

PERLA SOMASEKHARA REDDY AND ORS.

v.

STATE OF A.P. REP. BY PUBLIC PROSECUTOR
(Criminal Appeal No. 1218 of 2006)

MAY 6, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

Penal Code, 1860:

Sections 302, 302 r/w 149, 307, 120-B, 148:

Murder – Charges framed under various sections of IPC – All accused acquitted by Trial Court – On appeal by State, High Court convicted the accused under Sections 302, 302 r/w 149 and 307 – Acquitted the accused of the rest of the charges except under Sections 120-B and 148 – Appeal to Supreme Court – Powers of the Appellate Court against acquittal – Discussed – Principles reiterated – Reasonable doubt is a fair doubt based upon reason and common sense – Concepts of probability and degrees thereof – Discussed – Allegation that FIR was ante timed is without any foundation – Thus, the impugned judgment does not suffer from any infirmity to warrant interference – Explosive Substances Act, 1908, Sections 3 and 5 – Code of Criminal Procedure, 1973, Section 378.

The accused were charged under various Sections of the Penal Code. The trial court acquitted the accused. On an appeal preferred by the State, the High Court convicted the accused under Sections 302, 302 r/w 149 and 307. It, however, acquitted the accused of the rest of the charges except under Sections 120-B and 148 IPC. Hence the appeal.

Dismissing the appeal, the Court

A HELD: 1.1. A bare reading of Section 378 Cr.P.C. (appeal in case of acquittal), 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 re-appreciate, 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. [Para 9] [156-E-G]

D 1.2. 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. [Para 10] [156-H; 157-A-B]

F 2. Powers of the appellate court while dealing with an appeal against an order of acquittal are:

- (i) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.**
- G (ii) 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.**

H

- (iii) 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. A B C
- (iv) 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. D E
- (v) 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. [Para 35] [171-D-H; 172-A-D] F

Chandrappa and Ors. v. State of Karnataka 2007 (4) SCC 415, relied on. G

Sheo Swarup v. R. Emperor (1934) 61 IA 398; *Nur Mohd. v. Emperor* AIR 1945 PC 151; *Prandas v. State* AIR 1954 SC 36; *Surajpal Singh v. State* 1952 SCR 193; *Ajmer Singh v.* H

- A *State of Punjab* 1953 SCR 418; *Atley v. State of U.P.* AIR 1955 SC 807; *Aher Raja Khima v. State of Saurashtra* (1955) 2 SCR 1285; *Sanwat Singh v. State of Rajasthan* (1961) 3 SCR 120; *M.G. Agarwal v. State of Maharashtra* (1963) 2 SCR 405; *Shivaji Sahabrao Bobade v. State of Maharashtra* 1973 (2) SCC 793; *K. Gopal Reddy v. State of A.P.* (1979) 1 SCC 355; *Ramesh Babulal Doshi v. State of Gujarat* (1996) 9 SCC 225; *Allarakha K. Mansuri v. State of Gujarat* (2002) 3 SCC 57; *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85; *Harijana Thirupala v. Public Prosecutor, High Court of A.P.* (2002) 6 SCC 470; *Ramanand Yadav v. Prabhu Nath Jha* (2003) 12 SCC 606 and *Kallu v. State of M.P.* (2006) 10 SCC 313, referred to.

3. 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. [Para 36] [172-D-E]

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

4. 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. [Para 37] [173-B-D]

5.The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. [Para 38] [173-D-F]

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

6.In the instant case the incident took place in front of MDO office at Vemula around 1.40 p.m. The finding of the trial Court is to the effect that murder of deceased took place at 1.40 p.m. at Vemula and the same fact is not disputed by the accused persons. Between 2.40 and 2.45 p.m. the deceased and the injured were taken to the Government Hospital at Pulivendula by PW-9 which is also 12 KM from the place of occurrence. The medical intimation is Ext.P-25 which was sent to the Station In-charge at 2.45 p.m. PW-1 the de facto complainant was examined by PW-22 at around 3.30 p.m. The Station In-charge Pulivendula received information around that time. At 4.00 p.m. the statement of the de facto complainant (PW-1) was recorded by the Head Constable in the presence of PW-22. The statement of PW-1 alongwith Ext.P-25 was sent to Vemula Police Station on the point of jurisdiction and the same was registered as Crime No.22 of 1998 at Vemula P.S. by PW-21. The

