ACHHAR SINGH

v.

STATE OF HIMACHAL PRADESH

(Criminal Appeal Nos. 1140 –1141 of 2010)

MAY 07, 2021

[N.V. RAMANA, CJI, SURYA KANT AND ANIRUDDHA BOSE, JJ.]

Code of Criminal Procedure, 1973: s. 378 – Appeal in case of acquittal – Exercise of power by the High Court under – On facts, the High Court convicted two accused-appellants for offences u/s. 452, 326 and 323 and u/ss. 302 and 452 IPC, respectively, setting aside the acquittal by the trial court – Interference with – Held: High Court rightly interfered with the perverse findings of the trial court and prevented miscarriage of justice by convicting the appellants – High Court went through the consistent evidence against some of the accused which were overlooked by the trial court amid the chaos in evidence, and on basis of the evidence, convicted one accused u/s. 302 IPC and other u/ss. 326 and 323 IPC – Trial court erred in overlooking the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eye-witnesses belie their version – Trial court due to many contradictions failed to identify and appreciate material admissible evidence against the accused – Thus, the finding of the trial court in ignorance of the relevant material on record was perverse and called for interference from the High Court – Penal Code, 1860 – ss. 302, 323, 326, 452 – Evidence – Eye witnesses.

Criminal jurisprudence: Cardinal rule – Held: Every person is presumed to be innocent until proven guilty – It is obligatory on the prosecution to establish the guilt of the accused save where the presumption of innocence has been statutorily dispensed with – This presumption of innocence is doubled when a competent Court analyses the material evidence, examines witnesses and acquits the accused – When two reasonable and possible views arise, the one favourable to the accused is adopted – In such cases, interference is not thrusted unless perversity is detected in the decision-making

A *process – However, it cannot be interpreted that the "contours of appeal" against acquittal u/s 378 CrPC are limited to seeing whether or not the trial court's view was impossible – There is no bar on the High Court's power to re-appreciate evidence in an appeal against acquittal.*

B *Criminal trial: Appreciation of evidence – Held: Homicidal deaths cannot be left to the judgment of* god-judicium dei *– Court in their quest to reach the truth ought to make earnest efforts to extract the credibility – When the Court, despite its best efforts, fails to reach a firm conclusion, it extends the benefit of doubt.*

C *Evidence: Admissibility of – When witnesses tend to exaggerate – Held: In case of exaggerations, the court being mindful of distinction between truth and falsity, is duty bound to disseminate 'truth' from 'falsehood' – Evidence given by a witness cannot be discarded as a whole on the ground that it is exaggerated – It is only in a case where evidence are so inextricably intertwined that* D *in their separation no real evidence survives, that the whole evidence can be discarded.*

Words and phrases: Expression 'exaggeration' – Meaning of.

Dismissing the appeals, the Court

E **HELD: 1. The High Court was merited to interfere with the perverse findings of the trial court and has prevented miscarriage of justice by separating grain from the husks leading to the conviction of the appellants. AS's conviction under Sections 452, 326 and 323 IPC and BS's conviction under Sections 302** F **and 452 IPC by the High Court are maintained. [Para 37, 38] [267-B-D]**

2.1 It is fundamental in criminal jurisprudence that every person is presumed to be innocent until proven guilty, for criminal accusations can be hurled at anyone without him being a criminal. G **The suspect is therefore considered to be innocent in the interregnum between accusation and judgment. History reveals that the burden on the accuser to prove the guilt of the accused has its roots in ancient times. The Babylonian Code of Hammurabi (1792–1750 B.C.), one of the oldest written codes of law put the burden of proof on the accuser. Roman Law coined the principle**

H

of *actori incumbit (onus) probatio* (the burden of proof weighs on the plaintiff) i.e., presumed innocence of the accused. [Para 13][257-D-E]

2.2 A characteristic feature of Common Law Criminal Jurisprudence in India is also that an accused must be presumed to be innocent till the contrary is proved. It is obligatory on the prosecution to establish the guilt of the accused save where the presumption of innocence has been statutorily dispensed with, for example, under Section 113–B of the Evidence Act, 1872. Regardless thereto, the 'Right of Silence' guaranteed under Article 20(3) of the Constitution is one of the facets of presumed innocence. The constitutional mandate read with the scheme of the Code of Criminal Procedure, 1973 amplifies that the presumption of innocence, until the accused is proved to be guilty, is an integral part of the Indian criminal justice system. This presumption of innocence is doubled when a competent Court analyses the material evidence, examines witnesses and acquits the accused. Keeping this cardinal principle of invaluable rights in mind, the appellate courts have evolved a self–restraint policy whereunder, when two reasonable and possible views arise, the one favourable to the accused is adopted while respecting the trial court's proximity to the witnesses and direct interaction with evidence. In such cases, interference is not thrusted unless perversity is detected in the decision–making process. It is thus a well crystalized principle that if two views are possible, the High Court ought not to interfere with the trial court's judgment. However, such a precautionary principle cannot be overstretched to portray that the "contours of appeal" against acquittal under Section 378 CrPC are limited to seeing whether or not the trial court's view was impossible. It is equally well settled that there is no bar on the High Court's power to re-appreciate evidence in an appeal against acquittal. The CrPC does not differentiate in the power, scope, jurisdiction or limitation between appeals against judgments of conviction or acquittal and that the appellate court is free to consider on both fact and law, despite the self–restraint that has been ingrained into practice while dealing with orders of acquittal where there is a double presumption of innocence of the accused. [Paras 14, 15][257-G; 258-A-G]

2.3 The expressions "exaggeration" and "exaggerate" unambiguously suggest that the genesis of an 'exaggerated statement' lies in a true fact, to which fictitious additions are made so as to make it more penetrative. Every exaggeration, therefore, has the ingredients of 'truth'. No exaggerated statement is possible without an element of truth. On the other hand, expression false is also defined. There is, thus, a marked differentia between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded. [Para 24][262-A-D]

