GIRIJA PRASAD (DEAD) BY LRS. A

v.

STATE OF MADHYA PRADESH

AUGUST 27, 2007

[C.K. THAKKER AND TARUN CHATTERJEE, JJ.] B

Penal Code, 1860:

s. 161—Prosecution of accused u/s 161 IPC and s.5(1)(d) r/w s.5(2) of Prevention of Corruption Act—Accused caught by trap party accepting money from complainant—Plea of "false involvement" and "total denial" by accused—Money said to have been accepted on behalf of his senior officer—Acquittal by trial court—Conviction by High Court—Held, High Court wholly justified in setting aside acquittal and recording conviction—There being positive finding by both Courts below of accused accepting money, presumption u/s 4 of Prevention of Corruption Act would get attracted—It was also inmaterial whether acceptance of money by accused was for himself or for someone else—Prevention of Corruption Act, 1947—ss. 5(1)(d) and 5(2)—Presumption. C D

Evidence: E

Evidence of Police official—Trial court termed complainant and police official as interested witnesses and discarded their evidence—Held, credibility of witness has to be tested on touchstone of truthfulness and trustworthiness—No infirmity attaches to testimony of police officials merely because they belong to police force. F

Code of Criminal Procedure, 1973:

Appeal against acquittal—High Court in appeal setting aside acquittal and recording conviction—Held: Appellate court had every power to reappreciate, review and reconsider the evidence as a whole—On facts, High Court justified in setting aside acquittal. G

The appellant was prosecuted under s. 161 IPC and s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act, 1947. The prosecution case was

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A that PW-4, the Divisional Ayurved Chikitsa Adhikari, accompanied by the appellant-accused, on a surprise visit to one Ayurvedic Chikisalaya, found that several members of the staff of the said chikitsalaya including the Ayurvedic Chikitsak himself (PW-1) were absent from duty. When Pw-1 approached PW-4 in order to explain his absence, the latter was said to have informed the B former either to pay him Rs. 500/- through the accused or to suffer suspension. PW-1 was said to have paid Rs. 300/- to the accused the same day and assured him to pay the remaining amount of Rs. 200/- on a particular day. PW-1 thereafter lodged a complaint in the office of the Lokayukt. On the specified day, the trap was laid and the accused was caught with the currency notes which had already been treated with chemical powder. The accused denied C the prosecution case before the trial Court. Two *panch* witnesses were also treated 'hostile'. As regards the evidence of PW-1, the complainant and PW-10, the Inspector of Special Police Establishment, the trial court observed that the same could not be relied upon as both were interested witnesses. However, on appeal by the State, the High Court set aside the order of acqittal and convicted the accused of the charges and sentenced him to simple D imprisonment for four months and to pay a fine of Rs. 200/- for offence u/s 161 IPC. Aggrieved, the accused filed the instant appeal. During the pendency of the appeal the accused died and his wife was allowed to prosecute the appeal under s. 394 Cr. P.C.

E It was contended for the appellant that since he was not in a position to oblige the complainant and the demand and acceptance was for and on behalf of PW-4, the trial Court rightly observed that the accused was merely made a 'scapegoat', and the High Court erred in disturbing the order of acquittal: and that the trial Court rightly discarded the evidence of PWs 1 and 10 holding them as interested witnesses. It was also submitted that the accused having F died, if conviction and sentence were set aside, the family members of deceased accused would be able to get the retrial benefits,

Dismissing the appeal, the Court

HELD : 1. The High Court was wholly justified in setting aside acquittal G of the accused and in recording an order of conviction against him. Both the Courts below recorded a positive finding that the accused accepted an amount of Rs. 200/- from PW-1, the complainant. Therefore, Section 4 of the Act got attracted and presumption came into play against accused. There was no rebuttal by the accused by leading any evidence whatsoever. The defence was H of 'total denial' and 'false involvement'. Hence, the doctrine of 'preponderance

of probability' also had no application. It was also wholly immaterial whether the said acceptance of amount by the accused was for himself or for someone else. Even if an accused accepts the amount for 'someone else', in view of s. 161 IPC and s. 5(1)(d) of the Prevention of Corruption Act, 1947, he commits the offence. It was also immaterial whether the accused was or was not in a position to oblige the complainant by preventing or delaying his suspension. [Para 16, 19, 22 and 30] [490-G-H; 491-D; 493-A; 496-G] A B

