

STATE OF U.P.

v.

AWDHESH

(Criminal Appeal No. 803 of 2001)

SEPTEMBER 9, 2008

**[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB  
ALAM, JJ]**

*Code of Criminal Procedure, 1973:*

*s. 378 – Appeal against acquittal – Conviction by trial court u/s 396 IPC – Acquittal by High Court – HELD: High Court has rightly noticed the discrepancies and inconsistencies in prosecution evidence – A person has a profound right not to be convicted of an offence which is not established by evidential standard of proof beyond reasonable doubt – Keeping in view the principles regarding power of appellate court while dealing with an appeal against order of acquittal, and the view of the High Court being a possible one, the judgment of High Court requires no interference – Penal Code, 1860 – s.396 – Constitution of India, 1950 – Article 136.*

**A case u/ss. 396 and 314 IPC was registered against the respondent and two others in connection with a dacoity committed at about mid day for about 2-3 hours by 16-17 dacoits in the house of PW-2 and PW-9, both brothers, wherein their another brother was killed and some of the family members were injured. One of the accused absconded and the other died. The trial court convicted the respondent u/s 396 IPC and sentenced him to imprisonment for life. But, the High Court acquitted the respondent. Aggrieved, the State filed the instant appeal.**

**Dismissing the appeal, the Court**

**HELD:1.1 The parameters for dealing with an appeal**

A against acquittal have been laid down by this Court in several cases. In the case of *Chandrappa\**, the Court has culled out general principles regarding powers of appellate court while dealing with an appeal against order of acquittal. [para 7 and 37] [276 C-D 292-C]

B *\*Chandrappa and Ors. v. State of Karnataka 2007 (4) SCC 415; Prandas v. State AIR 1954 SC 36; Atley v. State of U.P. AIR 1955 SC 807; Sanwat Singh v. State of Rajasthan (1961) 3 SCR 120; Bhagwan Singh v. State of M.P. (2002) 4 SCC 85; and Harijana Thirupala v. Public Prosecutor, High Court of A.P. (2002) 6 SCC 470 – relied on.*

C *Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225; and Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606 – referred to.*

D *Nur Mohd. v. Emperor AIR 1945 PC 151; and Sheo Swarup v. R. Emperor (1934) 61 IA 398 – referred to.*

E 1.2 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. [para 12] [278 E-G]

F *Surajpal Singh v. State 1952 SCR 193; Ajmer Singh v. State of Punjab 1953 SCR 418; M.G. Agarwal v. State of Maharashtra (1963) 2 SCR 405; Shivaji Sahabrao Bobade v. State of Maharashtra 1973 (2) SCC 793; and K. Gopal Reddy v. State of A.P (1979) 1 SCC 355 – relied on.*

G *Aher Raja Khima v. State of Saurashtra (1955) 2 SCR 1285; Allarakha K. Mansuri v. State of Gujarat (2002) 3 SCC 57; Kallu v. State of M.P. (2006) 10 SCC 313 – referred to.*

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1.3 In the instant case, the High Court primarily acquitted the accused on the premises that admittedly accused 'BS' and 'JS' on the one hand, and PW-2 and the deceased, on the other, were in inimical terms; the respondent happened to be the brother-in-law of accused 'BS' and the trial court lost sight of the enmity aspect; that on the information of the village chowkidar (PW-3), the case was registered against unknown persons and no one was named as accused; that it was only when PW-2 submitted a written report to the Investigating Officer that the name of the respondent along with two others was indicated; that PWs 11 and 12 admitted that they did not know the respondent, yet they deposed as if they were acquainted with him; that while some of the alleged dacoits were stated to have covered their faces to conceal their identity, the three named accused, who were known, did not try to cover their faces; that the witnesses on hearing about the decoity had rushed to the Police Station and had no occasion to know the names of the accused persons. [para 4-7] [275 A-H; 276 A]

1.4 A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Doubts would be called reasonable if they are free from a zest for abstract speculation. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. [para 38-39] [293-C]

"The Mathematics of Proof II": Glanville Williams, *Criminal Law Review*, 1979, by Sweet and Maxwell, p.340 (342) – referred to.

