

SATYAVIR SINGH

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v.

STATE OF U.P.

(Criminal Appeal No. 295 of 2010)

FEBRUARY 11, 2010

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**[ALTAMAS KABIR AND SWATANTER KUMAR, JJ.]**

*Penal Code, 1860 – s.307 – Accused, armed with licensed gun of his brother, allegedly fired bullet shots at informant's brother and injured him – Trial Court convicted accused u/s 307, IPC and u/s 27 of Arms Act – First Appellate Court held that the firing was accidental and acquitted accused of both the offences – High Court reversed the judgment of acquittal by convicting accused u/s.307, IPC – Justification of – Held: Justified – The First Appellate Court founded its judgment of acquittal on surmises and suspicion, which were not supported by evidence on record – Statement of eye witnesses, medical evidence and investigation conducted by Investigating Officer clearly show that prosecution proved its case beyond reasonable doubt – The act of firing gun shots at the victim shows that accused had knowledge that by such an act he may even cause death of the victim, though it is a matter of co-incidence that the gun shots did not injure the victim at any of his vital organs – Arms Act, 1959 – s.27.*

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*Appeal – Appeal against acquittal – Scope for interference – Discussed.*

**According to the prosecution, the appellant-accused, armed with the licensed gun of his brother, fired bullet shots at PW3 and injured him as he was enraged with the fact that the farmers in the village had started irrigating their fields from the tubewell of PW1-informant instead of appellant's father. The occurrence was allegedly**

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A witnessed by PW1, PW-4 and two other witnesses. PW1 is brother of PW3.

B The trial court convicted the appellant u/s. 307 IPC and u/s 27 of Arms Act, 1959. The first Appellate Court held that the firing was accidental and acquitted the appellant of both the said offences. The High Court partly allowed the appeal of the State by convicting him u/s. 307 IPC.

C In appeal to this Court, it was contended that a) that the High Court erred in law in setting aside the judgment of acquittal recorded by the First Appellate Court, which was reasoned one and based on a proper appreciation of evidence and thus the High Court ought not to have upset the judgment of acquittal; (b) that no motive was proved and in absence of a specific motive, the High Court erred in holding the appellant guilty of offence under Section 307 IPC; (c) that the expert evidence being at variance and the medical evidence not supporting the injuries allegedly found on the person of the victim, the benefit of doubt should have been given to the accused as the prosecution had failed to prove its case beyond reasonable doubt and (d) that the High Court should have appreciated that it was an accidental firing and the prosecution had not put forth any explanation on record as to how the weapon (double barrel gun) was broken.

Dismissing the appeal, the Court

G HELD:1. The judgment of acquittal can be interfered by the appellate court. However, it is neither permissible nor possible to enunciate any straightjacket formula which can universally be applied to all the cases. The court will have to exercise its discretion keeping in view the facts and circumstances of a given case. [Para 15] [748-B-D]

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*Ganesh Bhavan Patel & Anr. vs. State of Maharashtra*, 1978 (4) SCC 371; *Sheo Swarup v. King Emperor* AIR 1934 PC 227; *Mathai Mathews v. State of Maharashtra* (1970) 3 SCC 772; *Khedu Mohnton & Ors. v. State of Bihar* 1970 (2) SCC 450; *Kunwar Bahadur Singh v. Shiv Baran Singh & Ors.* 2001 9 SCC 149; *Arulvelu & Anr. v. State represented by the Public Prosecutor & Anr.* 2009 (10) SCC 2006 and *Ghurey Lal v. State of U.P.* 2008 (10) SCC 450, referred to.

2.1. In the present case, the trial court discussed ocular as well as documentary evidence produced by the prosecution. The version stated by the eye witnesses, the medical evidence as well as the veracity of the statement made under Section 313 CrPC formed the basis of the judgment of conviction passed by the trial court. The court examined in its right perspective one of the most important feature of the case that why the accused was carrying gun of his brother and discarded the narration and the explanation for keeping the gun with him. [Para 16] [748-E-G]

2.2. The First Appellate Court, however, held that it was an accidental firing and the prosecution failed to prove its case. The benefit was given to the accused primarily on certain surmises and conjectures and doubting the presence of the witnesses particularly PW4 whose presence had been admitted by the accused himself in the report lodged by him and even in his explanation before the Court. [Para 18] [749-B-C]

2.3. Definite doubts or lacunae in the case of the prosecution may result in benefit of doubt being given to the accused and consequential acquittal. However, such doubts and lacunae must be clearly distinguished from doubts or lacunae based upon certain assumptions. In such cases what appears to be loop-hole in the case of the prosecution at the first glance, on appropriate