2.1. The trial court erred in discarding the evidence of PWs 1 and 10 on the ground that they were interest witnesses. It is well-settled that credibility of a witness has to be tested on the touchstone of truthfulness and trustworthiness. No infirmity attaches to the testimony of police officials merely because they belong to police force. The rule of prudence *may* require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence. [Para 23 andd 24] [493-E-G] C

Aher Raja Khima v. *State of Saurashtra,* AIR (1956) SC 217 and *Tahir* v. *State (Delhi),* [1996] 3 SCC 338, relied on. D

2.2. An appeal against acquittal is also an appeal under the Code of Criminal Procedure, 1973, and an appellate court has every power to reappreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial court, yet it is for the appellate court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence. [Para 27] [494-E, F] E F

Shivaji Sahabrao Bobade v. *State of Maharashtra,* [1973] 2 SCC 793 and *Chandrappa* v. *State of Karnataka,* [2007] 4 SCC 415: JT (2007) 3 SC 316, relied on.

Kunju Muhammed v. *State of Kerala,* [2004] 9 SCC 193: JT (2003) 7 SC 114; *Kashi Ram* v. *State of M.P.,* [2002] 1 SCC 71: JT (2001) 8 SC 650 and *Meena* v. *State of Maharashtra,* [2000] 5 SCC 21: JT (2000) 4 SC 521, Cited. G

3. Once it is found that the acquittal recorded by the trial court was *not* in consonance with law and the High Court was right in setting aside it and H

A **in convicting the accused, it is mere ' consequence' that the deceased-accused may not be held entitled to pensionary and other benefits. [Para 31] [497-B]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 885 of 2002.

B From the final Judgment and Order dated 17.04.2002 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 1070 of 1989

Shiv Sagar Tiwari for the Appellant.

C.D.Singh Merusagar Samantaray, Sunny Chowdhary and Ms. Vairagya C Vardhar for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. The present appeal was filed by appellant Girja Prasad (since deceased) against the judgment and final order passed by the D High Court of Madhya Pradesh, Jabalpur on April 17, 2002 in Criminal Appeal No. 1070 of 1989. By the said judgment, the High Court set aside an order of acquittal recorded by the II Addl. District & Sessions Judge, Jabalpur on March 15, 1989 in Special Criminal Case No. 40 of 1985 and convicted the appellant for an offence punishable under Section 161 of the Indian Penal Code ('IPC' for short) and Section 5(1)(d) read with Section 5(2) of the Prevention E of Corruption Act, 1947 (hereinafter referred to as 'the Act') and ordered him to undergo simple imprisonment for four months and to pay fine of Rs.200/- for the offence under Section 161, IPC. No separate sentence, however, was awarded to him for offence under the Prevention of Corruption Act.

F 2. Shortly stated, the facts are that the appellant (Girja Prasad) was working as Lower Division Clerk (LDC) in the Office of Divisional Ayurved Chikitsa Adhikari, Jabalpur Division, Jabalpur. It was the case of the prosecution that on September 20, 1983, Ramanarain Rajoria, Divisional Ayurved Chikitsa Adhikari, Jabalpur Division, Jabalpur (PW 4) paid surprise visit to Ayurvedic Chikitsalaya, Dindori, District Mandla and found that several members of the G staff were absent including the Ayurvedic Chikitsak himself. Consequently, he locked the Ayurvedic Chikitsalaya and returned to Jabalpur. Ramnarain Rajoria was accompanied by the accused Girja Prasad Gupta. On September 27, 1983, the complainant Anup Kumar (PW 1) came to Jabalpur and informed to the Divisional Ayurvedic Chikitsa Adhikari that he was on casual leave from H September 7, 1983 to September 11, 1983. He also stated that he had submitted