Cambridge Dictionary; Merriam-Webster; Concise Oxford Dictionary; Advance Law Lexicon; Oxford Concise Dictionary – **referred to.**

2.4 There is no gainsaid that homicidal deaths cannot be left to *judicium dei*. The Court in their quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of doubt is extended. [Para 26][263-B]

3.1 The trial court in the instant case rightly observed that the evidence was chaotic with regard to many accused persons and no definite view could be formed regarding their participation. The High Court also shared the view of the trial court and expressed concern regarding the exaggerations and contradictions within the evidence. Keeping in mind the attempts by the prosecution witnesses to implicate numerous people, the High Court delineated the strands of consistent evidence against some of the accused which were overlooked by the trial court amid the chaos. [Para 16][258-G; 259-A-B]

3.2 A meticulous reading of the statements makes it clear that even if the exaggerations of multiple axe blows being given to the deceased were discarded, the allegation that BS entered the house of the victims armed with an axe and hit SD on her head, and that SD died due to a head injury was consistent and undisputed throughout the FIR and the deposition by prosecution witnesses. The same is also supported by the post–mortem report stating one fatal injury to the head by a sharp–edged weapon and the medical officer's testimony that her injury could have been caused by the axe shown in Court. Considering this, the trial court's confusion as to who caused SD's fatal injury was unwarranted and uncalled for. The fact that BS executed an axe blow on SD's head knowing fully well that an axe blow on an old woman's vital body part would in all probability cause her death, justifies his conviction for the offence under Section 302 IPC. As for AS, the injuries sustained by BR (incised wounds on the face and posterior skull along with fracture in the facial bone) being a combination of grievous and simple injuries were opined to have been caused by both sharp and blunt edged weapons. Considering that all the witnesses have been consistent about AS's attack on BR with an axe, his conviction under Sections 326 and 323 IPC cannot be found faulty and deserves to be upheld. [Para 21, 22][261-A-E]

3.3 The appellants' contention that the testimony of P.W.1, P.W.11 or P.W.12 was wholly unbelievable and inconsistent with the evidence of the Doctor (P.W.3) and the post-mortem report, is unacceptable. The prosecution witnesses have given an over-exaggerated version of the injuries suffered by the deceased. They have, however, consistently deposed that the head injury which proved to be fatal, was caused by BS. Their statement, to this extent, is consistent and in conformity with the medical evidence on record. Despite the fact that the presence of many persons inside the room of occurrence created chaos and some of such persons were bystanders or fence sitters, the eye-witnesses have been able to see that the fatal blow to the deceased was caused by none else than BS. [Para 23][261-E-G]

3.4 An eye-witness is always preferred to others. The statements of P.W.1, P.W.11 and P.W.12 are, therefore, to be

analysed accordingly, while being mindful of the difference between exaggeration and falsity. The truth can be effortlessly extracted from their statements. The trial court apparently fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eye-witnesses belie their version. In the instant case, the trial court being overwhelmed by many contradictions failed to identify and appreciate material admissible evidence against the appellants. The trial court misdirected itself to wrong conclusions. The finding of the trial court in ignorance of the relevant material on record was undoubtedly "perverse" and called for interference from the High Court. [Para 27–29] [263-C-E; 264-A]

3.5 While testing the 'possibility' of the conclusion drawn by the trial court, it has to be kept in mind that neither is there a reason on record nor have the appellants led any defence evidence to suggest as to why NT (P.W.1), his wife MD (P.W.11) or his father BR (P.W.12) would allow the real culprits to go scot–free and instead falsely implicate the appellants to settle scores on trivial issues. Rather, from the very beginning (FIR) till their last deposition, the complainant and other two injured/eye witnesses have been consistently accusing BS for committing murder of SD and AS for grievously hurting BR. Their ocular version is duly corroborated by the medical evidence on record. [Para 30][264-B-D]

3.6 The appellants submitted that since the axe was recovered from a public place it should not have been held to be in the possession of BS or that an axe was also recovered from NS (with whom parity was sought), it is clear from the facts that this was a farming community in rural Himachal where tools like axes are found in everyone's homes. The submission that the spot of incident was doubtful as there was a blood trail outside the house as deposed by P.W.16-ASI, carries no force. The presence of random blood marks elsewhere could not put in doubt the fact that the incident happened in the house of the complainant from where the same witness recovered sticks, blood–stained stone, glass splinters, pieces of wood and leftover food, etc. The fact that the ASI did not find it necessary or even material to investigate the blood marks shows that they had no legal impact

on the investigative conclusions. It is pertinent to note that independent witness P.W.14 also corroborated the recovery of broken pieces of the door, broken bulb, stones, blood–stained soil etc. from the house of the complainant. [Para 31][265-A-D]

3.7 Non-examination of many alleged bystanders is well-explained as it is clear from the facts that the complainant's family had prior litigation with some people in the village and most of them had socially boycotted the victim's family. The fact that nine persons who were initially accused in the FIR but not charge-sheeted subsequently, were not arrayed as prosecution witnesses is understandable. It is not necessary for the prosecution to examine every cited or possible witness. So long as the prosecution case can withstand the test of proof beyond doubt, non–examination of all or every witness is immaterial. [Para 32][265-D-F]

3.8 Similarly, the doubt cast on the actual time of death relying on P.W.3- doctor's statement does not inspire confidence as he besides stating that the time between the death and the post–mortem was 'within 10 hours', also deposed that the time between the death of SD and the injury was 'within 5-10 minutes', thereby supporting the prosecution witnesses who deposed that she died on the spot owing to the injuries. [Para 34][266-D]