1.5 The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an

A unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. [para 40] [294 C-E]

C *State of U.P. v. Krishna Gopal* 1988 (4) SCC 302; *Krishnan and Anr. v. State represented by Inspector of Police* 2003 (7) SCC 56 – relied on.

D 2. In the instant case, though the judgment is not happily worded and some of the reasonings are not legally supportable but the ultimate conclusion is a possible view and, therefore, the same is not interfered with. [para 42] [294-F]

#### Case Law Reference

E	(1934) 61 IA 398	referred to	para 14
	AIR 1945 PC 151	referred to	para 18
	AIR 1954 SC 36	relied on	para 19
	1952 SCR 193	relied on	para 21
F	1953 SCR 418	relied on	para 22
	AIR 1955 SC 807	relied on	para 22
	(1961) 3 SCR 120	relied on	para 26
	(1963) 2 SCR 405	relied on	para 27
G	1973 (2) SCC 793	relied on	para 28
	(1979) 1 SCC 355	relied on	para 30
	(1996) 9 SCC 225	referred to	para 31
	(2002) 3 SCC 57	referred to	para 32
H	(2002) 4 SCC 85	relied on	para 33

(2002) 6 SCC 470	relied on	para 34	A
(2003) 12 SCC 606	referred to	Para 35	
(2006) 10 SCC 313	referred to	para 36	
2007 (4) SCC 415	relied on	para 37	
1988 (4) SCC 302	relied on	para 40	B
2003 (7) SCC 56	relied on	para 41	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 803 of 2001

From the final Judgment and Order dated 14.11.2000 of  
the High Court of Judicature at Allahabad in Criminal Appeal  
No. 1564 of 1980

S.N. Pandey, Anil Kaushik and Chandra Prakash Pandey  
for the Appellant.

Vishwajit Singh for the Respondents.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to  
the judgment of a Division Bench of the Allahabad High Court  
setting aside the conviction of the respondent for offence  
punishable under Section 396 of the Indian Penal Code, 1860  
(in short the 'IPC') as was recorded by learned Vth Additional  
Sessions Judge, Fatehpur. The respondent was sentenced to  
imprisonment for life by the said judgment; but he was acquitted  
of the charge relating to offence punishable under Section  
314 IPC.

2. Background facts in a nutshell are as under:

A dacoity was committed on 9.5.1973 at about mid day  
for about 2-3 hours in the house of three brothers namely  
Ramdas (PW-9), Har Prasad (PW-2) and Hiralal (hereinafter  
referred to as the 'deceased') in village Palia Buzurg within the  
area of police station Hathgaon, district Fatehpur. It was alleged  
that about 16-17 dacoits successfully decamped with cash,

A jewellery, ornaments, firearms etc. During the course of commission of dacoity, Hiralal, Mahesh Chandra and Smt. Mahabiria sustained injuries of whom Hiralal died.

B While dacoity was in operation, the matter was reported orally at police station, Hathgaon by village chowkidar Ram Ratan (P.W. 3) on the same day at 1.30 P.M. wherein none was named. Head Moharrir Fateh Bahadur Singh (P.W. 1) recorded the report in chick register and registered case under Section 395/397 IPC. Station Officer Yadram Verma (P.W. 29) took up investigation and he immediately proceeded to the scene of  
C occurrence. He met injured Hiralal, Mahesh Chandra and Smt. Mahabiria on the way. He got the said injured sent for their medical examination with "chithi majroobi". When the injured persons were being taken to hospital, Hiralal succumbed to his injuries. The constable who was escorting the injured then gave  
D information at police station about the death of Hiralal, whereupon case was converted to one under Section 396 IPC.

E When the investigating officer reached the place of occurrence, Har Parsed (P.W. 2) handed over to him a list of stolen articles and also a report giving out details of commission of dacoity in his house wherein he named three persons, namely  
F respondent Awdhesh, Ram Rattan alias Jhallar and Babu Singh. The investigating officer recorded the statements of witnesses on 10.5.1973, arrested named as well as some unknown persons during the course of investigation and some stolen articles were alleged to have been recovered from respondent Awdhesh and other accused. On completion of investigation charge sheet was submitted.