A inquest was held at around 9 to 12 p.m. and copy of FIR was received by the Elaq Magistrate. It is to be noted that since the Magistrate at Pulivendula was on leave and Magistrate at another place was not the in-charge, it was sent to another Court which is at a distance of 60 K.M. as is evident from the evidence of PW-21. Therefore, there is no delay in sending the FIR to the Magistrate. The allegation that the FIR was ante timed is without any foundation. [Para 40] [173-G-H; 174-A-E]

C 7.The impugned judgment cannot be said to be suffering from infirmity to warrant interference. [Para 41] [174-E-F]

Case Law Reference:

D	(1934) 61 IA 398	referred to	Para 12
	AIR 1945 PC 151	referred to	Para 16
	AIR 1954 SC 36	referred to	Para 17
	1952 SCR 193	referred to	Para 19
E	1953 SCR 418	referred to	Para 20
	AIR 1955 SC 807	referred to	Para 22
	(1955) 2 SCR 1285	referred to	Para 23
F	(1961) 3 SCR 120	referred to	Para 24
	(1963) 2 SCR 405	referred to	Para 25
	1973 (2) SCC 793	referred to	Para 26
G	(1979) 1 SCC 355	referred to	Para 28
	(1996) 9 SCC 225	referred to	Para 29
	(2002) 3 SCC 57	referred to	Para 30
H	(2002) 4 SCC 85	referred to	Para 31

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(2002) 6 SCC 470	referred to	Para 32	A
(2003) 12 SCC 606	referred to	Para 33	
(2006) 10 SCC 313	referred to	Para 34	
2007 (4) SCC 415	relied on	Para 35	B
1988 (4) SCC 302	relied on	Para 38	
2003 (7) SCC 56	relied on	Para 39	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1218 of 2006. C

From the Judgment & Order dated 29.09.2006 of the High
Court of Judicature, Andhra Pradesh at Hyderabad in Criminal
Appeal No. 1227 of 2004.

Sushil Kumar, S.S.S. Reddy, Aditya Kumar, P. Veera
Reddy and S. Usha Reddy for the Appellants. D

K.T.S. Tulsi and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by E

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is
to the judgment of a Division Bench of the Andhra Pradesh
High Court which by the impugned judgment allowed the appeal
filed by the State and held A-1 to A-4, A-6, A-7, A-9 to A-13
guilty for various offences. A-3 was found guilty of offence
punishable under Section 302 of the Indian Penal Code, 1860
(in short the 'IPC'). A-1, A-2, A-4, A-6, A-7, A-9 to A-13 were
found guilty of offence punishable under Section 302 read with
Section 149 IPC and A-1 to A-4, A-6, A-7, A-9 to A-13 were
also found guilty of offence punishable under Section 307 IPC
as also under Sections 3 and 5 of Explosive Substances Act,
1908 (in short the 'Explosive Act'). They were acquitted of the
rest of the charges except under Section 120-B and Section
148 IPC. F
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A 2. Prosecution case during trial is essentially as follows:

B A-1, A-2, A-5 and A-19 are brothers and A-19 is the Chairman of the Agricultural Market Yard, Pulivendula. The other accused are followers of A-19 and supporters of Telugu Desam Party. The deceased Y.S. Raja Reddy was an Ex-Sarpanch of Pulivendula. PW-1 is the Driver, PW-2 is the Private Body Guard., PWs. 3 and 4 are Carpenters, PWs.5 and 6 are residents of Gondipalli Village of Vemula Mandall and PWs.7 and 8 are residents of Vemula village. In January, 1996, deceased and his followers attacked A-19 and caused grievous injuries to him. Since then A-19 and his associates had decided to do away with the deceased.

