A RANGAIAH

v.

STATE OF KARNATAKA

(Criminal Appeal No. 992 of 2005)

DECEMBER 12, 2008

B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973 – s. 378 – Appeal against acquittal – Reversal of judgment of acquittal by High C *Court – Sustainability of – Held: Not sustainable – Judgment of acquittal should not be interfered with, if two views are possible – On facts, High Court did not apply the right test for reversing the judgment of acquittal – Findings of trial court were probable – It cannot be said to be wholly unacceptable* D *– Penal Code, 1860 – ss. 302 and 324 – Criminal Law – Administration of justice.*

According to the prosecution case, a quarrel took place between two groups of people of the same village. M had gone out of his house to take a cup of tea. During E **the quarrel, the appellant stabbed M with knife. M was sitting near gymnasium. PW-6 tried to intervene. Appellant inflicted injuries to PW-6. M was taken to the hospital and he died the next day. PW-6, PW-1-son of deceased and others witnessed the incident. FIR was lodged. Witnesses** F **were examined. Dying declaration was recorded. Appellant was charged u/s. 302 and 324 IPC. Trial court found that there were material discrepancies in the evidence of the prosecution witnesses, dying declaration and FIR; and acquitted the appellant. However, the High** G **Court holding that the findings of the trial court were perverse, set aside the order of acquittal. Hence the present appeal.**

Allowing the appeal, the Court

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HELD: 1.1. A judgment of acquittal passed should not be interfered with when two views are possible. Therefore, it is to be considered as to whether the view taken by the Sessions Judge was a probable one. The fact that the incident took place is not in dispute. What is in dispute is the manner in which the same took place and whether the appellant had participated therein. It was not the prosecution case that the appellant was on inimical terms with the deceased or his family. Two groups of residents of the same village had been quarrelling with each other. An incident took place within a day prior to the date of occurrence. Police personnel were posted. A police van was also stationed. If the prosecution case is to be believed, two constables were standing near the place of occurrence. It is beyond anybody's comprehension as to why when one group of people were chasing another group of people they did not intervene and why despite a police van being stationed, the deceased should have been shifted in the hospital in an auto rickshaw. The place of occurrence also is not fixed. According to the prosecution witness, deceased had gone out of his house to take a cup of tea near the hotel of P.W. 13. However, P.W.13 stated that he closed his shop at 7.00 a.m. Why more than two hours' time was taken for getting a cup of tea for the deceased is again beyond anybody's comprehension. Whereas according to the dying declaration the deceased was sitting on a pial of his house, where the incident is said to have taken place; according to P.Ws 1 and 6, the place of occurrence was near the 'Garadimane'. [Para 17] [410-C-H; 411-A]

1.2. Both in the FIR as also in the dying declaration, the name of R was already stated but no charge sheet was filed against him. No explanation has been offered as to why he was not charge-sheeted. No explanation has also been offered as to why the dying declaration could not be recorded by a judicial officer. The doctor on

A the basis of whose certificate, P.W. 23-Investigating Officer recorded the dying declaration, was not examined. At the time of recording of the dying declaration, the deceased was surrounded by his own people. Therefore, the veracity of the said statement cannot be said to be B completely beyond doubt. [Para 18] [411-A-C]

1.3. The prosecution version is totally different from the dying declaration. The alleged participation of R had been totally ignored by the High Court. It could not have been done for the purpose of judging the truthfulness or C otherwise of the dying declaration. The statement of the deceased made in his dying declaration was required to be considered from the said perspective. [Para 19] [413-E-F]

