REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1233-1234 OF 2002

Arulvelu & Another .. Appellants

Versus

State represented by the Public Prosecutor & Another .. Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. These appeals are directed against the judgment of the High Court of Madras dated 12.3.2002 in Criminal Appeal No. 315 of 1992 and Criminal R.C. No. 691 of 1991 respectively.

2. In the instant case, the High Court has reversed the judgment of acquittal passed by the II Additional Assistant Sessions Judge, Periyar District in Sessions Case No. 45 of 1999 and convicted the accused persons.

3. Brief facts which are necessary to dispose of the matter are recapitulated as under:

This appeal is filed by Arulvelu, A-1 and Krishnasamy, A-2 (father of A-1). Appellant Arulvelu has been convicted under section 304-B of the Indian Penal Code (for short 'IPC') and sentenced to seven years rigorous imprisonment and he has been further convicted under section 498-A IPC and sentenced to rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default to suffer three months rigorous imprisonment. Appellant accused no.2 has been imposed sentence of fine of Rs.1,000/- under section 498-A of IPC, in default to suffer simple imprisonment for a period of three months.

4. Before the marriage of Arulvelu with Mangayarkarasi (since deceased), an agreement was entered into to the effect that towards the consideration of the marriage, deceased's father P.W.1 would give gold ornaments of the weight of 50 sovereigns along with other articles and a car to Arulvelu.

5. The father of the deceased could give ornaments of the weight of only 30 sovereigns of gold and also could not give the car as undertaken. Instead of giving the remaining ornaments of 20 sovereigns and a car, P.W.1 in all gave only Rs.5,000/- in small installments. This was the main cause of annoyance of Arulvelu and his family members with the deceased. It is the case of the prosecution that accused nos. 1 to 3 had been torturing the deceased Mangayarkarasi by demanding a car and money.

6. A baby boy was born to Arulvelu and the deceased Mangayarkarasi. Arulvelu told his wife that he would take back her along with the newly born child only if ornaments of the weight of 5 sovereigns and a cash amount of Rs.5,000/- were given to him. The father of the deceased had given ornaments of the weight of 4 sovereigns and a cash of Rs.5,000/- to the first accused. The first accused had taken back the deceased and the child only after receiving the aforementioned articles from P.W.1.

7. The first accused had demanded the balance ornament of the weight of one sovereign when the second child was

born. The father of the deceased gave ornament of the weight of one sovereign.

8. The first accused had sent the deceased Mangayarkarasi many times to her father for getting money for doing business. According to the prosecution, since the car was not given to the first accused, he had beaten and tortured the deceased asking her to get the car from P.W.1. Mangayarkarasi ultimately became disgusted with her life and at 11.30 a.m. on 15.3.1989, she committed suicide by hanging herself.

9. The prosecution, in order to prove its case, had examined 20 witnesses. K. Ramalingam P.W.1 is the father of the deceased. D. Latha P.W.4 is the sister of the deceased. S.T.P. Muthusamy Mudaliar P.W.5 is the neighbour. Thirumathi N. Yasodha P.W.2 is the tenant of P.W.1and P.W.3 A. Periasamy is the person who had arranged the marriage of the first accused and the deceased. V.P. Subramaniam P.W.6 is a close relative of the deceased. N.Manickam P.W.8 is a member of the Panchayat. S.A.

Periasamy P.W.9 is another Sambandhi of P.W.1 who later on turned hostile.

10. The fact that the deceased had committed suicide by hanging herself is undisputed. The question which arises for our adjudication is whether the appellant is guilty for compelling the deceased to commit suicide. According to the prosecution she was forced to commit suicide because of consistent demands of dowry made by the first accused. According to P.W.1 the father of the deceased, his daughter committed suicide because he could not give gold and a car as agreed before her marriage. The accused persons started torturing and harassing the deceased which ultimately led to suicide.

