A NEPAL SINGH

v.

STATE OF HARYANA

(Criminal Appeal No. 383 of 2002)

APRIL 24, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

PENAL CODE, 1860/CODE OF CRIMINAL C *PROCEDURE, 1973:*

Sections 304-B, 498-A/378 – Wife committing suicide – Demand of dowry alleged – Husband was charged for his wife's death – Trial Court acquitting him, giving him benefit D *of doubt – High Court convicting him – Power of appellate court against acquittal – Discussed – On facts of the case, Held: Trial Court rightly noted there was no evidence regarding demand of dowry – High Court ought not have interfered with the well reasoned judgment of the trial court* E *directing acquittal.*

According to the Prosecution, deceased and appellant were husband and wife and that the appellant was not satisfied with the dowry and; that there was demand for gas connection and money. Gas connection F **was arranged. Before the money could be arranged, deceased committed suicide by consuming poison. Appellant was tried and the trial court acquitted him giving benefit of doubt. On appeal by State, the High Court convicted him for offences punishable under Sections** G **304-B, 498-A IPC. Hence the appeal.**

Allowing the appeal, the Court

HELD: 1.1. Bare reading of Section 378 Cr.P.C.

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(appeal in case of acquittal) 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. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court. [Paras 9 and 10] [992-E-H; 993-A-B]

1.2. In *Chandrappa* the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

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

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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. [Para 35] [1007-D-H; 1008-A-D]

Chandrappa and Ors. v. State of Karnataka **2007 (4) SCC 415, relied on.**

Sheo Swarup v. R. Emperor **(1934) 61 IA 398**; *Nur Mohd. v. Emperor* **AIR 1945 PC 151**; *Prandas v. State* **AIR 1954 SC 36**; *Surajpal Singh v. State* **1952 SCR 193**; *Ajmer Singh v. State of Punjab* **1953 SCR 418**; *Atley v. State of U.P.* **AIR 1955 SC 807**; *Aher Raja Khima v. State of Saurashtra* **(1955) 2 SCR 1285**; *Sanwat Singh v. State of Rajasthan* **(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**; *K. Gopal Reddy v. State of A.P* **(1979) 1 SCC 355**; *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, referred to. A B

2. 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. [Para 36] [1008-E-F] C

"The Mathematics of Proof II": Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p.340, referred to. D

3.1. Doubts would be called reasonable if they are free 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 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 37] [1009-B-D] E F

3.2. 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. G H

A **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**
B **trivialities would make a mockery of administration of criminal justice. [Para 38] [1009-D-G]**

State of U.P. v. Krishna Gopal **1988 (4) SCC 302, relied on.**

C *Krishnan and Anr. v. State represented by Inspector of Police* **2003 (7) SCC 56, referred to.**

4. During cross-examination PW 5 (deceased's father) accepted that it was not mentioned in the FIR that
D **gifts and other articles were given as dowry. He accepted that his father in law Udai Singh had settled the marriage between the accused and the deceased. Interestingly Udai Singh (DW1) has stated that there was no demand from the side of the accused at the time of marriage. The**
E **deceased and her parents had never complained to him that the accused or any member of his family was raising any demand of any kind when confronted with the statement made during investigation. PW5 accepted that he had not stated many vital things during investigation**
F **which for the first time he was speaking in Court. Similar is the position with PW7 the brother of the deceased. He also accepted on being confronted with the statement made during investigation that he had not stated particularly certain relevant aspects. Similar is the position with the evidence of mother of deceased (PW6).**
G **[Para 41] [1010-D-G]**

5. As was rightly noted by the trial court there was no evidence towards the claim regarding any demand of dowry. That being so the High Court ought not to have
H **interfered with the well reasoned judgment of the trial**

court directing acquittal. The reasoning of the High Court that something must have happened and otherwise deceased would not have committed suicide is clearly indefensible. That certainly could not have been a reason to set aside the trial Court's judgment of acquittal. [Para 42] [1010-H; 1011-A-B]

Case Law Reference:

(1934) 61 IA 398	referred to	Para 12
AIR 1945 PC 151	referred to	Para 16
AIR 1954 SC 36	referred to	Para 17
1952 SCR 193	referred to	Para 19
1953 SCR 418	referred to	Para 20
AIR 1955 SC 807	referred to	Para 22
(1955) 2 SCR 1285	referred to	Para 23
(1961) 3 SCR 120	referred to	Para 24
(1963) 2 SCR 405	referred to	Para 25
1973 (2) SCC 793	referred to	Para 26
(1979) 1 SCC 355	referred to	Para 28
(1996) 9 SCC 225	referred to	Para 29
(2002) 3 SCC 57	referred to	Para 30
(2002) 4 SCC 85	referred to	Para 31
(2002) 6 SCC 470	referred to	Para 32
(2003) 12 SCC 606	referred to	Para 33
(2006) 10 SCC 313	referred to	Para 34
2007 (4) SCC 415	relied on	Para 35

A	**1988 (4) SCC 302**	**relied on**	**Para 38**
	2003 (7) SCC 56	**referred to**	**Para 39**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 383 of 2002.