1.4. The High Court committed an error in proceeding D on the basis that although M.O.3 might not have been the weapon used but the appellant could be convicted only on the basis of the statements made by P.Ws 6, 11 and 27. If M.O.3 was not the weapon of attack, the statement of P.W.6 which has been supported by P.W.1 that he had E snatched the said knife from the hands of the appellant could not have been believed. The presence of P.W. 6 also becomes doubtful, as he had not been named as eye-witness in the FIR. As the FIR was lodged after the deceased was taken to hospital and the treatment started, F it is also difficult to believe P.W. 1 who testified that he was an eyewitness to the role of P.W.6 and the fact that he was also injured in the process. The High Court has also not assigned any reason for holding that as to when the statement of P.W. 11 was recorded by the police, is of not much significance. The High Court has not G adverted to the question that although in the FIR and the dying declaration both the appellant and R had been said to have assaulted the deceased, P.W.1 in his deposition as also other prosecution witnesses attributed the overt act only on the part of the appellant. [Para 19] [413-F-H; H 414-A-C]

1.5. The High Court did not apply the right test for reversing a judgment of acquittal. The findings of the Sessions Judge were probable. Such a view was possible. By no standard, the views of the Sessions Judge can be said to be wholly unacceptable. Thus, the impugned judgment cannot be sustained. It is set aside and judgment of trial court is restored. [Paras 20 and 24] [414-C-D; 419-F]

Himachal Pradesh vs. Sukhvinder Singh **2004 AIR SCW 968;** *Mohan Lal and Ors. vs. State of Haryana* **2007 (9) SCC 151;** *State of Punjab vs. Karnail Singh* **2003 (11) SCC 271;** *Devender Pal Singh vs. State of NCT of Delhi and Anr.* **2002 (5) SCC 234;** *Mohan Lal and Ors. vs. State of Haryana* **2007 (9) SCC 151;** *Chandrappa & Ors. vs. State of Karnataka* **2007 (4) SCC 415;** *Gowrishankara Swamigalu vs. State of Karnataka and Anr.* **2008 (4) SCALE 389;** *Ghurey Lal vs. State of U.P.* **2008 (10) SCALE 616, referred to.**

Case Law Reference:

2004 AIR SCW 968	**Referred to.**	**Para 15**
2007 (9) SCC 151	**Referred to.**	**Para 15**
2003 (11) SCC 271	**Referred to.**	**Para 16**
2002 (5) SCC 234	**Referred to.**	**Para 16**
2007 (9) SCC 151	**Referred to.**	**Para 18**
2007 (4) SCC 415	**Referred to.**	**Para 21**
2008 (4) SCALE 389	**Referred to.**	**Para 22**
2008 (10) SCALE 616	**Referred to.**	**Para 23**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 992 of 2005.

From the final Judgment and Order dated 7.6.2004 of the High Court of Karnataka at Bangalore in Crl. Appeal No. 32 of 1999.

Girish Ananthamurthy and P.P. Singh for the Appellant.

Sanjay R. Hegde for the Respondent.

The Judgment of the Court was delivered by

A **S.B. SINHA, J.** 1. Appellant is before us, aggrieved by and dissatisfied with a judgment of conviction and sentence dated 7.6.2004 passed by a Division Bench of the High Court of Karnataka at Bangalore in Criminal Appeal No. 32 of 1999 reversing a judgment of acquittal dated 15.9.1998 in S.C. No. B 30/91 passed in his favour by the 1st Additional Sessions Judge, Mysore.

2. There is a small village 'Rammanahalli' situate near the town of Mysore. It has two streets called 'Kelaginakeri' and 'Melinakeri'. A cinema tent was put therein. There were two C groups in the village residing in one or the other said streets. One group intended the owner of cinema/theatre to exhibit films starring Dr. Rajkumar and the other group asked them to exhibit the films starring Sri Vishnuvardhan. They had been asking the proprietor of the theatre to release the films in which their D favourite stars were acting. The occurrence took place at about 8.00 a.m. on 9.12.1990.

3. The prosecution case is as under:

Maruchhaiah, the deceased, had gone out of his house to have a cup of tea. A clash between two groups of people from E the aforementioned streets 'Kelaginakeri' and 'Melinakeri' took place. During the said clash, appellant is said to have stabbed the deceased with a knife when he was sitting near 'Garadimane' (Gymnesium). Maruchhaiah was taken to K.R. Hospital at Mysore. He died on the next day, i.e. on 10.12.1990 F at about 5.00 p.m. Appellant is said to have also caused injury to Madhu (P.W.6) when he tried to intervene. The said occurrence is said to have been witnessed by P.W. 6- Madhu, P.W.1-Maruchhaiah son of the deceased Maruchhaiah and several others.