3.9 As regards, NS, whose acquittal was upheld by the High Court also, it is imperative to point out that the FIR, though not an encyclopedia of the entire incident, is the most spontaneous account of it. It is very hard to believe that the complainant who walked seven hours overnight to reach the police station to record his account of the incident would forget to mention a fatal attack with a deadly weapon on his deceased mother by NS as well. Such a major omission on the complainant's part is very material to contradict his testimony in Court with regard to his belated allegations against NS. The medical evidence has also not substantiated such allegations against NS. The High Court has only acted on consistent and corroborated evidence against BS and AS which was conspicuously missing in the case of NS. [Para 35][266-E-G]

A **3.10 The submission relying on P.W.11's statement that the police could not have arrived before the FIR was filed does not defeat the case of the prosecution as it is a minor contradiction considering that P.W.16 ASI has deposed that he reached the house of the complainant at 1PM on 24.02.1996. The submission**
B **that there was no reason for BS to start a fight with his neighbours on the day of his daughter's wedding also does not help the appellants. The High Court has specifically pointed out that his daughter's wedding was solemnized two days prior to the date of the incident and there is no credible evidence as to whether a wedding function was underway at the relevant time. Even**
C **BS did not say so in his statement under Section 313 CrPC. [Para 36][266-G-H; 267-A-B]**

Murugesan v. State **(2012) 10 SCC 383 : [2012] 13 SCR 1;** *Aruvelu v. State* **(2009) 10 SCC 206 : [2009] 14 SCR 1081;** *Salim Akhtar v. State of UP* **(2003) 5**
D **SCC 499 : [2003] 3 SCR 470;** *SheikhHasib @ Tabarak v. State of Bihar* **(1972) 4 SCC 773;** *Dharma Rama Bhagare v. State of Maharashtra* **(1973) 1 SCC 537 : [1973] 3 SCR 92;** *State of UP v. Kishan Chand* **(2004) 7 SCC 629 : [2004] 3 Suppl. SCR 640;** *Leela Ram v.*
E *State of Haryana* **(1999) 9 SCC 525 : [1999] 3 Suppl. SCR 435;** *GangadharBehera v. State of Orissa* **(2002) 8 SCC 381 : [2002] 3 Suppl. SCR 183;** *Prabhu Dayal v. State of Rajasthan* **(2018) 8 SCC 127;** *Chandrappa v. State of Karnataka* **(2007) 4 SCC 415 : [2007] 2 SCR 630;** *State of Andhra Pradesh v. M.*
F *Madhusudhan Rao* **(2008) 15 SCC 582 : [2008] 14 SCR 1170;** *Raveen Kumar v. State of Himachal Pradesh* **2020 SCC OnLine SC 869;** Hari Chand v. State of Delhi **(1996) 9 SCC 112;** *Sucha Singh v. State of Punjab* **(2003) 7 SCC 643: [2003] 2 Suppl. SCR 35;** *Babu v.*
G *State of Kerala* **(2010) 9 SCC 189: [2010] 9 SCR 1039;** *Triveni Rubber & Plastics v. CCE* **1994 Supp (3) SCC 665:[1994] 3 Suppl. SCC 665;** *Basalingappa v. Mudibasappa* **(2019) 5 SCC 418: [2019] 6 SCR 555;** *Mohd. Rojali Ali v. State of Assam(2019) 19 SCC 567; Laltu Ghosh v. State of West Bengal (2019) 15 SCC 344;*

H

Khurshid Ahmed v. State of J&K **(2018) 7 SCC 429 : [2018] 6 SCR 1121;** *Shanmugam v. State* **(2013) 12 SCC 765 : [2013] 10 SCR 99;** *Sarwan Singh v. State of Punjab* **(1976) 4 SCC 369;** *Dalip Singh v. State of Punjab* **AIR 1953 SC 364 : [1954] SCR 145 – referred to.**

Woolmington v. Director ofPublic Prosecutions **[1935] AC 462 (HL) – referred to.**

Case Law Reference

[2012] 13 SCR 1	**referred to**	**Para 8**
[2009] 14 SCR 1081	**referred to**	**Para 8**
[2003] 3 SCR 470	**referred to**	**Para 8**
(1972) 4 SCC 773	**referred to**	**Para 8**
[1973] 3 SCR 92	**referred to**	**Para 8**
[2004] 3 Suppl. SCR 640	**referred to**	**Para 11**
[1999] 3 Suppl. SCR 435	**referred to**	**Para 11**
[2002] 3 Suppl. SCR 183	**referred to**	**Para 11**
(2018) 8 SCC 127	**referred to**	**Para 11**
[2007] 2 SCR 630	**referred to**	**Para 13**
[2008] 14 SCR 1170	**referred to**	**Para 13**
(1996) 9 SCC 112	**referred to**	**Para 25**
[2003] 2 Suppl. SCR 35	**referred to**	**Para 24**
[2010] 9 SCR 1039	**referred to**	**Para 28**
[1994] 3 Suppl. SCC 665	**referred to**	**Para 29**
[2019] 6 SCR 555	**referred to**	**Para 29**
[1954] SCR 145	**referred to**	**Para 30**
(2019) 19 SCC 567	**referred to**	**Para 30**
(2019) 15 SCC 344	**referred to**	**Para 30**
[2018] 6 SCR 1121	**referred to**	**Para 30**

A	**[2013] 10 SCR 99**	**referred to**	**Para 30**
	(1976) 4 SCC 369	**referred to**	**Para 33**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1140-1141 of 2010.

B From the Judgment and Order dated 12.05.2010 & 27.05.2010 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 281 of 1998.

With

Criminal Appeal No. 1144 of 2010

C

J.S. Attri, R. Basant, Sr. Advs., Rameshwar Prasad Goyal, R. Anand Padmanabhan, Vishnu Pazhanganat, Shashi Bhushan Kumar, Advs. for the Appellant.