11. The trial court in its lengthy and comprehensive judgment has dealt with the prosecution evidence and also all the 33 material exhibits. According to the learned trial Judge, the evidence of P.W.1 that he agreed to give balance ornaments was not corroborated by P.W.3. According to the trial court, P.W.1 had admitted that for the first time, he told the court that accused no. 2 demanded 40 sovereigns and

the same was not stated either before the police officers or during Revenue Divisional Officer's enquiry. According to the trial Judge, P.Ws. 15, 17 and 20 would depose that P.W.1 has not told about the demand of ornaments during his cross-examination. The trial court further held that P.W.1 had admitted that he did not tell about the demand of 40 sovereigns of gold by accused no. 2 during the course of investigation, it is his case that an agreement was reached at 35 sovereigns. This has been corroborated by P.W.3 also. P.W.15, the Revenue Division Officer who conducted the enquiry and who also held the inquest came to the conclusion that the death was due to cruelty meted out to the deceased by way of demand of dowry. He has stated in the cross examination that during enquiry P.W.1 did not tell him that first accused demanded 5 sovereigns as a condition to take his wife and the child after delivery. P.W.15 further stated that during enquiry P.W.1 did not tell him that the first accused demanded Rs.10,000/- for his business. During cross-examination on the side of the accused, P.W.15 had admitted as follows:

> "P.W.1 stated that in his evidence that A2 demanded 50 sovereign of gold before marriage,

> but he accepted to put only 30 sovereign of gold and remaining 20 sovereign will be given later and if the business goes well then he will get a car. But he never stated in his evidence that A2 demanded 40 sovereign of gold and P.W.1 refused and then accepted to give later."

12. The trial judge, while discussing the evidence of P.W.15, found that there was no demand of bridal gifts before the marriage. The trial judge disbelieved the version of P.W.3 holding that he is not related to P.W.1 and he pleaded ignorance about the date and month of meeting of P.W.1 and accused no. 2. The trial judge also disbelieved the testimony of P.W.1 regarding giving of 4 sovereigns and Rs.5,000/- to the first accused after the birth of the first child and another sovereign of jewel at the time of birth of the second child for the reason that those facts were not spoken to during investigation. This part of the prosecution case is disbelieved. The trial judge has clearly held that P.W.1 deposed for the first time in the court with regard to demand of a car. He did not mention this fact in the first information report.

13. Ex. P.8 is the suicide note of the deceased which reads as under:

> "Nobody is responsible for my death. Children should be handed over to mother's house."

In the suicidal note, the deceased had not implicated any accused. This factor has also weighed heavily with the trial court in acquitting all the accused. The argument on behalf of the accused was that the accused no. 1 had suspected the character of his mother-in-law and other members of his in-law's family, so he did not want the deceased to visit her parents' house and to resolve the dispute Panchayat was held and, as per the version of P.W.1, according to the decision of Panchayat, P.W.1 should not go to the house of the accused and the deceased and accused nos. 1 to 3 also should not go to the house of P.W.1. As per the version of the accused, the decision of the Panchayat not permitting the deceased to go to her parents perhaps led to suicide. The trial court after carefully examining the entire evidence acquitted the accused.

14. According to the High Court, if she (the deceased) had no problem in her marital house and she was living peacefully with her husband and in-laws, what was the necessity for her to commit suicide? Why should she write

in her suicide note to leave her children in her mother's house? According to the High Court, unless an intolerable harassment was meted out to her, there was absolutely no necessity for her to write like this that the children be handed over to her mother's house. Therefore, the High Court held that, in all probabilities, there was demand of dowry and the deceased was harassed by the first accused and therefore, she committed suicide.

15. The High Court set aside the judgment of the trial court on the count that the trial court gave undue emphasis on the minor inconsistencies and contradictions. The High Court discarded the version of the trial court regarding P.W.1's deposition for the first time in court regarding demand of car which he did not mention in the first information report (FIR).

