Before Jasjit Singh Bedi, J.

VIRENDER KUMAR—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER—*Respondents*

CRM-A No. 1313-MA of 2018 (O&M)

December 01, 2022

Code of Criminal Procedure, 1973—S. 378—Indian Penal Code, 1860—Ss. 306, 107—Appeal against acquittal by Trial Court—Alleged that deceased remained distressed as he had given money to accused property dealers for purchase of plots which they neither purchased nor returned the money—On day of incident, deceased told family he was going to collect the money—Thereafter jumped into canal and took own life—Question raised is whether alleged actions of accused constitute the offence of abetment under S. 306 IPC—Held that on examining the case in the background of Ss. 107 and 306, no offence is made out—Evidence led by prosecution neither proves mens rea, nor proves any direct or active act which led the deceased to commit suicide—Taking the entire prosecution version as true on its face value, no offence under S. 306 IPC would be made out—When Trial Court has passed order of acquittal, there is a double presumption in favour of innocence of accused—View taken by Trial Court is reasonable and based on evidence on record—Impugned judgment not perverse and does not require to be interfered with—Dismissed.

Held, that while an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded, it is equally true that there is a double presumption in favour of the innocence of the accused, firstly on account of the presumption of innocence available to an accused and secondly on account of the fact that the competent Court has acquitted the accused and therefore, if two reasonable conclusions were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court. However, where the judgment appealed against is totally perverse and the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant or

inadmissible material, then the Appellate Court would be well within its powers to interfere with the said findings and set them aside.

(Para 16)

Further held, that in view of the detailed discussion hereinabove as also the law enunciated by the Hon'ble Supreme Court and this Court, the view taken by the Trial Court while acquitting the accused is a reasonable view based on the evidence on record, cannot be said to be perverse and as such is not required to be interfered with.

(Para 17)

Ashit Malik, Advocate, *for the petitioner*.

Neeraj Poswal, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J. (Oral)

(1) The applicant/appellant has filed the present application for grant of leave to appeal against the order of acquittal dated 19.12.2017 passed by the Sessions Judge, Kurukshetra, whereby the accused-respondent No.2/Jagdish Dhingra @ Pappu has been acquitted of the charges under Section 306 IPC.

(2) The brief facts of the case are that on 17.08.2015, telephonic information was received that Devender alias Rinku died due to drowning in Bhakhra canal near village Udarsi. When, SI Chanan Ram accompanied by ASI Raj Kumar, ASI Naresh Kumar, HC Manoj Kumar was proceeding towards Bhakhra Canal village Udarsi, the complainant Virender Kumar and Dr. Surender Sharma presented a complaint in front of the gate of Police Station, Shahabad. The complainant stated that he was a resident of House No.227/4, Mohalla Khatarwada near flour mill of Roshan Lal and they were two brothers. He was elder to Devender alias Rinku, who was married and was in the cloth business. He had two children, one son and one daughter 4-5 months ago, Devender alias Rinku had given Rs.6,00,000/- to property dealer Jagdish alias Pappu Dhingra son of Desraj, resident of Tange Wali Gali, Majri Mohalla, Shahabad Markanda for the purchase of a plot and a sum of Rs.8,00,000/- to property dealer Gurjit Singh son of Karam Singh, resident of village Charuni. The money was paid from his firm. Despite payment, both the accused did not purchase any plot for his brother nor returned the money. His brother remained perturbed and stressed for fear of loosing his money. On 17.8.2015, at about 6.15 a.m., his brother left home in a Swift Car bearing registration No.HR-

78-9191. While going, he told them that he was going to collect money. At about 8.15 a.m., he (complainant) received telephonic information that his car (of deceased) was parked near the Canal in village Dalla Majra and slippers along with a key were lying near the car. He reached the spot with his family members where he learnt that Devender alias Rinku had ended his life by drowning in canal. His brother had committed suicide due to harassment by accused Jagdish alias Pappu and Gurjit Singh. Later on, the dead body was recovered from the canal near village Udarsi. They took the dead body to Civil Hospital, Kurukshetra. Legal action against both accused was prayed for.