Abhinav Mukerji, AAG. for the Respondent.

D The Judgment of the Court was delivered by

SURYA KANT, J.

The appellants Achhar Singh and Budhi Singh are aggrieved by the judgment and order dated 12.05.2010/27.05.2010 passed by the High Court of Himachal Pradesh whereby their acquittal by the Addl. Sessions
E Judge, Mandi dated 24.02.1998 has been set aside. Consequently, Achhar Singh has been convicted for offences under Sections 452, 326 and 323 of the Indian Penal Code, 1860 ("IPC") and sentenced to undergo rigorous imprisonment for five years along with fine, while Budhi Singh has been convicted for offences under Sections 302 and 452 IPC and sentenced
F to undergo imprisonment for life along with fine.

FACTS:

2. The prosecution case, in brief, is that on the night of 23.02.1996, the complainant Netar Singh's wife (Meera Devi, P.W.11) and mother (Swari Devi) had attended the marriage function in a nearby village at
G the house of the bridegroom with whom their neighbour Budhi Singh's daughter got married. Both the ladies returned home with *'Dhaam'* (traditional food served on social events). It is relevant to mention here that owing to their social boycott by Budhi Singh and some other villagers, Netar Singh's family did not attend any marriage function at the former's
H house. At about 8 pm when the complainant and his family were taking

Dhaam, Budhi Singh, Achhar Singh along with some other villagers shouted for the complainant and his father (Beli Ram, P.W.12) to come out. When they neared the door, they sensed the intention of the accused to kill the complainant party. The appellants and other villagers started pelting stones at the complainant party which forced them to rush back to the house and bolt their door. The assailants, however, broke open the door and entered the house bearing arms. Budhi Singh and Achhar Singh had axes, while the other accused were armed with sickles, spears and sticks. It is alleged that Budhi Singh executed an axe blow on Swari Devi's head causing her death on the spot and Achhar Singh hit Beli Ram with an axe due to which the latter fainted. The complainant was also allegedly beaten with sticks by other villagers after which he somehow managed to escape to the roof. Meera Devi begged the assailants for mercy and they left threatening that the complainant's family will be killed if they tried to leave the house.

3. Meanwhile, some villagers including Govind Ram (D.W.2) and Bahadur who were standing outside intervened and called on the accused persons to stop the violence whereupon the accused were forced to leave the place of incident. Afterwards, at around 2:00 AM the complainant went to the house of the Pradhan of Gram Panchayat (Beasa Devi - D.W.1) to inform her about the assault. She advised the complainant to contact the police. Since phone lines were down in the village and no buses plied at night, the complainant walked 24 kms to Jogindernagar police station and lodged FIR No. 36 of 1996 against sixteen villagers including the appellants at 9:30 AM on 24.02.1996. The police after investigation found that only seven persons out of the lot were involved in the attack against whom charge-sheet was filed. The accused persons were committed to stand trial for offence under Sections 147, 148, 452, 506, 323, 302 and 326 of the IPC.

4. The Additional Sessions Judge, Mandi acquitted all the accused vide judgment dated 24.02.1998. The trial Court while observing prior enmity and extensive litigation between the parties, did not rule out the possibility of false implication. The belatedly exaggerated allegations by the prosecution witnesses, were held to be an attempt by the complainant party to rope in as many people as possible. In regard to the role of present appellants, it was pointed out that according to the FIR, Swari Devi died owing to a single axe blow inflicted by Budhi Singh and the post-mortem report also showed only one head injury on her person.

A However, three prosecution eye-witnesses, namely, Netar Singh – P.W.1 (the complainant), Meera Devi – P.W.11 and Beli Ram – P.W.12 deposed that Budhi Singh gave two axe blows on her head and then Narinder Singh (co-accused) also hit the deceased's left ear with an axe twice. It was further noticed that while the complainant initially stated that his father was attacked on the face by Achhar Singh and Prakash (co-accused), but in their depositions the injured or eyewitnesses have attributed attacks to other co-accused persons also which were not corroborated by the medico legal report of Beli Ram. They also changed the nature of attack attributed to co-accused Prakash.

C 5. The trial Court also observed that eyewitness – Govind Ram (D.W.2) did not support the prosecution story and the Gram Panchayat Pradhan (Beasa Devi – D.W.1) stated that the complainant only informed her about a minor dispute after which she advised him to contact the police. Noting that no evidence was put forth by the complainant to establish the unavailability of telephone network in the neighbouring village, D the Court found the delay in registering the FIR to be fatal to the prosecution. The spot of occurrence was also doubted observing that bloodstains were noticed in the passage leading to the village. Keeping in view the conflicting exaggerations by the prosecution witnesses coupled with the allegation that about sixteen persons entered a small room and started attacking the complainant party with various deadly weapons, E the trial Court could not attribute any specific injury to any of the accused and thus acquitted them all by giving the benefit of doubt.

6. The High Court upon re-appreciation of the entire evidence, set aside the acquittal of the appellants Achhar Singh and Budhi Singh though it has upheld the acquittal of the rest of the five accused. While F acknowledging the contradiction between the contents of FIR, the witness testimonies and the medical reports, the High Court stated that a thread of consistent evidence against the appellants could still be extracted from the material on record, howsoever messy it was. Disregarding the exaggerations and improvements made by the complainant party, the G High Court observed that the allegation of the first axe blow by Budhi Singh on the head of Swari Devi was corroborated by the FIR, the prosecution witnesses, the post-mortem report which mentioned one fatal head injury by a sharp weapon and the recovery of axe from him. The High Court noted that the allegations against Achhar Singh with regard to his assault on Beli Ram with an axe were also consistent, and medical H evidence showed that some injuries could have been caused by an axe.