A examination and appreciation of evidence, may fall in the  
other class. The First Appellate Court founded its  
judgment of acquittal more on surmises and suspicion  
and the views of the Court were not supported by  
evidence on record. The First Appellate Court proceeded  
B on the basis of certain presumptions which in the  
opinion of the Court could be the correct approach. But  
such approach may be guided by the doctrine of  
perversity. If findings are neither supported by evidence  
nor such approach could be adopted by the person of  
C common prudence or behaviour, then the court may  
interfere in a judgment of acquittal. The First Appellate  
Court is a court of both fact and law and as such has  
jurisdiction to entirely re-appreciate the evidence. Thus,  
while setting aside the order of conviction it has to equally  
D ensure that no injustice is done and on certain  
assumptions of facts, guilty may not go scot free. A  
person otherwise proved to be guilty by the prosecution  
by leading cogent and reliable evidence, normally would  
not be given the benefit of doubt on the basis of certain  
assumptions or presumptions of facts. The Court may  
E have to notice and rely upon behaviour of the person of  
a common prudence only where the direct evidence have  
been produced. The assumptions raised by the First  
Appellate Court are not supported on record. The High  
Court did not err in setting aside the order of acquittal and  
F affirming the judgment of conviction rendered by trial  
court. [Paras 19 and 20] [749-D-H; 750-A-H]

2.4. The High Court noticed that the fields of farmers  
in the village were irrigated from the tubewell of  
G appellant's father which was installed in that village. It was  
because of construction of the road for the Power House  
that the farmers of the village started irrigating from the  
tubewell of PW1. This was not bearable to the appellant.  
Thus, this may not be exactly a motive but was a reason

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enough for the accused to take an offensive step against the injured. [Para 22] [751-B-C] A

2.5. The first information report was lodged by PW1 without any delay and PW3 had been challenged by the accused saying that how he was irrigating the fields of the villagers from his tubewell. Armed with a licensed gun of his brother, he opened fire on PW3 and shot two bullets. The occurrence was seen by PW-1, who was present there as well as PW-4 and some others. The accused was arrested and the gun was also deposited. [Para 23] [751-D-E] B C

3.1. PW3 was medically examined and according to Dr. (PW-5), three injuries were found on the person of the injured, who was then subjected to X-ray by PW8. The medical evidence clearly reflected that the injuries could be caused by gun shots. However, there was little difference of opinion between two doctors but both the doctors were not the ballistic experts so as to provide any expert opinion which could safely be relied upon by the Court while deciding the case. [Para 25] [751-E-H; 752-A-B] D E

3.2. The difference of opinion between experts necessarily may not persuade the Court to adopt one approach or the other particularly when none of the experts are persons competent to express opinion on that subject. The difference of opinion between two doctors which, in the facts and circumstances of the present case, does not have any material bearing on the case of the prosecution is not such a formidable submission which has to be accepted by the Court to grant necessarily the benefit of doubt to the accused. [Paras 24 and 26] [751-E-G; 752-B-C] F G

*Malay Kumar Ganguly v. Dr. Sukumar Mukherjee & Ors.*  
(2009) 9 SCC 22 – referred to. H

A 4. It was stated by PW-5 that the injuries on PW3  
 could be caused by gun shots. The trial court and the  
 High Court expressed in unambiguous language the view  
 that it was possible that no gun powder was traced  
 around the wounds of the injuries as he was wearing  
 B clothes. This finding cannot be said to be erroneous. PW-  
 8 clearly stated that the pellets of the fire shots were  
 found in the wounds and were duly seen in the X-Ray of  
 the injured. In fact the major part of the occurrence is not  
 even disputed by the accused in his statement under  
 C Section 313 CrPC and in any case the report lodged by  
 him clearly shows that the incident occurred and the  
 injured besides, other two witnesses, PW-1 and PW-2 were  
 present at the spot. In fact according to the accused it was  
 an accidental fire which occurred as a result of snatching  
 D of the gun by the injured and other persons  
 accompanying him at that time. While, according to the  
 prosecution he had fired two shots which injured the  
 victim and thereafter the gun was snatched. PW-5  
 examined the injuries of the injured and stated that  
 injuries would have been caused 2-3 hours earlier and  
 E that when the injured was brought to the hospital he was  
 bleeding and such injuries could be sustained by gun  
 shots. This statement of the doctor had fully supported  
 the case of the prosecution and chain of events as stated  
 therein. [Para 28] [752-E-H; 752-A-C]

F 5. The contention that as no explanation was  
 rendered by the prosecution as to how the gun had  
 broken, this would straightaway cause serious dent in  
 the case of the prosecution and entitles the accused for  
 G an acquittal, has no merit. It was for the accused to prove  
 his defence as the prosecution is liable to prove the case  
 as stated in the first information report and the report  
 filed by it under Section 173 CrPC. The eye witnesses had  
 actually seen the victim being injured by the shots fired

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by the accused. In fact the accused was apprehended at the spot with the gun. The gun in question was admittedly a double barrel gun and the same was used by the accused while firing two shots. The gun with the spent cartridges were taken into custody. The accused himself had lodged the report under Section 394 IPC against the eye-witnesses. The report lodged by the accused, itself shows as to how the gun was broken. But the breaking incident took place after the two shots had been fired by the accused upon the injured. There appears to be no justifiable reason as to why the eye witnesses PW-1 and PW-4, who even according to the accused were present at the place of occurrence, should be disbelieved. It could be safely construed from the evidence on record that the accused may not have any strong motive to kill the victim, however, the loss of revenue on account of the fact that water for irrigation was being provided by the father of the injured, was reason enough for the accused to show his anger or it was not acceptable to him, as stated by the witnesses, thus he fired two shots which resulted in causing injuries to PW3. The gun and the utilized bullets were given at the police station itself. This evidence clearly shows that prosecution has not failed in proving its case in accordance with law. [Paras 29, 30] [753-D-H; 754-A-C]

