Before Vinod S. Bhardwaj, J.

STATE OF HARYANA —*Appellant*

versus

KULDEEP SINGH @ KIPPA AND ANOTHER—*Respondents*

CRA-AS No.22 of 2022

March 14, 2022

Indian Penal Code, 1860 —Ss.392, 379-B and 34 — Appeal against acquittal filed by State—Motorcycle and cash of complainant robbed at gun point—Names of accused not known, only name of village known— Complainant failed to identify accused — Did not support prosecution case — Declared hostile — Prosecution failed to prove guilt of accused beyond shadow of reasonable doubt — Judgment of acquittal — State's appeal dismissed — No illegality, impropriety or perversity in judgment of Trial Court — Appellate Court would not normally set aside judgment of conviction or acquittal — On the basis of difference of opinion, legal position on appeals against acquittal summarized.

Held, that the position which emerges from a perusal of the law as settled by the Hon'ble Supreme Court through its catena of judgments in matters pertaining to appeals against acquittal can be summarized as under:-

a) Powers of High Court in dealing with criminal appeals are equally wide whether the appeals are against conviction or acquittal.
b) In dealing with appeal against acquittal, the High Court bears in mind that the presumption of innocence is strengthened.
c) 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.
d) 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".

e) The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, even though the view of the appellate court may be the more probable one.

f) 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 the 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.

g) The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

(Para 9)

Further held, that it is, hence well settled that the Appellate Court would not normally set aside a judgment of conviction on the basis of its difference of opinion from that of the trial Court unless the opinion of the trial Court suffers from illegality, perversity, infirmity or gross mis-appreciation of evidence. I am of the opinion that there is no illegality, impropriety or perversity in the judgment passed by the Additional Sessions Judge, Sirsa in extending the benefit of doubt to the respondents-accused and discharging them in the said case.

(Para 10)

Kanwar Sanjiv Kumar, Assistant Advocate General, Haryana , *for the appellant*.

VINOD S. BHARDWAJ, J.

(1) The present appeal has been filed against the judgment dated 07.02.2018 passed by Additional Sessions Judge Sirsa in CIS No.223-SC of 2017 in case FIR No.75 dated 16.08.2017 registered under Sections 392 and 379-B of the IPC at Police Station Rori District Sirsa.

Briefly the facts of the case are summarized as under:-

i. On 16.08.2017, complainant-Ramesh Kumar S/o Makhan Lal moved an application to the police on the allegation that when he was coming on his motorcycle at about 11/11:30 p.m. on 15.08.2017, after repairing motor of the tube-well and had reached near the house of Mohan Singh son of Gurdev Singh, two boys stopped his motorcycle. They were armed with pistol and *danda*. The boy who was armed with pistol pointed out his pistol on his shoulder and asked him to leave the motorcycle. The other boy armed with *danda* had taken out Rs.14,500 from his pocket. Thereafter, they went away on the motorcycle of the complainant. Both the said boys were known to him by face but he could not tell their name. They were residents of village Mattar. Upon enquiry, the names of the said boys came to be known as Kipa Singh son of Natha Singh and Baggi son of Nachattar Singh both Majbi Sikh. The FIR in question was accordingly registered.

ii. The respondents-accused persons were arrested in the case and motorcycle in question along with sum of Rs.7500/- was recovered from accused Kipa Singh alias Kuldeep and Rs.7000/- from accused Baggi alias Mangat Ram. The pistol as well as *danda* that had been allegedly used in the commission of offence were also taken into possession.

iii. The prosecution examined as many as five witnesses to prove its case. It is, however, essential to point out that the complainant, while appearing as PW-1, did not support the case of the prosecution and was declared hostile. The complainant failed to identify the respondents to the accused persons who had snatched his motorcycle. PW-2 Jagga Singh was also declared as hostile on the request of the public prosecutor and did not support the case of the prosecution.

iv. After conclusion of the prosecution evidence, the statement of the accused was recorded under Section 313 CrPC and all the incriminating evidence was put to them to which they pleaded innocence and false implication. No evidence in defence was however led by them.

v. Upon consideration of rival submissions advanced by the contesting parties, the Additional Sessions Judge, Sirsa noticed that the FIR under Section 379B read with Section 34 IPC had been registered on the allegations of forcible snatching of the motorcycle as well as Rs.14,500/- by two boys, whom the complainant could identify but whose names were not known.

The complainant while appearing as the PW-1 and the witness PW-2 have stated that the respondents-accused were not the persons who had committed the offence and have failed to identify them as the person who committed the offence. The same becomes crucial and significant because the complainant had claimed to identify the assailants. They were declared hostile as they did not support the case of the prosecution. Resultantly, the Additional Sessions Judge concluded that the prosecution failed to prove the guilt of the accused persons beyond a shadow of reasonable doubt and thus extended a benefit of doubt to the respondents-accused and acquitted them of the charges levelled against them.

(2) Shri Kanwar Sanjiv Kumar, learned State counsel has assailed the judgment of the Additional Sessions Judge, Sirsa by vehemently arguing that recovery of motorcycle as well as the sum of Rs.14,500/- has been affected from the respondents-accused persons and it is not in dispute that the motorcycle in question belongs to the complainant. Hence, the circumstantial evidence in the form of recovery based on the disclosure of the respondents duly established the link of the commission of the offence to the respondents-accused persons

(3) I have heard learned State counsel and have gone through the facts of the instant case as also the judgment of the trial Court with his able assistance.