G 3. Since the accused persons abjured guilt they were put on trial. It is to be noted that originally three persons were named as accused and reference was made to 9 unknown persons. One of them died during trial, and one died during pendency of the appeal before the High Court. Respondent was accused  
H No.4. In order to further its version prosecution examined 29 witnesses. Placing reliance on testimony of Har Prasad (PW-2),

Ram Lakhan (PW-7), Smt. Sheo Sakhi (PW-11) and Smt. Ram Rati (PW-12) the trial Court directed conviction as noted above.

4. Stand of the appellant before the High Court was that accused persons were admittedly on inimical terms with Har Prasad (PW-2) and it was a specific case that accused Babu Singh had absconded and did not face trial. He was on inimical terms with the deceased and PW-2. Respondent Awdhesh happened to be brother in law of Babu Singh. The trial Court held that the accusations have been established. In appeal before the High Court it was noted that the enmity aspect was lost sight of by the Trial Court. In any event, for a long time no witness supposedly spoke about accused Awdhesh. Though the village Chowkidar, Ram Ratan (PW-3) reported the matter to the police station on the basis of which Crime case No.30 was registered, no one was named as accused and the case was registered against unknown persons. Only when a written report was submitted by Har Prasad (PW-2) to the investigating officer, name of respondent was indicated alongwith Babu Singh and Jhallar Singh. It was pointed out that though PW-2 was shouting that three named persons were committing dacoity, in the report submitted by PW-3 the names were not given. Reference was also made to the evidence of Ram Lakhan (PW-4) who admitted that he never mentioned the names of the three persons whose names appeared in the report given by PW-2. With reference to the evidence of Smt. Sheo Sakhi, the High Court noticed that she did not know Awdesh, yet stated as if she was acquainted with him. Her statement in the cross examination was highlighted by the High Court. Similar was the position regarding Smt. Ram Rati (PW-12). The investigating officer stated that when he was going to the place of occurrence, he had met the deceased and two other persons who received injuries in the occurrence. They were Mahesh Chandra and Smt. Mahabiria. He had a talk with them and he sent them for medical examination. But till that time also the names of Awdhesh, Babu Singh and Jhallar Singh were not disclosed. Primarily, on these premises the High Court directed acquittal.

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A 5. The High Court also referred to the fact that while some of the alleged dacoits covered their faces to conceal the identity; the three named accused persons who were known did not try to cover their faces.

B 6. Learned counsel for the appellant-State submitted that the reasoning indicated by the High Court does not justify the order of acquittal. Most of the reasonings are based on surmises and conjectures. Particular reference is made to the evidence of PW-3. The High Court found that in the report submitted by PW-2 there was no reference to the three named accused persons.

C 7. It is pointed out that the witnesses on hearing about the dacoity had rushed to the police station and had no occasion to know the names of accused persons. The parameters for dealing with an appeal against judgment of acquittal have been laid down by this Court in several cases.

D 8. It would be appropriate to consider and clarify the legal position first. Chapter XXIX (Sections 372-394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. E Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376). Section 377 permits appeals by the State for enhancement of sentence. Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

F "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 G H 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. A
- (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. B C
- (3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court. D
- (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. E
- (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. F
- (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). G H

A 9. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

B 10. 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.

D 11. Bare reading of Section 378 of the Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to reappreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

F 12. 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.

H 13. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point.