6. The statement of the eye witnesses, medical evidence and the investigation conducted by the Investigating Officer clearly show that the prosecution has been able to prove its case beyond reasonable doubt. The act of firing gun shots at the injured obviously shows that the accused had the knowledge that by such an act he may even cause the death of the injured and actually caused hurt to victim. It is a matter of coincidence that the gun shots did not injure PW3 at any of his vital organs. [Para 31] [754-D-F]

A 7. The appellant while referring to certain  
discrepancies appearing in the statements of the  
witnesses including the doctors, contended that it was  
a case of acquittal and there was no intention on the part  
of the accused to kill the injured otherwise he would have  
B fired the gun shots at the vital parts of the body of the  
injured, particularly when according to the prosecution,  
it is stated that the firing took place from a close distance.  
This contention has no merit inasmuch the tattooing and  
charring shall always depend upon the constituents of  
C the propellant charge and it is in that context only  
wounds are classified by their external appearance as  
close contact. [Para 32] [754-F-H; 755-A]

*Bano Prasad & Ors. v. State of Bihar* 2006 (12) SCALE  
354, referred to.

D 8. Some discrepancies *per se* would not prove fatal  
to the case of the prosecution particularly when there is  
no reason before the Court to doubt the statement of PW-  
1. There has been no delay in registration of the case and  
E in fact even a counter case was registered which did not  
result in favourable culmination for the accused. Also the  
statement of the accused recorded under Section 313  
CrPC to some extent falls in line with the case of the  
prosecution. [Para 33] [755-B-D]

F 9. The High Court did not exceed its jurisdiction in  
law and with reference to the evidence on record while  
reversing the judgment of acquittal to one that of  
conviction. [Para 34] [755-D-F]

G Case Law Reference:

|                  |             |         |
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| 1978 (4) SCC 371 | referred to | Para 3  |
| AIR 1934 PC 227  | referred to | Para 11 |
| (1970) 3 SCC 772 | referred to | Para 12 |

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|----------------------------|--------------------|----------------|----------|
| <b>1970 (2) SCC 450</b>    | <b>referred to</b> | <b>Para 12</b> | <b>A</b> |
| <b>2001 9 SCC 149</b>      | <b>referred to</b> | <b>Para 12</b> |          |
| <b>2009 (10) SCC 2006</b>  | <b>referred to</b> | <b>Para 13</b> |          |
| <b>2008 (10) SCC 450</b>   | <b>referred to</b> | <b>Para 13</b> | <b>B</b> |
| <b>(2009) 9 SCC 22</b>     | <b>referred to</b> | <b>Para 27</b> |          |
| <b>2006 (12) SCALE 354</b> | <b>referred to</b> | <b>Para 32</b> |          |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 295 of 2010. **C**

From the Judgment & Order dated 20.10.2008 of the High Court of Judicature at Allahabad in Govt. Appeal No. 390 of 1981.

N.S. Gahlout, R.K. Singh and Sanjeev Malhotra for the Appellant. **D**

Ratnakar Dash, Rajeev K. Dubey, Kamendra Mishra for the Respondent.

The Judgment of the Court was delivered by **E**

**SWATANTER KUMAR, J.** 1. Leave granted.

2. Satyavir Singh, appellant-accused was tried for an offence under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as the 'Code') and Section 25/27 Arms Act, 1959 (for short the 'Act') in the Court of Assistant Sessions Judge, Bulandshahr, and was found guilty for both the offences. After hearing the accused on the question of sentence, the Court awarded him three years R.I. under Section 307 of the Code and one year R.I. under Section 27 of the Act. Both the sentences were ordered to run concurrently. Upon appeal by the accused, the learned 1st Additional Sessions Judge at Bulandshahr set aside the judgment and sentence and while partly allowing the appeal by its judgment dated 06.11.1980 **F**  
**G**  
**H**

- A acquitted him of both the charges for which he was convicted by the learned Assistant Sessions Judge, Bulandshahr and only convicted him for offence u/s 25(1)(a) of the Act and sentenced him to imprisonment till the rising of the Court. With the leave of the High Court, the State preferred an appeal against the judgment of acquittal. The High Court of Judicature at Allahabad vide its judgment dated 20.10.2008 set aside the order of acquittal and while allowing the appeal partly, it convicted the appellant under Section 307 of the Code and declined to interfere with the sentence awarded by the First Appellate Court in relation to an offence under Section 25 of the Act.

2. It will be useful to refer to the findings and conclusions recorded by the High Court of the State.

- D "On the basis of evidence on record, the charge under Section 307 IPC is proved beyond all reasonable and probable doubt.

- E The impugned judgment and order passed in Criminal Appeal No. 99 of 1979, '*Satyavir Singh vs. State of U.P.*' is thus found to be unsustainable as far as acquittal of accused-respondent under Section 307 IPC is concerned.