an application for extension of leave upto September 23, 1983 but the same was not available in the Office of Divisional Ayurvedic Chikitsa Adhikari, Jabalpur. On the same day, the Divisional Ayurvedic Chikitsa Adhikari went to Dindori and opened the lock of the Ayurvedic Chikitsalaya. It is alleged that PW 4-Ramnarain Rajoria asked the complainant that either he should pay an amount of Rs.500/- through accused Girja Prasad or should suffer suspension. The case of the prosecution was that Anup Kumar paid Rs.300/- on the same day to accused Girja Prasad at Dindori and assured him to pay the remaining amount of Rs.200/- on October 5, 1983 at Jabalpur.

3. According to the prosecution, PW1-complainant Anup Kumar was not willing to pay the remaining amount of Rs.200/- to the Divisional Ayurvedic Chikitsa Adhikari. He, therefore, lodged a complaint in writing in the office of Lokayukt at Jabalpur. In the said complaint, it was stated that the complainant wanted the corrupt officer to be caught red-handed. One J.M. Wadhwa (PW 8), an Assistant Engineer from P.H.E.D., a Gazetted Officer agreed to act as trap witness. The complainant and Wadhwa were asked to come on the next day i.e. on October 5, 1983 for arranging a trap. Accordingly, on October 5, 1983, the complainant Anup Kumar reached the Office of Lokayukt at 11.00 a.m. He was asked to bring the accused in a hotel so that he may be caught red-handed accepting the bribe. Two currency notes of Rs.100/- denomination each were kept in the pocket of the complainant duly treated with chemical powder and he was informed about the special signal after giving bribe to the accused, so that the accused can be caught. The complainant got back to the Lokayukt Office and informed the 'trap-party' that the accused had promised to come to Narmada Restaurant at 5.00 p.m. At 5.00 p.m., the complainant came with the accused in the restaurant and sat near the table of Wadhwa, panch witness, who was intimated about the currency notes treated with chemical powder. The accused then asked the complainant as to whether he had brought the amount. The complainant replied in the affirmative, took out two currency notes with his right hand and gave them to the accused. The complainant immediately gave signal to the 'trap party'. Inspector of Special Police Establishment, S.K. Tiwari (PW 10) and Wadhwa (PW 8), Gazetted Officer who was associated with the 'trap party' reached near the accused and asked him where the money was. The accused told them that the money was in the pocket of his shirt. The hands of the accused were washed in the solution of the sodium carbonate and liquid became '*matmaila*'. The pocket of the shirt of the accused was separately washed in the solution of the sodium carbonate and the liquid again became '*matmaila*'. A *panchnama* of the proceedings was drawn. Another *panch* was Jawahar Soni (PW 6). Liquid

A of the 'hand-wash' and 'pocket-wash' of the accused was separately sealed in two bottles and was sent to the Forensic Science Laboratory. On analysis, it was found by the Chemical Examiner that the 'pocket-wash' of the shirt of the accused was having traces of phenolphthalein powder. Sanction for prosecution of the accused was granted by the State Government. Charge sheet was submitted before the Special Judge. Investigation was conducted and the B accused was charged for offences punishable under Section 161, IPC and Sections 5(1)(d) and 5(2) of the Act.

4. The prosecution, in order to prove the case against the accused, *inter alia* examined PW1-Anup Kumar- Complainant, PW 4-Ramnarain Rajoria, PW C 6-Jawahar Soni-*Panch* II, PW 8-J. M. Wadhwa-Panch I, PW 10-S.K. Tiwari-Inspector of Special Police Establishment. The case of the appellant-accused was of total denial. In his defence, he stated that he had been falsely implicated.

5. It may be stated that at the trial, both the *Panch* witnesses-Jawahar Soni-PW 6 and Wadhwa-PW 8 did not support the prosecution and were D treated 'hostile'. The fate of the case, therefore, hanged on two witnesses, PW 1-Anup Kumar-Complainant and PW 10-S.K. Tiwari-Inspector of Special Police Establishment. The Trial Court negatived the contention of the accused that sanction was not in accordance with law and the trial was vitiated. The Court, however, acquitted the accused holding that both the *Panchas* did not support the case of the prosecution. According to the prosecution, it was PW 4- E Ramnarain Rajoria, the Divisional Ayurvedic Chikitsa Adhikari who had asked the complainant to pay Rs.500/- to the accused that the complainant paid the said amount to him. The Trial Court, therefore, concluded that the money was to be paid to PW 4-Ramnarain Rajoria who was not arrayed as accused and against whom no proceedings had been initiated.