(3) Pursuant to the registration of the FIR, an investigation was conducted and report under Section 173 Cr.P.C. was submitted.

(4) Finding a prima-facie case u/s 306 IPC against the accused, he was charge-sheeted thereunder by the court vide order dated 19.08.2016 to which he pleaded not guilty and claimed trial.

(5) The prosecution examined PW-1 Virender Kumar, complainant who deposed on the lines of his complaint Ex.P1, which he proved. He further stated that the dead body of his brother was found near Udarsi from the Bhakhra canal and police recorded statements of Sushil Kumar his friend and his maternal uncle Om Parkash under section 175 Cr.P.C. He and other family members identified the dead body, which was delivered to them vide receipt Ex.P2. The police took water from the canal in a plastic bottle which was taken into possession vide recovery memo Ex.P3. Swift car bearing registration No.HR-78-9191 alongwith a pair of chappals was taken into police possession vide memo Ex.P4. Photocopy of registration certificate of the car was Ex.P5. The car was searched and memo Ex.P6 was prepared. They took the car on superdari vide memo Ex.P7. Statement Ex.P8 of his maternal uncle Om Parkash was recorded by the police. He identified signatures of his maternal uncle Om Parkash on Ex.P2, Ex.P4, Ex.P6, Ex.P7 and Ex.P8, chapples Ex.P9 and Ex.P10 worn by deceased on 17.08.2015 and stated that they were found lying near the car. He added that his brother Devender alias Rinku committed suicide due to continuous harassment by accused Jagdish Dhingra alias Pappu and Gurjit Singh. The mobile phone numbers which his brother used were 9896327235 and 9254000034 while his mobile phone numbers were 9416292759 and 9996139459. His brother was under depression due to harassment by the accused persons and he used to tell about the harassment to him, his wife and mother. Deceased Devender told all facts to all family members and

asked them to find out some solution.

PW-2 Prem Singh, Canal Patwari proved scaled site plan Ex.P11 of place of occurrence, village Dalla Majra, Narwana Branach canal, which he prepared on 30.09.2015 on demarcation of SI Chanan Ram.

PW-3 EHC Rajesh Kumar delivered special reports of the case to the Illaqa Magistrate, Superintendent of Police, Kurukshetra and Deputy Superintendent of Police, Shahabad without any delay.

PW-4 Pyare Lal, Canal Patwari Halqa Jyotisar prepared scaled site plan Ex.P12 on 30.09.2015 on the demarcation of SI Chanan Singh.

PW-5 ASI Ajmer Singh recorded FIR Ex.P13 on 17.08.2015 on complaint Ex.P1 of Virender Kumar. He proved his endorsement Ex.P14 on the complaint and stated that he sent special reports to the higher authorities through EHC Rajesh Kumar.

PW-6 C. Karambir stated that on 18.08.2015, application Ex.P15 was moved to Incharge Cyber Cell, Kurukshetra by Incharge Police Post City Shahabad for taking call detail records and addresses of mobile phone Nos. 98963-27235 and 92540-00034 of deceased Devinder @ Rinku, Mobile phone No.85720-94272 of Raj Rani, mother of deceased and Mobile phone No.99961-39459 of complainant Virender. He obtained call details record from the concerned service providers through Email and handed over the print-outs Ex.P16 to Ex.P18 and list containing addresses of the holders Ex.P19 to SI Chanan Ram Investigating Officer, which were taken into police possession vide memo Ex.P20. His statement was recorded by SI Chanan Ram.

PW-7 HC Ajay deposited one sealed parcel of viscera, one sealed envelope addressed to Director, FSL Madhuban and sample seal of the Doctor with Director, FSL Madhuban on 27.08.2015 and delivered the receipt to MHC Karambir. He further stated that on 01.09.2015, MHC Karambir handed over to him one sealed vial containing blood of the deceased, one sealed envelope addressed to Director, FSL Madhuban, sample seal of the Doctor and one sealed water bottle alongwith sample seal of Investigating Officer for depositing the same with Director, FSL Madhuban. He deposited the same in FSL Madhuban and delivered the receipt to MHC Karambir. During the period the case property remained with him, he did not tamper with the same.