- F We do not find any illegality or irregularity in the impugned judgment and order dated 6.11.1980 regarding acquittal of accused-respondent under Section 27 Arms Act and his conviction under Section 25(1)(a) Arms Act.

The criminal revision filed by Bhanu Prakash Sharma is thus partly allowed. We are not inclined to enhance the sentence awarded under Section 307 IPC passed by learned Assistant Sessions Judge, Bulandshahr in S.T. No. 328 of 1976, *State vs. Satyavir Singh*. No prayer for the enhancement of the sentence under Section 307 IPC has been made in the criminal revision by Bhanu Prakash Sharma. The occurrence is dated 9.2.1975. We are also not inclined to enhance the sentence awarded to accused-

respondent under Section 25(1)(a) Arms Act.

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Keeping in view the date of occurrence of this case, we are not inclined to enhance the sentence as awarded by learned Assistant Sessions Judge, Bulandshahr in S.T.No. 328 of 1976 in government appeal as well.

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We thus confirm the sentence of three years R.I. Awarded under Section 307 IPC by learned Assistant Sessions Judge, Bulandshahr vide judgment and order dated 21.5.1979 passed in S.T. No. 328 of 1976, *State vs. Satyavir Singh*.

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Government Appeal is thus partly allowed. The judgment and order dated 6.11.1980 passed by 1st Additional Sessions Judge, Bulandshahr is partly set aside to the extent referred above. The accused-respondent Satyavir Singh having been found guilty under Section 307 IPC is sentenced to three years R.I.

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We decline to interfere with the order of acquittal passed under Section 27 Arms Act and instead convicting the accused-respondent under Section 25(1)(a) Arms Act and sentencing him to imprisonment till the rising of the Court.

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The judgment and order passed today is certified to the Court of 1st Additional Sessions Judge, Bulandshahr and such court shall thereupon make such orders as are conformable to the judgment and order of this Court and if necessary the record shall be amended in accordance therewith."

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3. Legality and correctness of the judgment and order of sentence passed by the High Court is questioned by the appellant-accused in the present appeal under Article 136 of the Constitution of India inter alia but primarily on the following grounds :

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A (a) The High Court has erred in law in setting aside the judgment of acquittal recorded by the First Appellate Court, which was reasoned one and based on a proper appreciation of evidence. Thus the High Court ought not to have upset the judgment of acquittal. Therefore, the High Court has acted beyond the limitations on such exercise of power and heavy reliance is placed on the case of *Ganesh Bhavan Patel & Anr. vs. State of Maharashtra* : 1978 (4)SCC 371.

C (b) No motive was proved and in absence of a specific motive, the High Court has erred in holding that the appellant is guilty of offence under Section 307 of the Code.

D (c) The expert evidence being at variance and the medical evidence not supporting the injuries allegedly found on the person of the victim, the benefit of doubt should have been given to the accused as the prosecution had failed to prove its case beyond reasonable doubt.

E (d) The Court should have appreciated that it was an accidental firing and the prosecution had not put forth any explanation on record as to how the weapon (double barrel gun) was broken.

F 4. In order to appreciate the merit or otherwise of the submissions made before us reference to the case of prosecution would be necessary :

### **5. Facts**

G Bhanu Prakash Sharma, (PW-1) was taking tea at Hamid Khan's Hotel at about 2.30 P.M. His brother Dharam Prakash (PW-3) arrived at the crossing towards Narora Bus Stand. Dharam Prakash aged about 18 years was a student of Khurja Polytechnic. Satyavir Singh, accused is the resident of village Niwari. Vijay Singh is his elder brother and owned a double

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barrel gun under a valid licence. It is the case of the prosecution that the fields of farmers in village Niwari were irrigated by tubewell of Prem Shankar Thakur. A road was constructed for the power house due to which some farmers of village Niwari started irrigating their fields from the tube well of Bhanu Prakash Sharma (PW-1), resident of village Jairampur Bangar. This caused some displeasure to Prem Shankar Thakur, father of Satyavir Singh, the accused. At about 2.30 P.M. on 09.02.1975 said Bhanu Pratap sharma was taking tea in the Hotel of Hamid Khan at Chauraha of the village. Dharam Prakash came from the side of Narora Bus Stand. The accused on seeing Dharam Prakash, who ultimately examined as PW-3, challenged him by saying that how he was irrigating the fields of villagers from his tube-well. The accused, as already noticed, was armed with a licenced gun of his brother. The accused thereupon fired two bullets from that gun on Dharam Prakash. Dharam Prakash was medically examined on that very day by Dr. Suresh Chandra Singh (PW-5) and the following injuries were noticed on his person:

'INJ: (1) Lacerated wound 1 c.m. X 1 c.m. X thickness of the left upper arm, on the left upper arm front aspect in upper part. There are four abrasions each 1/4c.m. X 1/4c.m. on its lower and outer aspect. Suspected underneath Adv. X-ray. The margines of the wound are inverted.

(2) Lacerated wound 1.5c.m. X 1.5c.m. X thickness of the left upper .. on the back aspect of the left upper arm 2c.m. Above the elbow... Suspected underneath. Adv. X-ray. The margines of the wound are inverted.

