REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 698 OF 2003

State of Rajasthan ..Appellant

Versus

Yusuf ..Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court, Jodhpur, directing acquittal of the respondents, who were found guilty of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') by the Learned Additional Sessions Judge, Sojat, Shivir.

2. Background facts in a nutshell are as follows;

Smt. Sugra was wife of accused Yusuf, who was married with her 20 years ago. Smt. Sugra was blessed with two daughters; one was 12 years old and other was 5 years old. At about 1 O' clock on 25.2.1986 Smt. Sugra was thinking to prepare lunch in the kitchen. Just then her husband accused Yusuf entered in the house and asked her to get out of house. Smt. Sugra told him that she will leave only after a lapse of three months. On this Smt. Sugra's husband said that he would bring another wife, and Yusuf poured a bottle of Kerosene Oil on her and lit the fire. She rushed out of the house, then the daughter in law of Mahmood Khan and

Farid Khan came out and threw a bucket of water on her. The Accused ran away through the crops of mustard. Head Constable Vijay Kumar and Constable Prabhu Singh of Jaitaran Police Station chowki were patrolling. The children heard the sound of running and crying that a woman is burnt whereupon they reached the spot. A woman was sitting outside the house of Sugra who was almost in naked condition. Sugra was covered with a blanket, which was lying on the cot, and with the help of a motorcyclist she was taken to hospital with constable Prabhu Singh in the hospital, Sugra's statements were recorded by the S.H.O. of Jaltaran. On the basis of above statement, case was lodged under Sec. 307 I.P.C.

Site of occurrence was inspected on the day of occurrence itself and Memo Ex.P-1 was made During the inspection, on the spot (i.e. the kitchen) a kerosene bottle was found and sealed and pieces of burnt clothes were found outside the kitchen. A match-box was found in the kitchen. Collecting the pieces of burnt clothes from the spot, Memo. Ex.P-2 was prepared and *memo Ex.P-3 of* recovered burnt clothes - from the body of Smt. Sugra was prepared. During the investigation, certificate ExP-1 regarding the condition *of* Sugra for giving statement was prepared. Smt. Sugra's statement just before her dying declaration was recorded on the day of incident at 3:20 P.M. by S.H.O. Jaltaran which is exhibited as Ex.P.13. On 25/02/1986 statements of Ishq Ali, Mojhnuddin, Narpat Singh, Kaal, Jannat. Fatma, Sadiq, Tultana, and Anwar were recorded. On 27.2.1986 Smt. Sugra's dying declaration was recorded by the Additional Chief Judicial Magistrate Jaltaran. Injury report of Smt. Surga was received vide Ex.P-4.

On completion of investigation chargesheet was filed. Charges under Sec. 302 IPC against accused Yusuf and Charges under Section 120-B read with article 302 IPC against other six accused personss was read over to them. Accused persons denied the charges and claimed trial. On behalf of the prosecution side 29 witnesses were produced in the said case.

Statements of accused persons were recorded under Sec. 313 of the Code of Criminal

Procedure, 1973 (in short 'Cr.P.C'). In their statements, accused said that statements of witnesses are wrong and *that Sugra's father has burnt her and lodged this false* case in the court. Accused persons, in support of their defence, examined DW-1 Rajkumar. According to the evidence of D.W.1 Rajkumar, on listening to the shrieks and noise, reached to the spot first and throw water on Sugra and put off the fire and wrapped her in a blanket. Sugra told him that his father wanted to get her killed and Sugra had burnt herself and her father was standing outside the door.

P.W.21 Dr. Kailash Chander Mathur on 20/05/86 was on the post of Medical Jurist in Amritkaur Hospital at Beawer. In his statement this witness has admitted that on that day, on the request of Police Station Beawer he performed the postmortem of Smt. Sugra W/o Mohd. Yusuf at 10:30 AM. It has been stated that Postmortem was done by the Board, whose members were he himself and Dr. Nirmala Agarwal and Dr. Gopa1 Mathur. This witness has stated that the medical board was of the view that the cause behind Sugra's death was toxemia due to extensive burn and she had died within six hours of postmortem. He stated that the postmortem report is written by him and bears his signature from A to B. The statement of this witness makes it clear that injuries of burn caused her death. According to Trial Court to be determined as to whether Sugra as per the accused persons, burnt herself or she was burnt by her father or Smt. Sugra was burnt by her husband after conspiring with other accused.

The trial court relied on the purported dying declaration and found the appellant guilty. The High Court found that there were several variations in the dying declaration and apart from that the High Court found that the dying declaration was not reliable and was not free from infirmity. The High court found that the deceased had not made truthful statement. Primarily three circumstances were highlighted to find the dying declaration unacceptable. They were:

1. a false statement about pregnancy;
2. the statement about the marital status.
3. false implication of a large number of family members of the accused.

The High Court found that the four statements given by her and described as dying declaration and the statement under Section 161 of the CrPC indicated that she was consistently improving her version to implicate the accused somehow or other.

It was also found that her statement about the whereabouts of the children were also proved to be false. Accordingly High Court directed acquittal.

3. Learned counsel for the appellant submitted that even if there were exaggerations that should not have weighed with the High Court to direct acquittal.

4. Learned counsel for the respondent supported the judgment of the High Court.

5. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded, it will result in the miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

6. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to

observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction on the same without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben* v. *State of Gujarat (1992(2) SCC 474)* (SCC pp.480-81, paras 18-19)

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

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

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

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

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

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

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

(*viii*) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See: *Surajdeo Ojha* v. *State of Bihar (1980 Supp.SCC 769*)]

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

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

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

7. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. (See *Gangotri Singh* v. *State of U.P.(1993 Supp(1)SCC 327*).