PW-8 Dr. Sanjeev Sharma, the then Medical Officer, LNJP Hospital, Kurukshetra tendered in evidence his duly sworn affidavit

Ex.P21 regarding postmortem examination on dead body of Devender Kumar son of Dilbag Rai, injuries noted at the time of postmortem examination and material handed over to the police. He proved copy of PMR Ex.P22 and identified signatures of Dr. Gaurav Chawla thereon. After seeing FSL reports Ex.P23 and Ex.P24, he stated that cause of death of Devender was drowning and not any common poison. He stated that after conducting the postmortem, one sealed box containing the viscera, one sealed envelope addressed to Director, FSL, Madhuban, one sealed vial of blood and two sample seals were handed over to Sub Inspector Chanan Ram.

PW-9 HC Karambir stated that on 17.08.2015, SI Chanan Ram Incharge Police Post HUDA, Shahabad deposited with him one sealed box, one sealed vial of blood, two envelopes addressed to Director, FSL Madhuban, two sample seals of doctors, one sealed water bottle and one sample seal of Investigating Officer, which he entered at serial number 396/15 in Register No.19. He stated that on 27.08.2015, he handed over one sealed box, one envelope, one sample seal to EHC Ajay Kumar for depositing the same in FSL Madhuban, who deposited the same in FSL Madhuban the same day and delivered the receipt to him. He stated that on 01.09.2015, he handed over a sealed vial of blood, one envelope, one sample seal, one water bottle and one sample seal of the Investigating Officer to EHC Ajay Kumar for depositing the same in FSL Madhuban. He deposited the same with FSL Madhuban the same day and delivered the receipt to him. The case property was not tampered with during the period it remained with him.

PW10 Dr. Priya Choudhary, Senior Scientific Officer, Forensic Laboratory, Madhuban conducted diatom examination on sealed parcels containing one vial of blood sample and one bottle of water sample on 01.09.2015 received through Constable Ajay Kumar in Biology Division, FSL, Madhuban with the request from Deputy Superintendent of Police, Shahabad, for a diatom examination. She stated that parcels containing one vial of blood sample and one bottle of water sample had seals intact and diatom examination was conducted in Ex.1 blood sample and Ex.2 water sample which were found to be of similar type. She gave her report Ex.P23 and after examination, parcels were sealed again with seal 'PC FSL'. She proved water bottle Ex.P25 bearing her seal 'PC FSL'.

PW-11 Dilbag Rai, the father of deceased, PW-12 Om Parkash, the Maternal uncle of the deceased and PW-13 Kiran, the wife of the deceased corroborated the statement of Virender Kumar PW-1

regarding suicide by deceased Devender alias Rinku due to continuous harassment by accused Jagdish Dhingra alias Pappu, who neither returned Rs.6 lacs nor purchased any property for him.

PW-14 Inspector Rajesh Kumar prepared the report under section 173 (2) Cr.P.C. on 24.09.2015 on completion of investigation.