G P.W. 1-son of the deceased was also known as Maruchhaiah. A first information report was lodged at the Mysore South Police Station, stating:

"On 9.12.1990 at 10 A.M. *my father Maruchhaiah was* H *sitting on the paial of Garadimane* and at that time

Rachimallaiah and Rangaiah assaulted my father and Rangaiah stabbed my father below the left shoulder. There is a dispute between one street Keelanakeri street and for this they have injured my father. At that time Chennaiah and Mahadeva's wife were present. I pray to take action."

(emphasis supplied)

4. Deceased allegedly made a dying declaration, which was recorded by P.W. 23 -J.S. Srikanta Murthy, Investigating Officer in the presence of duty doctor, Dr. Jagannath C.W.21. Dr. Jagannath, however, was not examined.

P.W. 23, in his deposition stated:

"He told before me in the presence of the Medical Officer C.W. 21 that on 9.12.1990 at 10.00 a.m. *while he was sitting on the pial of his house,* some people came in group and when he questioned those persons why they were creating galata, at that time, accused came and held him and stabbed him with knife. One Rachimallaiah (subsequently deleted in the charge sheet) assaulted him with club and stabbed with knife, as a result of the said injury, he fell bleeding and his son P.W. 1 admitted him to the hospital. He said that due to ill-will, accused (Rangaiah) stabbed him with the knife."

(emphasis supplied)

5. P.W. 23, in his deposition, had accepted that he did not obtain any certificate from the doctor that the deceased was both in a mentally and physically fit condition to give a dying declaration. Admittedly, no judicial officer was asked to record a dying declaration although the deceased after receiving the injury was alive for about 32 hours.

6. P.W.3 Dr. Hemavathy examined Maruchhaiah, the deceased and found only one cut injury 1 1/2 cm x 1/2 cms on the left side of the posterior exillery fold. She found 'bleeding present'; air bubble was also seen from the wound.

7. P.W. 1- Maruchhaiah is the complainant. He is son of

A the deceased. According to him, the people of 'Kelaginakeri' started chasing 'Melinakeri' people. Since they came near his house, he also started running towards Rama Mandir. At that time (i.e., while running), he saw the appellant stabbing his father below on the left shoulder near arm pit. Later appellant B and Madhu (P.W. 6) started fighting. Madhu snatched the knife from the hands of appellant and in the process he injured his right hand finger. The knife was stained with blood. According to this witness, there is a pial in the Rama Mandir. In his cross-examination, P.W. 1 stated that it cannot be seen from the road C as to who is sitting on the pial. He saw his father at 7.30 a.m. He took his father to the Hospital and then came back to the police station. He found Rachimallaiah there, who was detained for having injured the appellant. People from 'Melinakeri' street were also present. In the First Information Report (FIR), he did D not disclose that Madhu was an eye-witness to the occurrence.

8. The other important witness examined on behalf of the prosecution is Madhu (P.W.6). He is said to have suffered injuries in the incident.

Allegedly, on the day of incident at about 7.00 a.m., the E deceased had asked him to bring a cup of tea from the hotel which is at a distance of about 50 feet from the place of occurrence. The incident took place when he brought tea for the deceased. According to him, appellant stabbed the deceased in the left arm pit whereafter he snatched the knife F from him and in this process he injured his fingers and when he questioned the appellant, he ran away.

He kept the said knife with himself. He, for reasons best known to him, handed over the knife to the police authorities on the next day of the incident. The knife did not contain any G blood stain. Although a seizure memo must have been prepared on the date of incident, the police had taken his signature only on the next day. He was injured on the date of incident but he went to the hospital for his treatment only on the third day of the occurrence. According to him, Rachimallaiah H

was not seen near the scene of occurrence. He accepted that prior to the incident police van was stationed in the village in the 'Kelaginakeri' area and it was shifted to the scene of occurrence thereafter.