8. When the evidence on record has been examined in great detail by the trial Court and the High Court to place reliance on the dying declaration, the conclusions cannot be in

any way faulted.

9. In the instant case the High Court has found the dying declaration to be not truthful and that there was an inherent attempt to falsely implicate the accused which was borne out by various statements in the so called dying declaration which were proved beyond doubt to be false.

10. 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.

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 Code). At the time of hearing of appeal before the High Court, it was contended on behalf of the accused that in an appeal from an order of acquittal, it was not open to the appellate court to interfere with the findings of fact recorded by the trial Judge unless such findings could not have been reached by him had there not been some perversity or incompetence on his part. The High Court, however, declined to accept the said view. It held that no condition was imposed on the High Court in such

appeal. It accordingly reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge, recorded an order of conviction. A petition was presented to His Majesty in Council for leave to appeal on the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether in an appeal from an order of acquittal, an appellate court had the power to interfere with the findings of fact recorded by the trial Judge. Their Lordships thought it fit to clarify the legal position and accordingly upon the "humble advice of their Lordships", leave was granted by His Majesty. The case was, thereafter, argued. The Committee considered the scheme and interpreting Section 417 of the Code (old Code) observed that there was no indication in the Code of any limitation or restriction on the High Court in exercise of powers as an Appellate Tribunal. The Code also made no distinction as regards powers of the High Court in dealing with an appeal against acquittal and an appeal against conviction. Though several authorities were cited revealing different views by the High Courts dealing with an appeal from an order of acquittal, the Committee did not think it proper to discuss all the cases.

13. Lord Russel summed up the legal position thus:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result."

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

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code."

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

"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (*2*) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (*3*) the right of the accused to the benefit of any doubt; and (*4*) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. *To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice*."

(emphasis supplied)

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.

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.

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

"*6.* It must be observed at the very outset that *we cannot support the view which has been expressed in several cases that the High Court has no power 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)

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.*

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 contended by him that there were "no compelling reasons" for setting aside the order of acquittal and due and proper weight had not been given by the High Court to the opinion of the trial court as regards the credibility of witnesses seen and examined. It was also commented that the High Court committed an error of law in observing that "when a strong 'prima facie' case is made out against an accused person it is his duty to explain the circumstances appearing in evidence against him and he cannot take shelter behind the presumption of innocence and cannot state that the law entitles him to keep his lips sealed".

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 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."

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 appeal against the order of acquittal would be justified only if there are 'very substantial and compelling reasons to do so'. In some other decisions, it has been stated that an order of acquittal can be reversed only for 'good and sufficiently cogent reasons' or for 'strong reasons'. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (*a*) of Section 423(1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in *Sheo Swarup* the presumption of innocence in favour of the accused 'is not certainly weakened by the fact that he has been acquitted at his trial'. Therefore, the test suggested by the expression 'substantial and compelling reasons' should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in *Sanwat Singh* v. *State of Rajasthan* and *Harbans Singh* v. *State of Punjab* (1962 Supp 1 SCR 104) and so, *it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the*

***findings recorded therein as perverse.*"**

(emphasis supplied)

26. Yet in another leading decision in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* (1973 (2) SCC 793) this Court held that in India, there is no jurisdictional limitation on the powers of appellate court. "In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."

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. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....' *In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping*

***the logic of preponderant probability to punish marginal innocents*.**"

(emphasis supplied)

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

"***9.* The principles are now well settled. At one time it was thought that an order of acquittal could be set aside for 'substantial and compelling reasons' only and courts used to launch on a search to discover those 'substantial and compelling reasons'. However, the 'formulae' of 'substantial and compelling reasons', 'good and sufficiently cogent reasons' and 'strong reasons' and the search for them were abandoned as a result of the pronouncement of this Court in *Sanwat Singh* v. *State of Rajasthan (1961) 3 SCR 120*. In *Sanwat Singh case* this Court harked back to the principles enunciated by the Privy Council in *Sheo Swarup* v. *R. Emperor* and reaffirmed those principles. After *Sanwat Singh* v. *State of Rajasthan* this Court has consistently recognised the right of the appellate court to review the entire evidence and to come to its own conclusion bearing in mind the considerations mentioned by the Privy Council in *Sheo Swarup case*. Occasionally phrases like 'manifestly illegal', 'grossly unjust', have been used to describe the orders of acquittal which warrant interference. But, such expressions have been used more as flourishes of language, to emphasise the reluctance of the appellate court to interfere with an order of acquittal than to curtail the power of the appellate court to review the entire evidence and to come to its own conclusion. In some cases (*Ramaphupala Reddy* v. *State of A.P.*, (AIR 1971 SC 460) *Bhim Singh Rup Singh* v. *State of Maharashtra (AIR 1974 SC 286)*, it has been said that to the principles laid down in *Sanwat Singh case* may be added the further principle that 'if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court'. This, of course, is not a new principle. It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. *It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable.*"

(emphasis supplied)

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 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 reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding."

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. Negativing the contention of the appellants that the High Court could not have disturbed the findings of fact of the trial court even if that view was not correct, this Court observed:

"*7.* We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not".

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 accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."

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 because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

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

"*8*. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. *Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court*."

(emphasis supplied)

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

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

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

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

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

36. In our considered view it does not appear to be a case where any interference is called for.

37. Appeal deserves dismissal, which we direct.

……...J.
(Dr. ARIJIT PASAYAT)

…….……..J.
(ASOK KUMAR GANGULY)

New Delhi,
April 27, 2009