7. It was noticed that Govind Ram (D.W.2) being the son-in-law of the appellant Budhi Singh could not have deposed against him. While dealing with the delay in filing the FIR, the High Court considered the unavailability of buses at night, terrain of the area and the distance between the complainant's house and Jogindernagar police station (24 kms) while concluding that he could not have reached there until next morning. With regard to the trial Court's confusion about the spot of the occurrence, it was held that the evidence regarding the broken windowpanes, scattered articles in the room, plates with leftover food etc. was enough to conclude that the occurrence took place inside the room and the presence of random blood marks elsewhere ought not to be given undue credit. It was also observed that since the marriage of Budhi Singh's daughter was solemnized on 21.02.1996, no marriage function could have been underway at Budhi Singh's house on the night of the incident. While observing that the evidence on record did not suggest a common intention to kill Swari Devi or cause grievous hurt to Beli Ram, the appellants were held to be liable for their individual acts. Budhi Singh was thus convicted for offences under Sections 302 and 452 IPC and Achhar Singh was convicted for the offences under Sections 452, 326 and 323 IPC. They have now come to this Court against their conviction by the High Court.

CONTENTIONS:

8. Relying on ***Murugesan v. State***[1], Learned Senior Counsel for Budhi Singh contended that so long as the trial Court's view was a 'possible view', further scrutiny by the High Court in exercise of powers under Section 378 CrPC was not called for. While citing ***Aruvelu v. State***[2],it was urged that the trial Court's judgment cannot be set aside merely because the appellate Court's view is more probable and that to merit interference by the High Court there has to be perversity in the trial Court's judgment. It was also pressed that owing to their proximity to the witnesses, the trial Courts are at an advantage to judge the credibility of the witnesses and make intangible observations. Learned Senior Counsel highlighted the prosecution witnesses' tendency to exaggerate and falsely implicate, and pointed out that the four head injuries to the deceased as alleged by the eye-witnesses were falsified by the medical evidence which showed only one head injury. It was also

[1] (2012) 10 SCC 383.
[2] (2009) 10 SCC 206.

A accentuated that nine persons who were mentioned in the FIR were let go at the stage of charge as bystanders. The contention was that the prosecution also ought to have arrayed these nine persons as witnesses. ***Salim Akhtar v. State of UP***[3] was cited to urge that since the axe was recovered from a public place, it could not be held that Budhi Singh was in possession of the article recovered. Additionally, no conclusive presence of blood on the axes recovered was stated in the FSL report.

B

9. Highlighting the fact that there was a marriage function going on in Budhi Singh's house, it was urged that he had no reason to leave mid-celebration and attack his neighbours. Doubt was also cast on the actual spot of the incident contending that P.W.16 – ASI Jaisi Ram had deposed that there was a blood trail outside the house. It was further contended that Narinder Singh had also been accused of inflicting a head injury on the deceased with an axe and despite recovery of an axe from him, the High Court has not interfered with his acquittal. Suspicion was cast on the actual time of lodging the FIR (lodged at 9:30AM) as P.W.11 - Meera Devi had stated in her cross examination that the police arrived at 8-9 AM in the morning. It was then asserted that the police could not have arrived before the FIR had been lodged. Doubt was also cast on the exact time of death of the deceased as the prosecution witnesses stated that she died on the spot whereas according to P.W.3 – Dr. D.D. Rana who conducted the post-mortem, the time between the death and the post-mortem (on 25.02.1996 at 11am) was 'within 10 hours'.

C

D

E

10. Learned Senior Counsel for Achhar Singh also reiterated these very contentions and made a pointed reference to the statements of eye-witnesses according to which, some other accused besides Achhar Singh, too had hit Beli Ram with their respective weapons. It was claimed that trial Court rightly expressed its inability to identify the definite architect of individual injuries.

F

11. On the other hand, counsel for the State while placing reliance on ***Sheikh Hasib @ Tabarak v. State of Bihar***[4]&***Dharma Rama Bhagare v. State of Maharashtra***[5], canvassed that the FIR was not a substantive piece of evidence and could be used for contradicting or corroborating only its maker and not other witnesses. He contended that

G

[3] (2003) 5 SCC 499, ¶ 11-12.
[4] (1972) 4 SCC 773.
[5] (1973) 1 SCC 537.

H

the credibility of the witnesses cannot be called into question merely because they were related to the deceased (while citing ***State of UP v. Kishan Chand***[6]) or because there were minor discrepancies or exaggerations (relying on ***Leela Ram v. State of Haryana***[7]). While bringing out attention to this Court's observations in ***Gangadhar Behera v. State of Orissa***[8] and ***Prabhu Dayal v. State of Rajasthan***[9] it was urged that inconsistent evidence by the prosecution witnesses against one accused cannot be capitalised to give the benefit of doubt to another.

ANALYSIS:

12. The question which falls for consideration in these appeals is whether the High Court while exercising its powers under Section 378 of the Code of Criminal Procedure, 1973 ("CrPC") was justified in interfering with the acquittal by the trial Court?

13. It is fundamental in criminal jurisprudence that every person is presumed to be innocent until proven guilty, for criminal accusations can be hurled at anyone without him being a criminal. The suspect is therefore considered to be innocent in the interregnum between accusation and judgment. History reveals that the burden on the accuser to prove the guilt of the accused has its roots in ancient times. The Babylonian Code of Hammurabi (1792-1750 B.C.), one of the oldest written codes of law put the burden of proof on the accuser. Roman Law coined the principle of *actori incumbit (onus) probatio* (the burden of proof weighs on the plaintiff) i.e., presumed innocence of the accused. In ***Woolmington v. Director of Public Prosecutions***[10], the House of Lords held that the duty of the prosecution to prove the prisoner's guilt was the "golden thread" throughout the web of English Criminal Law. Today, Article 11 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights all mandate presumption of innocence of the accused.

