing with appeals from acquittal by the trial court. The Court observed as under:

> "It is well established that in an appeal under S. 417 Criminal P.C., the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is 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 can be reversed only for very substantial and compelling reasons."

25. This Court reiterated the principles and observed that presumption of innocence of accused is reinforced by an order of the acquittal. The appellate court could have interfered only for very substantial and compelling reasons.

26. In *Tulsiram Kanu v. The State,* AIR 1954 SC 1, this Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.

27. The same principle has been followed in *Atley v. State of U.P.* AIR 1955 SC 807 (at pp. 809-10 para 5), wherein the Court said:

"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."

28. In *Balbir Singh v. State of Punjab* AIR 1957 SC 216, this Court again had an occasion to examine the same proposition of law. The Court (at page 222) observed as under:

"It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and 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 must also be kept in mind, and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge."

29. A Constitution Bench of this Court in *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200, observed as under:

"There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled for the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence...

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, and so, it is not necessary that before reversing a judgment of

acquittal, the High Court must necessarily characterize the findings recorded therein as perverse. A

The question which the Supreme Court has to ask itself, in appeals against conviction by the High Court in such a case, is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was erroneous. In answering this question, the Supreme Court would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court." B C

30. In *Khedu Mohton & Others v. State of Bihar,* (1970) 2 SCC 450, this Court gave the appellate court broad guidelines as to when it could properly disturb an acquittal. The Court observed as under: D

"3. It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417, Cr. P.C. are as extensive as its powers in appeals against convictions but that court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. *If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient* E F G

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A *to interfere with the order of acquittal."*

(emphasis supplied)

31. In *Bishan Singh & Others v. The State of Punjab* (1974) 3 SCC 288, Justice Khanna speaking for the Court B provided the legal position:

"22. It is well settled that the High Court in appeal under Section 417 of the CrPC has full power to review at large the evidence on which the order of acquittal was founded C and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless is be found expressly stated be in the Code, but in exercising the power conferred by the Code and before reaching its conclusion D upon fact the High Court should 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 E the benefit of any doubt; & (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."

32. In *K. Gopal Reddy v. State of A.P.* (1979) 1 SCC 355, F the Court observed thus:

"9. .....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* G *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 H

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. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt; a doubt founded upon reasons. [*Salmond J. in his charge to the jury in R. v. Fantle* reported in 1959 Criminal Law Review 584.]"

{emphasis supplied}

33. In *Tota Singh & Another v. State of Punjab* (1987) 2 SCC 529, the Court reiterated the same principle in the following words:

"This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. *Where two views are possible on an appraisal of the evidence adduced*

A *in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."*

B (emphasis supplied)

34. In *Sambasivan & Others v. State of Kerala* (1998) 5 SCC 412, the Court observed thus:

C **"7.** The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court D cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere E with the order of acquittal."

35. In *Bhagwan Singh & Others v. State of M.P.* (2002) 4 SCC 85, the Court repeated one of the fundamental principles of criminal jurisprudence that if two views are possible on the F 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 Court observed as under:-

G "7. ..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

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the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided...." A

36. In *Harijana Thirupala & Others v. Public Prosecutor, High Court of A.P., Hyderabad* (2002) 6 SCC 470, this Court again had an occasion to deal with the settled principles of law restated by several decisions of this Court. Despite a number of judgments, High Courts continue to fail to keep them in mind before reaching a conclusion. The Court observed thus: B

"**10.** The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case. C D

11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence E F G H

A the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In
B reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends
C upon the facts of each case.

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
D 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 the order of*
E *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
F the High Court fails to make such an exercise the judgment will suffer from serious infirmity.

13. It is unfortunate that by the impugned order, the High Court has upset the well-reasoned order of acquittal
G passed by the trial court. It appears to us that the High Court while doing so, did not bear in mind the well-settled principles stated above as to what should be the approach in reversing an order of acquittal and under that circumstances it should be reversed.

H (emphasis supplied)

37. In *State of Rajasthan v. Raja Ram* (2003) 8 SCC 180, this Court observed as under:

> "15. ..... 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 principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

38. In *State of Goa v. Sanjay Thakran & Another,* (2007) 3 SCC 755, this Court observed as under:

> "16. ..... while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below....."

39. In *Chandrappa & Others v. State of Karnataka* (2007) 4 SCC 415, this Court held:

> "(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

A (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.

B (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 C 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.

D (*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 E 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.

F (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."

40. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us G (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. The exercise of surveying relevant judgments has again been taken with the hope that the Appellate Courts would keep in view the settled legal position while dealing with the trial courts' judgments of acquittals.

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41. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

42. We have considered the entire evidence and documents on record and the reasoning given by the trial court for acquitting the accused and also the reasoning of the High Court for reversal of the judgment of acquittal.

43. On careful marshalling of the entire evidence and the documents on record, we arrive at the conclusion that the view taken by the trial court is certainly a possible or plausible view.

A The settled legal position as explained above is that if the trial court's view is possible or plausible, the High Court should not substitute the same by its own possible view. In the facts and circumstances of this case, the High Court in the impugned judgment was not justified in interfering with the well reasoned
B judgment and order of the trial court.

44. Consequently, this appeal filed by the appellant is allowed and disposed of and the impugned judgment of the High Court is set aside.

C N.J. Appeal allowed.