D On 23-05-1998 the deceased along with PWs.1 to 4 went to his Estate situated at Gandhi village in a car. When he was returning to Pulivendula and when the car reached Vemula village, they found stagnation of water on the road near MDO Office. PW-1 slowed down the car to cross the water. At that moment A-1 to A-13, A-16, and A-17 surrounded the car. When A-1 exhorted, the other accused uttered "Kill Raja Reddy" and E A-2 hurled a bomb on the deceased and the front glass of the car was broken. A-3 to A-13, A-16 and A-17 also hurled bombs on the car. The bomb hurled by A-3 hit the head of the deceased and exploded causing blasting of his skull resulting in his instantaneous death. The bombs hurled by the other F accused hit the deceased and PWs. 1 to 4. They suffered splinter injuries all over the body and the car was also badly damaged. Due to explosion of bombs, A-5 sustained splinter injuries and fell down unconscious. A-5 was shifted to the house of his uncle by the other accused and PWs 1 to 4 were shifted to Pulivendula hospital for treatment. PW-25, the Head G Constable of Pulivendula Police Station, went to the hospital and recorded the statement of PW-1 at 4.00 PM and forwarded the same to Vemula Police Station on the point of jurisdiction. On the basis of the said complaint, a crime was registered at 5.45 PM and copies of FIR were sent to all concerned. PW- H

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30, the Inspector of Police, took up the investigation, held inquest over the dead body of the deceased from 9.00 PM to 12.00 midnight and got conducted postmortem examination over the dead body of the deceased. Immediately after inquest PW-32 took up further investigation and arrested the accused on various dates. On surrender of A-15, a judicial confession was recorded under Section 164 of the Code of Criminal Procedure, 1973 (in short the 'Code') by PW-17, the then III Additional Junior Civil Judge, Cuddapah, and the case property was sent to Forensic Science Laboratory for examination and after getting the report and obtaining sanction from the Collector, a charge sheet was filed against all the accused. Charges were framed against the accused for the offences under Sections 120-B 148, 302, 302/149, 307, 307/149, 435, 435/149 IPC and Section 3, 5, and 6 of Explosive Act. All the accused denied the charges and claimed for trial. Trial Court acquitted the accused persons. An appeal was preferred by State which as noted above was partially allowed.

3. In support of the appeal, learned counsel for the appellants submitted that the view taken by the High Court was a possible view and the reversal was done by taking another view. The prosecution, it is to be noted, gave up its case so far as A-15, A-18 and A-19 are concerned. A-5 died on the date of the occurrence while A-8 died during the pendency of the trial. In other words, there are 13 accused persons whose case remains to be considered. The High Court acquitted A-16 and A-17 from all the charges and convicted the rest of the accused as noted above.

4. There were four injured eye witnesses PWs 1, 2, 3 and 4. A complaint was given by PW-1 the driver, wherein the names of A-1 to A-13, A-14 and A-19 were mentioned. The same was recorded by PW-25 in the presence of PW-22 the doctor in the Government Hospital. Exh.P-4 is the inquest report which was witnessed by PWs 2 to 4. PW-1 was the driver of the deceased working for nearly four years and PW-2 was the

- A Personal Assistant of the deceased. PWs 3 and 4 were carpenters working near the place of occurrence. The eye witnesses apart from PWs 1 to 4 were PWs 5 and 6 of Gondipalli village and PWs 7 and 8 of Vemula village. Learned counsel for the appellants submitted that the view taken by the
- B trial Court was a possible view and the High Court should not have interfered with the finding. There was considerable delay in lodging the FIR. The accused belong to different villages and it could not be possible for all of them to assemble at one place with common intention and to attack as they did not have any
- C common motive or prior conspiracy. The so called eye witnesses belong to different villages and their version would not be truthful and reliable. The investigation in the case was tainted and there were several lapses in the process of conducting the investigation. PWs 1 to 4 were members of the
- D deceased's group and, therefore, their evidence could not have been believed. The doctor helped the prosecution as he did not conduct the post mortem examination or the internal examination of the dead body. The dead body was shifted and the injured witnesses also unauthorisedly went out from the scene of offence and there was no reason given.
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5. Learned counsel for the respondent-State on the other hand submitted that the trial Court's approach was erroneous and its conclusions were perversê. The High Court was therefore justified in setting aside the acquittal and directed

F conviction.

6. In view of rival submissions of the parties, we think it proper to consider and clarify the legal position first. Chapter XXIX (Sections 372-394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the present Code") deals with

G 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

H cases. Section 374 allows appeals from convictions. Section

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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. Appeal in case of acquittal.—(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal 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.

A (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.

B (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)."

C 7. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

D 8. 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.

E 9. Bare reading of Section 378 of the present Code
F (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 re-appreciate, 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
G High Court in an appeal against an order of acquittal.

H 10. It cannot, however, be forgotten that in case of acquittal,

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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.

11. 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.

