State of Goa Vs Pandurang Mohite

Court: Supreme Court of India

Date of Decision: Dec. 8, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 372, 378, 417, 418, 423, 423(1)
Penal Code, 1860 (IPC) â€" Section 201, 302, 323, 392, 447

Citation: (2009) 1 ACR 899 : AIR 2009 SC 1066 : (2009) AIRSCW 222 : (2009) CLT 439 : (2008) 12 JT 541 : (2008) 16 SCALE 72

Hon'ble Judges: Mukundakam Sharma, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: A. Subhashyini, for the Appellant; K. Sarda Devi, for the Respondent

Final Decision: Dismissed

Judgement

Arijit Pasayat, J.
Challenge in these appeals is to the judgment of a Division Bench of Bombay High Court at Goa directing acquittal of the

respondent. The accused faced trial for offences punishable u/s 302, 392 and 201 of the Indian Penal Code, 1860 (in short the `IPC"). The

learned Additional Sessions Judge, Mapusa found the accused guilty of offence punishable under Sections 302, 392 and 201 IPC and convicted

him to undergo imprisonment for life, seven years and one years with different fines with default stipulations.

2. In appeals the High Court found the evidence to be inadequate and directed acquittal.

3. Prosecution version in a nutshell is as follows:

Chandrakant Mahadeshwar and his son Shyam Mahadeshwar (hereinafter referred to as the `deceased") had gone for the annual fair to sell

sweets at the village Zarme. On 1.3.1998, in the morning they were returning home. At about 7.30 A.M. when they reached at village Valpoi,

Shyam told his father that he would stay behind and father should proceed ahead to his house and that he would follow him after some time. So,

Chandrakant left behind Shyam at Valpoi and went to his Village at Thana. Till 1.00 p.m. on that day Shyam did not return home. So he started

searching for Shyam. Ultimately, on 2.3.1998, at about 8.30 a.m. he lodged report at the Valpoi Police Station that Shyam was missing. On the

basis of that report, the missing case No.6/98 was registered at the police station.

On 2.3.1998 itself when Chandrakant was at Valpoi, Ramjatan Vishwakarma (PW3) told him that he had taken Shyam and the accused to

Hedode Bridge on the previous day at about 7.15 a.m, and he had left them there. Ramjatan then took Chandrakant to the house of the accused,

but the accused was not there. The matter was also reported to the police. The police visited the house of the accused on 2.3.98 at about 11 a.m.,

but the accused was not there.

On 2.3.1998, at about noon time, when Chandrakant returned home, he saw that the accused was at his home and accused told him that Shyam

would be returning home by evening. Thereafter, the police came there. The accused was taken to the police station. There was one bicycle. It

was seized by the police.

On 2.3.1998 itself, the brother of the accused i.e. Baburao as well as brother-in-law of the accused i.e. Jaidev Paryekar were also called at the

police station and inquiries were made with them. A shirt worn by Baburao and a pant worn by Jaidev Paryekar were seized by the police under a

Panchanama.

The accused was interrogated and he made a statement that he would point out the place where dead body of Shyam was lying. Then the police,

panchas and the accused went by police jeep to Hedode Bridge. From there, the accused took them in a jungle at distance of about one and half

kilometre and pointed out to the dead body of the deceased. Since it was night time, Inspector Dessai who had taken the accused and the panchas

to that place, could not prepare the panchanama of the dead body and therefore, he kept some policemen to keep watch on the dead body and

returned to the police station.

On returning to the police station, inspector Dessai himself lodged F.I.R. at about 1.30 a.m. on 3.3.1998. He gave all the details as to how the

dead body was recovered and alleged that the accused had committed the offence of murder of Shyam and had taken away cash and other

valuables from the body of the deceased. So, crime was registered for the offences punishable under Sections 302, 392 and 201 of I.P.C. It was

crime No.18/98.

Inspector Dessai himself took up the investigation. In the morning of 3.3.1998, Inspector Dessai again went to the place in the jungle where dead

body was lying. He prepared panchanama of the place of the offence and from there he recovered a pair of chapples and a knife. He also

prepared inquest panchanama of the dead body. He found that there were some injuries on the person of the deceased and there were also burn

injuries. He sent the dead body for post mortem examination to Goa Medical College at Bambolim.