9. Several other witnesses purported to be eye-witnesses to the occurrence were also examined. P.W-12 Shivana, P.W.-13 Mahadeva and P.W.-14 Mallaiah were treated as hostile. P.W.10 and P.W.11 being the daughter and son of the deceased did not speak anything incriminating the appellant.

10. Indisputably, appellant also suffered injuries. Although appellant and Rachimallaiah were named as the assailants of Maruchhaiah, a charge sheet was filed only against the appellant. No reason therefor was disclosed. No explanation was offered.

11. Charges were framed under Sections 302 & 324 of the Indian Penal Code for committing murder of Maruchhaiah and causing injury to P.W.6 Madhu with a knife. Before proceeding to consider the evidence of witnesses examined on behalf of the prosecution, we may place on record that a day prior to the said occurrence, i.e. on 8.12.1990, a quarrel had taken place between the two groups. Police Personnel were stationed in the village. Two constables were standing a little away from the place where the incident had allegedly taken place. No police personnel was examined. Why they could not prevent the occurrence has not been disclosed. If they were near the scene of occurrence, they must have witnessed the same. At least, they should have reached the place of occurrence immediately thereafter.

12. We may at this juncture notice the following post-mortem report dated 11.12.1990:

"I. EXTERNAL APPEARANCE

1. Condition of Subject : emaciated, decomposed, etc.

2. Wounds: Position, Size, character.

3. Bruises: Position, Size, nature

4. Mark of Ligatures on neck, dissection.

It was the dead body of an old aged male, aged about 70 years of normal built and nourishment, body was cold, height 170 cms, Hairs on the head were short 1 cm. long with a 5 cm. long pig tail on the back of the head. The whole body upto inguinal region including the serotum swollen and crepitations felt on palpation. Eyelids swollen, cornea clear, pupils dilated conjunctivae-congested. Rigor mortis was established in the lower limbs and passing off from upper limbs. P.M. staining could not be made out due to dark complexion.

External injuries: 1) Stitched stab wound 2 cm x 0.5 cm. x 7.5 cm (as far as it could be probed) situated over the left side of chest, 6 cm outer to nipple at 2.30 o' clock position, beam below mid armpit over the 3rd intercostals region. It had three stitches. It was horizontally placed. On dissection, the wound had pierced the muscles, entered through the 3rd intercostals space, piercing the pleura it had entered the surface of upper lobe of left lung as scratch 0.75 cm long.

2. A vertically place situated stab would 2 cm x 0.5 cm x 7.5 cms in size with two stitches, situated over the outer fold of left arm pit then entering the 1st intercostals space obliquely piercing the pleura.

The margins of the above injuries were clean cut, upper and were wide, inner and in No. (1) and lower and in No. (2) were clean cut. The left thorasic cavity contained 250 C.C. blood. Surgical emphysema present pressing over the chest.

3. Needle puncture mark over the inner aspect of left ankle.

All the above injuries were ante-mortem in nature.

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Opinion as to cause of death: A

Death was due to Respiratory failure as a result of surgical emphysema. Consequent upon stab injuries to left side of chest by a single edged weapon."

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13. The learned Sessions Judge recorded the judgment of acquittal, principally on the following findings:

(i). The scene of occurrence has not been firmly established insofar as according to the deceased he was sitting on the pial of his house whereas according to P.W. 1 and P.W. 6, the incident took place near the Garadimane. C

(ii) P.W.1 in his complaint as also the deceased in his dying declaration categorically stated that there were two cut injuries and one injury caused by club by the said Rachimallaiah but only one stab injury was found. Although in the FIR both the appellant and Rachimallaiah were said to have assaulted and caused stab injuries but only one stab injury was found and P.W. 6 had snatched the knife which had caused blood injury but no blood stain was found on the knife. D E

(iii) Prosecution case was that the deceased wanted to have a cup of tea and when P.W. 6 was taking one cup of tea from the hotel near the place of the incident and hardly he was at a distance of 5 feet away from the deceased, the alleged incident took place. F