PW-15 SI Chanan Ram, who investigated the case, stated that he received a telephonic message on 17.08.2015 that Devender Singh had died by drowning in Bhakhra Canal near village Udarsi. When they were on the way to village Udarsi, the complainant Virender met them near Police Station, Shahabad and presented an application Ex.P1 alleging continuous harassment of his brother Devender by Jagdish Dhingra and Gurjeet Singh on account of which, he committed suicide in the Bhakhra Canal. He conducted police proceedings Ex.P29 and sent ASI Naresh Kumar to Police Station, Shahabad for registration of the case. Then he along with ASI Raj Kumar and HC Manoj Kumar reached LNJP Hospital, Kurukshetra and conducted inquest proceedings Ex.P30 under section 174 Cr.P.C. He recorded statements of Sushil Kumar and Om Parkash under section 175 Cr.P.C. Then, he along with ASI Naresh Kumar reached the place of occurrence i.e. Bhakhra Canal near village Udarsi and Bachgaon and prepared rough site plan Ex.P31 at the instance of Virender Kumar. He took water bottle Ex.P32 from the canal, sealed it with seal 'SR' and took it into police possession vide memo Ex.P3. Then, he went to village Dalla Majra along with Om Parkash. A Swift car bearing registration No.HR-78-9191 was parked there. The key of the car and a pair of sandles Ex.P10 were also found. The car, key and sandles were taken into police possession vide memo Ex.P4. He stated that copy of registration certificate of the car was Ex.P5. A search of the car was conducted vide memo Ex.P6. The car was given on superdari to complainant Virender and Om Parkash vide memo Ex.P7. Rough site plan Ex.P33 of the place of recovery was prepared. ASI Raj Kumar made over to him one sealed parcel containing the viscera, one blood vial and another sealed jar along with the sample seal and envelope which he deposited with MHC, Police Station, Shahabad. On 18.08.2015, application Ex.P15 was moved to incharge Cyber Cell, S.P. Office, Kurukshetra seeking details of mobile numbers mentioned therein. On 22.08.2015, call details Ex.P34 along with ID were delivered by Constable Karamvir, which were taken into police possession vide memo Ex.P20. Dead body of Devender was handed over to Om Parkash and Sushil Kumar vide memo Ex.P2.

(6) The prosecution gave up Pws Dr. Gaurav Chawla, Raj Rani, Surjit alias Sushil Kumar and ASI Naresh Kumar being unnecessary. Thereafter, the prosecution evidence was closed.

(7) The statement of the accused was recorded under section 313 Cr.P.C. He denied the incriminating evidence as false and pleaded false implication.

(8) In defence, Ex.D2, copy of the statement of Kiran recorded under section 161 Cr.P.C. was produced.

(9) The Trial Court came to the conclusion that taking the evidence lead and the allegations to be true, no *mens rea* on the part of the accused was proved to commit the offence in question and thereby acquitted him vide judgment dated 19.12.2017 leading to the filing of the present appeal.

(10) The learned counsel for the applicant/appellant contends that PW-1/Virender Kumar (complainant), brother of the deceased and PW- 11/Dilbag Rai (father of the deceased) reiterated their version before the police while deposing in Court and have categorically stated that Devender @ Rinku (deceased) had committed suicide as the accused had failed to return the money given by him for purchasing the plot. In fact, the accused persons were issuing threats to the deceased that they would kill him if he demanded his money back and it was on this account, because of continuous harassment and threats given by the accused that the deceased committed suicide. PW-13/Kiran (widow of the deceased) had also supported the case of the prosecution in line with the version of the complainant-PW-1. He, thus, contends that the judgment of acquittal is perverse on the face of it and is liable to be set aside and the acquitted accused is liable to be convicted for having committed the offence in question.

(11) I have heard the learned counsel for the applicant/appellant at length.

(12) Before proceeding further it would be apposite to examine the provisions of Section 306 IPC and 107 IPC which are reproduced hereinabove:-

Section 306 IPC reads as under:-

> "306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable

to fine."

Section 107 IPC reads as under:

"Abetment of a thing: A person abets the doing of a thing, who:

First-Instigates any person to do that thing; or, Secondly: Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing."

(13) To instigate means to goad, urge, provoke, incite or encourage someone to do an act. It is not necessary that express words should be used in order to instigate. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has been so abetted. The basic spirit behind all these words i.e. to goad, to urge, to provoke, to aid, to instigate or encourage, lies in the actions or omissions which the accused did by words or gestures so as to bring the person abetted to such a mental state that under such circumstances, he could think nothing more except to end his life being so compelled by the circumstances.

(14) When the present case is examined in the background of Sections 107 IPC readwith Section 306 IPC, it is apparent that no offence whatsoever is made out.