14. A characteristic feature of Common Law Criminal Jurisprudence in India is also that an accused must be presumed to be innocent till the contrary is proved. It is obligatory on the prosecution to

[6] (2004) 7 SCC 629.
[7] (1999) 9 SCC 525.
[8] (2002) 8 SCC 381.
[9] (2018) 8 SCC 127.
[10] [1935] AC 462 (HL)

A establish the guilt of the accused save where the presumption of innocence has been statutorily dispensed with, for example, under Section 113-B of the Evidence Act, 1872. Regardless thereto, the 'Right of Silence' guaranteed under Article 20(3) of the Constitution is one of the facets of presumed innocence. The constitutional mandate read with the scheme of the Code of Criminal Procedure, 1973 amplifies that the presumption B of innocence, until the accused is proved to be guilty, is an integral part of the Indian criminal justice system. This presumption of innocence is doubled when a competent Court analyses the material evidence, examines witnesses and acquits the accused. Keeping this cardinal principle of invaluable rights in mind, the appellate Courts have evolved C a self-restraint policy whereunder, when two reasonable and possible views arise, the one favourable to the accused is adopted while respecting the trial Court's proximity to the witnesses and direct interaction with evidence. In such cases, interference is not thrusted unless perversity is detected in the decision-making process.

D 15. It is thus a well crystalized principle that if two views are possible, the High Court ought not to interfere with the trial Court's judgment. However, such a precautionary principle cannot be overstretched to portray that the *"contours of appeal"* against acquittal under Section 378 CrPC are limited to seeing whether or not the trial Court's view was impossible. It is equally well settled that there is no E bar on the High Court's power to re-appreciate evidence in an appeal against acquittal[11]. This Court has held in a catena of decisions (including ***Chandrappa v. State of Karnataka***[12], ***State of Andhra Pradesh v. M. Madhusudhan Rao***[13]and ***Raveen Kumar v. State of Himachal Pradesh***[14]**,**) that the CrPC does not differentiate in the power, scope, F jurisdiction or limitation between appeals against judgments of conviction or acquittal and that the appellate Court is free to consider on both fact and law, despite the self-restraint that has been ingrained into practice while dealing with orders of acquittal where there is a double presumption of innocence of the accused.

G 16. The trial Court in the instant case rightly observed that the evidence was chaotic with regard to many accused persons and no

---

[11] Sangappa v. State of Karnataka, (2010) 3 SCC 686, ¶ 10.
[12] (2007) 4 SCC 415, ¶ 42.
[13] (2008) 15 SCC 582, ¶ 20 – 21.
H [14] 2020 SCC OnLine SC 869, ¶ 11.

definite view could be formed regarding their participation. The High Court also shared the view of the trial Court and expressed concern regarding the exaggerations and contradictions within the evidence. Keeping in mind the attempts by the prosecution witnesses to implicate numerous people, the High Court delineated the strands of consistent evidence against some of the accused which were overlooked by the trial Court amid the chaos. While analysing the witness statements and other evidence, we will now consider whether the High Court did so correctly.

17. Complainant Netar Singh (P.W.1), deposed that when the accused persons broke open the door and entered their house, Budhi Singh, Achhar Singh, Narinder Singh were armed with axes, Prakash had a spear, Sodha Ram had a sickle and other accused (Jai Singh and Hem Singh) were bearing sticks. While mentioning the present appellants he said that *"Budhi Singh accused gave two axe blows on the head of my mother, while Narender accused gave two axe blows one above the left ear and second below the left ear of my mother, and my mother Swari Devi died on the spot... Achhar Singh and Sodha also gave blows of drat and axe to my father. As a result of the beatings my father became unconscious and fell down. Hem Singh and Jai Singh accused gave me danda blows".* It was also mentioned that the accused had broken the door, windows and utensils. He then described how he went to the Pradhan's house at 2:00 AM and later to the far away police station (Jogindernagar) on foot and lodged the FIR at about 8-9 AM the next morning. He also mentioned that prior animosity existed between the parties because Budhi Singh and Narinder Singh wanted to purchase the land where he had constructed a house and that his father - Beli Ram had previously filed a case against the accused persons in which they had been acquitted.

18. Meera Devi – P.W.11, the daughter in law of the deceased stated in her testimony that Budhi Singh and Narinder Singh were armed with axes, while Prakash carried a spear and Sodha Ram carried a sickle. She said that *"Budhi Singh accused gave two blows of axe on the head of my mother-in-law Smt. Swari Devi on which my mother-in-law raised cry. Narinder Singh accused gave two blows of axe on the ear of my mother-in-law and my mother-in-law fell down and died. Narinder Singh gave blow from backside of the axe to Beli Ram on his face and Achhar Singh gave blow of axe on the neck of*

Beli Ram. Sodha Ram gave drat blow on the leg of my father-in-law Beli Ram…Jai Singh and Hem Singh gave danda blow to my husband Netar Singh." She stated that her husband escaped to the roof, reported the matter to the Pradhan and came back with the police the next day. Her husband and father-in-law were taken for medical examination and her mother-in-law's body was sent for post-mortem. During her cross-examination, she mentioned that the police came at about 8-9AM in the morning.

19. Injured witness, Beli Ram (P.W.12) was also examined and he stated that Budhi Singh, Narinder and Achhar Singh came bearing axes, while Prakash had a spear, Sodha Ram had a sickle and Jai and Hem Singh were armed with sticks. While describing the attacks, he said that *"Budhi Singh gave two blows of axe on the head of my wife, Swari Devi and two blows of axe were given by Narinder near the ear of my wife and my wife died on the spot. Achhar Singh accused gave axe blow on the backside of my head while Sodha accused gave drat blow on my leg….Netar Singh was given beatings by Jai Singh and Hem Singh with danda and stones."* He added that his son escaped through the roof. It was mentioned that the accused persons had formed a committee to boycott them and thus nobody from the village gave evidence in their favour.He also disclosed that *"Narinder Singh accused also gave blow blunt side of the axe on my face near ear."* Thereafter, he fell unconscious and was medically examined at the hospital.