16. The High Court observed that the FIR cannot be an encyclopedia to contain all the details of history of the case. This approach of the High Court does not seem to be correct. The FIR should at least mention a broad story of the

prosecution and not mentioning of material and vital facts may affect the credibility of the FIR.

17. The trial court doubted the veracity of the statement of P.W.1 because it did not find any corroboration of the statement of P.W.1 with the statement of P.W.3 regarding agreeing to give the balance gold sovereigns. The High Court without any basis discarded the judgment of the trial court.

18. The trial judge observed that the testimony of P.W.1 is not credible because he for the first time in the court had stated that accused no. 2 had demanded 40 sovereigns. This was not stated either before the police officer or during Revenue Divisional Officers' enquiry.

19. The trial court disbelieved the version of P.W.1 regarding giving 4 sovereigns and Rs.5,000/- to the first accused after the birth of the first child and another sovereign of jewel at the time of birth of the second child for the reason that those facts were not spoken to during the investigation. The High Court held this part of the prosecution case unbelievable, but the fact remains that the

demand of dowry was proved beyond doubt through the evidence of P.Ws. 1 and 3. This approach of the High Court is not correct.

20. The High Court ought to have considered the entire evidence in a proper perspective. Unless comprehensive view of the entire evidence is taken in the proper perspective, a correct conclusion may not be possible. In this case, there has been acquittal by the trial court and, while reversing the order of acquittal, the High Court ought to have carefully considered the following circumstances:

(1) In the suicide note Ex. P-8, the deceased has not implicated any of the accused. This is indeed a very significant and vital factor which ought to have received proper attention by the High Court.

(2) There is no credible evidence to suggest that soon before the death, the deceased has been subjected to cruelty or harassment by the accused in connection with any demand of dowry which led to a serious act of committing suicide.

(3) The High Court failed to consider that the marriage took place in the year 1983 and the deceased committed suicide in the year 1989 i.e. after more than six years of the marriage. There are two small children out of the wedlock. It is quite improbable that ordinarily there would be consistent demands of dowry after six years. The fact of consistent demands is not established from clear evidence of the prosecution.

(4) The distance between the matrimonial home and the parental home of the deceased is merely one kilometer. There are many houses around the house of the accused. It is submitted that there was neither a whisper nor any complaint was filed by P.W.1 before the deceased committed suicide.

(5) It appears from the statement under section 313 IPC that A-1 wanted his wife (deceased) to keep some distance from her parental home. It transpired in the meeting of the Panchayat that to settle the dispute between the husband and wife and to reduce the affinity of the wife (deceased) towards her parental home (One kilometer away from the parental home),

the Panchayat took the decision that both the families should not visit each other. The impact of the decision of Panchayat on the deceased was not properly appreciated by the High Court.

(6) S.A. Periyasamy P.W.9 has not supported the case of the prosecution. He has stated that "we told Ramalingam that he and his wife should not go to Arulvelu"s house often". He has also admitted that A-1 and Magaiyarkarsi (deceased) were living happily.

(7) Ramalingam P.W.1 has stated that he consoled and advised his daughter to be bold as they would not come to see her as per the dictum of the Panchayat and wisely handle the situation at her matrimonial house. In fact the suggestion of defence is that the Panchayat was convened as there was a serious apprehension about the character of the mother of the deceased and her family. That is why in the Panchayat no discussion about dowry demand was whispered. Moreover, if the first appellant did not like his deceased wife, he would not be keen on keeping her with him.

(8) It appears that the Panchayat's decision caused serious depression to the deceased. It is submitted that the deceased's strong affinity towards her parents and her inability to cope up with the situation coupled with her sickness, she was driven to such a situation to commit suicide.

(9) R. Murugesan P.W.15, the RDO who prepared the inquest report has also stated about the panchayat's decision and has opined that "the reason for her death may be the control exerted on her that she should not go to her mother's house".