(3) Lacerated wound 7.5 c.m. X 3.5 c.m. on the left forearm upper half-inner aspect. It is bone deep. Suspected fracture underneath. Adv. X-ray.'

6. The occurrence was witnessed by Bhanu Prakash Sharma informant, Rama Shanker (PW-4); Brij Bhushan and others. Bhanu Prakash Sharma reported the matter to the

- A police, the first information report was registered being Exh.Ka-1 at about 16.05 hours and the case under Section 307 of the Code and under Section 25 of the Act was registered against the accused. The accused was arrested. The accused was also medically examined on that very day and on his person the following injuries were noticed:

"INJ: (1) Swelling 5c.m. X 5 c.m on the right side of front of face and nose. There is clotted blood in both nostrils. Red in colour Adv. X-ray.

- C (2) Swelling 2c.m. X 1/2c.m. on the left cheek lower jaw. Adv. X-ray in colour.

(3)Abrasion 1/5 c.m. X 1/5 c.m. on the front of the right knee joint. Oozing stopped.'

- D 7. Accused also lodged a report with Police Station, Dibai, District Bulandshahr on 09.02.1975 at about 5.00 P.M. stating that Pandit Raghunandan Prasad resident of village Jairampur Bangar had a tube-well in the village. Later on the appellant-accused installed a tube-well in his own village Niwari and started giving water for irrigation at lesser price. This affected the income of Pandit Raghunandan Prasad. On 09.02.1975 when he was carrying the gun of his brother Vijay Pal Singh to Narora and reached at the shop of Hamid Khan situated in Village Jairampur Bangar, Bhanu Prakash, Dharam Prakash, Rama Shankar and other unknown person met him and started snatching his gun. The fire accident happened due to snatching and caused injuries to Dharam Prakash. The accused was beaten and his gun was snatched. This came to be registered as Criminal Case No. 27A/75; whereas on the complaint of PW-1, Criminal case 87/75 under Section 307 of the Code and Section 25 of the Act respectively was registered.

- H 8. As the various contentions raised on behalf of the appellant are interconnected and common evidence would have to be examined to record a finding, it will be appropriate for us

to have a common discussion on these arguments.

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9. As is evident from the record before us, the learned trial court vide its judgment dated 21.05.1979 had convicted the accused of both the offences under Section 307 of the Code as well as 27 of the Act, which judgment of the trial court was set aside and the accused was acquitted of both these offences and was convicted for the offence under Section 25 (1) (a) of the Act while awarding him the punishment of imprisonment till rising of the court. This judgment of acquittal which was set aside by the High Court practically restored the judgment of the trial court and partly allowed the appeal of the State and convicted the accused of an offence under Section 307 of the Code and maintained the conviction under Section 25 (1) (a) of the Act.

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10. The reliance placed by the learned counsel upon the judgment of this Court in the case of *Ganesh Bhavan Patel's* case (supra), is to buttress his submission that a judgment of acquittal should not be interfered by the High Court, as on facts and overall view of the evidence recorded by the First Appellate Court, the findings were reasonable and, therefore, no interference was called for. It is true that in this case the court observed that where two reasonable conclusions can be drawn on evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the court below. To put it simply, if the order acquitting the accused is reasonable and plausible and cannot be entirely or effectively dislodged or demolished, the High Court should not disturb the order of acquittal. The principles with regard to exercise of judicial discretion by the High Court while hearing an appeal against a judgment of acquittal have been well settled and are hardly open to any expansion.

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11. Right from the case of *Sheo Swarup v. King Emperor* : AIR 1934 PC 227, the principles governing exercise of discretion were well stated by the court with a specific note that there was no occasion for placing limitations upon the power

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A unless it was so expressly stated in the code itself. It will be useful to reproduce the dictum of the court at this stage :

B “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. 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 recognized in the administration of justice.”

F The above stated principles have been reiterated with approval and wider dimensions by this Court from time to time.

G 12. In the case of *Mathai Mathews v. State of Maharashtra* : 1970 (3) SCC 772, the court while reiterating the said principle stated that it is now well settled that order of an appellate court to review evidence in appeals against acquittal is as extensive as its power in appeals against convictions. It is also well settled that before an appellate court can set aside the order of acquittal, it must carefully consider the reasons given by the trial court in support of its order and must give a reasoning to reject those reasons. In brief, the appellate court should not disturb the order of acquittal except on very cogent grounds

and on examination of the entire material. Before the appellate court, where the judgment of acquittal is recorded, two important aspects emerge from such judgment. Firstly, there is presumption of innocence of the accused person in our criminal jurisprudence and secondly, the concerned court has recorded the finding in favour of the accused and disbelieved the prosecution and has founded as a matter of fact that the prosecution has failed to prove its case beyond reasonable doubt, thus giving benefit to the accused. Both these presumptions – jurisprudential and in regard to the factual matrix – must be kept in mind and unless the conclusions reached by the court were palpably erroneous or contrary to law or it is likely to result in injustice, the High Court may be reluctant in interfering with the judgment of acquittal. Reference in this regard can also be made to the case of *Khedu Mohton & Ors. v. State of Bihar* : 1970 (2) SCC 450.