(iv) P.W. 13 Mahadeva, the owner of the tea shop, however, categorically stated that he opened his shop at 5.00 a.m. and closed by 7.00 a.m. as no milk was available. He reopened his shop at 10.00 a.m. G

(v) P.W. 14- Mallaiah although claimed that at the time H

A of the incident he was also stabbed by the accused but neither any investigation in that regard was made nor any additional charge against the accused for having stabbed this witness was framed. The prosecution has not offered any
B explanation for the said lapse. P.W. 1 or P.W. 6 however did not make any reference to P.W.14 at all. The report submitted by the F.S.I did not make any reference to P.W.14.

(vi) Dr. Channegowda, P.W. 2 in his cross-examination
C stated that the name of the assailant was mentioned in the Accident Register to be one Chikkavenkati. It is nobody's case that appellant is also called Chikkavenkati.

(vii) Although P.W. 11 Alaiah, another son of the
D deceased in whose presence dying declaration is said to have been made, stated about the presence of his sister P.W.10 Maniyamma at the time of dying declaration, in her deposition she merely stated that some people had told her that
E appellant had stabbed her father. However, she did not know who they were.

14. The High Court however, reversed the said judgment of acquittal opining that the findings of the learned Sessions
F Judge were perverse.

The High Court relied upon the evidence of P.Ws. 1 and 6, to hold:

"We have gone thoroughly through the entire cross-examination of these three witnesses and we do not find
G any material discrepancies in the evidence of these witnesses to the fact that the deceased was near Garadimane and that he had requested P.W. 6 to get a cup of tea from the nearby."

It was stated:

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(i) P.W. 6's version could not have been disbelieved as the accused had made a suggestion that he had filed a complaint against him which shows the presence of the accused during the incident.

(ii) The trial court committed an error in disbelieving the evidence of P.W. 11 on the ground that he had not disclosed the fact that the deceased told him that it is the accused who stabbed him with knife to the police when his statement was recorded *under* Section 161 of the Code of Criminal Procedure.

(iii) There is no reason to disbelieve the dying declaration although Dr. Jagannath, C.W.21 was not examined.

(iv) Non-examination of C.W. 21 does not mitigate the veracity of the dying declaration.

(v) As regards non-examination of another Dr. Jayanth who was present at the time of dying declaration and who had not issued any certificate when the dying declaration was recorded by P.W.23 and who merely endorsed as "before me signed", the High Court observed that the same was merely a rule of cause.

(vi) As the injury suffered by the accused is of minor nature, the same was not required to be explained.

In regard to seizure of knife by P.W. 23, it was held in para 28:

"...Even assuming that M.O.3 may not have been the weapon used the facts and circumstances of the case cannot be doubted specially the dying declaration which is corroborated by the evidence of PWs 6, 11 and 27. The evidence on record also discloses that in the dying declaration the deceased has stated that not only the present accused but also another person Rachimallaiah has also assaulted him with knife. But Rachimallaiah was later on given up by the police. It is true that the prosecution

A has not sent up Rachimallaiah for trial and the charge sheet was filed only against the accused. But that cannot be a reason to acquit the respondent when the evidence on record pointed out that he had participated in committing the offence. The reasoning given by the trial court that the B name of P.W. 6 does not find a place in the complaint Ex. P1 is also of no consequence when it has been held in several cases by the Hon'ble Supreme Court as well as High Court that it is not necessary to mention the names of all the eye witnesses in the complaint."

C 15. Mr. Girish Anantmurthy, learned counsel appearing on behalf of the appellant, would in support of the appeal contend that the High Court committed a serious error in reversing the well-reasoned judgment of the trial court. Reliance has been placed on the decision of this Court in *Himachal Pradesh vs.* D *Sukhvinder Singh* [2004 AIR SCW 968].

It was further submitted that as the purported dying declaration was recorded at 1.00 p.m. when all were present, the dying declaration itself was made clearly as a result of tutoring and was not a free and voluntary one. Reliance in this E behalf has been placed on *Mohan Lal & ors. vs. State of Haryana* [(2007) 9 SCC 151].