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From the Judgment & Order dated 21.07.1997 of the High Court of Punjab and Haryana at Chandigarh in Crl. No. 99-DBA/ 1993.

Sushil Kumar, Gp. Capt. Karan Singh Bhati, Aditya Kumar, C Aishwarya Bhati and Anmol Rani for the Appellant.

Rajeev Gaur 'Naseem' (for Rajesh Ranjan) and T.V. George for the Respondent.

D The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court convicting the appellant for offences punishable under Sections 304-B, 498-A of the Indian Penal Code, 1860 E (in short the 'IPC'). He was sentenced to undergo rigorous imprisonment for seven years and to pay a fine with default stipulation for the first offence. But no separate sentence was awarded in respect of the later offence. The appellant faced trial before learned Sessions Judge, Narnaul, and was acquitted by F learned Sessions Judge giving him the benefit of doubt. The State Government preferred an appeal which was allowed by the High Court.

2. Prosecution version in a nutshell is as follows:

G The marriage of Manju (hereinafter referred to as the 'deceased') was solemnised with appellant-Nepal Singh on 26.1.1989. Though Yudhishter Singh (PW5) the father of the deceased had spent sufficient money for the marriage, accused Nepal Singh was not satisfied with the dowry. He demanded a H gas connection which deceased conveyed to her mother

Lajwant (PW6) on which her father (PW5) got the gas connection and gave it to Manju. A

On 16.5.1991, deceased had come to Bapora (village of her father) to attend the marriage of the daughter of Shyam Pal Singh (brother of her father). Deceased told her father (PW5) and mother (PW6) that accused had completed his course and wanted her to bring Rs. One lakh from them and that if she failed to do so, accused would turn her out of the house. Yudhishter Singh (PW5) told her that he would arrange for the money. B C

On 23.5.1991 deceased left for Kanti (village of her in-laws) accompanied by Sunil Kumar (PW7), her brother. While going, deceased told her father to arrange for the money otherwise her in laws would not allow her to live. D

Since Yudhishter Singh (PW5) could not arrange money, Manju had committed suicide by consuming some poisonous substance. On receiving information on 26.5.1991, Yudhishter Singh (PW5) alongwith Sarpanch-Mitter Pal and Head Constable Rohtas Singh (PW3) met SI-Ramji Lal (PW8) at the bus stand of Ateli and Yudhishter Singh (PW5) made the above said statement which formed the basis for registering the formal FIR. Investigation was undertaken. E

After investigation was completed, charge sheet was filed. Since the accused pleaded innocence, trial was held. The prosecution primarily relied upon the evidence of Yudhishter Singh (PW5) father of the deceased and Lajwant (PW6) mother of the deceased and Sunil Kumar (PW7) brother of the deceased. The trial court found that this was a case of suicide and little physical contact between the accused and the deceased was the primary reason. It was noted that the accused was pursuing studies till 13th May, 1991, and thereafter he returned home. Finding the prosecution version to be suspect, the trial court directed acquittal. As noted above State preferred an appeal. It was the primary stand that some thing F G H

must have happened otherwise the victim would not have committed suicide and the fact that the accused and the deceased could not have any sexual relationship was an additional ground for suicide. The High Court found that the evidence of Sunil Kumar (PW7) the brother of the deceased conclusively established the accusations and accordingly set aside the order of acquittal and recorded conviction.

3. In support of the appeal, learned counsel for the appellant submitted that the High Court has not even discussed the conclusions of the trial court in the proper perspective and even no reason was indicated as to why the High Court differed with the view of the trial court. The allegation of dowry demand was not stated during investigation and lot of improvements were made in court for the first time. It is in essence submitted that considering the limited scope for interference with the judgment of acquittal, the High Court should not have interfered with the judgment of the trial court.

4. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court submitting that the High Court has rightly analysed the evidence of PWs 5, 6 & 7 which was casually done by the trial court.

5. The parameters for dealing with an appeal against judgment of acquittal have been laid down by this Court in several cases.