Dr. Silvano Dias Sapeco conducted post mortem examination on the dead body and gave his opinion that the cause of death was due to post

mortem burns.

4. On completion of investigation charge sheet was filed and the accused faced trial. There was no eye witness to the occurrence. Prosecution

version rested on circumstantial evidence. The prosecution rested its version on the last seen theory contending that the accused and the deceased

were last seen together. For that purpose it relied on the evidence of PWs 3 & 8. As noted above the trial court placed reliance on the evidence of

PWs 3 & 8 and directed conviction which in appeal was set aside by the High Court.

5. Learned Counsel for the appellant-State submitted that the High Court should not have discarded the evidence of PWs 3 & 8. According to

PW 3 he had carried both the accused and the deceased on his motor cycle between 7 to 7.15 AM. Thereafter the accused was seen alone

between 9.15 to 9.30 AM. PW 8 saw the accused going near the place of occurrence between 9 AM to 9.30 AM and had carried him on his

motor cycle. This, according to learned Counsel for the appellant, was sufficient to fasten the guilt on the accused.

6. Learned Counsel for the respondent on the other hand supported the judgment of the High Court. It was submitted that keeping in view

parameters relating to appeal against judgment of acquittal, this appeal is sans merit.

7. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified

only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other

person. (See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316);

Earabhadrappa v. State of Karnataka AIR 1983 SC 446; State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh v. State of

Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to

the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact

sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case

depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the

accused and bring the offences home beyond any reasonable doubt.

8. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has

been observed thus:

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully

proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left

in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally

inconsistent with his innocence....

9. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79) , it was laid down that when a case rests upon circumstantial evidence,

such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human

probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the

guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

10. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial

evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also

pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established

must be consistent only with the hypothesis of guilt.

11. Sir Alfred Wills in his admirable book ""Wills'' Circumstantial Evidence"" (Chapter VI) lays down the following rules specially to be observed in

the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt

connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal

accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of

explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is

entitled as of right to be acquitted"".

12. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to

circumstantial evidence laid down by the this Court as far back as in 1952.

13. In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343), wherein it was observed thus:

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be

drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of

the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but

the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been

done by the accused.

14. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). Therein, while

dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of

lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be

based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned `must'' or

`should'' and not `may be'' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

15. These aspects were highlighted in State of Rajasthan v. Raja Ram (2003 (8) SCC 180), State of Haryana v. Jagbir Singh and Anr. (2003 (11)

SCC 261) and Kusuma Ankama Rao v. State of A.P. (Criminal Appeal No. 185/2005 disposed of on 7.7.2008)

16. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this Court. In State of U.P. v. Satish [2005 (3) SCC

114] it was noted as follows:

22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive

and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and

possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased

were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the

deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.

17. In Ramreddy Rajeshkhanna Reddy v. State of A.P. [2006 (10) SCC 172] it was noted as follows:

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last

seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible. Even in such a case the courts should look for some corroboration.

(See also Bodh Raj v. State of J&K (2002(8) SCC 45).)

18. A similar view was also taken in Jaswant Gir v. State of Punjab 2005 (12) SCC 438 and Kusuma Ankama Rao"s case (supra).

19. It is interesting to note that PWs 3 & 8 claimed to have seen the accused at the same time and to have carried him in the motor cycle which

itself is impossibility. Additionally neither PW 3 nor PW 8 claimed to have seen the other witness along with the accused at the relevant point of

time. The High Court noticed that PW 3 Ramjathan stated that on 1.3.1998 he had taken the accused and the deceased to Hedode Bridge and he

was available in the police station on 2.3.1998 at 11 PM. The High Court found it strange that his statement was not recorded on that day. It

rejected the stand of the learned Counsel for State that the crime was registered at about 1.30 AM on 3.3.1998 and thereafter the investigation

started and therefore, statement of PW 3 was recorded afterwards. In ordinary circumstances it could have been accepted as sufficient