16. Mr. Sanjay R. Hegde, learned counsel appearing on behalf of the State, on the other hand, would contend:

F (i) The trial court is not justified in disbelieving the evidence of eye-witness which clearly proved that the accused was present at the time of occurrence.

(ii) The prosecution case could not have been thrown out by the learned Sessions Judge only on the G ground that no charge sheet has been filed against the Rachimallaiah.

(iii) The trial court committed a serious error in disbelieving the evidence of PW 6 on the premise that Rangaiah was also called Chikkavenkati H although in the Accident Register Chikkavenkati

was shown to be the father of the appellant. A

Reliance has been placed by Mr. Hegde on *State of Punjab vs. Karnail Singh* [(2003) 11 SCC 271) wherein this Court opined:

> "6. 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 re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See *Bhagwan Singh and Ors. v. State of M.P.*(2002) 4 SCC 85]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

Reliance has been placed by Mr. Hegde also on *Devender Pal Singh vs. State of NCT of Delhi & anr.* [(2002) 5 SCC 234], wherein this Court held:

> "53. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made

A sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. [See *Gurbachan Singh v. Satpal Singh* (1990) 1 SCC 445]. Prosecution is not required to meet any and every hypothesis put B forward by the accused. [See *State of U.P. v. Ashok Kumar Srivastava* (1992) 2 SCC 86]."

17. Before we advert to the respective contentions made by the learned counsel, we may record the well known principles laying down the parameters of reversing a judgment C of acquittal.

A judgment of acquittal passed should not be interfered with when two views are possible. We, therefore, are required to consider as to whether the view taken by the learned Sessions Judge was a probable one. The fact that the incident D took place is not in dispute. What is in dispute is the manner in which the same took place and whether the appellant had participated therein. It was not the prosecution case that the appellant was on inimical terms with the deceased or his family. Two groups of residents of the same village had been E quarrelling with each other. An incident took place within a day prior to the date of occurrence. Police personnel were posted. A police van was also stationed. If the prosecution case is to be believed, two constables were standing near the place of occurrence. It is beyond anybody's comprehension as to why F when one group of people were chasing another group of people they did not intervene and why despite a police van being stationed, the deceased should have been shifted in the hospital in an auto rickshaw. The place of occurrence also is not fixed. According to the prosecution witness, deceased had G gone out of his house to take a cup of tea near the hotel of P.W. 13 Mahadeva. P.W.13, however, said that he closed his shop at 7.00 a.m. Why more than two hours' time was taken for getting a cup of tea for the deceased is again beyond anybody's comprehension. Whereas according to the dying declaration H the deceased was sitting on a pial of his house, where the

incident is said to have taken place; according to P.Ws 1 and 6, the place of occurrence was near the 'Garadimane'. A

18. Both in the FIR as also in the dying declaration, the name of Rachimallaiah was already stated but no charge sheet was filed against him. No explanation has been offered as to why he was not charge-sheeted. B

No explanation has also been offered as to why the dying declaration could not be recorded by a judicial officer. The doctor on the basis of whose certificate, P.W. 23 – Investigating Officer recorded the dying declaration, was not examined. C

At the time of recording of the dying declaration, the deceased was surrounded by his own people. Veracity of the said statement, therefore, cannot be said completely beyond doubt.

In *Mohan Lal & ors. vs. State of Haryana* [(2007) 9 SCC 151], it was held: D

> "10. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross- examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the E reason the Court also insists that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. F The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It G cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying H

declaration, which could be summed up as under as indicated in *Smt. Paniben v. State of Gujarat* (1992) 2 SCC 474: (SCC pp. 480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See *Munnu Raja v. State of M.P.* (1976) 3 SCC 104]

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See *State of U.P. v. Ram Sagar Yadav* (1985) 1 SCC 552 and *Ramawati Devi v. State of Bihar* (1983) 1 SCC 211]