The summon and substance of the allegations levelled by PW-1/Virender Kumar (brother of the deceased), PW-11/Dilbag Rai (father of the deceased) and PW-13/Kiran (wife of the deceased) is that the deceased- Devender @ Rinku had given a sum of Rs.6 lacs to the acquitted accused- Jagdish Dhingra for purchase of a plot and whenever he demanded his money back or a plot from the accused, he was threatened with death and the money was not returned to him. On this account, the deceased (Devender @ Rinku) was depressed leading him to commit suicide. In fact, there has been a considerable improvement in the statements of these witnesses. In the initial statements recorded under Section 161 Cr.P.C., the version of the accused extending threats to kill does not find mention. This version has come for the first time when the said witnesses were examined in the Court. Therefore, the improved version cannot be considered to

convict the accused.

Taking the allegations of advancement of Rs.6 lacs to be true, in case, the said amount was not being refunded to the deceased, he had the option to effect the recovery in accordance with law by approaching the Court or the investigating agencies. Merely because the said amount was not being refunded or a plot proposed to be purchased from the said amount was not being given to the deceased would not make out a case of abetment.

Having said that, it may be pointed out that there is no evidence on record to suggest that the deceased had indeed paid a sum of Rs.6 lacs to the accused for the purchase of the plot. The version of three family members of the deceased-Devender @ Rinku with regard to the advancement of money to the accused is also running contrary to each other. PW-1/Virender Kumar has stated that the money was paid to the accused by withdrawing from the bank and PW-11/Dilbag Rai has stated that his son has given Rs.6 lacs to the accused after taking the same from his mother.

Since there is no Certificate under Section 65-B of the Indian Evidence Act, 1872 accompanying the call detail record, it cannot be held that there was an exchange of calls between the accused and the deceased and even on this account, the offence cannot be proved against the accused.

Taking the entire prosecution version as true on its face value, no offence under Section 306 IPC would be made out. A person is said to instigate another to do an act, when he actively suggests or stimulates him to do the act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. A person abets by aiding when by any act done either prior to, or at the time of commission of an act, he intends to facilitate and does in fact facilitate the commission thereof. The intention should be to aid an offence or to facilitate the commission of an offence. In this case, there is no direct allegation in the report under section 173 Cr.P.C. that the accused ever instigated, engaged, intentionally committed or so conspired that the deceased should commit suicide. The statement of PW-13 Kiran in evidence that the accused told the deceased to go and commit suicide is an embellished afterthought version and even otherwise insufficient to affix guilt on the accused. ***In the case of Sanju @ Sanjay Singh Sengar*** *versus* ***State of Madhya***

Pradesh[1], where the accused used abusive language and told the deceased 'to go and die', the Hon'ble Supreme Court held that instigation was not made out and the words uttered in a quarrel or in spur of the moment cannot be taken to be uttered with any mens rea. In ***Swamy Prahaladdas*** *versus* ***State of M.P. and another***[2], the accused was charged for an offence under Section 306 IPC on the ground that during the quarrel he told the deceased 'to go and die'. The court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima-facie enough to instigate the deceased to commit suicide.

Thus, clearly, the statements of PW-1/complainant-Virender Kumar, PW-11 Dilbag Rai and PW-13 Kiran cannot be used to infer that the accused by his continuous course of conduct, created such circumstances that the deceased was left with no other option but to commit suicide. The evidence led by prosecution neither proves any *mens rea* on the part of the accused to commit the offence nor proves any direct or active act which led the deceased to commit suicide.

(15) As regards the legal position in an appeal against acquittal and the scope of interference called for by the Court, the Hon'ble Supreme Court in the matter of M.G. Aggarwal Versus State of Maharashtra, AIR 1963 SC 200, held 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

[1] 2002 (2) RCR (Crl.) 687 (SC)
[2] 1995 SCC (Cri) 943

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 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, (1934) L.R. 61 I.A. 398: AIR 1934 PC 227 and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) In 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 1952-3 SCR 193 at p.201 AIR 1952 SC 52. Similarly in Ajmer Singh v. State of Punjab, 1953 SCR 418: AIR 1953 SC 76, 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, AIR 1961 SC 715 and Harbans Singh v. The State of Punjab, AIR 1962 SC 439; 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 reasonable 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.