explanation. Strangely, the police claimed to have seized the bicycle of the accused before registration of the crime and to have recorded his

statement as an accused. According to the prosecution on the basis of the aforesaid statement seizure was made. Not only that, the alleged

memorandum of statement of the accused was prepared on 2.3.1998 and thereafter as per the prosecution the accused took them to the jungle

where dead body was lying and discovery panchnama was *-also prepared on 2.3.1998. The discovery panchnama is Exhibit 6/A which was

marked by PW 6. The signature of the accused was obtained as an accused. In other words on 2.3.1998 police was treating the respondent as an

accused and had started investigation. That being so there was no difficulty in recording the statement of PW 3 on 2.3.1998.

20. It is proper to consider and clarify the legal position regarding appeal and acquittal. Chapter XXIX (Sections 372-394) of the Code of

Criminal Procedure, 1973 (hereinafter referred to as ""the present Code"") deals with appeals. Section 372 expressly declares that no appeal shall

lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373

provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused

pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376). Section 377 permits appeals by the State for enhancement of

sentence. Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material

and may be quoted in extenso:

378(1) Save as otherwise provided in Sub-section (2) and subject to the provisions of Sub-sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an Appeal to the Court of Session from an order of acquittal

passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an Appeal to the High Court from an original or appellate order

of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of

Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment

constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an

offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of Sub-section (3), also direct the

Public Prosecutor to present an Appeal--

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under

clause (a)] or an order of acquittal passed by the Court of Session in revision.

(3) No Appeal to the High Court under Sub-section (1) or Sub-section (2) shall be entertained except with the leave of the High Court. (4) If such

an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this

behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court

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

of acquittal.

(6) If, in any case, the application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal

from that order of acquittal shall lie under Sub-section (1) or under Sub-section (2).

21. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts. 22. 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.

23. Bare reading of Section 378 of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been

imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High

Court has full power to 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.

24. 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.

25. 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.

26. 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 u/s 417 of the old Code (similar to Section 378 of the present 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.

27. Lord Russel summed up the legal position thus:

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'', 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.

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 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.

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

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 presumption of

innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the

accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the

advantage of seeing the witnesses. 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.

(emphasis supplied)

29. In Nur Mohd. v. Emperor (AIR 1945 PC 151) (Privy Council) 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.

30. 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.

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

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 u/s 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.

32. In Surajpal Singh v. State 1952 SCR 193, a two-Judge Bench observed that it was well established that in an appeal u/s 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.

33. 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 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. 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"".

Upholding the contention, this Court said:

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 the accused had failed to explain the circumstances appearing

against him but only for very substantial and compelling reasons.

(emphasis supplied)

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

In our opinion, it is not correct to say that unless the appellate court in an appeal u/s 417, Criminal Procedure Code came to the conclusion that the

judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to

come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened

but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose

evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the

case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the

trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which

recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to

have been vitiated.

35. 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.

36. 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:

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 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 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, (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 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.

37. 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:

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 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)

38. 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 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 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.

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

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 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 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 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 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)

40. 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

u/s 378 of the present 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 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 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 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 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. 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 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.

(emphasis supplied)

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

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.

42. 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 reappreciate 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.

43. In Bhagwan Singh v. State of M.P. (2002) 4 SCC 85 , the trial court acquitted the accused but the High Court convicted them. Negativing 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 u/s 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 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 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 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 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 High Court to reappreciate 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.

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

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 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 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.

45. 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

reappreciate 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.

46. 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 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)

47. 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, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the

evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ""substantial and compelling reasons"", ""good and sufficient grounds"", ""very strong circumstances"", ""distorted

conclusions"", ""glaring mistakes"", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such

phraseologies are more in the nature of ""flourishes of language"" to emphasise the reluctance of an appellate court to interfere with acquittal than to

curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the

presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be

innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his

innocence is further reinforced, reaffirmed and strengthened by the trial court.

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

recorded by the trial court.

48. 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 junior 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.

49. 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.

50. 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 .

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

52. When the conclusions of the High Court are considered in the background of the principles set out above, the inevitable conclusion is that the

appeals are without merit, deserve dismissal, which we direct.