In the case of *Kunwar Bahadur Singh v. Shiv Baran Singh & Ors.* : 2001 9 SCC 149, this Court introduced the caution of exercise of such discretion by the court and observed that interference while hearing an appeal against judgment of acquittal, the court should not hesitate to examine the matter on merits merely because there is a judgment of acquittal in favour of the accused. Undue benefit need not be given particularly if acquittal is based on surmises and conjectures and not substantiated by law and evidence on record. Usefully, reference can be made to the relevant findings recorded by the court in para 24 of the judgment :

“In the former case declining to go into the merits may be justifiable but in the latter case it is impermissible. There can be no doubt that jurisprudentially an accused is presumed to be innocent till he is found to be guilty by a competent court. In giving its verdict the Court will give benefit of doubt arising on consideration of evidence brought on record by the prosecution or on account of absence of material evidence which ought to have been

A adduced but is not brought on record, to the accused  
persons and acquit him of the offence charged against.  
But a doubt arising on the basis of surmises and  
conjectures should never be allowed to influence the verdict  
of the Court as in such cases giving benefit of doubt to the  
B accused but will be counter productive and destructive of  
system of delivery of justice in criminal cases having  
repercussions on existence of every civilised and peaceful  
society. The Courts will have to be cautious and prudent  
to secure the ends of justice."

C 13. In a very recent judgment a Bench of this Court in the  
case of *Arulvelu & Anr. v. State represented by the Public*  
*Prosecutor & Anr.* : 2009 (10) SCC 2006, while referring with  
approval the judgment of another equal (Division) Bench in the  
case of *Ghurey Lal v. State of U. P.* : 2008 (10) SCC 450 and  
D relying upon various judgments of the court stated the following  
principles :

E "34 In *Ghurey Lal v. State of Uttar Pradesh* [(2008) 10  
SCC 450] a two Judge Bench of this Court of which one  
of us (Bhandari, J.) was a member had an occasion to  
deal with most of the cases referred in this judgment. This  
Court provided guidelines for the Appellate Court in  
dealing with the cases in which the trial courts have  
acquitted the accused. The following principles emerge  
F from the cases above:

1. The accused is presumed to be innocent until proven  
guilty. The accused possessed this presumption when he  
was before the trial court. The trial court's acquittal bolsters  
the presumption that he is innocent.

G 2. The power of reviewing evidence is wide and the  
appellate court can re-appreciate the entire evidence on  
record. It can review the trial court's conclusion with  
respect to both facts and law, but the Appellate Court must  
H give due weight and consideration to the decision of the

trial court.

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3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

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4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

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36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law."

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14. In addition to the above re-statement of principles, the court also referred to what findings could be termed as 'perverse' so as to call for interference by the higher court hearing the appeal against judgment of acquittal. 'perverse' was stated to be a behaviour which most of the people would take wrong, unacceptable, unreasonable and a 'perverse' verdict may probably be defined as one that is not only against the weight of the evidence but is altogether against the evidence. Besides, a finding being 'perverse', it could also suffer from the infirmity of distorted conclusions and glaring mistakes. In addition thereto there can be cases where for substantial and compelling reasons, good and sufficient grounds, very strong

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- A circumstances and to avoid the ends of justice being defeated, the higher courts have to interfere with the judgment of acquittal recorded by the lower court.

- B 15. From the above enunciated principles it is clear that judgment of acquittal can be interfered by the appellate court. However, exercise of judicial discretion would be guided by these principles. It is neither permissible nor possible to enunciate any straightjacket formula which can universally be applied to all the cases. The court will have to exercise its discretion keeping in view the facts and circumstances of a given case. The court within the stated parameters will well be within its jurisdiction to interfere with the judgment of acquittal. Thus, we will have to examine the matter from the point of view whether in the facts of the present case and evidence on record, High Court was justified in reversing the judgment of acquittal and convicting the accused of an offence under Section 307 of the Code.

- E 16. The trial court in its lengthy judgment have discussed ocular as well as documentary evidence produced by the prosecution. The version stated by the eye witnesses, the medical evidence as well as the veracity of the statement made under Section 313 Code of Criminal Procedure (for short the 'Cr.P.C.') formed the basis of the judgment of conviction passed by the learned trial court. The court examined in its right perspective one of the most important feature of the case that why the accused was carrying gun of his brother and discarded the narration and the explanation for keeping the gun with him. According to the accused his brother Vijay Pal (DW-1) demanded his gun at Narora. According to report Exh. Kh-2, Vijay Pal stated to bring his licensed gun to Narora as he would come late in the evening and the Court was not satisfied with the explanation and held that prosecution has been able to bring home the guilt of the accused.

- H 17. The Court while noticing the statement made by the eye-witnesses PW-1 and PW-3 noticed as under :

"Accused Satyavir himself admits the presence of Ramashankar. Therefore, despite three persons could not explain satisfactory reason of their presence, their presence cannot be denied. "

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18. These findings were set aside by the learned First Appellate Court which stated that it was an accidental firing and the prosecution has failed to prove its case. The benefit was given to the accused primarily on certain surmises and conjectures and doubting the presence of the witnesses particulaly Ram Shankar whose presence had been admitted by the accused himself in the report lodged by him and even in his explanation before the Court.