14. The first important decision was rendered by the Judicial Committee of the Privy Council in *Sheo Swarup v. R. Emperor* (1934) 61 IA 398). In *Sheo Swarup* the accused were acquitted by the trial court and the local Government directed the Public Prosecutor to present an appeal to the High Court from an order of acquittal under Section 417 of the old Code (similar to Section 378 of the Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some perversity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the Code of any limitation or restriction on the High Court in exercise of powers as an Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

15. Lord Russel summed up the legal position thus:

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A "There is, in their opinion, no foundation for the view,  
apparently supported by the judgments of some courts in  
India, that the High Court has no power or jurisdiction to  
reverse an order of acquittal on a matter of fact, except in  
cases in which the lower court has 'obstinately blundered',  
B or has 'through incompetence, stupidity or perversity'  
reached such 'distorted conclusions as to produce a  
positive miscarriage of justice', or has in some other way  
so conducted or misconducted itself as to produce a  
glaring miscarriage of justice, or has been tricked by the  
defence so as to produce a similar result."

C 16. His Lordship, then proceeded to observe: (IA p.404)  
"Sections 417, 418 and 423 of the Code give to the High  
Court full power to review at large the evidence upon which  
the order of acquittal was founded, and to reach the  
D conclusion that upon that evidence the order of acquittal  
should be reversed. No limitation should be placed upon  
that power, unless it be found expressly stated in the Code "

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

E "But in exercising the power conferred by the Code and  
before reaching its conclusions upon fact, the High Court  
should and will always give proper weight and  
consideration to such matters as (1) the views of the trial  
Judge as to the credibility of the witnesses; (2) the  
F 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  
G a judge who had the advantage of seeing the witnesses.  
*To state this, however, is only to say that the High Court  
in its conduct of the appeal should and will act in  
accordance with rules and principles well known and  
recognised in the administration of justice.*"

H (emphasis supplied)

18. In *Nur Mohd. v. Emperor* (AIR 1945 PC 151), the Committee reiterated the above view in *Sheo Swarup* (*Supra*) and held that in an appeal against acquittal, the High Court has full powers to review and to reverse acquittal. A

19. So far as this Court is concerned, probably the first decision on the point was *Prandas v. State* (AIR 1954 SC 36) (though the case was decided on 14-3-1950, it was reported only in 1954). In that case, the accused was acquitted by the trial court. The Provincial Government preferred an appeal which was allowed and the accused was convicted for offences punishable under Sections 302 and 323 IPC. The High Court, for convicting the accused, placed reliance on certain eyewitnesses. B C

20. Upholding the decision of the High Court and following the proposition of law in *Sheo Swarup* (*supra*), a six-Judge Bench held as follows: D

“6. It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice.” E

(emphasis supplied) F

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

A        22. In *Ajmer Singh v. State of Punjab* (1953 SCR 418) the  
accused was acquitted by the trial court but was convicted by  
the High Court in an appeal against acquittal filed by the State.  
The aggrieved accused approached this Court. It was  
B        contended by him that there were “no compelling reasons” for  
setting aside the order of acquittal and due and proper weight  
had not been given by the High Court to the opinion of the trial  
court as regards the credibility of witnesses seen and examined.  
C        It was also commented that the High Court committed an error  
of law in observing that “when a strong ‘prima facie’ case is  
made out against an accused person it is his duty to explain the  
circumstances appearing in evidence against him and he cannot  
take shelter behind the presumption of innocence and cannot  
state that the law entitles him to keep his lips sealed”.

23. Upholding the contention, this Court said:

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

(emphasis supplied)

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

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

H        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."

(emphasis supplied)

25. In *Aher Raja Khima v. State of Saurashtra* (1955) 2 SCR 1285) the accused was prosecuted under Sections 302 and 447 IPC. He was acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking for the majority (2:1) stated: (AIR p. 220, para 1) "It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; *there must also be substantial and compelling reasons for holding that the trial court was wrong.*"

(emphasis supplied)

26. In *Sanwat Singh v. State of Rajasthan* (1961) 3 SCR 120, a three-Judge Bench considered almost all leading decisions on the point and observed that there was no difficulty in applying the principles laid down by the Privy Council and accepted by the Supreme Court. The Court, however, noted that appellate courts found considerable difficulty in understanding the scope of the words "substantial and compelling reasons" used in certain decisions. It was observed inter-alia as follows:

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

The Court concluded as follows:

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

F 27. Again, in *M.G. Agarwal v. State of Maharashtra* (1963) 2  
SCR 405, the point was raised before a Constitution Bench of this  
Court. Taking note of earlier decisions, it was observed as follows:

G "17. In some of the earlier decisions of this Court, however,  
in emphasising the importance of adopting a cautious  
approach in dealing with appeals against acquittals, it  
was observed that the presumption of innocence is  
reinforced by the order of acquittal and so, 'the findings of  
the trial court which had the advantage of seeing the  
H witnesses and hearing their evidence can be reversed

only for very substantial and compelling reasons': vide *Surajpal Singh v. State* (1952 SCR 193). Similarly in *Ajmer Singh v. State of Punjab* (1953 SCR 418), it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are 'very substantial and compelling reasons to do so'. In some other decisions, it has been stated that an order of acquittal can be reversed only for 'good and sufficiently cogent reasons' or for 'strong reasons'. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in *Sheo Swarup* the presumption of innocence in favour of the accused 'is not certainly weakened by the fact that he has been acquitted at his trial'. Therefore, the test suggested by the expression 'substantial and compelling reasons' should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in *Sanwat Singh v. State of Rajasthan* and *Harbans Singh v. State of Punjab* (1962 Supp 1 SCR 104) and so, *it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse.*"

(emphasis supplied)

28. Yet in another leading decision in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973 (2) SCC 793) this Court held that in India, there is no jurisdictional limitation on the powers of appellate court. "In law there are no fetters on the plenary

A power of the appellate court to review the whole evidence on  
which the order of acquittal is founded and, indeed, it has a duty  
to scrutinise the probative material de novo, informed, however,  
by the weighty thought that the rebuttable innocence attributed  
B to the accused having been converted into an acquittal the  
homage our jurisprudence owes to individual liberty constrains  
the higher court not to upset the holding without very convincing  
reasons and comprehensive consideration.”

C 29. Putting emphasis on balance between importance of  
individual liberty and evil of acquitting guilty persons, this Court  
observed as follows:

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

'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....' *In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents.*

(emphasis supplied)

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

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

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

G (emphasis supplied)

31. In *Ramesh Babulal Doshi v. State of Gujarat* (1996)  
9 SCC 225, this Court said:

H "While sitting in judgment over an acquittal the appellate  
court is first required to seek an answer to the question

whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.”

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

“7. The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to reappraise the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding.”

33. In *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85, the trial court acquitted the accused but the High Court convicted them. Negating the contention of the appellants that the High Court could not have disturbed the findings of fact of the trial court even if that view was not correct, this Court observed:

“7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the

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

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

F “12. Doubtless the High Court in appeal either against an  
order of acquittal or conviction as a court of first appeal  
has full power to review the evidence to reach its own  
independent conclusion. However, it will not interfere with  
an order of acquittal lightly or merely because one other  
G view is possible, because with the passing of an order of  
acquittal presumption of innocence in favour of the  
accused gets reinforced and strengthened. The High Court  
would not be justified to interfere with order of acquittal  
merely because it feels that sitting as a trial court it would  
H have proceeded to record a conviction; a duty is cast on

the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.”

35. In *Ramanand Yadav v. Prabhu Nath Jha* (2003) 12 SCC 606, this Court observed:

“21. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is 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 reappraise the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not”.

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

“8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence

AA and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. *Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.*"

(emphasis supplied)

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

- (1) An appellate court has full power to review, reappraise 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.

38. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another, a learned author says [see "The Mathematics of Proof II": Glanville Williams, *Criminal Law Review*, 1979, by Sweet and Maxwell, p.340 (342)]:

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

A 39. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

C 40. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in *State of U.P. v. Krishna Gopal* (1988 (4) SCC 302).

F 41. The above position was highlighted in *Krishnan and Anr. v. State represented by Inspector of Police* (2003 (7) SCC 56).

G 42. In the present case, though the judgment is not happily worded and some of the reasonings are not legally supportable but the ultimate conclusion is a possible view. That being so, we decline to interfere in this appeal which is dismissed. The bail bond executed in the present case by the respondent shall stand discharged.

H R.P.

Appeal dismissed.