(10) The trial court has observed that when the accused were questioned under section 313 Cr.P.C., they filed a written statement jointly. In that written statement it has been explained that – "Due to mental agony, incurable stomach-ache, pain over the body and the control by the first accused that she should not go to the house of her parents, Mangayarkarasi had committed suicide". Further that "Arulvelu, without marrying for the second time for several years looked after the children with lot of love and affection so that

the children may not feel the absence of their mother. The family of accused is a joint family. In that family, accused nos. 1 to 3 and Vijayakumar, another son of accused nos. 2 and 3 and his wife Padma are living jointly."

(11) The trial court noticed serious contradictions and inconsistencies in the evidence of P.W.1 and those became relevant particularly when the High Court was dealing with the order of acquittal.

(12) There are material contradictions in the statements of P.W.1 and P.W.3. P.W.1 says after the birth of first child there was demand. Whereas P.W.3 says after 6-7 months of the marriage there was demand. Further P.W.1 says that 20 days before the occurrence A-2 and A-3 said that customary gifts were not good. Whereas P.W.3 says that after 6-7 months of 1st incident deceased was told that the articles were not good. P.W.1 says 30 sovereigns. However, P.W.3 says 35 sovereigns. P.W.1 has stated that he said to A-2 that he could give 20 sovereign later on. However, P.W.3 does not corroborate the same. Though P.W.3 has

stated that A-2 demanded car during the marriage negotiation, however, P.W.3 has not corroborated the evidence of P.W.1 with regard to the demand of car.

It is submitted that none of the investigating officers have supported P.W.1 with regard to the demand of jewels, car, cash and/or with regard to harassment to the deceased due to non fulfillment of the above said items.

(13) A. Periyasamy P.W.3 has not been examined by the DSP Sivanandam, RDO, Karuppusamy and others. Only CB CID Velu examined him. CB CID, Velu has stated that P.W.3 told him that the (a) P.W.1 is not his relative (b) not a family friend (c) accused is also not related (d) that he did not go for condolence when Mangai died (e) he does not know about Seer Varisai (f) he does not know about the dates on which he arranged the talks. However during his deposition he has admitted that he knows Palaniappan, the brother of Rukmani (P.W.1's wife) and he is his relative. P.W.20 has admitted that P.W.3 has said that Ramlingam (P.W.1) is his family friend. For the above said reasons

the evidence was of P.W.3 was not relied upon the trial court. It is submitted that the High Court has not considered these aspects.

(14) D. Latha P.W.4 stated that she was present during the talks when the demand during the marriage negotiation took place. However, P.W.3 says during talks except P.W.1 and A-2 no body was present. Further none of the witnesses including P.W.1 has said that P.W.4 was present during the talks.

K. Sivanandhan, Deputy Superintendent of Police P.W.17 has stated that P.W.4 has not stated that failure to buy a car became a problem. She has not stated about the demand of 50 sovereigns and a car. Therefore the trial court has disbelieved the presence of P.W.4 during the talks.

D. Latha P.W.4 has not given in her evidence that she had known personally that little by little 20 sovereign were given. The trial court has held that P.W.4 does not speak anything about the timings of the torture like four weeks, 20 days or 8 days before the death.

(15) S.T.P. Muthusamy Mudaliar P.W.5's testimony does not inspire confidence. He says that during the verbal argument between A-1 and Rukmani Amma, A-1 asked about car. However, Yasodha P.W.2 did not say the same. Further, Rukmani Amma was not examined. It is submitted that the trial court has discussed the contradictions between P.W.2, P.W.1 and P.W.5 and about utterance with regard to car in the quarrel and therefore the trial court has not relied on P.W.5. It is submitted that apart from Rukminiammal, Shaktivel (P.W.1's son) and Planniappan was also not examined by the prosecution.