(4) The case of the prosecution was founded on the identification of the accused persons by the complainant. It was specifically stated by the complainant that two persons, whom the complainant could identify but whose names were not known, had snatched the motorcycle as well as the amount of Rs.14,500/- from the complainant. Names of the assailants were given by the complainant later on- leading to arrest of respondents. The complainant as well as PW-2 Jagga Singh have however not supported the case of the prosecution and have deposed that the respondents facing trial were not the assailants who had snatched the motorcycle as well as cash. Further,

insofar as recovery of Rs.14,500/- is concerned, the same cannot be claimed as a recovery to link the respondents to the commission of the offence. For proving identification of the currency notes the numbers of the notes which are distinctive feature had to be mentioned. Invariably, there is no description of either of the denomination of the currency or currency numbers, as a result whereof, it cannot be conclusively held that the currency recovered from the respondents was in fact the currency notes that were snatched away from the possession of the complainant.

(5) The same thus leads to the recovery of motorcycle. The offence in question was committed on account of forcible snatching of the motorcycle. The identification of the respondents-accused having itself been denied as being not the assailants, the circumstances under which motorcycle came in possession of the respondents were to be explained by the prosecution and such a burden cannot be put on accused. It is also not forthcoming from the case of the prosecution that the recovery of the motorcycle was effected from any place that was exclusively in the knowledge of the respondents and that it had been concealed from public view. Besides, no independent witness has been associated by the Police in effecting the said recovery.

(6) The burden to prove that respondents-accused had in fact committed the offence lay upon prosecution State and the commission of the offence under Section 392 and 379-B IPC cannot be assumed merely on the basis of recovery of the allegedly snatched motorcycle. Being in possession of stolen/snatched property does not *ipso facto* lead to a conclusion that the respondents-accused had in fact committed offence punishable under Section 392 and 379-B of IPC. There is no charge against the respondents for offence under section 411 IPC and even though the same cannot be said to be a lesser charge of the offences tried, no such case has been set up by the prosecution. A mere recovery, that is not supported and substantiated by any evidence indicating that the persons from whom the recovery had been affected were in fact the persons who had committed the offence, would be insufficient to attract a judgment of conviction against the persons who are set up to face trial. The obligation lies on the prosecution to prove its case beyond a shadow of reasonable doubt. A conviction of an accused cannot be made on the basis of preponderance of the probabilities or even a grave suspicion. It is well settled position in law that suspicion, howsoever grave, does not substitute for the need to prove the case. The recovery, is at best, a suspicious circumstance.

Once the identity of the respondents-accused is specifically denied by the complainant, despite claiming in his FIR to the effect that he would be able to identify the assailants who had taken away his motorcycle, his deposition assumes significance.

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

(7) The same now leads to the scope of interference by the Court while hearing appeal against acquittal. The Hon'ble Supreme Court has held in the matter of ***M. G. Aggarwal*** *versus* ***State of Maharashtra***[1]**,** the relevant part is extracted as under:

> "(16) Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. 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 to 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

[1] AIR 1963 SC 200

conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. this position has been clarified by the Privy Council in Sheo Swarup v. The King Emperor and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) Some of the earlier decisions of this Court, however, in emphasizing 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. The State Similarly in Ajmer Singh V. State of Punjab, 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 emphasise 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 the case of 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. The State of Punjab; 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. Therefore, the question which we have to ask ourselves in the present appeals 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 reason-able doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we 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. But under Article 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

(8) Further, the Hon'ble Supreme Court has held in the matter of ***Nagbhushan*** *versus* ***State of Karnataka***[2]**,** as under:

"**7.2** Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

In the case of Babu v. State of Kerala (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the

[2] (2021) 5 SCC 212

appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama v. S.Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "… 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."

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC

415, this Court reiterated the legal position as under: (SCC p. 432, para 42) "(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(1) 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.

(2) 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.

(3) 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.

(4) 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."

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to

evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) "20. … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good

reasons for interference." (emphasis supplied)

When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v.State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.(2009) 10 SCC 636)." (emphasis supplied)

It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

7.3 In the case of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope o Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court,

while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233) "10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1 In Sambasivan v. State of Karala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416) "

8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babula Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court

has rendered a well- considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

In K. Ramakrishnan Unnithan v. State of Karala (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound.

This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 809-10)

"5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.PC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

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

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

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of

U.P. AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

In K.Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule." (emphasis supplied)

(9) Thus, the position which emerges from a perusal of the law as settled by the Hon'ble Supreme Court through its catena of judgments in matters pertaining to appeals against acquittal can be summarized as under:-

a) Powers of High Court in dealing with criminal appeals are equally wide whether the appeals are against conviction or acquittal.

b) In dealing with appeal against acquittal, the High Court bears in mind that the presumption of innocence is strengthened.

c) 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.

d) 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".

e) The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, even though the view of the appellate court may be the more probable one.

f) 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 the 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.

g) The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

CONCLUSION:

(10) It is hence well settled that the Appellate Court would not normally set aside a judgment of conviction on the basis of its difference of opinion from that of the trial Court unless the opinion of the trial Court suffers from illegality, perversity, infirmity or gross mis-appreciation of evidence. I am of the opinion that there is no illegality, impropriety or perversity in the judgment passed by the Additional Sessions Judge, Sirsa in extending the benefit of doubt to the respondents-accused and discharging them in the said case.

(11) The present appeal is accordingly dismissed and the judgment of the Additional Sessions Judge, Sirsa is affirmed.

Shubreet Kaur