12. The first important decision was rendered by the *Judicial Committee of the Privy Council in Sheo Swarup v. R. Emperor* (1934) 61 IA 398). In *Sheo Swarup* the accused were acquitted by the trial court and the local Government directed the Public Prosecutor to present an appeal to the High Court from an order of acquittal under Section 417 of the old Code (similar to Section 378 of the 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

- A 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
- B 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
- C 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.

13. Lord Russel summed up the legal position thus:

- D “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’,
- E 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
- F defence so as to produce a similar result.”

14. His Lordship, then proceeded to observe: (IA p.404)

- G “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.”

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

"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." B C D

(emphasis supplied)

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

17. 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. F G

18. Upholding the decision of the High Court and following the proposition of law in *Sheo Swarup* (supra), a six-Judge H

A 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 under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice."

(emphasis supplied)

C 19. In *Surajpal Singh v. State* (1952 SCR 193), a two-Judge Bench observed that it was well established that in an appeal under Section 417 of the (old) Code, the High Court had full power to review the evidence upon which the order of acquittal was founded. But it was equally well settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons.

E 20. 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 F 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 G 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 H his lips sealed".

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21. 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)

22. 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 under Section 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

A to the opinion of the trial court which recorded the order of acquittal.

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

(emphasis supplied)

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

(emphasis supplied)

24. 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.”

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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."

25. 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

A 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
 B 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
 C 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
 D 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
 E 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
 F judgment of acquittal, the High Court must necessarily
 characterise the findings recorded therein as perverse."

(emphasis supplied)

26. Yet in another leading decision in *Shivaji Sahabrao*
 G *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,
 H it has a duty to scrutinise the probative material de novo,

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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."

27. 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.

A 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
 B 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
 C chance possibilities as good enough to set the delinquent
 free and chopping the logic of preponderant probability to
 punish marginal innocents."

(emphasis supplied)

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

E "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
 F '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
 G 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
 H mentioned by the Privy Council in *Sheo Swarup* case.

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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)

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

"While sitting in judgment over an acquittal the appellate

A 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."

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

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

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

"7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the

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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 reappraise the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not".

32. 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

A 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
B 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."

C 33. 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
D 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
E 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
F than from the conviction of an innocent. In a case where
admissible evidence is ignored, a duty is cast upon the
appellate court to reappraise the evidence in a case
where the accused has been acquitted, for the purpose of
ascertaining as to whether any of the accused committed
any offence or not".

G 34. Again in *Kallu v. State of M.P.* (2006) 10 SCC 313,
this Court stated:

H "8. While deciding an appeal against acquittal, the power
of the appellate court is no less than the power exercised

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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)

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

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate

A court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

B (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.

D (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.

E 36. 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)]:

G "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

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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."

37. 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.

38. 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).

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

40. It is to be noted that in the instant case the incident took place in front of MDO office at Vemula around 1.40 p.m.

- A The finding of the trial Court is to the effect that murder of deceased took place at 1.40 p.m. at Vemula and the same fact is not disputed by the accused persons. Between 2.40 and 2.45 p.m. the deceased and the injured were taken to the Government Hospital at Pullvendula by PW-9 which is also 12
- B KM from the place of occurrence. The medical intimation is Ext.P-25 which was sent to the Station Incharge at 2.45 p.m. PW-1 the de facto complainant was examined by PW-22 at around 3.30 p.m. The Station Incharge Pullivendula received information around that time. At 4.00 p.m. the statement of the
- C de facto complainant (PW-1) was recorded by the Head Constable in the presence of PW-22. The statement of PW-1 alongwith Ext.P-25 was sent to Vemula Police Station on the point of jurisdiction and the same was registered as a Crime No.22 of 1998 at Vemula P.S. by PW-21. The inquest was held
- D at around 9 to 12 p.m. and copy of FIR was received by the Elaaq Magistrate. It is to be noted that since the Magistrate at Pulivendula was on leave and Magistrate at another place was not the incharge, it was sent to another Court which is at a distance of 60 K.M. as is evident from the evidence of PW-21. Therefore, there is no delay in sending the FIR to the
- E Magistrate. The allegation that the FIR was ante timed is without any foundation.

41. The impugned judgment cannot be said to be suffering from infirmity to warrant interference. The appeal fails and is
- F dismissed.

G.N.

Appeal dismissed.