6. It would be appropriate to consider and clarify the legal position first. Chapter XXIX (Sections 372-394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in

petty cases (Section 376). Section 377 permits appeals by 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 appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be

A 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.

B (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).

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

8. It may be stated that more or less similar provisions were found in the Code of Criminal Procedure, 1898 D (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 E against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

9. Bare reading of Section 378 of the Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the F 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 G questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

10. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, H 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. A B

11. 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. C

12. The first important decision was rendered by the Judicial Committee of the Privy Council in *Sheo Swarup v. R. Emperor* [(1934) 61 IA 398)]. In Sheo Swarup, the accused were acquitted by the trial court and the local Government directed the Public Prosecutor to present an appeal to the High Court from an order of acquittal under Section 417 of the old Code (similar to Section 378 of the Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some perversity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their D E F G H

A Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the Code of any limitation or restriction on the High Court in exercise of powers as an B Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, C the Committee did not think it proper to discuss all the cases.

13. Lord Russel summed up the legal position thus:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in D India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a E 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."

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

"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 G should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

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

"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. *To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."*

(emphasis supplied)

16. 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.

17. 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.

18. 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*

A *support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected*
B *itself so as to produce a miscarriage of justice."*

(emphasis supplied)

19. In *Surajpal Singh v. State* (1952 SCR 193), a two-Judge Bench observed that it was well established that in an
C appeal under Section 417 of the (old) Code, the High Court had full power to review the evidence upon which the order of acquittal was founded. But it was equally well settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court
D which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons.

20. In *Ajmer Singh v. State of Punjab* (1953 SCR 418) the accused was acquitted by the trial court but was convicted
E by the High Court in an appeal against acquittal filed by the State. The aggrieved accused approached this Court. It was contended by him that there were "no compelling reasons" for setting aside the order of acquittal and due and proper weight had not been given by the High Court to the opinion of the trial
F court as regards the credibility of witnesses seen and examined. It was also commented that the High Court committed an error of law in observing that "when a strong 'prima facie' case is made out against an accused person it is his duty to explain the circumstances appearing in evidence
G 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".

21. Upholding the contention, this Court said:

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"We think this criticism is well founded. After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him *but only for very substantial and compelling reasons.*"

(emphasis supplied)

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

"In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal Procedure Code came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

A If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated."

(emphasis supplied)

B 23. In *Aher Raja Khima v. State of Saurashtra* [(1955) 2 SCR 1285)] the accused was prosecuted under Sections 302 and 447 IPC. He was acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking for the majority C (2:1) stated: (para 1)

"It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; *there must also be substantial and compelling reasons for holding that the trial court was wrong."*

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(emphasis supplied)

24. In *Sanwat Singh v. State of Rajasthan* (1961) 3 SCR 120, a three-Judge Bench considered almost all leading E 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" F used in certain decisions. It was observed inter-alia as follows:

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

The Court concluded as follows:

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

25. Again, in *M.G. Agarwal v. State of Maharashtra* (1963) 2 SCR 405, the point was raised before a Constitution Bench of this Court. Taking note of earlier decisions, it was observed as follows:

"17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, 'the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons': vide *Surajpal Singh v. State* (1952 SCR 193). Similarly in *Ajmer Singh v. State of Punjab* (1953 SCR 418), it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are 'very substantial and compelling reasons to do

so'. In some other decisions, it has been stated that an order of acquittal can be reversed only for 'good and sufficiently cogent reasons' or for 'strong reasons'. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in Sheo Swarup the presumption of innocence in favour of the accused 'is not certainly weakened by the fact that he has been acquitted at his trial'. Therefore, the test suggested by the expression 'substantial and compelling reasons' should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in *Sanwat Singh v. State of Rajasthan and Harbans Singh v. State of Punjab* (1962 Supp 1 SCR 104) and so, *it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse."*

(emphasis supplied)

26. Yet in another leading decision in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973 (2) SCC 793) this Court held that in India, there is no jurisdictional limitation on the powers of appellate court. "In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material *de novo*, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into

an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration." A

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

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

A 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* B *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."*

C (emphasis supplied)

28. In *K. Gopal Reddy v. State of A.P* (1979) 1 SCC 355, the Court was considering the power of the High Court against an order of acquittal under Section 378 of the Code. After D considering the relevant decisions on the point it was stated as follows:

"9. The principles are now well settled. At one time it was thought that an order of acquittal could be set aside for 'substantial and compelling reasons' only and courts used E to launch on a search to discover those 'substantial and compelling reasons'. However, the 'formulae' of 'substantial and compelling reasons', 'good and sufficiently cogent reasons' and 'strong reasons' and the search for them were abandoned as a result of the F pronouncement of this Court in *Sanwat Singh v. State of Rajasthan* (1961) 3 SCR 120. In Sanwat Singh case this Court harked back to the principles enunciated by the Privy Council in *Sheo Swarup v. R. Emperor* and reaffirmed those principles. After *Sanwat Singh v. State of Rajasthan* G this Court has consistently recognised the right of the appellate court to review the entire evidence and to come to its own conclusion bearing in mind the considerations mentioned by the Privy Council in *Sheo Swarup* case. Occasionally phrases like 'manifestly illegal', 'grossly H unjust', have been used to describe the orders of acquittal

which warrant interference. But, such expressions have been used more as flourishes of language, to emphasise the reluctance of the appellate court to interfere with an order of acquittal than to curtail the power of the appellate court to review the entire evidence and to come to its own conclusion. In some cases (*Ramaphupala Reddy v. State of A.P.*, (AIR 1971 SC 460) *Bhim Singh Rup Singh v. State of Maharashtra* (AIR 1974 SC 286), it has been said that to the principles laid down in *Sanwat Singh* case may be added the further principle that 'if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court'. This, of course, is not a new principle. It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. *It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable."*

(emphasis supplied)

29. 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

A 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 B 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."

30. In *Allarakha K. Mansuri v. State of Gujarat* (2002) 3 SCC 57, referring to earlier decisions, the Court stated:

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"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 D has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by E the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such F a finding."

31. In *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85, the trial court acquitted the accused but the High Court convicted them. Negativing the contention of the appellants that the High Court could not have disturbed the findings of fact of G 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 H Code of Criminal Procedure the High Court could not

disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappreciate 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".

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

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

A 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
B 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."

33. In *Ramanand Yadav v. Prabhu Nath Jha* (2003) 12 SCC 606, this Court observed:
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"*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
D 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
E favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where
F admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate 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".

G 34. Again in *Kallu v. State of M.P.* (2006) 10 SCC 313, this Court stated:

"8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised
H 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)

35. From the above decisions, in *Chandrappa and Ors. v. State of Karnataka* (2007 (4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

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

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with

A 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.

36. 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)]:

> "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. 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 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."

37. Doubts would be called reasonable if they are free 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 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.

38. 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. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in *State of U.P. v. Krishna Gopal* (1988 (4) SCC 302).

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

A 40. PW5 had gone to the Police Station at Ateli at about 9.50 P.M. on 25.5.1991 to lodge the report regarding the death of the deceased. The father of the appellant had already sent one Dharam Pal for giving intimation of the death to her parents. PW5 admitted that at the time of marriage Nepal Singh was B studying in MA Class in Delhi and after doing M.A. he had gone to Ahmedabad to undergo some training. He accepted that the deceased had told him that the accused had returned from Ahmedabad on 13.5.1991 after completing his course. It has also been admitted by PW5 that he did not send any amount C to Nepal Singh while he was prosecuting studies at Ahmedabad. In the FIR PW had stated that he had told that he would arrange money. After the marriage on 23.5.1991 victim went back to village Kanti with her brother Sunil Kumar (PW7) and while going back she told her father that if money was not D arranged the accused and his family members will not allow her to breathe.

41. During cross-examination he accepted that all this was not stated during investigation. He also accepted that it was not mentioned in the FIR that gifts and other articles were given E as dowry. He accepted that his father in law Udai Singh had settled the marriage between the accused and the deceased. Interestingly Udai Singh (DW1) has stated that there was no demand from the side of the accused at the time of marriage. The deceased and her parents had never complained to him F that the accused or any member of his family was raising any demand of any kind when confronted with the statement made during investigation, PW5 accepted that he had not stated many vital things during investigation which for the first time he was speaking in Court. Similar is the position with PW7 the G brother of the deceased. He also accepted on being confronted with the statement made during investigation that he had not stated particularly certain relevant aspects. Similar is the position with the evidence of mother of deceased (PW6).

42. As was rightly noted by the trial court there was no H

evidence towards the claim regarding any demand of dowry. That being so the High Court ought not to have interfered with the well reasoned judgment of the trial court directing acquittal. The reasoning of the High Court that something must have happened and otherwise deceased would not have committed suicide is clearly indefensible. That certainly could not have been a reason to set aside the trial Court's judgment of acquittal.

43. The appeal is allowed. The bail bonds executed with effect to the order of bail dated 18th May, 2002 and subsequent date shall stand discharged.

G.N. Appeal allowed.