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6. Regarding evidence of PW 1-Anup Kumar- Complainant and PW 10-S.K. Tiwari-Inspector of Special Police Establishment, the Court stated that their evidence could not be relied upon since they were 'interested' witnesses.

7. The Court also observed that the accused was merely a Clerk and he G was not in a position to oblige the complainant by not placing him under suspension. The power to suspend was only with Ramnarain Rajoria-PW 4, and the 'main work' was to be done by Ramnarain Rajoria, but it was not clear under what compelling circumstances, no prosecution was launched against Ramnarain Rajoria. The Court also observed that presumption under Section 4(1) of the Act was not available to the prosecution as the amount paid by H the complainant was to be given to PW4-Ramnarain Rajoria. Accordingly, the

Trial Court acquitted the accused.

8. The State preferred an appeal against the acquittal and the High Court, as observed earlier, set aside the order of acquittal and convicted the accused for the offences with which he was charged. The said conviction has been challenged by the accused in this Court.

9. On August 2, 2002, notice was issued by this Court. On September 2, 2002, leave was granted and the accused was ordered to be released on bail. The matter was thereafter placed for final hearing.

10. On August 1, 2007, when the matter was placed before us for final hearing, it was stated that during the pendency of the appeal, Girja Prasad (original appellant-accused) died. It was stated that Smt. Munni Bai, widow of deceased Girja Prasad had filed an application under proviso to sub-section (2) of Section 394 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') to allow her to continue the appeal by seeking leave of this Court. The said provision confers right on near relatives of the accused who is convicted and sentenced to imprisonment and who dies during the pendency of the appeal to continue the appeal in certain cases by applying to the Court within thirty days of the death of the appellant. Such application was filed by Munni Bai. The Registry of this Court, however, raised an objection that there was delay of 149 days in filing the application. After hearing learned counsel for the parties, we condoned delay, granted the prayer of applicant-Munni Bai and allowed her to continue the appeal. We, thereafter, heard learned counsel for the parties.

11. The learned counsel for the appellant contended that the High Court was wholly wrong in allowing the appeal against an order of acquittal and in convicting the deceased-accused for offences punishable under Section 161, IPC and Section 5(1)(d) read with Section 5(2) of the Act. It was submitted that the Trial Court was right in acquitting the accused, particularly when no prosecution was lodged against PW 4-Ramnarain Rajoria who was the main culprit and for whom the amount of Rs.200/- was alleged to have been accepted by the accused. It was also submitted that the Trial Court was right in observing that no independent witness supported the prosecution and only 'interested' version was placed before the Court in the form of deposition of PW 1-Anup Kumar-Complainant and PW 10-S.K. Tiwari, Inspector. Both independent panchas (PW 8-Wadhwa and PW 6-Jawahar Soni) did not oblige the prosecution.

A 12. The counsel submitted that from the evidence, it could not be said that demand and acceptance of Rs.200/- by the accused was proved. But even if it was held proved, since the accused was not in a position to oblige the complainant and the demand and acceptance was for and on behalf of PW 4-Ramnarain Rajoria, the Trial Court was right in holding that the accused was merely made a 'scapegoat'.

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13. It was also urged that even if the High Court felt that the other view was possible, as per settled law, it ought not to have disturbed the order of acquittal.

C 14. Finally, it was submitted that during the pendency of the appeal in this Court, the accused had died and hence there is no question of sending the accused to jail. On the other hand, if the conviction is set aside, the family members of the deceased-accused would be able to get retiral benefits of the deceased.