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19. Definite doubts or lacunae in the case of the prosecution may result in benefit of doubt being given to the accused and consequential acquittal. However, such doubts and lacunae must be clearly distinguished from doubts or lacunae based upon certain assumptions. In such cases what appears to be loop-hole in the case of the prosecution at the first glance, on appropriate examination and appreciation of evidence, may fall in the other class. The following observations of the learned First Appellate Court clearly demonstrates that Court has founded its judgment of acquittal more on surmises and suspicion and the views of the Court which were not supported by evidence on record. Illustratively, the following observations can usefully be noticed:

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"(a) It is evident that left arm is not a vital part. If the appellant was fired from a close range within 4 feet, he could have easily aimed at the chest of the victim, which could have killed him at the spot.

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(b) But when the motive alleged is the very genesis or commencement of the prosecution story, it would not be possible to discard the defect relating to motive or genesis in the prosecution story.

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A (c) The third important feature of the case is simultaneous presence of Bhanu Prakash, Dharam Prakash and Ram Shanker at the crossing.

B (d) Then the only possible inference is that they were together at the crossing or at the tea stall for some other reason and as soon as they saw appellant Satyavir Singh, a youngman alongwith a gun, they were tempted to snatch the gun. According to medical evidence the very seat of the injuries discloses that the shots would have been fired during snatching. "

C 20. The above observations demonstrate that the learned First Appellate Court has proceeded on the basis of certain presumptions which in the opinion of the Court could be the correct approach. But such approach may be guided by the

D doctrine of perversity. If findings are neither supported by evidence nor such approach could be adopted by the person of common prudence or behaviour, then the court may interfere in a judgment of acquittal. The First Appellate Court is a court of both fact and law and as such has jurisdiction to entirely re-

E appreciate the evidence. Thus, while setting aside the order of conviction it has to equally ensure that no injustice is done and on certain assumptions of facts, guilty may not go scot free. A person otherwise is proved to be guilty by the prosecution by leading cogent and reliable evidence, normally would not be

F given the benefit of doubt on the basis of certain assumptions or presumptions of facts. The Court may have to notice and rely upon behaviour of the person of a common prudence only where the direct evidence have been produced. As we shall shortly proceed to discussion that the assumptions raised by

G the First Appellate Court are not supported on record. We find that the High Court has not fallen in error of law in setting aside the order of acquittal and affirming the judgment of conviction rendered by learned trial court.

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21. Now we may proceed to examine the appreciation of evidence on record by the First Appellate Court acquitting the accused as well as that of the High Court reversing the judgment of acquittal. A

22. The High Court noticed that the fields of farmers in village Niwari were irrigated from the tubewell of Prahalad Singh Thakur which was installed in that village. It was because of construction of the road for the Power House that the farmers of village Niwari started irrigating from the tubewell of Bhanu Prakash Sharma resident of Village Jairampur Bangar. This was not bearable to the accused who is the son of Prahlad Singh Thakur. Thus, this may not be exactly a motive but was a reason enough for the accused to take an offensive step against the injured. B C

23. The first information report was lodged by Bhanu Prakash Sharma without any delay and as already noticed Dharam Prakash (PW-3) had been challenged by the accused saying that how he was irrigating the fields of the villagers of his village from his tubewell. Armed with a licensed gun of his brother, he opened fire on Dharam Prakash and shot two bullets. The occurrence was seen by Bhanu Prakash Sharma (PW-1), who was present there as well as Rama Shankar (PW-4) and some others. The accused was arrested and the gun was also deposited. Ext.Ka-1 report to the police station was lodged by Bhanu Prakash Sharma (PW-1). D E F

24. Dharam Prakash was medically examined on 9th February, 1975 at about 4.35 p.m. and according to Dr. Suresh Chandra Singh (PW-5), three injuries were found on the person of the injured who was then subjected to X-Ray by Dr. A.K. Agarwal (PW-8), who was posted as Radiologist in District Hospital, Bulandshahr. It has been proved on record by Dr. Jitendra Singh Sharma (PW-7) that Dharam Prakash remained in the hospital from 9th February, 1975 to 20th March, 1975. G

25. The medical evidence clearly reflected that the injuries H

A could be caused by gun shots. However, there was little difference of opinion between two doctors but both these doctors are not the ballistic experts so as to provide any expert opinion which could safely be relied upon by the Court while deciding the case.

B 26. The difference of opinion between experts necessarily may not persuade the Court to adopt one approach or the other particularly when none of the experts are persons competent to express opinion on that subject. The difference of opinion  
C between two doctors which, in the facts and circumstances of the present case, does not have any material bearing on the case of the prosecution is not such a formidable submission which has to be accepted by the Court to grant necessarily the benefit of doubt to the accused.

D 27. In the case of *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee & Ors.* : (2009) 9 SCC 22, this Court has, while noticing the difference of opinion between the doctors on the basis of the evidence on record and the literature produced, preferred one view over the other without commenting on any  
E expert opinion expressed by either of them.