(16) S.A. Periyasamy P.W.9 (Sambandhi of P.W.1) has not supported the case of prosecution. He says that he advised Ramlingam that they should not go to A-1's house often. During his cross-examination he has stated that "I understood that Arulvelu and Mangaiyarkarasi were living a happy matrimonial life. There is a Car in my son Sivakumar's name TNC-4128. Its RC was in the name of Ramalingam S/o Palaniappa Mudhaliar."

(17) The Assistant Judicial Magistrate PW 11 has stated that crime number of Exhibit A-1 has been manipulated. Further, P.W.13 has stated that "Ramalingam has given only one complaint on that day. Exhibit A13 is the first original copy. Exhibit A18 is the original of another set of copies taken. The person who has written Exhibit 13 has not written Exhibit A18". The trial court has also discussed the discrepancy with regard to Exh. A-13 and Exh.A-18.

(18) R. Murugesan P.W.15, RDO who prepared the inquest report has admitted that Yashoda (P.W.2) was examined on 30.03.89. He also stated that nearly 1000 houses would be there. It was crowded area with many houses. However, no neighbour was examined as a witness. Further, P.W.17 has admitted that A-1 said to him that he (A-1) brought the doctor. However, P.W.15 did not believe the same. It is submitted that P.W.15 has not given any cogent reason for disbelieving the same. It is submitted that the conduct of P.W.15 (the RDO) was adversely commented by the trial court.

(19) R.Murugesan P.W.15 has stated that Rukmaniammal said that on 18.3.89 Mangayarkarsi came to the house as she was ill. She asked as to why did she (Rukmaniammal) made controversy in a house where the death had taken place. She has also stated that on 21.3.89 she had sent medicine and tablets to Mangayarkarasi's husband's house through a car. It is submitted that R. Murugesan P.W.15 has admitted that Ramlingam (P.W.1) has not stated that A-1 had told him that he was going to get into another marriage. Further, he (P.W.1) did not say about demand of 5 sovereigns, Rs.10,000/- and that dowry was not enough. He (P.W.1) has also not stated before P.W.15 that Mangayarkarsi came to his house 8 days before and told that she could live only if he buys a car. Further, P.W.1 had also not stated before him that on Tuesday their daughter's parents in law asked them to buy a car. P.W.15 has further admitted that Yashoda (P.W.2) had stated that A-1 came to Rukmanniammal and told that 'because of you, A am very ashamed'. P.W.15 has also stated that P.W.1 had

not told him that before marriage there was any discussion about dowry on presence of some persons. Further that none of the witnesses has stated that they discussed about jewels and car before the marriage.

(20) The Panchayat's decision coupled with the condition of illness could have driven the deceased to commit suicide. This possibility cannot be ruled out. P.W.15 has also stated that on 22.3.89 a panchayat was convened to decide on the issue of dispute between both the families. In that Panchayat it has been decided that they should not visit each others house and Mangaiyarkarasi has to be advised accordingly.

(21) The High Court has made erroneous observation that: "It is not the panchayat decision that the deceased should not visit her parents. The only thing is P.W.1 should not go to the house of the accused".

As per the case of prosecution and as per the evidence it is crystal clear that the Panchayat's decision was that 'both the familier should not visit each other'.

(22) The High Court failed to appreciate that the prosecution has failed to prove that with all certainty, the dowry demand was the only cause for the deceased to commit suicide. The High Court has simply presumed with the following words: "The immediate temptation for her to commit suicide appears to be the demand of a car and subsequent quarrel of the first accused with the mother of the deceased. She has died in her in-law's house. Why should she commit suicide if she was happily living with the first accused?"

21. These are some of the material and vital aspects which clearly demonstrate that the trial court has carefully analyzed the entire evidence on record and the view taken by the trial court is certainly a possible or plausible view.