D 15. The learned counsel for the respondent-State, on the other hand, supported the order of conviction passed by the High Court. According to him, the entire approach of the Trial Court was illegal and faulty. Once it is proved that the accused accepted the amount, it was immaterial whether he was in a position to oblige the complainant or not or whether the acceptance of amount was for him or for someone else. The Trial Court was, therefore, E not right in acquitting the accused on the ground that the accused accepted the amount for Ramnarain Rajoria-PW 4. Grievance was also made by the learned advocate that the Trial Court was legally wrong in discarding the evidence of PW 1-Anup Kumar-Complainant and PW 10-S.K. Tiwari-Inspector, characterizing them as 'interested' witnesses. It was, therefore, submitted that F the appeal deserves to be dismissed.

16. Having anxiously considered the rival contentions of the parties and having gone through the record of the case meticulously, we are of the view that the High Court was wholly justified in setting aside acquittal of the accused and in recording an order of conviction against him. From what is G stated above, it is clear that the Trial Court also believed the case of the prosecution that the amount of Rs.200/- was paid by PW1-Anup Kumar-Complainant to accused Girja Prasad which is clear form the following finding recorded in para 46 of the judgment;

"Thus from the above evidence from Anup Kumar, it becomes H clear that Anup Kumar entrusted Rs.200/- to the accused so that

accused Girja Prasad may give it to Shri Rajoria". A

17. The Court then proceeded to state;

"Clearly the acceptance of Rs.200/- currency notes by accused Girja Prasad, he was only innocent scarifying goat in the hands of Mr. Rajoria..." B

18. The Trial Court also observed:

"It goes without saying that accused Girja Prasad worked as innocent carrier to Rajoria misusing his post while performing his official duty or he adopted illegal means for that". C

19. To us, the learned advocate for the respondent-State is right in submitting that once it is proved that the amount has been received by the accused, presumption under Section 4 of the Act would get attracted. Section 4 of the Prevention of Corruption Act, 1947 (since repealed) provided for presumption where public servant accepted gratification other than legal D remuneration. Sub-section (1) of the said section was relevant and read as under;

"Presumption where public servant accepts gratification other than legal remuneration.—(1) Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code E (45 of 1860) or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof, it is provided that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) F or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate." G

20. The Trial Court observed that the presumption is not 'absolute', but is rebuttable and the accused can prove otherwise for getting rid of such presumption. This is true. But, in our view, the Trial Court lost sight of the fact that the case of the accused was of 'total denial' and of 'false involvement'. The presumption, in the circumstances, could not be said to have been H

A rebutted by the accused.

21. In our opinion, once the finding was recorded by the Trial Court that the accused had accepted the amount, it was wholly immaterial whether the said acceptance of amount was for him or for someone else. Even if an accused accepts the amount for 'someone else', he commits an offence. In this B connection, we may refer to both the provisions i.e. Section 161, IPC (before it was repealed by Section 31 of the Prevention of Corruption Act, 1988) and Section 5(1)(d) of the Prevention of Corruption Act, 1947 (before the said Act was repealed by the Prevention of Corruption Act, 1988).

C 161. *Public servant taking gratification other than legal remuneration* in respect of an official act.—Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, *for himself or for any other person,* any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing D or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government company referred to in section 21, or with any public servant, as such, shall be punished with E imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(emphasis supplied)

F 5 (1).*Criminal misconduct.*—(1) A public servant is said to commit the offence of criminal misconduct---

(a) to (c) ....

(d) if he, by corrupt or illegal means or by otherwise abusing his G position as public servant, obtains *for himself or for any other person* any valuable thing or pecuniary advantage.

(emphasis supplied)

22. It was, therefore, of no consequence whether the accused had H accepted the amount for and on behalf of Ramnarain Rajoria-PW 4. Once it

is proved that he accepted the amount of Rs.200/-, he cannot escape from criminal liability on a specious ground that he was made 'scapegoat' or was merely 'innocent carrier'. It was also immaterial whether the accused was or was not in a position to oblige the complainant by preventing or delaying his suspension. The case of the prosecution was that the complainant was asked to pay an amount of Rs.500/- by the accused and the said amount had been accepted by him in two installments, Rs.300/- at Dindori and Rs.200/- at Jabalpur where trap was successful.