28. It was stated by Dr. Suresh Chandra Singh (PW-5) that such injuries could be caused by gun shots. The trial court and the High Court expressed in unambiguous language the view that it was possible that no gun powder was traced around the  
F wounds of the injuries as he was wearing clothes. This finding cannot be said to be erroneous. Dr. A.K. Agarwal (PW-8) clearly stated that the pellets of the fire shots were found in the wounds and were duly seen in the X-Ray of the injured. Thus such view taken by the courts cannot be faulted. In fact the major  
G part of the occurrence is not even disputed by the accused in his statement under Section 313 of Cr.P.C. and in any case the report lodged by him bearing No. 27A/75 clearly shows that the incident occurred and the injured besides, other two witnesses, PW-1 and PW-2 were present at the spot. In fact  
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according to the accused it was an accidental fire which occurred as a result of snatching of the gun by the injured and other persons accompanying him at that time. While, according to the prosecution he had fired two shots which injured the victim and thereafter the gun was snatched. Dr. Suresh Chandra Singh (PW-5) examined the injuries of the injured and stated that injuries would have been caused 2-3 hours earlier and that when the injured was brought to the hospital he was bleeding and such injuries could be sustained by gun shots. This statement of the doctor had fully supported the case of the prosecution and chain of events as stated therein.

29. With considerable emphasis, learned counsel for the appellant argued that as no explanation was rendered by the prosecution as to how the gun had broken, this would straightaway cause serious dent in the case of the prosecution and entitles the accused for an acquittal.

30. We find no merit in the aforesaid contention. It was for the accused to prove his defence as the prosecution is liable to prove the case as stated in the first information report and the report filed by it under Section 173 of Cr.P.C. The eye witnesses had actually seen the victim being injured by the shots fired by the accused. In fact the accused was apprehended at the spot with the gun. The gun in question was admittedly a double barrel gun and the same was used by the accused while firing two shots. The gun with the spent cartridges were taken into custody vide Ext Ka-3. The accused himself had lodged the report bearing No. 27A/75 under Section 394 of the Indian Penal Code against the eye-witnesses including Bhanu Prakash Sharma, Dharam Prakash, Rama Shankar and one unknown person. The report lodged by the accused, itself shows as to how the gun was broken. But the breaking incident took place after the two shots had been fired by the accused upon the injured. There appears to be no justifiable reason as to why the eye witnesses PW-1 and PW-4, who even according to the accused were present at the place of occurrence, should

- A be disbelieved. It could be safely construed from the evidence on record that the accused may not have any strong motive to kill the victim, however, the loss of revenue on account of the fact that water for irrigation was being provided by the father of the injured, was reason enough for the accused to show his
- B anger or it was not acceptable to him, as stated by the witnesses, thus he fired two shots which resulted in causing injuries to Dharam Prakash. Both the reports were lodged by the informant as well as the accused at 2.30 p.m. on 9th February, 1975. The gun and the utilized bullets were given at
- C the police station itself. This evidence clearly shows that prosecution has not failed in proving its case in accordance with law.

31. As already noticed, part of the occurrence stands admitted and it is only the limited aspect of the case as to

D whether the firing was accidental or the accused had intentionally fired on the injured. Statement of the eye witnesses, medical evidence and the investigation conducted by the Investigating Officer clearly show that the prosecution has been able to prove its case beyond reasonable doubt. The act of

E firing gun shots at the injured obviously shows that the accused had the knowledge that by such an act he may even cause the death of the injured and actually caused hurt to victim. It is a matter of co-incidence that the gun shots did not injure Dharam Prakash at any of his vital organs.

F 32. Learned counsel appearing for the appellant while referring to certain discrepancies appearing in the statements of the witnesses including the doctors, vehemently contended that it was a case of acquittal and there was no intention on the part of the accused to kill the injured otherwise he would

G have fired the gun shots at the vital parts of the body of the injured, particularly when according to the prosecution, it is stated that the firing took place from a close distance. If that was so, such injuries would not have been caused. This contention also does not impress us inasmuch the tattooing and

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charring shall always depend upon the constituents of the propellant charge and it is in that context only wounds are classified by their external appearance as close contact. Reference can be made to *Bano Prasad & Ors. v. State of Bihar* : 2006 (12) SCALE 354. A

33. Some discrepancies per se would not prove fatal to the case of the prosecution particularly when there is no reason before the Court to doubt the statement of the eye witnesses, PW-1. There has been no delay in registration of the case and in fact even a counter case was registered which did not result in favourable culmination for the accused. It may also be noticed that the learned trial court as well as the High Court has referred to the statement of the accused recorded under Section 313 of Cr.P.C. which to some extent falls in line with the case of the prosecution. B C

34. The cumulative effect of the above discussion is that we do not see any reason to interfere with the judgment of the High Court. The High Court has not exceeded its jurisdiction in law and with reference to the evidence on record while reversing the judgment of acquittal to one that of conviction. So far as the conviction of the accused under Section 25(1) of the Act is concerned, no arguments were addressed. In any case we see no reason to interfere with the said finding of the courts below. D E

35. In the result, the appeal fails and is dismissed. F

B.B.B.

Appeal dismissed.