22. In our considered opinion, the approach of the High Court in the impugned judgment is not in consonance with the settled principles of criminal jurisprudence. The High Court while reversing the judgment of the trial court observed that "in all probabilities, I am inclined to hold that there was demand of dowry and the deceased was harassed by the first accused and

therefore, she committed suicide." In criminal cases the conviction can be sustained only when there is clear evidence beyond reasonable doubt. The accused cannot be convicted on the ground that in all probabilities the accused may have committed the crime. The approach of the High Court is wholly fallacious and unsustainable in law.

23. The real question which falls for our consideration is whether the view which has been taken by the trial court was a possible or a plausible view.

24. We have carefully perused the judgment of the trial court and the impugned judgment of the High Court. The trial court very minutely examined the entire evidence and all documents and exhibits on record. The trial court's analysis of evidence also seems to be correct. The trial court has not deviated from the normal norms or methods of evaluation of the evidence. By no stretch of imagination, we can hold that the judgment of the trial court is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it and consequently the judgment of the trial court is perverse.

25. We also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial court is so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse and the findings rendered by the trial court are against the weight of evidence. The law is well settled that, in an appeal against acquittal, unless the judgment of the trial court is perverse, the Appellate Court would not be justified in substituting its own view and reverse the judgment of acquittal.

26. The expression 'perverse' has been dealt with in number of cases. In ***Gaya Din (Dead) through LRs. & Others*** *v.* ***Hanuman Prasad (Dead) through LRs. & Others*** (2001) 1 SCC 501 this Court observed that the expression 'perverse' means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

27. In ***Parry's (Calcutta) Employees' Union*** *v.* ***Parry & Co. Ltd. & Others*** AIR 1966 Cal. 31, the Court observed that

'perverse finding' means a finding which is not only against the weight of evidence but is altogether against the evidence itself.

28. In ***Triveni Rubber & Plastics*** *v.* ***Collector of Central Excise, Cochin*** AIR 1994 SC 1341, the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

29. In ***M. S. Narayanagouda*** *v.* ***Girijamma & Another*** AIR 1977 Kar. 58, the Court observed that any order made in conscious violation of pleading and law is a perverse order.

30. In ***Moffett*** *v.* ***Gough,*** 1 L.R. 1r. 371, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

31. In ***Godfrey*** *v.* ***Godfrey*** 106 NW 814, the Court defined 'perverse' as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct etc.

32. The expression "perverse" has been defined by various dictionaries in the following manner:

1. **Oxford Advanced Learner's Dictionary of Current English Sixth Edition**

PERVERSE: Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

2. **Longman Dictionary of Contemporary English – International Edition**

PERVERSE: Deliberately departing from what is normal and reasonable.

3. **The New Oxford Dictionary of English – 1998 Edition**

PERVERSE: Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. **New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)**

PERVERSE: Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. **Stroud's Judicial Dictionary of Words & Phrases, Fourth Edition**

PERVERSE: A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

33. In ***Shailendra Pratap & Another*** *v.* ***State of U.P.*** **(2003) 1 SCC 761,** the Court observed thus:

> "We are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court

> would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

34. In ***Kuldeep Singh v. The Commissioner of Police & Others*** (1999) 2 SCC 10, the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under:

> "9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.
>
> 10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

35. The meaning of 'perverse' has been examined in ***H. B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others*** 1992 Supp (2) SCC 312, this Court observed as under:

> "7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness – as distinguished from the legal permissibility – of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

36. The legal position seems to be well settled and consistent at least since 1934 when the Privy Council decided the case of ***Sheo Swarup & Others*** *v.* ***King Emperor*** AIR 1934 PC 227 in which the Court (per Lord Russell) observed as under:

> "..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.."