20. Dr. DD Rana, who conducted the post-mortem of the deceased and medically examined the injured (Netar Singh and Beli Ram) was examined as P.W.3. with regard to Swari Devi, he described one incised wound on the left temporal region, which he stated, could have been caused by the axe shown in Court. On medically examining Beli Ram, he stated that he found incised wounds on the face and the back of his skull, a lacerated wound on the right foot, fracture in the facial bone and a black eye. He said that the incised wounds were possible by the axe shown in Court and the rest were possible by stick blows. During cross-examination, he added that the incised injuries on Beli Ram could be inflicted by falling on a sharp-edged stone and other injuries were possible from falling on a hard surface. After medically examining Netar Singh (P.W.1), he is stated to have found abrasions on the right foot, left leg and forehead. He added that such injuries were possibly a result of stick blows and could also be from a fall.

21. A meticulous reading of the above statements makes it clear that even if the exaggerations of multiple axe blows being given to the deceased were discarded, the allegation that Budhi Singh entered the house of the victims armed with an axe and hit Swari Devi on her head, and that Swari Devi died due to a head injury was consistent and undisputed throughout the FIR and the deposition by prosecution witnesses. The same is also supported by the post-mortem report stating one fatal injury to the head by a sharp-edged weapon and the medical officer's testimony that her injury could have been caused by the axe shown in Court. Considering this, the trial Court's confusion as to who caused Swari Devi's fatal injury was unwarranted and uncalled for.

22. The fact that Budhi Singh executed an axe blow on Swari Devi's head knowing fully well that an axe blow on an old woman's vital body part would in all probability cause her death, justifies his conviction for the offence under Section 302 IPC. As for Achhar Singh, we find that the injuries sustained by Beli Ram (incised wounds on the face and posterior skull along with fracture in the facial bone) being a combination of grievous and simple injuries were opined to have been caused by both sharp and blunt edged weapons. Considering that all the witnesses have been consistent about Achhar Singh's attack on Beli Ram with an axe, his conviction under Sections 326 and 323 IPC cannot be found faulty and deserves to be upheld.

23. The appellants' contention that the testimony of P.W.1, P.W.11 or P.W.12 was wholly unbelievable and inconsistent with the evidence of the Doctor (P.W.3) and the post-mortem report, is unacceptable. As noticed earlier, the prosecution witnesses have given an over-exaggerated version of the injuries suffered by the deceased. They have, however, consistently deposed that the head injury which proved to be fatal, was caused by Budhi Singh. Their statement, to this extent, is consistent and in conformity with the medical evidence on record. Despite the fact that the presence of many persons inside the room of occurrence created chaos and some of such persons were bystanders or fence sitters, the eye-witnesses have been able to see that the fatal blow to the deceased was caused by none else than Budhi Singh.

24. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. Cambridge Dictionary defines "exaggeration" as *"the fact of making something larger, more important, better or worse than it really is"*. Merriam-Webster defines

A the term "exaggerate" as to *"enlarge beyond bounds or the truth"*. The Concise Oxford Dictionary defines it as *"enlarged or altered beyond normal proportions"*. These expressions unambiguously suggest that the genesis of an 'exaggerated statement' lies in a true fact, to which fictitious additions are made so as to make it more penetrative. Every exaggeration, therefore, has the ingredients of 'truth'. No exaggerated statement is possible without an element of truth. On the other hand, Advance Law Lexicon defines "false" as *"erroneous, untrue; opposite of correct, or true"*. Oxford Concise Dictionary states that "false" is *"wrong; not correct or true"*. Similar is the explanation in other dictionaries as well. There is, thus, a marked differentia between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded.[15]

25. Learned State counsel has rightly relied on ***Gangadhar Behera (Supra)*** to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, conviction can be based on it. This Court in ***Hari Chand v. State of Delhi***[16] held that:

> *"24. ...So far as this contention is concerned it must be kept in view that* ***while appreciating the evidence of witnesses in a criminal trial especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff.It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from***

[15] Sucha Singh v. State of Punjab, (2003) 7 SCC 643, ¶ 18.
[16] (1996) 9 SCC 112.

other evidence on record so that the acceptable part can be safely relied upon..."

(emphasis supplied)

26. There is no gainsaid that homicidal deaths cannot be left to *judicium dei*. The Court in their quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of doubt is extended.

27. An eye-witness is always preferred to others. The statements of P.W.1, P.W.11 and P.W.12 are, therefore, to be analysed accordingly, while being mindful of the difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial Court apparently fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eye-witnesses belie their version.

28. As regard to the appellants' contention that an appellate Court is not justified in reversing the trial Court's judgment unless it was found to be "perverse", it is important to point out that in the instant case, the trial Court being overwhelmed by many contradictions failed to identify and appreciate material admissible evidence against the appellants. The trial Court misdirected itself to wrong conclusions. Suffice it to cite ***Babu v. State of Kerala***[17] where this Court observed that:

"12. ...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...***"

(emphasis supplied)

29. There are numerous later decisions (including ***Aruvelu v. State (supra),Triveni Rubber & Plastics v. CCE***[18]and ***Basalingappa v.***

[17] (2010) 9 SCC 189.
[18] 1994 Supp (3) SCC 665, ¶ 3.

A ***Mudibasappa***[19]) where this Court has firmly held that a finding contrary to the evidence is "perverse". The finding of the trial Court in ignorance of the relevant material on record was undoubtedly "perverse" and ripe for interference from the High Court.