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See *K. Ramachandra Reddy v. Public Prosecutor* (1976) 3 SCC 618]

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See *Rasheed Beg v. State of Madhya Pradesh* (1974) 4 SCC 264]

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See *Kake Singh v. State of M.P.*(1981 Supp. SCC 25)]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See *Ram Manorath v. State of U.P.* (1981) 2 SCC 654]

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See *State of Maharashtra v. Krishnamurthi Laxmipati Naidu* (1980 Supp. SCC 455)]

(viii) Equally, merely because it is a brief statement, it is

not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See *Surajdeo Oza. v. State of Bihar* (1980 Supp. SCC 769)].

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See *Nanahau Ram. v. State of M.P.* (1988 Supp. SCC 152)].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See *State of U.P. v. Madan Mohan* (1989) 3 SCC 390].

(xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. [See *Mohanlal Gangaram Gehani v. State of Maharashtra* (1982) 1 SCC 700]"

19. In this case, the prosecution version is totally different from the dying declaration. The alleged participation of Rachimallaiah had been totally ignored by the High Court. It could not have been done for the purpose of judging the truthfulness or otherwise of the dying declaration. The statement of the deceased made in his dying declaration was required to be considered from the said perspective.

The High Court committed an error in proceeding on the basis that although M.O.3 might not have been the weapon used but the appellant could be convicted only on the basis of the statements made by P.Ws 6, 11 and 27. If M.O.3 was not the weapon of attack, the statement of P.W.6 which has been supported by P.W.1 that he had snatched the said knife from the hands of the appellant could not have been believed. The presence of P.W. 6 also becomes doubtful, as he had not been

named as eye-witness in the FIR. As the FIR was lodged after the deceased was taken to hospital and the treatment started, it is also difficult to believe P.W. 1 who testified that he was an eyewitness to the role of P.W.6 and the fact that he was also injured in the process. The High Court has also not assigned any reason for holding that as to when the statement of P.W. 11 was recorded by the police, is of not much significance. The High Court has not adverted to the question that although in the FIR and the dying declaration both the appellant and Rachimallaiah had been said to have assaulted the deceased, P.W.1 in his deposition as also other prosecution witnesses attributed the overt act only on the part of the appellant herein.

20. The High Court, in our opinion, did not apply the right test for reversing a judgment of acquittal. The findings of the learned Sessions Judge were probable. Such a view was possible. By no standard, the views of the learned Sessions Judge can be said to be wholly unacceptable. The parameters laid down by this Court in regard to a judgment of acquittal are well known. We may, however, refer to a few precedents in this behalf.

21. In *Chandrappa & ors. vs. State of Karnataka* [(2007) 4 SCC 415], this Court held:

> "42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:
>
> (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 emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the 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."

22. In *Gowrishankara Swamigalu Vs. State of Karnataka and Anr.* [2008 (4) SCALE 389], this Court noticed:

"29. We may at this juncture notice a few precedents operating in the field.

In *Jagdish & Anr. v. State of Madhya Pradesh* [2007 (11) SCALE 213], this Court held:

> "12. The High Court while dealing with an appeal from a judgment of acquittal was, thus, required to meet the aforementioned reasonings of the learned Trial Judge. There cannot be any doubt whatsoever that irrespective of the fact that the High Court was dealing with a judgment of acquittal, it was open to it to re-appreciate the materials brought on records by the parties, but it is a well-settled principle of law

A that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal. [See *Rattan Lal v. State of Jammu & Kashmir* – 2007 (5) SCALE 472].

14. It is unfortunate that the High Court while arriving B at the aforementioned conclusion did not pose unto itself the right question. In the event, it intended to arrive at a finding different from the one arrived at by the Trial Court, it was obligatory on its part to analyze the materials on record independently. The C High Court was also required to meet the reasoning of the learned Trial Judge. If the learned Trial Judge upon appreciation of the evidence arrived at a conclusion that the time of occurrence disclosed in the First Information Report was not correct D inasmuch whereas the occurrence is said to have taken place at 08.00 a.m. but in fact it took place much prior thereto, it could not be opined that the First Information Report was lodged within an hour of the incident..."