The aforesaid decision was followed in subsequent judgments of this Court. [See: ***Surajpal Singh & Others*** *v.* ***The State,*** AIR 1952 SC 52; ***Tulsiram Kanu*** *v.* ***The State,*** AIR 1954 SC 1, ***Atley*** *v.* ***State of Uttar Pradesh*** AIR 1955 SC 807; ***Balbir Singh*** *v.* ***State of Punjab*** AIR 1957 SC 216; ***M.G. Agarwal*** *v.* ***State of Maharashtra*** AIR 1963 SC 200; ***Khedu Mohton & Others*** *v.* ***State of Bihar,*** (1970) 2 SCC 450; ***Bishan Singh & Others*** *v.* ***The State of Punjab*** (1974) 3 SCC 288; ***K. Gopal Reddy*** *v.* ***State of Andhra Pradesh*** (1979) 1 SCC 355; ***Tota Singh & Another*** *v.* ***State of Punjab*** (1987) 2 SCC 529; ***Sambasivan & Others*** *v.* ***State of Kerala*** (1998) 5 SCC 412; ***Bhagwan Singh & Others*** *v.* ***State of M.P.*** (2002) 4 SCC 85; ***Harijana Thirupala & Others*** *v.* ***Public Prosecutor, High Court of A.P., Hyderabad*** (2002) 6 SCC 470; ***State of Rajasthan*** *v.* ***Raja Ram*** (2003) 8 SCC 180; ***Budh Singh & Others*** *v.* ***State of UP*** (2006) 9 SCC 731; ***Kalyan Singh*** *v.* ***State of MP*** (2006) 13 SCC 303; ***Kallu alias Masih & Others***

v. ***State of MP*** (2006) 10 SCC 313; and ***State of Goa*** *v.* ***Sanjay Thakran & Another,*** (2007) 3 SCC 755]

37. In ***Shambhoo Missir & Another*** *v.* ***State of Bihar*** (1990) 4 SCC 17, this Court observed thus:

> "We are of the view that the High Court has interfered with the order of acquittal passed by the trial court not only for no substantial reasons but also by ignoring material infirmities in the prosecution case. Hence, we allow the appeals and set aside the order of the High Court convicting and sentencing the accused in both the appeals."

38. In ***Chandrappa & Others*** *v.* ***State of Karnataka*** (2007) 4 SCC 415, this Court reiterated the legal position as under:

> "(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."

39. 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 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.

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 give due weight and consideration to the decision of the trial court.

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.

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.

40. This Court in a recently delivered judgment ***State of Rajasthan v. Naresh @ Ram Naresh*** 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. 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.

42. In ***State of Uttar Pradesh v. Banne Alias Baijnath and Ors.*** (2009) 4 SCC 271, a two-Judge Bench of this court of which one of us (Bhandari, J.) was a member had an occasion to deal with this controversy in detail has laid down some of the circumstances in which this court would be justified in interfering with the judgment of the High Court. The circumstances discussed in the judgment are illustrative not exhaustive.

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

43. The appellate courts must keep in view these aforementioned observations in dealing with the appeals where the trial court has acquitted the accused.

44 In ***Dhanapal*** *v.* ***State by Public Prosecutor, Madras*** (Criminal Appeal No.987 of 2002 decided on September 1, 2009), this Court again examined the aforementioned decisions and analyzed the principles emerging out of the said decisions, it seems to us that despite series of judgments, the High Court has not clearly appreciated the legal position. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are

substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. 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. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.

45. We have re-examined the entire case because of the conflicting judgments of the Trial Court and the High Court. On careful marshalling of the entire evidence and the documents on record, we arrive at the conclusion that the view taken by the trial court is a possible and plausible view. The judgment of the trial court cannot be termed as perverse. The High Court ought not to have substituted the same by its own possible view. The impugned judgment of the High Court cannot stand the scrutiny of the well settled legal position which has been crystallized for more than 80 years since the case of ***Sheo Swarup***. In the facts and circumstances of this

case, we are constrained to set aside the impugned judgment of the High Court.

46. Consequently, these appeals filed by the appellants are allowed. The impugned judgment of the High Court set aside and that of the trial court is restored.

.....J.
(Dalveer Bhandari)

.....J.
(Dr. B.S. Chauhan)

New Delhi;
October 7, 2009.