The Hon'ble Supreme Court in ***C. Antony*** *versus* ***K.G. Raghavan Nair***[3], held as under:-

> **"6.This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases 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.** See Bhim Singh Rup Singh v. State of Maharashtra (1974(3) SCC 762) and Dharamdeo Singh & Ors. v. The State of Bihar **(1976(1) SCC 610)**.
>
> [Emphasis supplied]

The Hon'ble Supreme Court in ***State of Rajasthan*** *versus* ***Mohan Lal***[4], held as under:-

> "5. In view of rival submissions of the parties, we think it proper to consider and clarify the legal position first. Chapter XXIX (Sections 372- 394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the present Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376). Section 377

[3] 2002 (4) R.C.R. (Crl.) 750
[4] 2009 (2) R.C.R. (Crl.) 812

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 entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

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

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

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

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

9. 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.

34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka, 2007(2) RCR (Criminal) 92: 2007(4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

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

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

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

(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.

[Emphasis supplied]

The Hon'ble Supreme Court in ***Lunaram*** *versus* ***Bhupat Singh & others***[5], held as under:-

"6. There is no embargo on the appellate court

[5] 2010 (5) R.C.R. (Crl.) 530

> **reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.** The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P, 2003 (3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are substantial reasons for doing so. If the impugned judgment is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a substantial reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225), Jaswant Singh v. State of Haryana (2000 (4) SCC 484), Raj Kishore Jha v. State of Bihar (2003 (11) SCC 519), State of Punjab v. Karnail Singh (2003(11) SCC 271), State of Punjab v. Phola Singh (2003 (11) SCC 58), Suchand Pal v. Phani Pal (2003 (11) SCC 527) and Sachchey Lal Tiwari v. State of U.P. (2004 (11) SCC 410).
>
> [Emphasis supplied]

The Hon'ble Supreme Court has held in the case of ***Nagbhushan*** *versus* ***State of Karnataka***[6], as under:

"5.2 Before considering the appeal on merits, the law on

[6] 2021 (5) SCC 222

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. 1973 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 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 VS**. 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.

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

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

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of

criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

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)

5.2.2 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)

5.2.3 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.

5.3 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., 1973 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 re-appreciate 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."

31.2. 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 re-appreciate 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.

31.3. 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]

This Court in ***Karan Anand*** *versus* ***Kamal Bakshi***[7], held as under:-

> "5. In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary

[7] 2015 (4) R.C.R. (Crl.) 595

> to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.
>
> [Emphasis supplied]

This Court in ***Rekha*** *versus* ***State of Haryana & another***[8], held as under:-

> "13.While granting the leave applied for, this Court is to bear in mind 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 principles of criminal jurisprudence that every person is presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured acquittal, the presumption of his innocence is certainly not weakened but re-inforced, reaffirmed and strengthened by the trial Court. When two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."
>
> [Emphasis supplied]

(16) The judgments of the Hon'ble Supreme Court and this Court are to the effect that while an Appellate Court has full power to review, re- appreciate and reconsider the evidence upon which the order of acquittal is founded, it is equally true that there is a double presumption in favour of the innocence of the accused, firstly on account of the presumption of innocence available to an accused and secondly on account of the fact that the competent Court has acquitted the accused and therefore, if two reasonable conclusions were possible on the basis of the evidence on record, the Appellate Court should not

[8] 2019 (4) R.C.R. (Crl.) 294

disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court. However, where the judgment appealed against is totally perverse and the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant or inadmissible material, then the Appellate Court would be well within its powers to interfere with the said findings and set them aside.

(17) In view of the detailed discussion hereinabove as also the law enunciated by the Hon'ble Supreme Court and this Court, the view taken by the Trial Court while acquitting the accused is a reasonable view based on the evidence on record, cannot be said to be perverse and as such is not required to be interfered with.

(18) Therefore, this Court sees no reason to interfere with the well reasoned judgment of the Trial Court and hence the application for grant of leave to appeal is hereby dismissed.

Divya Gurnay