30. While testing the 'possibility' of the conclusion drawn by the
B trial Court, it has to be kept in mind that neither is there a reason on record nor have the appellants led any defence evidence to suggest as to why Netar Singh (P.W.1), his wife Meera Devi (P.W.11) or his father Beli Ram (P.W.12) would allow the real culprits to go scot-free and instead falsely implicate the appellants to settle scores on trivial issues. Rather, from the very beginning (FIR) till their last deposition, the
C complainant and other two injured/eye witnesses have been consistently accusing Budhi Singh for committing murder of Swari Devi and Achhar Singh for grievously hurting Beli Ram. Their ocular version is duly corroborated by the medical evidence on record. This Court in ***Dalip Singh v. State of Punjab***[20] opined that:

D
> ***"****26....****Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere*
E *fact of relationship far from being a foundation is often a sure guarantee of truth.* *However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of*
F *prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."*
>
> *(emphasis supplied)*

This decision has been usually followed by this Court in various cases such as, ***Mohd. Rojali Ali v. State of Assam***[21]***, Laltu Ghosh v.***
G ***State of West Bengal***[22]***, Khurshid Ahmed v. State of J&K***[23] *and* ***Shanmugam v. State***[24].

---

[19] (2019) 5 SCC 418, ¶ 31.
[20] AIR 1953 SC 364, ¶ 26.
[21] (2019) 19 SCC 567, ¶ 14.
[22] (2019) 15 SCC 344 ¶ 14.
H [23] (2018) 7 SCC 429, ¶ 29.
[24] (2013) 12 SCC 765, ¶ 13.

31. Coming to the arguments of Learned Senior Counsel for the appellants that since the axe was recovered from a public place it should not have been held to be in the possession of Budhi Singh or that an axe was also recovered from Narinder Singh (with whom parity was sought), it is clear from the facts that this was a farming community in rural Himachal where tools like axes are found in everyone's homes. The argument that the spot of incident was doubtful as there was a blood trail outside the house as deposed by P.W.16 - ASI Jaisi Ram, carries no force. The presence of random blood marks elsewhere could not put in doubt the fact that the incident happened in the house of the complainant from where the same witness recovered sticks, blood-stained stone, glass splinters, pieces of wood and leftover food, etc. The fact that the ASI did not find it necessary or even material to investigate the blood marks shows that they had no legal impact on the investigative conclusions. It is pertinent to note that independent witness P.W.14 - Lauhalu Ram also corroborated the recovery of broken pieces of the door, broken bulb, stones, blood-stained soil etc. from the house of the complainant.

32. Non-examination of many alleged bystanders is well-explained as it is clear from the facts that the complainant's family had prior litigation with some people in the village and most of them had socially boycotted the victim's family. The fact that nine persons who were initially accused in the FIR but not charge-sheeted subsequently, were not arrayed as prosecution witnesses is understandable. It is not necessary for the prosecution to examine every cited or possible witness. So long as the prosecution case can withstand the test of proof beyond doubt, non-examination of all or every witness is immaterial.

33. This Court in ***Sarwan Singh v. State of Punjab***[25] was of the view that:

> *"13.…The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution…* ***The law is well-settled that the prosecution is bound to produce only such witnesses as***

[25] (1976) 4 SCC 369, ¶ 13.

A ***are essential for unfolding of the prosecution narrative.*** *In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case.* ***It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters****. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit…"*

C *(emphasis supplied)*

34. Similarly, the doubt cast on the actual time of death relying on P.W.3 - Dr. D.D. Rana's statement does not inspire confidence as he besides stating that the time between the death and the post-mortem was 'within 10 hours', has also deposed that the time between the death D of Swari Devi and the injury was 'within 5-10 minutes', thereby supporting the prosecution witnesses who deposed that she died on the spot owing to the injuries.

35. Coming to the case of Narinder Singh, whose acquittal has been upheld by the High Court also, it is imperative to point out that the E FIR, though not an encyclopedia of the entire incident, is the most spontaneous account of it. It is very hard to believe that the complainant who walked seven hours overnight to reach the police station to record his account of the incident would forget to mention a fatal attack with a deadly weapon on his deceased mother by Narinder Singh as well. Such F a major omission on the complainant's part is very material to contradict his testimony in Court with regard to his belated allegations against Narinder Singh. The medical evidence has also not substantiated such allegations against Narinder Singh. The High Court has only acted on consistent and corroborated evidence against Budhi Singh and Achhar Singh which was conspicuously missing in the case of Narinder Singh.

G

36. Likewise, the contention relying on P.W.11's statement that the police could not have arrived before the FIR was filed does not defeat the case of the prosecution as it is a minor contradiction considering that P.W.16 - ASI Jaisi Ram has deposed that he reached the house of the complainant at 1PM on 24.02.1996. The argument that there was no

H

reason for Budhi Singh to start a fight with his neighbours on the day of his daughter's wedding also does not help the appellants. The High Court has specifically pointed out that his daughter's wedding was solemnized two days prior to the date of the incident and there is no credible evidence as to whether a wedding function was underway at the relevant time. Even Budhi Singh has not said so in his statement under Section 313 CrPC.

37. In light of the above discussion and upon an in-depth reading of the trial Court and High Court records, we are convinced that the High Court was merited to interfere with the perverse findings of the trial Court and has prevented miscarriage of justice by separating grain from the husks leading to the conviction of the appellants.

CONCLUSION:

38. For the above-stated reasons, the appeals are dismissed. Achhar Singh's conviction under Sections 452, 326 and 323 IPC and Budhi Singh's conviction under Sections 302 and 452 IPC by the High Court are maintained. Their bail bonds are cancelled and they are directed to undergo the remainder of their sentence.

Nidhi Jain Appeals dismissed.