E It was noticed:

"17. Yet again in *Kallu alias Masih and Others v. State of M.P.* [(2006) 10 SCC 313], this Court opined :

F "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 G 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 H 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." A B

[See also *Rattanlal* (supra) and *Ramappa Halappa Pujar & Others v. State of Karnataka* – 2007 (6) SCALE 206]."

[See also *Chandrappa & Ors. v. State of Karnataka* 2007 (3) SCALE 90 and *Haji Khan v. State of U.P.* [(2005) 13 SCC 353] C

Recently in *Abdul Gafur & Ors. v. The State of Assam* [2007 (13) SCALE 801], a Bench of this Court held:

"10. The accused persons are not strangers and were practically neighbours of the informant and his family. The High Court noted that there was no intention to falsely implicate accused persons because of enmity and there was no reason as to why dignity of two young girls would be put at stake by alleging rape. It is to be noted that in fact rape was alleged but the Trial Court found that there was no material to substantiate the plea of rape. The evidence is totally inconsistent and lacks credence. The High Court's observations were clearly based on surmises and contrary to the factual scenario. The High Court has noted that the evidence of PWs. 1,2,3,5 & 8 stand fully corroborated by the medical evidence. Significantly, on consideration of the evidence of PW 4, it is clear that the evidence of this witness is clearly contrary to the medical evidence. To add to the confusion, it is noted that the High Court recorded as finding that appellant Abdul Gafur was absconding. As a matter of fact the evidence of Investigating Officer (in short the D E F G H

A 'I.O') shows that he had arrested Abdul Gafur on the date the First Information Report (in short the 'FIR') was lodged. Unfortunately the High Court has merely referred to certain conclusions of the Trial court without analyzing the evidence and various
B submissions made by the appellants. To add to the vulnerability of the prosecution version, the FIR was lodged long after the incident and in fact law was already set on motion after the telephonic message had been received.

C 11. The aforesaid infirmities in the background of admitted animosity between the parties renders the prosecution version unacceptable. The Trial Court and the High Court did not analyse the evidence correctly and acted on mere surmises and
D conjectures. That being so, the appellants deserve to be acquitted, which we direct."

The High Court unfortunately failed to bear in mind the aforementioned legal principles. The High Court misdirected itself at various stages. It was wholly unfair to
E the appellant."

23. In *Ghurey Lal vs. State of U.P.* [2008 (10) SCALE 616], this Court held:

"76. On marshalling the entire evidence and the documents
F on record, the view taken by the trial court is certainly a possible and plausible view. The settled legal position as explained above is that if the trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views. The difference in
G treatment of the case by two courts below is particularly noticeable in the manner in which they have dealt with the prosecution evidence. While the trial court took great pain in discussing all important material aspects and to record its opinion on every material and relevant point, the learned
H Judges of the High Court have reversed the judgment of

the trial court without placing the very substantial reasons given by it in support of its conclusion. The trial court after marshalling the evidence on record came to the conclusion that there were serious infirmities in the prosecution's story. Following the settled principles of law, it gave the benefit of doubt to the accused. In the impugned judgment, the High Court totally ignored the settled legal position and set aside the well reasoned judgment of the trial court.

77. The trial court categorically came to the finding that when the substratum of the evidence of the prosecution witnesses was false, then the prosecution case has to be discarded. When the trial court finds so many serious infirmities in the prosecution version, then the trial court was virtually left with no choice but to give benefit of doubt to the accused according to the settled principles of criminal jurisprudence.

78. On careful analysis of the entire evidence on record, we are of the view that the reasons given by the High Court for reversing the judgment of acquittal is unsustainable and contrary to settled principles of law. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.

24. For the aforementioned reasons, the impugned judgment cannot be sustained. It is set aside accordingly and judgment of the trial court restored. The appeal is allowed. The appellant who is in custody is directed to be released forthwith unless wanted in connection with any other case.

N.J. Appeal allowed.