23. We are equally unable to uphold the contention of the learned counsel for the appellant that the trial Court was right in not relying upon PW 1-Anup Kumar-Complainant and PW 10-S.K. Tiwari-Inspector of Special Police Establishment. The trial Court, it may be stated, discarded the evidence of these two witnesses by laying down the following proposition of law;

> "It goes without saying that Anup Kumar and Shri S.K. Tiwari were concerned only with the success of the trap and thus both these persons are interested witnesses. PW 10, Shri Tiwari is Inspector in Lokayukt Office therefore he is highly interested witness".

24. In our judgment, the above proposition does not lay down correct law on the point. It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

25. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in the leading case of *Aher Raja Khima* v. *State of Saurashtra*, AIR (1956) SC 217, Venkatarama Ayyar, J. stated:

A *"The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.* Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration".

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(emphasis supplied)

26. In *Tahir* v. *State (Delhi),* [1996] 3 SCC 338, dealing with a similar question, Dr. A.S. Anand, J. (as His Lordship then was) stated:

C "Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case".

D 27. Regarding setting aside acquittal by the High Court, the learned counsel for the appellant relied upon *Kunju Muhammed* v. *State of Kerala,* [2004] 9 SCC 193 : JT (2003) 7 SC 114, *Kashi Ram* v. *State of M.P.,* [2002] 1 SCC 71 : JT (2001) 8 SC 650 and *Meena* v. *State of Maharashtra,* [2000] 5 SCC 21 : JT 2000 (4) SC 521. In our opinion, the law is well settled. An appeal against acquittal is also an appeal under the Code and an Appellate Court has E every power to reappreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the Trial Court. But that is not the end of the matter. It is for the Appellate Court to keep in view the relevant principles of law, to reappreciate F and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence.

28. In *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* [1973] 2 SCC 793, dealing with a similar situation, a three Judge Bench speaking through V.R. Krishna Iyer, J. stated:

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"Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to

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the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. *Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community.* The evil of acquitting a guilty person light-heartedly as a learned author has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that *"a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent...."* In short, our jurisprudential enthusiasm far presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

(emphasis supplied)

29. Recently, in *Chandrappa* v. *State of Karnataka,* [2007] 4 SCC 415 : JT (2007) 3 SC 316, after considering the relevant provisions of the old Code (Code of Criminal Procedure, 1898) and the present Code (Code of Criminal Procedure, 1973) and referring to decisions of the Privy Council and of this Court, one of us (C.K. Thakker, J.) laid down certain general principles regarding powers of Appellate Court in dealing with appeal against an order of acquittal. In para 42 it was observed:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

A (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
B 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
C acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize 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
D of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence 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
E 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".

F 30. In the case on hand, as observed earlier, both the Courts below recorded a positive finding that the accused accepted an amount of Rs.200/-. In our opinion, therefore, Section 4 of the Act got attracted and presumption came into play against the accused. There was no rebuttal by the accused by leading any evidence whatsoever. The defence was of total
G denial and of false implication. Hence, the doctrine of 'preponderance of probability' also had no application. The Trial Court was, therefore, wrong in not invoking Section 4 and raising presumption. The Trial Court was also wrong in discarding the evidence of PW 1-Anup Kumar-Complainant and PW 10-S.K. Tiwari-Inspector observing that they were 'interested' witnesses and their testimony could not be relied upon. If it is so, in our judgment, the High
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Court was justified in setting aside the order of acquittal and in convicting the accused for the offences with which he was charged. A

31. We appreciate the anxiety of the learned counsel for the appellant that if the conviction of the deceased is upheld by this Court, the deceased may not be held entitled to pensionary and other benefits. We are, however, helpless. Once we are satisfied that the acquittal recorded by the Trial Court was not in consonance with law and the High Court was right in setting aside it and in convicting the accused, it is a mere 'consequence' which cannot be helped. The argument of 'sympathy', therefore, does not impress us and cannot carry the case of the appellant-applicant herein further. B

32. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed. C

R.P. Appeal dismissed.